

## Reconstructing the Limits of Freedom of Expression in Combating Hoaxes: A Forensic Analysis of the Implementation of the ITE Law in Indonesia

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**Abstrak:** Kebebasan berekspresi merupakan hak fundamental yang dijamin dalam sistem demokrasi, namun dalam praktiknya sering berhadapan dengan kebutuhan negara untuk menanggulangi penyebaran hoaks di ruang digital. Di Indonesia, implementasi Undang-Undang Informasi dan Transaksi Elektronik (UU ITE) menjadi instrumen utama dalam penegakan hukum terhadap penyebaran informasi palsu, tetapi pada saat yang sama menimbulkan perdebatan mengenai batasan kebebasan berekspresi. Penelitian ini bertujuan merekonstruksi batasan kebebasan berekspresi dalam konteks pemberantasan hoaks melalui analisis forensik terhadap implementasi UU ITE di Indonesia. Metode penelitian yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan, pendekatan konseptual, dan pendekatan kasus, serta didukung analisis forensik terhadap sejumlah putusan pengadilan dan praktik penegakan hukum terkait delik informasi elektronik. Hasil penelitian menunjukkan bahwa penerapan UU ITE masih menghadapi persoalan multitafsir norma, ketidakseragaman penegakan hukum, serta kecenderungan penggunaan pasal tertentu yang berpotensi membatasi ruang ekspresi warga negara secara berlebihan. Di sisi lain, penanggulangan hoaks tetap memerlukan instrumen hukum yang efektif guna menjaga ketertiban umum dan melindungi masyarakat dari dampak disinformasi. Oleh karena itu, rekonstruksi batasan kebebasan berekspresi perlu diarahkan pada prinsip legalitas, proporsionalitas, kepastian hukum, dan perlindungan hak asasi manusia, sehingga penegakan hukum terhadap hoaks tidak berubah menjadi sarana represif terhadap kritik dan pendapat publik. Penelitian ini merekomendasikan reformulasi norma dalam UU ITE, pedoman penegakan hukum yang lebih terukur, serta penguatan literasi digital sebagai pendekatan non-penal yang berkelanjutan

**Kata Kunci:** Kebebasan Berekspresi, Hoaks, UU ITE, Forensik Hukum, Hak Asasi Manusia.

**Abstract:** Freedom of expression is a fundamental right guaranteed in a democratic system, but in practice it often clashes with the state's need to combat the spread of hoaxes in the digital space. In Indonesia, the implementation of the Electronic Information and Transactions Law (UU ITE) is the primary instrument for law enforcement against the spread of false information, but at the same time, it has sparked debate about the limits of freedom of expression. This study aims to reconstruct the limits of freedom of expression in the context of eradicating hoaxes through a forensic analysis of the implementation of the ITE Law in Indonesia. The research method used is normative legal research with a legislative approach, a conceptual approach, and a case approach, supported by a forensic analysis of several court decisions and law enforcement practices related to electronic

information crimes. The results show that the implementation of the ITE Law still faces issues of multiple interpretations of norms, inconsistent law enforcement, and a tendency to use certain articles that have the potential to excessively limit citizens' freedom of expression. On the other hand, combating hoaxes still requires effective legal instruments to maintain public order and protect the public from the impact of disinformation. Therefore, the reconstruction of the boundaries of freedom of expression needs to be guided by the principles of legality, proportionality, legal certainty, and human rights protection, so that law enforcement against hoaxes does not become a means of repression against public criticism and opinion. This study recommends reformulating the norms in the ITE Law, more measurable law enforcement guidelines, and strengthening digital literacy as a sustainable, non-penal approach.

**Keywords:** Freedom of Expression, Hoaxes, ITE Law, Legal Forensics, Human Rights



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## **A. INTRODUCTION**

The development of information and communication technology over the past two decades has brought about significant changes to the social, political, economic, and legal patterns of modern society. Digitalization, marked by the advent of the internet, social media, instant messaging applications, and various network-based platforms, has created a new public space that is open, fast, and cross-border. Every individual can now produce, distribute, and access information in real time without the filtering mechanisms inherent in conventional media. This transformation has had a positive impact on expanding public participation, strengthening democracy, and opening up public access to information and knowledge. In this context, freedom of expression has acquired a new, broader and more effective medium. Freedom of expression is a fundamental right in a democratic state and a state governed by the rule of law. This right includes the freedom to express opinions, receive information, seek ideas, and disseminate views through various means of communication. In Indonesia, the guarantee of freedom of expression is affirmed in the 1945 Constitution of the Republic of Indonesia, specifically Articles 28E and 28F, which grant everyone the right to communicate and obtain information. Furthermore, Indonesia has also ratified the International Covenant on Civil and Political Rights (ICCPR) through Law No. 12 of 2005, which establishes freedom of expression as a universally recognized right. Therefore, freedom of expression holds a crucial position within the national legal system.(Armiwulan, 2022)

However, freedom of expression is not an absolute right. In modern constitutional practice, this right can be restricted as long as it is based on law, has a legitimate purpose, and meets the principles of necessity and proportionality. These restrictions are generally implemented to

protect the rights of others, maintain public order, national security, public morals, and public health. In the digital context, one of the main reasons for restricting freedom of expression is the increasing threat of the spread of hoaxes, disinformation, and information manipulation, which can have widespread impacts on society.(Helm & Nasu, 2021)

The hoax phenomenon in the digital era has become a serious problem in many countries, including Indonesia. Hoaxes are no longer understood simply as false information, but have become a social and political instrument that can influence public perception, divide communities, damage individual reputations, and even trigger horizontal conflict. The spread of hoaxes in Indonesia is particularly prominent during elections, religious issues, health pandemics, government policies, natural disasters, and economic issues. Through social media and messaging apps, false information can spread massively in a short time, often faster than official clarifications from the government or credible media. This situation demonstrates that hoaxes have a real destructive power to the social order and the quality of democracy. To respond to this threat, the state needs effective legal instruments.(Cavaliere, 2024) In Indonesia, one of the main instruments used is the Electronic Information and Transactions Law (UU ITE). First enacted in 2008 and subsequently amended, the ITE Law is intended to provide legal certainty for electronic activities, digital transactions, data protection, and combating the misuse of information technology. In the context of hoaxes, the ITE Law is often used to prosecute those who spread fake news, misleading information, or digital content deemed detrimental to the public and causing unrest.(Journal et al., 2021)

However, the implementation of the ITE Law has created complex legal dynamics. On the one hand, the ITE Law is seen as crucial for maintaining order in cyberspace and providing a deterrent effect against those spreading false information. On the other hand, several provisions within the ITE Law are considered to have broad, flexible, and open to multiple interpretations. Terms such as "harmful content," "false information," "defamation," or "inciting hatred" are often interpreted differently by law enforcement officials. As a result, the implementation of the ITE Law often draws criticism for opening up opportunities for the criminalization of citizen expression. Several cases in Indonesia demonstrate that the use of the ITE Law is not always limited to tackling pure hoaxes. In a number of cases, certain articles have been used against individuals who express criticism of public officials, consumer complaints, political opinions, or personal opinions on social media. This raises concerns that legal instruments intended to protect the public from disinformation could potentially suppress civil liberties. This situation highlights the tension between the state's interest in maintaining digital order and citizens' rights to express their opinions freely.(Cunha et al., n.d.)

From a legal theory perspective, this tension raises fundamental questions about the limits of the state's legitimacy in restricting expression. While the state has a positive obligation to protect society from the dangers of hoaxes, it is also obligated to respect and guarantee human rights. Therefore, restrictions on freedom of expression must be implemented carefully and

must not exceed legitimate needs. If restrictions are excessive, the law loses its democratic legitimacy and becomes an instrument of power control. Previous research has examined the ITE Law and freedom of expression from various perspectives. First, normative research highlights the existence of "rubber articles" in the ITE Law and encourages legislative revisions to create more definitive norms. Second, sociological research explains the impact of the chilling effect, a condition where people are afraid to express their opinions for fear of being punished. Third, public policy research emphasizes the importance of digital literacy and fact-checking mechanisms as non-penal strategies to combat hoaxes. Fourth, human rights research examines the ITE Law's compliance with international standards for freedom of expression. Although numerous, these studies remain limited. Most research focuses on the text of the norm and conceptual critiques, but has not yet examined in depth how the ITE Law is implemented in law enforcement practice. In fact, the main problem often lies not only in the wording of the norm, but also in how it is used by investigators, prosecutors, and judges. Furthermore, previous research has tended to separate the issue of hoaxes from the issue of freedom of expression, thus failing to offer a comprehensive framework for balancing the two.(Popat et al., n.d.)

Thus, there is a significant research gap. First, there is still limited research using a legal forensic approach to analyze the implementation of the ITE Law, particularly regarding the handling of hoax cases and their impact on freedom of expression. Second, there are not many studies examining digital evidence patterns, the use of electronic evidence, the construction of charges, and judicial considerations in cases related to digital expression. Third, there is no model for reconstructing the limits of freedom of expression based on real-world evaluations of law enforcement practices, rather than solely normative analysis. A forensic approach in this research is important because the digital space has different evidentiary characteristics than conventional criminal acts. Electronic evidence can be manipulated, cut, removed from context, or redistributed by others. A post deemed a hoax, for example, may not necessarily be created by the account owner, and a strong opinion may not necessarily meet the elements of a crime. Therefore, the assessment of digital cases must consider the authentication of the evidence, the context of the communication, the perpetrator's intent, the actual impact, and the causal relationship between the expression and the harm caused. Without careful forensic analysis, law enforcement is vulnerable to unjust decisions. Unlike previous research, this study attempts to reconstruct the boundaries of freedom of expression in combating hoaxes through a forensic analysis of the implementation of the ITE Law in Indonesia. The research focuses on how law enforcement officials interpret the elements of crimes, how electronic evidence is used, how judges weigh public interest against individual rights, and how verdict patterns reflect tendencies toward protecting or restricting freedom of expression.

This reconstruction of boundaries is not intended to eliminate the state's authority to act on hoaxes, but rather to restructure the parameters of restrictions to align with the principles of a democratic rule of law. Restrictions on freedom of expression should only be implemented if

they meet the requirements of legality, legitimate purpose, urgent need, proportionality, and due process of law. Criticism of the government, political opinion, satire, academic expression, and consumer complaints should not be easily classified as criminal offenses without a strong basis. The urgency of this research is even greater as Indonesia moves toward an increasingly complex digital society. Without a balanced legal framework, the country risks facing two extremes simultaneously: if it is too weak, the digital space will be dominated by hoaxes and manipulation; if it is too repressive, the digital space will lose freedom and innovation. Therefore, a legal design is needed that positions the eradication of hoaxes and the protection of freedom of expression as two complementary, rather than mutually exclusive, objectives. The results of this study are expected to provide theoretical contributions to the development of cyber law, criminal law, and human rights law in Indonesia. Furthermore, this research is expected to provide practical recommendations for legislators, law enforcement officials, judicial institutions, and policymakers in formulating reformulations of the ITE Law, guidelines for interpreting articles related to digital expression, and a more democratic, accountable, and equitable national strategy for combating hoaxes.

## **B. METHOD**

This research employs normative legal research methods with a statute approach, a conceptual approach, a case approach, and a forensic legal analysis approach. The statutory approach is used to examine various regulations related to freedom of expression, the fight against hoaxes, and the implementation of the Electronic Information and Transactions Law (UU ITE) in Indonesia. The conceptual approach is used to analyze human rights theory, the principles of restrictions on freedom of expression, and the principles of legality and proportionality in a democratic state governed by law. Meanwhile, the case approach is carried out through a review of court decisions and law enforcement practices related to hoax cases and digital expression crimes. The forensic legal approach is used to examine electronic evidence, indictment construction patterns, judicial considerations, and the relationship between criminal elements and the context of digital communication. The legal materials used consist of primary, secondary, and tertiary legal materials collected through literature studies, then analyzed qualitatively using descriptive-analytical and prescriptive techniques to formulate an ideal reconstruction of the limits of freedom of expression in combating hoaxes in Indonesia. (Al-Fatih, 2023)

## **C. DISCUSSION**

### **1. Implementation of the Electronic Information and Transactions Law (UU ITE) in Indonesia in Combating Hoaxes Reviewed from the Perspective of Freedom of Expression and Forensic Analysis of Law Enforcement.**

The Implementation of the Electronic Information and Transactions Law (UU ITE) in Indonesia in Combating Hoaxes, Reviewed from the Perspective of Freedom of Expression and Forensic Analysis of Law Enforcement. The massive digital transformation that has taken place in recent years has changed the way people communicate, obtain information, and participate in the public sphere. The presence of social media, video-sharing platforms, instant messaging applications, and various digital forums has created an open and very fast interaction space. Every individual can become a producer and distributor of information without the need for media institutions as intermediaries. From a democratic perspective, this development brings significant benefits because it expands public access to information and strengthens freedom of expression as a basic citizen's right. (Ramadhan et al., 2026) However, the digital space also presents serious problems in the form of the increasing spread of hoaxes, disinformation, opinion manipulation, digital propaganda, and misleading content that has the potential to disrupt public order. (Darmawanto, 2026)

In Indonesia, the hoax phenomenon has grown alongside increasing internet penetration and social media usage. The spread of false information frequently arises in issues related to electoral politics, religious identity, public health, the economy, natural disasters, and national security. At certain political moments, hoaxes are even used as a tool for mass mobilization and social polarization. During health crises, hoaxes can cause panic, rejection of public policies, and even endanger public safety. (Pollicino, 2023) In an economic context, false information about markets, investments, or financial stability also has the potential to cause widespread harm. Therefore, the state has a legitimate legal interest in combating the spread of hoaxes to protect the public interest. In response to these developments, the government has adopted the Electronic Information and Transactions Law (ITE Law) as its primary instrument for cyber law enforcement. The ITE Law is designed to provide legal certainty for electronic activities, digital transactions, protect electronic systems, and take action against the misuse of information technology. In practice, several provisions in the ITE Law serve as the legal basis for prosecuting parties deemed to be spreading fake news, misleading information, or electronic content that is detrimental to the public. Therefore, the existence of the ITE Law can be understood normatively as an effort to modernize national law to address the challenges of the digital era. From a criminal policy perspective, the use of the ITE Law to combat hoaxes has justifiable rationality. Criminal law is often used as a last resort when an act poses a real threat to society. The spread of hoaxes that trigger riots, mass fraud, public panic, or security disturbances requires a firm response. In certain conditions, persuasive or administrative approaches are no longer adequate so that the state requires a coercive mechanism through criminal law. (Koltay, 2026) Therefore, theoretically, applying the ITE

Law to hoaxes is not a flawed policy, as long as it is done selectively, proportionally, and based on due process of law.

However, the main problem arises at the implementation level. Several provisions in the ITE Law still contain broad formulations and are subject to multiple interpretations. Terms such as "fake news," "misleading information," "consumer harm," "disturbing," or "certain content" do not always have rigid definitions. In criminal law, the ambiguity of norms can raise serious issues because it contradicts the principle of *lex certa*, which requires the formulation of crimes to be clear and not subject to arbitrary interpretation. When norms are elastic, law enforcement officers have significant discretion in determining whether a post can be classified as a hoax. (Milanovic & Webb, 2024) Persoalan tersebut menjadi semakin penting ketika dikaitkan dengan kebebasan *Freedom of expression*. *Freedom of expression* is a fundamental right guaranteed by the 1945 Constitution of the Republic of Indonesia and various international human rights instruments. This right not only protects popular or government-favored expressions, but also protects controversial opinions, harsh criticism, political satire, and ideas that differ from the mainstream. In a democratic state, *freedom of expression* is the foundation for accountability in power because through public criticism and debate, the public can monitor the course of government.

It is true that *freedom of expression* is not an absolute right. The state can impose restrictions as long as they meet the requirements of legality, legitimate purpose, necessity, and proportionality. However, these restrictions must be strictly enforced and should not be used as an excuse to silence opposition, public criticism, or legitimate civil expression. In this context, the implementation of the ITE Law is often questioned because it does not always clearly distinguish between dangerous hoaxes and simply critical or controversial expression.

In Indonesian law enforcement practice, several cases demonstrate that the Electronic Information and Transactions (ITE) Law is not only directed at pure hoax spreaders, but also against citizens who complain about public services, consumers who provide negative reviews, activists who criticize officials, citizen journalists, and social media users who make harsh comments. While each case presents a different context, this phenomenon demonstrates that digital legal instruments can be used broadly beyond their original purpose of eradicating disinformation. As a result, people can experience fear of speaking out in the digital public sphere. This phenomenon of fear is known in the literature as the chilling effect, a situation where the threat of legal sanctions causes individuals to refrain from expressing opinions, even if those opinions are legally valid. (Kok & Ren, 2020) The chilling effect is particularly dangerous for democracy because it isn't always directly visible. While there are no visible mass arrests, people are gradually choosing to remain

silent, deleting posts, avoiding political discussions, or simply refusing to criticize public policies. If this situation persists, the quality of public deliberation will decline, and the digital space will become sterile from criticism. Beyond normative issues, the implementation of the ITE Law must also be viewed from a forensic law enforcement perspective. In hoax cases, the primary evidence almost always takes the form of electronic data, such as screenshots, conversation recordings, social media posts, digital links, metadata, IP addresses, account activity logs, and electronic device extractions. Unlike conventional evidence, digital evidence is easily copied, altered, cropped, manipulated, or removed from its original context. Therefore, the validity of digital evidence is not sufficient simply to show printouts or screenshots. (Suleiman Usman Santuraki, 2019)

In a digital forensics approach, electronic evidence must be tested through three main aspects: authenticity, integrity, and relevance. Authenticity relates to whether the evidence truly originates from a legitimate source. Integrity relates to whether the evidence has been changed or modified. Relevance relates to whether the evidence is truly relevant to the alleged offense. Without examining these three elements, the risk of law enforcement errors is very high. A screenshot can be doctored, an account can be faked, and a post can be truncated, completely changing its meaning. The next issue is identifying the perpetrator. In the digital space, the account owner is not always identical to the content creator. Accounts can be hacked, used by others, operated by a shared admin, or loaned. There are even bots and anonymous accounts that deliberately disguise identities. If law enforcement bases cases solely on account names or registered phone numbers without further technical investigation, the potential for wrongful arrests or wrongful targets is high. Therefore, tracing digital footprints requires adequate technical competence and strict standards of proof. Another equally important aspect is the element of *mens rea*, or malicious intent. Not everyone who spreads false information intends to deceive the public. Some people share information because they believe it to be true, because they are influenced by group bias, because they lack digital literacy, or because they simply forward a message without reading the entire content. In modern criminal law, the distinction between intent, negligence, and ignorance has significant consequences for criminal liability. However, in some practices, the element of intent is often not explored in depth, so legal proceedings focus solely on the fact of information distribution. (Camarasa et al., 2024)

However, sharing misinformation is not always synonymous with committing a crime. If someone in good faith forwards information they believe to be true, an educational and corrective approach is often more appropriate than criminalization. Conversely, if someone consciously fabricates information, creates a false narrative, and disseminates it to gain political or economic advantage, then criminalization has a stronger basis for legitimacy. This distinction is important to prevent overuse of criminal law. Forensic analysis must

also consider the context of digital communication. Language on social media is often hyperbolic, satirical, sarcastic, or symbolic. A meme, irony, or political humor can be misinterpreted as a factual statement if taken literally. Similarly, a fragment of a sentence taken from a long thread can have a different meaning than the overall context. Therefore, judges and law enforcement need to assess the social context, the purpose of the communication, the intended audience, and the language used before concluding that a hoax has been committed. In terms of effectiveness, the use of the ITE Law as the primary instrument to combat hoaxes also has limitations. Hoaxes are a structural problem influenced by digital platform algorithms, low media literacy, political polarization, the attention economy, and low public trust in official institutions. Arresting a few perpetrators does not necessarily address the root of the problem. False content can resurface from other networks at the same or even greater speed. Therefore, a penal approach alone is insufficient to address the disinformation ecosystem. Therefore, the implementation of the ITE Law should be placed within an integrated policy approach. Law enforcement needs to be combined with increased digital literacy, strengthened fact-verification mechanisms, transparency of platform algorithms, accountability of electronic system operators, public education, and prompt and credible government communication. If the public obtains official information transparently and easily accessible, the space for hoaxes to thrive will be reduced.

From the perspective of a state based on the rule of law, criminalization through the ITE Law should ideally be the *ultimum remedium*, a last resort after other mechanisms have been ineffective. Content that is criminally punishable should be limited to hoaxes that have real and serious impacts, such as inciting violence, deceiving the public, causing mass panic, undermining national security, or causing significant economic loss. Meanwhile, expressions of opinion, criticism, political debate, satire, or misinformation without malicious intent should be responded to through clarification, correction, the right of reply, or non-criminal mechanisms. To improve implementation, uniform law enforcement guidelines are needed for investigators, prosecutors, and judges. These guidelines should include an operational definition of hoaxes, indicators of real impact, digital evidence authentication standards, parameters for the element of intent, protection of public expression, and the principle of proportionality of punishment. Furthermore, increasing the capacity of officers in digital forensics is crucial so that case handling processes do not rely solely on reports from certain parties or unverified electronic evidence. Reforms also need to be directed at updating the norms of the Electronic Information and Transactions (ITE) Law to make them more precise and less open to multiple interpretations. Vague norms must be clarified with limitative definitions and measurable elements of the offense. This way, the law can provide certainty while preventing selective use against certain groups.

Public oversight and transparency of law enforcement data are also crucial to ensure accountability in the implementation of the ITE Law.

Based on this description, it can be concluded that the implementation of the ITE Law in Indonesia to combat hoaxes is clearly urgent, but its implementation still faces significant challenges. From a freedom of expression perspective, there is a risk of restricting citizens' rights if norms are applied broadly and disproportionately. From a forensic analysis perspective, robust digital evidence standards are still needed to prevent misapplication of the law. Therefore, the future orientation must position the ITE Law as a public protection instrument that operates within the corridors of legality, proportionality, accountability, and respect for human rights, so that the eradication of hoaxes can be effective without compromising digital democracy.

## **2. Reconstructing the Ideal Limits of Freedom of Expression in Eradicating Hoaxes through the Implementation of the ITE Law to Align with the Principles of the Rule of Law, Proportionality, and Protection of Human Rights.**

Freedom of expression is one of the most fundamental elements of modern democracy. This right allows every citizen to express thoughts, opinions, criticisms, ideas, and aspirations through various media, both in person and digitally. In the context of a state governed by the rule of law, freedom of expression is not merely an individual right, but a crucial instrument for ensuring accountability of power, encouraging public participation, and maintaining an open government. In Indonesia, freedom of expression is guaranteed by the 1945 Constitution of the Republic of Indonesia and is also recognized through various international human rights instruments ratified by the state. However, in practice, this freedom faces new challenges with the development of the digital space, particularly the increasing spread of hoaxes, disinformation, and information manipulation that can undermine social order and disrupt the public interest. (Bourne, 2025)

The development of information technology has enabled society to live in a fast-paced, nearly limitless flow of communication. Information can be produced, shared, and consumed in seconds without adequate verification. This situation creates two realities simultaneously. On the one hand, society has gained greater freedom to express themselves and participate in public discourse. On the other hand, the digital space has also become a fertile medium for the spread of false information, slander, provocation, and narrative manipulation. Under certain circumstances, hoaxes can cause mass panic, horizontal conflict, a decline in public trust in state institutions, security disruptions, and even economic losses. Therefore, the state has a constitutional obligation to protect the public from these dangers. In response to this issue, Indonesia has adopted the Electronic Information and Transactions Law (UU ITE) as one of its primary legal instruments to regulate digital activities and prosecute violations in

cyberspace. In the context of eradicating hoaxes, the ITE Law provides a legal basis for law enforcement to prosecute those who intentionally spread false or misleading information that causes harm to the public. Theoretically, this policy represents an adaptation of national law to technological developments and the need to maintain digital order.(Choy & Chong, n.d.) However, the implementation of the ITE Law has also drawn criticism because in some cases it is considered too broad, open to interpretation, and has the potential to disproportionately restrict freedom of expression.

The main issue that arises is not the state's need to crack down on hoaxes, but rather how to define the boundary between legitimate expression and expression that can be legally restricted. In many cases, the dividing line between criticism, opinion, satire, allegations, and factual falsehoods is not always clear. When this boundary is not precisely defined, the law risks being used not only to protect the public from disinformation but also to limit public criticism and citizen participation. Therefore, it is necessary to reconstruct the boundaries of freedom of expression through the implementation of the ITE Law so that it aligns with the principles of the rule of law, proportionality, and the protection of human rights.(Shao et al., n.d.)

This reconstruction must begin with the principle of a state based on the rule of law. In a state based on the rule of law, any restrictions on citizens' rights can only be implemented based on clear, rational, and accountable laws. Criminal law must not be built on vague norms or open to excessive interpretation. Therefore, provisions in the ITE Law relating to hoaxes need to be reformulated more firmly. Terms such as "fake news," "misleading information," "disturbing," or "public harm" must be given restrictive definitions so that the public clearly understands the limits of prohibited behavior. Without legal certainty, law enforcement has the potential to be selective and lead to injustice.(Utomo, 2021)

In addition to clarifying norms, reconstruction must also prioritize equality before the law. Enforcement of the ITE Law must not be harsh on the bottom and blunt on the top, or directed only at certain individuals who lack social and political power.(Armiwulan, 2022) Jika If the law is applied discriminatorily, society will view the law as a tool of power, not a means of justice. Therefore, reconstructing the boundaries of freedom of expression must be accompanied by a guarantee that everyone is treated equally before the law, regardless of social status, political position, or proximity to power. The next principle that must underlie the reconstruction is proportionality. Not all forms of misinformation deserve a criminal response. In many situations, someone shares misinformation not out of malicious intent, but out of ignorance, negligence, limited digital literacy, or a belief that the information is true.(Prahassacitta, 2021) Therefore, the law must clearly distinguish between misinformation and disinformation. Misinformation is false information spread without malicious intent, while disinformation is false information deliberately created and spread to deceive, provoke, or harm others. This distinction is important because only disinformation

is morally and legally more deserving of criminal sanctions. Within the framework of proportionality, criminalization should be a last resort and not an automatic response. The state must first assess the level of danger, the scope of the spread, the perpetrator's intent, and the actual impact. If a post only causes a minor misunderstanding and can be quickly corrected, then public clarification, the right of reply, or an administrative warning are more appropriate than imprisonment. Conversely, if content is deliberately engineered to deceive the public, incite violence, cause mass panic, or cause significant economic loss, then criminal sanctions may be justified. Thus, law enforcement must balance the protection of the public and the protection of civil liberties.(Popat et al., n.d.)

Reconstructing the boundaries of freedom of expression must also provide special protection for expression related to the public interest. Criticism of the government, state policies, public officials, public services, and social issues is fundamentally at the heart of freedom of expression in a democratic state. Such expression should not be easily criminalized simply because it is harsh, satirical, or causes discomfort to those criticized. Under modern democratic standards, public officials are required to have a higher tolerance for criticism because their power comes from the people. Therefore, the implementation of the ITE Law must clearly distinguish between legitimate criticism and deliberate factual falsehoods.

Another crucial aspect of reconstruction is due process of law. In many digital cases, the primary evidence is screenshots, social media posts, recorded conversations, or other electronic data. This type of evidence is highly susceptible to manipulation, excision, removal from context, or even falsification. Therefore, any law enforcement process against hoaxes must require rigorous digital forensic examination to ensure the authenticity, integrity, and relevance of the evidence. Law enforcement must not base cases solely on screenshots circulating on social media without technical verification. Furthermore, suspects must be given a full opportunity to defend themselves, present independent experts, and explain the context of the communication in question. Within the framework of human rights protection, criminal law should be positioned as the *ultimum remedium*, a last resort after other efforts have been ineffective. Hoaxes are a complex social problem and cannot be resolved solely through criminalization. Factors such as low digital literacy, political polarization, cognitive bias, weak government communication, and digital platform business models that encourage virality are also key contributing factors.(Cunha et al., n.d.) Therefore, eradicating hoaxes must be accompanied by non-penal strategies such as digital literacy education, strengthening fact-checking institutions, ensuring public information transparency, improving the quality of government communications, and ensuring digital platforms are responsible for controlling the spread of false content.

Digital platforms also need to be recognized as a shared responsibility. The spread of hoaxes in the modern era is inseparable from algorithms that promote sensational content for user engagement. Therefore, the state needs to promote regulations requiring platforms to have

systems for reporting false content, rapid correction mechanisms, fair appeals procedures, and transparent content moderation. This approach is more effective than simply punishing individual users, as the root of hoaxes often lies in the structure of digital information distribution. Furthermore, national guidelines for law enforcement in hoax cases need to be established to avoid disparities between regions and law enforcement agencies. These guidelines should include parameters regarding the definition of criminal hoaxes, measures of social impact, standards for digital evidence, indicators of intent, and proportionate sanctions. With uniform guidelines, law enforcement officials have an objective reference point, thereby minimizing the risk of criminalization and arbitrary interpretation. In certain cases, a restorative justice approach is also worth considering. If the perpetrator spread false information without malice, promptly removed the content, apologized, and the damage caused was not significant, then resolving the issue through mediation or social reparation is more in line with a sense of justice than criminal punishment. (Journal et al., 2021) This approach also reduces the burden on the criminal justice system and prevents the excessive use of prisons for violations that could be corrected through education and rehabilitation. Ultimately, reconstructing the boundaries of freedom of expression must place freedom as the fundamental principle, while restrictions are exceptions that must be rigorously proven. The state bears the burden of arguing why an expression needs to be restricted, not the citizen who must prove their right to speak. If the state is too repressive, the digital space will be filled with fear and the public will be reluctant to participate. Conversely, if the state is too permissive, the digital space will be dominated by disinformation that undermines the social order. Therefore, balance is key.

Therefore, the ideal reconstruction of the boundaries of freedom of expression through the implementation of the ITE Law must be built on three main foundations: legal certainty within the framework of the rule of law, balanced restrictions through the principle of proportionality, and full respect for human rights. If these three principles are consistently applied, Indonesia can achieve digital governance that is safe from hoaxes while remaining open to criticism, public participation, and a healthy democracy.

#### **D. CONCLUSION**

Based on these two discussions, it can be concluded that the implementation of the Electronic Information and Transactions Law (ITE Law) in Indonesia has real urgency as a legal instrument in combating hoaxes and maintaining order in the digital space. However, its implementation still faces various problems in the form of multi-interpretable norms, inconsistent law enforcement, weak digital forensic evidence standards, and the potential for excessive restrictions on freedom of expression. These conditions indicate the need to reconstruct the ideal boundaries of freedom of expression through a reformulation of clearer legal norms, the application of the principle of proportionality in imposing sanctions, protection for criticism and legitimate expression, strengthening due process of law, and placing criminal law as the ultimum remedium supported by non-penal approaches such as digital literacy and

electronic platform responsibility. Thus, the implementation of the ITE Law must be directed at creating a balance between protecting the public from the dangers of hoaxes and respecting human rights, thereby realizing democratic, fair, and legally just governance of Indonesia's digital space.

## **E. REFERENCE**

- Al-Fatih, S. (2023). *Perkembangan Metode Penelitian Hukum di Indonesia*. UMM Press.
- Armiwulan, H. (2022). *The Limitation of Freedom of Expression by State as a Crime during Pandemic Covid-19 in Indonesia*. 17(2), 101–113. <https://doi.org/10.5281/zenodo.4756113>
- Bourne, P. A. (2025). *Freedom of Speech in the Social Media Era : Costs , Benefits , and Consequences*. 10(1), 31–49.
- Camarasa, V., Juan, S., & Feng, M. (2024). Instrumentalization of Fake News and Fake News Laws : A Content Analysis of Hong Kong Newspapers in Transitional Times. *Mass Communication and Society*, 27(6), 1659–1684. <https://doi.org/10.1080/15205436.2024.2372319>
- Cavaliere, P. (2024). *Freedom of expression after disinformation : Towards a new paradigm for the right to receive information*. 7632. <https://doi.org/10.1080/17577632.2024.2362482>
- Choy, M., & Chong, M. (n.d.). *Seeing Through Misinformation : A Framework for Identifying Fake Online News*. Director of Operations and Technology , SSON Analytics . Associate Professor , Corporate Communication ( Practice ), Singapore Management. 1–14.
- Cunha, E., Magno, G., Caetano, J., & Jul, C. L. (n.d.). “ fake news ” in the media. 1–16.
- Darmawanto. (2026). *TINJAUAN YURIDIS NORMATIF TERHADAP PERTANGGUNG JAWABAN PIDANA PELAKU USAHA KOSMETIK ILEGAL BERBAHAYA*. UNIVERSITAS MUSLIM INDONESIA.
- Helm, R. K., & Nasu, H. (2021). *Regulatory Responses to ‘ Fake News ’ and Freedom of Expression : Normative and Empirical Evaluation*. 1995, 1–27. <https://doi.org/10.1093/hrlr/ngaa060>
- Journal, I. L., Prahassacitta, V., Program, B. L., Barat, J., Khusus, D., & Jakarta, I. (2021). *OFFENSES PRINCIPLES AND A LIMITATION FOR DISINFORMATION VIA THE*

*INTERNET IN INDONESIA. 14(1), 37–51.*

Kok, R., & Ren, C. (2020). *SUPPRESSING FAKE NEWS OR CHILLING FREE SPEECH : ARE THE REGULATORY REGIMES OF MALAYSIA AND SINGAPORE COMPATIBLE WITH INTERNATIONAL LAW ?* 47(1).

Koltay, A. (2026). *Freedom of Expression and the Regulation of Disinformation in the European Union.* 133–160.

Milanovic, M., & Webb, P. (2024). *False Speech* (Issue July 2021).  
<https://doi.org/10.1093/law/9780198899372.003.0004>

Pollicino, O. (2023). *For more information on the book or to purchase* (Vol. 44, Issue 0).

Popat, K., Mukherjee, S., Yates, A., & Weikum, G. (n.d.). *using Evidence-Aware Deep Learning.*

Prahassacitta, P. (2021). *iNduCeMeNt , eNCOuRAGeMeNt , OR ASSiStANCe THE PROBLEM OF THE INDETERMINATE DEFENDANT CRIMINAL DISINFORMATION IN RELATION TO SELF-MUTILATION IN BRAZILIAN CRIMINAL IN TORT IN EUROPE TO THE FREEDOM OF EXPRESSION IN INDONESIA : THE LIMITS BETWEEN THE BASIC OFFENCE CRITICAL STUDY AND THE RESULT-QUALIFIED SIGNIFICANT.*

Ramadhan, M. F., Nawati, S., Khalid, H., & Abbas, I. (2026). *The Nature of Legal Regulations on The Merauke Integrated Food and Energy Plantation Project.* 11(1), 3001–3006.

Shao, C., Ciampaglia, G. L., Flammini, A., & Menczer, F. (n.d.). *Hoaxy : A Platform for Tracking Online Misinformation.*

Suleiman Usman Santuraki. (2019). *Trends in the Regulation of Hate Speech and Fake News: A Threat to Free Speech?* 5(2), 140–158. <https://doi.org/10.20956/halrev.v5i2.1625>

Utomo, L. (2021). *Criminalizing the Freedom of Expression by State during COVID-19 Pandemic in Indonesia.* 16(2), 415–425. <https://doi.org/10.5281/zenodo.4756085>