

## Public Officials, Social Media, and Criminal Defamation: Rethinking Responsibility under Indonesia's ITE Law

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### Abstract

*The expanding use of social media by public officials has transformed governmental communication into a real-time, direct, and wide-reaching practice, while simultaneously generating new legal tensions concerning criminal defamation and responsibility for reputational harm in digital environments. This paper seeks to propose how a balance between freedom of expression and the public official's function of disseminating information through media and the constitutional protection of individual honor can be formulated within the framework of criminal liability for defamation on social media under the ITE Law. This study employs a normative legal research method using statutory and conceptual approaches, supplemented by a case approach through the controversy of DN versus AR as a public official in Surabaya as an illustrative instance of the application of Article 27A juncto Article 45(4) of the ITE Law. Primary and secondary legal materials were analyzed prescriptively to examine the role of social media as a medium of communication, the element of intent (dolus), and the positional consequences of public officials in criminal liability. The findings show that the ITE Law does not merely function as a repressive instrument against citizens, but also as an institutional control mechanism that imposes a duty of care on public officials when communicating through social media. The criminal defamation provisions under Article 27A in conjunction with Article 45(4) ITE Law establish constitutional and penal boundaries that restrict public officials' freedom of expression, requiring accuracy, verification, and proportionality to prevent reputational harm.*

**Keywords:** Defamation; Social Media; Public Officials; ITE.

### Introduction

The rapidly developing digital era has made social media become an unavoidable means of communication and information dissemination, as well as an integral part of modern society. Smartphones support this phenomenon by providing easy social interaction, unlimited access to information, and positive contributions to the exchange of knowledge and recreational



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activities.<sup>1</sup> The rapid growth of ICT has created a borderless world with unlimited internet access, but at the same time it has triggered changes in people's behavior and attitudes which often occur without them realizing it.<sup>2</sup>

On the one hand, the development of information technology provides a wider space for expression and openness of information for all levels of society, including for public officials in conveying government performance and various policies taken. However, freedom of expression that is not accompanied by caution and mature legal considerations can have serious legal impacts, especially when the information conveyed has the potential to attack the honor/defame a person or a business entity as regulated in the Law 1/2024 on Information and Electronic Transactions, hereinafter referred to as the ITE Law. This digital era has made the government and its officials use social media to support their duties. This is evident in the Ministry of Communication and Information Technology report, public relations focuses on activities that are below the line (direct communication), above the line (communication with the media) and through the line (communication via social media) through social media publications with Instagram channels, Twitter, YouTube, Facebook, DJKN website.<sup>3</sup> Social media has become one of the key instruments in political strategy, both to approach the public and to socialize the government's agenda. In addition to enriching political interactions, this platform also facilitates real-time and two-way information exchange.<sup>4</sup>

Social media, which is currently used by various groups, poses the risk of violating the ITE Law regarding defamation of honor/good name. One example is the case of reporting by businessman DN against public official AR in Surabaya in April 2025. Diana officially reported AR for alleged violation of Article 27A in conjunction with Article 45 paragraph (4) from Law No. 1 of 2024 Second Amendment to the Electronic Information and Transactions Law (the ITE Law). These articles specifically regulate the prohibition of using electronic systems to attack the honor and/or defame other people. This report began with the virality of a video on social media, with content of AR conducting an inspection of the CV SSS (a company owned by DN's family)

<sup>1</sup> Adrian Scribano, "Emotions, Society, and Influencers in the Digital Era," *Online Media and Global Communication* 3, no. 4 (2024): 473–86, <https://doi.org/10.1515/omgc-2024-0065>.

<sup>2</sup> Yuliannova Lestari and M Misbahul Mujib, "Optimizing Personal Data Protection Legal Framework in Indonesia (a Comparative Law Study)," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 11, no. 2 (2022): 203–34, <https://doi.org/10.14421/sh.v11i2.2729>.

<sup>3</sup> DJKN, "Laporan Kinerja Direktorat Jenderal Kekayaan Negara 2024," Kementerian Keuangan Republik Indonesia, 2024.

<sup>4</sup> Andi Setyawan and Iin Soraya, "Efek Media Sosial Dalam Menciptakan 'Borderless Communication' Pejabat Publik & Masyarakat (Analisis Komunikasi Interaksional Akun Instagram@ Ridwankamil)," *Jurnal Khatulistiwa Informatika* 11, no. 1 (2020): 51–60, <https://doi.org/10.31294/jkom.v11i1.7613>.

in Margomulyo, Surabaya. The video was uploaded via the social media account @cakj1 on various popular platforms such as TikTok, Instagram, and YouTube. In the video that is the subject of the case, AR allegedly called DN as the person/corporation that withheld the diploma, and displayed a personal photo of DN with her husband without permission. According to DN, the act not only defamed her personally, but also damaged her company's reputation in public, the accusations in the video were considered baseless.

This case raises an interesting legal dilemma to be studied further. On the one hand, public officials are indeed required to always be transparent in conveying various information to the public as part of good governance accountability. The practice of conveying information directly through social media like this is becoming a trend among public officials, as can be seen in the publication and communication style of the Governor of West Java (KDM) which often appears on various social media platforms. However, this transparency must still be exercised with caution and in compliance with the law, particularly the ITE Law which firmly protects the right to honor and privacy of every citizen.

The DN vs. AR case illustrates how the expansion of social media has placed public officials in an increasingly complex position in performing functions of governmental transparency and accountability. On the one hand, social media serves as a strategic medium for public officials to directly communicate their performance and policies to the public. On the other hand, the use of social media entails significant legal risks when the disseminated content potentially attacks the honor or reputation of other parties. This complexity is further heightened by the rapid circulation of information in digital spaces, which is often received by the public without adequate verification, thereby amplifying the impact of reputational harm.<sup>5</sup>

In this context, public officials occupy a distinctive position. Their expressions may indeed obtain protection as an aspect of freedom of expression, yet they are simultaneously subject to stricter scrutiny due to the influence and responsibilities inherent to their office. This generates a legal tension between the public interest in accessing information concerning governmental performance and the individual right to constitutional protection of honor and reputation. Such tension becomes increasingly relevant when public officials' initiatives to disseminate information take the form of digital content containing specific accusations without prior clarification.

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<sup>5</sup> Nasya S Rampen, Nicholas Boer, and Sharon M Gultom, "Kontroversi Mengenai Konten Berita Pejabat Publik Di Media Sosial," *J-CEKI: Jurnal Cendekia Ilmiah* 3, no. 3 (2024): 775–81, <https://doi.org/10.56799/jceki.v3i3.3381>.

A number of previous studies have examined defamation in the digital era by highlighting the tension between freedom of expression and the protection of reputation, whether from a common-law perspective, through comparisons between civil and criminal approaches, or via cross-jurisdictional comparative analyses. For instance, M. Zukić and A. Zukić discuss defamation law in the digital context with a focus on the dynamics of legal systems and the differing normative approaches adopted across jurisdictions.<sup>6</sup> In addition, studies in the United States and the European Union tend to emphasize the ethical dimension and the moral responsibilities of public officials in digital spaces.<sup>7</sup> Public officials are required to exercise their freedom of expression responsibly by applying a duty of care, including ensuring the accuracy of information, avoiding unilateral accusations, and limiting the dissemination of personal data or images that are irrelevant to the performance of official duties. Given the significant influence inherent in public office, any statement conveyed without verification, clarification, and proportionality may generate broader legal and social consequences and trigger legal liability.

The research gap lies in the distinctiveness of Indonesia's legal framework, which places digital defamation under a criminal law regime through the Information and Electronic Transactions Law (ITE Law). This stands in contrast to studies in the United States and Europe, which tend to conceptualize defamation as an issue of public ethics,<sup>8</sup> civil liability, or the balancing of freedom of expression. In such jurisdictions, defamation is predominantly treated as a civil matter on the grounds that the aggrieved party is deemed the most entitled to seek compensation for reputational harm.<sup>9</sup> Meanwhile, Indonesian positive law explicitly criminalizes attacks against honor or reputation conducted through electronic media. This legal distinctiveness has not been extensively examined, particularly in relation to the criminal liability of public officials who utilize social media in the performance of official duties. Consequently, there remains a notable scholarly gap in systematically linking the legal position of public officials with the

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<sup>6</sup> Melisa Zukić and Abdurrahman Zukić, "Defamation Law and Media: Challenges of the Digital Age," *MAP Education and Humanities* 5 (2025): 98–109, <https://doi.org/10.53880/2744-2373.2024.5.98>.

<sup>7</sup> Gergely Gosztonyi, János Bálint, and Gergely Ferenc Lendvai, "Public Figures and Social Media from a Freedom of Expression Viewpoint in the Recent US and EU Jurisdiction," *Journalism and Media* 6, no. 1 (2025): 26, <https://doi.org/10.3390/journalmedia6010026>.

<sup>8</sup> Tetiana M Alforova et al., "Right to Freedom of Expression v. Reputation Protection (Based on ECtHR Practice Materials)," *The Age of Human Rights Journal*, no. 18 (2022): 311–30, <https://doi.org/10.17561/tahrj.v18.6527>.

<sup>9</sup> Mahardhika Zifana, Iwa Lukmana, and Dadang Sudana, "The Construction of Victim of Defamation in Court's Written Verdict," *Indonesian Journal of Applied Linguistics* 12, no. 1 (May 31, 2022): 156–63, <https://doi.org/10.17509/ijal.v12i1.28273>.

constituent elements of Article 27A in conjunction with Article 45(4) of the ITE Law.

Based on these issues and research gaps, a systematic examination is required to analyze the legal liability of public officials for statements or digital content disseminated through social media. Such an inquiry is important given that public officials do not merely act as private individuals, but also as government actors bound by higher legal and ethical standards. Accordingly, this study is directed toward answering two main questions: first, how does the ITE Law regulate the use of social media by public officials in the performance of official duties? and second, how does the criminal defamation regime under the ITE Law affect the freedom of expression of public officials in using social media?

The novelty of this study lies in its assertion that, within the Indonesian legal context, the use of social media by public officials falls directly within the criminal liability regime of the ITE Law, rather than merely constituting an issue of communicative ethics or freedom of expression. In contrast to prior studies that generally situate defamation within the realm of public ethics, civil liability, or the balancing of freedom of expression, this study conceptualizes defamation as a specific criminal offense as regulated under Article 27A in conjunction with Article 45(4) of the ITE Law. It further takes into account the consequences of the act and the positional status of the actor as a government official whose influence extends more broadly within the digital sphere. By contextualizing the discourse on reputational protection within Indonesia's criminal law framework, this study fills a scholarly gap concerning the criminalization of defamation committed by public officials. Accordingly, it offers a more operational normative framework for law enforcement and for delimiting the authority of public officials in their use of social media in Indonesia.

## Methodology

This study employs a normative (doctrinal) legal research method using a statute approach and a conceptual approach. The analysis is focused on Article 27A in conjunction with Article 45(4) of the ITE Law as the basis for criminal liability for defamation in digital spaces, particularly when committed by public officials. The conceptual approach is used to examine legal doctrines concerning public officials' responsibility, freedom of expression, and the protection of honor and reputation. In addition, a case approach is applied by reviewing the DN versus AR case in Surabaya as an illustration of the practical application of legal norms. To deepen the assessment of public officials' accountability, this study also adopts the prudential principle in criminal law as an analytical lens to evaluate the standard of care and level of due diligence expected from public officials when exercising discretionary powers in digital

communication. The legal materials consist of primary legal materials in the form of relevant statutes and court decisions, and secondary legal materials in the form of legal textbooks and national as well as international journal articles. All legal materials are analyzed qualitatively through a prescriptive-analytical technique to assess the fulfillment of the constituent elements of the offense, the impact of the dissemination of electronic information, and the status of the perpetrator as a public official within Indonesia's criminal law regime.

## Discussion

### Social Media Control for Public Officials

Advances in information and communication technology have significantly transformed the way public officials interact with the public. Social media today functions not only as a medium of personal communication, but also as a digital public sphere through which state officials disseminate policies, provide clarifications, display performance, and directly respond to social issues. However, the use of social media by public officials also produces complex legal implications, particularly when the statements or actions conveyed have the potential to infringe upon citizens' rights. Within this context, the Information and Electronic Transactions Law (ITE Law) functions as a legal control mechanism over the activities of public officials in digital spaces.

The case involving DN, the owner of CV SS, and Deputy Mayor AR serves as a concrete example of how the use of social media by public officials can intersect directly with cyber criminal law. The matter began with a criminal complaint filed by DN with the Integrated Police Service Center (SPKT) of the East Java Regional Police on Thursday night, April 10, 2025, under Report Number LP/B/47x/IV/2025/SPKT/East Java Regional Police. The report was based on alleged defamation committed through electronic media, which stemmed from the circulation of a video on TikTok, Instagram, and YouTube via the account @cakj1.<sup>10</sup>

The video captured AR's visit to the CV SS office in the Margomulyo area of Surabaya on Wednesday, April 9, 2025. In the recording, AR made statements accusing DN's company of withholding a former employee's academic diploma. In addition to the statement, the video also displayed photographs of DN and her husband without their permission or consent. According to DN, the accusation made by AR never occurred and was not preceded by any clarification, mediation, or lawful administrative examination. Therefore, DN argued that the public statements made in the digital space

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<sup>10</sup> Kompas.com, *Pengusaha Surabaya Buka Suara Usai Laporkan Cak Ji Wakil Walikota Surabaya Ke Polda Jatim* (Surabaya: [www.youtube.com](http://www.youtube.com), 2025).

defamed her personally and caused both material and immaterial harm to the company she manages.

Although often intended as a rapid response to public complaints, the use of social media by public officials must still be clearly distinguished between the function of administrative oversight and acts of law enforcement. When an official publicly alleges a legal violation committed by an individual or business entity through social media without being supported by the results of an official investigation or a legally binding ruling, such action may violate the presumption of innocence. This principle constitutes one of the pillars of the rule of law and applies not only in criminal judicial proceedings, but also in any government action that affects the rights and reputation of citizens.

Furthermore, the dissemination of personal identities, photographs, or individual data in the context of public accusations must also be assessed under the personal data protection regime. Law No. 27 of 2022 on Personal Data Protection provides legal guarantees for every person's rights over their personal data and requires a legal basis or consent for the processing and dissemination of such data. In the context of the DN-AR case, the display of DN's photographs along with her spouse without consent in content containing allegations may be considered a violation of the right to privacy, particularly when no lawful and proportionate legal interest exists.

Freedom of expression is indeed guaranteed as a constitutional right for every citizen, including public officials. The Constitutional Court Decision No. 50/PUU-VI/2008 affirms that freedom of expression is part of the human rights protected by the Constitution. However, the Court also emphasized that such freedom must be exercised responsibly and may not infringe upon another person's right to honor and reputation. Article 27(3) and Article 45(1) of the ITE Law were deemed constitutional, as they conform to democratic values, human rights, and the principles of a constitutional state.<sup>11</sup> In practice, different standards apply when public officials are the object of criticism, as they are expected to demonstrate a higher level of tolerance toward criticism. However, this logic cannot be reversed automatically when public officials become the ones making accusations against citizens. In such a position, public officials are required to exercise greater caution because their statements carry authoritative weight and exert a much stronger influence in shaping public opinion.

Social media and mass media possess the ability to disseminate information rapidly, widely, and simultaneously. With a heterogeneous audience, messages delivered by public officials in digital spaces can easily

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<sup>11</sup> Zaka Firma Aditya and Sholahuddin Al-Fatih, "Indonesian Constitutional Rights: Expressing and Purposing Opinions on the Internet," *The International Journal of Human Rights* 25, no. 9 (October 21, 2021): 1395–1419, <https://doi.org/10.1080/13642987.2020.1826450>.

shape public perceptions and judgments toward certain individuals or business entities. Therefore, the use of social media by public officials must be carried out professionally, in a balanced and proportional manner, and in a way that does not create the appearance of interference with legal processes or attempts to influence public opinion to the detriment of others. The fact that social media accounts of public officials are often managed by third parties or professional administrators does not automatically eliminate the official's legal responsibility, so long as the disseminated content is directly related to their activities and capacity as officeholders.

Within the framework of cyber criminal law, the DN-AR case is relevant to analyze under Article 27A in conjunction with Article 45(4) of the ITE Law, which prohibits attacks on another person's honor or reputation through electronic systems. To determine whether AR's actions fulfill the elements of a criminal offense, an examination of both the *actus reus* and the *mens rea* is required. AR created the video to protect a worker who allegedly encountered difficulties due to the withholding of their academic certificate by the company. AR's conduct may therefore be characterized as a form of administrative oversight or clarification regarding alleged violations of a former employee's rights.<sup>12</sup> However, the statements conveyed in the video contain serious allegations that could harm the reputation of DN and her company. If such allegations are proven untrue and were made without a lawful basis, the element of attacking honor or reputation may be deemed satisfied.

The element of dissemination or transmission of electronic information must also be considered. Although AR did not directly upload the video, liability may still arise if it can be shown that AR knew of, approved, or permitted the content to be distributed to the public. Under criminal law, a person need not commit the act directly to incur criminal responsibility; it is sufficient that they knowingly participate in or contribute to the realization of the offense (medeplegen). Meanwhile, the use of online social media platforms inherently satisfies the requirement of "through an electronic system" as stipulated under the ITE Law.<sup>13</sup>

This case illustrates that the use of social media by public officials in the performance of their official duties remains subject to the control of criminal and cyber law. The ITE Law—particularly Article 27A—functions as a limiting instrument to ensure that the authority and power of public officials are not

<sup>12</sup> Fregy Andhika Perkasa, M Adaninggar, dan MM Wijaya, "Perspektif Perlindungan Hukum Terhadap Hak-Hak Pekerja Dalam Sistem Ketenagakerjaan Indonesia," *Civilia: Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan* 1 (2024): 48–62, <https://doi.org/10.572349/civilia.v3i1.1669>.

<sup>13</sup> Edi Kristianta Tarigan dkk., "Peran Media Sosial Dalam Menegakkan Hukum Di Zaman Digital Di Indonesia," *Warta Dharmawangsa* 19, no. 1 (2025): 188–201, <https://doi.org/10.46576/wdw.v19i1.5849>.

exercised excessively in digital spaces and do not infringe upon citizens' rights to honor, reputation, and privacy. The final assessment regarding the fulfillment of the elements of a criminal offense in the DN-AR case lies entirely within the discretion of law enforcement authorities, taking into account factual circumstances, the context of office, and the principles of prudence and proportionality that form the foundation of the rule of law.

### **The ITE Law and the Restriction of Public Officials' Expression**

The criminal defamation regime under the Information and Electronic Transactions Law (ITE Law) has a direct impact on the scope of public officials' freedom of expression in disseminating policy in the digital era. On one hand, the existence of this law is susceptible to being used to suppress criticism and freedom of opinion.<sup>14</sup> On the other hand, the introduction of Article 27A as a new provision resulting from the ITE Law amendment not only expands the forms of defamation in cyberspace but also functions as a juridical-ethical instrument that regulates the communicative behavior of state actors in digital public spaces. The article stipulates that anyone who intentionally attacks the honor or reputation of another person by making allegations, with the intent for them to be known publicly, through electronic information or documents and carried out via an electronic system, may be held criminally liable. This formulation clarifies the elements of intent, false allegations, and the purpose of public dissemination, thereby narrowing interpretative leeway and preventing the criminalization of legitimate criticism.

In the context of its application to public officials, Article 27A should be understood as a rational limitation on the use of social media in the performance of official duties. Uploading or disseminating digital content containing accusatory statements, accompanied by the display of an individual's identity or personal data, formally satisfies the element of use of an electronic system. Digital criminal proof requires digital expertise. The digital process in uncovering digital events includes the collection, storage, and analysis of evidence from digital devices such as computers, mobile phones, and servers, including data files, system logs, and metadata.<sup>15</sup> Law enforcement officers must also be equipped with up-to-date knowledge and technology to

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<sup>14</sup> Rahmazani, "Problematika Hukum Penerapan Undang-Undang Informasi Dan Transaksi Elektronik (UU ITE) Di Indonesia," *Mimbar Hukum* 34, no. 1 (June 30, 2022): 161–85, <https://doi.org/10.22146/mh.v34i1.3078>; T Mann, "Activists on Trial: The Weaponisation of Online Defamation Provisions in Indonesia," *Australian Journal of Asian Law* 25, no. 2 (2025): 1–16, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-86000586736&partnerID=40&md5=d477047447e83b185772c406a3804c89>.

<sup>15</sup> Mery Rohana Lisbeth Sibarani dkk., "Penerapan Konsep Pembuktian Digital Dalam Kasus Kejahatan Teknologi Informasi," *Jurnal Kolaboratif Sains* 8, no. 1 (2025): 390–95, <https://doi.org/10.56338/jks.v8i1.6742>.

handle cyber cases effectively, including the ability to distinguish between actors who intentionally violate the law and those who commit violations due to a lack of digital literacy, thereby enabling more effective case management.<sup>16</sup>

However, the main issue in criminal proof lies in the mens rea element, namely whether the actor had the intention and awareness to attack the honor or reputation of another person. General guidance in the application of law in criminal cases dictates that mens rea must be carefully established.<sup>17</sup> In criminal law, intent cannot be inferred solely from the consequences but must be demonstrated through the context of the act, the choice of means, and the purpose sought. If a public official consciously makes allegations without a lawful basis or without adequate clarification mechanisms, and allows or intends for such content to be consumed by the public, the element of intent may be deemed satisfied. The criminal sanctions for such conduct are regulated under Article 45(4) of the ITE Law, which provides for a maximum imprisonment of four years and/or a fine of up to seven hundred and fifty million rupiah, while still considering direct or indirect involvement in the dissemination of the content.

Protection of honor and reputation cannot be separated from the human rights framework. The Indonesian Constitution, through Article 28G(1) of the 1945 Constitution, explicitly guarantees the protection of each person's honor and personal dignity. This guarantee aligns with Article 17 of the International Covenant on Civil and Political Rights (ICCPR), which has been ratified and incorporated into national law, prohibiting all forms of arbitrary attacks on an individual's honor and reputation and obliging the state to provide effective legal protection. The right to honor and reputation is a fundamental right that cannot be arbitrarily diminished, even in emergency situations.<sup>18</sup> In the corporate context, defamation has particular characteristics because it can have systemic effects on public trust, business stability, and economic continuity, making remedies not only individual but also institutional, through reputation rehabilitation and restitution.

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<sup>16</sup> Alfian Maranatha Seichi Rumondor, Herlyanty YA Bawole, and Deizen Devenz Rompas, "Analisis Yuridis Tentang Pertanggungjawaban Hukum Terhadap Pencemaran Nama Baik Melalui Media Sosial: Perspektif Undang-Undang Nomor 1 Tahun 2024 Tentang Informasi Dan Transaksi Elektronik," *Jurnal Fakultas Hukum UNSRAT Lex Privatum* 13, no. 5 (2024): 1–12, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/57250>.

<sup>17</sup> Rizki Romandona and Bukhari Yasin, "Analisis Hukum Asas Mens Rea Dan Actus Reus Dalam Kasus Pembunuhan Brigadir Nofriansyah Yosua Hutabarat (Studi Kasus Dalam Putusan Pn Jakarta Selatan No. 796/Pid.B/2022/Pn Jkt. Sel)," *JUSTITIABLE-Jurnal Hukum* 6, no. 2 (2024): 1–12, <https://doi.org/10.56071/justitable.v6i2.817>.

<sup>18</sup> Novriyanti Manulang, Firdaus Firdaus, and Zulwisman Zulwisman, "Analisis Perwujudan Jaminan Dan Perlindungan Hukum Negara Atas Kebebasan Beragama Dan Berabadat Dalam Perspektif Pasal 28e Undang-Undang Dasar Tahun 1945," *Jurnal Ilmiah Wahana Pendidikan* 10, no. 16 (2024): 637–48, <https://doi.org/10.5281/zenodo.13764919>.

The challenge of protecting the right to honor has become increasingly complex in the digital era. Technological developments not only bring benefits but also pose risks to human safety, fundamental rights, and the potential for social injustice in safeguarding public interests.<sup>19</sup> Social media enables the rapid, widespread, and difficult-to-control dissemination of information, so that a single problematic piece of content can cause permanent harm. The state is not only required to provide criminal law instruments but also to establish recovery mechanisms that are fair, effective, and proportional. Such recovery may include criminalizing the offender, restoring the victim's reputation, and compensating for the losses suffered.<sup>20</sup> In this context, the ITE Law functions not merely as a repressive instrument but also opens the space for restorative protection, whether through civil lawsuits or mediation approaches aimed at rehabilitating the victim's reputation and halting the spread of problematic content.

On the other hand, freedom of expression is a constitutional right guaranteed by Article 28E(3) of the 1945 Constitution and Article 19 of the ICCPR. However, this freedom is explicitly limited by the obligation to respect the rights and reputation of others. The amendment to the ITE Law, which replaced the term "good name" with "honor," broadens the scope of protection from mere public reputation to the comprehensive protection of human dignity. The addition of the element of intentional allegations aimed at public dissemination clarifies the presence of malicious intent (dolus malus), thereby distinguishing between legitimate policy criticism and unlawful personal attacks. For public officials, these limitations are even stricter, as statements made in an official capacity carry greater authority and influence in shaping public opinion.

Immanuel Kant's philosophical view on the rationality of action provides a normative foundation that the means used to achieve an end must be proportional and must not degrade human dignity. In the context of policy communication, the use of social media as a communication tool must not treat other individuals merely as instruments for political objectives, image management, or the legitimization of authority. This principle aligns with bureaucratic ethics, which require public officials to act in good faith, exercise prudence, and comply with legal norms and the ethical standards of office. Deviations from this principle, particularly if driven by personal interests or

<sup>19</sup> Herlambang Perdana Wiratraman dan Arifin Setyo Budi, "Meninjau Kembali Hukum Dan Keadilan Sosial Dalam Transformasi Digital," *Masalah-Masalah Hukum* 52, no. 3 (2023): 283–94, <https://doi.org/10.14710/mmh.52.3.2023.280-291>.

<sup>20</sup> Jekson Kipli Lumban Toruan dan Jinner Sidauruk, "Analisis Hak Serta Rehabilitasi Nama Baik Korban Tindak Pidana Pencemaran Nama Baik Melalui Media Sosial," *Perspektif Administrasi Publik Dan Hukum* 2, no. 1 (2025): 1–14, <https://doi.org/10.62383/perspektif.v2i1.64>.

image-building, may be classified as an abuse of authority that infringes upon the rights of others. The means employed to achieve such ends are considered of lesser value than the ends themselves.<sup>21</sup>

Cases of defamation in digital spaces also highlight the importance of victim protection within the legal system. The dissemination of false information can cause significant psychological, social, and economic impacts, both for individuals and corporations. Although the ITE Law provides a legal basis for criminal enforcement, its practical implementation still faces various challenges, such as difficulties in digital evidence, perpetrator anonymity, low digital literacy, and differing legal interpretations. Therefore, enhancing the capacity of law enforcement officers in information technology and strengthening public digital literacy are urgent needs to ensure fair and effective law enforcement.

The legal and social implications of digital content dissemination by public officials cannot be taken lightly. The harm suffered by victims is often layered, encompassing personal, social, and economic dimensions. In the digital era, the boundary between private and public spheres has become increasingly blurred, requiring extra caution when conveying information concerning others.<sup>22</sup> Therefore, mechanisms such as preliminary clarification, the right of reply, and mediation should be prioritized before conflicts escalate into formal criminal proceedings. A restorative justice approach offers a more proportional alternative by focusing on rehabilitating reputation, halting the spread of problematic content, and providing preventive education to avoid similar violations in the future.

A moderate legal approach that integrates positive law with the values of Pancasila, bureaucratic ethics, and the philosophy of social harmony offers a more comprehensive framework for resolving defamation conflicts in digital spaces. Law does not function solely as an instrument of punishment, but also as a means to cultivate moral awareness, restore social relationships, and maintain a balance between public interests and the protection of individual rights. Conflicts between parties are expected to be resolved effectively to fulfill the concept of harmony; a principle that emphasizes placing everything in its proper place and function. This entails understanding each role, developing potential, and creating balance by transforming tension into

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<sup>21</sup> Andreas Matthias, "Immanuel Kant tentang Sarana dan Tujuan," Daily Philosophy, 2021, <https://daily-philosophy.com/quotes-kant-means-ends/>.

<sup>22</sup> Nabila Zahara dan Muhammad Irwan Padli Nasution, "Pengaruh Media Sosial Terhadap Kebebasan Berekspresi Dan Privasi Di Era Digital," Surplus: Jurnal Ekonomi Dan Bisnis 2, no. 1 (2023): 65–69, <https://yptb.org/index.php/sur/article/view/647>.

cooperation to prevent conflict. Harmony is not a static condition, but a dynamic process that continuously requires renewal.<sup>23</sup>

The concept of harmony can be linked to a restorative spirit. For parties involved in criminal law conflicts, legal processes should be directed toward restoring relationships and enhancing moral awareness, rather than solely focusing on criminalization.<sup>24</sup> This model not only ensures procedural justice but also restores social relationships and promotes moral growth.<sup>25</sup> The DN vs. AR case illustrates the tension between constitutionally guaranteed freedom of speech and the protection of an individual's right to reputation.<sup>26</sup> Article 19 of the ICCPR affirms that freedom of opinion and expression is guaranteed, but with the stipulation that such freedom must be exercised responsibly and must not harm the rights of others, including the right to reputation (honor) of others.<sup>27</sup>

An action is considered unethical if it deviates from prevailing rules and norms.<sup>28</sup> Therefore, the criminal defamation regime under the ITE Law should be understood as a balancing mechanism that influences the freedom of expression of public officials in policy communication—not to silence public communication, but to ensure that such communication is conducted responsibly, with dignity, and in respect of human rights in the digital era.

## Conclusion

The ITE Law functions as a legal instrument that regulates the behavior of public officials in the use of social media through the criminalization of defamation under Article 27A in conjunction with Article 45(4). These

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<sup>23</sup> Daniël Kramer, “The Confucian Conception of Harmony: On the Tension between the Individual and the Society” (Universiteit Leiden, 2021), <https://doi.org/10.13140/RG.2.2.28954.62406>.

<sup>24</sup> Jianhong Liu, “Principles of Restorative Justice and Confucius Philosophy in China,” in *European Forum for Restorative Justice*, vol. 8, 2007, 2–3, [https://www.euforumrj.org/sites/default/files/2019-11/vol08\\_issue01.pdf](https://www.euforumrj.org/sites/default/files/2019-11/vol08_issue01.pdf).

<sup>25</sup> Tasya Salsabilah Efendi dkk., “Implementasi Nilai-Nilai Pancasila Dalam Era Digital,” *Jurnal Riset Manajemen* 3, no. 1 (2025): 130–38, <https://doi.org/10.54066/jurma.v3i1.2973>.

<sup>26</sup> Kirana Apsari dan Komang Pradnyana Sudibya, “Harmonisasi Hak Atas Kebebasan Berpendapat Dan Berekspresi Serta Hak Individu Atas Reputasi Dalam Perspektif HAM,” *Jurnal Kertha Negara* 9, no. 10 (2021): 779–90, <https://jurnal.harianregional.com/kerthanegara/id-73293>.

<sup>27</sup> Paul M Taylor, *A Commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights* (Cambridge University Press, 2020), <https://doi.org/10.1017/9781108689458>.

<sup>28</sup> David Fourie, Johannes and Josephine Rogate Kimaro, “The Interrelationship Between Ethics and Integrity in Public Administration,” *Administratio Publia* 28, no. 2 (2020): 76–93, <https://hdl.handle.net/10520/ejc-adminpub-v28-n2-a6>.

provisions establish a duty of care for public officials to ensure that information conveyed to the public does not cause reputational harm to others. This limitation demonstrates that the ITE Law does not operate solely as a repressive tool against citizens but also serves as a form of institutional oversight over public officials in the context of socialization. Accordingly, the ITE Law functions as a control mechanism to ensure that public officials' communication remains within the bounds of the law and does not abuse official authority to attack the honor of others through digital media.

The criminalization of defamation under the ITE Law creates constitutional and criminal limits on the freedom of expression of public officials when conducting policy communication. As legal subjects who also hold symbolic state authority, public officials cannot exercise absolute freedom of communication, particularly when such expression involves allegations, insinuations, or unverifiable information. The criminal regime under the ITE Law compels public officials to prioritize principles of proportionality, information accuracy, and fact verification, so that policy communication does not become a reputational attack against citizens. Thus, the freedom of expression of public officials in digital spaces exists in a balance between governmental transparency and the protection of honor and reputation as constitutional rights of citizens.

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