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Law from the Perspective of Human Rights Protection in Indonesia

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Abstract

As an instrument for regulating activities in cyberspace, the most fundamental threat to freedom of expression-currently-on the internet in Indonesia comes from Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE). This article analyzes how the 2016 ITE Law still and continues to cause problems that violate the principles of freedom of expression and human rights. The research results show that this law still has the potential to suppress and limit the right to freedom of expression and silence criticism. This law causes the public to remain silent about the existing socio-political conditions for fear of being seen as insulting or defaming their good name and thus being sentenced to prison. Therefore, the need to improve several articles becomes very important. In Indonesia, it is also urgent to establish an independent regulatory body that has the authority to explain and limit the regulation of content on the Internet based on human rights principles.

INTRODUCTION

The internet has become an essential medium for carrying out various human rights activities; combating injustice, and accelerating development and human progress. Ensuring universal access to the internet should therefore be a priority for all states. In addition to access, freedom of expression must also be protected by states on the internet. At the international level, the development of the internet has been rolled out at the 17th Session of the United Nations Human Rights Council (UNHRC) in the report of the special rapporteur, Frank La Rue, on the protection of freedom of opinion and expression on the internet.

Regulations governing activities when accessing the internet are one of the human rights challenges in Indonesia today. The Internet has become an essential part of everyday life in Indonesia. According to Internet World Stats 2020, the number of Internet users in Indonesia as of 31 December 2020 was 196,400,000, covering 71.1% of Indonesia's population, and 7.18% of Asia. As the number of internet users in Indonesia grows, various innovations and problems arise in society. As an innovation, the internet has even become a massive medium used to support public participation in policymaking, and can also bring public services closer to the community. In addition, advocacy efforts carried out by civil society organizations can also be carried out on the internet; to mobilize support for resolving corruption cases and

advocating for women's rights against violence. On the other hand, the protection of human rights when accessing the internet in Indonesia is still very inadequate; Freedom House's Freedom on the Net 2020 report places Indonesia in the 'partially free' category. This indicates that Indonesia is still facing problems related to gaps in access, filtering and blocking/censorship, criminalization of internet users, threats to privacy rights, and freedom to use the internet.

The most real and significant threat to freedom of expression on the internet in Indonesia comes from Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE) which is an instrument for regulating online content on the internet and can also provide legitimacy for criminalizing freedom of expression. The ITE Law is the first law to regulate activities on the Internet in Indonesia and is also often used in conjunction with the Criminal Code against individuals who express critical opinions criticisms of the government, institutions, or companies on the Internet. Indonesia's tendency to create regulations that limit content on the internet even with the potential for criminalization which is not in line with the principle of freedom of expression must be a highlighted issue. Regarding supervision in the online category, apart from the unclear definition and scope of online content, supervision, and control is still the authority of the government. The situation is exacerbated by the absence of detailed rules on monitoring procedures, as well as the absence of clear categories of content that can be restricted, and the reasons for the restrictions.

In connection with this problem, every country, including Indonesia, wants the government to regulate internet governance that guarantees mutual stability and security. In drafting these regulations, the state must fully prioritize principles that prioritize human rights. Consequently, any restrictions on freedom of expression (regulation of content on the internet) must refer to human rights standards that have been guaranteed in various international human rights agreements. Indonesia has revised its ITE Law, but there are still problems, so it is necessary to build a constructive and human rights-based system to protect freedom of expression for internet users. The problem that will be analyzed in this paper is regarding freedom of expression in the Electronic Transactions Law from the perspective of protecting human rights in Indonesia.

METHOD OF RESEARCH

The research method used in this paper is library research with a normative juridical study approach, namely a statutory and conceptual approach. A statutory approach is used to analyze several national and international human rights instruments that guarantee freedom of expression on the Internet. Meanwhile, a conceptual approach is used to formulate the development of understanding and agreement regarding the concept of online freedom of expression at the international level. The data in this research was obtained from material that includes primary and secondary legal sources. The primary legal source is a public and binding legal instrument, namely the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to the 1966 International Covenant on Civil and Political Rights (ICCPR) Law or the International Covenant on Civil and Political Rights, several United Nations resolutions on human rights, and several Indonesian laws and regulations. Secondary legal sources include research results and scientific articles related to freedom of expression at the national and international levels. In terms of analysis, classification is carried out according to its relevance to each research problem.

RESULTS AND DISCUSSION

3.1 Freedom of Expression in Indonesia

a. Protection of Freedom of Expression in Indonesia

Freedom of expression is recognized and guaranteed by the 1945 Constitution. Although laws relating to human rights already existed at that time, human rights activists argued that stronger constitutional protection was needed. The provisions that protect human rights are mostly taken from the UDHR which is then outlined in Chapter XA articles 28A to 28J. Freedom of expression itself is regulated in article 28E (2) where everyone has the right to freedom of belief, to express their thoughts, according to their conscience. Article 28E (3) guarantees that everyone has the right to express opinions, including the right to seek information, receive and disseminate information in various forms, and use available channels. Article 28F states that everyone has the right to communicate and obtain information to develop the personal and social environment, as well as the right to seek, obtain, own, store, process, and convey information using all types of available channels. In line with the Constitution, the 1999 Human Rights Law regulates that everyone has the right to communicate and obtain information needed to develop their personality and social environment and has the right to seek, obtain, possess, store, process, and convey information using all types of means. which are available. This guarantee of protection is strengthened by the Indonesian government's commitment to ratifying the ICCPR.

In its development, the right to freedom of expression which also contains the right to information is recognized in subsequent regulations. These regulations include Law Number 40 of 1999 concerning the Press, Law Number 32 of 2002 concerning Broadcasting, and Law Number 14 of 2008 concerning the Openness of Public Information. However, although the formulation of the normative framework for protecting the right to freedom of expression has progressed, there are weaknesses related to the development of information technology, which is one of the media used to implement the right to freedom of expression. All existing regulations do not explicitly confirm the guarantee of their validity in online domains on the internet. Some of them have the potential to violate the implementation of the right to freedom of expression on the internet.

b. Freedom of Expression and the ITE Law

Freedom of expression (including restrictions) is finally regulated in cyberspace or on the internet through Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) which was adopted on April 21, 2008, which is the first law to regulate cyber law in Indonesia. The use of information technology and electronic transactions is carried out to educate the nation's life as part of the world information society; develop trade and the national economy to improve people's welfare; increase the effectiveness and efficiency of public services; open the widest possible opportunities for everyone to advance their thinking and abilities in the field of optimal and responsible use and utilization; as well as providing security, justice and legal certainty for information technology users and providers.

Initially, the ITE Law was projected to improve the Indonesian economy by regulating all transactions in cyberspace (e-commerce). However, after it was passed, controversy and polemics emerged in the public because of the many restrictions and the resulting criminalization of society. The controversy over the ITE Law arose after the arrest of Prita Mulyasari in 2009 who was charged with violating Article 27 paragraph (3) concerning defamation. Prita Mulyasari's case started with an e-mail containing her complaint about the services at Alam Sutera Omni International Hospital, Tangerang, which was then widely circulated, resulting in a civil and criminal lawsuit by Omni International

Hospital. Indeed, at the Judicial Review level, the Supreme Court acquitted Prita Mulyasari of all charges.

However, the Supreme Court at the cassation level has ordered Prita to pay compensation for provisions categorized as defamation. This case arose because of the weakness of Article 27 (3) regarding the multiple interpretations of the meaning of "electronic transmission", namely that it does not differentiate between private and public communications. Therefore, people who send SMS, e-mail, or other closed forums are interpreted the same as those who write statuses on Twitter, Facebook, and other open social media.

The formula for the offense contained in article 27 (3) is every person; intentionally and without right; distributes and/or sends and/or makes accessible electronic information and/or electronic documents; has allegations of insult and/or defamation. The problem is, that all these terms are not explained in the ITE Law. For example, the terms distributing and transmitting are technical terms that in practice are not the same in the world of online and offline information technology. At the Constitutional Court hearing, issues related to the formulation became a significant debate between the applicant and the government. This formulation repeats the problems in the Criminal Code and various other laws related to defamation. This offense formula model has its consequences where in practice the Court decides differently.

The main problem arises from prohibited actions. The most problematic article is in the "Prohibited Actions" chapter, which is contained in Article 27, Article 28, and Article 29 of the ITE Law. Based on these three articles, content that is prohibited from circulating on the internet includes, among others:

1) Content that is considered to violate decency;
2) Content containing gambling content;
3) Content that contains elements of insult and/or defamation;
4) Content that contains elements of blackmail and/or threats;
5) Content that spreads fake news, causing consumer harm;
6) Hateful content based on racism; And
7) Content that contains threats of violence.

From these articles, internet content has become a matter of debate among the affected victims of criminalization, several citizens who use the internet both to disseminate information and produce content (visual, audio, video, or textual). In this context, the law has the potential to silence the right to freedom of expression and criminalize legitimate expressions such as criticism. Indeed, expressions such as hate speech must be prohibited. However, various expressions should not be criminalized. In the case of insults or defamation, although the aim is to protect one's honor, from this problem, almost every year the UN Human Rights Commission in its resolutions on freedom of expression calls out for concern about the ongoing abuse of legal provisions on defamation and defamation. In addition, 3 international commissions were established with a mandate to promote freedom of expression, namely the UN Special Rapporteur, the OSCE Representative on Freedom of the Media, and the OAS Special Rapporteur on Freedom of Expression. Additionally, in December 2002, an important statement was also issued that criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, if necessary, with appropriate civil defamation laws. The problem is, that criminal defamation is often used to hinder discussion of government policies and political debates, reporting on human rights situations, government activities, government corruption, election campaigns, peaceful demonstrations, or various political activities.

However, in the opinion of the UN Special Rapporteur, these activities cannot be subject to any restrictions at all.

Several people have been criminalized since the enactment of the ITE Law for content they published on the internet. In practice, the application of criminal sanctions is mostly based on the use of the ITE Law combined with the Criminal Code which has claimed several lives. The Southeast Asian Freedom of Expression Network (SafeNet) noted that since it was first implemented in 2008 and until 31 October 2018, the ITE Law had claimed around 381 victims. Most of the victims were charged specifically under articles 27(3) and 28(2). It is also known from SafeNet that from 2008 to the end of June 2018, 49.72% of cases used Article 27 (3) as the basis for reporting content. This article was most widely used in 2016 with 54 cases, while in 2017 a total of 32 cases were reported. Usually, the ITE Law targets reporting by those who have power, including state and government officials. The pattern of criminal punishment in cases of the ITE Law also varies. These include revenge, bartering, silent criticism, shock therapy, and group abuse. Apart from the Prita case in 2008, several examples of cases that emerged include Alexander An in 2012, Florence Sihombing in 2014, Nuril in 2015, the case of the former Governor of Jakarta, Basuki "Ahok" Tjahja Purnama in 2016, and cases that were the subject of prohibited actions based on ITE Law and Criminal Code.

It is also important to consider the proposal to abolish criminal defamation provisions (decriminalization). Efforts to combat criminal sanctions for online defamation have been pursued through constitutional or judicial review of Article 27, paragraph (3) at the Constitutional Court in Indonesia. The Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE) has undergone seven reviews, including Constitutional Court Decision Number 50/PUU-VI/2008, Decision Number 2/PUU-VII/2009, Decision No.5/PUU-VIII/2010, Decree No. 52/PUU-XI/2013, Decision no. 1/PUU-XIII/2015, Decree no. 20/PUU-XIV/2016, and Decree No. 74/PUU-XIV/2016. However, the Constitutional Court granted only two of these cases, while the others were rejected or withdrawn. The Court declined to declare the provision unconstitutional and not binding.

In its legal reasoning, the Court determined that the criminal defamation provisions set forth in the offline Criminal Code cannot apply to defamation offenses committed online, as it is impossible to satisfy the elements of the provisions of the Criminal Code in the online space. The Constitutional Court decided that articles 27 (3) and 45 (1) c were constitutional because they were in accordance with democratic values, human rights, and the principles of the rule of law.

In further developments, in 2016 there was a process of revising the 2008 ITE Law into Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning ITE. This revision is considered crucial considering the high number of victims being sued for alleged defamation. However, the revision of several articles of the ITE Law does not necessarily solve problems related to freedom of opinion and expression on the Internet. Amendments to several articles do not touch the main issues and needs for a law regulating the internet. There are at least 3 problems

First, to avoid multiple interpretations of the provisions for insult and/or defamation in Article 27 paragraph (3), the ITE Law adds several explanations. There is an additional explanation for the terms of distribution, delivery, and/or accessibility of electronic information. It is also emphasized that this provision is a complaint offense and not a general offense. This means that, according to Article 72 of the Criminal Code, this violation can only be complained about by the person who is the victim. Apart from that, the criminal element in these provisions refers to the provisions for defamation and slander regulated in

the Criminal Code (KUHP). This means that it must fulfill elements in public and is an interpersonal problem. In Article 310 of the Criminal Code paragraph (1) 4 important elements must be fulfilled, namely (1) intentionally, (2) attacking someone's honor or good name, (3) by accusing something, (4) for the public interest, then these four elements must be proven at trial. Often cases of defamation that fall into the realm of crime are not carried out openly for the public to know.

Second, reducing sanctions. For prison sanctions, there is a reduction in sanctions from a maximum of 6 years to a maximum of 4 years and/or a fine of a maximum of IDR 1 billion to a maximum of IDR 750 million. Meanwhile, regarding the threat of criminal acts of violence in Article 29, there is a reduction in the law from a maximum of 12 years to a maximum of 4 years and/or a fine of a maximum of IDR 2 billion to a maximum of IDR 750 million. At first glance, the reduction in sentences provides a breath of fresh air for society. However, problems in criminal regulations have not been able to reduce violations of freedom of expression, especially the criminalization of legitimate expression. This means that there are no substantive changes between the old law and the new law. Article 27 paragraph (3) continues to limit freedom of opinion and expression for citizens. The government's revision only implies that suspects who violate Article 27 (3) will not be detained because they are below the threshold for detention requirements, namely the threat of a 5-year prison sentence.

Third, the ITE Law strengthens the Government's role in protecting from all types of interference due to misuse of information and electronic transactions by including additional authorities. In this case, the Government is obliged to prevent the dissemination of electronic information that prohibits content and has the authority to stop access and/or order electronic system operators to stop access to electronic information that has content that violates the law. This means that the article gives the government the authority to limit access or distribution of illegal content. This action is based on the government's efforts to protect the public interest from all types of interference resulting from misuse of information and electronic transactions. Therefore, the government is required to prevent the dissemination of electronic information that is prohibited by.

If it is related to the general explanation of the ITE Law, the implementation of this Law is a synergy of three approaches, namely the legal approach, the technological approach, and the socio-cultural-ethical approach. One of the considerations is directed at the need to pay attention to the religious and socio-cultural values of Indonesian society in the use of information technology. This context is interesting because it is the basis for considerations that originate from several controversial articles contained in the ITE Law, especially those relating to internet content.

c. Regulations on Online Content

Regarding government authority, the revised ITE Law model shows a state-centric pattern (direct regulation), which positions the government as the sole authority to regulate the Internet, including in the formation of regulations, supervision, and control. This pattern is almost the same as other laws that regulate online content, such as Law Number 44 of 2008 concerning Pornography which gives the government (including regional governments) the authority to block pornographic content on the internet, as well as Law Number 28 of 2014 concerning Copyright which gives the government (KOMINFO) the authority to block pages that violate copyright, after a request from the Ministry in charge of intellectual property rights (KEMENKUMHAM).

Meanwhile, other related laws, such as the Telecommunications Law, Law Number 40 of 1999 concerning the Press, Law Number 32 of 2002 concerning Broadcasting, Law Number 14 of 2008 concerning Openness of Public Information, and Law Number 33 of 2009 concerning Film mandate the formation of an independent body that functions as a regulator, supervisor, and controller. For example, the Press Law has the Press Council as an independent supervisor, the Broadcasting Law has an independent supervisor from the Indonesian Broadcasting Commission, the Public Information Openness Law has a dispute resolution mechanism through the Information Commission, and the Law on Films has a Film Censorship Institute.

Based on this, several parties have suggested to the government to use a co-regulatory approach to regulate internet content management. Management can be carried out through an independent body which can be formed through a Government Regulation and is technically regulated in a Presidential Regulation. That way, the government does not directly intervene in internet governance, such as blocking content or limiting access. Internet governance arrangements that involve multiple stakeholders are in line with the mandate of the ICCPR. For example, Article 19(3) of the ICCPR mandates restrictions to be made through national laws or regulations that are officially recognized and established by legislators. Then it has a legitimate purpose, such as national security, public order, public health/morals, as well as protecting the rights and good name of others. Restrictions should be made when necessary. Finally, the restriction procedure should be clear, transparent, and accountable, and can be tested in court. Therefore, the government needs to establish an independent body that regulates Internet governance. The body has strong authority so that its decisions can be challenged in the State Administrative Court. The existence of an independent body will clarify the regulation of internet content because the procedure is clear. Those who object to restricted content can also have the right to sue in court.

The paradigm that is always oriented towards managing content censorship (filtering) on the internet eventually colors the conversation rather than highlighting the aspects of internet content management itself which are much more comprehensive. This trend arises because some content management policies on the internet initiated by the government illustrate the nature of public policy that is too concerned with censorship as a form of restriction, rather than tidying up important elements that support the governance ecosystem itself, such as physical infrastructure, information access policies, and so on. As a result, the current ecosystem of Internet content management is increasingly characterized by debates about content that is banned and content that is not banned. While this topic is also important and is the substance of what we call internet content management, the real purpose of why content governance should be included in the public policymaking agenda is the need to build the information architecture that has now migrated to Indonesia in the digital sphere.

d. Protection of Freedom of Expression Through Human Rights

Freedom of opinion and freedom of expression are also fundamental rights that must be recognized and guaranteed in a democratic legal state that upholds human rights. This freedom is one of the fundamental characteristics for individuals or humans (state of nature) in the context of their development. In other words, freedom of expression is absolute because it cannot be separated from the dignity of the individual or the value of humanity itself. Freedom of opinion and expression is a necessity in every democratic society. This freedom has led to a flow of thoughts and knowledge that is very useful for society.

Despite UNHRC resolutions, emphasizing the need to protect freedom of expression online, international law has long held that the right to freedom of expression is a mandatory subject. This freedom of expression was first set out internationally in the 1948 Universal Declaration of Human Rights (UDHR) which states that "Everyone has the right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".This means that everyone has the right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference, and to seek, receive, and impart information and ideas through any media regardless of frontiers.

These provisions demonstrate international recognition that freedom of expression and the freedom to seek, receive, and impart information and ideas through any media, is one of the human rights standards widely recognized in international forums. The UDHR itself is not legally binding because it is in the form of a declaration, not an international treaty. Although the principles contained in the UDHR are legally binding, the United Nations (UN) considers it necessary to find a legal basis that can bind all nations or countries in the world, namely forming a legally binding treaty. After ratification about 18 (eighteen) years after the acceptance of the UDHR, in 1966 the UN unanimously approved the International Covenant on Civil and Political Rights (ICCPR) which includes freedom of expression. In Article 19 of the ICCPR, "Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, or print, in the form of art, or through any other media of his choice."

The above rules on freedom of expression on the internet guarantee that everyone has the right to such freedom in whatever media he or she covers (including online) as he or she has the right to expression offline. In July 2011, the United Nations Human Rights Committee (HR Committee), the body that monitors the ICCPR international treaties, issued General Comment No. 34 related to Article 19.

The General Comment is an authoritative interpretation of the minimum standards guaranteed by Article 19. It is considered a progressive clarification of international law on freedom of expression and access to information, which is particularly instructive on several issues concerning freedom of expression on the internet. The General Comment states that Article 19 "Protects all forms of expression and how they are spread, including all forms of electronic and internet-based expression modes." As applies offline, the protection of freedom of expression must also apply online.

Concerning freedom of expression and regulations related to content, any restrictions must meet strict criteria determined by international and regional human rights rules. Even though the right to freedom of expression is a fundamental right, this freedom can still be limited—under certain conditions. The exercise of rights creates special obligations and responsibilities. Restrictions can only be made by the law and as long as necessary to respect the rights or good name of others; and protect national security, public order, and public health or morals. Therefore, any restrictions on the right to freedom of expression must first pass a three-part test. The test, which was confirmed by the HR Committee, requires that any restrictions must be specified by law; have a legitimate purpose; and comply with strict tests related to the principles of need and proportionality. The explanation is as follows:

1) First, these restrictions must be regulated by law, which is clear and accessible to everyone (the principles of predictability and transparency). This means that restrictions on freedom of expression must be determined by national law. However, laws that limit these rights must not be arbitrary and without reason. In addition, states must provide adequate protection and remedies against the establishment or application of arbitrary restrictions on these rights. Laws must be accessible, unambiguous, and carefully and comprehensively crafted, allowing each individual to see whether an action is unlawful or not.
2) Second, restrictions must fulfill one of the objectives set out in Article 19 (3) ICCPR, namely to protect the rights and reputation of other people; and to protect national security public order, or public health or morals. This is what is called the principle of legitimacy. This means that restrictions must aim to protect legitimate interests and are [under the circumstances] more important than freedom itself. The list of interests in Article 19 (3) is exclusive, meaning that only interests included in the list can be protected as reasons for limiting freedom of expression. International courts have rarely overturned any restrictions based on this testing stage, and jurisprudence on the subject is underdeveloped.
3) Third, it must be proven that restrictions are important, and minimum means of restrictions are needed to achieve the main goal (the principles of importance and balance/proportionality). Restrictions on freedom of expression must be necessary to protect the interests identified in the second stage of testing. In contrast to the previous two tests, this stage of testing presents a fairly high standard of proof that must be met by a State seeking to justify a restriction.

Based on the three-part test above, the interpretation of various restrictive provisions must be based on the true intent of the formulation of the restrictive provisions. A more detailed explanation can refer to various official formulations of permitted restrictions, for example by referring to the HR Committee's General Comment, referring to international human rights principles—for example, the Siracusa principle, Johannesburg, and others. Guidelines can also be based on decisions from various regional human rights courts, for example, the European Court of Human Rights or the Inter-American Court of Human Rights.

The same principles and limitations also apply to any form of electronic communication or expression distributed on the Internet. The HR Committee stated in General Comment No. 34, that any restrictions on the operation of websites, blogs, or internet-based, electronic, and other information systems, including systems that support such communications, such as internet service providers or search engines, are only permitted as long as they are by paragraph 3. Generally permitted restrictions must be content specific; general prohibition on the operation of sites and systems that are not following paragraph 3. What is also not following paragraph 3 is prohibiting sites or information dissemination systems from publishing material solely on the basis that the information is critical of the government or the socio-political system run by the government.

These principles were approved by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, in a report dated 10 August 2011. In the report, the UN Special Rapporteur identified three types of expression. for online setup purposes, i.e.:

1) Expression that constitutes a violation of international law and can be criminalized;

2) Expression that cannot be criminalized but may justify civil restrictions and prosecution; And
3) Expressions that do not carry criminal or civil sanctions, but still raise concerns in terms of tolerance, politeness, and respect for other parties.

Specifically, the Special Rapporteur clarified that the excluded types of expression that states must prohibit under international law are child pornography, the spread of hatred, public incitement to genocide, and advocacy that could lead to incitement to discrimination, violence, or hostility. The four types of expression tested above fall into the first category of expression which constitutes a violation under international criminal law and/or international human rights law and which must be prohibited by states at the domestic level. However, since there are restrictions on the right to freedom of expression, they must also comply with the three-part test.

Additionally, laws criminalizing this type of expression must be fully appropriate and there must be effective protection against harassment, including oversight and review by independent and impartial regulatory bodies or courts. The determination of what content to block must be made by competent authorities or judicial bodies that are independent of political, commercial, and unreasonable influences to ensure that blocking is not used as a means of censorship. Furthermore, the Special Rapporteur emphasizes that as set out in Human Rights Council resolution 12/16 (paragraph 5(p)(i), the following types of expression may not be subject to restrictions, including discussions of government policies and political debates; reporting on human rights people, government activities, and corruption in government; engaging in election campaigns, peaceful demonstrations, or political activities, including for peace or democracy; and expressions of opinion and dissent, religion, or belief, including those of minority or vulnerable groups.

CONCLUSION

As a consequence of signing the ICCPR, Indonesia is obliged to ensure that the laws, policies, and practices implemented in regulating electronic and internet-based modes of freedom of expression and their content comply with Article 19 of the ICCPR, as determined by the Human Rights Committee. In addition, Indonesia is one of 82 countries that supports the historic HRC resolution on the promotion, protection, and enjoyment of human rights on the Internet.

Until now, the existence of the ITE Law has always been associated with freedom of expression. Several provisions in the ITE Law, especially Article 27 (3) which regulates defamation, are considered to be contrary to the essence of freedom of expression guaranteed in Article 28 of the 1945 Constitution. In general, both before and after the revision, Article 27 (3) of the ITE Law, is often seen as the reason why people choose to remain silent about the socio-political conditions that exist in society for fear of being seen as insulting or defaming their good name. The law is often used to suppress freedom of expression and silence criticism. Therefore, it is necessary to improve the articles that are considered crucial which cause multiple interpretations and make victims of punishment for anyone suspected of committing defamation. For this reason, there are several proposed recommendations so that the provisions in the ITE Law can be in line with international human rights principles. In the criminal context, it is important to review all provisions governing criminal law, to then remove all duplicate criminal acts from the ITE Law that have been regulated in the Criminal Code.

Regarding the practice of blocking internet content, Indonesia needs to specifically provide space for content regulation that takes into account three elements of testing: (i) the act of blocking content must be regulated by clear laws and can be accessed by everyone (the principles of predictability and transparency); (ii) the action must fulfill one of the objectives set out in Article 19(3) of the ICCPR, namely to protect the rights and reputation of others; national security, or public order, or public health or morals (the principle of legitimacy); and (iii) actions must be able to prove their urgency to achieve the main goal (the principles of importance and proportionality). In terms of procedures, because there is no uniformity in procedures for handling offline and online content, Indonesia must form an independent regulatory body (aside from the government) that has the authority to clarify internet content regulations.

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