

Juridical Implications of Constitutional Court Decision Number 78/PUU-XXI/2023 on Freedom of Expression in Indonesia

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ABSTRACT

Freedom of expression constitutes a constitutionally protected right under the 1945 Constitution of the Republic of Indonesia. Nevertheless, its implementation continues to encounter significant challenges, particularly due to the existence of vague criminal provisions that generate legal uncertainty and create the risk of criminalizing legitimate expressions. This issue became central to the judicial review of Articles 14 and 15 of Law Number 1 of 1946 concerning Criminal Law Regulations, culminating in Constitutional Court Decision Number 78/PUU-XXI/2023. This study aims to examine the Constitutional Court's legal reasoning and to analyze the juridical implications of the decision for the protection of freedom of expression in Indonesia. Employing normative legal research, this study applies statutory, conceptual, and case approaches. The analysis is conducted qualitatively on primary, secondary, and tertiary legal materials. The findings indicate that the Court emphasized that any restriction on freedom of expression must meet the requirements of clarity, precision, and proportionality. The Court held that ambiguous criminal norms violate the principles of legal certainty (*lex certa*) and constitutional protection of rights. Consequently, the Court declared the contested provisions unconstitutional and legally non-binding. The decision establishes a constitutional benchmark for assessing other restrictive criminal norms, including those contained in the new Criminal Code and the amended Electronic Information and Transactions (EIT) Law. Thus, the ruling reinforces constitutional safeguards for freedom of expression and provides normative guidance for legislators and law enforcement authorities in formulating and implementing criminal law policies.

Keywords: Freedom of Expression; Constitutional Court Decision; Legal Certainty

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INTRODUCTION

Freedom of expression is a fundamental human right recognized universally and guaranteed constitutionally within Indonesia's legal framework. As a state founded upon the principles of constitutional democracy and the rule of law (*rechtsstaat*), Indonesia is obligated to regulate and safeguard the exercise of this right in accordance with constitutional mandates. Article 28E paragraph (3) of the 1945 Constitution guarantees every individual the right to associate, assemble, and express opinions. Complementarily, Article 28F affirms the right of every person to communicate and obtain information for the development of oneself and one's social environment. These constitutional guarantees reflect the centrality of freedom of expression within Indonesia's democratic order.

Indonesia's commitment to protecting freedom of expression is further reinforced by its ratification of the International Covenant on Civil and Political Rights (ICCPR) through Law Number 12 of 2005. Article 19 of the Universal Declaration of Human Rights (UDHR) (1948) and Article 19 paragraph (2) of the ICCPR (1966)

recognize the right of every individual to seek, receive, and impart information and ideas through any media and regardless of frontiers. Domestically, Law Number 39 of 1999 concerning Human Rights strengthens this protection in Article 14 paragraph (2), which guarantees the right to seek, obtain, possess, store, process, and convey information using all available means.

These normative instruments collectively affirm that freedom of expression constitutes an essential civil liberty that underpins democratic governance. Public expression, including criticism of governmental policies and state institutions, functions as a mechanism of social control and democratic accountability. The vibrancy of democratic life can be assessed, among other indicators, through the degree of protection afforded to civil liberties and freedom of expression.

However, constitutional recognition of freedom of expression does not imply its absolute character. In accordance with the doctrine of limitation of rights, restrictions may be imposed by law, provided that such limitations pursue legitimate aims and satisfy the principles of legality, necessity, and proportionality. In practice, the regulation of these limitations has generated complex legal issues, particularly where criminal provisions are drafted in vague or overly broad terms. Ambiguous norms concerning the dissemination of false information, defamation, or public disorder have frequently been criticized for contravening the principles of *lex certa* and legal certainty.

The rapid development of digital communication technologies has further complicated the regulatory landscape. Social media platforms and online communication channels have expanded the scope of public discourse, while simultaneously intensifying concerns regarding misinformation, hate speech, and potential social conflict. The state thus occupies a dual position: it must guarantee freedom of expression while also ensuring the protection of public order and individual dignity.

In Indonesia, the Electronic Information and Transactions (EIT) Law has been subject to sustained criticism for containing provisions that are considered overly broad and susceptible to misuse. Certain articles have been characterized as “rubber provisions” due to their elasticity in interpretation, thereby enabling selective or subjective enforcement. Similar concerns have historically surrounded Articles 14 and 15 of Law Number 1 of 1946 concerning Criminal Law Regulations, which criminalized the dissemination of false news capable of causing public disorder. These provisions, inherited from the colonial legal framework, have long been regarded as problematic due to their indeterminate terminology and potential to suppress dissent.

A prominent illustration of these issues arose in the case involving human rights activists Fatia Maulidiyanty and Haris Azhar, who were reported for defamation following public criticism of alleged involvement of public officials in mining activities in Papua. Although both were eventually acquitted, the protracted legal proceedings demonstrated the chilling effect that ambiguous criminal provisions may exert on public discourse.

In response to these constitutional concerns, the Constitutional Court issued Decision Number 78/PUU-XXI/2023 on March 21, 2024. The Court declared Article 14 paragraphs (1) and (2) and Article 15 of Law Number 1 of 1946 unconstitutional and without binding legal force. The judicial review was filed by civil society actors who

argued that the contested provisions violated constitutional guarantees of freedom of expression due to their vague and multi-interpretable nature.

In its legal reasoning, the Court emphasized that criminal norms restricting freedom of expression must be formulated with sufficient clarity and precision to prevent arbitrary enforcement. Terms such as “false news” and “public disorder” were deemed excessively broad and incapable of providing adequate legal certainty. By annulling these provisions, the Court reaffirmed the constitutional requirement that any limitation on fundamental rights must conform to the principles of legality and proportionality.

Nevertheless, the juridical implications of this decision extend beyond the annulled provisions. Similar regulatory patterns remain present in the new Criminal Code and the amended EIT Law. Consequently, further scholarly analysis is necessary to assess how this decision functions as a constitutional standard for evaluating analogous norms and to determine its broader impact on legislative reform and law enforcement practices.

Accordingly, this study examines the juridical implications of Constitutional Court Decision Number 78/PUU-XXI/2023 for the protection of freedom of expression in Indonesia. It analyzes the Court’s constitutional interpretation and evaluates its potential to shape future criminal law policy, with the objective of contributing to legal harmonization and the strengthening of constitutional safeguards for freedom of expression within Indonesia’s democratic framework.

METHOD

According to Peter Mahmud Marzuki (2008:35), legal research is a systematic process aimed at identifying legal rules, principles, and doctrines to resolve specific legal issues. Legal research methodology constitutes a scientific method characterized by structured procedures for collecting, analyzing, and evaluating legal materials to establish normative validity. Scientific knowledge, in this context, is knowledge whose validity has been systematically examined and verified (Efendi & Ibrahim, 2016:3). Within this framework, the present study is designed using a structured doctrinal apparatus to ensure analytical rigor and comprehensive results.

This research adopts a normative (doctrinal) legal research model, which examines statutory regulations and library-based legal materials as its primary objects of analysis (Soekanto & Mamudji, 2003:56). The study relies exclusively on secondary data consisting of primary, secondary, and tertiary legal materials. It seeks to analyze the juridical implications of Constitutional Court Decision Number 78/PUU-XXI/2023 concerning the protection of freedom of expression in Indonesia.

Consistent with the normative legal research paradigm, this study employs three complementary approaches: the statute approach, the conceptual approach, and the case approach (Marzuki, 2008:93). The statute approach examines relevant legislation governing freedom of expression, its permissible limitations, and criminal provisions concerning false information. It includes a comparative analysis between the annulled provisions and substantively similar norms contained in subsequent legislation. The conceptual approach constructs the theoretical and philosophical foundation of the research by examining legal doctrines and constitutional principles, including freedom of expression within the human rights and democratic framework, the legality principle (*lex certa*), legal certainty, and proportionality. The case approach

analyzes the Constitutional Court's ratio decidendi in Decision Number 78/PUU-XXI/2023, particularly its constitutional reasoning in annulling vague criminal provisions and its broader function in safeguarding constitutional rights through judicial review.

The legal materials utilized in this study comprise: (1) primary legal materials, including constitutional provisions, statutes, international human rights instruments, and Constitutional Court decisions; (2) secondary legal materials, such as textbooks, academic journal articles, and scholarly commentaries; and (3) tertiary materials, including legal dictionaries and relevant authoritative online sources. These materials were collected through library research and subsequently analyzed using qualitative descriptive methods. The analytical process follows a deductive reasoning pattern, moving from general legal principles to specific legal issues through structured legal argumentation. By employing doctrinal analysis, statutory interpretation, and constitutional reasoning, this research aims to formulate systematic conclusions regarding the juridical implications of the Constitutional Court's decision and the necessity for legislative harmonization to ensure effective constitutional protection of freedom of expression in Indonesia.

RESULTS AND DISCUSSION

1. Constitutional Deficiencies of Criminal Provisions Regulating False Information

The findings demonstrate that Constitutional Court Decision Number 78/PUU-XXI/2023 represents a substantive constitutional correction of criminal provisions regulating false information in Indonesia. The Court determined that Articles 14 and 15 of Law Number 1 of 1946 failed to satisfy essential constitutional requirements, particularly the principles of legal certainty (*lex certa*) and proportionality. These provisions contained vague and indeterminate terms—such as “false news,” “uncertain information,” and “public disturbance”—without clear normative parameters, thereby allowing overly expansive interpretation by law enforcement authorities.

Such ambiguity undermined the predictability of criminal law and created a significant risk of arbitrary enforcement. The Court emphasized that criminal sanctions imposed without precise legal formulation are incompatible with the rule of law, as individuals must be able to reasonably foresee the legal consequences of their conduct. Furthermore, the severity of criminal penalties attached to broadly defined offenses was deemed disproportionate to the legitimate objective of maintaining public order. Consequently, the Court concluded that the contested provisions enabled the criminalization of constitutionally protected expression and therefore violated constitutional guarantees of freedom of expression.

2. Constitutional Standards for Limiting Freedom of Expression

A central contribution of the decision lies in its articulation of constitutional standards governing permissible restrictions on freedom of expression. The Court established that limitations on expression must cumulatively satisfy the principles of legality, legitimate purpose, necessity, and proportionality, derived from democratic rule-of-law doctrine and international human rights norms.

The legality requirement mandates that criminal norms be clearly formulated, precise, and free from ambiguity. The legitimacy requirement demands that

restrictions pursue constitutionally recognized objectives, such as the protection of public order or national security. The necessity and proportionality requirements ensure that criminal sanctions constitute a measure of last resort and do not exceed what is strictly required to achieve their legitimate aim.

Importantly, the Court affirmed that public criticism of government institutions and public officials constitutes a core element of democratic participation and therefore merits heightened constitutional protection. By integrating these doctrinal standards, the Court reinforced constitutional democracy and prevented the instrumentalization of criminal law as a tool to suppress dissent.

3. Juridical Implications for Criminal Law Enforcement

The annulment of the contested provisions generates significant juridical consequences for criminal law enforcement. The decision produces a decriminalization effect with respect to conduct previously prosecuted under the invalidated norms. Pursuant to the principle of *lex mitior*, individuals cannot be subjected to criminal liability under provisions that no longer possess binding legal force.

This doctrinal consequence obliges law enforcement authorities to discontinue investigations and prosecutions based solely on the annulled provisions. Courts must likewise ensure that criminal sanctions are not imposed absent valid statutory grounds. Beyond procedural implications, the decision also carries restorative consequences, including the potential rehabilitation of individuals adversely affected by the unconstitutional norms.

These implications illustrate that constitutional adjudication functions not merely as abstract normative review but as an effective mechanism for safeguarding individual rights within the criminal justice system.

4. Democratic Implications and the Reduction of the Chilling Effect

The research further demonstrates that the decision strengthens democratic governance by mitigating the chilling effect associated with vague criminal provisions. Prior to the ruling, the indeterminate scope of criminal liability generated legal uncertainty that discouraged public participation in political discourse, particularly within digital communication platforms.

By invalidating ambiguous norms, the Court fosters a more secure constitutional environment for open debate and civic engagement. This development advances substantive democratic principles by ensuring that individuals may express opinions, criticize public policy, and participate in public discourse without disproportionate fear of criminal prosecution.

5. Continuing Normative Challenges in Subsequent Legislation

Despite its progressive character, the decision does not entirely eliminate normative ambiguity in Indonesian criminal legislation. The research identifies that similar formulations persist in subsequent legal frameworks, including provisions in the new Criminal Code and the amended Electronic Information and Transactions (ITE) Law, which refer to “public disorder” or “disturbance in society” without sufficiently precise definitional boundaries.

This continuity reveals a legislative paradox: although unconstitutional norms have been formally annulled, substantively analogous formulations reappear in newer statutory instruments. Consequently, the effectiveness of constitutional protection depends upon consistent interpretative discipline by courts and law enforcement

authorities. To prevent recurring constitutional violations, criminal liability must be strictly confined to situations involving demonstrable and measurable harm to public order, supported by a clear causal nexus between expression and concrete consequences.

6. General Evaluation

Overall, the findings confirm that Constitutional Court Decision Number 78/PUU-XXI/2023 constitutes a pivotal development in strengthening constitutional protection of freedom of expression in Indonesia. The decision not only invalidates constitutionally defective criminal provisions but also establishes binding normative standards that guide legislative drafting, judicial interpretation, and law enforcement practices. However, the long-term effectiveness of this constitutional advancement depends upon legislative harmonization and consistent application of constitutional principles across the criminal justice system. The decision therefore operates both as a corrective intervention and as a normative framework for future regulation of freedom of expression within Indonesia's democratic constitutional order.

Discussion

The findings indicate that Constitutional Court Decision Number 78/PUU-XXI/2023 constitutes a substantive constitutional correction of criminal provisions regulating false information in Indonesia. By annulling Articles 14 and 15 of Law Number 1 of 1946, the Court reaffirmed the centrality of the principles of legal certainty (*lex certa*) and proportionality within a democratic rule-of-law state. The vague formulations contained in these provisions—such as “false news,” “uncertain information,” and “public disturbance”—were found to lack precise normative boundaries, thereby creating space for expansive and potentially arbitrary interpretation. Such indeterminacy not only undermined predictability in criminal law but also exposed constitutionally protected expression to disproportionate criminal sanctions. Through its reasoning, the Court articulated cumulative constitutional standards for limiting freedom of expression—legality, legitimate purpose, necessity, and proportionality—while emphasizing that public criticism of government institutions forms an essential component of democratic participation. In doing so, the decision strengthens constitutional democracy by preventing the instrumentalization of criminal law as a mechanism to suppress dissent.

Beyond its normative clarification, the decision generates significant juridical and democratic implications. The annulment of the contested provisions produces a decriminalization effect pursuant to the principle of *lex mitior*, requiring the termination of investigations and prosecutions based solely on invalidated norms and potentially enabling restorative measures for affected individuals. The ruling thus demonstrates that constitutional adjudication functions not merely as abstract review but as a concrete safeguard within the criminal justice system. Moreover, by eliminating vague criminal formulations, the decision mitigates the chilling effect that previously discouraged public participation in political discourse, particularly in digital spaces. Nevertheless, the persistence of similarly ambiguous terminology in subsequent legislation—such as references to “public disorder” in the new Criminal Code and the amended ITE Law—reveals an ongoing legislative paradox. Accordingly, the long-term effectiveness of the decision depends upon legislative harmonization and disciplined constitutional interpretation to ensure that criminal liability is strictly limited

to demonstrable harm, thereby sustaining robust protection of freedom of expression within Indonesia's democratic constitutional order.

CONCLUSION

Based on the foregoing analysis, the following conclusions are drawn:

1. Constitutional Court Decision Number 78/PUU-XXI/2023 affirms that criminal norms restricting freedom of expression must not be formulated in vague or multi-interpretable terms, as such formulation contravenes the principle of legal certainty and the constitutional guarantee of freedom of expression under the 1945 Constitution. The Court determined that the reviewed provisions created space for the criminalization of expression that should receive constitutional protection. Accordingly, the decision establishes a constitutional standard requiring that any limitation on freedom of expression be clearly defined, firmly grounded, and proportionately structured within a democratic rule-of-law framework.
2. The decision carries broader juridical implications as a benchmark for assessing and applying criminal provisions regulating freedom of expression. Although the contested norms were annulled, potential ambiguity persists in the new Criminal Code, particularly through the term "disturbance" in Articles 263 and 264, as well as in Article 28 paragraph (3) and Article 45A paragraph (3) of the amended ITE Law, which employ the phrase "disturbance in society." Therefore, the decision is not merely corrective in nature but also functions as a constitutional foundation for future judicial review and for the application of strict and restrictive interpretation to ensure sustained protection of freedom of opinion and expression.

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Reference

- Amiruddin, & Asikin, Z. (2016). *Pengantar Metode Penelitian Hukum*. Jakarta: Raja Grafindo Persada.
- Amnesty International. (2022). *Amnesty International Report 2021/2022: The State of the World's Human Rights*. Diakses pada 21 September 2025, dari <https://www.amnesty.org/en/documents/pol10/4871/2022/en/>

- ARTICLE 19. (2009). *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information*. London: ARTICLE 19. Diakses dari <https://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf>
- Asshiddiqie, J. (2006). *Pengantar Ilmu Hukum Tata Negara Jilid II*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI.
- Asshiddiqie, J. (2010). *Konstitusi dan Konstitusionalisme Indonesia*. Jakarta: Sinar Grafika.
- Ayuningtiyas, F., Khusnah, A., & Wahyuningtyas, A. (2023). Efektivitas Undang-Undang Dasar Tahun 1945 terhadap Mekanisme Checks and Balances dan Pemakzulan Presiden atau Wakil Presiden dalam Perspektif Hukum Tata Negara. *Jurnal Penegakan Hukum dan Keadilan*, 4(2), 99-111.
- Azmi, R. H. N. (2020). Problematika Hate Speech Dengan Freedom Of Speech Dalam Konsepsi Negara Demokrasi. *Jurnal Studia Legalia*, 1(1), 1-13.
- Badan Pembinaan Ideologi Pancasila (BPIP). (2021). *Peraturan Badan Pembinaan Ideologi Pancasila Nomor 5 Tahun 2021*. Diakses pada 21 September 2025, dari <https://peraturan.bpk.go.id/Home/Download/333654/Peraturan%20BPIP%20Nomor%205%20tahun%202021.pdf>
- Deanova, S. (2024). Pasal Karet dan Potensi Kriminalisasi Kebebasan Berekspresi. *Jurnal Hukum dan HAM*, 12(1), 45-62.
- Dewi, C. I. D. L. (2021). Aspek Hukum Kebebasan Berpendapat dan Berekspresi. *Jurnal Yustitia*, 15(1), 26-34.
- Diantha, I. M. P. (2016). *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*. Jakarta: Kencana.
- Eddyono, L. W. (2018). Mahkamah Konstitusi dan Konsolidasi Demokrasi di Indonesia. *Jurnal Konstitusi*, 15(1), 1-26.
- Efendi, J., & Ibrahim, J. (2016). *Metode Penelitian Hukum: Normatif dan Empiris*. Depok: Kencana.
- Emanuel, S. L. (2005). *Constitutional Law* (24th ed.). New York: Aspen Publishers.
- EngageMedia. (2021). *Research: The State of Digital Rights in Indonesia*. Diakses pada 25 Agustus 2024, dari <https://engagemedia.org/projects/research-digital-rights-indonesia/>
- Fahum UMSU. (2024). *Mengenal Lebih Dekat Demokrasi Pancasila di Indonesia*. Diakses pada 21 September 2025, dari <https://law.umsu.ac.id/mengenal-lebih-dekat-demokrasi-pancasila-di-indonesia/>
- Freedom House. (2022). *Indonesia: Freedom in the World 2022 Country Report*. Diakses pada 22 September 2025, dari <https://freedomhouse.org/country/indonesia/freedom-world/2022>
- Inglehart, R., & Norris, P. (2016). *Cultural Backlash: Trump, Brexit, and Authoritarian Populism*. Cambridge: Cambridge University Press.
- Institute for Criminal Justice Reform (ICJR). (2024). *ICJR Apresiasi Putusan Mahkamah Konstitusi yang Hapus Pidana Berita Bohong*. Diakses pada 22 September 2025, dari <https://icjr.or.id/icjr-apresiasi-putusan-mahkamah-konstitusi-yang-hapus-pidana-berita-bohong/>
- Ishaq. (2017). *Dasar-dasar Ilmu Hukum*. Jakarta: Sinar Grafika.

- Isra, S. (2015). *Pergeseran Fungsi Legislasi: Menguatnya Model Legislasi Parlementer dalam Sistem Presidensial Indonesia*. Jakarta: RajaGrafindo Persada.
- Ketetapan Majelis Permusyawaratan Rakyat Republik Indonesia Nomor XVII/MPR/1998 tentang Hak Asasi Manusia.
- Kitab Undang-Undang Hukum Pidana (Wetboek van Strafrecht).
- Komisi Nasional Hak Asasi Manusia (Komnas HAM). (2021). *Komentar Umum Standar Norma dan Pengaturan Hak Atas Kebebasan Berpendapat dan Berekspresi*. Diakses dari <https://www.komnasham.go.id>
- Komisi Nasional Hak Asasi Manusia (Komnas HAM). (2024). *Standar Norma dan Pengaturan Nomor 5 tentang Hak Atas Kebebasan Berpendapat dan Berekspresi*. Diakses pada 26 Agustus 2024, dari <https://komnasham.go.id>
- La Rue, F. (2011). *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*. United Nations Human Rights Council. Diakses dari <https://www.ohchr.org/en/special-procedures/sr-freedom-of-opinion-and-expression>
- Lembaga Kajian dan Advokasi Independensi Peradilan (LeIP). (2024). *Putusan MK No. 78/PUU-XXI/2023: Penghapusan Pasal "Berita Bohong" yang (Semoga) Menjadi Kenyataan*. Diakses pada 24 Maret 2024, dari <https://leip.or.id/rilis-media-putusan-mk-no-78-puu-xxi-2023-penghapusan-pasal-berita-bohong-yang-semoga-menjadi-kenyataan/>
- Lintang, H. (2022). *Sejarah Perkembangan Demokrasi di Indonesia (Orde Lama-Reformasi)*. Zenius Education. Diakses pada 25 Agustus 2024, dari <https://www.zenius.net/blog/sejarah-perkembangan-demokrasi-indonesia>
- Locke, J. (1689). *Two Treatises of Government*. London: Awnsham Churchill.
- Mahfud MD, M. (2009). Rambu Pembatas Dan Perluasan Kewenangan Mahkamah Konstitusi. *Jurnal Hukum*, 16, 441-462.
- Mahkamah Agung Republik Indonesia. Putusan Kasasi Nomor 575 K/Pid/2024.
- Mahkamah Konstitusi Republik Indonesia. Putusan Nomor 005/PUU-IV/2006.
- Mahkamah Konstitusi Republik Indonesia. Putusan Nomor 006/PUU-III/2005.
- Mahkamah Konstitusi Republik Indonesia. Putusan Nomor 011/PUU-V/2007.
- Mahkamah Konstitusi Republik Indonesia. Putusan Nomor 115/PUU-XXII/2024.
- Mahkamah Konstitusi Republik Indonesia. Putusan Nomor 14/PUU-VI/2008.
- Mahkamah Konstitusi Republik Indonesia. Putusan Nomor 50/PUU-VI/2008.
- Mahkamah Konstitusi Republik Indonesia. Putusan Nomor 78/PUU-XXI/2023.
- Mahmud Marzuki, P. (2008). *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group.
- Marwandianto, M., & Nasution, H. A. (2020). Hak atas Kebebasan Berpendapat dan Berekspresi dalam Koridor Penerapan Pasal 310 dan 311 KUHP. *Jurnal HAM*, 11(1), 1-15.
- Mastro, O. S. (2020). The Authoritarian Resurgence: Duterte's Threat to Democracy in the Philippines. *Journal of Democracy*, 31(2), 133-148.
- Nasution, M. L. (2022). UU ITE dan Tantangan Kebebasan Berekspresi di Indonesia. *Jurnal Hukum dan Masyarakat*, 8(2), 120-135.
- Nasution, M. L., & Aqil, N. A. (2022). UU ITE: Antara Kebijakan Kontrol dan Ancaman Kebebasan Berinternet. *Recht Studiosum Law Review*, 1(1), 35-47.

- Nazar, H. S. E. S., & Putri, N. R. (2022). Mural: Jaminan dan Batasan Kebebasan Berekspresi di Indonesia dalam Perspektif Hukum. *Jurnal Restorasi Hukum*, 5(2), 125-142.
- Pappas, T. (2019). *Populism and Liberal Democracy: A Comparative and Theoretical Analysis*. Oxford: Oxford University Press.
- Pengadilan Negeri Jakarta Timur. Putusan Nomor 202/Pid.Sus/2023/PN Jkt.Tim.
- Pengadilan Negeri Jakarta Timur. Putusan Nomor 203/Pid.Sus/2023/PN Jkt.Tim.
- Peraturan Mahkamah Konstitusi Nomor 2 Tahun 2021 tentang Tata Beracara dalam Perkara Pengujian Undang-Undang.
- Pusat Studi Hukum dan Kebijakan (PSHK). (2024). *Analisis Pasal Karet dalam Regulasi Informasi*. Diakses dari <https://pshk.or.id>
- Rahmanto, T. Y. (2016). Kebebasan Berekspresi dalam Perspektif Hak Asasi Manusia: Perlindungan, Permasalahan dan Implementasinya di Provinsi Jawa Barat. *Jurnal HAM*, 7(1), 45-53.
- Roqib, M., Putra, H. A. S., Noris, A., & Ambarita, H. P. (2020). Hak atas Kebebasan Berekspresi dan Berpendapat di Indonesia dengan di Amerika Serikat. *Perspektif Hukum*, 20(1), 41-53.
- Rosana, E. (2016). Negara Demokrasi dan Hak Asasi Manusia. *Jurnal Tapis: Jurnal Teropong Aspirasi Politik Islam*, 12(1), 37-53.
- Rouf, H. (2021). Pembatasan Kebebasan Berpendapat di Era Digital. *Jurnal Hukum Lex Generalis*, 2(5), 32-50.
- SAFEnet. (2021). *Digital Rights Situation Report Indonesia 2021: In Indonesia, Digital Repression Keep Continues*. Diakses pada 25 Agustus 2024, dari <https://safenet.or.id/2022/03/in-indonesia-digital-repression-is-keep-continues/>
- Schumpeter, J. A. (2003). *Capitalism, Socialism, and Democracy*. New York: Harper & Brothers Publishers.
- Selian, D. L., & Melina, C. (2018). Kebebasan Berekspresi di Era Demokrasi: Catatan Penegakan Hak Asasi Manusia. *Lex Scientia Law Review*, 2(2), 189-198.
- Soekanto, S., & Mamudji, S. (2003). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada.
- Sulisworo, D. T. W., & Arif, D. B. (2012). *Demokrasi Hibah Materi Pembelajaran Non Konvensional 2012*. Yogyakarta: UAD.
- Supreme Court of the United States. *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).
- Supreme Court of the United States. *Schenck v. United States*, 249 U.S. 47 (1919).
- Supreme Court of the United States. *Whitney v. California*, 274 U.S. 357 (1927).
- The Indonesian Institute. (2024). *TIF Seri 104 - Kesiapan Indonesia untuk Merdeka Berekspresi di Tahun 2024*. Diakses pada 22 September 2025, dari <https://www.theindonesianinstitute.com/tif-seri-104-kesiapan-indonesia-untuk-merdeka-berekspresi-di-tahun-2024/>
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- Undang-Undang Nomor 1 Tahun 1946 tentang Peraturan Hukum Pidana (Lembaran Negara Republik Indonesia Tahun 1958 Nomor 127).
- Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana (Lembaran Negara Republik Indonesia Tahun 2023 Nomor 1).

- Undang-Undang Nomor 1 Tahun 2024 tentang Perubahan Kedua atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik (Lembaran Negara Republik Indonesia Tahun 2024 Nomor 1).
- Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik (Lembaran Negara Republik Indonesia Tahun 2008 Nomor 58).
- Undang-Undang Nomor 12 Tahun 2005 tentang Pengesahan International Covenant on Civil and Political Rights (Kovenan Internasional tentang Hak-Hak Sipil dan Politik) (Lembaran Negara Republik Indonesia Tahun 2005 Nomor 119).
- Undang-Undang Nomor 13 Tahun 2022 tentang Perubahan Kedua atas Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan (Lembaran Negara Republik Indonesia Tahun 2022 Nomor 143).
- Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik (Lembaran Negara Republik Indonesia Tahun 2016 Nomor 251).
- Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi (Lembaran Negara Republik Indonesia Tahun 2003 Nomor 98).
- Undang-Undang Nomor 27 Tahun 1999 tentang Perubahan Kitab Undang-Undang Hukum Pidana yang Berkaitan dengan Kejahatan terhadap Keamanan Negara (Lembaran Negara Republik Indonesia Tahun 1999 Nomor 168).
- Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia (Lembaran Negara Republik Indonesia Tahun 1999 Nomor 165).
- Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman (Lembaran Negara Republik Indonesia Tahun 2009 Nomor 157).
- Undang-Undang Nomor 7 Tahun 2020 tentang Perubahan Ketiga atas Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi (Lembaran Negara Republik Indonesia Tahun 2020 Nomor 216).
- Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana (Lembaran Negara Republik Indonesia Tahun 1981 Nomor 76).
- Undang-Undang Nomor 8 Tahun 2011 tentang Perubahan atas Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi (Lembaran Negara Republik Indonesia Tahun 2011 Nomor 70).
- United Nations Human Rights Committee. (2011). *General Comment No. 34 on Article 19: Freedoms of Opinion and Expression*. CCPR/C/GC/34. Diakses dari <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-34-article-19-freedoms-opinion-and>
- United Nations. (1948). *Universal Declaration of Human Rights*. Diakses pada 25 Maret 2024, dari https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/tsh.pdf
- United Nations. (1966). *International Covenant on Civil and Political Rights*. Diakses pada 25 Maret 2024, dari <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>
- Universitas An-Nur. (2024). *Tiga Sistem Pemerintahan: Presidensial, Parlementer, dan Semi-Presidensial*. Diakses pada 25 Agustus 2024, dari <https://an-nur.ac.id/blog/tiga-sistem-pemerintahan-presidensial-parlementer-dan-semi-presidensial.html>

- Varshney, A. (2002). *Ethnic Conflict and Civic Life: Hindus and Muslims in India*. New Haven: Yale University Press.
- Walangitan, S. (2023). Independensi Mahkamah Konstitusi: Tantangan dan Ancaman Politik. *Jurnal Konstitusi*, 20(2), 215-238.
- Yusuf, M. A. (n.d.). *Pengertian Demokrasi: Sejarah, Ciri, Tujuan, Macam, dan Prinsip*. Gramedia Literasi. Diakses pada 25 Agustus 2024, dari <https://www.gramedia.com/literasi/demokrasi/>