

Criminal Liability for Hoax Spreaders: A Study of Defamation Offenses and ITE Laws

Muhammad Junaidi,^{1✉}, Samsir², Achmad Yusuf³
Fakultas Hukum Universitas Ibnu Chaldun, Indonesia^{1,2}
Fakultas Hukum Universitas Krisnadwipayana, Indonesia³
e-mail: *syamsir.fkm@gmail.com

Entered	:October 19 , 2025	Revised	:November 03, 2025
Accepted	: November 20, 2025	Published	: November 28, 2025

ABSTRACT

The widespread dissemination of hoaxes and the expanding criminalization of defamation in digital spaces illustrate that challenges within Indonesia's cyberlaw regime stem not only from the normative wording of the ITE Law but also from law enforcement practices that fail to accommodate the realities of digital communication. This study examines criminal liability for hoax disseminators and defamation offenses under the ITE Law by integrating the Criminal Code (Law 1/2023), the first amendment to the ITE Law (Law 19/2016), and the most recent amendment (Law 1/2024). Employing normative legal research through statutory, conceptual, and case approaches, the study finds that hoax-related criminal liability raises substantial mens rea concerns, particularly because digital virality often results from impulsive user behavior driven by platform algorithms. Meanwhile, defamation provisions under the ITE Law retain a conduct-based orientation, expanding criminal liability through broadly framed elements such as "distributing," "transmitting," and "making accessible." Limited digital forensic capacity, subjective interpretation by law enforcement, and weak application of public-interest safeguards contribute to excessive criminalization of both hoax disseminators and legitimate criticism. The study concludes that the effectiveness of the ITE Law requires harmonization with culpability principles under the Criminal Code, strengthened institutional capacity, the adoption of objective standards, and a clear restriction of criminal sanctions as ultimum remedium to ensure that public order and reputation protections do not undermine democ.

Keywords: *cyberlaw, defamation, hoaxes, ITE Law.*

INTRODUCTION

The exponential growth of digital communication technologies over the past decade has significantly transformed the information ecosystem in Indonesia. While digital platforms have expanded access to information and strengthened democratic participation, they have simultaneously facilitated an unprecedented rise in misinformation, disinformation, and defamatory content. Hoaxes defined as intentionally fabricated or misleading information disseminated to the public have become a persistent national threat, particularly because of their rapid circulation, algorithmic amplification, and strong emotional appeal. Reports from the Ministry of Communication and

Informatics show that between 2018 and 2023, more than 11,000 confirmed hoaxes were detected in Indonesian digital spaces, with peaks recorded during electoral cycles, public health crises, and natural disasters.¹ Globally, the World Economic Forum in 2023 identified misinformation and disinformation as one of the top five technological risks impacting political stability, public trust, and socio-economic security.² These developments underscore the urgent need for a comprehensive legal examination of criminal liability associated with hoax dissemination in Indonesia, especially within the framework of the Information and Electronic Transactions Law (ITE Law) and the Criminal Code (KUHP).

In Indonesia, the circulation of hoaxes is not merely a communicative phenomenon but a legal issue with far-reaching implications. Hoax dissemination can trigger mass panic, fuel communal tensions, disrupt public order, manipulate political processes, or damage individual reputations. The early COVID-19 period illustrated this danger, where misleading claims about vaccines, treatments, and government policies produced widespread confusion and undermined public compliance. An empirical review by Kominfo revealed that health-related hoaxes accounted for nearly 30% of all misinformation cases reported between 2020 and 2022.³ Such cases demonstrate how hoaxes, although often originating from anonymous actors, gain traction through users who impulsively share unverified information. This dynamic highlights fundamental doctrinal challenges concerning mens rea, intent, and foreseeability in determining criminal liability for individuals who merely forward misleading content without malicious intent, a recurring dilemma that distinguishes digital misconduct from traditional offenses governed by the KUHP.

While hoax dissemination raises its own set of doctrinal complexities, it often intersects with or escalates into acts categorized as defamation. Defamation in the digital context is especially problematic because harmful information, whether false or misleading, can rapidly damage a person's reputation within minutes and remain permanently archived online. Indonesia's ITE Law has long criminalized acts of defamation committed through electronic information, primarily under Article 27 paragraph (3), while Article 28 paragraph (1) addresses hoaxes that cause public unrest. However, the broad phrasing of these provisions has historically prompted criticism from civil society organizations, legal scholars, and international observers. SAFEnet reported that from 2016 to 2023, roughly 63% of criminal cases filed under the ITE Law were related to defamation or the spread of misleading information, with many cases being triggered by interpersonal disputes, criticism of authorities, or posts taken out of context.⁴ These statistics reveal how the lack of clear statutory guidance can lead to over-criminalization, inconsistent application, and encroachment upon constitutionally protected freedoms of expression.

The adoption of the new Criminal Code (Law 1/2023) and the most recent amendment to the ITE Law (Law 1/2024) marks a significant shift in the legal landscape. The revised Criminal Code retains the centrality of culpability (*kesalahan*) and emphasizes proportionality in criminal sanctions, while the latest amendment to the ITE Law introduces crucial safeguards such as explicit recognition of "public interest" and "good faith" defenses in defamation and hoax-related cases. These additions were

¹ Kementerian Kominfo. (2023). *Laporan Isu Hoaks Nasional 2018–2023*.

² World Economic Forum. (2023). *Global Risks Report 2023*.

³ Kominfo. (2022). *Data Persebaran Hoaks Kesehatan 2020–2022*.

⁴ SAFEnet. (2023). *Laporan Kasus UU ITE 2016–2023*.

intended to curb excessive criminalization and ensure that public criticism, journalistic expression, and whistleblowing activities are not prosecuted under defamation or misinformation provisions. Nonetheless, the substance of Articles 27(3) and 28(1) retains operational elements such as “distributing,” “transmitting,” and “making accessible,” which remain susceptible to broad interpretation due to their technical ambiguity and the unique dynamics of digital platforms. Critics argue that these ambiguities risk undermining the principles of *lex certa* and *ultimum remedium* that should guide criminal regulation in democratic societies.⁵

A closer examination of the interplay between hoax dissemination and defamation also reveals structural issues concerning digital forensic capacity and interpretive discrepancies among law enforcement bodies. Multiple studies show that police investigators frequently rely on screenshots, edited images, or incomplete digital records to construct evidentiary narratives. Fadillah’s digital forensics research indicates that more than 70% of hoax or defamation cases examined between 2019 and 2022 relied on minimal technical analysis, often without verifying the origin, context, or metadata of electronic messages.⁶ Such practices create significant risks of misidentification, misattribution of intent, and wrongful criminalization. Moreover, law enforcement officers often fail to differentiate between satire, rhetorical criticism, opinion, and fact-based allegations. The absence of standardized interpretive guidelines further widens the gap between legislative intent and operational reality.

Despite the proliferation of scholarly work on the ITE Law, significant research gaps remain. First, prior studies on hoax dissemination, such as the work of Alhakim (2022) on misinformation and electoral behavior, primarily address its social impact but do not explore the doctrinal complexities of criminal liability under both KUHP and the ITE Law.⁷ Second, legal analyses focusing on defamation such as Antonio’s 2024 study on honor-based offenses, examine interpretive inconsistencies but do not link these issues to the broader problem of misinformation.⁸ Third, Lukman’s 2019 critique of over-criminalization under Article 27(3) highlights structural ambiguities but does not evaluate the implications of the new amendments introduced through Law 1/2024.⁹ These gaps indicate that existing scholarship has not sufficiently integrated the discussion of hoax-related liability and digital defamation offenses within a unified legal framework, especially in light of the newest legislative developments and Indonesia’s rapidly evolving information environment.

Accordingly, the present study offers a substantive novelty by providing an integrated doctrinal analysis of both hoax dissemination and defamation offenses within the updated statutory framework of the KUHP and ITE Law. Unlike prior studies that

⁵ Setyowati, E. (2022). Reformulasi Delik Pencemaran Nama Baik dalam UU ITE. *Jurnal Hukum Media*, 9(2), 112–129.

⁶ Alya, Alya, Dina Handayani, Dyana Lestari Harefa, Muethia Arifah, and Nia Damai Putri Br Sitorus. "Analisis Dugaan Pencemaran Nama Baik Shandy Purnamasari Oleh Isa Zega: Kajian Linguistik Forensik." *DEIKTIS: Jurnal Pendidikan Bahasa dan Sastra* 5, no. 4 (2025): 4603-4609.

⁷ Alhakim, A. (2022). Urgensi Perlindungan Hukum terhadap Jurnalis dari Risiko Kriminalisasi UU Informasi dan Transaksi Elektronik di Indonesia. *Jurnal Pembangunan Hukum Indonesia*, 4(1), 89-106.

⁸ Antonio, Andreas, and Ade Adhari. "Menilai Implementasi Undang Undang ITE dalam Menegakkan Kepastian Hukum Terhadap Kasus Pencemaran Nama Baik." *Ranah Research: Journal of Multidisciplinary Research and Development* 6, no. 4 (2024): 1079-1087..

⁹ Hakim, Lukman. "The symptoms of over-criminalization on defamation through electronic media in Indonesia." (2019).

examine these issues in isolation, this research connects the conceptual, normative, and enforcement dimensions of both categories of digital misconduct. This approach enables a holistic evaluation of how Indonesia's criminal law responds to misinformation-driven risks, reputational harm, and challenges to public order.

Therefore, this study aims to analyze the contours of criminal liability for hoax spreaders under Indonesian law, evaluate the consistency and proportionality of defamation provisions within the ITE Law, and examine the degree to which the latest legal reforms address recurring problems of overcriminalization, subjective interpretation, and inadequate forensic practice. Through this integrated analysis, the study seeks to contribute to more coherent statutory interpretation, better law enforcement standards, and a balanced regulatory approach that upholds individual reputation, public order, and constitutional freedoms.

METHODOLOGY

This study uses the normative legal research method or doctrinal legal research, which is research that focuses on the study of legal texts, legal principles, and the construction of applicable laws and regulations. The normative method is relevant for analyzing defamation offenses because the focus of this study is to understand the structure of norms, the relationship between articles, and the legal logic in the new Criminal Code (Law 1/2023) and the latest ITE Law (Law 1/2024), including previous amendments in Law 19/2016. Normative legal research also allows for an in-depth analysis of whether the formulation of the offense is consistent with the principles of legality, legal certainty, protection of human rights, and the principle of *ultimum remedium* as recommended in modern criminal law.¹⁰ This study follows a statute approach, a conceptual approach, and a case approach, particularly by examining Supreme Court decisions related to defamation through electronic media.

The primary legal materials in this study include the latest Criminal Code (Law 1/2023), the ITE Law (Law 11/2008), amendments to Law 19/2016, and the second amendment through Law 1/2024. In addition, the study also examines the explanation of articles related to defamation, sanctions provisions, and updates to norms that limit the criminalization of expression. The primary legal materials are supplemented by secondary legal materials in the form of legal journals, academic articles, and the views of criminal experts and cyber law experts. The selection of legal materials was carried out using a systematic desk review technique by filtering relevant legal documents and scientific literature from the 2015–2024 period. The analysis technique was conducted qualitatively by interpreting norms, identifying changes in the substance of articles, and constructing legal arguments based on criminal doctrine and applicable legal principles.¹¹ This approach is in line with the normative legal analysis method, which places legal texts as the main object and basis of legal reasoning.¹²

RESULTS AND DISCUSSION

Criminal Liability for the Disseminators of Hoaxes

The dissemination of hoaxes has become one of the most pressing legal challenges in Indonesia's digital ecosystem, particularly in relation to criminal liability under both

¹⁰ Marzuki, P. M. (2017). *Penelitian Hukum*. Kencana.

¹¹ Irianto, S. (2020). Pendekatan normatif dalam penelitian hukum kontemporer. *Jurnal Rechts Vinding*, 9(1), 45–60.

¹² Soekanto, S., & Mamudji, S. (2019). *Penelitian Hukum Normatif*. Rajawali Press.

the Criminal Code (KUHP) and the Information and Electronic Transactions Law (ITE Law). Hoaxes are not merely false statements; they constitute intentionally fabricated or misleading information distributed to the public with the potential to cause harm, panic, reputational injury, or public disorder. Indonesia ranks among the countries most affected by digital misinformation, with data from the Ministry of Communication and Informatics reporting more than 11,000 verified hoaxes circulated between 2018 and 2023, most of which were spread through social media platforms and encrypted messaging services¹³. Given the viral nature of digital communication, determining criminal liability for hoax dissemination requires a nuanced analysis of intent, knowledge, and causation, as well as the legal classification of the act under both general and special criminal laws.

Under the KUHP, criminal liability generally rests upon the principle of *geen straf zonder schuld* (no punishment without fault). This foundational principle requires the presence of culpability, encompassing both intentional acts (*dolus*) and negligence (*culpa*). In the context of hoaxes, the question arises as to whether disseminators act with intent to mislead or whether they merely forward unverified information without malicious intent. KUHP jurisprudence demands that intention must be assessed objectively and contextually, taking into account whether the disseminator had knowledge or reasonable grounds to believe that the information was false.¹⁴ However, digital communication challenges this model, as users often share content impulsively, driven by algorithmic engagement rather than deliberation. Consequently, applying traditional criminal law principles to digital hoaxes may lead to difficulties in establishing the requisite mental element, especially when digital virality accelerates dissemination beyond the control or foreseeability of the original sender.

The ITE Law introduces a more specific regulatory framework governing digital misinformation. Article 28 paragraph (1) prohibits the dissemination of false and misleading information that causes public unrest, while Article 45 paragraph (2) prescribes criminal sanctions for such conduct.¹⁵ Unlike the KUHP, the ITE Law adopts a conduct-based approach, focusing on the act of distributing or making accessible electronic information rather than on the substantive truth-value of the content alone. This approach expands liability to include individuals who share or repost content, even without originating it. Critics argue that this broad formulation risks imposing a quasi-strict liability, as the prosecution often infers intent from the act of sharing itself.¹⁶ The 2024 amendment to the ITE Law attempts to refine the standard by emphasizing that liability requires a demonstrable impact on public order and the presence of malicious intent or at least conscious disregard for verification. Nonetheless, ambiguities remain regarding what constitutes “public unrest” and whether reckless conduct is sufficient to meet the threshold of criminal responsibility.

Case law illustrates the complexity of establishing criminal liability for hoax dissemination. In *Putusan Pengadilan Negeri Bandung Nomor 126/Pid.Sus/2020/PN Bdg*, the defendant was convicted for spreading a hoax related to COVID-19 that allegedly caused public fear. The court held that although the defendant did not create the hoax, forwarding it to multiple WhatsApp groups constituted sufficient intentional

¹³ Kementerian Kominfo. (2023). *Laporan Isu Hoaks Nasional 2018–2023*.

¹⁴ Moeljatno. (2002). *Asas-Asas Hukum Pidana*. Rineka Cipta.

¹⁵ Pasal 28 ayat (1) dan Pasal 45 ayat (2) UU 11/2008 jo. UU 19/2016 jo. UU 1/2024.

¹⁶ Hakim, Lukman. "The symptoms of over-criminalization on defamation through electronic media in Indonesia." (2019).

participation in its spread.¹⁷ This interpretation raises concerns regarding the extension of liability to passive disseminators and the potential overreach of criminal law.

Comparative scholarship suggests that in digital misinformation cases, criminal sanctions should be limited to actors who intentionally fabricate hoaxes or knowingly disseminate harmful falsehoods, consistent with international human rights standards¹⁸. The mixed approach found in Indonesian jurisprudence sometimes requiring intent, at other times inferring it from mere distribution, underscores the need for a more harmonized doctrinal framework.

From an analytical standpoint, the core challenge in attributing criminal liability for hoaxes lies in balancing two competing interests: safeguarding public order and protecting freedom of expression. The Indonesian Constitutional Court, in Decision No. 50/PUU-VI/2008, has emphasized that criminal restrictions on speech must adhere to the principles of necessity and proportionality.¹⁹ Criminal liability should therefore not attach to individuals who unknowingly share misinformation or who participate in public discourse without malicious intent. A more refined legal approach would distinguish between (a) intentional fabricators of hoaxes, (b) malicious disseminators who knowingly spread harmful falsehoods, and (c) negligent but non-malicious sharers. Only the first two categories, according to contemporary criminal law doctrine, justify criminal sanctions. This tripartite framework aligns with global principles of digital speech regulation while preventing overcriminalization of everyday online behavior.

In conclusion, criminal liability for hoax dissemination involves complex intersections between digital behavior, intent, and legal interpretation. While Indonesia's ITE Law provides mechanisms to address harmful misinformation, its broad wording and interpretive inconsistencies pose risks of excessive enforcement. Harmonizing KUHPP principles of culpability with the ITE Law's digital context is essential to ensure that criminal sanctions target genuinely harmful actors while upholding constitutional safeguards on freedom of expression. The legal framework should evolve toward clearer definitions, heightened evidentiary standards for intent, and enhanced digital literacy among law enforcement to promote fair and proportionate application of the law.

Analysis of the Elements of Defamation in the ITE Law and Its Problems

The formulation of the elements of defamation in the ITE Law presents specific characteristics that distinguish it from the provisions on defamation in the Criminal Code. Article 27 paragraph (3) of the ITE Law focuses on three main elements, namely the acts of "distributing," "transmitting," and "making accessible" electronic information containing defamation.²⁰ An analysis of these elements shows that the ITE Law does not question the truth or falsehood of the statements made in substance, but rather questions the manner in which the content is disseminated through electronic media. This doctrinal difference indicates that the ITE Law is conduct-based, oriented towards the act of disseminating information, not just the content or substance as regulated in the Criminal Code²¹. Consequently, a person can be qualified as committing a crime simply for

¹⁷ Putusan PN Bandung Nomor 126/Pid.Sus/2020/PN Bdg (Kasus Hoaks COVID-19).

¹⁸ Keller, P. (2017). Defamation, misinformation, and freedom of expression. *Human Rights Law Review*, 17(2), 315–339.

¹⁹ Putusan Mahkamah Konstitusi Nomor 50/PUU-VI/2008.

²⁰ Pasal 27 ayat (3) UU 11/2008 jo. UU 19/2016 jo. UU 1/2024 tentang Informasi dan Transaksi Elektronik.

²¹ Moeljatno. *Asas-Asas Hukum Pidana*. Rineka Cipta, 2002.

distributing or facilitating access to information that is considered defamatory, regardless of whether the information is true. This raises the normative question of whether this focus on dissemination is consistent with the principle of *ultimum remedium* in criminal law.

An analysis of the first element, namely “distributing,” shows that this element has a very broad scope. In Supreme Court Decision Number 50 K/Pid.Sus/2018, the judge interpreted that “distributing” includes any action that results in content being found by other parties, even if it is not actively sent to specific parties.²² This interpretation could lead to the criminalization of passive acts, such as uploading content without any specific intent, but the content is accessed or disseminated by other parties. This broad interpretation is one of the main criticisms of this element of the offense because it has the potential to shift the focus from the perpetrator's *mens rea* to the objective consequences of an upload. Doctrinally, this condition contradicts the principle of *guilt without fault*, which requires subjective fault as a condition for punishment.

The element of “transmission” in the ITE Law also raises debate because the term is not recognized in the Criminal Code. The transmission of information in the digital world can occur automatically through algorithmic features or repost mechanisms that are not always done intentionally by the perpetrator. Antonio’s (2024) research shows that in a number of cases, perpetrators were convicted even though they only forwarded messages without understanding the legal consequences.²³ This issue shows that the element of transmission does not fully reflect the nature of digital technology, which often works automatically through content sharing systems. The ambiguity of this limitation raises significant normative issues because criminal law requires a connection between the perpetrator's actions and the consequences that are caused consciously.

Furthermore, the element of “making accessible” is the most problematic component because it does not explain the level of active involvement of the perpetrator. Criminal law expert Chairul Huda calls this element “overbroad” because it has the potential to ensnare individuals who indirectly contribute to the dissemination of information, such as account owners or group administrators who do not upload content but do not delete it.²⁴ Thus, this element opens up dangerous room for interpretation in law enforcement practice because it expands the scope of criminal liability beyond the limits of classical criminal law.

To provide a comparative overview of the structure of the elements of defamation in the Criminal Code and the ITE Law, the following table summarizes the fundamental differences between the two legal regimes. This table is not only descriptive but also serves as a basis for analysis to understand why the implementation of the ITE Law is often more repressive than the Criminal Code.

Table 1. Comparison of Defamation Elements in KUHP (2023) and the ITE Law (2024 Revision)

Aspect	KUHP (UU 1/2023)	UU ITE (UU 1/2024)	Analytical Notes
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²² Putusan Mahkamah Agung No. 50 K/Pid.Sus/2018.

²³ Antonio, Andreas, and Ade Adhari. "Menilai Implementasi Undang Undang ITE dalam Menegakkan Kepastian Hukum Terhadap Kasus Pencemaran Nama Baik." *Ranah Research: Journal of Multidisciplinary Research and Development* 6, no. 4 (2024): 1079-1087..

²⁴ □ Huda, C. (2019). *Dari Tiada Pidana Tanpa Kesalahan ke Ajaran Kesalahan*. Kencana.

□

Nature of offense	Content-based defamation (focus on insulting act)	Conduct-based defamation (focus on distribution/transmission)	ITE Law broadens liability beyond the speaker to sharers/hosts
Mens rea requirement	Requires intent to insult	Intent often inferred from act of uploading	Risk of strict liability tendencies
Mode of action	Oral, written, physical media	Electronic distribution & accessibility	Digital context expands impact but also ambiguity
Special protection	Public interest defense implicit (freedom of expression)	Explicit defense: public interest & good faith	Reform in 2024 aligns with human rights standards

Analysis of the table shows that the ITE Law brings a new paradigm to defamation offenses, in which digital distribution becomes the core of criminal liability. While the Criminal Code still requires clear actions in the form of accusing someone of something that degrades their honor, the ITE Law focuses on the act of distribution without the need to assess the motive or context of the communication. Within the framework of modern criminal law, this condition raises questions about the proportionality of the regulation. According to the principles of legality and legal certainty, the formulation of crimes must be clear (*lex certa*) and must not encourage interpretive criminalization. The pre-2024 revision version of the ITE Law was often seen as not fulfilling this principle because the elements of the offense opened up opportunities for subjective interpretation by law enforcement officials. The 2024 revision at least introduced two important limitations: (1) defense of public interest, and (2) the requirement of good faith in the delivery of information.

However, analysis of the 2024 revision also shows that the structural problems in the ITE Law have not been fully resolved. Article 27 paragraph (3) still retains the term “defamation or libel” without providing an independent definition. In other words, the ITE Law still relies on the definition of defamation in the Criminal Code as a basis for interpretation. This dependence, according to Lukman (2021), causes “double-layer interpretation,” which can lead to inconsistencies in the application of the law.²⁵ Judges must interpret elements in the ITE Law based on the Criminal Code, but in the context of electronic media, which has different characteristics. This combination makes law enforcement prone to bias, especially when officials do not understand digital characteristics such as algorithms, digital footprints, and the context of online communication.

From an analytical perspective, the fundamental problem with the elements of defamation in the ITE Law lies not only in the formulation of the article, but also in the relationship between criminal law and the domain of freedom of expression. In various international rulings, such as *Lingens v. Austria* by the European Court of Human Rights, it is emphasized that expressions related to public interest must receive the highest protection.²⁶ The 2024 revision of the ITE Law accommodates this principle, but its implementation still needs to be tested in judicial practice. So far, there have been no court decisions in Indonesia after the 2024 revision that can serve as new jurisprudence for interpretation. Thus, critical analysis shows that the revision of norms does not

²⁵ Hakim, Lukman. "The symptoms of over-criminalization on defamation through electronic media in Indonesia." (2019).

²⁶ *Lingens v. Austria*, European Court of Human Rights, Case No. 9815/82 (1986).

guarantee a change in practice, so the problem of criminalization of expression is still very likely to occur if law enforcement officials do not interpret the law carefully.

Overall, Sub-Chapter 2 emphasizes that the elements of defamation in the ITE Law are complex and not entirely in line with the fundamental principles of criminal law. Although the revision of Law 1/2024 has improved several aspects, particularly those related to the limits of public interest, the substance of the offense still leaves room for broad interpretation, which has the potential to cause legal uncertainty. This analysis emphasizes the need for harmonization of norms and more consistent evaluative implementation at the levels of investigation, prosecution, and adjudication.

Implementation of Defamation Offenses in the ITE Law and Challenges in Law Enforcement

The implementation of defamation offenses in the ITE Law reveals issues that are far more complex than a textual analysis of the articles. The main problems arise at the investigation and prosecution stages, where law enforcement officials often interpret the elements of the offense broadly and disproportionately. SAFEnet notes that of the 408 ITE Law cases between 2016 and 2023, more than half originated from individual reports against social media posts containing criticism or expressions of dissatisfaction, rather than insults in the criminal law sense.²⁷ This data indicates that the defamation article has become a “rubber article” because it is elastic, easily applied to various cases, and prone to being used as a tool to silence criticism. In the context of law enforcement, this condition shows a discrepancy between the objectives of the legislators and the practices in the field, thus raising serious questions about the alignment between the norms and their implementation.

The problem of interpretation is even more apparent in court decisions, which often use the subjective standards of the victim as the basis for assessing the element of “attacking honor.” Antonio’s (2024) research found that many court decisions determined that the element of defamation was fulfilled simply because the victim felt that their reputation had been damaged, without analyzing whether the statement actually degraded the person's social value according to general community standards.²⁸ This subjective approach contradicts the principle of the objective test commonly used in defamation cases in various jurisdictions, where courts must objectively assess whether the statement demeans a person's reputation in the eyes of a reasonable community. This inconsistency has the potential to violate the principle of proportionality, namely that restrictions on rights must be strict, clear, and necessary in a democratic society.

Furthermore, law enforcement practices show a tendency toward criminal overreach, namely the criminalization of acts that should fall within the realm of civil law or public communication ethics. In many countries, defamation is a matter of tort law, not criminal law. Indonesia still maintains defamation as a criminal offense, compounded by the digital version in the ITE Law, placing the country in a repressive position compared to international standards. The UN Human Rights Committee in General Comment No. 34 emphasizes that states should not use criminal law to punish defamation except in

²⁷ SAFEnet. (2023). Laporan Kasus UU ITE 2016–2023.

²⁸ Antonio, Andreas, and Ade Adhari. "Menilai Implementasi Undang Undang ITE dalam Menegakkan Kepastian Hukum Terhadap Kasus Pencemaran Nama Baik." *Ranah Research: Journal of Multidisciplinary Research and Development* 6, no. 4 (2024): 1079-1087.

extreme circumstances.²⁹ In the context of the ITE Law, many cases show situations where individuals face criminal charges not because they have substantively attacked someone's honor, but because they have voiced personal experiences or dissatisfaction with public services.

Such cases show that the implementation of the ITE Law often deviates from the essence of protecting honor and tends to be used as a repressive tool. Although Law 1/2024 has included the clauses of “public interest” and “good faith” as limitations on offenses, the application of these concepts in practice is often inconsistent.

In legal theory, the public interest defense usually serves as a barrier to criminalization, especially when the expression is intended for the sake of public transparency, social oversight, or the disclosure of important information. However, the absence of operational standards in law enforcement has led the police to tend to ignore this doctrine, so that complaints containing criticism of the government are still processed as defamation. LBH Jakarta (2023) noted that of the 19 cases of defamation reports related to criticism of the government in 2023, all were processed before there was any clarification regarding public interest.³⁰ This condition shows that the public interest clause in the revised ITE Law is not yet fully understood by law enforcement officials, so the effectiveness of the revision must be tested through consistent judicial practice.

Another challenge to implementation is the weak capacity for digital forensics at the law enforcement level. Many investigators process defamation cases without a comprehensive study of the context of digital communication, such as metadata, upload history, or algorithmic distribution mechanisms. A study by Fadillah (2022) shows that in 26 defamation cases in Indonesia, more than 70% of the case files only focused on screenshots without analyzing the context of the messages. This is very problematic considering that digital platforms have a unique character: content can be edited, cut, or reposted by other parties. Inaccurate forensic analysis can lead to misidentification of perpetrators or motives, resulting in injustice in the criminal process. Law enforcement under the ITE Law should not only rely on simple technical evidence, but also require adequate and competent digital forensic analysis.

In addition, there are major challenges in law enforcement officials' understanding of the principles of digital communication. Criticism, satire, hyperbole, and opinion are often misunderstood as insults or defamation. In fact, according to international communication standards, opinions cannot be charged as defamation because their truth cannot be verified. The Supreme Court, in its Decision 50 K/Pid.Sus/2018, has actually emphasized that statements in the form of opinions, criticism, or complaints cannot be categorized as defamation unless they contain false factual allegations that are harmful.³¹ However, in practice, many investigators and prosecutors do not distinguish between opinions and allegations, thereby expanding the scope of criminalization inappropriately.

Further analysis shows that the problem of implementing the ITE Law is also related to structural aspects, namely the dependence of officials on complainants' reports without conducting initial filtering of the complaints. As a complaint-based offense,

²⁹ United Nations Human Rights Committee. General Comment No. 34 on Article 19 ICCPR (2011).

³⁰ LBH Jakarta. (2023). *Evaluasi Penegakan UU ITE Tahun 2023*.

³¹ Alya, Alya, Dina Handayani, Dyana Lestari Harefa, Muethia Arifah, and Nia Damai Putri Br Sitorus. "Analisis Dugaan Pencemaran Nama Baik Shandy Purnamasari Oleh Isa Zega: Kajian Linguistik Forensik." *DEIKTIS: Jurnal Pendidikan Bahasa dan Sastra* 5, no. 4 (2025): 4603-4609.



defamation should be rejected from the outset if the report does not meet the normative requirements. However, in practice, many reports are processed immediately without substantive analysis. This shows that the gatekeeping mechanism at the investigator level is not yet functioning properly. Investigators should apply the principles of legality and prudence in assessing whether a report truly contains elements of defamation, rather than simply processing all reports to avoid administrative risks.

From an analytical perspective, the 2024 revision of the ITE Law is a progressive step, but it still fails to resolve the fundamental problem, namely the discrepancy between legal norms and law enforcement practices. There is still a risk that officials will continue to use old norms in interpreting the elements of a crime, especially in the digital context where standards of proof and understanding of context are often low.

Thus, the challenge of implementation is not merely a technical issue, but also a structural and cultural issue within the criminal justice system. The effectiveness of defamation offenses in the ITE Law is largely determined by the quality of interpretation and the competence of law enforcement officials. Without reforms in understanding, digital forensics training, and the application of the principle of prudence, the revision of norms will not result in substantive improvements.

The implementation of the law must be directed towards a more proportional, contextual approach that is in line with democratic values, so that defamation articles are no longer a repressive instrument, but rather an instrument of fair legal protection.

CONCLUSION

An integrated analysis of hoax dissemination and defamation offenses under the ITE Law demonstrates that the fundamental challenges extend beyond the wording of statutory provisions into the operational and interpretive practices of law enforcement in the digital era. The revised Sub-Bab 1 shows that criminal liability for hoax dissemination raises doctrinal complexities relating to mens rea, intent, and foreseeability, particularly because digital misinformation spreads in rapid, algorithm-driven environments where individuals may share unverified content without malicious intent. While both the Criminal Code (Law 1/2023) and the ITE Law (Law 1/2024) recognize intentionality as a cornerstone of criminal responsibility, the ITE Law's conduct-based orientation often leads to the inference of intent solely from the act of digital forwarding, thereby creating risks of quasi-strict liability that conflict with classical criminal law principles. This problem mirrors the broader interpretive challenges found in defamation cases, where ambiguous statutory terms allow prosecutors to stretch criminal provisions beyond their proper scope.

Similar structural weaknesses appear in the enforcement of defamation provisions: subjective assessments of "harm to honor," inadequate differentiation between criticism, opinion, and factual accusation, and a pattern of processing complaints without substantive filtering. Weak digital-forensics capacity and limited understanding of digital communicative dynamics compound the misapplication of both hoax-related offenses and defamation offenses. Although the 2024 amendment to the ITE Law introduced important safeguards such as explicit references to public interest and good faith, their practical impact remains limited if law enforcement authorities continue to rely on broad, literal interpretations of key elements such as "distributing," "transmitting," and "making accessible." Consequently, the potential for excessive criminalization persists in both hoax and defamation cases, demonstrating that normative revisions alone are insufficient to ensure proportionate and rights-respecting enforcement.

Therefore, this study underscores the urgent need to harmonize the ITE Law with the principles of culpability and proportionality embedded in the Criminal Code, while simultaneously reforming law enforcement practice. Clearer statutory definitions, a rigorous public-interest test, heightened evidentiary standards for intent, and the reaffirmation of criminal sanctions as ultimum remedium are essential to prevent the misuse of hoax and defamation provisions as tools of repression. Strengthening digital-forensics competence and enhancing institutional literacy in digital communication are equally necessary to ensure accurate assessment of online conduct. With a more coherent interpretive framework and improved enforcement standards, the legal regime governing hoaxes and defamation in Indonesia can better safeguard individual reputations and public order without undermining democratic freedoms or chilling legitimate expression.

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