

Legal Certainty in the Legislative System in Indonesia study on the Information and Electronic Transactions Law

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ABSTRACT

Legal certainty is a fundamental element in the legal system that aims to create justice, order, and predictability in society. However, in practice, the existence of the Electronic Information and Transaction Law (UU ITE) often causes polemics due to multiple interpretations and inconsistent application. This study aims to examine the aspects of legal certainty in the ITE Law by highlighting articles that are in the public spotlight, such as related to insult and defamation, as well as their technical implementation in the field. The research method used is juridical-normative with an analytical approach to the text of the law and juridical-empirical through case studies and interviews with legal practitioners. The results of the study show that legal uncertainty in the ITE Law is caused by the lack of harmonization between the ITE Law and other laws, weak public understanding of regulations, and uneven implementation by law enforcement officials. To create better legal certainty, revisions to articles with multiple interpretations, capacity building for law enforcement officials, and comprehensive public education about the ITE Law are needed. This research is expected to make a theoretical contribution to the development of legal studies in Indonesia as well as a basis for recommendations for policymakers in improving the quality of legislation.

Keywords: Legal certainty, legal system, ITE Law, electronic transactions.

INTRODUCTION

Law has a very important role in creating certainty and justice in society. Legal certainty provides clear guidance on the rights, obligations, and legal consequences of each action, so that people can act in accordance with applicable rules. Legal certainty also prevents arbitrariness, both from individuals and law enforcement officials. On the other hand, justice aims to ensure that the law is applied evenly and is not discriminatory. In this context, law is the main instrument to create an orderly and fair social order¹. One of the important legal instruments in the digital era is the Electronic Information and Transaction Law (UU ITE). This law was first promulgated through Law Number 11 of 2008, then revised with Law Number 19 of 2016, and was finally updated through Law Number

¹ Hans Kelsen, *General Theory of Law and State* (Jakarta: PT RajaGrafindo Persada, 2015), p. 145

1 of 2024. The ITE Law serves as a legal umbrella in regulating various aspects of information and electronic transactions, including personal data protection, cybercrime, and digital transaction regulation². The position of the ITE Law in the Indonesian legal system is very strategic, because it provides a legal framework for the development of information technology in the modern era. However, despite this, its implementation still faces various challenges. In its implementation, the ITE Law often becomes a polemic because some of its articles are considered multi-interpreted, such as Article 27 concerning insult and defamation. The lack of clarity in the interpretation of this article often criminalizes freedom of expression, which should be guaranteed by the constitution³. In addition, several cases show that the ITE Law is used as a tool to suppress criticism of certain parties, thereby creating legal uncertainty in society⁴. The impact is quite significant, ranging from the increasing fear of free opinion to the potential for abuse by law enforcement personnel. Seeing these various problems, an in-depth study is needed to reassess the position and implementation of the ITE Law, as well as find solutions that can increase legal certainty and justice. This study is expected to provide useful recommendations for policymakers, law enforcement, and the wider community in utilizing information technology responsibly and fairly.

The role of law in creating certainty and justice.

The existence of law also aims to create justice, where every individual is treated equally before the law regardless of social, economic, or political status. This concept of justice is reflected in the principle of equality before the law which is a fundamental principle in the state of law⁵. By applying justice consistently, the law can be a tool to overcome conflicts and encourage a harmonious society. However, challenges in creating certainty and justice often arise from the implementation of the law itself. For example, laws that are multi-interpreted or not in harmony with the development of the times can cause uncertainty. In this case, legal reform is needed to answer the needs of a dynamic society. In addition, justice lies not only in the substance of the law, but also in the process of enforcing it. Unprofessional, corrupt, or discriminatory law enforcement can erode people's sense of justice⁶. Therefore, the role of law is not only limited to setting norms, but must also include a fair implementation and enforcement process in accordance with human values. Thus, the law is able to create certainty and justice which is an important foundation for the life of society and the state.

The position of the ITE Law in the Indonesian legal system.

The Electronic Information and Transaction Law (UU ITE) is one of the important legal instruments in the Indonesian legal system, especially in the current digital era. The ITE Law was first promulgated through Law Number 11 of 2008 and then revised with Law Number 19 of 2016. This revision was carried out to adjust to dynamic legal needs in the midst of the development of information and communication technology. Finally, the ITE Law is further updated through Law

² Republic of Indonesia, *Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions*

³ Jimly Asshiddiqie, *Constitution and Freedom of Opinion* (Jakarta: Konstitusi Press, 2006), p. 120

⁴ Wahyudi Djafar, "The Impact of the ITE Law on Freedom of Opinion in the Digital Era," *Journal of Law and Society*, Vol. 12, No. 2 (2021), pp. 234-24

⁵ Satjipto Rahardjo, *Law in a Sociological Perspective* (Bandung: CV Mandar Maju, 2002), p. 87

⁶ Jimly Asshiddiqie, *Constitution and Freedom of Opinion* (Jakarta: Konstitusi Press, 2006), p. 120



Number 1 of 2024 to overcome various multi-interpretation issues and increase the protection of people's digital rights⁷.

As part of Indonesia's legal system, the ITE Law is strategically positioned as it regulates various important aspects of the digital world, including personal data protection, cybercrime, and electronic transactions. This law is designed to support a safe, efficient, and equitable digital ecosystem. In addition, the ITE Law is also a legal umbrella for various activities involving information technology, thus providing a guarantee of legal certainty for digital technology users⁸.

However, the position of the ITE Law in the Indonesian legal system also faces a number of challenges. One of the main challenges is harmonization between the ITE Law and other laws, such as the Law on Consumer Protection or the Law on Copyright. This disharmony can cause overlapping rules, thus potentially causing legal uncertainty in society. In addition, the ITE Law also often receives criticism related to several articles that are considered multi-interpreted, such as Article 27 paragraph (3) concerning insult and defamation, which is considered to have the potential to threaten freedom of expression⁹.

With its crucial position, the ITE Law requires constant updates and adjustments to remain relevant and effective in responding to the challenges of the times. In addition, harmonized steps with other regulations in the national legal system are needed so that the ITE Law can support more comprehensive and integrative legal development.

Polemic of application and its impact on society

The implementation of the Electronic Information and Transaction Law (UU ITE) has caused various polemics in the community, especially related to articles with multiple interpretations, such as Article 27 paragraph (3) concerning insult and defamation. This article is often considered a "rubber article" because it has a wide space for interpretation and has the potential to be abused by certain parties to silence legitimate criticism or opinions. In some cases, the ITE Law is used to criminalize social media users who voice opinions or criticism of government policies or certain individuals. This condition raises fear among the public in expressing their opinions, thus potentially threatening the freedom of expression guaranteed by the 1945 Constitution. The impact of the inconsistent implementation of the ITE Law is widely felt at various levels of society¹⁰. People are worried about using digital spaces to discuss or express their views, because the threat of criminalization can occur at any time. In addition, uneven law enforcement practices, such as preferential treatment of certain parties, further worsen the public's perception of the ITE Law¹¹. This situation creates distrust of law enforcement officials and weakens the government's efforts to create a safe and equitable digital space. Therefore, it is necessary to evaluate the implementation of the ITE Law to ensure that this law not only provides certainty, but also supports the protection of people's digital rights fairly.

PROBLEM FORMULATION

1. How is legal certainty manifested in the ITE Law?
2. What are the challenges in the implementation of the ITE Law?

⁷ Republic of Indonesia, *Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions*.

⁸ Jimly Asshiddiqie, *The Constitution and Legal Changes in the Digital Era* (Jakarta: Pustaka Konstitusi, 2020), p. 34

⁹ Wahyudi Djafar, "Challenges of the ITE Law in Guaranteeing Freedom of Opinion," *Journal of Law and Society*, Vol. 12, No. 2 (2021), pp. 234-245

¹⁰ Wahyudi Djafar, "Challenges of the ITE Law in Guaranteeing Freedom of Opinion," *Journal of Law and Society*, Vol. 12, No. 2 (2021), pp. 234-245

¹¹ Satjipto Rahardjo, *Law and Society: A Perspective on Legal Sociology* (Bandung: CV Mandar Maju, 2002), pp. 112-115



LITERATURE REVIEW

Legal Certainty Theory

The definition and concept of legal certainty according to experts. Legal certainty is one of the fundamental principles in the legal system that aims to create stability, order, and justice in society. According to Hans Kelsen, legal certainty is a condition in which the law is able to provide clear and predictable guidance on the behavior of individuals in society¹². In Kelsen's view, the law must be structured in a logical, coherent, and consistent manner so as not to give rise to conflicting interpretations. This is important to prevent public doubt in determining whether an action is in accordance with the law or not.

Lon L. Fuller argues that legal certainty is one of the main elements of a good legal system. He explained that the law must meet eight main principles, including clarity, consistency, and fair application¹³. Fuller emphasized that laws that are vague or difficult to understand will lose legitimacy because they do not provide guidelines that can be followed by the public. Thus, legal certainty is not only related to the content of the regulation, but also to the way the regulation is drafted and implemented.

In Gustav Radbruch's perspective, legal certainty is closely related to the purpose of law itself, namely justice, utility, and certainty¹⁴. According to him, legal certainty is an element that provides stability in the legal system and ensures that people can trust the law as an instrument for regulating life. Radbruch also stated that legal certainty should not sacrifice justice, so the law must be flexible to adjust to human values. Jeremy Bentham sees legal certainty from the point of view of utilitarianism. According to Bentham, legal certainty is needed to create the greatest benefit for as many people as possible¹⁵. An uncertain law will cause harm, both morally and economically, because individuals cannot predict the impact of their actions. Therefore, definite and predictable laws are considered the main condition for creating the happiness of society as a whole. Meanwhile, in the context of Indonesian law, Satjipto Rahardjo defines legal certainty as the existence of rules that are able to provide a sense of security to the community¹⁶. He emphasized that legal certainty does not only depend on the quality of regulations, but also on fairness in their implementation. According to Rahardjo, the law must function as a tool to protect individual rights without overriding the aspect of humanism. Thus, legal certainty not only serves to create order, but also to provide substantial justice for society.

ITE Law in the Indonesian Legislative System

The Electronic Information and Transaction Law (UU ITE) has a strong legal foundation in the Indonesian legal system. This law was first promulgated as Law Number 11 of 2008 to regulate activities involving information technology, including electronic transactions, personal data protection, and cybercrime. The revision was carried out through Law Number 19 of 2016, which aims to improve a number of articles that are considered multi-interpreted. Finally, further updates

¹² Hans Kelsen, *General Theory of Law and State* (Jakarta: PT RajaGrafindo Persada, 2015), p. 145

¹³ Lon L. Fuller, *The Morality of Law* (New Haven: Yale University Press, 1964), hlm. 106-107.

¹⁴ Gustav Radbruch, *Legal Philosophy* (New York: Oxford University Press, 1950), hlm. 23-24

¹⁵ Jeremy Bentham, *Introduction to the Principles of Morals and Legislation* (London: Dover Publications, 1948), hlm. 120

¹⁶ Satjipto Rahardjo, *Law and Social Change* (Bandung: CV Mandar Maju, 2007), pp. 45-46



are carried out with Law Number 1 of 2024, which adjusts regulations to technological developments and the needs of the digital society. As part of the legal system, the ITE Law has a strategic position because it supports the development of a safe, transparent, and fair digital ecosystem¹⁷. One of the case studies on the implementation of the ITE Law that is quite well known is the case of Prita Mulyasari in 2009. This case began when Prita, a hospital patient, complained about medical services via email which was then widely spread. He was charged with Article 27 paragraph (3) of the ITE Law regarding defamation. This case caused a polemic because many parties considered that Prita should not be criminalized for her personal opinion. This incident highlights the weakness of the ITE Law in guaranteeing freedom of expression while showing how multi-interpretation articles can be used to suppress freedom of opinion¹⁸. Another case that has attracted public attention is the criminalization of social media users who criticize government policies or public officials.

In many cases, people are subject to criminal sanctions under the ITE Law because of uploads on social media that are considered insulting or defamatory. This example shows how the ITE Law can cause legal uncertainty due to inconsistent implementation. This situation reinforces the need to revise the multi-interpretation articles in the ITE Law to be clearer, fairer, and in accordance with the principle of freedom of expression guaranteed by the constitution¹⁹.

POSITIVE LAW STUDIES

The Electronic Information and Transaction Law (UU ITE) is a legal instrument that aims to regulate digital activities in Indonesia, including electronic transactions, data protection, and the responsible use of information technology. However, in its implementation, the ITE Law often overlaps with other regulations, such as the Criminal Code, the Personal Data Protection Law, and the Telecommunications Law. This overlap raises the potential for inconsistencies in law enforcement. For example, Article 27 Paragraph (3) of the ITE Law on defamation is often criticized because it has a different standard of proof from Article 310 of the Criminal Code, causing confusion among law enforcement officials and the wider community.²⁰

One of the main criticisms of the ITE Law is the lack of clarity in some clauses that are often considered "rubber articles." Articles such as Article 27 and Article 28 are often used to restrict freedom of expression.²¹ Although revisions were made in 2016 to reduce the potential for abuse, the practice still raises cases that are considered disproportionate. For example, cases of reporting speech on social media are often based on personal or political motives, rather than focusing on actual violations of the law.²² This shows the need to strengthen the harmonization of the ITE Law with other regulations to ensure the protection of human rights, including freedom of opinion.

In addition to criticism, the policy evaluation of the ITE Law shows that there are efforts to improve alignment with technological developments and community needs. However, these policies are less adaptive to new challenges, such as personal data protection in the digital economy and cyber threats.

¹⁷ Republic of Indonesia, *Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions*

¹⁸ "The Case of Prita Mulyasari: Lessons for the Revision of the ITE Law," *Kompas*, December 5, 2009

¹⁹ Wahyudi Djafar, "Challenges in Enforcement of the ITE Law in the Digital Era," *Journal of Digital Law and Policy*, Vol. 10, No. 1 (2021), pp. 15-23

²⁰ Article 27 Paragraph (3) of the ITE Law and Article 310 of the Criminal Code regulate defamation, but differ in the scope and application in the digital realm.

²¹ "Rubber article" is a term that refers to articles with ambiguous definitions, so they are vulnerable to abuse. See: Makarim, *Indonesian Digital Law*, 2020.

²² Case studies of reporting hate speech on social media show an increase in cases after the revision of the 2016 ITE Law. See: National Police Criminal Investigation Agency, 2021.



Harmonization with the Personal Data Protection Law, which has just been passed, is an important step to ensure that digital regulations are more comprehensive and integrated²³. In this context, the government needs to strengthen coordination between institutions and improve law enforcement governance to be more responsive to the needs of the digital community.

In the future, the reform of the ITE Law must place more emphasis on the principles of transparency, justice, and accountability. Regular evaluation of the implementation of this law is necessary to ensure that it remains relevant and not abused. In addition, public participation in the policy update process is essential to create regulations that are more inclusive and acceptable to all parties. Thus, the harmonization of the ITE Law with other regulations will not only increase legal effectiveness, but also strengthen public trust in the Indonesian legal system.

RESEARCH METHODOLOGY

This study uses a qualitative descriptive research method, which aims to provide an in-depth picture of legal certainty in the legal system in Indonesia, especially in the implementation of the Electronic Information and Transaction Law (UU ITE). This method was chosen to analyze how the legal provisions in the ITE Law provide guarantees of legal certainty for the community and how the practice of implementing this law is carried out. This research is only focused on the legal certainty aspect of the ITE Law, without discussing other aspects such as social, political, or economic implications in depth. The analysis was carried out during the implementation period of the ITE Law until the last year the research was conducted. This methodology is expected to make a significant contribution in understanding and evaluating legal certainty in the legal system in Indonesia, especially in the context of the ITE Law.

RESEARCH APPROACH

One of the case studies that is often in the spotlight is the reporting of defamation based on **Article 27 paragraph (3) of the ITE Law**, as happened in the case of Baiq Nuril Maknun, a teacher in Mataram, who was reported for alleged defamation through recorded conversations. This case sparked a national debate because the victim of harassment became a suspect. The court found Baiq Nuril guilty, even though the context of his case showed that his actions were taken to protect himself from harassment. This case shows how the articles of the ITE Law, when applied rigidly without considering the social context, can give birth to injustice²⁴.

Another case involved environmental activists who criticized mining companies through social media. In this case, the company used Article 27 paragraph (3) to report the activist on suspicion of defamation. Although criticism based on data is valid, the law is used to silence criticism. In the court's ruling, the judge did not explicitly consider the freedom of expression protected by the constitution. This shows the potential for abuse of the ITE Law for certain interests, especially by parties with economic or political power²⁵.

In further study, it was found that Article 28 paragraph (2) of the ITE Law, which regulates the dissemination of information that can incite hatred, is often used repressively against individuals who express opinions in the digital space. For example, a journalist was reported for spreading hate after publishing an investigative article criticizing government policies. The court's ruling in this case sets

²³ The Personal Data Protection Law was passed in 2022 and has significant relevance to the ITE Law in digital data management.

²⁴ ¹ Mataram District Court Decision,

²⁵ ² Interview with an environmental activist lawyer



aside the fact that the report is based on data and facts, indicating that the article has great potential to be abused to suppress press freedom²⁶.

Analysis of legal documents, including court decisions, shows that the implementation of the ITE Law is not always consistent with the principle of legal certainty. Some rulings indicate bias in the application of the article, especially when cases involve actors with greater power. In addition, interviews with legal academics and practitioners show that multiple interpretations in the articles of the ITE Law are the root of the problem that needs to be addressed immediately. They emphasized the need for a revision of the ITE Law to eliminate articles that are ambiguous and potentially detrimental to human rights.

As a recommendation, the revision of the ITE Law must be carried out by involving stakeholders, including civil society, to ensure that this law is responsive to technological developments and the needs of the community. In addition, clearer interpretation guidelines for law enforcement officials need to be developed to prevent abuse. This reform is important to ensure that the ITE Law not only regulates the digital space, but also protects freedom of expression and human rights as mandated in the Indonesian constitution.

RESEARCH RESULTS AND DISCUSSION

Legal Certainty in the ITE Law

Legal certainty is one of the fundamental principles in the legal system that aims to provide a guarantee of justice for all citizens. In the context of the Electronic Information and Transaction Law (UU ITE), legal certainty is a crucial issue, considering that several articles in it are considered to have multiple interpretations. One of the articles that is often in the spotlight is Article 27 paragraph (3), which regulates defamation. In practice, this article is often used to report individuals who criticize certain parties through social media. Multiple interpretations of terms such as "defamation" pose a major challenge in the application of this article, as there are no explicit limitations describing the context or parameters of the act²⁷.

In addition, Article 28 paragraph (2) which regulates the dissemination of information that can trigger hatred or hostility based on ethnicity, religion, race, and inter-group (SARA) is also a concern. Although the purpose of this article is to maintain social harmony, the vagueness in the definition of "information that can incite hatred" has given rise to a variety of different interpretations. In some cases, this article is used to silence criticism of government policies, even if the criticism is based on data and facts. This raises questions about whether the application of this article is in accordance with the principle of freedom of expression guaranteed by the constitution²⁸. An analysis of the legal provisions in the ITE Law shows that multiple interpretations of certain articles provide a wide space for interpretation by law enforcement officials and related parties. As a result, there are often inconsistencies in law enforcement. For example, in defamation cases, some courts have decided to acquit defendants on the grounds that the criticism conveyed is part of freedom of expression, while others have sentenced defendants to imprisonment in consideration of the same article²⁹. This inconsistency shows the weak legal certainty in the implementation of the ITE Law.

²⁶ LBH Indonesia Report, "Case Analysis of the ITE Law: Freedom of Expression in Threats

²⁷ Article 27 paragraph (3), Law No. 11 of 2008 concerning Information and Electronic Transactions, as amended by Law No. 19 of 2016.

²⁸ Amnesty International Indonesia's report, "Freedom of Expression in the ITE Law

²⁹ Jakarta District Court Decision



From a theoretical perspective, multiple interpretations in legal norms have the potential to erode public trust in the judicial system. Interviews with legal experts revealed that multi-interpretation occurs because the law does not provide clear interpretation guidelines. For example, the definitions of "defamation" or "hate-inciting information" are not specifically formulated, thus leaving room for law enforcement subjectivity. Legal academics also emphasized that the law should ideally be formulated by taking into account the *lex certa* principle (legal certainty) to prevent abuse³⁰.

The recommendation that can be given is the need to revise the multi-interpretation articles in the ITE Law. The revision must be carried out by involving civil society, academics, and legal practitioners to ensure that the resulting legal norms are specific and in accordance with the needs of the community. In addition, technical guidelines for law enforcement officials also need to be prepared to reduce subjective interpretation in the application of the articles of the ITE Law. This reform is important to restore public trust in the legal system and ensure that the ITE Law provides fair and proportionate protection for all parties³¹.

Challenges in the Implementation of the ITE Law

The Electronic Information and Transaction Law (UU ITE) faces significant challenges in its implementation, especially due to the existence of multi-interpreted legal provisions. The main challenge lies in articles such as Article 27 paragraph (3) on defamation and Article 28 paragraph (2) on the dissemination of information that incites hatred. The ambiguity in the definitions and limitations of the norms governed by these articles provides a wide space for subjectivity in the interpretation of the law. This often leads to inconsistencies in law enforcement, where similar cases can result in different rulings in different courts³². Case studies of the application of the ITE Law in the community show that this law is often used to report individuals who express criticism of certain governments or institutions. One of the cases that is of concern is the reporting of an environmental activist who criticized mining companies through social media. Although the criticism is based on data and facts, the activist was reported on defamation charges using Article 27 paragraph (3). This case reflects how the ITE Law can be used to silence legitimate criticism, thus creating fear in the community to express opinions³³.

The role of law enforcement officials in ensuring legal certainty is very important, but practice in the field shows that there are limitations in understanding and implementing the ITE Law. In many cases, officials tend to focus on the formal aspects of the report without considering the social context or background of the case. For example, in the case of a student who criticized local government policies through social media, law enforcement officials processed the case without considering that the criticism was part of the freedom of expression protected by the constitution. This shows the need for more in-depth training for officials to understand human rights principles relevant to the implementation of the ITE Law. Criticism of the ITE Law has also come from civil society organizations and legal academics, who highlight that the law is often used for repressive purposes, such as silencing criticism or strengthening certain positions of power. A report from the Legal Aid

³⁰ Interview with legal academics

³¹ LBH Indonesia Report, "Revision of the ITE Law: Urgency and Challenges

³² ¹ Article 27 paragraph (3) and Article 28 paragraph (2), Law No. 11 of 2008 concerning Information and Electronic Transactions, as amended by Law No. 19 of 2016.

³³ ² LBH Indonesia Report, "Case Study on the Implementation of the ITE Law: An Analysis of Criticism of Companies

Institute (LBH) shows that most of the reports related to the ITE Law are carried out by individuals or institutions who feel aggrieved by criticism on social media.

This raises questions about whether the ITE Law has been used in accordance with its original purpose, which is to regulate electronic transactions and protect the public from criminal acts in the digital world³⁴. As a recommendation, reforms to the ITE Law are needed, especially in the revision of multi-interpretation articles and the preparation of technical guidelines for law enforcement officials. These revisions should involve a wide range of stakeholders, including civil society, academia, and non-governmental organizations, to ensure that the resulting legal norms are specific and do not open up room for abuse. In addition, intensive training for law enforcement officials is urgently needed to improve understanding of freedom of expression and human rights principles. Thus, the ITE Law is expected to be an instrument that not only regulates the digital space but also ensures fair legal protection for the entire community³⁵

SOLUTIONS AND RECOMMENDATIONS

To overcome problems in the implementation of the Electronic Information and Transaction Law (UU ITE), strategic steps are needed that include law revision, law enforcement capacity building, and public education. This solution aims to ensure that the ITE Law is an instrument that is able to provide legal certainty while protecting human rights, especially in freedom of expression in the digital space.

Proposed Revision of Problematic Articles

Revision of the multi-interpretation articles in the ITE Law is a priority step. Article 27 paragraph (3) on defamation, for example, needs to be clarified with a firm definition of "defamation" and legal restrictions on public criticism. Similarly, Article 28 paragraph (2) on the dissemination of information that could incite hatred should be reformulated to ensure that this article is not used to silence legitimate criticism. The revision process needs to involve a wide range of stakeholders, including legal academics, civil society, and international organizations, to ensure that the articles do not conflict with human rights principles³⁶.

Law Enforcement Capacity Building

In addition to the revision of the law, increasing the capacity of law enforcement officials is urgently needed to ensure a consistent and fair implementation of the ITE Law. Intensive training on freedom of expression, digital rights, and principles of international law should be part of the curriculum for police officers, prosecutors, and judges. Law enforcers must also be given clear technical guidelines in interpreting the articles of the ITE Law so that they can reduce subjectivity in law enforcement. Restorative justice-based approaches can also be applied in certain cases, such as defamation, to avoid unnecessary criminalization³⁷.

Public Education Strategy on the ITE Law

Public education about the ITE Law is also an important step to prevent unintentional violations and increase digital legal literacy. The government and civil society organizations can work together in organizing educational programs about rights and obligations in the digital space, including the

³⁴ Laporan Amnesty International Indonesia

³⁵ Komnas HAM Report, "Recommendations for Reform of the ITE Law to Ensure Justice

³⁶ Komnas HAM Report, "Recommendations for the Revision of the ITE Law: Guaranteeing Human Rights

³⁷ Interview with legal academics

potential risks of using social media. Public campaigns using social media, seminars, and workshops can help people understand the content of the ITE Law and how to protect themselves from abuse of the law³⁸.

Collaboration in ITE Law Reform

The reform of the ITE Law must be part of a broader effort to improve the legal system in Indonesia. This step requires collaboration between the government, legislatures, civil society, and academia. Strong political commitment is needed to push for the revision of the law and ensure transparent implementation. With an inclusive approach, the ITE Law can become a legal instrument that is not only relevant to technological developments, but also able to provide fair legal protection for all parties³⁹.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

1. Legal certainty in the Electronic Information and Transaction Law (UU ITE) is realized through regulations that regulate the digital space legally and formally, providing protection for individual rights and public interests. The ITE Law serves as a legal basis for dealing with cybercrimes, such as defamation, online fraud, and the spread of fake news. In an effort to provide legal certainty, the ITE Law regulates criminal sanctions and dispute resolution mechanisms that apply in the digital space. In addition, the existence of Article 5 paragraph (1) which recognizes electronic documents as valid evidence in court also shows legislative efforts to keep up with technological developments and provide legal clarity for the public.
2. The main challenge in the implementation of the ITE Law is the multiple interpretations of several articles, such as Article 27 paragraph (3) concerning defamation and Article 28 paragraph (2) concerning the dissemination of information that incites hatred. The lack of clarity of definitions in these articles opens up space for subjective interpretation by law enforcement officials, thus causing inconsistency in law enforcement. In addition, the ITE Law is often considered to be used repressively to silence legitimate criticism or opinions, instead of protecting the public from digital crimes. The lack of legal literacy in the community about the provisions of the ITE Law and the lack of technical guidelines for law enforcement officials are also significant challenges in ensuring fair and consistent implementation.

Recommendations

As a recommendation, lawmakers need to revise the multi-interpretation articles in the Electronic Information and Transactions Law (UU ITE), such as Article 27 paragraph (3) and Article 28 paragraph (2), to provide a clearer and more specific definition to prevent abuse and ensure legal certainty. In addition, it is important for the government to develop technical guidelines that can be a reference for law enforcement officials in interpreting and applying these articles consistently. To strengthen law enforcement, intensive training for law enforcement officials on the principles of human rights, freedom of expression, and digital literacy should be conducted on a regular basis. With these steps, the ITE Law is expected to become a legal instrument that is fair, effective, and in line with the development of the digital space and democratic values.

³⁸ Amnesty International Indonesia Report, "Public Education and Digital Literacy: Strategies to Reduce the Abuse of the ITE Law

³⁹ LBH Indonesia Report, "Collaboration for ITE Law Reform: Policy Analysis

Bibliography

Laws and Regulations

1. Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik.
2. Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik.
3. Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
4. Peraturan Pemerintah Nomor 71 Tahun 2019 tentang Penyelenggaraan Sistem dan Transaksi Elektronik.

Journal

5. Arief, B. N. (2020). "Analisis Kepastian Hukum dalam Penerapan UU ITE di Indonesia." *Jurnal Hukum dan Keadilan*, 12(2), 143–158.
6. Nugraha, R. (2019). "Penerapan Pasal Pencemaran Nama Baik dalam UU ITE: Perspektif Kepastian Hukum." *Jurnal Hukum Indonesia*, 8(3), 221–234.
7. Wijaya, R. A., & Yuniarso, T. (2021). "Multitafsir dalam Pasal UU ITE dan Dampaknya pada Kebebasan Berekspresi." *Jurnal Konstitusi dan Hukum Digital*, 6(1), 45–60.
8. Iskandar, M. (2020). "Kebijakan Hukum Pidana dalam Penanganan Kejahatan Siber di Indonesia." *Jurnal Cyber Law dan Teknologi Informasi*, 5(4), 312–329.
9. Suryani, T. (2018). "Kepastian Hukum dalam Pengaturan Kejahatan Digital: Studi UU ITE." *Jurnal Legislasi Nasional*, 9(1), 25–40.
10. Hartono, P. (2021). "Evaluasi Implementasi UU ITE dalam Konteks Hak Asasi Manusia." *Jurnal Hukum dan Kebijakan Publik*, 15(3), 89–101.

Book

11. Haryono, T. (2018). *Kebebasan Berekspresi dan UU ITE: Tinjauan Hukum dan HAM*. Jakarta: Pustaka Hukum Indonesia.
12. Setiawan, B. (2020). *Prinsip Kepastian Hukum dalam Sistem Perundang-Undangan Indonesia*. Bandung: Refika Aditama.
13. Prasetyo, E., & Suyanto, H. (2019). *Cyber Law dan Perkembangan Hukum Digital di Indonesia*. Yogyakarta: Gadjah Mada University Press.
14. Basuki, W. (2020). *Tinjauan Hukum Siber di Indonesia: Tantangan dan Solusi*. Surabaya: Airlangga University Press.

Report

15. Lembaga Bantuan Hukum (LBH). (2021). *Laporan Kasus Penerapan UU ITE: Perspektif Hak Asasi Manusia*. Jakarta: LBH Indonesia.
16. Amnesty International Indonesia. (2020). *Penerapan UU ITE dan Implikasinya terhadap Kebebasan Berekspresi*. Jakarta: Amnesty International Indonesia.

17. Komnas HAM. (2021). *Rekomendasi Reformasi UU ITE untuk Menjamin Hak Digital*. Jakarta: Komnas HAM.

Article

18. Yusran, A. (2021, Oktober 15). "Polemik Multitafsir dalam UU ITE: Urgensi Revisi." *Kompas.com*. Diakses dari www.kompas.com.
19. Wahyudi, F. (2022, Januari 10). "UU ITE dan Kepastian Hukum: Masalah atau Solusi?" *Hukum Online*. Diakses dari www.hukumonline.com.
20. Aziz, N. (2020, Mei 5). "Kritik Sosial dan Kriminalisasi: Studi Kasus UU ITE." *The Conversation Indonesia*. Diakses dari theconversation.com.

