

Impacts of Court Ruling on Digital Democracy and Free Expression

Linda Ikawati¹, Retno Eko Mardani², Sitta Saraya³, Rengga Kusuma Putra⁴

¹Universitas Sains Al-Qur'an, Indonesia

² Universitas Veteran Bangun Nusantara Sukoharjo

³ Universitas Selamat Sri, Indonesia

⁴ Universitas Sains dan Teknologi Komputer, Indonesia

*Correspondence e-mail: lindaika@unsiq.ac.id

Submission

2024-Mar-19

Review

2025-Jan-07

Accepted

2025-Apr-03

Publish

2025-Apr-19

Abstract

This study aims, first, to analyze the legal reasoning of the Constitutional Court in Decision Number 115/PUU-XXII/2024, which annulled the phrase "riots" in Article 28 paragraph (3) and Article 45A paragraph (3) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 on Electronic Information and Transactions. Second, it seeks to examine the implications of this annulment for the scope of freedom of expression and the potential regulation of hate speech or incitement in Indonesia's digital sphere. It further explores how this Constitutional Court decision may influence the dynamics of digital democracy, particularly in the context of public criticism and online participation in Indonesia. This study employs a qualitative research method, with the primary legal material being Constitutional Court Decision Number 115/PUU-XXII/2024 on the Judicial Review of Provisions in Law Number 1 of 2024. The findings reveal that the Constitutional Court's removal of the phrase "riots" has the potential to broaden the space for digital freedom of expression, but it also presents new challenges in maintaining public order. Therefore, a deeper understanding of the boundaries of freedom of expression in the digital age is required, along with the development of effective legal and non-legal mechanisms to balance expressive freedom and social order.

Keywords: Digital Democracy; Freedom of Expression; Rubber Articles.

How to Cite: Linda Ikawati.et.al"Impacts of Court Ruling on Digital Democracy and Free Expression" *Jurnal Ilmiah Dunia Hukum*, 9 no. 2 (2025): 51-63. DOI : 10.35973/jidh.xxxxxx

1. Introduction

Freedom of expression is one of the fundamental human rights and serves as a cornerstone of democratic systems.¹ Etymologically, the term "freedom of expression" is derived from the Latin words *libertas* (freedom) and *expressio* (expression or articulation), and is normatively protected under various international legal instruments, such as Article 19 of the Universal Declaration of Human Rights (UDHR), as well as Article 28E(3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). Alongside technological advancement, freedom of expression in the digital context now faces a range of new challenges, particularly those associated with the spread of hate speech and disinformation (hoaxes). To address these challenges, Indonesia enacted Law No. 11 of 2008 on Electronic Information and Transactions (the

¹ Tri Rahmi Gettari, Wira Okta Viana, and Meydianto Mene, "Hak Asasi Manusia Dan Kebebasan Berekspresi Di Indonesia ," *Ensiklopedia of Journal* 5, no. 2 (2023).

EIT Law), which has since undergone several amendments, most recently resulting in Law No. 1 of 2024.²

Legal challenges have arisen in the implementation of the EIT Law, especially in relation to Article 27A in conjunction with Article 45(4), as well as Article 28(3) in conjunction with Article 45A(3). These provisions exhibit potential legal uncertainty. From a juridical perspective, these articles have been frequently criticized as "rubber articles" due to their vague and overly broad formulations, particularly regarding terms such as "attacking someone's honor or reputation" and "disseminating false information that causes public unrest." Empirically, these provisions have triggered public concern, as they are often used to criminalize individuals for expressing criticism of public officials. In contrast, countries such as Germany and Canada have developed more precise and narrowly tailored definitions of hate speech and disinformation, thereby avoiding excessive restrictions on freedom of expression.³

Data indicate that the ambiguous provisions within the EIT Law have repeatedly been subjected to judicial review before the Constitutional Court. In its most recent ruling on Article 28(3) in conjunction with Article 45A(3), the Court rejected the petition and upheld the existing substance of the article, failing to clarify the phrase "disseminating false information." In practice, however, unverified information conveyed as a form of criticism is often mischaracterized as a hoax. Similarly, Article 27A generates legal uncertainty by applying to "any person," which opens the door for criticism of public officials to be misconstrued as defamation. According to data from SAFEnet (2023), there has been a significant increase in criminalization cases against digital activists based on these contested provisions.⁴

Several previous studies have addressed similar themes. First, Fairus Augustina Rachmawati, as published in the National Seminar on Higher Legal Education: Integrity-Based and Technology-Oriented, discussed and concluded that the provision under Article 27(3) of the Electronic Information and Transactions Law (ITE Law), which pertains to defamation and insult, is open to multiple interpretations. This ambiguity has led to several serious issues in its implementation. These include: restrictions on freedom of opinion guaranteed by the Constitution and human rights law, legal uncertainty, potential over-criminalization, overlapping norms with the Indonesian Penal Code (KUHP) which render the article ineffective, and arbitrary actions by law enforcement authorities in designating suspects. This multi-

² Muhammad Irfan Pratama, Abdul Rahman, and Fahri Bachmid, "Kebebasan Berpendapat Dan Berekspresi Di Media Sosial Dalam Perspektif Hak Asasi Manusia," *Qawanin Jurnal Ilmu Hukum* 3, no. 1 (2022), <https://doi.org/10.56087/qawaninjih.v3i1.406>.

³ Nur Ansar, "Memahami Kebebasan Berekspresi, Batasannya, Serta Hubungannya Dengan Delik Penghinaan Di Indonesia," *Researchgate.Net*, no. July (2021).

⁴ Damar Juniarto, "Revisi UU ITE Total Sebagai Solusi," *SAFEnet*, 2021.

interpretative nature is deemed to undermine the objectives of the law, namely legal certainty, utility, and justice.⁵

Second, Yosephus Mainake and Luthvi Febryka Nola, in an article published in *Info Singkat Journal* titled *The Impact of Multi-Interpretative Articles in the Law on Electronic Information and Transactions*, found that vaguely worded provisions in the ITE Law – especially Articles 27, 28, and 29 – have had negative consequences, including an increase in criminal complaints and the potential curtailment of public freedom of expression. The lack of clarity in the wording of these articles has made the ITE Law an effective tool for criminalizing certain individuals, even being used as an instrument of revenge, thus deviating from the legal objectives of the ITE Law. Therefore, revision of the ITE Law is urgently needed through the legislative function of the Indonesian House of Representatives (DPR RI), along with strict oversight of its implementation and enforcement to prevent misuse of the existing norms.⁶

Third, an international article written by Gehan Gunatilleke, as published in *Human Rights Review* under the title *Justifying Limitations on the Freedom of Expression*, shows that the proportionality approach – commonly used in many jurisdictions to restrict freedom of expression – has significant weaknesses, as it does not always require the state to provide substantial justification for such limitations. The study critiques this method and offers an alternative: the duty-based justificatory approach, which obliges the state to demonstrate that the individual in question has a moral or justice-based duty to refrain from certain expressive acts. This approach is considered more normative and better able to limit the state's potential abuse of power to silence minority or opposition voices, while also preventing the state from using restrictions merely to protect majority interests or avoid fulfilling its positive obligations.⁷

Building on previous research, this study offers originality through its specific and timely focus, namely an in-depth analysis of Constitutional Court Decision No. 115/PUU-XXII/2024, which annulled the term "unrest" in Article 28(3) and Article 45A(3) of the ITE Law. Earlier studies have tended to discuss the general problem of vague provisions in the ITE Law or critique limitation approaches such as the proportionality test without directly linking them to the concrete implications of this Constitutional Court ruling. In contrast, this study not only analyzes the legal reasoning of the Constitutional Court but also examines the contextual impact on the expansion of freedom of expression in the digital sphere and the new challenges of maintaining public order. Therefore, this research provides a new contribution to the

⁵ Fairus Augustina Rachmawati, Januari Nasya, and Ayu Taduri, "Implikasi Pasal Multitafsir UU ITE Terhadap Unsur Penghinaan Dan Pencemaran Nama Baik," *Seminar Nasional Hukum Universitas Negeri Semarang* 7, no. 2 (2021).

⁶ Yosephus Mainake and Luthvi Febryka Nola, "Dampak Pasal-Pasal Multitafsir Dalam Undang-Undang Tentang Informasi Dan Transaksi Elektronik," *Jurnal Info Singkat* XII, no. 16 (2020).

⁷ Gehan Gunatilleke, "Justifying Limitations on the Freedom of Expression," *Human Rights Review* 22, no. 1 (2021), <https://doi.org/10.1007/s12142-020-00608-8>.

field of legal studies by exploring the dynamics of digital democracy following the Constitutional Court's decision and emphasizing the importance of redefining legal boundaries on hate speech to ensure consistency with the constitutionally guaranteed principle of freedom of expression.

This study aims, first, to analyze the legal reasoning of the Constitutional Court in Decision No. 115/PUU-XXII/2024, which annulled the phrase "unrest" in Article 28(3) and Article 45A(3) of Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions. Second, it seeks to analyze the implications of this annulment on the scope of freedom of expression and the potential for managing hate speech or incitement in Indonesia's digital space. Furthermore, it explores how this Constitutional Court decision may influence the dynamics of digital democracy, particularly in the context of online criticism and public participation in Indonesia.⁸

2. Research Method

The research methodology employed in this journal adopts a normative legal approach, focusing on the analysis and interpretation of relevant legal norms through qualitative methods. The primary method involves legal document analysis of the Constitutional Court's decision concerning the annulment of the term "riot" (kerusuhan) in the Electronic Information and Transactions Law (ITE Law), particularly in Article 28 paragraph (3) and Article 45A paragraph (3), both before and after the amendment (Law No. 1 of 2024). This is complemented by an examination of the 1945 Constitution provisions regarding freedom of expression and opinion, as well as relevant doctrines in criminal law. The study also incorporates a conceptual analysis of key terms such as "freedom of expression," "digital democracy," and "riot" within both legal and socio-political contexts. An interpretive approach is used to understand the meaning and implications of the Constitutional Court's ruling within the Indonesian legal system and the broader digital socio-political dynamics. Primary data sources include the Constitutional Court Decision Number 115/PUU-XXII/2024, while secondary data consist of statutory texts, legal books, scholarly journals, expert opinions, and credible media reports. Data were collected through literature study and documentation, and analyzed using qualitative content analysis techniques to identify legal arguments and ratio decidendi, hermeneutic interpretation to explore deeper meaning within systemic and socio-political contexts, and synthesis to formulate comprehensive conclusions from the findings.

⁸ Sarah Joseph, "International Covenant on Civil and Political Rights (ICCPR)," in *Elgar Encyclopedia of Human Rights*, 2022, <https://doi.org/10.4337/9781789903621.int.covenant.civil>.

3. Research Results and Discussion

3.1. The Constitutional Court's Legal Reasoning in Annuling the Term "Riot" in the ITE Law

The Law on Electronic Information and Transactions has been in force since the enactment of Law No. 11 of 2008. Over time, the ITE Law has become increasingly controversial, particularly among civil society activists, political analysts, and legal aid foundations concerned with governance and state affairs. This controversy primarily stems from several provisions within the law that have been labeled "rubber articles" (pasal karet) due to their broad and ambiguous wording, which allows for flexible interpretation and inconsistent application in practice.⁹

Due to its contentious nature, the law has undergone two amendments: first, through Law No. 19 of 2016, which amended Law No. 11 of 2008; and more recently, through Law No. 1 of 2024, which constitutes the second amendment to the original statute.¹⁰

Unfortunately, despite having undergone two amendments as previously mentioned, the controversy surrounding the ITE Law has not subsided. It continues to be listed among laws containing "rubber articles" (provisions with vague and overly broad language). In 2024 alone, several articles of the ITE Law were subject to judicial review before the Constitutional Court, including: Article 27 paragraph (1) in conjunction with Article 45 paragraph (1); Article 28 paragraph (3); Article 45A paragraph (3); Article 45 paragraph (2); and Article 45 paragraph (7).

Among the articles under review, this paper specifically focuses on Article 28 paragraph (3) in conjunction with Article 45A paragraph (3), which, from the researcher's perspective, has received comparatively limited scholarly attention. This article pertains to the dissemination of false information or hoaxes, which the state has criminalized. However, the author argues that the concept of "hoax news" itself can be categorized into two distinct types: (1) information that is purely false or deliberately fabricated, and (2) information labeled as a hoax due to the absence of verified truth.

At present, a significant distinction exists between these two categories. Pure hoax news is generally created with the intent to mislead readers, potentially

⁹ Shinta Ressmy Cakra Ningrat and Soni Akhmad Nulhaqim, "Pasal Karet UU ITE Dan Peyeleaian Konflik Digital Di Indonesia," *Epistemik: Indonesian Journal of Social and Political Science* 4, no. 2 (2023), <https://doi.org/10.57266/epistemik.v4i2.158>.

¹⁰ Kendry Tan, "ANALISA PASAL KARET UNDANG-UNDANG INFORMASI DAN TRANSAKSI ELEKTRONIK TERHADAP ASAS KEJELASAN RUMUSAN," *Jurnal Hukum Samudra Keadilan* 17, no. 1 (2022), <https://doi.org/10.33059/jhsk.v17i1.3376>.

causing serious harm. In contrast, news that is deemed a hoax due merely to its unverified nature often contains a foundational element of truth but is embellished with unsubstantiated details, sometimes rooted in prejudice or speculation. The underlying purpose of this second type of hoax is often to seek validation or public acknowledgment of the circulated information.¹¹

Based on these considerations, the Constitutional Court declared that the term "riot" as found in Article 28 paragraph (3) and Article 45A paragraph (3) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 on Electronic Information and Transactions (State Gazette of the Republic of Indonesia Year 2024 Number 1, Supplement to the State Gazette Number 6905) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force, conditionally unconstitutional, unless interpreted as "riot refers to a condition that disrupts public order in the physical space, not in the digital/cyber space."

The Constitutional Court's decision to annul the phrase "riot" in Article 28 paragraph (3) of the ITE Law not only reflects a commitment to upholding constitutional principles but also demonstrates strong and well-reasoned legal arguments. The annulment stems from the Court's concern over the potential for multiple interpretations or legal ambiguity, which could restrict citizens' constitutional rights, particularly freedom of speech and expression.

First, the Court considered the compatibility of Article 28 paragraph (3) of the ITE Law with Articles 14 and 15 of Law No. 1 of 1946 on Criminal Law. These provisions contain important elements such as "false news," "exaggerated reports," and "public disorder or unrest." The Court found that the elements of "false or misleading information" and "uncertain or exaggerated news" in these articles are ambiguous due to the absence of clear and objective parameters. What constitutes "false news" or "exaggerated reporting" may vary depending on an individual's perspective, cultural background, religious values, or social context. This legal uncertainty risks the criminalization of citizens who are, in essence, exercising their constitutional right to express their opinions.¹²

Second, the Court emphasized the importance of recognizing freedom of expression as guaranteed by the 1945 Constitution and international law, particularly Articles 19 (2) and (3) of the International Covenant on Civil and Political Rights (ICCPR). The covenant underscores that restrictions on freedom of expression may only be imposed if they meet strict criteria: they must be

¹¹ Amri; Duan and Bambang; Mudjiyanto, "Pasal Karet Undang-Undang Informasi Dan Transaksi Elektronik Bermasalah," *Jurnal Kominfo* 3 (2022).

¹² Muhammad Farid, "Penyebarluasan Informasi Mengenai Bentuk Dan Macam Tindakan Cyberbullying Berdasarkan Undang-Undang Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik Dan Upaya Pencegahannya Melalui Keb," *Jurnal Sumbangsih* 1, no. 1 (2020), <https://doi.org/10.23960/jsh.v1i1.11>.

clearly prescribed by law, necessary in a democratic society, and aimed at protecting legitimate interests such as national security, public order, or the rights of others.¹³

Furthermore, the Court referred to the Siracusa Principles as a guideline in assessing the validity of human rights restrictions. These principles emphasize that restrictions on rights should not undermine the essence of the right itself, must be precisely formulated, and cannot be arbitrary. In this regard, the phrase "riot" in Article 28 paragraph (3) of the ITE Law has the potential to become a "rubber article," as it lacks clear criteria and could be used repressively by law enforcement against citizens expressing controversial opinions or criticism.

Third, the Court noted that in the current era of information openness and technological advancement, society has rapid access to a wide range of information sources. In this context, it is difficult to instantly determine whether information is false or true. Therefore, a repressive approach to assessing the spread of information with potential for riot is irrelevant and even contrary to the spirit of democracy and human rights protection.

The Court also emphasized that the state should not impose an absolute standard on the truth of public opinions expressed by citizens. If truth is defined solely by the state, it could silence the public sphere, stifle creative thinking, and reduce the role of citizens in the democratic process. Therefore, the Court stated that disproportionate restrictions on freedom of expression, especially when relying on uncertain norms such as the term "riot," are contrary to the principles of the rule of law, which uphold legal certainty and the protection of constitutional rights.

Considering the constitutional aspects, international legal principles, and the current social and technological dynamics, the Court concluded that the phrase "riot" in Article 28 paragraph (3) of the ITE Law has the potential to create legal uncertainty and open space for violations of freedom of expression. Therefore, the phrase should be annulled in order to preserve the integrity of the rule of law and constitutional democracy in Indonesia.

3.2. Implications of the Annulment of "Riot" on Freedom of Expression and Hate Speech Handling

After understanding the Constitutional Court's reasoning related to the controversy in Article 28 paragraph (3) of Law 1/2024, which led to the annulment of the term "riot" in its provisions, it is clear that this decision invites several specific implications that are likely to arise following the annulment of

¹³ Sarah Joseph, "General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life (H.R. Comm.)," *International Legal Materials* 58, no. 4 (2019), <https://doi.org/10.1017/ilm.2019.31>.

the phrase "riot" in Article 28 paragraph (3) and Article 45A paragraph (3) of the ITE Law, including:

1. Implications for the Scope of Freedom of Expression:
 - a. Expansion of Online Expression Boundaries: This annulment directly broadens the scope of freedom of expression in the digital realm. Society will have more space to express opinions, criticism, and even forms of expression that might have previously been considered potentially inciting "riots" under a broad interpretation.
 - b. Potential Reduction in Silencing Criticism: Individuals and groups wishing to express criticism of government policies, corporations, or sensitive social issues may feel safer doing so without the fear of being ensnared by the "riot" provision, which is seen as vague.
2. Implications for Handling Hate Speech and Incitement:
 - a. Focus on More Specific Offenses: Law enforcement is likely to focus more on other offenses regulated under the ITE Law or the Criminal Code (KUHP), which more specifically address hate speech that contains discriminatory elements or incitement to immediate physical violence.
 - b. Challenges in Proving Offenses: Without the broader interpretive phrase "riot," law enforcement may face greater challenges in proving the criminal elements in provocative speech that does not explicitly call for physical violence or anarchy.
 - c. Possibility of New Interpretations: There is potential for law enforcement and the courts to develop new interpretations of other Articles in the ITE Law or the Criminal Code to address speech deemed harmful but no longer categorized as "riot."
3. Implications for the Dynamics of Digital Democracy:
 - a. Potential for Increased Public Participation: With broader space for expression, public participation in online discussions about important issues is likely to increase. This can enrich the democratic process and bring diverse perspectives.
 - b. Challenges in Managing Polarization: On the other hand, broader freedom without clear boundaries around "riot" could worsen polarization on social media if provocative and divisive speech is not addressed through other mechanisms.
 - c. Need for Stronger Digital Literacy: Society will be increasingly required to possess strong digital literacy to sift through information, identify hate speech, and participate responsibly in the digital space.
4. Legal and Policy Implications:
 - a. Need for Interpretation Guidelines: There will be a need for clearer guidelines from law enforcement regarding the boundaries between

protected freedom of expression and speech that can be criminalized under other provisions.

- b. Potential for Further Revisions to the ITE Law: This annulment could serve as a momentum to review other problematic provisions in the ITE Law that may hinder freedom of expression.
- c. Strengthening Non-Legal Mechanisms: It will become increasingly important to strengthen non-legal mechanisms to address the negative impact of speech in the digital space, such as education, mediation, and the active role of social media platforms in moderating content.

3.3. The Impact of the Constitutional Court's Decision on the Dynamics of Digital Democracy in Indonesia

In addition to the various implications previously outlined, the annulment of the term “*unrest*” (*kerusuhan*) also brings with it a series of broader effects, particularly on the dynamics of digital democracy as a medium for expressing opinions. The influence of the Constitutional Court's decision to annul the term “*unrest*” can be understood through the lens of *potential* effects, both positive and negative, as follows:

The Constitutional Court's decision to strike down the term “*unrest*” from certain legal provisions has notable implications for the evolution of digital democracy in Indonesia, especially in relation to freedom of expression in the online space. As an essential element of modern democracy, the digital sphere serves as a primary channel for voicing public aspirations, critiquing policy, and fostering inclusive discourse. Accordingly, the annulment of this term has repercussions not only from a legal standpoint but also from social and political perspectives, influencing how digital communication is practiced by the public.¹⁴

From a positive standpoint, this decision has the potential to produce several beneficial outcomes. First, individuals may now feel safer and freer to express their opinions online without the looming threat of criminalization under a previously vague and broadly interpretable article. This expanded freedom may foster more active and open public participation in discussions on strategic issues, whether related to governmental policy or broader social dynamics.¹⁵

Moreover, the digital sphere may be further strengthened as a tool for social oversight. With diminished fear of legal reprisal, citizens may feel more

¹⁴ Ulmi Marsya, “DISKURSUS PEREMPUAN DALAM MEDIA SOSIAL INSTAGRAM: STUDI DESKRIPTIF CYBERBULLYING DI AKUN @LAMBE_TURAH,” *Jurnal PIKMA : Publikasi Ilmu Komunikasi Media Dan Cinema* 2, no. 1 (2020), <https://doi.org/10.24076/pikma.2019v2i1.394>.

¹⁵ Abdulloh Hanif and Saifur Rahman, “Moralitas Diskursus Dan Otoritas Wacana Keagamaan Di Media Sosial,” *Palita: Journal of Social Religion Research* 8, no. 1 (2023), <https://doi.org/10.24256/pal.v8i1.3773>.

empowered to engage in open monitoring, criticism, and advocacy. Such developments can enrich public discourse, providing greater visibility to marginalized or dissenting voices. This environment is conducive to the growth of a healthy deliberative democracy.

Nevertheless, alongside these positive potentials, certain negative impacts and challenges must be anticipated.¹⁶ One key concern is the potential for heightened polarization within digital spaces. Broader freedom of expression can create opportunities for the spread of provocative rhetoric, disinformation, and emotionally charged but unverified narratives. Such trends risk exacerbating social tensions and deepening divides among groups with differing viewpoints.

In such conditions, fact-based narratives may be overshadowed by sensational viral content, leaving public opinion vulnerable to manipulation. Another risk is the misuse of this newfound freedom to disseminate hate speech, particularly targeting vulnerable or minority communities. In the absence of a sufficiently clear and enforceable legal framework, social media platforms may struggle to moderate harmful content effectively.¹⁷

Should the digital space become saturated with destructive content, public trust in the democratic process itself may erode. Citizens may grow increasingly skeptical toward the integrity of information and political actors, ultimately weakening the deliberative foundations that underpin democracy.¹⁸

Therefore, it is essential to strike a balance between freedom of expression and social responsibility. The first step lies in strengthening digital literacy, enabling the public to critically assess information and resist misleading narratives. At the same time, social media platforms must be encouraged to adopt moderation policies that are adaptive, transparent, and accountable.

Legal enforcement remains necessary, particularly for expressions that clearly violate legal norms, such as hate speech and violent threats. However, enforcement approaches must be proportionate and should not create a chilling effect on legitimate, constructive expression. Finally, fostering a culture of healthy and inclusive discourse must be a collective priority. Dialogues that respect diversity, rely on data and factual reasoning, and avoid polarization are

¹⁶ Yunas Setia Novy, Said Fauzi Muchammad, and SR Aziz Abdul, "Penguatan Literasi Digital Pada Generasi Millenial Dalam Menyongsong Pemilihan Umum 2024," *Surya Abdimas* 7, no. 4 (2023).

¹⁷ Nurul Hasfi Hasfi, Joyo NS Gono, and Wiwid Noor Rakhmad, "Internet Access and the Potential in Facilitating Online Political Communication of Disabled," *Jurnal ASPIKOM* 5, no. 1 (2020), <https://doi.org/10.24329/aspikom.v5i1.468>.

¹⁸ Jefri Andri Saputra, "Propaganda Model Sinkretis Etis Sebagai Budaya Tandingan Terhadap Penistaan Agama Di Media Sosial: Tinjauan Khusus Terhadap Kasus Joseph Paul Zhang," *Jurnal Teologi Pambelum* 3, no. 1 (2023), <https://doi.org/10.59002/jtp.v3i1.52>.

essential conditions for ensuring the sustainable growth of digital democracy in the wake of this Constitutional Court ruling.¹⁹

4. Closing

4.1. Conclusions

The Constitutional Court's Decision to Annul the Term "Unrest" in Article 28(3) in Conjunction with Article 45A(3) of Law No. 1 of 2024 (Second Amendment to the Electronic Information and Transactions Law). The Constitutional Court's decision to annul the term "unrest" in Article 28(3) in conjunction with Article 45A(3) of Law No. 1 of 2024 concerning the second amendment to the Electronic Information and Transactions (ITE) Law constitutes a significant step toward maintaining a balance between protecting the public from the dissemination of misleading information and upholding freedom of expression as a constitutional right. The Court argued that the term "unrest" carried the potential for multiple interpretations and lacked legal clarity, thereby posing a threat to the fundamental rights of citizens—especially within the digital sphere. By referring to constitutional principles, international legal norms such as the International Covenant on Civil and Political Rights (ICCPR), and human rights restriction standards like the Siracusa Principles, the Court emphasized that any restriction on expression must be clear, proportionate, and non-arbitrary. In this context, the term "unrest" was deemed to function as a rubber article—an overly broad legal provision that could be used to criminalize legitimate and constructive expression, which is in fact a cornerstone of healthy democratic practice. Implicitly, the Court also conveyed that the state must not monopolize the truth or silence public expression based on a singular and non-objective definition. Therefore, the annulment of the term represents a corrective measure against legal uncertainty, aimed at ensuring legal clarity and the protection of human rights within Indonesia's legal system.

4.2. Suggestions

The government and lawmakers should promptly harmonize legislation related to the dissemination of information and hate speech to ensure consistency with the Constitutional Court's decision. Additionally, they should formulate more precise law enforcement guidelines based on objective parameters that clearly distinguish between protected expression and criminal acts. Furthermore, education and training for law enforcement officers and the general public are necessary to clarify the limits of freedom of expression, accompanied by efforts to improve digital literacy in order to prevent the misuse of cyberspace—without infringing upon the constitutional rights of citizens.

¹⁹ Putri Limilia and Ikhsan Fuady, "Literasi Media, Chilling Effect, Dan Partisipasi Politik Remaja," *Jurnal Kajian Komunikasi* 9, no. 1 (2021), <https://doi.org/10.24198/jkk.v9i1.31939>.

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