

Hate Speech and Offensive Speech in Indonesian Law, Alignment with the Rabat Plan of Action (RPA)

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ABSTRACT

The regulation of hate speech and offensive speech has become a critical issue within Indonesian law, particularly in the context of expanding digital communication and increasing public discourse on social media platforms. This study aims to examine the normative construction of hate speech and offensive speech in Indonesian legal frameworks and to assess their alignment with the Rabat Action Plan (RPA) through a normative juridical analysis. The research employs doctrinal methods by analyzing statutory provisions, legal principles, and international human rights standards, focusing on the six-part threshold test of the RPA, which includes context, speaker, intent, content or form, extent of dissemination, and likelihood of harm. The findings indicate that Indonesian law demonstrates a strong commitment to maintaining public order and social harmony; however, several legal provisions remain broadly formulated, creating potential overlap between hate speech and offensive speech. The absence of a structured analytical framework may lead to inconsistent interpretation, particularly regarding intent and demonstrable harm. Comparative analysis reveals that while Indonesian regulations share similar objectives with the RPA, greater emphasis on proportionality, contextual assessment, and clear legal thresholds is needed to ensure compatibility with international human rights standards. This study contributes to the discourse on legal harmonization by offering a normative evaluation of speech regulation in Indonesia and highlighting the importance of balancing freedom of expression with the protection of vulnerable groups in the digital era.

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1. INTRODUCTION

The rapid expansion of digital communication technologies has significantly transformed the landscape of public discourse in Indonesia. Social media platforms, online forums, and instant messaging applications have enabled individuals to express opinions and disseminate information more widely and rapidly than ever before. While these

developments have strengthened democratic participation and freedom of expression, they have also intensified challenges related to hate speech and offensive speech. The spread of harmful narratives targeting individuals or groups based on ethnicity, religion, race, gender, or political identity has raised serious legal and ethical concerns, particularly in a multicultural society such as Indonesia.

Consequently, the regulation of speech has become a central issue in balancing the protection of individual dignity, social harmony, and constitutional freedoms.

Indonesia has established various legal instruments aimed at addressing harmful speech, including provisions within the Criminal Code, the Law on Electronic Information and Transactions, and other sectoral regulations. These frameworks are intended to prevent expressions that may incite discrimination, hostility, or violence. However, the implementation of such laws has sparked ongoing debates among scholars, legal practitioners, and civil society organizations. Critics argue that certain provisions are formulated broadly, allowing for diverse interpretations that may risk restricting legitimate expression. Supporters, on the other hand, emphasize the necessity of legal intervention to preserve public order and prevent social conflict. This tension reflects a broader global discourse regarding the appropriate boundaries between free expression and the regulation of harmful speech.

Internationally, the Rabat Action Plan (RPA), developed under the auspices of the United Nations, has emerged as an important normative framework for assessing restrictions on expression related to incitement to hatred. The RPA proposes a six-part threshold test consisting of context, speaker, intent, content or form, extent of dissemination, and likelihood of harm, which aims to balance freedom of expression with the need to prevent incitement in accordance with international human rights standards such as the ICCPR [1], [2]. Rather than encouraging blanket censorship, the framework promotes a proportional and contextual approach that distinguishes lawful expression, offensive speech, and criminal hate speech. Comparative discussions from European and Inter-American human rights perspectives further highlight the importance of structured legal standards, including platform responsibility and codes of conduct in regulating harmful speech in the digital era [3], [4].

Despite Indonesia's commitment to human rights principles, significant challenges remain in applying these standards within domestic legal practice. Legal inconsistencies, variations in judicial interpretation, and the rapid expansion of digital communication often complicate enforcement and create uncertainty regarding the boundary between criticism, offensive expression, and punishable hate speech [5]. Although Indonesia has enacted various regulations addressing harmful speech, their implementation is not always uniform, reflecting the tension between maintaining social harmony and protecting freedom of expression. Consequently, a normative juridical examination becomes essential to evaluate how Indonesian law conceptualizes harmful speech and to assess whether its regulatory framework adequately reflects internationally recognized analytical standards.

Previous studies have examined hate speech regulation from constitutional, cyber law, and socio-political perspectives, yet many discussions remain fragmented by focusing separately on domestic legal doctrine or international human rights principles without systematically integrating both frameworks. A comprehensive evaluation of Indonesian legal norms through the lens of the Rabat Action Plan remains limited, even though such an approach is essential to identify convergence and divergence between national regulations and global standards, particularly regarding legal clarity, proportionality, and the protection of fundamental rights. Therefore, this paper conducts a normative juridical analysis of hate speech and offensive speech regulations in Indonesian law to assess their alignment with the Rabat Action Plan, examining statutory provisions, legal interpretations, and normative principles to better understand how Indonesia balances freedom of expression with the prevention of harmful speech, while contributing to academic discourse, informing policymakers and practitioners, and encouraging the development of a more coherent legal framework in the digital era.

2. LITERATURE REVIEW

2.1 *Conceptualization of Hate Speech and Offensive Speech*

The differentiation between hate speech and offensive speech within the Indonesian legal context remains complex and contested due to broad legal formulations and enforcement practices that often blur the boundary between expressions that incite hatred and those that merely offend. Hate speech generally refers to expressions that promote discrimination, hostility, or violence based on protected characteristics, while offensive speech may involve criticism or satire that does not necessarily cause harm; however, the absence of clear legal distinctions in Indonesia complicates efforts to balance public order with freedom of expression. Existing regulations under the Electronic Information and Transactions Law (UU ITE) and the Indonesian Penal Code (KUHP) frequently employ ambiguous language, allowing both hate speech and offensive speech to be interpreted within the same legal framework, which has led to concerns about selective prosecution and potential restrictions on political dissent [6]. At the international level, the absence of a universally agreed definition of hate speech further complicates regulatory efforts, although the United Nations Strategy and Plan of Action on Hate Speech characterizes it as expressions that attack or use discriminatory language based on identity [7]. The broader legal debate therefore centers on maintaining a balance between safeguarding freedom of expression and protecting individuals from discrimination and harm, with different jurisdictions adopting varying approaches, such as the strong speech protections under the First Amendment in the United States compared to stricter regulatory models elsewhere [8].

2.2 *Freedom of Expression and Legal Restrictions*

Freedom of expression in Indonesia is constitutionally guaranteed

but subject to statutory limitations, particularly under the Electronic Information and Transactions (ITE) Law, which seeks to balance individual liberties with societal interests such as public order and morality, although its broad and vague formulations have often led to misuse and the criminalization of legitimate digital expression, raising concerns about shrinking democratic space and the need for reforms grounded in legality, necessity, and proportionality principles [9], [10]. The revised Criminal Code and the Constitutional Court Decision No. 105/PUU-XXII/2024 represent important developments by narrowing the scope of defamation offenses to individuals and strengthening legal certainty, thereby aligning more closely with international human rights standards [9], [11]. From an international perspective, limitations on expression are permissible to protect public order and morality, yet they must be contextually defined and proportionate to avoid systemic human rights violations, a challenge that continues to confront Indonesia in harmonizing domestic regulations with global norms [10], [12], [13]. Although the Constitutional Court's decision marks progress in safeguarding public criticism and democratic oversight, effective implementation still requires consistent legal interpretation, institutional reform, and cultural shifts within law enforcement practices [11].

2.3 *The Rabat Action Plan as an International Normative Framework*

The Rabat Action Plan (RPA) represents a pivotal framework in international human rights discourse concerning the regulation of incitement to hatred by introducing a nuanced six-part threshold test that evaluates context, speaker, intent, content or form, extent of dissemination, and likelihood of harm, ensuring that only the most serious forms of incitement are subject to criminal sanctions while maintaining respect for freedom of expression. The RPA emphasizes contextual analysis to

distinguish harmful incitement from permissible expression, demonstrating its relevance in legal assessments such as the Bambang Tri Mulyono case and highlighting its potential for broader national adoption [2], [14]. By considering the speaker's position and intent, the framework promotes a careful and proportionate approach that targets malicious conduct rather than limiting legitimate discourse [2]. Furthermore, the evaluation of content, form, and dissemination provides a comprehensive analytical structure that goes beyond simplistic categorization of speech, helping identify expressions that pose genuine risks to public order [2]. The inclusion of the likelihood of harm as a central criterion aligns the RPA with international human rights principles aimed at protecting vulnerable groups from discrimination and violence, reinforcing its role as a key reference in assessing domestic legal frameworks [15].

2.4 Indonesian Legal Framework on Hate Speech

Indonesian law regulates hate speech through several instruments, particularly the Electronic Information and Transactions Law (UU ITE) and the Indonesian Penal Code (KUHP), which were designed to reduce online hostility and prevent social tensions in a pluralistic society; however, scholarly literature highlights persistent challenges arising from vague legal formulations and subjective judicial interpretations that create inconsistencies in enforcement and raise concerns about the balance between public order and freedom of expression. Article 28(2) of the ITE Law, for instance, lacks an objective threshold, allowing broad judicial discretion and multiple interpretations of key terms such as "incitement," which often results in subjective assessments of offensiveness and selective prosecution, including cases involving political dissent and criticism [6], [16], [17]. Enforcement challenges are further compounded by political pressures, institutional biases, and

limited training or capacity among law enforcement and judicial actors, leading to inconsistent application of hate speech regulations [18]. Consequently, many scholars advocate for legal reform through clearer definitional standards and the adoption of structured analytical frameworks, including those proposed by the Rabat Action Plan, to ensure more balanced protection between social harmony and the right to freedom of expression [6], [17].

2.5 Research Gap

Although previous scholarship has explored hate speech regulation in Indonesia and discussed international human rights frameworks, relatively few studies provide a systematic normative comparison between Indonesian legal provisions and the Rabat Action Plan. Existing research often addresses legal enforcement challenges or broader socio-political implications without applying the structured six-part threshold test proposed by the RPA. This gap indicates a need for a comprehensive juridical analysis that evaluates both conceptual alignment and practical implications. By situating Indonesian law within the analytical framework of the Rabat Action Plan, this study seeks to contribute to the ongoing discourse on harmonizing national legislation with international human rights standards while maintaining sensitivity to local legal and cultural contexts.

3. RESEARCH METHODS

3.1 Research Design and Approach

This study employs a normative juridical research design to examine the regulation of hate speech and offensive speech within Indonesian law and to evaluate its alignment with the Rabat Action Plan (RPA), focusing on the analysis of legal norms, principles, and doctrines as reflected in statutory regulations, international instruments, and legal interpretations. The approach is appropriate because the research does not aim to measure social behavior

empirically but rather to assess the conceptual and normative consistency between national legal frameworks and international human rights standards through doctrinal analysis. Using a qualitative legal analysis that emphasizes systematic interpretation of legal texts, this study explores how Indonesian law conceptualizes harmful speech, distinguishes between hate speech and offensive speech, and aligns these concepts with international norms, while also examining the philosophical foundations of freedom of expression and the legal justifications for restricting certain forms of speech within a democratic society.

3.2 *Types and Sources of Legal Materials*

This study relies primarily on secondary legal data comprising three categories of legal materials. Primary legal materials include statutory regulations, constitutional provisions, and relevant international human rights instruments, such as Indonesian criminal law provisions, electronic communication laws, the Rabat Action Plan, and principles derived from the International Covenant on Civil and Political Rights (ICCPR), which serve as the main object of analysis in evaluating the normative structure of speech regulation. Secondary legal materials consist of scholarly books, peer-reviewed journal articles, legal commentaries, and academic discussions related to hate speech, freedom of expression, and human rights law, providing theoretical perspectives and interpretative frameworks to support doctrinal analysis. Meanwhile, tertiary legal materials, including legal dictionaries, policy reports, and official explanatory documents, are used to clarify terminology and contextualize legal concepts, ensuring a comprehensive understanding of both domestic legal provisions and international normative frameworks.

3.3 *Data Collection Techniques*

Data collection in this normative juridical research is carried out through

systematic literature study and document analysis, where relevant legal texts and scholarly sources are identified, categorized, and examined according to their relevance to the research objectives. The researcher gathers statutory documents, official guidelines, and international legal instruments related to the regulation of harmful speech, while also reviewing academic literature to explore ongoing debates, theoretical developments, and critical perspectives on hate speech regulation and freedom of expression. The process involves accessing legal databases, academic repositories, and official publications to ensure the credibility and reliability of sources, with particular emphasis on authoritative materials that represent both Indonesian legal perspectives and international human rights discourse, thereby maintaining objectivity and transparency in the analysis of legal norms.

3.4 *Analytical Framework*

The analysis in this study employs a doctrinal and comparative approach, where doctrinal analysis is used to interpret Indonesian legal provisions related to hate speech and offensive speech by examining legal definitions, elements of criminal liability, and the scope of restrictions on expression, while comparative analysis evaluates these provisions against the six-part threshold test of the Rabat Action Plan, including context, speaker, intent, content or form, extent of dissemination, and likelihood of harm. Through this analytical framework, the research assesses whether Indonesian law reflects principles of proportionality and necessity consistent with international human rights standards, while also considering the broader implications of speech regulation and the risks associated with overly broad legal interpretation, ultimately aiming to identify normative gaps and opportunities for legal harmonization between domestic regulations and international guidelines.

4. RESULTS AND DISCUSSION

4.1 *Normative Construction of Hate Speech and Offensive Speech in Indonesian Law*

The analysis of Indonesian legal provisions shows that the regulation of hate speech and offensive speech is primarily embedded within criminal law and electronic communication legislation, reflecting the state's responsibility to maintain public order and protect citizens from expressions that may provoke hostility, discrimination, or social conflict in a multicultural society. However, doctrinal examination indicates that many provisions employ broad terminology such as "insult," "defamation," or "incitement," which creates interpretative ambiguity. For instance, Article 28 paragraph (2) of the ITE Law lacks specific legal thresholds, allowing multiple interpretations and subjective enforcement practices [17]. Such broad definitions have contributed to selective prosecution, including cases involving political dissent and criticism, raising concerns about democratic rights and legal certainty [6]. The overlap of hate speech provisions across different laws further complicates legal processes, often causing stagnation at the pre-prosecution stage due to differing interpretations among investigators and prosecutors, while the absence of an objective threshold expands judicial discretion and results in inconsistent assessments of harm [16].

These broad formulations create a normative overlap between hate speech and offensive speech, where hate speech generally targets protected groups and may incite violence or discrimination, whereas offensive speech may merely involve harsh criticism or statements perceived as disrespectful. The lack of explicit differentiation in legal provisions contributes to interpretative ambiguity and inconsistent law enforcement practices, as decisions may rely more on subjective perceptions of offensiveness than on structured evaluations of harm. Scholars emphasize the need to refine

legal definitions to ensure proportional enforcement and to prevent multiple interpretations that could undermine legal certainty [6], [17]. Although Indonesian legal mechanisms include both preventive and repressive measures, clearer guidelines are necessary to distinguish between legitimate freedom of expression and punishable hate speech [19].

From a normative juridical perspective, Indonesian law places strong emphasis on protecting public morality and social cohesion, reflecting historical and cultural values that prioritize collective harmony. While this approach aims to safeguard societal stability, overly broad restrictions risk limiting legitimate public debate, particularly within digital spaces where political expression and social criticism are increasingly prevalent. Consequently, legal discourse in Indonesia has begun to highlight the importance of balancing social order with constitutional freedoms by adopting clearer conceptual boundaries and proportional legal standards. Strengthening legal clarity would not only reduce interpretative inconsistencies but also help align national regulations with broader human rights principles while maintaining sensitivity to Indonesia's socio-cultural context.

4.2 *Alignment with the Rabat Action Plan: Context and Speaker*

The Rabat Action Plan proposes that the assessment of harmful speech should begin with a structured evaluation of context and the role of the speaker, where context includes social tensions, historical relations between groups, and the broader political environment in which speech occurs. In Indonesian legal practice, contextual considerations are often present but remain implicit rather than formally articulated within a clear analytical framework. Law enforcement authorities and courts may consider potential impacts on public order or communal relations, particularly in cases involving religious or ethnic sensitivity,

yet the legal framework, including the Information and Electronic Transactions Law, does not consistently provide structured guidance on contextual analysis [5], [20]. This absence of systematic evaluation creates uncertainty in determining when speech crosses the threshold from permissible expression to punishable hate speech.

The Rabat Action Plan also emphasizes the importance of assessing the speaker's position, authority, and influence, recognizing that speech delivered by political leaders, public figures, or individuals with significant reach may carry greater risk of harm. However, Indonesian statutory provisions generally focus on the content of expression rather than the speaker's status or social influence, which may limit the effectiveness of legal responses to harmful speech disseminated by influential actors [21], [22]. This gap suggests that Indonesian law could benefit from adopting a more nuanced evaluation that incorporates speaker influence, ensuring that legal interventions correspond proportionally to the potential impact of particular forms of expression.

The lack of clear guidelines on contextual analysis and speaker status may lead to inconsistent legal outcomes, where similar statements are judged differently depending on public reactions or media attention rather than objective legal criteria. Scholars have expressed concerns that overly strict enforcement risks replicating past repressive measures, while also highlighting the need for clearer legislation and increased public awareness to prevent hate speech effectively [5], [21]. Aligning Indonesian legal practice with the contextual approach of the Rabat Action Plan could strengthen legal predictability, enhance proportionality in enforcement, and support a more balanced framework that protects freedom of expression while addressing genuine risks of incitement.

4.3 *Intent and Content/Form of Expression*

Another critical component of the Rabat Action Plan (RPA) is the assessment of intent, which examines whether a speaker deliberately aims to incite hatred or discrimination. Although Indonesian legal provisions recognize elements of intention, their application in practice is not always consistent, as courts often rely on behavioral indicators rather than comprehensive psychological evaluation when determining intent, leading to varying legal outcomes [23]. Some scholars suggest that adopting a dualistic approach that combines objective offense elements with a deeper examination of the perpetrator's mental state could improve fairness and legal certainty in hate speech cases [24]. The RPA, by contrast, places strong emphasis on intentionality as a prerequisite for criminal sanctions, ensuring that only speech demonstrating clear incitement is subject to punishment.

The content and form of expression also play a central role in determining whether speech qualifies as punishable hate speech. Indonesian law frequently evaluates the language used, especially expressions perceived as insulting religious symbols or ethnic identities, yet doctrinal analysis indicates that such evaluations may prioritize moral or cultural sensitivity over an objective assessment of incitement [25]. In comparison, the RPA framework encourages a more precise legal analysis focused on whether speech directly advocates hostility or violence rather than merely causing offense, a principle also reflected in jurisprudence from international bodies such as the European Court of Human Rights [26]. This distinction is essential to prevent the conflation of controversial or critical expression with genuinely harmful incitement.

International comparisons highlight the importance of clearer standards in assessing both intent and content, suggesting that Indonesia could

strengthen its legal framework by integrating contemporary psychological insights and standardized procedures for evaluating intent [23]). Incorporating the RPA's analytical approach would help legal authorities differentiate between lawful yet controversial expression and speech that poses a real threat to social stability. Such differentiation is crucial to prevent the misuse of legal provisions against critical voices while maintaining effective protection against discrimination and harmful speech, ultimately supporting a more balanced relationship between freedom of expression and public order.

4.4 *Extent of Dissemination and Likelihood of Harm*

Digital communication has significantly amplified the speed and reach of speech dissemination, making the evaluation of audience size and potential impact increasingly important within contemporary legal frameworks. The Rabat Action Plan identifies the extent of dissemination as a crucial factor in determining whether speech should be subject to criminal regulation, particularly in digital environments where algorithmic amplification can expand influence beyond traditional boundaries. Although Indonesian law recognizes the role of online platforms and includes provisions related to electronic dissemination, it still lacks clear and specific criteria for assessing the scale of distribution or the effects of algorithm-driven visibility, creating uncertainty in legal application [27]. The rapid expansion of digital platforms has therefore intensified the challenge of balancing effective regulation of harmful content with the protection of freedom of expression [27].

Another central component of the RPA framework is the likelihood of harm, which refers to the measurable risk of violence, discrimination, or societal instability resulting from particular forms of speech. In practice, Indonesian legal provisions often assume that certain

expressions inherently threaten social harmony without requiring strong evidence of probable harm, reflecting a preventive orientation that prioritizes socio-cultural preservation [28]. This approach differs from the RPA's emphasis on evidence-based risk assessment, which encourages authorities to apply criminal sanctions only when potential harm is substantial and demonstrable, thereby strengthening fairness and proportionality in enforcement [28]. The absence of a clear evidentiary standard in assessing harm remains a significant challenge in aligning domestic legal practice with international human rights principles.

Scholars note that Indonesia continues to face conceptual and regulatory challenges in defining "harm" within digital expression, particularly as technological developments introduce new forms of communication and AI-mediated interactions [28], [29]. Recommendations include adopting a risk-based regulatory model and redefining legal subjects to address emerging technological contexts while maintaining accountability and ethical values [29]. Incorporating the RPA's analytical elements into Indonesian legal practice would also encourage a more graduated regulatory approach, where criminal law is complemented by alternative strategies such as mediation, public education, or counter-speech initiatives when the risk of harm remains low, aligning with international human rights principles that prioritize minimal restriction of expression.

4.5 *Normative Implications and Legal Harmonization*

The comparative analysis indicates that Indonesian law shares several objectives with the Rabat Action Plan, particularly in preventing discrimination and safeguarding social harmony; however, important differences appear in the methodological approach used to evaluate harmful speech. Indonesian regulations tend to emphasize

moral protection and the maintenance of public order, whereas the RPA framework promotes structured assessment, proportionality, and evidence-based analysis. Bridging these perspectives requires clearer legal definitions and greater analytical consistency so that speech regulation is applied in a predictable and balanced manner.

Normatively, aligning domestic law with the Rabat Action Plan does not mean abandoning national legal values, but rather refining legal interpretation so that restrictions on expression remain narrowly tailored and grounded in demonstrable risk. Such alignment could enhance legal certainty, minimize overcriminalization, and reinforce Indonesia's commitment to international human rights standards while maintaining sensitivity to its pluralistic social context. Overall, integrating the RPA's six-part threshold test into Indonesian legal discourse would help clarify the distinction between hate speech and offensive speech and foster a more balanced relationship between freedom of expression and the protection of vulnerable communities in the digital era.

5. CONCLUSION

This study demonstrates that Indonesian legal regulations concerning hate speech and offensive speech are primarily designed to safeguard social harmony and prevent conflict within a pluralistic society. Through normative juridical analysis, it becomes evident that existing statutory provisions reflect a strong protective orientation but often lack clear conceptual boundaries between expressions that merely offend and those that constitute incitement to hatred or violence. The comparison with the Rabat Action Plan reveals partial alignment, particularly in recognizing the need to address harmful speech, yet highlights significant gaps in the structured evaluation of context, speaker influence, intent, dissemination, and likelihood of harm. The absence of a consistent analytical framework may result in interpretative ambiguity and uneven law enforcement practices. Strengthening legal clarity by integrating proportionality and evidence-based assessment, as emphasized in the Rabat Action Plan, could enhance legal certainty while preserving freedom of expression. Ultimately, harmonizing Indonesian legal norms with international human rights principles does not require abandoning national values but rather refining legal interpretation to achieve a balanced approach that protects both individual dignity and democratic discourse in the digital era.

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