

The Urgency of Revision of the Rubber Article in the ITE Law No. 19 of 2016

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ABSTRACT

The development of information and communication technology has changed the behavior and lifestyle patterns of society as a whole, transcending the world and bringing changes in various fields. Information technology not only contributes to human well-being, progress and advancement of civilization, but can also be an effective means of breaking the law. The purpose of the enactment of the ITE Law is also to ensure the recognition and respect for the rights and freedoms of others in accordance with existing legal corridors. Unfortunately, the ITE Law has several articles that cause multiple interpretations in society, or better known as the rubber article. The purpose of this study is to reveal the urgency of the revision of UU ITE no. 19 of 2016. The method used in this research is normative and legal, using the technique of collecting library research materials. In summary, amendments to the ITE Law are very much needed to prevent incidents involving multiple interpretation articles. The provisions of the ITE Law which can be interpreted many times have negative impacts such as limited freedom of opinion in expressing opinions and criticism, lack of legal certainty in supporting the law, and the possibility of being misused and also the possibility of excessive crimes.

Keywords: *Urgency of Revision; Article Rubber; ITE Law No. 19 Year 2016*

1. INTRODUCTION

Indonesia, as a developing country, continues to advance in various sectors, including the economy, law, education, and technology. One of the most significant transformations in recent decades is the rapid growth of digital technology and the internet. The internet has revolutionized communication, commerce, and access to information, enabling unprecedented global connectivity [1]. However, alongside its positive impacts, the internet also poses significant legal and social challenges, including cyber threats, misinformation, defamation, and violations of personal data privacy [2].

To regulate cyberspace activities, Indonesia enacted Law No. 11 of 2008 concerning Information and Electronic Transactions (ITE Law), which was later revised by Law No. 19 of 2016. The ITE Law aims to provide legal certainty for digital interactions and protect the public from cybercrimes. However, several articles within the law, particularly those related to defamation and electronic transactions, have sparked controversy due to their ambiguous wording and broad interpretation, leading to what is commonly referred to as the 'rubber articles' (pasal karet) [3]. These articles have raised concerns about their potential misuse, particularly in limiting freedom of speech, enabling selective law enforcement, and facilitating criminalization of dissenting opinions [4].

The urgent need for a revision of these articles stems from their impact on democratic values and legal certainty. The

ambiguity in their interpretation has resulted in numerous cases where individuals face legal repercussions for expressing opinions online [5]. Moreover, the law has been criticized for disproportionately targeting journalists, activists, and ordinary citizens, leading to a chilling effect on freedom of expression [6]. In contrast, many developed countries have adopted more balanced legal frameworks that uphold both cybersecurity and human rights [7]. Therefore, a comprehensive revision of the ITE Law is necessary to align it with international legal standards, ensuring that it safeguards digital rights while effectively addressing cybercrimes [8].

The primary objective of this study is to analyze the legal implications of the rubber articles in the ITE Law and propose necessary amendments to prevent their misuse. By examining case studies, comparative legal perspectives, and expert opinions, this research aims to provide a policy recommendation that ensures legal clarity and upholds fundamental rights in Indonesia's digital space [9]. The discussion will also explore potential alternatives for a more precise and proportional regulation of cyber activities without compromising democratic principles [10].

2. RESEARCH SIGNIFICANCE

Explain the importance of the research you are conducting and how the results of the research can benefit society, science, or a particular field.

da explaining why the topic under study is important to study and how the research can make a significant

contribution in solving problems or increasing understanding of a topic. Authors can also identify deficiencies or weaknesses in previous research and explain how their research will address these issues. So that it can help readers understand why the research is important and feel compelled to read the entire article or the results of your research.

3. RESEARCH METHODS

This investigation uses normative legal methods. Normative legal research is research that uses secondary legal data. Search for Internet materials using primary legal materials in library research and analytical data collection methods. And the method of analysis using descriptive analysis.

4. RESULTS AND DISCUSSION

4.1 Urgency of Revision

The revision of the Electronic Information and Transaction Law (UU ITE) requested by President Jokowi has given the public a breath of fresh air. Where the revision of rubber articles contained in the ITE Law is considered unfair and very troubling for the public, especially users of the internet or electronic media. Every day the people of Indonesia and even the world use electronic media as part of life. In modern times, electronic media is a basic need for most people, from waking up to sleeping again the use of electronic media greatly affects human life.

Apart from the role of electronic media which is a primary human need, there are very basic and complex problems in society, is criticizing or commenting on the government or groups of people who have different views is an insult or defamation? Law No. 19 of 2016 concerning Information and Electronic Transactions is the basis and Limitation for electronic media users so that they are wiser in using electronic media [11], [12].

The issuance of this Law is expected to be able to accommodate every behavior and ethics of society in the use of electronic media. The making of the law has a good purpose. However, in reality there is often injustice in the implementation of these laws. Although not all articles in the ITE Law are problematic. Law No. 19 of 2016 concerning Information and Electronic Transactions Article 27 paragraph 3 states that "Every person intentionally and without rights distributes and/or transacts and/or makes accessible electronic information and/or electronic documents that contain insults and/or defamation [13].

The content of the article in the ITE Law is a problem for most Indonesian people. This article is a terrible specter that ambushes at any time without looking at and listening to what is actually intended to convey a truth.

Social Media is an online media that is used by each other where users can easily participate, interact, share and create content for blogs, social networks, wikis, forums and virtual worlds without being limited by space and time. Social media users have grown rapidly from year to year. Social media is a stage for anyone to express what is being experienced through news or posts. Because of that, social media has become a wilderness where anyone can enter and

cut down whatever is in it. Because social media is not a diary that not everyone can enter and intervene in what is being experienced. The consequence of using social media is that personal information can be accessed and can even become material for chat, because social media is public. Therefore, problems often occur that start with a post on social media.

From this explanation, we can underline that social media is a public domain that can be accessed and can even trigger a problem. Because, anyone may have an opinion to express a different view of a problem. Freedom of opinion is one of the elements of democracy that must be protected and freedom of opinion in social media must also be protected because social media is a public domain where anyone is allowed to express an opinion even if it is critical. This criticism has an element, namely intention. Good or bad intentions can only be assessed by the individual users, because intentions cannot be materialized.

Article 27 paragraph 3 of the ITE Law is in the public spotlight, especially electronic media users. As a result, people's participation in voicing their opinions becomes hampered and afraid of the existence of this article. Freedom of opinion is protected in the 1945 Constitution article 28 letter i "The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right to not be prosecuted on the basis of retroactively applicable law is a human right that cannot be reduced under any circumstances"[14].

Freedom of opinion based on the aforementioned article is the basis for the community to voice their opinions in public or in electronic media. This shows that democracy in a country exists and functions for a balance between society and government or fellow users of electronic media. Freedom of opinion takes the form of criticism and even satire, so that what is voiced is heard and can be corrected immediately. However, lately criticism has become a misinterpretation which is considered as defamation because it is directed at someone who aims to undermine or attack someone's honor.

Criticism and defamation are very different, criticism is an expression or statement with different views according to constructive facts, while defamation has elements of dropping or attacking someone's honor by way of slander or facts that have not yet happened. There is defamation if the victim complains to the authorities, because defamation is a complaint offense according to the Criminal Code. The interpretation of article 27 paragraph 3 of the ITE Law is legally blurred. Because, it does not specifically mention which elements so that the act violates Article 27 paragraph 3 and the standard for a person can be subject to Article 27 paragraph 3. Therefore, it is necessary to have a revision regarding this article so that it is clear and does not become a frightening specter for the public to convey or express opinions in public and electronic media.

The President submitted and asked the DPR to submit it to the Priority National Legislation Program (Prolegnas) to revise the ITE Law in relation to several articles that the public found very troubling. The nomination for the

presidency is a pressure from the public considering the importance of freedom of opinion which has become the principle of democracy. However, referring to the decision of the DPR and the Government represented by the Ministry of Law and Human Rights, the agenda for revising the ITE Law was not included in the priority Prolegnas for 2021 and prioritized discussions related to the RKUHP. This means that the government's intervention and seriousness in revising the article is questionable. This is because these articles are ambiguous according to law and are more in favor of those who have position and power.

If the government and DPR are serious about following up on this pressure, the government and the DPR can regulate provisions for revoking offenses in the ITE Law after it is revised later and moving it into the RKUHP or the new KUHP. This is a very simple solution that the Government can implement without sacrificing the urgency of revising the ITE Law, bearing in mind that victims of the ITE Law continue to fall and the president has made promises and must be kept. Supposedly, this complex problem is a common concern and we must be aware of and fix it regarding the wise use of electronic media. In addition to protecting freedom of expression so that there are no multiple interpretations which result in misunderstandings between the government and the public and fellow electronic media users. Thus a harmonious democratic state will be created according to the fifth precept, namely social justice for all Indonesian people.

4.2 Rubber Article

Article rubber is the designation of an article or law that is considered to have no clear benchmarks. Since it was enacted during the leadership era of President Susilo Bambang Yudhoyono (SBY) on April 21 2008, Law Number 19 of 2016 concerning Information and Electronic Transactions (ITE) has become the main weapon for convicting someone. It is considered that the ITE Law Number 19 has not been able to distinguish between the victims and the perpetrators of violations of the law. What exactly is it that makes so many people entangled in ITE cases? First, people already know the ITE Law, but cannot translate it correctly. Second, the government is not optimal in providing literacy and socialization of the ITE Law.

The large number of cases was apparently influenced by the Rubber Articles which allow each individual or group to report certain parties. The Rubber Articles include Article 27, Article 28, and Article 29 of the ITE Law. In Article 27 of the ITE Law, a constitutional law expert at Alauddin State Islamic University Makassar, Dr. Syamsuddin Radjab SH MH stated that the existence of Article 27 in the ITE Law had deviated from the original purpose of establishing the ITE Law. This article is considered a Rubber Article because everyone can sign in to report, so now there is one profession, namely reporting. Article 27 of the ITE Law is even more severe in punishment compared to the Criminal Code (KUHP) [15].

From various criticisms of the ITE Law, it appears that this Law in several respects is still considered to be lacking in guaranteeing legal certainty. Several formulations are multi-interpretative (rubber) so that they can interfere with

freedom of expression (opinion, criticism) in the democratic era via Facebook, Twitter, Youtube, messengers (SMS, Whatsapp). In addition, the ITE Law tends to trigger disputes among members of the public who easily report it to law enforcement and adds to the source of conflict between authorities and community members. Several articles are considered to be duplication of the Criminal Code rules. Furthermore, there is an impression that the ITE Law on the one hand contains elements of protection, but also contains threats and also causes unrest [16], [17].

4.3 ITE Law No. 19 of 2016

Explanation of RI Law No. 19 of 2016 concerning Amendments to Law no. 11 of 2008 concerning ITE explains that freedom of expression and freedom of opinion as well as the right to obtain information through the use and utilization of Information and Communication Technology is intended to advance public welfare and educate the nation's life as well as provide a sense of security, justice and legal certainty for users and System Operators Electronic [18], [19].

In the life of society, nation and state, the rights and freedoms through the use and utilization of Information Technology are carried out taking into account the limitations stipulated by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill the demands justice in accordance with moral considerations, religious values, security, and public order in a democratic society.

Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) is the first law in the field of Information Technology and Electronic Transactions as a much-needed product of legislation and has become a pioneer laying the foundation for regulations in the field of utilization of Information Technology and Electronic Transactions. However, in reality, the implementation journey of the ITE Law has encountered problems. First, this law has been filed for judicial review several times at the Constitutional Court with Constitutional Court Decisions Number 50/PUU-VI/2008, Number 2/PUU-VII/2009, Number 5/PUUVIII/2010, and Number 20/PUU-XIV/2016.

Based on the Decision of the Constitutional Court Number 50/PUU-VI/2008 and Number 2/PUU-VII/2009, criminal acts of insult and defamation in the field of Electronic Information and Electronic Transactions are not solely as general crimes, but as complaint offenses. The affirmation of complaint offenses is meant to conform with the principles of legal certainty and the sense of justice in society. Based on the Ruling of the Constitutional Court Number 5/PUU-VIII/2010, the Constitutional Court is of the opinion that wiretapping activities and authorities are very sensitive matters because on the one hand they are a limitation of human rights, but on the other hand they have aspects of legal importance. Therefore, regulations concerning the legality of wiretapping must be properly formulated and formulated in accordance with the 1945 Constitution of the Republic of Indonesia. In addition, the Court is of the opinion that wiretapping is a violation of

human rights as emphasized in Article 28J paragraph (2) The 1945 Constitution of the Republic of Indonesia, it is very reasonable and appropriate that if the state wants to violate the citizen's right to privacy, the state must deviate from it in the form of a law and not in the form of a government regulation.

In addition, based on the Decision of the Constitutional Court Number 20/PUU-XIV/2016, the Constitutional Court is of the opinion that in order to prevent different interpretations of Article 5 paragraph (1) and paragraph (2) of the ITE Law, the Court emphasized that every interception must be carried out legally, especially in terms of law enforcement. Therefore, the Court in its ruling added the word or phrase "in particular" to the phrase "Electronic Information and/or Electronic Documents". In order to avoid interpretation that the decision will narrow the meaning or meaning contained in Article 5 paragraph (1) and paragraph (2) of the ITE Law, to provide legal certainty the existence of Electronic Information and/or Electronic Documents as evidence needs to be reaffirmed in the Elucidation Article 5 UU ITE. Second, the provisions regarding searches, seizures, arrests, and detentions regulated in the ITE Law raise problems for investigators because criminal acts in the field of Information Technology and Electronic Transactions are so fast and perpetrators can easily obscure acts or evidence of crime. Third, the virtuality characteristics of cyber space allow illegal content such as Information and/or Electronic Documents which have content that violates decency, gambling, insults or defamation, extortion and/or threats, dissemination of fake and misleading news resulting in consumer losses in Electronic Transactions, as well as acts of spreading hatred or hostility based on ethnicity, religion, race, and class, and sending threats of violence or intimidation that are personally directed can be accessed, distributed, transmitted, copied, stored for re-dissemination from anywhere and anytime. In order to protect the public interest from all kinds of disturbances as a result of misuse of Electronic Information and Electronic Transactions, it is necessary to affirm the Government's role in preventing the dissemination of illegal content by taking action to terminate access to Electronic Information and/or Electronic Documents that have content that violates the law so that they cannot be accessed. from the jurisdiction of Indonesia and authority is required for investigators to request information contained in Electronic System Operators for the purposes of enforcing criminal law in the field of Information Technology and Electronic Transactions.

Fourth, the use of any information through media or electronic systems involving a person's personal data must be carried out with the consent of the person concerned. For this reason, it is necessary to guarantee the fulfillment of personal self-protection by requiring each Electronic System Operator to delete irrelevant Electronic Information and/or Electronic Documents under their control at the request of the person concerned based on a court order.

Based on these considerations, it is necessary to enact a Law on Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions which reaffirms

the provisions for the existence of Electronic Information and/or Electronic Documents in the Elucidation of Article 5, adding provisions for the obligation to delete Electronic Information and/or Electronic Documents irrelevant in Article 26, changing the provisions of Article 31 paragraph (4) regarding delegating the preparation of interception procedures to law, increasing the role of the Government in preventing the dissemination and use of Electronic Information and/or Electronic Documents that have content prohibited in Article 40, amending several provisions regarding investigations related to alleged criminal acts in the field of Information Technology and Electronic Transactions in Article 43, and adding explanations to Article 27 paragraph (1), paragraph (3), and paragraph (4) so that they are more harmonious with the legal system regulated material punishment in Indonesia.

4.4 The urgency of revising the Article on Rubber in the ITE Law No. 19 of 2016

The ITE Law is a law that regulates information and electronic transactions that play a role in the world of commerce and growth in the national economic sector to create a prosperous society. Therefore, the government must provide support related to growth in the field of information technology through legal arrangements so that people feel safe in using information technology and as an effort to prevent misuse of technology that is growing, the government urges the public to stick to existing norms. The ITE Law is a regulation that applies to all people who carry out legal actions as stated in the regulation. Materials from the ITE Law are generally divided into two types, including: First, regulations concerning information and electronic transactions. Second, regulations regarding what actions are prohibited in the law [21], [22].

In terms of freedom to express opinions through electronic media, the Indonesian government has presented Law No. 19 of 2016 amendments to Law no. 11 of 2008 concerning Information and Electronic Transactions which raises the pros and cons in society regarding this regulation. Because some people think that the existence of the law will provide restrictions on freedom of expression. With the birth of various regulations that guarantee the protection of human rights, especially in terms of freedom of opinion because the existence of these regulations on the one hand guarantees but on the other hand also provides limitations in voicing opinions in Indonesia. The existence of these regulations is a form of turmoil that occurs in society because the era continues to develop which then demands the government to make appropriate policies regarding freedom of expression in the community.

The problems that are currently happening can then be used as a benchmark in terms of spreading fake news (hoaxes) or which are part of criticism and defamation. Defamation related to information in the form of an opinion which is then reported by one party regarding the other party which tends to contain bad things from the other party, but the impact caused by this opinion is very broad and then it is also felt by electronic media users consisting of various groups, so that the readers become influenced whether they agree with the opinion or those who oppose it. That's why

there can be a shift in meaning due to the perspective of each subject, whether it's the one who wrote the opinion statement or the one who obtained the information, often has a difference [20].

5. CONCLUSIONS

Communicating online can be done more easily and cheaply than face-to-face. Information technology in addition to contributing to the improvement of human welfare, progress and civilization, can also create an effective means of unlawful acts. The purpose of establishing the ITE Law is also carried out to better guarantee recognition and respect for the rights and freedoms of others in accordance with existing legal corridors. The revision of the ITE Law is urgently needed to prevent the development of cases with multiple interpretations of articles. This is considering that the multiple interpretations of the ITE Law have had negative impacts, such as the limited right to freedom of opinion in giving opinions and criticism, lack of guaranteed legal certainty in upholding justice, can be misused, and has the potential for over-criminalization.

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7. AUTHOR CONTRIBUTIONS

- Conceptualization: Widaningsih
- Data curation: Widaningsih
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