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Reformulation of the Regulations on the Right to Freedom of Expression for Academics in the Digital Space in Enforcing the Crime of Defamation

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Abstract: *This study aims to analyze the problematic enforcement of defamation offenses against academic expression in the digital space and formulate a model for reformulating its regulations based on the protection of academic freedom from the perspective of human rights and a democratic rule of law. The 1945 Republic of Indonesia Constitution, Law Number 39 of 1999 concerning Human Rights, Law Number 1 of 2024 concerning Electronic Information and Transactions, the National Criminal Code, and the International Covenant on Civil and Political Rights are all reviewed as part of the normative juridical research method with a statutory and conceptual approach, and relevant Constitutional Court decisions. The research results indicate that Indonesian positive law still faces problems in the form of a dualism of the legal regime between the Criminal Code and the ITE Law, the ambiguity of elements of offenses, such as attacking honor, accusing someone, and public knowledge, and the absence of normative parameters capable of distinguishing scientific criticism from personal attacks. These conditions have triggered the criminalization of lecturers, researchers, experts, and observers, which has resulted in the emergence of a chilling effect and overcriminalization of academic freedom in the digital space. This study proposes a model of ius constituendum through a reformulation of Article 27A of the ITE Law, adding explicit exceptions for academic expression conducted in scientific forums, research publications, and opinions based on scientific methodology, as long as they are conducted in good faith and in the public interest. The reformulation includes the implementation of a balancing test, specific evidentiary standards for scientific expression, indicators of good faith academic criticism, and strengthening non-penal settlement mechanisms through the right of reply, scientific correction, and reputation restoration. This model is expected to achieve proportional legal certainty between reputation protection and academic freedom of expression as pillars of digital democracy.*

Keywords: *Academic Freedom of Expression; Defamation; Digital Space; Legal Reformulation*

Introduction

Freedom of expression is an inherent part of human rights, which is philosophically rooted in the recognition of human dignity as rational and autonomous beings, It is protected by Article 28E paragraph (3) and Article 28F of the Republic of Indonesia's 1945 Constitution, which grants everyone the freedom to voice their opinions and acquire and transmit information. (Selian & Melina, 2018) Law Number 39 of 1999 concerning Human Rights, particularly Article 23 paragraph (2), and international instruments like the

International Covenant on Civil and Political Rights, which was ratified by Law Number 12 of 2005, reinforce this guarantee. Article 19 of the International Covenant on Civil and Political Rights states that everyone has the right to freedom of expression and opinion. (Olivia, 2020) In a democratic state of law, freedom of expression not only functions as an individual right, but also as a structural mechanism in maintaining a system of checks and balances and as a means of criticism of power. (Nasution, 2020) Within this framework, academics hold a unique position as epistemic authorities and moral forces, playing a role in producing knowledge, conducting scientific criticism, and testing public policies rationally and objectively. Therefore, freedom of expression for academics cannot be simply equated with the freedom of expression of citizens in general. (Wiratraman, 2024)

The development of information technology has shifted the space for academic expression from conventional spaces to digital spaces, which are open, without territorial boundaries, and characterized by rapid and easily viral information dissemination. Media such as social media, open journal platforms, and online discussion forums have significantly expanded the reach of academic expression, but they also create new legal risks because every academic statement is widely accessible to the public and potentially interpreted outside its scientific context. (Arief, 2022) This transformation has the consequence that academic expression, previously confined to a limited discourse space, has now entered the digital public sphere, vulnerable to criminalization. Therefore, changes in communication media essentially also mean changes in the level of vulnerability to criminal law enforcement, particularly in the context of defamation crimes. (Anas, 2020)

The Electronic Information and Transactions Law, which was most recently modified by Law Number 1 of 2024, replaced the Criminal Code as the legal framework governing defamation in Indonesia. Article 27A of the 2024 Electronic Information and Transactions Law stipulates that "any person who intentionally attacks the honor or good name of another person by making an accusation with the intention of making it publicly known through an electronic system" is then subject to criminal penalties under Article 45 paragraph (4) with a maximum imprisonment of two years and/or a fine. (Asmadi, 2021) This formulation demonstrates continuity with Article 433 of the 2023 Criminal Code, which also regulates defamation in an oral context, resulting in a dual legal regime between the Criminal Code and the Electronic Information and Transactions Law. The dualism creates systemic problems in terms of the consistency of norms and legal application, particularly because the Electronic Information and Transactions Law has a lex specialis character that extends the scope of the offense to the digital space. (Simamora, 2020)

However, the formulation of the crime of defamation still contains fundamental problems in the form of vague norms, particularly in the phrases "attacking honor" and "accusing something," which lack clear operational boundaries. (Ramadhan, 2024) This ambiguity makes it difficult to distinguish between scientific criticism, academic opinion, and actions that legally qualify as defamation. In fact, the official explanation in the ITE Law does not provide adequate parameters for interpreting the elements of the offense with certainty, thus opening up room for multiple interpretations that contradict the principle of lex certa in criminal law (Muthia & Arifin, 2019). This situation is exacerbated by the fact that the crime of defamation is an absolute complaint offense, thus relying heavily on the subjectivity of the aggrieved party. In practice, this often leads to the criminalization of

expressions that should be protected as part of freedom of expression. The phenomenon of criminalization of academic expression in the digital space is growing stronger with the use of the ITE Law as a legal instrument against criticism expressed by academics, both in the form of policy analysis and scientific opinions. In practice, this provision is often viewed as a tool that can silence public criticism and has a chilling effect on academics from expressing their critical views. (Hadijaya, 2025) It indicates a shift in the function of law from protecting individual reputations to restricting freedom of expression, which

Method

The study of positive legal norms, legal principles, doctrines, and legal concepts pertinent to the problem of reformulating the regulation of the right to freedom of expression for academics in the digital space in enforcing the crime of defamation is the focus of this research, which uses a normative juridical research method. A conceptual approach and a statutory approach are two of the methods used. The 1945 Constitution of the Republic of Indonesia, Law Number 39 of 1999 concerning Human Rights, Law Number 1 of 2024 concerning the Second Amendment to the Law on Information and Electronic Transactions, the National Criminal Code, Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights, and Constitutional Court rulings pertinent to Article 27A of the ITE Law are among the regulations pertaining to the guarantee of freedom of expression, protection of honor, and potential for legal reform. In the meantime, theoretical ideas like academic independence, freedom of expression, and human rights are thoroughly examined using a conceptual approach, reputation protection, lex certa, proportionality, balancing of rights, academic freedom doctrine, overcriminalization, and the chilling effect, which have developed in the doctrines and thoughts of legal experts. The use of these two approaches aims to build prescriptive legal arguments regarding the need for reformulation of defamation crime norms to be able to provide more proportional protection for academic expression in the digital space, while ensuring legal certainty and a balance between the protection of honor and freedom of expression in a democratic state under the rule of law.

Result and Discussion

The Right to Freedom of Academic Expression in the Digital Space from the Perspective of Human Rights and a Democratic Rule of Law

Freedom of expression is a fundamental human right inherent in every individual as a consequence of the recognition of human dignity. Philosophically, this right is rooted in the principle that humans are rational beings with the ability to think, express opinions, and express ideas freely without arbitrary intervention. Article 28E paragraph (3) of the Republic of Indonesia's 1945 Constitution, which declares that everyone has the right to freedom of organization, assembly, and expression, provides a strong constitutional protection for freedom of expression in the context of national law. Freedom of expression is positioned not only as an individual right but also as a public right with social and democratic dimensions in national life, as evidenced by Article 28F, which ensures the right to communicate and to collect and disseminate information using all available channels. (Fatimah, 2025)

As stated in Article 19 paragraphs (1) and (2) of the International Covenant on Civil and Political Rights, ratified by Law Number 12 of 2005, which affirms that everyone has the right to hold opinions without interference and the right to seek, receive, and disseminate information and ideas through any media, freedom of expression is also acknowledged as a fundamental civil and political right from the standpoint of international human rights law. As a result, as part of its international obligations, the state is legally required to uphold, defend, and fulfill these rights. Additionally, Law Number 39 of 1999 concerning Human Rights, specifically Article 23 paragraph (2), affirms that everyone is free to hold, express, and disseminate opinions in accordance with their conscience within the national framework, strengthening the position of freedom of expression as a right protected at various levels, both constitutionally and internationally. (Rahardjo, 2022)

Freedom of expression in the academic context has evolved into the concept of academic freedom, which is an integral part of human rights, particularly in the field of scientific development. The doctrine of academic freedom affirms that academics have the freedom to conduct research, express scientific opinions, and criticize public policies based on scientific methods without pressure or threats. This principle also aligns with international standards, such as the 1997 UNESCO Recommendation on the Status of Higher Education Teaching Personnel, which emphasizes the importance of academic freedom as a primary prerequisite for the development of science. In this context, academics are not simply viewed as ordinary individuals, but as special subjects of expression with an epistemic function in producing knowledge and a moral function in controlling power through scientifically based criticism. (Anggraeniko, 2023)

The development of information and communication technology has fundamentally changed the way academics express their ideas and research results, moving from conventional academic spaces to open and limitless digital spaces. Social media, online journal platforms, and digital discussion forums enable the rapid and widespread dissemination of scientific ideas to the public. However, the global, instantaneous, and easily viral nature of digital space also creates new vulnerabilities, as academic expression previously confined to a scientific context can now be interpreted as public statements with potential legal consequences. Thus, this transformation of the medium of expression not only expands freedom of expression but also increases the risk of criminalization of academic expression, particularly in relation to defamation offenses. (Lukum, 2025)

Although it is generally protected, the right to free speech is not unqualified. According to Article 28J paragraph (2) of the Republic of Indonesia's 1945 Constitution, everyone must be subject to legal restrictions when exercising their rights and freedoms in order to ensure that others' rights and freedoms are recognized and respected and to satisfy reasonable demands based on considerations of morality, religious values, security, and public order in a democratic society. This clause is consistent with Article 19 paragraph (3) of the International Covenant on Civil and Political Rights (ICCPR), which enables limitations on the right to free speech to the extent that it is required by law to uphold the rights or reputations of others and to safeguard public order or national security. Nonetheless, these limitations must adhere to the proportionality, need, and legality standards, and should not be used excessively or arbitrarily, thereby diminishing the essence of freedom itself. (Sinaga, 2026)

Within the framework of a democratic state governed by the rule of law, freedom of expression, particularly in the form of academic expression, holds greater value because it is directly related to the production of knowledge, the formation of rational public opinion, and the oversight of state power. Academics, as intellectual actors, play a strategic role in maintaining the quality of democracy through evidence-based criticism and scientific methodology. Thus, restrictions on academic expression must be placed carefully and proportionally to avoid a chilling effect that could hinder the development of science and undermine the function of social control over power. Therefore, normatively and theoretically, it can be affirmed that academic freedom of expression in the digital space has a strong constitutional standing and requires more specific legal protection than freedom of expression in general, as a consequence of its strategic role in a modern democratic system.

Problems in Enforcing the Crime of Defamation Against Academic Expression in the Digital Space

The regulation of the crime of defamation in Indonesian positive law demonstrates a historical development that is not entirely linear and/or leads to normative complexity in law enforcement practices. In the old Criminal Code (KUHP), specifically Articles 310 and 311, defamation was defined as an act of attacking a person's honor or reputation by making an accusation for public knowledge. This definition was then transformed in the digital legal regime through Article 27 paragraph (3) of Law Number 11 of 2008 concerning Electronic Information and Transactions, which expanded the medium of the act to the electronic space. The latest reformulation in Article 27A of Law Number 1 of 2024 retains the same structure, namely "attacking a person's honor or reputation by making an accusation with the intention of making it public knowledge through an electronic system," indicating that the changes are more editorial than substantive. At the same time, a similar provision was adopted in Article 433 of the National Criminal Code, creating a dual legal regime between the Criminal Code and the Electronic Information and Transactions (ITE) Law, which often causes legal uncertainty regarding the proper application of the norm.

The key problem with this norm construction lies in the vagueness of the elements of the offense used, particularly the phrases "attacking honor or reputation," "accusing something," and "publicly known," which lack clear parameters in legal interpretation. The official explanation of Article 27A of the ITE Law provides only a general definition without clear operational boundaries, leaving law enforcement officials open to wide interpretation. This situation raises serious issues with the principles of lex certa and lex stricta in criminal law, as an act cannot be definitively classified as a crime without clear normative boundaries. Empirically, this ambiguity differs in the application of the law across court decisions. It has even been found that the application of Article 27A of the ITE Law is inconsistent in assessing the elements of defamation, thus creating legal disparities that have implications for legal subjects, including academics.

In practice, this ambiguity of norms has a direct impact on the emergence of the criminalization of academic expression in the digital space. Academics who criticize public policies, research results, or scientific analyses are often reported under defamation laws, either under the Criminal Code or the Electronic Information and Transactions (ITE) Law. Empirically, the use of Article 27 paragraph (3) of the ITE Law and Article 310 of the Criminal Code has been used in various cases involving expression in the digital space,

including critical statements or opinions conveyed through electronic media. This pattern demonstrates that defamation norms are not only used to protect individual reputations but also have the potential to become an instrument for responding to substantive criticism. In the academic context, this is problematic because scientific criticism, which should be protected as part of academic freedom, is at risk of being criminalized.

A further impact of this situation is the emergence of the chilling effect, a situation where academics become reluctant to publicly express their opinions or research results due to fear of potential criminal prosecution. The phenomenon is exacerbated by the tendency towards overcriminalization, the excessive use of criminal law against expression that should be resolved through non-penal mechanisms such as the right of reply or clarification. In practice, there is no clear line between scientific criticism based on data and argument and statements deemed offensive to honor. Therefore, law enforcement officials tend to use a formalistic approach in assessing the elements of a crime without considering the academic context of the statement. As a result, criminal law functions not only as a tool for protecting reputation but also as a tool for restricting freedom of expression, indirectly weakening the function of social control in a democracy.

This problem is further complicated by the disharmony between the protection of the right to reputation and freedom of expression, which has not been regulated proportionally in Indonesian positive law. Normatively, both rights are guaranteed, but there is no clear balancing test mechanism to determine the boundary between the two in concrete contexts. It tends to lead law enforcement to prioritize reputation protection over freedom of expression, especially in cases involving criticism of certain parties. In an academic context, this situation contradicts the principle of academic freedom, which places scientific criticism as part of the intellectual function that must be protected. This disharmony demonstrates the failure of positive law to accommodate the complex relationship between these two fundamental rights.

An attempt to address this issue was made through Constitutional Court Decision No. 105/PUU-XXII/2024, which limited the meaning of the phrase "other person" in Article 27A of the ITE Law, emphasizing that it applies only to individuals and does not include institutions, corporations, or public officials. This decision empirically aims to prevent the abuse of norms to silence criticism of institutions or authorities and strengthens the protection of freedom of expression in the digital space. However, while this decision narrows the scope for criminalization, it has not substantively resolved the main issue: the unclear boundary between scientific criticism and defamation. Therefore, it can be concluded that Indonesian positive law remains unable to adequately distinguish between legitimate academic expression as part of freedom of expression and actions that truly fulfill the elements of defamation, thus opening up space for criminalization and hampering the development of academic freedom in the digital space.

Reformulation of Defamation Crimes Based on the Protection of Academic Freedom in the Digital Space

The urgency of reformulating the provisions on defamation crimes against academic expression in the digital space stems from the fact that Article 27A of Law Number 1 of 2024 is still oriented toward general reputation protection without distinguishing the specific characteristics of scientific expression. From the perspective of digital criminal law reform,

this is no longer adequate, as the digital space has become the primary medium for knowledge production, research dissemination, and public policy criticism by lecturers, researchers, experts, and observers. Therefore, the proposed ius constituendum model must shift from a repressive approach to a protective-proportional approach, namely by positioning academic freedom as a legal interest that must be explicitly protected. Concrete actions that can be formulated include the addition of an exception to Article 27A of the ITE Law or its explanation, which emphasizes that expression in scientific forums, academic publications, teaching, community service, and opinions based on scientific methodology cannot be punished as long as they are performed in good faith and for the benefit of scientific development. This formulation will serve as a normative foundation that provides legal certainty for academics in carrying out their intellectual functions.

Substantively, the reformulation must be carried out through a redefinition of the elements of the crime of defamation, specifically the phrases "attacking honor," "accusing something," and "publicly known." A concrete action would be to reformulate the element of "attacking honor" to limit it to factual statements that are proven false, made intentionally to demean personal dignity, and lacking a basis in either public or scientific interest. Meanwhile, the element of "accusing something" must be limited to personal accusations and not academic assessments of policies, institutions, or social phenomena. Therefore, scientific criticism of public policy, the quality of regulations, or the actions of public officials based on data cannot be included as elements of the crime. This reformulation is crucial to fulfill the principles of lex certa and lex stricta, while also preventing law enforcement officials from flexibly applying norms to academic criticism.

It is necessary to establish normative parameters for academic criticism as operational standards in law enforcement. A concrete action that can be adopted is to incorporate indicators of good-faith academic criticism into law enforcement guidelines or Supreme Court Regulations and Attorney General Circulars. These include at least: the existence of a scientific database or reference, the use of a verifiable academic methodology, an orientation toward the public interest or the development of science, the absence of any intention to attack individuals, and the provision of academic verification. With these indicators, law enforcement officers have a more objective tool to distinguish between scientific expression and personal attacks. Furthermore, an absolute exception should be emphasized for scientific forums, such as seminars, journals, webinars, campus discussions, research reports, policy papers, and scientific opinions in digital media, as long as they meet academic standards.

Regarding the evidentiary aspect, norm reformulation must be accompanied by specific evidentiary standards for scientific expression. A concrete action needed is to require judges, investigators, and public prosecutors to use the testimony of independent experts from relevant scientific fields to assess whether an expression constitutes academic criticism or defamation. This model can be adopted through amendments to the Criminal Procedure Code or at least through technical guidelines for handling cyber cases. Furthermore, a three-stage balancing test model needs to be implemented: first, testing whether the expression has a public interest; second, assessing whether the statement was prepared based on a responsible methodology; and third, measuring the level of actual reputational harm compared to the public benefit of the expression. With this model, Only

when limits on academic freedom of expression genuinely satisfy the necessity and proportionality standards outlined in Article 28J of the Republic of Indonesia's 1945 Constitution and Article 19 paragraph (3) of the ICCPR can they be put into effect.

Reformulations must address the proportionality of sanctions, as the use of imprisonment for academic expression has the potential to cause serious chilling effects. A more progressive concrete action would be to shift the approach to punishment from penal primacy to penal subsidiarity, where imprisonment is only used as the ultimum remedium if there is proven malicious intent, factual falsehood, and significant reputational harm. Alternatively, the law should prioritize administrative sanctions, the right of reply, public clarification, the obligation to provide scientific corrections, apologies, and non-penal reputation restoration mechanisms. In the universities and research institutions, a digital academic expression ethics council could also be established with the authority to assess disputes over scientific expression before they are brought to criminal proceedings. This mechanism is more in keeping with the character of the academic world, which upholds open correction and scientific verification. The proposed reformulation model must be aligned with Articles 28E, 28F, and 28J of the Republic of Indonesia's 1945 Constitution, Article 23 of Law Number 39 of 1999 respecting Human Rights, Article 19 of the ICCPR, and the fundamentals of a democratic rule of law that prioritizes freedom of expression as a crucial cornerstone of power supervision. The most important concrete action is to revise Article 27A of the ITE Law by adding a new paragraph that explicitly states exceptions to academic expression based on good faith and scientific interests, along with implementation guidelines for law enforcement officials. With this model, legal reform does not stop at editorial changes, but produces an operational and measurable protection system. The output of this reformulation is the birth of a norm for the crime of defamation that is able to indeed distinguish scientific criticism from personal attacks, thereby providing explicit protection for academic freedom in the digital space without neglecting the right to reputation in a democratic society.

Conclusion

The study's conclusion demonstrates that fundamental issues remain with Indonesian positive law's regulation of defamation, especially with regard to Article 27A of Law Number 1 of 2024. These issues include ambiguous norms and the legal regime's dualism with Article 433 of the National Criminal Code, and the absence of clear parameters to distinguish between scientific criticism and attacks on personal honor. In empirical practice, these conditions have given rise to the risk of criminalization of academic expression in the digital space, especially when lecturers, researchers, experts, and observers convey criticism of public policy or the results of scientific studies through electronic media. The absence of recognition of academics as special subjects of expression causes criminal law to be applied formally without considering the methodological context and public interest of such expression, thus giving rise to a chilling effect and overcriminalization that has the potential to hinder the development of science and reduce the function of social control in a democratic rule of law. Therefore, norm reformulation is an urgent need, placing academic freedom as part of human rights with high constitutional value based on Article 28E paragraph (3), Article 23 of Law Number 39 of 1999 concerning Human Rights, Article 28F

and 28J of the Republic of Indonesia's 1945 Constitution, and Article 19 of the ICCPR, which was approved by Law Number 12 of 2005.

The suggestion put forward in this study is the need for concrete legal reform through a revision of Article 27A of the ITE Law by adding explicit exceptions to academic expression conducted in scientific forums, research publications, opinions based on scientific methodology, and policy criticism based on the public interest and good faith. Furthermore, lawmakers need to reformulate elements of offenses such as the phrases "attacking honor," "accusing something," and "publicly known" to comply with the principles of *lex certa* and *lex stricta*, while also establishing normative parameters for academic criticism and indicators of good faith academic criticism that can be implemented through guidelines for investigators, public prosecutors, and judges. On the other hand, judicial institutions and law enforcement officials need to implement a balancing test and specific standards of proof that require the use of independent experts to assess the scientific context of an expression. As a non-penal measure, the resolution of disputes over academic expression should prioritize the right of reply, scientific correction, reputation restoration, and academic ethics mechanisms before resorting to criminal instruments. Thus, the proposed reformulation not only strengthens legal certainty and reputation protection but also ensures that the digital space remains a safe arena for the development of science, public policy criticism, and the strengthening of constitutional democracy.

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