THE PROBLEM OF VIOLATING THE LAW ON INFORMATION AND ELECTRONIC TRANSACTIONS IN DEMOCRACY COUNTRY

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Abstract: Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 (ITE Law) is a law that regulates all matters concerning information technology applicable in Indonesia. As a democratic country, Indonesia upholds and respects freedom. In reality, the ITE Law creates many problems in the midst of society, because it is often used as a tool to limit freedom of speech and opinion. The results of this study indicate that the presence and implementation of the ITE Law which is considered to silence freedom of opinion and expression which is one of the pillars of democracy for social media users, is actually not all true. The existence of the ITE Law actually presses all parties to be more careful in their attitudes and expressions on social media. So that the negative impact or violation of the rights of freedom of others and other violations in the cyber world can be avoided. Then the freedom of opinion and expression can run well.
Keyword: Electronic Information, Electronic Transaction, Democracy Country.

Abstract: Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik sebagaimana telah diubah dengan Undang-Undang Nomor 19 Tahun 2016 (UU ITE) adalah undang-undang yang mengatur segala hal mengenai teknologi informasi yang berlaku di Indonesia. Sebagai negara demokrasi, Indonesia menjunjung tinggi dan menghormati kebebasan. Namun dalam kenyataannya, UU ITE menimbulkan banyak masalah di tengah-tengah masyarakat, karena UU ITE sering dijadikan sebagai alat untuk membatasi kebebasan berpendapat dan berekspresi. Hasil penelitian ini menunjukkan bahwa kehadiran dan implementasi

UU ITE yang dianggap membungkam kebebasan berpendapat dan berekspresi yang merupakan salah satu pilar demokrasi bagi pengguna media sosial, ternyata tidak semuanya benar. Keberadaan UU ITE justru mendesak semua pihak untuk lebih berhati-hati dalam bersikap dan berekspresi di media sosial. Sehingga dampak negatif atau pelanggaran terhadap hak kebebasan orang lain dan pelanggaran lainnya di dunia maya dapat dihindari, serta kebebasan berpendapat dan berekspresi dapat berjalan dengan baik.
Kata Kunci: Informasi elektronik, Transaksi elektronik, Negara demokrasi.

Introduction

In this era of globalization, information flowing through the Internet is speedy. You could say that everything in this world can be easily obtained via the Internet. People become information literate only with gadgets. Through gadgets, one can efficiently channel their aspirations to the general public. Information technology by itself also changes people's behavior. The development of information technology has caused the world to be borderless and led to rapid social change. So it can be said that current information technology is a double-edged sword because, in addition to contributing to the improvement of welfare, progress, and human civilization, it is also an effective means of acting against the law.[1]

Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 (UU ITE) was passed on April 21, 2008 and became the first cyber law in Indonesia. According to Article 1 point 3 of the ITE Law, Electronic Information is one or a set of electronic data including but not limited to writing, sound or images, maps, designs, photographs, electronic data interchange (EDI), electronic mail, telegram, telex, telecopy or the like letters, signs, numbers, access codes, symbols, or perforations that have meaning or meaning or can be understood by those who can understand them.

[1] Budi Suhariyanto, *Tindak Pidana Teknologi Informasi (Cybercrime): Urgensi dan Pengaturan Celah Hukumnya* (Jakarta: Raja Grafindo Persada, 2012), 2.

The development of information and communication technology has also caused world relations to become borderless and caused significant social, economic, and cultural changes to take place so rapidly. Information technology includes system problems that collect, save, process, produce and transmit information to and from industry or society effectively and quickly, likewise with Indonesia, where the use of information technology is developing very rapidly, and its meaning is increasingly important for society. Its use has been increasingly widespread so that it has entered almost all aspects of life.[2]

Basically, every law made by legislators is a legal answer to community problems at the time the law was formed. The development of law should be in line with the development of society so that when society changes or develops, the law must change to organize all developments that occur in an orderly manner in the midst of the growth of modern society because globalization has become the driving force for the birth of the era of information technology.[3] The Information and Electronic Transaction Law or commonly abbreviated as the ITE Law is a law that regulates all matters concerning information technology applicable in Indonesia.

Along with the development of people's needs in the world, information technology plays an important role, both now and in the future. There are at least two things that make information technology so important in spurring world economic growth. First, information technology encourages demand for information technology products; second is to facilitates business transactions, especially financial businesses, in addition to other businesses.[4] However, with the continuous development of current information technology and information technology, science is currently more focused on internet-based electronic media and considering that currently, Indonesia is a democratic country, as stated in article 1 (2), Article 2 (1), Article 6 (1), Article 6a (1-4), article 19 (1), Article

[2] M. Arsyad Sanusi, *Hukum dan Teknologi Informasi* (Jakarta: Tim KemasBuku, 2005), 3.
[3] Sanusi, 9.
[4] Sanusi, 1.

22c (1), article 22e (2-5), article 28 and article 33 (3-4) then it is possible that many Indonesians who are also social media users convey their aspirations, ideas, thoughts, and even criticisms of government performance and policies through social media.

Democracy in Greek is democracy, which literally means "controlled by the people". This means that society is the center of a country and society has equal and equal rights. This means that society is the center of a country and society has the same rights. Because it upholds equality, democracy upholds and respects freedom of expression, because it is the life of democracy. In Indonesia, democracy is something that was aspired to post-Reformation, because there was almost no freedom of expression, the press was silenced, and many activists disappeared by Petrus (Mysterious Shooter) during the New Order era. If you look at the many parties charged with the ITE Law in the Reformation era, it can be concluded that the democracy that was wanted to be created during the Reformation period was just a dream.

History of the ITE Law in Indonesia

In 2000, the Institute for Law and Technology Studies, Faculty of Law, the University of Indonesia, in collaboration with the Ministry of Industry and Trade of the Republic of Indonesia, also conducted research to compile an Academic Paper on the Bill on Electronic Information and Electronic Transactions (RUU IETE). In 2003, the two academic papers were harmonized into a single draft law under the name of the Draft Law on Information and Electronic Transactions (RUU ITE).

Since the Ministry of Communication and Information Technology of the Republic of Indonesia was formed in 2005, the discourse to follow up on the Draft ITE Law has been rolled out again and finally finalized in March 2008. Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 (UU ITE) was passed on April 21, 2008 and became the first cyber law in Indonesia. On 27 October 2016 the plenary session of the House of Representatives passed Law

Number 19 of 2016 concerning Amendments to Law Number 11 of 2008. The articles that were amended were Article 27 paragraphs (1) and (3), Article 28 paragraph (2), and Article 31 paragraph (3).

The ITE Law, which consists of 13 chapters and 54 articles, is a new legal regime in the realm of Indonesian legislation. New principles that are less common or unknown in national regulations animate the formulation of articles of the ITE Law, such as the principle of extraterritorial jurisdiction and the principle of freedom to choose technology or technology neutrality.

The scope of the ITE Law material is also relatively new. In this law, information and/or electronic documents are known as valid legal evidence, recognition of electronic signatures, organizing certificates and electronic systems, domain names, intellectual property rights in cyberspace, and so on.

The ITE Law also requires the emergence of new institutions, which according to this law, will be further regulated through government regulations. A number of government regulations that must be made to support the effectiveness of the ITE Law include Government Regulations on Reliability Certification Agencies (mandated by Article 10 of the ITE Law), Government Regulations on Electronic Signatures (mandated by Article 11 of the ITE Law), Government Regulations on Electronic Certification Providers (mandate Article 13 of the ITE Law), Government Regulations on the Implementation of Electronic Systems (mandated by Article 16 of the ITE Law), Government Regulations on Electronic Transactions (mandated by Article 17 of the ITE Law), Government Regulations on Electronic Agent Operators (mandated by Article 22 of the ITE Law), Government Regulations concerning Domain Name Manager (mandated by Article 24 of the ITE Law), Government Regulation on Interception (mandated by Article 31 of the ITE Law), Government Regulation on Strategic Data Institutions (mandated by Article 40 of the ITE Law).

Something that is interesting about the ITE Law is that it is formulated in article 2, which states that the ITE Law applies to

every person who commits a legal act, whether within the jurisdiction of Indonesia or outside the jurisdiction of Indonesia, which has legal consequences in the Indonesian jurisdiction and/or outside the jurisdiction of Indonesia and detrimental to Indonesia's interests.

An editorial that is more or less similar is also found in Article 37, which states that "Everyone deliberately commits an act that is prohibited as referred to in Article 27 to Article 36 outside the territory of Indonesia against Electronic Systems that are in the jurisdiction of Indonesia." By reading these two articles, it can be concluded that the jurisdiction of the ITE Law does not only apply to Indonesia's sovereign territory but also outside Indonesia. In other words, Article 2 and Article 37 of the ITE Law have exceeded (extra) the principle of territorial jurisdiction.

As stated by Huala Adolf, the principles of jurisdiction can be classified into four types. First, the principle of territorial jurisdiction. According to this principle, the state has jurisdiction over all matters or events within its territory. This principle is so important in international law that it is said that territory is the fundamental basis for upholding state jurisdiction.

Apart from the territory of the state in the conventional sense, territorial jurisdiction also applies in the form of (1) the right of peaceful passage in the territorial sea, (2) ships with foreign flags in the territorial sea, (3) ports, (4) and foreigners. Exceptions to territorial jurisdiction apply to (1) foreign countries and heads of state, (2) diplomatic and consular representatives, (3) government ships of foreign countries, (4) foreign national armed forces, and (5) international organizations.[5]

Second, the principle of personal jurisdiction. According to this principle, a country can try crimes committed by its citizens wherever it is. On the contrary, it is the state's obligation to provide protection to its citizens wherever they are. The two kinds of propositions then developed into a new principle that became part

[5] Huala Adolf, *Aspek-aspek Negara dalam Hukum Internasional* (Bandung: Keni Media, 2011), 166.

of the principle of personal jurisdiction, namely (1) active personal jurisdiction (jurisdiction that applies to citizens abroad) and (2) passive personal jurisdiction (jurisdiction that applies to foreign nationals). Who have committed legal acts (including crimes or criminal acts] against their citizens).

Third, the principle of protection jurisdiction. Based on this principle, a state can enforce its jurisdiction over foreign nationals who commit crimes abroad, which are thought to threaten the interests, security, integrity, and independence of the country. The crimes referred to can be in the form of plans to overthrow the government, counterfeiting money, espionage, or attacks on diplomats abroad. In essence, the function of this principle is to protect the governmental functions of a country.

Fourth, the principle of universal jurisdiction. According to this principle, states have jurisdiction over all crimes deemed to threaten the international community. The principle of universal jurisdiction stems from the assumption that because no international judicial organization can try crimes committed by individuals, it is the matter of their respective countries.

Based on the principles of jurisdiction as conveyed by Huala Adolf, it is known that jurisdiction that transcends the territory of the state (the principle of extraterritorial jurisdiction) is indeed known in the nomenclature of international law. In order to enforce its sovereignty beyond its territorial boundaries, the state may base itself on the argument that this is done in order to (1) protect its citizens (passive personal jurisdiction principle), (2) state security reasons (protection jurisdiction principle), and (3)) the absence of a judiciary that has obtained the legitimacy to judge individuals (the principle of universal jurisdiction).

However, it must be understood that the enforcement of the principle of extraterritorial jurisdiction still raises many problems. The first problem concerns the subjectivity of the arguments behind it. In the end, there will be an impression that the application of the principles of extraterritorial jurisdiction is more of an attempt by a state to intervene in the sovereignty of another country. The second

problem has to do with the substance of these arguments. State jurisdiction can extend beyond its territory if crucial reasons related to the foundation of statehood are met, namely protection of citizens and state security.

Article 2 of the ITE Law contains a very clear principle of extraterritorial jurisdiction. It is stated that the legal construction of the ITE Law applies not only to Indonesian citizens but also to foreign citizens, both inside and outside the territory of Indonesia. The juridical argument underlying the entry into force of this article is if the legal act committed "has legal consequences in the jurisdiction of Indonesia and / or outside the jurisdiction of Indonesia and is detrimental to the interests of Indonesia." Thus it is clear that legal consequences within and/or outside the territory of Indonesia are not sufficient, but such legal acts must also be detrimental to Indonesia's interests.

Another thing that is interesting about the ITE Law is that the principle of justice has not been felt. Article 3 of the ITE Law only states that "the use of Information Technology and Electronic Transactions is carried out based on the principles of legal certainty, benefits, prudence, good faith, and freedom to choose technology or technology neutrality." The principle of justice is usually side by side with the principle of legal certainty and benefit, as expressed by Gustav Radbruch when explaining the three basic values of law.[6]

The values of justice, benefit, and legal certainty are the values that underlie the enactment of the law. The failure to emphasize the principle of justice in the ITE Law can be said to be a neglect of justice as the basis for the enactment of the law. Putting aside the principle of justice in the text of the law is tantamount to not trying to uphold justice. Justice is very important considering that the ITE Law contains many criminal formulations aimed at citizens. Failure to include the principle of justice in the ITE Law is tantamount to thinking that justice in cyberspace does not need to be realized through this law.

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[6] Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Cintra Aditya, 2014), 19.

State and Community Relations

The community has an important role in the ITE Law. A number of articles regulate the role of the community. These articles include Article 23 Paragraphs (1) and (3), Article 24 Paragraphs (1), Article 38 Paragraph (2), and Article 41. From the formulation of these articles, it appears that the state does not enforce internet law. Will succeed without the support of the community, both the general public and the internet user community.

According to Antonio Segura-Serrano's opinion, which classifies three groups that have different views on internet law, society has no small role in maintaining comfort or the operation of a condition in its space. Society has a central role because the real purpose of internet law is to regulate society, human beings who interact with each other in cyberspace. It is even possible for the public, according to Antonio Segura-Serrano's opinion, to form their own internet laws. In fact, a sovereign state always seeks to expand and enforce its sovereignty to the farthest extent. The ITE Law is clear evidence of the desire of the state (Indonesia) to enforce its sovereignty in cyberspace. In fact, according to Satjipto Rahardjo, apart from state law, there are other forces that secretly work in society.[7] Dealing with social forces outside of himself, the law will only occupy a position that depends on the play of these forces.

Therefore, there must be a harmonious relationship between society and the state in drafting and enforcing laws in cyberspace. The state can set regulations, formulate sanctions, and determine what can and cannot be done in the space, but all of this will never be effective if it is not supported by the participation and support of the community. The function of the state in cyberspace is actually only to regulate without disturbing the existing "life" (in this case, life in cyberspace). The state should come when there is a dispute among the internet users, not to become the source of the chaos. This is because enforcing the law in society does not mean totally

[7] Satjipto Rahardjo, *Penegakan Hukum Progresif* (Jakarta: Penerbit Buku Kompas, 2010), 204.

intervening in the community but by making a grand scheme in which the concrete processes are left to the community.[8]

It must also be ensured that whether problems that arise in cyberspace must be resolved by and through law. This knowledge, according to Satjipto Rahardjo, depends on the legal concept that we have. Internet lawmaking must be oriented towards the community, namely the internet users themselves, not merely focusing on regulations that are expected to solve all problems in cyberspace.

Satjipto Rahardjo also explained that before drafting a law, it would be better if research was started on the objectives of the law. Arranging internet laws means knowing the ins and outs and all things about the Internet. Satjipto Rahardjo said that the law has its advantages but also its own shortcomings. Even if it is not preceded by careful study, instead of bringing good, the law can actually cause "calamity." Careful research is not guaranteed that the law will succeed. Such a careful preliminary study will only reduce the risk of negative effects.[9]

The preparation of legal instruments that do not begin with preliminary research, thus, it is clear that they will not give the right results with the objectives to be achieved. The Internet has its own system and society. Facebook social network users, for example, must comply with the rules that have been set by Facebook.

If a user violates one of the clauses made by Facebook, Facebook administrators can impose sanctions that are far more effective than what the state stipulates through its laws. For example, for certain users who share pornographic content, Facebook will immediately act by removing the content from its pages. Facebook can also cancel the account of the internet user in question so that the user can no longer be active on Facebook using his personal account.

Such an example is only to explain that the real authority on the Internet is not the state but the server or manager of the website

[8] Satjipto Rahardjo, *Hukum dalam Jagat Ketertiban* (Jakarta: UKI Press, 2006), 89.
[9] Rahardjo, 87.

concerned. In other words, the holder of the highest internet control is the internet user community itself. So, thus, the position of society is actually very central in order to realize the good values to be achieved from a regulation.

The Concept of a Democratic State

Etymologically, democracy comes from Greek which means demos (people), and cratos or cratein (government or power).[10] If combined, demos-cratein or demos-cratos means a system of government that comes from the people, by the people, and for the people.[11] Meanwhile, in terms of democracy, it means people's government, which means a government in which the people play an important role.[12]

According to Martens, the intention of the people is that the existence of a democratic government definitely needs the support (legitimacy) of the people.[13] Another definition states that from the people, it means that the government of the state, in essence, has received a mandate from the people to carry out its government. This is because the people are the highest power in a democratic country. If it has received a mandate from the people, it means that it has been declared legitimate as a leader, whether the president, governor, regent, and so on.[14]

Meanwhile, the purpose of government by the people means that the essence of government in that country is carried out by the people. Even though in practice, only the government is running it, its position represents the people. In addition, another opinion

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[10] Nafi' Mubarok dkk., *Kewarganegaraan*, ed. oleh Wahidah Zein Br. Siregar (Surabaya: UIN Sunan Ampel Press, 2020), 216.

[11] A. Ubaedillah dan Abdul Rozak, *Pendidikan Kewarganegaraan (Civic Education): Demokrasi Hak Asasi Manusia dan Masyarakat Madani* (Jakarta: ICCE-UIN Syarif Hidayatullah, 2010), 36.

[12] Srijanti, *Pendidikan Kewarganegaraan untuk Mahasiswa* (Yogyakarta: Graha Ilmu, 2009), 47.

[13] Mardenis, *Pendidikan Kewarganegaraan: Dalam Rangka Pengembangan Kepribadian Bangsa* (Jakarta: Rajawali Press, 2017), 31.

[14] Winarno, *Paradigma Baru Pendidikan Kewarganegaraa: Panduan Kuliah di Perguruan Tinggi* (Jakarta: Sinar Grafika, 2018), 101.

states that by the people, it means that in the practice of running the government, the people are supervised. Meanwhile, a constellation or government for the people means that every policy made by a democratic government must be in accordance with the aspirations or desires and interests of the people.[15]

Meanwhile, the concept of democracy itself is the most popular idea, but its position is quite difficult to translate into understanding, likewise with the historical aspects of its divergent ideas, their definitions, and their meanings. Therefore, people understand that the essence of the concept of democracy is very broad and free.[16]

The conception of democracy always places the people in a very strategic position in the constitutional system, even though at the level of implementation, there are differences between one country and another. Because of the various variants of democracy implementation, in the state literature, there are several terms of democracy, namely constitutional democracy, parliamentary democracy, guided democracy, Pancasila democracy, people's democracy, soviet democracy, national democracy, and so on.

Thus, based on the general understanding of democracy, it can be concluded that democracy is a state government whose power is in the hands of the people. Because the people are the holders of the highest power. Therefore, a government that places the people as the highest power is known as a democratic government, or in other matters, it is also called a government with people's sovereignty.[17]

Meanwhile, Sidney Hook provides a definition of democracy as a form of government in which important government

[15] Winarno, 101–2.
[16] Kunawi Basyir dan Helmi Umam, *Pancasila dan Kewarganegaraan* (Surabaya: IAIN Sunan Ampel Press, 2017), 75.
[17] Ubaedillah dan Rozak, *Pendidikan Kewarganegaraan (Civic Education): Demokrasi Hak Asasi Manusia dan Masyarakat Madani*, 102.

decisions or policy direction behind decisions are directly based on majority decisions given freely from adult people.[18]

This means that at the last level, the people provide provisions in basic matters concerning their lives, including in assessing state policies that determine their lives. Therefore, democracy as a political idea contains 5 (five) criteria, namely :

1. Equal suffrage in determining binding collective decisions,
2. Effective participation, namely equal opportunities for all citizens in the collective decision-making process,
3. The disclosure of the truth, namely the existence of equal opportunities for everyone to provides an assessment of the course of the political and governmental process in a logical manner.
4. The final control over the agenda, namely the existence of an exclusive decision for the community to determine which agenda should and should not be decided through the government process, including delegating that power to other people or institutions that represent society, and
5. Coverage, namely the coverage of society which includes all adults in relation to the law.[19]

Gwendolen M. Carter, John H. Herz, and Henry B. Mayo also proposed comprehensive criteria for democracy. Carter and Herz conceptualize democracy as a government characterized by and run through the principles :

1. Restrictions on government actions to provide protection for individuals and groups by arranging changes of leadership periodically, orderly and peacefully, and through effective means of representation of the people;
2. There is an attitude of tolerance towards opposing opinions;
3. Equality before the law which is manifested in an attitude of submitting to the rule of law regardless of political position;

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[18] Nakamura dan Samallowood, *The Polities of Policy Implementation* (New York: St. Martin's Press, 1980), 67.

[19] Robert A. Dahl, *Dilema Demokrasi Pluralis: Antara Otonomi dan Kontrol*, trans. oleh Sahat Simamora (Jakarta: Rajawali Press, 1985), 19–20.

4. The existence of free elections accompanied by an effective representative model;
5. To provide freedom of participation and opposition to political parties, social organizations, society, and individuals as well as public opinion infrastructures such as the press and mass media;
6. There is respect for the right of the people to express their views no matter how wrong and unpopular those views seem; and
7. Developed an attitude of respecting the rights of minorities and individuals by prioritizing the use of persuasive means and discussion rather than coercive and repressive.[20]

In another view, democracy as a political ideal is a universal understanding so that it contains several elements as follows :

1. The organizers of power come from the people;
2. Every officeholder who is elected by the people must be able to be accountable for the policies that are intended and have been carried out;
3. Manifested directly or indirectly;
4. The rotation of power from a person or group to another person or group, in a democracy, the opportunity for a rotation of power must exist and be carried out regularly and peacefully;
5. The existence of an electoral process, in a democratic country election, is carried out regularly in guaranteeing the political rights of the people to vote and be elected; and
6. The existence of freedom as human rights enjoy basic rights, in a democracy, every citizen of society can enjoy his basic rights freely, such as the right to express opinions, assemble and associate and others.[21]

In order to implement all the aforementioned criteria, principles, values, and elements of democracy, it is necessary to provide several institutions as follows :

1. Responsible governance;

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[20] Dahl, 20.

[21] Afan Gaffar, *Politik Indonesia; Transisi Menuju Demokrasi* (Yogyakarta: Pustaka Pelajar, 2005), 15.

2. A House of Representatives representing groups and interests in society is elected by free and secret elections and on the basis of at least two candidates for each seat. This council / representative exercises oversight (control), allows constructive opposition, and allows continuous assessment of government policies;
3. A political organization that includes one or more political parties. Parties maintain a continuous relationship between the general public and their leaders;
4. Press and mass media that are free to express opinions; and
5. A free judicial system guarantees human rights and defends justice.

That is the basis of the power mechanism provided by the conception of democracy, which is based on the principle of human equality and equality. In essence, power in an organization can be obtained based on religious legitimacy, elite ideological legitimacy, or pragmatic legitimacy. Power is obtained through democratic mechanisms. Because the conception of democracy places humans as the owner of sovereignty, which is then known as the principle of people's sovereignty, it is certain that it will become democratic power because it is the will of the people as the basis of its legitimacy.[22]

Controversial Articles

In the ITE Law, there are a number of articles that contain criminal threats against violators. Under Chapter VII, which contains "Prohibited Acts," there are a number of criminal acts in cyberspace according to the ITE Law as stipulated in Articles 27 to Article 37 with the criminal provisions contained in Articles 45 to 52. The offenses can be classified into two categories. First, offenses that use information technology as a means. Second, offenses that make information technology a target.

[22] Mubarok dkk., *Kewarganegaraan*, 235.

Among these articles, there are articles that are controversial because judicial reviews are often requested to the Constitutional Court of the Republic of Indonesia. These articles are Article 27 Paragraph (3) in conjunction with Article 45 Paragraph (1) of the ITE Law, which regulates defamation and/or defamation in cyberspace, and Article 28 Paragraph (2) in conjunction with Article 45 Paragraph (2) of the ITE Law, which regulates the spread of hatred or hostility in cyberspace.[23]

The offense caused controversy because it was accompanied by hefty criminal sanctions even after the revision of this rule. For offenses of defamation and/or defamation, the maximum criminal sanction is from six years imprisonment to 4 years and/or a maximum fine of IDR 1,000,000,000 to IDR 750,000,000, while for offenses for spreading hatred or hostility, the maximum criminal sanction is imprisonment. six years and / or a maximum fine of IDR 1,000,000,000.

It is interesting to reveal the views of experts regarding the judicial review of Article 27 Paragraph (3) in conjunction with Article 45 Paragraph (1) of the ITE Law. Soetandyo Wignjosoebroto argued that the source of objections to Article 27 Paragraph (3) of the ITE Law was, first, the unclear who was the target of the article norms regulation: those who made information accessible or were those who made an insult or defamation charge. (dagger). Second, the article on defamation is an article that contains elements of a very subjective offense, different from other formulations of offenses that are always formulated more objectively, for example, theft. Insult is always subjective because there must be someone who feels victimized and feels humiliated.[24]

According to Atmakusumah Astraatmadja, the ITE Law does not keep up with developments in international law. At least fifty countries have shifted the issue of fake news, insults, defamation

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[23] AP. Edi Atmaja, "Kedaulatan Negara di Ruang Maya : Kritik UU ITE dalam Pemikiran Satipto Raharjo," *Jurnal Opinion Juris* 16 (September 2014): 84.

[24] Mahkamah Konstitusi Republik Indonesia, "Putusan Nomor 2/PUU-VII/2009," 2009, 57.

from criminal law to civil law. Several countries, continued Atmakusumah Astraatmadja, even completely removed the legal provisions for spreading hatred and insults because they were deemed difficult to prove or very subjective.

Even though it caused various controversies, the Indonesian Constitutional Court rejected the request for judicial review of Article 27 Paragraph (3) in conjunction with Article 45 Paragraph (1) of the ITE Law, which was submitted on December 28, 2008 (Decision Number 50 / PUU-VI / 2008). Even though on 29 January 2009, a similar application was submitted (but only tested Article 27 Paragraph [3] of the ITE Law), the Indonesian Constitutional Court stated that the request for judicial review of Article 27 Paragraph (3) of the ITE Law could not be accepted (Decision Number 2 / PUU-VII / 2009). The Constitutional Court of the Republic of Indonesia affirms that the norms of Article 27 Paragraph (3) in conjunction with Article 45 Paragraph (1) of the ITE Law are constitutional and do not conflict with democratic values, human rights, and the principles of the rule of law.

Meanwhile, on April 26, 2013, a judicial review of Article 28 Paragraph (2) of the ITE Law was also filed. In Decision Number 52 PUU-XI / 2013, the Indonesian Constitutional Court decided to reject the petition in its entirety. The considerations of the Indonesian Constitutional Court include :

"If someone disseminates information with the intention of causing hatred or enmity for individuals and / or certain groups of people based on ethnicity, religion, race, and intergroup (SARA), it is something that is against the guarantee of recognition and respect for the rights and freedoms of others, and It is also contrary to the demands that are just in accordance with the moral considerations of religious values, security and public order in a democratic society."[25]

"The right to communicate and obtain information to develop personal and social environment as well as the right to store,

[25] Mahkamah Konstitusi Republik Indonesia, "Putusan Nomor Nomor 52 PUU-XI/2013," 2013, 15.

process, and convey information using all available channels, must not contain information which is then disseminated for the purpose of creating hatred or hostility between individuals and the community."[26]

Several things that should be a common concern. First, Article 27 Paragraph (3) in conjunction with Article 45 Paragraph (1) of the ITE Law is considered by human rights activists who are fighting for internet freedom (Internet HAM) as a rubber article that is vulnerable to abuse by the authorities. Article 27 Paragraph (3) in conjunction with Article 45 Paragraph (1) of the ITE Law is said to be a continuation of the Criminal Code (KUHP) because the article refers to the provisions of Chapter XVI Book II of the Criminal Code concerning insults contained in Articles 310 and 311 of the Criminal Code. Second, specifically regarding offenses as stipulated in Article 27 Paragraph (3) and Article 28 Paragraph (2) of the ITE Law, the criminalization mechanism should be changed because a qualified offense is not an ordinary offense. Settlement of disputes outside the court must take precedence. According to Satjipto Rahardjo, an out-of-court settlement is not something strange, taboo, and extraordinary for those who see this problem through the optics of legal sociology. Because for the sociology of law, the function is more important than just form.[27]

In other words, justice and benefit must be prioritized over legal certainty. Third, because of the subjective nature of the offense of defamation and/or defamation, investigators should distinguish the offense in two interpretations, namely (1) insulting and/or defamation of an institution or organization and (2) insulting and/or defamation, against individuals or individuals. It is an offense of defamation and/or defamation only if the act is intended for an individual or individual.

ITE Law within the Framework of a Democratic Country

[26] Mahkamah Konstitusi Republik Indonesia, 15–16.
[27] Rahardjo, *Penegakan Hukum Progresif*, 3–6.

The ITE Law was issued during the presidency of President Susilo Bambang Yudhoyono (SBY) in 2008, which is ten years after the reform struggle, which provided protection for citizens to express and express opinions. Starting in 1999, research in the field of information technology was carried out by the Cyberlaw Study Center of Padjadjaran University in collaboration with the Department of Electrical Technology of the Bandung Institute of Technology and the Directorate General of Post and Telecommunications, the Ministry of Transportation of the Republic of Indonesia in order to compile an Academic Paper on the Draft Law on Utilization of Information Technology (RUU PTI). In 2000, the Institute for Law and Technology Studies, Faculty of Law, the University of Indonesia in collaboration with the Ministry of Industry and Trade of the Republic of Indonesia also conducted research to compile an Academic Paper on the Draft Law on Electronic Information and Electronic Transactions (RUU ITE).[28]

In 2003, the two academic papers were harmonized into a single draft law under the name of the Draft Law on Information and Electronic Transactions (RUU ITE). Since the Ministry of Communication and Information Technology of the Republic of Indonesia was formed in 2005, the discourse to follow up on the Draft ITE Law has been rolled back again and finally completed in March 2008.[29]

However, ironically, the ITE Law continues to threaten the freedom of expression that was championed during the 1998 reform era. The SBY government issued the ITE Law with the intention of protecting consumers in conducting electronic transactions amid the widespread use of the Internet in the national economy. However, in its implementation, the government and state apparatus actually misuse this law to silence those who criticize the

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[28] Danrivanto Budhijanto, *Hukum Telekomunikas, Penyiaran, dan Teknologi Informasi: Regulasi dan Konvergensi* (Bandung: Refika Aditama, 2010), 131.

[29] Atmaja, "Kedaulatan Negara di Ruang Maya : Kritik UU ITE dalam Pemikiran Satipto Raharjo," 72.

state. Or the feudalists who want to defend their good name and secure their interests. This, of course, injures the citizens' freedom of expression, which continues to decline.

The Law on Information and Electronic Transactions (UU ITE) is said to have multiple interpretations of articles. Electronic transactions and freedom of expression are considered two different things and must be separated. The rubber articles considered threatening freedom of expression and opinion in the Electronic Transactions and Information Law (ITE) is still and will continue to take its toll. This is a paradoxical phenomenon in democratic life adhered to in Indonesia. This is because many voices that are critical or different from the state narrative are often silenced through articles of the ITE Law. Initially, the ITE Law was created to ensure legal certainty for electronic information and transactions. The ITE Law was also introduced to regulate the Internet (cyberlaw). However, in its application, the rubber articles in the ITE Law actually become a weapon to trap political opponents.

In the concept of democracy, every living being in this world has the right to experience the freedom of association, assembly, and expression. The thing that most often happens and triggers a conflict in this life starts from the misinterpretation of the word "having the freedom to express an opinion or express an opinion" because, in fact, every living being is free to express opinions and expression in public. Many cases started as a form of protest and resulted in acts of violence, riots, and even criminal acts. It is time for us to become aware of the laws and regulations that govern our behavior and actions. We one part of the world that applies the pillars of democracy.

Democracy is an important part of the life of the state because it gives many important meanings which, when explained and applied, will make this state life feel just and comfortable. Freedom of opinion is also an important part of a democracy, and this freedom has a legal basis which is regulated in Article 28 of the 1945 Constitution of the Republic of Indonesia, which states that freedom is responsible and acts to convey opinions in public. So

democracy also has pillars in which opinions are free but have an opinion that is responsible based on the facts, and do not hurt each other because in this life we are also governed by human rights because our rights are also limited by the rights of others. Have an intelligent opinion and do not cause disunity because of SARA.

The presence and implementation of the ITE Law, which is considered to silence freedom of opinion and expression, which is one of the pillars of democracy for social media users, is actually not all right. The existence of the ITE Law actually presses all parties to be more careful in their attitudes and expressions on social media. So that the negative impact or violation of the rights of freedom of others and other violations in the cyber world can be avoided so that freedom of opinion and expression can run well. And this is also in accordance with the maqasid syari'ah. Benefit and common good are the purposes of the existence and formation of a rule.

With the passage of the ITE Law, it is hoped that it can bridge the legal needs of internet users. As a forum to inspire opinions, the government can also use it to promote more transparent governance, increase accountability, citizen-centered services, distributed associations, petitions, and contestations simplified, more responsive representation, and re-involvement of citizens in governance processes so that it creates harmony between citizens and the government.

Therefore, there must be a harmonious relationship between society and the state in drafting and enforcing laws in cyberspace. The state can set regulations, formulate sanctions, and determine what can and cannot be done in the space, but all of this will never be effective if it is not supported by public participation and support. The function of the state in cyberspace is actually only to regulate without disturbing the existing "life" (in this case, life in cyberspace). The state should come when there is a dispute among the internet users, not to become the source of the chaos. This is because enforcing the law in society does not mean totally intervening in the community but by making a grand scheme in which the concrete processes are left to the community.

Conclusion

The ITE Law, which consists of 13 chapters and 54 articles, is a new legal regime in the realm of Indonesian legislation. Indonesia is a country that applies the principles of democracy. Democracy means that society is the center of a country and society has the same rights. It upholds and respects freedom of expression, because it is the life of democracy. In the concept of democracy, every living being in this world has the right to experience the freedom of association, assembly, and expression.

ITE Law is considered to have multiple interpretations of articles. The rubber articles contained in the ITE Law are considered to threaten freedom of expression and opinion, so the ITE Law often takes victims. This is a paradoxical phenomenon in democratic life adhered to in Indonesia. This is because many voices that are critical or different from the state narrative are often silenced through articles of the ITE Law.

The presence and implementation of the ITE Law, which is considered to silence freedom of opinion and expression, which is one of the pillars of democracy for social media users, is actually not all right. The existence of the ITE Law actually presses all parties to be more careful in their attitudes and expressions on social media. So that the negative impact or violation of the rights of freedom of others and other violations in the cyber world can be avoided so that freedom of opinion and expression can run well.

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