

Criticising State Institutions in Indonesia's Digital Sphere After Constitutional Court Decision 105/PUU-XXII/2024

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Article Info

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History:

Submitted: 16-12-2025

Revised: 31-08-2026

Accepted: 29-10-2026

Keyword:

Chilling Effect; Constitutional Court; Criminal Defamation; Freedom of Expression; State Institutions.



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Abstract

Freedom of expression is guaranteed by Article 28E(3) of the 1945 Constitution of the Republic of Indonesia, yet expression aimed at state institutions in the digital sphere remains exposed to the criminal provisions of the Electronic Information and Transactions (EIT) Law. This article asks how Indonesian positive law delimits that freedom, and what Constitutional Court Decision 105/PUU-XXII/2024 implies for the handling of digital criticism. The September 2025 episode involving content creator Ferry Irwandi and officers of the Indonesian National Armed Forces is used as factual context, not as an adjudicated case. The study is normative legal research combining statute, case, and conceptual approaches, with grammatical, systematic, and constitutional interpretation. It finds that the Court created no general immunity for criticism. It narrowed the class of persons who may stand as victims under Article 27A, excluding government bodies, institutions, corporations, professions, and offices, and it confined the element "a matter" to conduct degrading personal honour. Expression may still be unlawful under other offences when every element is met. Institutional standing, rather than the critical content of speech as such, is therefore the decisive variable.

How to cite (Chicago Style):

Pinky Roseva Santoso, Robby Cahya Illahi, Faiqking Zaki Rizqullah Ramadhana Adnan, Alung Prasetyo, and Wildan Mukholladun. "Criticising State Institutions in Indonesia's Digital Sphere After Constitutional Court Decision 105/PUU-XXII/2024." *Estudiante Law Journal* 8, no. 2 (2026): 472-494. <https://doi.org/10.33756/eslaj.v8i2.36170>.

1. Introduction

Indonesia's constitutional order guarantees the freedom to associate, to assemble, and to express opinions in Article 28E(3) of the 1945 Constitution,¹ and complements that guarantee with the right to communicate and to obtain information through any available channel in Article 28F² and the right to legal certainty and equal treatment before the law in Article 28D(1).³ Taken together, these provisions establish that political criticism of public authority is not a tolerated deviation but a protected constitutional activity. What they do not settle is the question that now dominates Indonesian digital-speech litigation: when a state institution considers itself injured by online criticism, may it invoke the criminal law on its own behalf?

That question has become acute because the Electronic Information and Transactions (EIT) Law supplies criminal provisions whose wording does not, on its face, identify the class of persons whose honour the law protects. Article 27A of Law No. 1 of 2024 penalises any person who intentionally attacks the honour or reputation of "another person" by accusing them of "a matter" with the intent that it become publicly known.⁴ Scholarship on the second amendment to the EIT Law had already warned that the open texture of these elements left enforcement discretion largely unconstrained,⁵ and that the reformulation of the defamation offences had not resolved the tension between reputational protection and expressive freedom.⁶ The Constitutional Court addressed precisely that gap in Decision 105/PUU-XXII/2024.⁷

The literature that frames this problem has developed along two tracks that rarely meet. One track examines the EIT Law doctrinally, mapping the elements of its defamation and hate-speech offences and arguing for reformulation or decriminalisation.⁸ A second track examines the shrinking civic space in which Indonesian digital expression occurs,

¹ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, art. 28E(3).

² Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, art. 28F.

³ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, art. 28D(1).

⁴ Undang-Undang Nomor 1 Tahun 2024 tentang Perubahan Kedua atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik, art. 27A.

⁵ Mikhael Feka, Pujiyono Pujiyono, R. B. Sularto, and J. T. Pareke, "Navigating the Legal Minefield: The Impact of Articles 27A and 27B of Indonesia's EIT Law on Freedom of Expression and the Path to Legal Reform," *Journal of Law and Legal Reform* 6, no. 1 (2025): 265–304, <https://doi.org/10.15294/jllr.v6i1.19116>.

⁶ Arif Rahman, Sufian Hamim, Admiral, and Heni Susanti, "Reformulating Defamation Offenses: Implications for Freedom of Expression in Indonesia's Digital Space," *UIR Law Review* 10, no. 1 (2026): 105–28, [https://doi.org/10.25299/uirlrev.2026.vol10\(1\).29303](https://doi.org/10.25299/uirlrev.2026.vol10(1).29303).

⁷ Putusan Mahkamah Konstitusi Nomor 105/PUU-XXII/2024, pronounced 29 April 2025, https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_12530_1745894606.pdf.

⁸ Shohib Muslim and Nuryati Solapari, "The Impact of Hate Speech Regulations on Freedom of Expression: An Indonesian Legal Perspective," *The Easta Journal Law and Human Rights* 3, no. 1 (2024): 10–19, <https://doi.org/10.58812/eslhr.v3i01.352>.

documenting pressure on human rights defenders,⁹ journalists,¹⁰ and youth movements.¹¹ The first track tends to treat standing as a technical detail; the second rarely works through the elements of the offence that makes institutional complaints possible in the first place. The novelty claimed here is the junction of the two: this article treats the identity of the complainant as the doctrinal variable that determines whether institutional criticism is justiciable at all, and reads Decision 105/PUU-XXII/2024 as the provision that fixes that variable.

A concrete sequence of events in September 2025 supplies the factual setting. On 8 September 2025 four senior officers of the Indonesian National Armed Forces (TNI) – including Brigadier General J. O. Sembiring, commander of the TNI Cyber Unit – attended the Jakarta Metropolitan Police headquarters for a legal consultation concerning material published by the content creator Ferry Irwandi.¹² The following day a police officer, Adjunct Senior Commissioner Fian Yunus of the Metropolitan Police cyber directorate, told reporters that a defamation complaint must be lodged by an individual rather than an institution, and attributed that position to a Constitutional Court ruling.¹³ On 13 September 2025 Ferry Irwandi stated on his own social-media account that the TNI spokesperson had telephoned him, that misunderstandings had been clarified, and that mutual apologies had been exchanged.¹⁴ No formal police report was filed, no suspect was designated, and no court ever ruled on the merits.

Three cautions follow from that sequence and govern the analysis below. First, the distinction between an intention to report, a formal complaint, and criminal proceedings is doctrinally significant and must be preserved; what occurred here did not pass the first stage. Second, the account of the settlement rests on one party's public statement and has not been independently corroborated, so it is treated as an attributed claim rather than an established fact. Third, because the episode produced no judicial decision, it cannot serve as a case in the jurisprudential sense. It functions instead as contextual illustration, while the case approach proper is directed at Decision 105/PUU-XXII/2024.

The wider significance of the episode lies in the institutional actor involved. The TNI is constitutionally and statutorily an instrument of national defence rather than a law

⁹ Rahayu, Kholis Roisah, Khansadhia Afifah Wardana, and Vania Lutfi Safira Erlangga, "Human Rights Defenders in Indonesia's Digital Age: Navigating Limited Spaces in the Quest for Digital Democracy," *Sriwijaya Law Review* 8, no. 2 (2024): 358–75, <https://doi.org/10.28946/slrev.Vol8.Iss2.3860.pp358-375>.

¹⁰ Bagus Gede Ari Rama, "Press Freedom in the Digital Era in Indonesia: A Human Rights Perspective," *JIHAD: Jurnal Ilmu Hukum dan Administrasi* 6, no. 4 (2024), <https://doi.org/10.58258/jihad.v6i4.7543>.

¹¹ Sri Lestari Wahyuningroem, Rheinhard Sirait, Uljanatunnisa, and Dudy Heryadi, "Youth Political Participation and Digital Movement in Indonesia: The Case of #ReformasiDikorupsi and #TolakOmnibusLaw," *F1000Research* 12 (2024): 543, <https://doi.org/10.12688/f1000research.122669.3>.

¹² "Polisi Sebut Dansatsiber TNI ke Polda untuk Laporkan Ferry Irwandi," ANTARA News, 9 September 2025, <https://www.antaranews.com/berita/5096629/polisi-sebut-dansatsiber-tni-ke-polda-untuk-laporkan-ferry-irwandi>.

¹³ "Polda Metro Sebut Institusi TNI Tak Bisa Laporkan Ferry Irwandi meski Dituding Cemarkan Nama Baik," Wartakotalive, 9 September 2025, <https://wartakota.tribunnews.com/jakarta/866853/polda-metro-sebut-institusi-tni-tak-bisa-laporkan-ferry-irwandi-meski-dituding-cemarkan-nama-baik>.

¹⁴ "Konflik Ferry Irwandi dan TNI Selesai usai Ditelepon Kapuspen, Kedua Pihak Saling Memaafkan," Liputan6, 13 September 2025, <https://www.liputan6.com/news/read/6158611/konflik-ferry-irwandi-dan-tni-selesai-usai-ditelepon-kapuspen-kedua-pihak-saling-memaafkan>.

enforcement agency, and recent scholarship on the 2025 amendment of the TNI Law has questioned the expansion of military presence into civilian domains and its implications for democratic accountability¹⁵ and for citizens' digital rights.¹⁶ Where a defence institution turns to criminal process in response to public criticism, the relevant legal question is not only whether the elements of an offence are satisfied but whether the complainant has standing at all.

This article therefore addresses two research questions. First, how does Indonesian positive law delimit freedom of expression in the public sphere, and what lawful restrictions apply to criticism directed at state institutions? Second, what are the normative implications of Decision 105/PUU-XXII/2024 for the handling of digital criticism of state institutions, with the Ferry Irwandi episode as factual context? The scope is confined to Indonesian positive law as it stood between April 2025 and October 2026, and to the criminal rather than civil consequences of institutional criticism.

2. Method

This study is normative legal research. It treats legal norms, their internal coherence, and their authoritative interpretation as the object of inquiry, rather than measuring social behaviour or attitudes.¹⁷ Normative legal research in the Indonesian tradition is characterised by the prescriptive character of its conclusions: the inquiry ends not in a description of what occurs but in a proposition about what the law requires.¹⁸ No empirical data were collected, no respondents were interviewed, and no statistical inference of any kind is drawn or claimed anywhere in this article.

Three approaches are combined. The statute approach examines the relevant instruments: Articles 28D(1), 28E(3), 28F, and 28J of the 1945 Constitution; Law No. 39 of 1999 on Human Rights; Law No. 9 of 1998 on Freedom to Express Opinions in Public; Law No. 1 of 2024 on the second amendment to the EIT Law; and Law No. 1 of 2023 establishing the new Criminal Code. The case approach is directed principally at Decision 105/PUU-XXII/2024, with Decision 50/PUU-VI/2008 and Decision 282/PUU-XXIII/2025 examined to trace doctrinal continuity. Because the Ferry Irwandi episode was never adjudicated, it is not treated as a judicial case; it is used as contextual material for testing the operation of the norms identified. The conceptual approach supplies the analytical vocabulary – standing, complaint-based offence, *ultimum remedium*, chilling effect – drawn from the doctrinal literature rather than invented for the occasion.

¹⁵ Suif Al-Adawiyah, "Dwifungsi Gaya Baru? Penempatan Prajurit Aktif di Jabatan Sipil dalam Revisi UU TNI 2025 dan Dampaknya terhadap Demokrasi," *Pemuliaan Keadilan* 2, no. 3 (2025): 1–19, <https://doi.org/10.62383/pk.v2i3.911>.

¹⁶ Dimas Kurnia Iqram, Ilham Agusyanda, and Dody Heryanto Sitorus, "Revisi Undang-Undang TNI dan Hak Digital Warga Negara: Antara Keamanan Nasional dan Tantangan Demokrasi Digital," *Journal Kompilasi Hukum* 10, no. 2 (2025): 412–29, <https://doi.org/10.29303/jkh.v10i2.279>.

¹⁷ Tunggul Ansari Setia Negara, "Normative Legal Research in Indonesia: Its Originis and Approaches," *Audito Comparative Law Journal* 4, no. 1 (2023): 1–9, <https://doi.org/10.22219/aclj.v4i1.24855>.

¹⁸ Putri Wulandari, "Normative Legal Research Methodology from the Experts' Perspective: A Comparative Analysis of Concepts and Approaches," *Archipel: Journal of Indonesian Interdisciplinary Studies* 1, no. 6 (2026): 12–25, <https://doi.org/10.65739/archipel.v1i6.34>.

Interpretation proceeds through three recognised methods. Grammatical interpretation is applied to the elements of Article 27A, whose wording determines which class of persons may be a victim. Systematic interpretation situates that provision in relation to Article 45(4) and (5) of the same statute, to the defamation provisions of the new Criminal Code, and to the constitutional limitation clause. Constitutional interpretation is used to read the operative part and the ratio decidendi of Decision 105/PUU-XXII/2024 as binding norm rather than as persuasive commentary, which follows from the final and binding character of Constitutional Court decisions¹⁹ and from the erga omnes effect attributed to them in the literature on their implementation.²⁰

The legal materials are classified using the terminology proper to normative research. Primary legal materials comprise the binding instruments listed above together with the three Constitutional Court decisions. Secondary legal materials comprise peer-reviewed journal articles that explain, criticise, or interpret those instruments. Tertiary materials comprise legal dictionaries and reference works used to fix the meaning of technical terms. News reports are used for one purpose only – to reconstruct the factual sequence of the September 2025 episode – and never to establish the content of a legal norm; for norms, the official text of the statute or the decision is cited directly.

Analysis proceeds in five steps. The applicable norms are first identified and ranked. The elements of each candidate offence are then interpreted, with particular attention to the subject whose interest the provision protects. Third, the ratio decidendi of Decision 105/PUU-XXII/2024 is examined to determine how it modifies those elements. Fourth, the reconstructed norms are applied to the factual sequence of September 2025 to test which offences could and could not have been engaged. Fifth, a legal prescription is drawn from that application, expressed as a conclusion about standing and as recommendations distinguishing legal obligation from policy preference.

Two temporal boundaries must be stated because the applicable law changed during the period studied. Conduct is assessed under the law in force when it occurred: the events of September 2025 fall to be assessed under Law No. 1 of 2024 as construed by Decision 105/PUU-XXII/2024, which was pronounced on 29 April 2025 and so was already in force. The new Criminal Code enacted by Law No. 1 of 2023 entered into force on 2 January 2026,²¹ three years after promulgation, and was therefore only a prospective framework in September 2025. The analysis is current to 28 October 2026 and accordingly incorporates Decision 282/PUU-XXIII/2025 of 28 August 2026.

¹⁹ Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi, art. 47, on the final and binding character of Constitutional Court decisions.

²⁰ Chaidir Ali and Refi Meidiantama, “Upholding the Erga Omnes Principle: The Role of Constitutional Court Decisions in the Formation of Indonesia’s New Penal Code,” *Journal of Constitutional Law Society* 4, no. 1 (2025): 18–31, <https://doi.org/10.36448/cls.v4i01.102>.

²¹ Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Lembaran Negara Republik Indonesia Tahun 2023 Nomor 1, art. 624, on entry into force three years after promulgation.

3. Freedom of Expression and Its Lawful Limits in Indonesian Positive Law

3.1. The Constitutional Architecture and the Limitation Clause

The constitutional guarantee of expression does not stand alone, and the analytically important provision is not the guarantee but the limitation clause that qualifies it. Article 28J(1) obliges every person to respect the human rights of others,²² while Article 28J(2) provides that in exercising rights and freedoms every person is subject to restrictions established by statute for the purpose of securing recognition and respect for the rights and freedoms of others and of satisfying just demands in accordance with considerations of morality, religious values, security, and public order in a democratic society.²³ Read as a structure rather than as a list, that clause yields four cumulative conditions for any lawful restriction: the restriction must be established by statute, must pursue one of the enumerated aims, must be necessary in a democratic society, and must be proportionate to the aim pursued.

Indonesian constitutional scholarship has traced the proportionality idea within Article 28J(2) itself rather than importing it wholesale from comparative sources, and has shown that the phrase “in a democratic society” performs the work that a necessity test performs in other systems.²⁴ Analysis of the Court’s own practice confirms that proportionality reasoning is applied, if unevenly, when competing rights must be reconciled.²⁵ The same four-part structure appears in Article 19(3) of the International Covenant on Civil and Political Rights, to which Indonesia is a party,²⁶ so the domestic and international tests converge rather than compete.

Applying that structure to criticism of state institutions produces a conclusion that the constitutional text alone does not state. The aims enumerated in Article 28J(2) are the rights and freedoms of others, morality, religious values, security, and public order. The dignity of a government body is not among them. An institution’s reputational interest can therefore enter the analysis only indirectly, through public order, and a restriction justified on that footing must still satisfy necessity and proportionality. It follows that the constitutional guarantee is not absolute — but it also follows that the state bears the burden of locating any restriction within an enumerated aim, and the protection of institutional prestige is not self-evidently such an aim.

Statutory human rights law reinforces that reading. Article 23(2) of Law No. 39 of 1999 secures the freedom to hold, express, and disseminate opinions in accordance with conscience, orally or in writing, through print or electronic media, while directing attention

²² Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, art. 28J(1).

²³ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, art. 28J(2).

²⁴ Muhamad Dzadit Taqwa, “Tracing the Proportionality in Article 28J(2) UUD NRI Tahun 1945,” *Jurnal Konstitusi* 22, no. 3 (2025): 484–507, <https://doi.org/10.31078/jk2234>.

²⁵ Tanto Lailam and Putri Anggia, “The Indonesian Constitutional Court Approaches the Proportionality Principle to the Cases Involving Competing Rights,” *Law Reform* 19, no. 1 (2023): 110–27, <https://doi.org/10.14710/lr.v19i1.54087>.

²⁶ Undang-Undang Nomor 12 Tahun 2005 tentang Pengesahan International Covenant on Civil and Political Rights, art. 19(3).

to religious values, decency, order, the public interest, and the needs of the nation.²⁷ Articles 25 and 44 of the same statute specifically contemplate the expression of opinion addressed to government for the purpose of securing clean, effective, and efficient administration.²⁸ The statute thus treats criticism of administration as an exercise of a protected right, not as conduct tolerated at the state's discretion.

3.2. Three Layers of Norms: Right, Statutory Restriction, Criminal Prohibition

Much of the confusion in this field arises from treating three distinct normative layers as a single undifferentiated limit. The first layer is the constitutional right, which binds the state and is enforceable through constitutional review. The second is the statutory restriction, which allocates duties and procedures without necessarily attaching a penal sanction. The third is the criminal prohibition, which attaches a sanction and is therefore governed by the principle of legality and by strict construction of elements. A proposition that is true at the second layer is not thereby true at the third.

Law No. 9 of 1998 illustrates the second layer and the risk of conflating it with the third. That statute governs the freedom to express opinions in public, and its subject matter is physical and collective expression — demonstrations, public meetings, processions — for which it prescribes notification duties and responsibilities such as respecting the rights of others, observing generally recognised moral rules, obeying the law, and maintaining public order.²⁹ It is not a general charter for expression on social media, and its normative relationship to the EIT Law is one of subject-matter complementarity rather than hierarchy. Treating its responsibility clauses as if they supplied elements of a cybercrime would collapse the second layer into the third.

The third layer is where the EIT Law operates, and its provisions differ sharply in structure. Article 27A creates a complaint-based defamation offence protecting personal honour.³⁰ Article 28(2) creates an ordinary offence protecting listed groups against incitement to hatred, and Article 28(3) an ordinary offence addressing false notices that cause public unrest.³¹ Article 27B addresses threats and extortion conducted electronically.³² These provisions protect different interests, require different elements, and are activated by different procedural mechanisms. The assumption that a complainant barred under one provision may simply select another is therefore mistaken as a matter of doctrine, and Table 1 below sets out the differences that make it mistaken.

The evaluative label “rubber article” (*pasal karet*) frequently applied to these provisions in public debate is avoided here in favour of the doctrinal vocabulary of vagueness and overbreadth. A provision is vague when its elements do not permit a citizen of ordinary

²⁷ Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia, art. 23(2).

²⁸ Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia, arts. 25 and 44.

²⁹ Undang-Undang Nomor 9 Tahun 1998 tentang Kemerdekaan Menyampaikan Pendapat di Muka Umum, arts. 1(1), 2, 5, and 6.

³⁰ Law No. 1 of 2024, art. 27A.

³¹ Undang-Undang Nomor 1 Tahun 2024 tentang Perubahan Kedua atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik, arts. 28(1), 28(2), and 28(3).

³² Undang-Undang Nomor 1 Tahun 2024 tentang Perubahan Kedua atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik, art. 27B.

understanding to predict whether conduct falls within it; it is overbroad when its literal reach captures constitutionally protected expression alongside the conduct it legitimately targets. Both defects are demonstrable through doctrinal analysis and both have been argued in the Indonesian literature on Articles 27A and 27B,³³ which is what gives the criticism analytical rather than merely rhetorical force.

3.3. Article 27A After Decision 105/PUU-XXII/2024: The Reconstructed Elements

Article 27A cannot now be read in its enacted form, and this is the point at which a great deal of recent commentary goes wrong. On 29 April 2025 the Constitutional Court declared two of its phrases conditionally unconstitutional. The phrase “another person” (*orang lain*) in Article 27A and Article 45(4) of Law No. 1 of 2024 has no binding legal force unless it is construed as excluding government bodies, groups of persons with a specific or particular identity, institutions, corporations, professions, and offices.³⁴ The phrase “a matter” (*suatu hal*) must be construed as conduct that degrades the honour or reputation of a person.³⁵

Two consequences follow, and the second is routinely overlooked. The first concerns the subject: the class of possible victims is narrowed to natural persons, so that an entity falling within any of the excluded categories cannot occupy the position of the victim under Article 27A. The second concerns the conduct element: an expression satisfies Article 27A only if it accuses a person of an identifiable act that degrades that person’s honour. A generalised negative evaluation, an unfavourable assessment of institutional performance, or a value judgment about policy does not accuse anyone of any act and therefore fails the reconstructed element independently of who complains. The ruling thus constrains Article 27A twice over, and the Indonesian commentary on the decision has emphasised the narrowing of criminalisable space that results.³⁶

The scope of the decision must nevertheless be stated with precision. The Court did not prohibit state institutions from making criminal complaints as such; it interpreted specific elements of two provisions. An institution remains capable of reporting offences whose protected interest is not personal honour — fraud, unlawful access, extortion, incitement — provided every element of the offence invoked is satisfied. Nor did the Court confer immunity on expression. It removed one route to criminalisation and narrowed another; it did not declare criticism of institutions to be beyond the reach of the criminal law in all circumstances. Analyses that present the decision as a general decriminalisation of institutional criticism overstate it.

³³ Feka et al., “Navigating the Legal Minefield,” 271–75.

³⁴ Putusan Mahkamah Konstitusi Nomor 105/PUU-XXII/2024, operative part, declaring the phrase “orang lain” in arts. 27A and 45(4) of Law No. 1 of 2024 conditionally unconstitutional unless read as excluding “lembaga pemerintah, sekelompok orang dengan identitas spesifik atau tertentu, institusi, korporasi, profesi atau jabatan.”

³⁵ Putusan Mahkamah Konstitusi Nomor 105/PUU-XXII/2024, operative part, requiring the phrase “suatu hal” to be read as “suatu perbuatan yang merendahkan kehormatan atau nama baik seseorang.”

³⁶ Ghifary REXIANDA Davisto, “Penafsiran Konstitusional Delik Pencemaran Nama Baik dalam UU ITE: Analisis Putusan MK Nomor 105/PUU-XXII/2024,” *Sosio Yustisia: Jurnal Hukum dan Perubahan Sosial* 5, no. 2 (2025): 224–46, <https://doi.org/10.15642/sosyus.v5i2.836>.

The decision also stands in a line of authority rather than alone, and its relationship to the earlier case law is one of development rather than repetition. In Decision 50/PUU-VI/2008 the Court upheld the constitutionality of the then-applicable defamation provisions of the EIT Law while tying their interpretation to the Criminal Code offences from which they derived.³⁷ That decision concerned a different statutory text, and citing it as authority for the proposition that institutions lack standing would be an anachronism: the 2008 ruling did not decide that question. What the two decisions share is a method — the construction of electronic defamation offences by reference to the general law of defamation — and the 2025 ruling applies that method to a reformulated text to reach a conclusion the earlier Court had no occasion to reach. The jurisprudence develops; it does not merely restate itself, and the literature on the enforcement of Constitutional Court decisions warns that treating superseded rulings as current authority is a recurrent source of error.³⁸

3.4. Distinguishing Protected Criticism from Unlawful Expression

Because the phrase “constructive criticism” has no determinate legal content, an operational test is required. The reconstructed elements of Article 27A, read with the limitation structure of Article 28J(2), yield five questions that can be applied in sequence to any contested expression.

The first question concerns the target: is the expression directed at an identifiable natural person, or at an institution, office, or policy? If the target is institutional, Article 27A is unavailable regardless of the expression’s tone. The second concerns the nature of the statement: does it accuse the target of a specific act, or does it express an evaluation, opinion, or prediction? Only the former can satisfy the reconstructed element of “a matter.” The third concerns individuation: even where an act is alleged, does the allegation attach to a particular person, or does it refer to unnamed members of an institution? The fourth concerns *mens rea*: was the accusation made with intent to attack honour, or in the good-faith pursuit of a matter of public concern? The fifth concerns publication: was the material distributed through an electronic system with the intent that it become publicly known?

The comparative literature supports this architecture. The European Court of Human Rights has long distinguished statements of fact, which may be proved, from value judgments, which may not, and has held that politicians and public bodies must tolerate a wider measure of criticism than private persons — although that jurisprudence has itself been criticised for inconsistency in its treatment of offensive expression.³⁹ Comparative work on corporate defamation shows that jurisdictions which allow non-natural persons to sue have generally found it necessary to impose threshold requirements such as proof of serious

³⁷ Putusan Mahkamah Konstitusi Nomor 50/PUU-VI/2008, pronounced 5 May 2009.

³⁸ Adissya Mega Christia, Lidya Christina Wardhani, Marsatana Tartila Tristy, and Faizal Adi Surya, “The Legal Politics of the Enforcement of Constitutional Court Decisions in Indonesia,” *Lex Renaissance* 9, no. 1 (2024): 62–84, <https://doi.org/10.20885/JLR.vol9.iss1.art4>.

³⁹ Jacob Mchangama and Natalie Alkiviadou, “Hate Speech and the European Court of Human Rights: Whatever Happened to the Right to Offend, Shock or Disturb?” *Human Rights Law Review* 21, no. 4 (2021): 1008–42, <https://doi.org/10.1093/hrlr/ngab015>.

financial loss, precisely because an entity has no personal dignity to vindicate.⁴⁰ Comparative analysis across Greater China similarly finds that the active enforcement of criminal defamation, rather than its formal presence on the statute book, is what distinguishes systems in which reputational law suppresses public debate.⁴¹

Two further distinctions complete the test. Insult, which attaches to the manner of expression, must be separated from defamation, which attaches to the content of an allegation, because conduct that is merely offensive does not satisfy the accusation element; the new Criminal Code marks that separation on the face of the statute by treating minor insult in Article 436 as an offence distinct from the defamation offences of Articles 433 and 434.⁴² And false information, which engages Article 28(3) and protects public order rather than honour, must be separated from both; the Court's earlier invalidation of the colonial-era false-news provision shows how readily offences of this type overreach when their elements are loosely drawn.⁴³

Table 1. Normative Comparison of Offences Potentially Engaged by Online Criticism of a State Institution

Provision	Protected interest	Who may lodge a complaint	Core elements beyond publication	Status as at October 2026
Art. 27A, Law No. 1 of 2024 (defamation)	Personal honour and reputation	The natural person defamed; government bodies, institutions, corporations, professions, and offices are excluded	Intent; an accusation of conduct degrading a specific person's honour; intent that it become publicly known	In force, as construed by Decision 105/PUU-XXII/2024
Art. 28(2), Law No. 1 of 2024 (incitement to hatred)	Public order and equality of protected groups	Ordinary offence; no private complaint required	Intent to incite hatred or hostility on a listed protected ground	In force
Art. 28(3), Law No. 1 of 2024 (false notice causing unrest)	Public order	Ordinary offence; no private complaint required	Knowingly broadcasting false notice; resulting public disturbance	In force
Arts. 240 and 241, Law No. 1 of 2023 (insulting the	Institutional dignity	Complaint-based offence lodged for the institution	Public insult of the government or a state institution; resulting	Void; unconstitutional per Decision

⁴⁰ Peter Coe, "An Analysis of Three Distinct Approaches to Using Defamation to Protect Corporate Reputation from Australia, England and Wales, and Canada," *Legal Studies* 41, no. 1 (2021): 111–29, <https://doi.org/10.1017/lst.2020.38>.

⁴¹ Brendan Clift, "Defamation Law in Greater China: Principles, Politics, and Prospects," *The Chinese Journal of Comparative Law* 13 (2025): cxaf006, <https://doi.org/10.1093/cjcl/cxaf006>.

⁴² Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Lembaran Negara Republik Indonesia Tahun 2023 Nomor 1, art. 436, on minor insult, read with art. 441(2) on the aggravation applicable where the person insulted is an official performing a lawful duty.

⁴³ Vidya Prahassacitta, "Freedom of Opinion After the Constitutional Court Ruled the Fake News Dissemination Crime Unconstitutional," *Journal of Law and Legal Reform* 5, no. 3 (2024): 1301–30, <https://doi.org/10.15294/jllr.v5i3.6752>.

Provision	Protected interest	Who may lodge a complaint	Core elements beyond publication	Status as at October 2026
government or a state institution)			unrest in the Elucidation of Art. 240	282/PUU-XXIII/2025
Arts. 433, 434, and 436, Law No. 1 of 2023 (defamation, calumny, and minor insult)	Personal honour and reputation	The natural person defamed; complaint required under Art. 440	Arts. 433 and 434: attack on honour by accusing a person of a matter, orally or in writing, with intent to publicise, subject to the public-interest exception in Art. 433(3); Art. 436: insult not amounting to defamation	In force since 2 January 2026

Source: Law No. 1 of 2024; Law No. 1 of 2023; Constitutional Court Decisions 105/PUU-XXII/2024 and 282/PUU-XXIII/2025 (compiled by the authors).

4. Normative Implications of Decision 105/PUU-XXII/2024 for Digital Criticism

4.1. Why the Episode Could Not Proceed Under Article 27A

Applying the test set out above to the September 2025 sequence produces a clear result, and it rests on the first question rather than on any assessment of the content of the material. The complainant contemplating a report was a military institution acting through its officers, and the interest said to be injured was institutional reputation. On the reconstructed reading of “another person,” an institution cannot occupy the position of the victim under Article 27A.⁴⁴ The analysis ends there: no inquiry into tone, accuracy, or intent is required, because the provision is simply unavailable to that complainant. The police statement of 9 September 2025 that a defamation complaint must be lodged by an individual rather than an institution is consistent with that reading, though it is an attributed characterisation by an officer rather than a citation of the decision’s text.⁴⁵

A second and independent obstacle existed. Even had an individual officer complained in a personal capacity, the material would have had to accuse that officer of an identifiable act degrading his honour. Commentary discussing unnamed members of an institution, or assessing institutional conduct in general terms, does not satisfy the reconstructed element of “a matter.”⁴⁶ Recent analysis of enforcement practice after the decision notes that this second limb is frequently neglected, with investigators attending to the identity of the complainant while treating the conduct element as satisfied by any unfavourable statement.⁴⁷

⁴⁴ Putusan Mahkamah Konstitusi Nomor 105/PUU-XXII/2024, operative part.

⁴⁵ “Polda Metro Sebut Institusi TNI Tak Bisa Laporkan Ferry Irwandi.”

⁴⁶ Putusan Mahkamah Konstitusi Nomor 105/PUU-XXII/2024, operative part.

⁴⁷ Ryan Hidayat Saputra, Rahman Amin, and Lusia Sulastri, “Penegakan Hukum terhadap Pencemaran Nama Baik melalui Media Sosial Pasca Putusan MK Nomor 105/PUU-XXII/2024,” *Journal of Law and Security Studies* 3, no. 1 (2026): 249–61, <https://doi.org/10.31599/jlss.v3i1.5150>.

It is important to be precise about what the sources establish regarding why no report was filed. The available material shows that a consultation took place on 8 September 2025,⁴⁸ that a police officer publicly stated the following day that institutions cannot lodge defamation complaints,⁴⁹ and that the matter was later described by Ferry Irwandi as resolved.⁵⁰ No source states that the officers abandoned the plan because of the Constitutional Court's ruling. The chronology is consistent with that inference but does not compel it, and the causal claim is therefore not made here. What can be said is narrower and sufficient: the doctrinal position articulated by the police corresponds to the reconstructed norm, and had a report been lodged it would have faced the two obstacles identified above.

4.2. Residual Offences and the Status of Articles 240 and 241

The unavailability of Article 27A does not exhaust the criminal law, and the practically important question is which residual offences remained. Article 28(2) and Article 28(3) of Law No. 1 of 2024 are ordinary offences requiring no private complaint, and either could in principle be invoked by a state body reporting conduct that fell within it.⁵¹ But each carries elements of its own. Article 28(2) requires intent to incite hatred or hostility on an enumerated ground – race, nationality, ethnicity, colour, religion, belief, sex, or disability – none of which is engaged by criticism of institutional conduct. Article 28(3) requires a knowingly false notice and resulting public disturbance, both of which must be proved. Neither provision operates as a residual clause available whenever defamation fails, and the Indonesian scholarship on hate-speech regulation cautions that treating them that way produces selective enforcement against political dissent.⁵²

The new Criminal Code requires separate treatment because of its timing. Article 240 of Law No. 1 of 2023 penalised public insult of the government or a state institution, and Article 241 extended that protection; the Elucidation of Article 240 added resulting unrest as a qualifying circumstance.⁵³ In September 2025 these provisions were not yet in force: the Code entered into force on 2 January 2026,⁵⁴ so they could be discussed only as a prospective framework. Indonesian commentary published while they were pending argued that the term “insult” was subjective and open to multiple interpretations, and that the provisions

⁴⁸ “Polisi Sebut Dansatsiber TNI ke Polda.”

⁴⁹ “Polda Metro Sebut Institusi TNI Tak Bisa Laporkan Ferry Irwandi.”

⁵⁰ “Konflik Ferry Irwandi dan TNI Selesai.”

⁵¹ Law No. 1 of 2024, art. 28.

⁵³ Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Lembaran Negara Republik Indonesia Tahun 2023 Nomor 1, arts. 240 and 241.

risked criminalising criticism;⁵⁵ earlier critical review had reached the same conclusion about the regulation of state institutional insults more generally.⁵⁶

That prospective framework has now been removed. On 28 August 2026 the Constitutional Court granted a petition in full and declared Articles 240 and 241 and the Elucidation of Article 240 contrary to the 1945 Constitution and without binding legal force.⁵⁷ The Court reasoned that the honour of individuals deserves legal protection but cannot be equated with the dignity of the government or of state institutions, that government bodies are accountable to the public and must accept oversight and criticism, and that the logic of Decision 105/PUU-XXII/2024 extends to the Criminal Code; it also held that the legislature may not revive the substance of a norm already declared unconstitutional.⁵⁸ The doctrinal position as at October 2026 is therefore that neither the EIT Law nor the Criminal Code affords a state institution a route to criminal protection of its own reputation.

What remains available are the ordinary offences against honour in the new Code, and their structure repays attention. Article 433 penalises an attack on another person's honour by accusing them of a matter, orally under paragraph (1) and in published writing or imagery under paragraph (2), while Article 434 addresses calumny; both are prosecuted only on the complaint of the person defamed under Article 440, and Article 433(3) expressly excludes liability where the act was done in the public interest or in necessary self-defence.⁵⁹ Article 436 covers minor insult, a separate offence directed at the manner rather than the content of an expression, and Article 441(2) increases the penalty by one third where the person concerned is an official performing a lawful duty – which confirms that the new Code protects the officeholder personally rather than the office.⁶⁰ These are the provisions through which an individual official injured in a personal capacity may now proceed, and the doctrinal analysis of the reconstructed elements of electronic defamation applies to them by analogy, since the Court's method has consistently been to construe the electronic

⁵⁵ Tuti Anisah Sopandi, Gusti Faiz Anandi, and Rizq Muharram Putra, "Paradoks Hukum Penghinaan Pemerintah: Tinjauan Pasal 240 Ayat (1) dan Pasal 241 Ayat (1) KUHP dalam Konsep Negara Hukum Demokratis," *Terang: Jurnal Kajian Ilmu Sosial, Politik dan Hukum* 3, no. 2 (2026): 113–23, <https://doi.org/10.62383/terang.v3i2.1713>.

⁵⁶ Wiwin, Syafa'at Anugrah Pradana, and Muhammad Imam Dhiya'ul Haq, "The Regulation of Articles on State Institutional Insults to the Right to Freedom of Expression in Indonesia: A Critical Review," *Mulawarman Law Review* 8, no. 1 (2023): 21–31, <https://doi.org/10.30872/mulrev.v8i1.1122>.

⁵⁷ Putusan Mahkamah Konstitusi Nomor 282/PUU-XXIII/2025, pronounced 28 August 2026, declaring arts. 240 and 241 and the Elucidation of art. 240 of Law No. 1 of 2023 contrary to the 1945 Constitution and without binding legal force.

⁵⁸ "MK Nyatakan Pasal Penghinaan Pemerintah dan DPR Inkonstitusional," CNN Indonesia, 28 August 2026, <https://www.cnnindonesia.com/nasional/20260828185452-12-1397578/mk-nyatakan-pasal-penghinaan-pemerintah-dan-dpr-inkonstitusional>.

⁵⁹ Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Lembaran Negara Republik Indonesia Tahun 2023 Nomor 1, arts. 433(1)–(3) and 434, read with art. 440 on the complaint requirement.

offences by reference to the general law.⁶¹ The conclusion is not that criticism is unpunishable but that its punishability now turns on injury to an identifiable person rather than to an institution.

4.3. Chilling Effect as a Constitutional Concept and as an Empirical Claim

The chilling effect is frequently invoked in this literature as though naming it were sufficient. Treated as a constitutional concept it has a specifiable mechanism with four stages: a criminal norm whose elements are vague or overbroad; a credible prospect that the norm will be enforced; an anticipated cost of process – investigation, detention, legal expense, reputational damage – that the citizen bears irrespective of eventual acquittal; and consequent self-censorship extending beyond the conduct the norm actually prohibits. The decisive feature is the third stage: because the burden falls on process rather than on conviction, deterrence operates even where the expression is lawful.

Formulated this way, the claim is normative and can be assessed doctrinally. It does not depend on measuring how many citizens in fact fell silent. It asserts that a norm whose elements cannot be predicted in advance, coupled with a credible enforcement prospect, generates a deterrent effect that the limitation structure of Article 28J(2) does not authorise, because a restriction that suppresses protected expression as a side effect is to that extent disproportionate. That is a claim about the quality of the norm, and the argument that Articles 27A and 27B are defective in exactly this respect has been made in the doctrinal literature.⁶²

The empirical claim is different and must be kept separate. Whether Indonesian citizens actually self-censor, and to what degree, is a question for empirical research that this study did not conduct and cannot answer. The international literature provides a theoretical model of chilling effects together with an explicit research agenda for measuring them, precisely because the measurement problem is unresolved.⁶³ Recent survey-based work in the United Kingdom finds associations between perceived surveillance and reduced willingness to express opinions online, but the strength and direction of those associations vary with the population studied.⁶⁴ Indonesian evidence of a comparable kind is thin: documentation of pressure on human rights defenders⁶⁵ and analysis of online resistance to

⁶¹ Ario Setra Setiadi, "Navigating Freedom of Speech in Social Media: Reconstruction of the Crime of Defamation in the Era of the New Criminal Code and Its Implications for Freedom of Expression on Social Media," *Jurnal Hukum dan Peradilan* 15, no. 2 (2026): 233–60, <https://doi.org/10.25216/jhp.15.2.2026.233-260>.

⁶² Feka et al., "Navigating the Legal Minefield," 271–75.

⁶³ Moritz Büchi, Noemi Festic, and Michael Latzer, "The Chilling Effects of Digital Dataveillance: A Theoretical Model and an Empirical Research Agenda," *Big Data & Society* 9, no. 1 (2022), <https://doi.org/10.1177/20539517211065368>.

⁶⁴ Neil Anthony Daruwala, "Social Media, Expression, and Online Engagement: A Psychological Analysis of Digital Communication and the Chilling Effect in the UK," *Frontiers in Communication* 10 (2025): 1565289, <https://doi.org/10.3389/fcomm.2025.1565289>.

the silencing of expression⁶⁶ establish that cases occur, not that a general pattern of self-censorship has been measured. The claim advanced here is accordingly a potential chilling effect as a normative risk, not a demonstrated chilling effect as an empirical finding.

Nor can a single episode establish a broader pattern. The September 2025 sequence is best characterised as an illustrative case raising concerns for enforcement practice. Treating it as a benchmark of professionalism across the enforcement apparatus would exceed what one undetermined matter can support. The regional literature does, however, place such episodes in context: comparative work on Southeast Asia documents the use of information controls as instruments of political management,⁶⁷ and studies of media governance in the region show how reputational and public-order provisions function within those strategies.⁶⁸ Indonesian studies of the boundaries of criticism on social media reach convergent conclusions about the regulatory environment in which Indonesian users operate.⁶⁹

4.4. Ultimum Remedium and the Limits of the Restorative-Justice Label

The resolution of the September 2025 episode is often described as an application of restorative justice, and the description will not withstand examination. Restorative justice in Indonesian law is a formal mechanism: it operates through defined procedures, involves designated officials, requires the participation of the parties in a structured process, and produces a documented outcome with legal consequences for the handling of the case. Scholarship on penal mediation in defamation cases has consistently emphasised that its advantages depend on precisely this procedural framework, and has criticised the absence of detailed procedural regulation.⁷⁰

What the sources describe is something else. A telephone conversation in which misunderstandings were clarified and apologies exchanged,⁷¹ occurring at a stage when no report had been filed and no case existed, is a non-penal settlement through dialogue. It is a legitimate and in many respects desirable outcome, but it is not restorative justice in the juridical sense, and using the term loosely obscures the distinction between an informal accommodation and a recognised legal mechanism. The accurate description is that the matter was resolved through clarification and mutual apology outside any formal process.

⁶⁶ B. Arnold Simangunsong and Shenna, "Bentuk Perlawanan terhadap Pembungkaman Kebebasan Berekspresi pada Akun Instagram @gejayanmemanggil," *Jurnal Ilmu Komunikasi* 21, no. 2 (2024), <https://doi.org/10.24002/jik.v21i2.7620>.

⁶⁷ Aim Sinpeng, "Digital Media, Political Authoritarianism, and Internet Controls in Southeast Asia," *Media, Culture & Society* 42, no. 1 (2020): 25–39, <https://doi.org/10.1177/0163443719884052>.

⁶⁸ Martin Albrecht Haenig and Xianbai Ji, "A Tale of Two Southeast Asian States: Media Governance and Authoritarian Regimes in Singapore and Vietnam," *Asian Review of Political Economy* 3, no. 1 (2024): 4, <https://doi.org/10.1007/s44216-024-00024-6>.

⁶⁹ Aisyah Dwi Putri Hardiyati and M. Tanzil Multazam, "Freedom of Speech Boundaries in Criticizing Government on Social Media," *Indonesian Journal of Public Policy Review* 26, no. 3 (2025), <https://doi.org/10.21070/ijppr.v26i3.1458>.

⁷⁰ Renalda Arma Sentia Putri, Muhamad Gary Gagarin Akbar, and Muhamad Abas, "Restorative Justice as a Means to Achieve Justice and Legal Certainty in Defamation Cases," *Unram Law Review* 8, no. 2 (2024), <https://doi.org/10.29303/ulrev.v8i2.374>.

⁷¹ "Konflik Ferry Irwandi dan TNI Selesai."

The principle of *ultimum remedium* is also engaged, though again with a qualification. The principle holds that criminal law should be the last instrument resorted to, after non-penal avenues have been considered. Its application to expression disputes is supported by the structure of the limitation clause: where clarification, a right of reply, or a civil remedy would adequately protect the interest at stake, a criminal response is unlikely to satisfy necessity. But the principle operates as a guide to prosecutorial and legislative policy rather than as a justiciable rule that a court may enforce against a complainant, and it should not be presented as though it conferred an entitlement.

4.5. Institutional Accuracy and the Audience of Reform Proposals

Three precisions are necessary before recommendations can be stated. The first is institutional. The TNI is an instrument of national defence; the National Police and the Public Prosecution Service are law enforcement agencies. Grouping them together as “law enforcement officials” misdescribes the constitutional allocation of functions, and the distinction matters here because the question whether a defence institution should resort to criminal process in response to criticism is different from the question how an investigator should handle a complaint once lodged. Scholarship on the 2025 amendment of the TNI Law has made the expansion of military functions into civilian domains a live constitutional issue,⁷² and the digital-rights dimension of that expansion has been examined separately.

The second precision concerns the normative status of what follows. A recommendation that the legislature synchronise Article 27A with Article 45(4) and (5) and with the defamation provisions of the new Criminal Code is a proposal addressed to lawmakers, not an existing legal duty.⁷³ A recommendation that public officials respond to criticism through clarification and open explanation is a statement of good practice, not a legal obligation; no provision of Indonesian law requires an institution to hold a public dialogue before considering legal steps. Presenting policy preference as binding rule is a category error that weakens rather than strengthens the argument.

The third precision concerns audience. Mass media and independent content creators do not share a single legal framework. Journalists working for registered press companies fall within Law No. 40 of 1999, which provides a right of reply and a self-regulatory mechanism through the Press Council,⁷⁴ and the literature on journalist liability under that statute shows how the good-faith standard operates within it.⁷⁵ Independent creators publishing on platforms generally fall outside that framework and are exposed directly to the EIT Law, a gap documented in comparative work on the protection of journalists in the digital age⁷⁶

⁷² Khalifa Nur Khaliq Pohan, Kayla Azalia Putri Rosano, Nia Rafa Ayu, Natasya Chairul, and Jerry Indrawan, “Demokrasi di Bawah Militerisme: Kritik Sosial terhadap Implementasi UU TNI dan Implikasinya bagi Keamanan Nasional,” *Indonesian Journal of Law and Justice* 3, no. 2 (2025): 1–15, <https://doi.org/10.47134/ijlj.v3i2.5225>.

⁷³ Undang-Undang Nomor 1 Tahun 2024 tentang Perubahan Kedua atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik, art. 45(4) and (5).

⁷⁴ Undang-Undang Nomor 40 Tahun 1999 tentang Pers, arts. 1(1), 5(2), and 5(3).

⁷⁵ Zainal Arifin, Emi Puasa Handayani, Herlina Manullang, and Zico Junius Fernando, “Journalist Liability for Breaches of Good Faith under Indonesian Press Law,” *Jurnal Litigasi* 27, no. 1 (2026): 169–205, <https://doi.org/10.23969/litigasi.v27i1.32353>.

⁷⁶ Chanidia A. Rahmayani, Cahya Wulandari, Mutmainah Nur Qoiri, Winarsih, Nauli Pinorsinta Pasaribu, and Jennifer Margareth Uliana Sianipar, “Protecting Journalists in the Digital Age: A Cross-Jurisdictional

and in analysis of press freedom in Indonesia's digital era. Recommendations premised on the right of reply therefore cannot simply be extended to creators, and work on the regulation of Indonesian influencers confirms that this population is governed by a different mix of state and social control.⁷⁷

Finally, the broader significance of this body of doctrine lies in its relation to accountability rather than to speech alone. Criticism of administrative performance is an exercise of the oversight function that Articles 25 and 44 of Law No. 39 of 1999 expressly contemplate, and the literature on the right to freedom of expression within a rule-of-law framework treats such criticism as constitutive of, rather than incidental to, the democratic order.⁷⁸ Where an institution's recourse to criminal process would convert that oversight into a legal risk, the limitation structure of Article 28J(2) requires the restriction to be justified rather than assumed; Indonesian commentary on the paradox of expressive freedom under the EIT Law⁷⁹ and on the implications of Decision 105/PUU-XXII/2024 for expressive freedom⁸⁰ converges on that conclusion, as does the comparative literature on social-media regulation in ASEAN and the European Union.⁸¹ The constitutional-interests framing of judicial review developed in recent Indonesian scholarship supplies the same point from the side of the reviewing court.⁸²

5. Conclusion

This study concludes that Indonesian law protects freedom of expression while permitting restrictions subject to legality, legitimate aims, necessity, and proportionality. Decision No. 105/PUU-XXII/2024 narrowed Article 27A of the EIT Law by excluding institutions and other collective entities from the category of eligible victims and limiting defamation to conduct degrading an individual's honour. Accordingly, government institutions cannot claim victim status under Article 27A, and criticism of institutional performance does not automatically constitute electronic defamation. The September 2025 episode illustrates the

Legal Comparison of Indonesia and the Netherlands," *Indonesia Media Law Review* 4, no. 2 (2025): 190–211, <https://doi.org/10.15294/imrev.v4i2.35972>.

⁷⁷ Petra Mahy, Monika Winarnita, and Nicholas Herriman, "Influencing the Influencers: Regulating the Morality of Online Conduct in Indonesia," *Policy & Internet* 14, no. 3 (2022): 574–96, <https://doi.org/10.1002/poi3.321>.

⁷⁸ Edi Sofwan, "Restrictions on the Right to Freedom of Expression in Public from the Perspective of the Rule of Law," *International Journal of Community Service* 5, no. 1 (2026): 109–23, <https://doi.org/10.55299/ijcs.v5i1.1809>.

⁷⁹ Amelia Puspita and Melyana, "The Paradox of Freedom of Expression: An Evaluation of the Implementation of the ITE Law from a Human Rights Perspective in Indonesia," *Ekasakti Journal of Law and Justice* 4, no. 1 (2026): 10–17, <https://doi.org/10.60034/fbvp1504>.

⁸⁰ Daffa Briliandana Pratama and Prioni Rahmanda Saputri, "Implikasi Putusan Mahkamah Konstitusi Nomor 105/PUU-XXII/2024 atas Kasus Pencemaran Nama Baik dalam Undang-Undang Informasi dan Teknologi Elektronik terhadap Kebebasan Berekspresi," *Journal Law and Government* 4, no. 1 (2026): 8–14, <https://doi.org/10.31764/jlag.v4i1.38918>.

⁸¹ Sholahuddin Al-Fatih, Abdurrahman Raden Aji Haqqi, and Asrul Ibrahim Nur, "Realizing a Polite Society on Social Media: ASEAN and EU Perspectives," *Indonesian Journal of Law and Society* 3, no. 2 (2022): 219–50, <https://doi.org/10.19184/ijls.v3i2.33430>.

⁸² Andriansyah Rahman and Muthi'ah Maizaroh, "Strengthening Independence: Constitutional Interests as a Paradigm for Judicial Review in Indonesia," *Jurnal Hukum dan Peradilan* 13, no. 1 (2024): 33–62, <https://doi.org/10.25216/jhp.13.1.2024.33-62>.

practical articulation of this principle through clarification and dialogue, although it does not establish a general enforcement pattern or demonstrate an empirical chilling effect.

The study recommends consistent application of the Constitutional Court's interpretation, legislative clarification of Article 27A and its relationship with the new Criminal Code, and institutional preference for clarification and the right of reply over criminal proceedings. Legal education should also distinguish remedies available to registered press companies from those applicable to independent content creators. Ultimately, Decision No. 105/PUU-XXII/2024 and Decision No. 282/PUU-XXIII/2025 reinforce that institutions cannot claim criminal protection for injury to their own reputation, while individuals remain protected. Future empirical research should examine enforcement practices and the effects of perceived legal risks on public criticism.

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