

## Reconstruction of the Legal Standing of Victims of Digital Defamation Following Constitutional Court Decision No. 105/PUU-XXII/2024: An Equality Before the Law Perspective

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### Abstract

This article examines the limitation of legal subjects in online defamation offenses under the Electronic Information and Transactions Law after Constitutional Court Decision Number 105/PUU-XXII/2024 from the perspective of equality before the law. The issue arises from the broad interpretation of defamation provisions, which previously allowed institutions, government bodies, corporations, and certain groups to be treated as victims in online defamation cases. This interpretation created risks of criminal law misuse against public criticism and raised concerns over legal certainty, freedom of expression, and equal treatment before the law. This methods a normative juridical method with statutory, conceptual, and case approaches. The analysis focuses on Article 27 paragraph (3) of the previous ITE Law, Article 27A of Law Number 1 of 2024, and the Constitutional Court's legal reasoning. The findings show that limiting the phrase "other person" to individuals strengthens legal certainty, prevents institutional overreach, protects citizens' criticism, and promotes proportional law enforcement in a democratic digital sphere.

## INTRODUCTION

The digital space has become an important medium for the public to express opinions, criticism, and supervision of the exercise of power. The development of the digital space has also given birth to the concept of *digital constitutionalism*, which is an approach that places constitutional values, such as freedom of expression, equality before the law, and the protection of human rights, as the basis for the formation and implementation of regulations in the digital space. In this perspective, the regulation of digital activities not only aims to create legal order, but must also ensure that restrictions on citizens' rights are carried out proportionately and in accordance with the principles of the rule of law<sup>1</sup>. The development of digital space also not only poses challenges to the protection of human rights, but also gives birth to the concept of *digital constitutionalism*, which is an approach that places constitutional principles as the basis for regulating digital space in order to ensure freedom of expression, legal certainty, and the protection of citizens<sup>2</sup> rights. In democratic life, digital space provides space for people to exercise the right to freedom of opinion and expression<sup>3</sup>. In modern legal theory, freedom of expression is seen as one of the main pillars of a democratic state because it allows people to exercise control over the exercise of power without disproportionate restrictions<sup>4</sup>. Social media no longer only functions as a means of personal communication, but also as a space for public participation that brings together citizens, public officials, state institutions, and social institutions. This role is even more important because APJII (2024) recorded that Indonesian internet users reached 221,563,479 people with a penetration rate of 79.5 percent. This condition shows that people's activities in the digital space have a great influence on social, political, and legal life in Indonesia. However, the expansion of the digital expression space also raises legal issues, especially when criticism, opinions, or public uploads are considered to attack the honor and good name of other parties. This issue is related to the defamation provisions in the Electronic Information and Transaction Law. The settlement of defamation cases on social media needs to pay attention to the principle of *ultimum remedium*, because criminal law should not be used immediately if there are still other more proportionate settlement mechanisms available (Sumah, 2025). So that the application of defamation offenses in the digital space must be

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<sup>1</sup> Edoardo Celeste, "Digital Constitutionalism: A New Systematic Theorisation," *International Review of Law, Computers & Technology* 33, no. 1 (January 2, 2019): 76–99, <https://doi.org/10.1080/13600869.2019.1562604>.

<sup>2</sup> Edoardo Celeste, *Digital Constitutionalism: The Role of Internet Bills of Rights* (Routledge, 2022), <https://doi.org/10.4324/9781003256908>.

<sup>3</sup> L Nasution, "The Right to Freedom of Opinion and Expression in Public Space in the Digital Age," *is: Law and Justice Bulletin* 4, no. 3 (2020): 37–48.

<sup>4</sup> Eric M Barendt, *Freedom of Speech* (Oxford University Press, 2005)

carried out carefully so that the criminal law does not turn into a tool to restrict expression.

The provisions on defamation in the previous ITE Law were regulated in Article 27 paragraph (3) of Law Number 11 of 2008 as amended by Law Number 19 of 2016. This provision was then updated through Law Number 1 of 2024 with a new formulation in Article 27A. The article prohibits everyone from deliberately attacking the honor or good name of another person by accusing someone through an electronic system, while the criminal threat is regulated in Article 45 paragraph (4). Therefore, Article 27A can be understood as a form of transformation from Article 27 paragraph (3) of the ITE Law in the development of electronic defamation offenses. Although the amendment aims to clarify the formulation of the delicacy, Article 27A still raises problems of interpretation, especially with regard to the phrases "other person" and "something". Through Decision Number 105/PUU-XXII/2024, the Constitutional Court gave a constitutional limit to the two phrases. The Court emphasized that "other persons" must be interpreted as individuals or individuals, not government agencies, corporations, professions, positions, or certain groups. This ruling is important because defamation offenses in the digital space are often debated in relation to freedom of expression and the potential restriction of public criticism. In the development of international law, the regulation of *criminal defamation* is increasingly associated with the protection of freedom of expression and the principles of a democratic state. Various studies show that defamation provisions that are formulated too broadly have the potential to cause a *chilling effect*, which is a condition when people are reluctant to express criticism because they are worried about criminal threats. In addition, the development of the concept of *digital constitutionalism* emphasizes that the regulation of digital space must still ensure a balance between the protection of individual reputations, freedom of expression, and legal certainty in a democratic country. In addition, the Constitutional Court also limited the meaning of the phrase "something" in Article 27A and Article 45 paragraph (4) of Law Number 1 of 2024<sup>5</sup>. The phrase is only constitutional if it is interpreted as "an act that degrades the honor or good name of a person". This interpretation narrows the space for the application of defamation offenses, because not all criticism, opinions, or digital expressions can be treated as criminal offenses. The element of accusation must relate to certain acts that truly degrade the honor or good name of the individual.

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<sup>5</sup> "Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions" (Statute Book of the Republic of Indonesia Number 1 of 2024, Supplement to Statute Book of the Republic of Indonesia Number 6905, 2024).

In the perspective of the principle *of equality before the law*, restricting the subject of defamation victims is important. Article 27 paragraph (1) of the 1945 Constitution emphasizes that every citizen has the same position in law and government. Article 28D paragraph (1) also guarantees fair legal certainty and equal treatment before the law. The ITE Act, this principle not only means that anyone can use criminal law, but also that the law should not give a stronger position to institutions or power holders to suppress public criticism.

Several previous studies have discussed the Constitutional Court Decision Number 105/PUU-XXII/2024 from various perspectives. Rachman emphasized the discussion on the juridical implications of the decision on the protection of freedom of expression in the implementation of the ITE Law<sup>6</sup>. Meanwhile, Fedira analyzed the Constitutional Court's legal considerations in limiting the application of defamation offenses after the second amendment to the ITE Law<sup>7</sup>. On the other hand, Windani examines the dilemma of criminalizing freedom of expression after the revision of the ITE Law by highlighting the potential abuse of Article 27A<sup>8</sup>. However, these studies still focus on the implications of the decision on freedom of expression or normative analysis of changes in the provisions of the ITE Law, without specifically linking the restriction on the subject of defamation offenses with the principle *of equality before the law* as the constitutional basis for the restriction.

Based on these conditions, this study offers a different contribution by placing the Constitutional Court Decision Number 105/PUU-XXII/2024 as a constitutional instrument to reinterpret the principle *of equality before the law* in electronic defamation offenses. This study not only explains the change in the meaning of the phrase "other people", but also shows that the restriction of legal subjects is a mechanism to maintain a balance between the protection of individual honor, freedom of expression, and equality of every citizen's standing before the law.

Based on this description, there is still a gap in the study regarding the relationship between the restriction on the subject of defamation after the Constitutional Court Decision Number 105/PUU-XXII/2024 and the implementation of the principle *of equality before the law*. Therefore, this study aims to analyze the regulation of the principle

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<sup>6</sup> M T Rachman, "The Juridical Implications of the Constitutional Court Decision Number 105/PUU-XXII/2024 on Freedom of Expression in the ITE Law," *Unizar Law Review*, 2025.

<sup>7</sup> R Fedira, "Analysis of the Constitutional Court Decision No. 105/PUU-XXII/2024," *Mutiara: Indonesian Multidisciplinary Scientific Journal*, 2025.

<sup>8</sup> S Windani, "The Dilemma of Criminalizing Freedom of Expression in Defamation Regulations After the Second Revision of the ITE Law," *Lex Lectio: Journal of Legal Studies* 4, no. 2 (2025): 104–13, <https://doi.org/10.61715/jll.v4i2.125>.

of *equality before the law*, the relationship between the Constitutional Court Decision and Article 27A of the ITE Law, and the implications of the restriction of legal subjects on the protection of freedom of expression and legal certainty in the digital space.

## METHODS

The approaches used include legislative, conceptual, and case approaches. The legislative approach is used to study the 1945 Constitution, the ITE Law, the Human Rights Law, and related regulations. A conceptual approach is used to understand the concepts of equality before the law, legal certainty, freedom of expression, and digital defamation. The case approach is used to analyze the Constitutional Court Decision Number 105/PUU-XXII/2024. The research legal material consists of primary, secondary, and tertiary legal materials. Primary legal materials include the 1945 Constitution, the ITE Law, the Human Rights Law, and the Constitutional Court Decision Number 105/PUU-XXII/2024. Secondary legal materials are books, journals, legal articles, and expert opinions. Tertiary legal materials are in the form of legal dictionaries, legal encyclopedias, and other supporting sources. The technique of collecting legal materials is carried out through literature studies. In analyzing the Constitutional Court Decision Number 105/PUU-XXII/2024, this study uses several legal interpretation techniques. Grammatical interpretation is used to interpret the meaning of the phrase "**other person**" in Article 27A of Law Number 1 of 2024 based on the formulation of the norm. Systematic interpretation is used by linking these provisions with the 1945 Constitution, the Human Rights Act, and other provisions related to the protection of honor and freedom of expression. Furthermore, teleological interpretation is used to understand the law-making purpose and the Constitutional Court's considerations in limiting the subject of defamation offenses. In addition, constitutional interpretation is applied to assess the conformity of these norms with the principles of *equality before the law*, legal certainty, and protection of citizens' constitutional rights. The data was analyzed qualitatively descriptive-analytical by interpreting the relationship between Article 27A of the ITE Law and the Constitutional Court Decision Number 105/PUU-XXII/2024, then assessing it based on the principle of *equality before the law*.

## RESULTS AND DISCUSSION

The defamation provisions in the ITE Law raise normative problems because the phrase "other person" opens up a wide space of interpretation. The phrase has the potential to be interpreted not only as an individual, but also an institution, institution, position, profession, or corporation. As a result, defamation norms can be used to

respond to public criticism through criminal channels. This study highlights the regulation of norms in the ITE Law, the interpretation of the Constitutional Court in Decision Number 105/PUU-XXII/2024, and its implications for the principle *of equality before the law*.

### **1. Regulation of the Principle of Equality Before the Law in the Indonesian Legal System**

Bases *equality before the law* has an important position in the Indonesian legal system because it is the basis for assessing whether the law is applied equally to everyone. This principle has a constitutional basis in Article 27 paragraph (1) of the 1945 Constitution which affirms the equal position of citizens in law and government, and Article 28D paragraph (1) of the 1945 Constitution which guarantees protection, fair legal certainty, and equal treatment before the law.

The guarantee is also strengthened through Article 3 paragraph (2) and Article 5 paragraph (1) of Law Number 39 of 1999 concerning Human Rights <sup>9</sup>, and Article 4 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which affirms that courts adjudicate according to the law without discriminating against persons <sup>10</sup>. In the development of modern law, the principle of *equality before the law* It is not enough to be interpreted as a formal equation that is only written in laws and regulations. This principle must also be substantively realized in law enforcement practice. The principle of the state of law and *equality before the law* want the life of the nation and the state to be free from arbitrariness and discrimination. This means that the law should not allow room for a certain party to gain a stronger position just because of the institutional status, position, or power it has<sup>11</sup>.

Concept *equality before the law* was first put forward systematically by Albert Venn Dicey as one of the main elements *rule of law*. According to Dicey, everyone, regardless of position, position, or institutional status, must be subject to the same laws and receive equal legal protection. No particular group or institution shall acquire legal privileges outside the provisions applicable to other citizens<sup>12</sup>. In the context of defamation offenses, the principle emphasizes that criminal law should not be used to provide greater

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<sup>9</sup> "Law No. 39 of 1999 concerning Human Rights" (Statute Book of the Republic of Indonesia No. 165 of 1999, Supplement to Statute Book of the Republic of Indonesia No. 3886, 1999).

<sup>10</sup> "Law No. 48 of 2009 concerning Judicial Power" (Statute Book of the Republic of Indonesia No. 157 of 2009, Supplement to Statute Book of the Republic of Indonesia No. 5076, 2009).

<sup>11</sup> Peter Mahmud Marzuki, Legal Research (Jakarta: Kencana, 2017).

<sup>12</sup> Albert Venn Dicey, "Introduction to the Study of the Law of the Constitution: Introduction to the Eighth Edition (1915)," *Journal of Constitutional History*: 13, 1, 2007, 2007, 171–229, <https://doi.org/10.1400/201184>.

protection to state institutions, corporations, or certain groups than the protection given to individuals as subjects of law.

This view is in line with the thought of Ronald Dworkin who affirmed that the state must treat everyone with *equal concern and respect*. Equality before the law is not only interpreted as a formal equality in laws and regulations, but also as the state's obligation to apply the law fairly without providing disproportionate protection to those with greater power<sup>13</sup>. Therefore, phrase restrictions "*Others*" in the Constitutional Court Decision Number 105/PUU-XXII/2024 can be understood as an effort to realize this principle by placing individuals as the main subject protected in defamation offenses, while preventing the use of criminal law as an instrument to limit criticism of public institutions.

Defamation through the ITE Law, this principle is an important measure to assess whether the use of criminal law has run proportionately. Defamation provisions in the digital space often cause problems because they can limit freedom of opinion if applied widely without clear boundaries. According to Putra & Tantimin (2022), freedom of opinion is guaranteed by the constitution, but the application of Article 27 paragraph (3) of the ITE Law can limit such freedom when used disproportionately<sup>14</sup>. This is all the more important when the phrase "other person" in the defamation provisions can be interpreted to include an institution, institution, position, profession, group, or corporation. Interpretations that are too broad have the potential to create inequality between citizens and those with stronger legal resources. In such situations, criminal law can change its function from an instrument to protect individual rights to a means of responding to public criticism. Studies on the ITE Law also show that the defamation and hate speech articles are often criticized because their formulation is too broad and has the potential to interfere with freedom of expression in practice<sup>15</sup>.

The Constitutional Court Decision Number 105/PUU-XXII/2024 is relevant because it provides a restriction on the phrase "other person" in Article 27A of the ITE Law. The Court emphasized that the phrase refers only to individuals or individuals, not government agencies, groups of people, professions, positions, or corporations. This affirmation strengthens legal certainty and prevents arbitrariness in the application of defamation offenses. The ruling restricts governments, companies, institutions, or

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<sup>13</sup> Ronald Dworkin, *Taking Rights Seriously* (A&C Black, 2013)

<sup>14</sup> A E Putra and Tantimin, "Legal Studies of Article 27 Paragraph 3 of the ITE Law on Freedom of Public Opinion," *JUSTITIA: Journal of Law and Humanities* 9, no. 5 (2022): 2366-74.

<sup>15</sup> Arif Purnama Hasyim and Sujono, "Reformulation of Criminal Law Policy on Hate Speech on Social Media: A Comparative Study Between the Criminal Code and the ITE Law," *Lex Laguens: Journal of Law and Justice Studies* 3, no. 2 (2025), <https://doi.org/10.08221/lexlaguens.v3i2.270>.

groups with certain identities from filing defamation complaints against individuals, with the aim of maintaining legal certainty and preventing abuse of the law<sup>16</sup>.

Basic setup *equality before the law* in the Indonesian legal system is not only reflected through normative recognition in the 1945 Constitution, the Human Rights Law, and the Judicial Power Law, but must also be seen in the way criminal law norms are interpreted and applied proportionately. The ITE Law, the restriction of legal subjects in defamation offenses through the Constitutional Court Decision Number 105/PUU-XXII/2024, shows that the principle of equality before the law must be realized in real terms through balanced protection between individual honor, freedom of expression, and the prevention of abuse of criminal law by those in power.

## **2. The Relationship of the ITE Law with the Constitutional Court Decision Number 105/PUU-XXII/2024**

The provisions for defamation in the digital space were originally regulated in Article 27 paragraph (3) of Law Number 11 of 2008 concerning Information and Electronic Transactions. After the amendment through Law Number 1 of 2024, the regulation is formulated in Article 27A. This amendment clarifies the form of prohibited acts, namely attacking the honor or good name of others by accusing something through electronic information or electronic documents. However, the change still leaves a problem because the phrase "other person" has not provided a firm limit on who can be a victim in a defamation offense. The absence of these restrictions creates a wide space for interpretation. The phrase "other person" can be understood not only as an individual, but also an institution, institution, position, profession, group, or corporation.

In practice, interpretation that is too broad can cause serious problems because criticism of certain institutions has the potential to be processed as defamation. This makes the provisions of the ITE Law not only serve as a protection for personal honor, but also risk becoming an instrument to limit freedom of expression. The application of Article 27 paragraph (3) of the ITE Law can limit freedom of opinion if used disproportionately. The Constitutional Court Decision Number 105/PUU-XXII/2024 is an important point in clarifying this issue. The Court emphasized that the phrase "other person" in Article 27A of the ITE Law only refers to an individual or an individual. This means that government institutions, institutions, positions, professions, groups of people, or corporations cannot be placed as victims of defamation based on these provisions. This interpretation narrows the space for the application of norms so that

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<sup>16</sup> Reuters, "Indonesian Court Bans Government, Company from Defamation Complaints," Reuters, 2025.

defamation offenses are not used outside of their main purpose, which is to protect a person's personal honor.

From the perspective of *ratio decidendi*, the main basis of the Constitutional Court's consideration lies in the need to provide a constitutional limit to the phrase "other person" in Article 27A of the ITE Law. The Court considered that the phrase could not be interpreted broadly to include government agencies, corporations, professions, positions, or certain groups because such an interpretation has the potential to create legal uncertainty and open up space for criminalization of public criticism. Therefore, restricting the subject of law to only the individual is the main legal reason (*ratio decidendi*) which is the basis of the verdict.

In addition to these main legal reasons, the Court also provides several considerations that strengthen the direction of its interpretation (*obiter dictum*). The Court emphasized that criticism of state institutions, public officials, professions, and corporations is part of democratic life that must continue to receive constitutional protection as long as it is conveyed in accordance with the provisions of the law. This consideration does not directly determine the merits of the decision, but provides guidelines for law enforcement officials not to expand the application of defamation offenses beyond the purpose of its formation.

From the side constitutional significance, Constitutional Court Decision Number 105/PUU-XXII/2024 not only changes the way of understanding Article 27A of the ITE Law, but also strengthens the principle of a democratic state of law. The ruling provides a constitutional limit on the use of criminal law in the digital space so that the protection of individual honor continues without sacrificing freedom of expression and equality before the law. Thus, this decision has an important meaning as a constitutional guideline in the interpretation of defamation offenses in the digital era.

The relationship between the ITE Law and the Constitutional Court Decision lies in the function of the decision as an affirmation of constitutional limits on digital criminal norms. The court did not remove the defamation offense, but limited its application to be clearer, proportionate, and not to cause legal uncertainty. These restrictions also prevent the excessive use of criminal law against public criticism. In the state of law, such interpretation is important because criminal law must be used with caution and must not be a tool to protect institutions from public criticism.

The Constitutional Court's Decision Number 105/PUU-XXII/2024 shows that the provisions of the ITE Law must be read in line with the principles of legal certainty, freedom of expression, and equality before the law. The assertion that the victims of defamation are only individuals makes the application of Article 27A more directed. The

norm can still be used to protect a person's honor, but it cannot be expanded to protect an institution or legal entity from public criticism.

### **3. Constitutional Court's Legal Considerations on the Restriction of Defamation Subjects**

The Constitutional Court's legal considerations in Decision Number 105/PUU-XXII/2024 depart from the need to clarify the limits of the application of defamation offenses in Article 27A of the ITE Law. Before the verdict, the phrase "other person" still opened up a wide space for interpretation. This phrase can be understood not only as an individual, but also as a government agency, profession, position, group of people, or corporation. This condition raises problems because defamation offenses can be used outside of their main purpose, which is to protect one's personal honor. The Constitutional Court then affirmed that the phrase "other person" in Article 27A of the ITE Law must be interpreted as an individual or an individual. In its consideration, the Court stated that the phrase "Others" Article 27A of the ITE Law cannot be interpreted to include government agencies, corporations, professions, positions, or certain groups because the main purpose of defamation is to provide protection for honor individual as a subject of law. Thus, the expansion of the meaning of the phrase has the potential to cause legal uncertainty and abuse of criminal provisions against public criticism. This interpretation is important so that there is no arbitrariness by law enforcement officials in applying the defamation article.

From the perspective of original intent, the defamation provisions in the ITE Law were originally established as an instrument to protect the honor of individuals from attacks through electronic media, not to provide criminal protection to state institutions, corporations, professions, or positions. Therefore, the Constitutional Court Decision Number 105/PUU-XXII/2024 can be understood as an effort to restore the purpose of establishing norms (*original intent*) so that the application of Article 27A remains in accordance with its original function and does not develop into an instrument of criminalization of public criticism <sup>17</sup>.

In addition to considering the purpose of establishing norms, the Court also applies The Principle of Proportionality (Proportionality Principle). This principle requires that restrictions on citizens' constitutional rights can only be exercised if they are absolutely necessary, have a legitimate purpose, and are carried out proportionately. In the context of Article 27A of the ITE Law, restrictions on freedom of expression must not go beyond

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<sup>17</sup> Antonin Scalia and Bryan A Garner, *Reading Law: The Interpretation of Legal Texts* (St. Paul, Minnesota: Thomson/West, 2012), <https://cir.nii.ac.jp/crid/1970867909785576870>.

the need to protect the honor of individuals so as not to turn into instruments that limit criticism of public institutions.

The Court's consideration shows that there is constitutional balancing, which is an effort to balance two constitutional interests that are equally protected by the 1945 Constitution, namely the right to individual honor and reputation on the one hand and the right to freedom of expression on the other. The Court does not remove the protection of good name, but limits the subject of the law that can be protected so that the application of criminal law remains proportionate and does not create a silencing effect (*chilling effect*) against public criticism. Thus, Decision Number 105/PUU-XXII/2024 is a form of constitutional a balance that maintains a balance between the protection of individual rights and the interests of democracy<sup>18</sup>.

In an overview of Decision Number 105/PUU-XXII/2024, the Court stated that government institutions, a group of people with a certain identity, profession, position, or corporation are excluded as victims of defamation based on Article 27A of the ITE Law. These considerations show that the Court does not remove the defamation offense, but limits the scope of the subject protected by the norm. That is, the law can still be used to protect the honor and good name of individuals, but it cannot be expanded to protect institutions from public criticism. According to Rachman, this restriction is important because the application of the defamation article in the ITE Law is often criticized as limiting freedom of opinion if used disproportionately<sup>19</sup>. The phrases "other person", "something", and "without rights" in the provisions of the previous ITE Law have the potential to become rubber articles because their meaning is unclear, so that it can open up space for abuse of criminal law and threaten freedom of expression in society.

The issue was then affirmed through the Constitutional Court Decision Number 105/PUU-XXII/2024, which limits the meaning of the phrase "other person" in Article 27A of the ITE Law to only individuals or individuals. With these restrictions, government institutions, institutions, positions, professions, groups, and corporations can no longer be positioned as victims of defamation. This ruling is an important step to prevent the criminalization of public criticism and strengthen the protection of freedom of expression<sup>20</sup>. The Constitutional Court Decision Number 105/PUU-XXII/2024 not only clarifies the limits of the application of defamation offenses, but also strengthens

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<sup>18</sup> Aharon Barak and Doron Kalir, *Proportionality: Constitutional Rights and Their Limitations*, Cambridge University Press, 2012.

<sup>19</sup> Rachman, "The Juridical Implications of the Constitutional Court Decision Number 105/PUU-XXII/2024 on Freedom of Expression in the ITE Law."

<sup>20</sup> Fedira, "Analysis of the Constitutional Court Decision No. 105/PUU-XXII/2024."

legal certainty and principles *equality before the law*, because the law no longer provides excessive criminal protection to institutions, but instead focuses on the protection of individual honor.

From the perspective of freedom of expression, the Court's consideration also shows an effort to maintain space for public criticism. Criticism of government institutions, professions, positions, or corporations is part of public participation in a democratic country. If such criticism can be easily processed as defamation, then criminal law has the potential to be a tool to limit freedom of expression. The latest study on defamation offenses after the revision of the ITE Law also shows that Article 27A emphasizes the element of "alleging something", but it still needs to be applied carefully so as not to interfere with the protection of freedom of expression<sup>21</sup>. The Court's consideration in the decision is also related to the basis of *equality before the law*. If institutions, institutions, or corporations are still given the position of victims of defamation, there will be an imbalance in the relationship between citizens and those who have greater power. Citizens are in a weaker position because they have to deal with institutions that have stronger legal, political, or economic resources.

By limiting the victim to only individuals, the Court places criminal protection in a more proportionate manner and prevents legal privilege for certain parties. This verdict also serves as a correction to the potential expansion of criminal law in the digital space. The ITE Law is still needed to regulate electronic activities and protect the rights of individuals, but its application must have clear limits. The limitation of the subject of law in Article 27A shows that criminal law should not be used excessively against public criticism. The ruling puts the protection of good name, freedom of expression, legal certainty, and equality before the law in a more balanced position.

According to the author, the Constitutional Court's approach in Decision Number 105/PUU-XXII/2024 shows an important shift from a formal reputation protection approach to a more balanced protection of constitutional rights. The restriction of the phrase "other person" is not intended to diminish the protection of one's honor, but rather to ensure that the criminal law is not overused against criticism that is part of democratic life. Thus, the ruling strengthens the principles of *equality before the law*, legal certainty, and freedom of expression at the same time.

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<sup>21</sup> Windani, "The Dilemma of Criminalizing Freedom of Expression in Defamation Regulations After the Second Revision of the ITE Law."

## CONCLUSION

The Constitutional Court Decision Number 105/PUU-XXII/2024 affirms the limits of the application of defamation offenses in the ITE Law, especially on the meaning of the phrase "other person" in Article 27A. By limiting the phrase to only individuals or individuals, the Court clarifies that government agencies, institutions, positions, professions, groups, or corporations cannot be victims of defamation under these provisions. This decision strengthens legal certainty because it reduces the space for interpretation that is too wide in the application of the ITE Law. The restrictions also prevent the excessive use of criminal law against public criticism, especially criticism directed at institutions or parties with a stronger position. The principle of equality before the law, the decision before the law must not provide excessive criminal protection to institutions, while citizens must still be guaranteed their right to express their opinions responsibly.

This research shows that the Constitutional Court Decision Number 105/PUU-XXII/2024 not only provides legal certainty for the application of Article 27A of the ITE Law, but also represents a paradigm shift in Indonesian cybercriminal law, namely from institution-oriented reputation protection to individual reputation protection as a consequence of the principles of *constitutional democracy* and *equality before the law*. These findings enrich the study of constitutional law and cyber law by emphasizing that the protection of individual honor must be placed proportionately through the *constitutional balancing mechanism*, so that freedom of expression is guaranteed without eliminating the function of criminal law in protecting the rights of every citizen.

## REFERENCES

Book:

Marzuki, Peter Mahmud. *Penelitian Hukum*. Edisi Revisi. Jakarta: Kencana, 2024.

Legislation:

"Undang-Undang Nomor 1 Tahun 2024 Tentang Perubahan Kedua Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik." Lembaran Negara Republik Indonesia Tahun 2024 Nomor 1, Tambahan Lembaran Negara Republik Indonesia Nomor 6905, 2024.

"Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia." Lembaran Negara Republik Indonesia Tahun 1999 Nomor 165, Tambahan Lembaran Negara Republik Indonesia Nomor 3886, 1999.

“Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman.” Lembaran Negara Republik Indonesia Tahun 2009 Nomor 157, Tambahan Lembaran Negara Republik Indonesia Nomor 5076, 2009.

Journals:

Windani, S. “Dilema Kriminalisasi Kebebasan Berekspresi Dalam Pengaturan Pencemaran Nama Baik Pasca Revisi Kedua UU ITE.” *Lex Lectio: Jurnal Kajian Hukum* 4, no. 2 (2025): 104–13. <https://doi.org/10.61715/jll.v4i2.125>.

Fedira, R. “Analisis Putusan Mahkamah Konstitusi No. 105/PUU-XXII/2024.” *Mutiara: Jurnal Ilmiah Multidisiplin Indonesia*, 2025.

Hasyim, Arif Purnama, and Sujono. “Reformulasi Kebijakan Hukum Pidana Terhadap Ujaran Kebencian Di Media Sosial: Studi Komparatif Antara KUHP Dan UU ITE.” *Lex Laguens: Jurnal Kajian Hukum Dan Keadilan* 3, no. 2 (2025). <https://doi.org/10.08221/lexlaguens.v3i2.270>.

Nasution, L. “Hak Kebebasan Berpendapat Dan Berekspresi Dalam Ruang Publik Di Era Digital.” *Adalah: Buletin Hukum Dan Keadilan* 4, no. 3 (2020): 37–48.

Putra, A E, and Tantimin. “Kajian Hukum Pasal 27 Ayat 3 UU ITE Terhadap Kebebasan Berpendapat Masyarakat.” *JUSTITIA: Jurnal Ilmu Hukum Dan Humaniora* 9, no. 5 (2022): 2366–74.

Rachman, M T. “Implikasi Yuridis Putusan Mahkamah Konstitusi Nomor 105/PUU-XXII/2024 Terhadap Kebebasan Berekspresi Dalam UU ITE.” *Unizar Law Review*, 2025.

Internet/Website:

Barak, Aharon, and Doron Kalir. *Proportionality: Constitutional Rights and Their Limitations*. Cambridge University Press, 2012.

Barendt, Eric M. *Freedom of Speech*. Oxford University Press, 2005. [https://books.google.co.id/books?id=xrzmCwAAQBAJ&lpg=PR15&ots=dV8r9bpw9T&dq=Barendt%2CEric.\(2005\).FreedomofSpeech.OxfordUniversityPress.&lr&pg=PR13#v=onepage&q=Barendt,Eric.\(2005\).FreedomofSpeech.OxfordUniversityPress.&f=false](https://books.google.co.id/books?id=xrzmCwAAQBAJ&lpg=PR15&ots=dV8r9bpw9T&dq=Barendt%2CEric.(2005).FreedomofSpeech.OxfordUniversityPress.&lr&pg=PR13#v=onepage&q=Barendt,Eric.(2005).FreedomofSpeech.OxfordUniversityPress.&f=false)

Celeste, Edoardo. “Digital Constitutionalism: A New Systematic Theorisation.” *International Review of Law, Computers & Technology* 33, no. 1 (January 2, 2019): 76–99. <https://doi.org/10.1080/13600869.2019.1562604>.

— — —. *Digital Constitutionalism: The Role of Internet Bills of Rights*. Routledge, 2022. <https://doi.org/10.4324/9781003256908>.

Dworkin, Ronald. *Taking Rights Seriously*. A&C Black, 2013. [https://books.google.co.id/books?id=Ud\\_UAAAAQBAJ&lpg=PR3&ots=RDeW8BxxY0&dq=Dworkin%2CR.\(1977\).TakingRights](https://books.google.co.id/books?id=Ud_UAAAAQBAJ&lpg=PR3&ots=RDeW8BxxY0&dq=Dworkin%2CR.(1977).TakingRights)

- Seriously.&lr&pg=PR3#v=onepage&q=Dworkin, R. (1977). Taking Rights Seriously.&f=false.
- Fedira, R. "Analisis Putusan Mahkamah Konstitusi No. 105/PUU-XXII/2024." *Mutiara: Jurnal Ilmiah Multidisiplin Indonesia*, 2025.
- Hasyim, Arif Purnama, and Sujono. "Reformulasi Kebijakan Hukum Pidana Terhadap Ujaran Kebencian Di Media Sosial: Studi Komparatif Antara KUHP Dan UU ITE." *Lex Laguens: Jurnal Kajian Hukum Dan Keadilan* 3, no. 2 (2025). <https://doi.org/10.08221/lexlaguens.v3i2.270>.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana, 2017.
- Nasution, L. "Hak Kebebasan Berpendapat Dan Berekspresi Dalam Ruang Publik Di Era Digital." *Adalah: Buletin Hukum Dan Keadilan* 4, no. 3 (2020): 37–48.
- Putra, A E, and Tantimin. "Kajian Hukum Pasal 27 Ayat 3 UU ITE Terhadap Kebebasan Berpendapat Masyarakat." *JUSTITIA: Jurnal Ilmu Hukum Dan Humaniora* 9, no. 5 (2022): 2366–74.
- Rachman, M T. "Implikasi Yuridis Putusan Mahkamah Konstitusi Nomor 105/PUU-XXII/2024 Terhadap Kebebasan Berekspresi Dalam UU ITE." *Unizar Law Review*, 2025.
- Reuters. "Indonesian Court Bans Government, Company from Defamation Complaints." *Reuters*, 2025.
- Scalia, Antonin, and Bryan A Garner. *Reading Law: The Interpretation of Legal Texts*. St. Paul, Minnesota: Thomson/West, 2012. <https://cir.nii.ac.jp/crid/1970867909785576870>.
- "Undang-Undang Nomor 1 Tahun 2024 Tentang Perubahan Kedua Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik." Lembaran Negara Republik Indonesia Tahun 2024 Nomor 1, Tambahan Lembaran Negara Republik Indonesia Nomor 6905, 2024.
- "Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia." Lembaran Negara Republik Indonesia Tahun 1999 Nomor 165, Tambahan Lembaran Negara Republik Indonesia Nomor 3886, 1999.
- "Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman." Lembaran Negara Republik Indonesia Tahun 2009 Nomor 157, Tambahan Lembaran Negara Republik Indonesia Nomor 5076, 2009.
- Venn Dicey, Albert. "Introduction to the Study of the Law of the Constitution: Introduction to the Eighth Edition (1915)." *Giornale Di Storia Costituzionale*: 13, I, 2007, 2007, 171–229. <https://doi.org/10.1400/201184>.
- Windani, S. "Dilema Kriminalisasi Kebebasan Berekspresi Dalam Pengaturan Pencemaran Nama Baik Pasca Revisi Kedua UU ITE." *Lex Lectio: Jurnal Kajian Hukum* 4, no. 2 (2025): 104–13. <https://doi.org/10.61715/jll.v4i2.125>.

- Barak, Aharon, and Doron Kalir. *Proportionality: Constitutional Rights and Their Limitations*. Cambridge University Press, 2012.
- Barendt, Eric M. *Freedom of Speech*. Oxford University Press, 2005.  
[https://books.google.co.id/books?id=xrzmCwAAQBAJ&lpg=PR15&ots=dV8r9bpw9T&dq=Barendt%2C Eric. \(2005\). Freedom of Speech. Oxford University Press.&lr&pg=PR13#v=onepage&q=Barendt, Eric. \(2005\). Freedom of Speech. Oxford University Press.&f=false](https://books.google.co.id/books?id=xrzmCwAAQBAJ&lpg=PR15&ots=dV8r9bpw9T&dq=Barendt%2C+Eric+(2005).+Freedom+of+Speech.+Oxford+University+Press.&lr&pg=PR13#v=onepage&q=Barendt,+Eric+(2005).+Freedom+of+Speech.+Oxford+University+Press.&f=false).
- Celeste, Edoardo. "Digital Constitutionalism: A New Systematic Theorisation." *International Review of Law, Computers & Technology* 33, no. 1 (January 2, 2019): 76–99. <https://doi.org/10.1080/13600869.2019.1562604>.
- — —. *Digital Constitutionalism: The Role of Internet Bills of Rights*. Routledge, 2022. <https://doi.org/10.4324/9781003256908>.
- Dworkin, Ronald. *Taking Rights Seriously*. A&C Black, 2013.  
[https://books.google.co.id/books?id=Ud\\_UAAAAQBAJ&lpg=PR3&ots=RDeW8BxxY0&dq=Dworkin%2C R. \(1977\). Taking Rights Seriously.&lr&pg=PR3#v=onepage&q=Dworkin, R. \(1977\). Taking Rights Seriously.&f=false](https://books.google.co.id/books?id=Ud_UAAAAQBAJ&lpg=PR3&ots=RDeW8BxxY0&dq=Dworkin%2C+R+(1977).+Taking+Rights+Seriously.&lr&pg=PR3#v=onepage&q=Dworkin,+R+(1977).+Taking+Rights+Seriously.&f=false).
- Fedira, R. "Analisis Putusan Mahkamah Konstitusi No. 105/PUU-XXII/2024." *Mutiara: Jurnal Ilmiah Multidisiplin Indonesia*, 2025.
- Hasyim, Arif Purnama, and Sujono. "Reformulasi Kebijakan Hukum Pidana Terhadap Ujaran Kebencian Di Media Sosial: Studi Komparatif Antara KUHP Dan UU ITE." *Lex Laguens: Jurnal Kajian Hukum Dan Keadilan* 3, no. 2 (2025). <https://doi.org/10.08221/lexlaguens.v3i2.270>.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana, 2017.
- Nasution, L. "Hak Kebebasan Berpendapat Dan Berekspresi Dalam Ruang Publik Di Era Digital." *Adalah: Buletin Hukum Dan Keadilan* 4, no. 3 (2020): 37–48.
- Putra, A E, and Tantimin. "Kajian Hukum Pasal 27 Ayat 3 UU ITE Terhadap Kebebasan Berpendapat Masyarakat." *JUSTITIA: Jurnal Ilmu Hukum Dan Humaniora* 9, no. 5 (2022): 2366–74.
- Rachman, M T. "Implikasi Yuridis Putusan Mahkamah Konstitusi Nomor 105/PUU-XXII/2024 Terhadap Kebebasan Berekspresi Dalam UU ITE." *Unizar Law Review*, 2025.
- Reuters. "Indonesian Court Bans Government, Company from Defamation Complaints." *Reuters*, 2025.
- Scalia, Antonin, and Bryan A Garner. *Reading Law: The Interpretation of Legal Texts*. St. Paul, Minnesota: Thomson/West, 2012.  
<https://cir.nii.ac.jp/crid/1970867909785576870>.

- “Undang-Undang Nomor 1 Tahun 2024 Tentang Perubahan Kedua Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik.” Lembaran Negara Republik Indonesia Tahun 2024 Nomor 1, Tambahan Lembaran Negara Republik Indonesia Nomor 6905, 2024.
- “Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia.” Lembaran Negara Republik Indonesia Tahun 1999 Nomor 165, Tambahan Lembaran Negara Republik Indonesia Nomor 3886, 1999.
- “Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman.” Lembaran Negara Republik Indonesia Tahun 2009 Nomor 157, Tambahan Lembaran Negara Republik Indonesia Nomor 5076, 2009.
- Venn Dicey, Albert. “Introduction to the Study of the Law of the Constitution: Introduction to the Eighth Edition (1915).” *Giornale Di Storia Costituzionale*: 13, I, 2007, 2007, 171–229. <https://doi.org/10.1400/201184>.
- Windani, S. “Dilema Kriminalisasi Kebebasan Berekspresi Dalam Pengaturan Pencemaran Nama Baik Pasca Revisi Kedua UU ITE.” *Lex Lectio: Jurnal Kajian Hukum* 4, no. 2 (2025): 104–13. <https://doi.org/10.61715/jll.v4i2.125>.