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REFORM

PROTECTING ONLINE SPEECH IN INDONESIA: LESSONS FROM THE EIT LAW AND THE ROAD AHEAD

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TRIALWATCH REPORT

A CLOONEY FOUNDATION **FOR** JUSTICE INITIATIVE

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The Institute for Criminal Justice Reform (ICJR) is an independent research organization dedicated to promoting legal, criminal justice, and criminal law reform in Indonesia. Focused on transforming the criminal justice system from tools of authoritarian power to instruments that support democracy and human rights, ICJR advocates for systematic efforts to establish the Rule of Law. The ICJR plays a key role in fostering a culture of human rights and supporting democratic values through initiatives that reform criminal justice practices and reinforce respect for the Rule of Law. Researchers and contributors at ICJR were **Adhigama A. Budiman**, **Maidina Rahmawati**, **Ove Syaifudin Abdullah**, and **Wahyu Aji Ramadhan**.

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B.ABOUT THE CLOONEY FOUNDATION FOR JUSTICE'S TRIALWATCH INITIATIVE

TrialWatch is an initiative of the **Clooney Foundation for Justice** that provides free legal aid in defense of free speech. Its mission is to expose injustice, help to free those unjustly detained and promote the rule of law around the world. **Maneka Khanna**, Senior Legal Program Manager, led the project for the TrialWatch team and drafted the report, along with **Kate McFarland**, Legal Program Manager and **Shirin Asgari**, former Legal Fellow.

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EXECUTIVE SUMMARY



Freedom of speech in Indonesia has come under increasing threat in recent years. While the country's legal framework recognizes the right to freedom of expression, a number of statutory provisions have infringed on the exercise of this right—including, in particular, key provisions of the Electronic Information and Transactions Law ("**EIT Law**"). Various international organizations, including Amnesty International, have criticised the EIT Law for being "excessively and arbitrarily" used to criminalize a wide array of online speech, including social media posts, videos and news reports.¹ Most prosecutions have been brought under two provisions of the EIT Law: Article 27(3), prohibiting cyberdefamation, and Article 28(2), criminalizing hate speech.² These two articles have been particularly susceptible to abuse due to their vague language—earning them the moniker of "rubber/elastic" articles in Indonesia.³

Recognising the scale of the problem, in June 2021, the Chief of the National Police, the Attorney General, and the Minister of Communication and Information Technology jointly issued guidelines on how to interpret the EIT Law so as to protect against criminalization of protected speech (the "**Joint Decree**"). The present report analyzes how the EIT Law has been implemented following adoption of the Joint Decree, and unpacks the lessons learned for freedom of speech in Indonesia, as a new Criminal Code comes into effect in 2026.

This report analyses 73 cases brought under the EIT Law since the issuance of the Joint Decree⁴ and finds that police and prosecutors, while aware of the Joint Decree (as confirmed in interviews), have not followed it. More than 90 percent

¹ See e.g. Amnesty International, *Silencing Voices, Suppressing Criticism: The Decline in Indonesia's Civil Liberties*, 2022, *available at* <https://www.amnesty.org/en/wp-content/uploads/2022/10/ASA2160132022ENGLISH.pdf>; SAFEnet, *International Civil Society Strongly Condemn Digital Crackdown by the Government of Indonesia and Big Tech*, Sept. 10, 2025, *available at* <https://safenet.or.id/2025/09/international-civil-society-strongly-condemn-digital-crackdown-by-the-government-of-indonesia-and-big-tech/>.

² Amnesty International, *Silencing Voices, Suppressing Criticism: The Decline in Indonesia's Civil Liberties*, 2022, at 18 – 19, *available at* <https://www.amnesty.org/en/wp-content/uploads/2022/10/ASA2160132022ENGLISH.pdf>.

³ International Federation of Journalists, *Indonesia: ITE Convictions Threaten Press Freedom*, Dec. 3, 2021, *available at* <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/indonesia-ite-convictions-threaten-press-freedom.html>; Jim Nolan, *Are Indonesia's "Rubber" Law Limiting Freedom of Speech*, Feb. 22, 2021, The Lowy Institute, *available at* <https://www.loyyinstitute.org/the-interpreter/are-indonesia-s-rubber-laws-limiting-freedom-speech>.

⁴ 60 cases in the dataset were filed after the Joint Decree came into force (June 2021-January 2024), while in the remaining 13 cases/complaints were filed prior to the Joint Decree but investigations/prosecutions continued after the Decree.

of the cases analysed for this report ought to have been exempt from prosecution per the Joint Decree, yet police and prosecutors did not dismiss most of these cases. Over 60 percent of the defamation cases analysed involved opinions and/or insulting speech that could be classified as “ridicule, mockery or inappropriate words,” and should not have triggered prosecution under either international law or the Joint Decree. Similarly, in almost 60 percent of the defamation cases, the speech was related to an issue of public interest. Nonetheless, the speech in question did not receive the legal protection it should have been afforded in international law and by the Joint Decree. One prosecutor, when interviewed for this report, made their views clear: “Even if it is for the public interest, if someone feels their reputation is being injured, it can still be considered a criminal offense.” With respect to hate speech, in none of the cases analyzed was there an evident intent to incite hatred—meaning these prosecutions took place in contravention of international standards and the Joint Decree.

Several cases analysed for this report also included charges under Articles 14 and 15 of Law No. 1/1946 on Criminal Law Regulation—“hoax provisions” that criminalize the spreading of “false” or “uncertain or exaggerated or incomplete” information that “may cause disruption among the public.” In March 2024, the Indonesian Constitutional Court struck down these provisions on the ground that they were “broad and unclear and thus can be interpreted in an unlimited and diverse manner,” thus infringing “the right to associate, assemble, and express thoughts.”⁵ This ruling is relevant for vague provisions that criminalize speech in general, and the provisions that criminalize fake news in the new Criminal Code in particular, since they share several features with the provisions that were struck down.⁶

Indonesia’s new Criminal Code, which repeals the current colonial-era Criminal Code, governs online and offline speech. It will replace the EIT Law in 2026. Additionally, in December 2023, Indonesia’s parliament approved an amendment to the EIT Law, which came into effect in 2024 and is currently in force.

⁵ Lembaga Kajian & Advokasi Independensi Peradilan, Press Release: Revocation of “Fake News” Provisions is (Hopefully) Not Fake, Mar. 23, 2024, *available at* <https://leip.or.id/press-release-revocation-of-fake-news-provisions-is-hopefully-not-fake/>; see also Amnesty International, Indonesia: Landmark Court Decision Nullifies Defamation Articles, Mar. 22, 2024, *available at* <https://www.amnesty.id/kabar-terbaru/siaran-pers/indonesia-landmark-court-decision-nullifies-defamation-articles/03/2024/>.

⁶ *Id.*

Several important and positive steps have been taken in the amended EIT Law and new Criminal Code, including a public interest exception to defamation,⁷ a narrowing down of the groups that can invoke the hate speech law⁸ and a requirement that hate speech result in *actual* violence against people or goods.⁹ Additionally, as recently as April 2025, Indonesia's Constitutional Court warned that criminal defamation laws risk abuse, and should be interpreted narrowly to protect individual reputations, not shield officials or institutions from criticism.¹⁰ In a separate decision, the Court also affirmed public interest as a defense to charges of defamation.¹¹

And yet the amended EIT Law and the new Criminal Code are still inconsistent with international standards on freedom of expression—and increasingly with domestic jurisprudence. As a first step, the Indonesian government should consider revising certain provisions of the new Criminal Code in line with judgments of the Constitutional Court.

These inconsistencies give rise to serious concern that abusive prosecutions will continue to take place, highlighting the importance of implementing guidelines. Such guidelines could draw upon positive developments from across the various branches of government, including the Joint Decree's effort to protect certain forms of expression and decisions of the Constitutional Court requiring that criminal provisions that restrict the freedom of expression be clear.¹²

Given the issues with implementation of the Joint Decree described in this report, however, it would be important that any such guidelines be clear and enforceable. Further, the Ministry of Law is currently developing training guidelines on "Criminal Acts Related to Freedom of Expression in the New Criminal Code." This provides another opportunity to ensure that training for

⁷ Republic of Indonesia, Law No. 1 of 2024 about Second Amendment of Law No. 11 of 2008 Concerning Information and Electronic Transactions, [hereinafter "Amended EIT Law"], Article 45(4).

⁸ Amended EIT Law, Article 28(2); Republic of Indonesia, Law No. 1 of 2023 on Criminal Code, Government Gazette of the Republic of Indonesia, Article 243(1) (2023), *available at* <https://the-world-is-watching.org/wp-content/uploads/2023/02/2023-Indonesia-Penal-Code.pdf> [hereinafter "New Criminal Code"].

⁹ New Criminal Code, Article 243(1).

¹⁰ See Constitutional Court Decision No. 105/PUU-XXII/2024 (unofficial English translation).

¹¹ See Constitutional Court Decision No. 115/PUU-XXII/2024 (unofficial English translation).

¹² See Constitutional Court Decision No. 105/PUU-XXII/2024 (unofficial English translation); Constitutional Court Decision No. 115/PUU-XXII/2024 (unofficial English translation); Constitutional Court Judgment, Case No. 78/PUU-XXI/2023 (unofficial English translation).

police, prosecutors and judges builds on lessons learned from the ways the Joint Decree was—or was not—followed in criminal cases.

This report builds on findings submitted by the Clooney Foundation for Justice's TrialWatch Initiative (TrialWatch) and the Institute for Criminal Justice Reform (ICJR) to the UN Human Rights Committee in March 2024, in advance of Indonesia's review by the Committee, on the ineffectiveness of the Joint Decree.¹³ The submission also identified gaps in the amended EIT Law and the new Criminal Code. In its concluding observations adopted after the review, the Human Rights Committee called upon Indonesia to "revise the legal framework, including the Criminal Code and the amended [EIT] Law" and define the provisions on defamation and fake news in the amended EIT law "in accordance with the principles of legal certainty, necessity and proportionality."¹⁴ It also called upon Indonesia to "conduct training for judges, prosecutors, lawyers and police personnel on the right to freedom of expression, including online expression."¹⁵ The recommendations we offer are consistent with the Committee's views.

Section I of the report provides a background to the laws discussed in the report: the EIT Law (including the guidelines in the Joint Decree and the amendments to the law in 2024); Articles 14 and 15 of Law No. 1/1946 (the so-called "hoax provisions"); and the relevant provisions in the new Criminal Code.

Section II outlines the methodology adopted for this report. Section III gives an overview of findings from analysing the dataset of 73 cases, highlighting the inconsistent implementation of the Joint Decree by all actors in the justice system. Section IV contains in-depth case summaries of six cases, which reflect the different types of cases and outcomes in the larger dataset.

Section V provides a detailed legal analysis examining the provisions of the EIT Law, the Joint Decree and the cases in the dataset as against international human rights standards on defamation, hate speech and fake news. This section of the report also includes an analysis of the fair trial rights violated by the overreliance on 'expert opinions' by Indonesian courts in the cases. Section VI looks at protections afforded to journalists in Indonesia as against international law. Section VII highlights perspectives of police, prosecutors and judges on the Joint Decree, based on interviews conducted for this report.

¹³ Clooney Foundation for Justice, Reforms of Indonesia's Cyberlaw Are Inadequate, Say TrialWatch and ICJR, Mar. 10, 2024, *available at* <https://cfj.org/news/reforms-of-indonesias-cyberlaw-are-inadequate-say-trialwatch-and-icjr/>.

¹⁴ UN Human Rights Committee, Concluding Observations on the Second Periodic Report of Indonesia, U.N. Doc. CCPR/C/IDN/CO/2, May 3, 2024, page 10.

¹⁵ *Id.*

Finally, Section VIII offers recommendations as to how the Indonesian government can better protect the right to freedom of expression. Specifically, it urges Indonesian authorities to adopt clearer and more enforceable guidance for police, prosecutors and judges to ensure that protected speech is not criminalized in the country, and to reflect that guidance in the trainings that are currently in development.

BACKGROUND

Indonesia has an obligation to protect the right to freedom of expression, as reflected in both international and domestic legal instruments. The International Covenant on Civil and Political Rights (“**ICCPR**”), to which Indonesia acceded in 2006,¹⁶ provides that “[e]veryone shall have the right to freedom of expression . . . [which] include[s] freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of [their] choice.”¹⁷ Article 28E of the Indonesian Constitution likewise protects the right to freedom of expression of opinion. Article 28F further protects one’s right to “communicate and obtain information for their personal and social environment development, and the right to seek, obtain, own, store, process, and convey information using all available channels.” These rights are also protected by specific legislation, such as the Human Rights Law (Law No. 39 of 1999) and the Press Law (Law No. 40 of 1999).

Yet other laws restrict the right to freedom of expression, particularly online speech. The 2008 Electronic Information and Transactions Law (“**EIT Law**”) regulates online transactions and criminalizes a number of “prohibited acts,” including cyberdefamation and hate speech.¹⁸ The articles on cyberdefamation (Article 27(3)) and hate speech (Article 28(2)) have been criticized for being “excessively and arbitrarily used as basis for making police reports and arresting members of civil society for simply exercising their rights to freedom of

¹⁶ Office of the High Commissioner for Human Rights (OHCHR), UN Treaty Body Database, *available at* https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=80&Lang=EN (recording Indonesia’s accession to the ICCPR on February 23, 2006.).

¹⁷ International Covenant on Civil and Political Rights, December 19, 1966, 999 U.N.T.S. 171, Article 19 (emphasis added) [hereinafter “ICCPR”]. The European Convention on Human Rights, African Charter on Human and Peoples’ Rights, and American Convention on Human Rights also protect free speech in similar terms. See Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, ETS 5, Article 10(1) [hereinafter “ECHR”]; African Charter on Human and Peoples’ Rights (Banjul Charter), June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Article 9 [hereinafter “Banjul Charter”]; Organization of American States (OAS), American Convention on Human Rights, “Pact of San Jose”, Costa Rica, Nov. 22, 1969, Article 13 [hereinafter “ACHR”].

¹⁸ Republic of Indonesia, Law No. 11 of 2008 on Electronic Information and Transaction, as amended by Law No. 19 of 2016, Articles 27(3), 28(2), 45(1), and 45(2), *available at* http://www.flevin.com/id/lgso/translations/JICA%20Mirror/english/4846_UU_11_2008_e.html [hereinafter “EIT Law”].

expression and peaceful assembly.”¹⁹ The UN Special Rapporteur on the Situation of Human Rights Defenders, for example, has expressed deep concern “at the way defamation laws are being used in Indonesia to undermine the right to freedom of opinion and expression.”²⁰ The EIT Law was amended for the second time in late 2023; however, the 2023 amendments (which entered into force in 2024) have been criticised for “fail[ing] to rectify the main flaws of its previous iteration.”²¹ Indeed, in April 2025 Indonesia’s Constitutional Court warned that certain provisions of the law carry the potential to suppress freedom of speech, and emphasized the need for clarity and limitations “so that it is not used excessively or disproportionately against forms of expression that are legitimate in a democratic society.”²² Further, these amendments introduced a new provision, Article 28(3), prohibiting the dissemination of fake news.

Indonesian authorities also used the so-called ‘Hoax Provisions’ in Article 14(2) and Article 15 of Law No. 1/1946 to clamp down on free speech. The provisions criminalized and imposed a penalty of imprisonment for spreading misinformation in the public sphere.²³ As with Indonesia’s criminal defamation

¹⁹ Amnesty International, *Indonesia: Silencing Voices, Suppressing Criticism: The Decline in Indonesia’s Civil Liberties*, Oct. 7, 2022, *available at* <https://www.amnesty.org/en/documents/asa21/6013/2022/en/>

(“[T]he overly broad provisions of the law have been misused and deployed as a means to silence criticism ...by arresting and threatening to arrest those who express unwelcome opinions on social media.”); see also U.S. Embassy & Consulates in Indonesia, 2022 Country Reports on Human Rights Practices: Indonesia (2022) (“[T]he Electronic Information and Transactions law ... was often used to regulate online speech and carries a maximum six-year prison sentence. NGOs reported this law was also often used to prosecute critics of the government.”), *available at* <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/indonesia/>; Civicus, *Statement at the 52nd Session of the UN Human Rights Council on UPR Outcome Adoption—Indonesia*, Mar. 27, 2023 (observing that these defamation laws have granted Indonesian authorities a tool to “arrest, prosecute and punish activists, journalists, [and other] government critics”), *available at* <https://www.civicus.org/index.php/media-resources/news/united-nations/geneva/6329-indonesia-restrictive-laws-used-to-target-activists-journalists-and-government-critics>.

²⁰ OHCHR, *Indonesia: Stop Judicial Harassment of Human Rights Defenders—UN Expert*, Nov. 26, 2021, *available at* <https://www.ohchr.org/en/press-releases/2021/11/indonesia-stop-judicial-harassment-human-rights-defenders-un-expert>.

²¹ International Commission of Jurists (ICJ), *Indonesia: Newly Revised ITE Law Threatens Freedom of Expression and Must Be Amended*, Dec. 6, 2023, *available at* <https://www.icj.org/indonesia-newly-revised-ite-law-threatens-freedom-of-expression-and-must-be-amended/>.

²² Constitutional Court Decision No. 105 PUU-XXII/2024, at 456 (unofficial English translation).

²³ Fredrik J. Pinakunary Law Offices, *The Criminal Act of Publishing or Spreading Fake News (Hoax)*, Mar. 10, 2020, *available at* <https://fjp-law.com/the-criminal-act-of-publishing-or-spreading-fake-news-hoax/>.

laws, civil society urged Indonesian authorities to exercise more restraint in prosecuting individuals under the Hoax Provisions.²⁴ In March 2024, the Constitutional Court deemed the Hoax Provisions unconstitutional; as a result, no prosecutions under these provisions can continue.²⁵

On December 6, 2022, the Indonesian parliament passed a new Criminal Code, repealing the current Criminal Code, which dates back to the Dutch colonial period. Among other changes, the new Criminal Code, which is due to come into force on January 2, 2026,²⁶ amends the provisions on defamation and hate speech and introduces a provision on fake news. The new Criminal Code's provisions on defamation and hate speech address both online and offline speech, meaning that Articles 27(3) and 28(2) of the EIT Law will be subsumed by the Code in 2026.

An introduction to each of these laws and the relevant provisions is given in the sections below.

A. EIT Law

Chapter VII of the EIT Law lists a number of “prohibited acts,” including cyberdefamation in Article 27(3) and hate speech in Article 28(2). Article 45 sets out the punishment for these prohibited acts. As initially adopted, Article 27(3), together with Article 45(1), provided that “[a]ny person who intentionally and without right distribute[d] and/or transmit[ted] and/or cause[d] to be accessible Electronic Information and/or Electronic Documents with contents of insults and/or defamation” could be imprisoned for up to six years and/or fined. Article 27(3) undermined the right to freedom of expression in various respects—it

²⁴ The Jakarta Post, Beware What You Share: Police Step Up War on Hoaxes, Nov. 12, 2018, *available at* <https://www.thejakartapost.com/news/2018/11/12/beware-what-you-share-police-step-war-hoaxes-fake-news.html>.

²⁵ Lembaga Kajian & Advokasi Independensi Peradilan, Press Release: Revocation of “Fake News” Provisions is (Hopefully) Not Fake, Mar. 23, 2024, *available at* <https://leip.or.id/press-release-revocation-of-fake-news-provisions-is-hopefully-not-fake/>.

²⁶ Ananda Teresia, Indonesia Set to Pass New Criminal Code that Will Ban Sex Outside Marriage, Reuters, Dec. 5, 2022 (“Once ratified, the new code will come into effect in three years’ time as the government and related institutions draft related implementing regulations.”), *available at* <https://www.reuters.com/world/asia-pacific/indonesia-set-pass-new-criminal-code-that-will-ban-sex-outside-marriage-2022-12-05/>; Human Rights Watch, Indonesia: New Criminal Code Assaults Rights, Heightened Discrimination Against Religious Minorities, Women, LGBT People, Jan. 12, 2023 (“The law has a three-year transition period before coming into effect.”), *available at* <https://www.hrw.org/news/2023/01/12/indonesia-new-criminal-code-assaults-rights#:~:text=On percent20December percent206 percent2C percent202022 percent2C percent20Indonesia's,violating percent20the percent20right percent20to percent20privacy.>

criminalized speech considered ‘insulting,’²⁷ swept very widely (including ‘contents’ that might entail value judgments²⁸ and even private messages), did not permit a public-interest defense²⁹ or a defense of truth,³⁰ and applied a potential prison sentence to allegedly defamatory speech.³¹

Article 28(2), together with Article 45(2), as initially adopted, provided that “any person who intentionally and without right disseminate[d] information aimed at causing hatred or hostility among individuals and/or certain groups based on ethnicity, religion, race, or intergroup [a term that refers to different types of social groupings]” could be imprisoned for up to six years and/or fined.³² The term “intergroup” has been understood to include individuals affiliated with professional organizations, sports teams, political parties, and government offices, lowering the threshold for Article 28(2) prosecutions.³³ In contravention of international standards, Article 28(2) did not include a requirement of intent

²⁷ UN Human Rights Committee (UNHRC), General Comment No. 34, U.N. Doc. CCPR/C/GC/34, Sep. 12, 2011, paras. 11 and 38 (“[T]he mere fact that forms of expression are considered to be insulting ... is not sufficient to justify the imposition of penalties.”).

²⁸ *Id.* at para. 47 (Defamation laws “should not be applied with regard to those forms of expression that are not, of their nature, subject to verification.”); see also European Court of Human Rights (ECtHR), *Fedchenko v. Russia* (No. 5), App. No. 17229/13, Oct. 2, 2018, para. 44 (Stressing the difference “between statements of fact and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself.”).

²⁹ UNHRC, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, Sep. 12, 2011, para. 47 (“[A] public interest in the subject matter ... should be recognized as a defence.”).

³⁰ *Id.* (“All such laws, in particular penal defamation laws, should include such defences as the defence of truth.”).

³¹ *Id.* (“States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.”).

³² EIT Law, Articles 28(2) and 45(2).

³³ Adhigama Budiman et al., *The Indonesian Information and Electronic Transaction Law and EU Perspectives on the Moderation of Online Content*, Delegation of the European Union to Indonesia, pg. 24 (Feb. 2022).

to incite hatred or a requirement of imminent harm,³⁴ and did not define the terms “hatred” or “hostility.”³⁵

Of a total of 118 criminal cases brought under the EIT Law between 2008 and 2015, 90 percent were defamation cases, with numbers “steadily increasing.”³⁶ In response to concerns about the vagueness of the EIT Law and its potentially arbitrary application, the legislature amended the law in 2016,³⁷ reducing the maximum penalties for defamation to a four-year term of imprisonment (down from six years) and/or a fine of IDR 750 million (down from IDR 1 billion).³⁸ The 2016 amendments also confirmed the Indonesian Constitutional Court’s 2008 holding that Article 27(3) should be interpreted with reference to the relevant provisions in the Criminal Code, which state that “neither slander nor libel shall exist as far as the principal obviously has acted in the general interest.”³⁹ Reaffirming this stance, in April 2025, the Constitutional Court held that speech that attacks the honor or reputation of others cannot be criminalized if carried out in the public interest.⁴⁰ In addition to a public interest exception, the defamation provisions in the Criminal Code establish a partial defense of truth.⁴¹

³⁴ Compare UN Human Rights Council, Report of the UN High Commissioner for Human Rights on the Expert Workshops on the Prohibition of Incitement to National, Racial or Religious Hatred (Appendix: “Rabat Plan of Action”), U.N. Doc. A/HRC/22/17/Add.4, Jan. 11, 2013, paras. 29(c) and (f) [hereinafter “Rabat Plan of Action”] (emphasizing that incitement is an “inchoate crime,” meaning the advocated act need not occur for the speech to be criminal, and that the mens rea under Article 20 of the ICCPR requires “‘advocacy’ and ‘incitement,’” not merely distributing material.), with Adhigama Budiman et al., *supra*, pg. 9 (“The fundamental problem of Article 28(2) of the EIT Law is that in order for *mens rea* to be fulfilled, the prosecution need only to prove that the defendant had the intention of spreading the content, instead of proving an intent to incite hatred/violence.”).

³⁵ Cf. Rabat Plan of Action, para. 21.

³⁶ Adhigama Budiman et al., *supra*, pg. 13.

³⁷ *Id.* at pgs. 13–16.

³⁸ EIT Law, Article 45(3); see Conventus Law, Indonesia – Electronic Information And Transactions Law Amended In Indonesia, Nov. 22, 2016, *available at* <https://conventuslaw.com/report/indonesia-electronic-information-and-transactions/>; Adhigama Budiman et al., *supra*, pg. 26.

³⁹ *Id.*; see also Adhigama Budiman et al., *supra*, pgs. 15–17.

⁴⁰ Constitutional Court Decision No. 105 PUU-XXII/2024, at 449 (unofficial English translation).

⁴¹ Article 312 states that when a defendant invokes a public interest or necessity defense, the judge has the discretion to determine if proving the truth of the statements is “necessary.” If truth is at issue and the defendant cannot substantiate their claims, they may be convicted of the more serious offense of “calumny” under Article 311, which carries a maximum sentence of

However, defamation cases continued to surge following the amendments. Hate speech cases also spiked, particularly in relation to criticism of the government for its COVID-19 policies.⁴² As stated by Freedom House in its 2021 review of internet freedom in Indonesia, in addition to employing Article 27(3), the authorities “increasingly targeted online discourse that is critical of the government by labelling it hate speech, which could potentially limit the willingness of journalists and users to criticize the government online.”⁴³ According to ICJR, 768 people were charged under the EIT Law from 2016 to 2020, with 37 percent of these cases brought under Article 27(3) (the cyber defamation provision) and 28 percent under Article 28(2) (the hate speech provision).⁴⁴ Nearly 97 percent of the cases resulted in convictions.⁴⁵

In February 2021, former President Widodo urged Indonesia’s police leadership to ensure that the implementation of the EIT Law be in “compliance with the principle of accountability and provide the public [a] sense of justice....”⁴⁶ The former President acknowledged that articles of the law were open to “multiple

four years. In contrast, ‘ordinary’ slander or libel offenses carry lesser maximum sentences of nine months and one year and four months, respectively.

⁴² See Devita Kartika Putri, Hate Speech and the Harm in Indonesian Judicial Decisions, Oct. 30, 2023, *available at* <https://www.tandfonline.com/doi/full/10.1080/23311886.2023.2274430>.

⁴³ Freedom House, Freedom on the Net 2021: Indonesia, 2021, *available at* <https://freedomhouse.org/country/indonesia/freedom-net/2021>; see also ICJ, Indonesia: Newly Revised ITE Law Threatens Freedom of Expression and Must Be Amended, June 12, 2023 (“The ICJ notes that the previous criminal hate speech provision in the ITE Law has been applied in an arbitrary manner to charge journalists and convict forms of expression that do not give rise to substantial harm.”), *available at* <https://www.icj.org/indonesia-newly-revised-ite-law-threatens-freedom-of-expression-and-must-be-amended/>.

⁴⁴ Tim Mann, Attempts to Revise Draconian ITE Law Stumble, Apr. 1, 2021, Indonesia at Melbourne, *available at* <https://indonesiaatmelbourne.unimelb.edu.au/attempts-to-revise-draconian-ite-law-stumble/>.

⁴⁵ *Id.*

⁴⁶ Off. of Assistant to Deputy Cabinet Sec’y for State Documents & Trans., President Jokowi: ITE Law Must Fulfill Public Sense of Justice, Feb. 15, 2021, *available at* <https://setkab.go.id/en/president-jokowi-ite-law-must-fulfill-public-sense-of-justice/>.

interpretations” and proposed the creation of “guidelines for official interpretation of Articles.”⁴⁷ The President also proposed amending the law.⁴⁸

In response to these comments, the Chief of the National Police issued a circular to police officers instructing them to use discretion when investigating reports of digital infringements, and to prioritise ‘restorative justice,’ such as mediation, rather than prosecution.⁴⁹ In June 2021, the Chief of the National Police, the Attorney General, and the Minister of Communication and Information Technology issued a Joint Decree (the “**Joint Decree**”), providing some guidance on (limiting) interpretations of the EIT Law.⁵⁰ Paragraph (b) of the Joint Decree noted that some articles of the EIT Law are subject to multiple interpretations, and highlighted the need for guidelines for Law Enforcement Officials to understand their duties and authority.

Further, the Coordinating Minister for Political, Legal and Security Affairs announced that the government would discuss revising the law.⁵¹ The EIT Law was indeed revised in December 2023, as discussed in further detail below.

The Joint Decree

With respect to cyber-defamation, the Joint Decree clarifies that speech cannot be defamatory if the content is in the form of insults that are categorized as mockery, ridicule, and/or inappropriate words.”⁵² The Joint Decree further

⁴⁷ Off. of Assistant to Deputy Cabinet Sec’y for State Documents & Trans., President Jokowi: ITE Law Must Fulfill Public Sense of Justice, Feb. 15, 2021, *available at* <https://setkab.go.id/en/president-jokowi-ite-law-must-fulfill-public-sense-of-justice/>.

⁴⁸ Off. of Assistant to Deputy Cabinet Sec’y for State Documents & Trans., President Jokowi: ITE Law Must Fulfill Public Sense of Justice, Feb. 15, 2021, *available at* <https://setkab.go.id/en/president-jokowi-ite-law-must-fulfill-public-sense-of-justice/>.

⁴⁹ Kate Lamb & Stanley Widiyanto, Indonesia Police Chief Urges Softer Enforcement of Controversial Internet Law, Reuters, Feb. 23, 2021, *available at* <https://www.reuters.com/article/indonesia-internet-idINKBN2AN0UU/>.

⁵⁰ VOI, ITE Law Implementation Guidelines Signed, Mahfud MD: This Is the Result of the Discussion, June 23, 2021, *available at* <https://voi.id/en/news/61444>.

⁵¹ Nafisyul Qodar, HEADLINE: Jokowi Usulkan DPR Revisi UU ITE dan Hapus Pasal Karet, Angin Segar Demokrasi? [HEADLINE: Jokowi Proposes that the DPR Revise the ITE Law and Remove Ambiguous Articles, a Fresh Breath of Democracy?], *Liputan6*, Feb. 17 2023, *available at* <https://www.liputan6.com/news/read/4484375/headline-jokowi-usulkan-dpr-revisi-uu-ite-dan-hapus-pasal-karet-angin-segar-demokrasi?page=2>.

⁵² Republic of Indonesia, Joint Decree of the Minister of Communications and Information Technology, the Attorney General and the Chief of National Police, Joint Decree Number 229 of 2021, 154 of 2021, KB/2/VI/2021 on Implementation Guidelines for Certain Articles in Law

provides that speech cannot be defamatory if the content “is derived from an assessment, opinion, [or] evaluation results” or if it is a “fact” i.e., true. Importantly, the Joint Decree clarified that the focus of Article 27(3) should not be on the “feelings of the victim” but rather on the action of the accused who “knowingly and intentionally” distributed/transmitted/made accessible an accusation with the intention of making it known to the public. Finally, the Joint Decree stipulated that if a press institution published the material under dispute, then the Press Law (pursuant to which Indonesia’s Press Council mediates and settles disputes between the media and public outside of the criminal justice system), not the EIT Law, should be applied.

With respect to Article 28(2), the Joint Decree explicitly requires that intent be established: “The deed prohibited under this article is where the motive is to incite hatred and animosity based on ethnic, religious, racial, or inter-group sentiments.” Law enforcement authorities must prove this motive by establishing that the content incites people against each other *in order to create hatred or hostility*. It clarified that “conveyance of opinion, non-consenting statements or dislike towards an individual or group of society d[id] not constitute a prohibited action.” Notably, the Joint Decree did not limit the scope of the term “intergroup,” instead reiterating a 2017 Constitutional Court Decision, which held that the term extends beyond religious, ethnic and racial groups to other entities.⁵³ (This issue is subsequently addressed in the hate speech provision in the amended EIT Law and the new Criminal Code, as discussed below.)

The Decree noted that private communication/messages could not be prosecuted under Article 27(3) and Article 28(2), stating that the term “dissemination” in Article 28(2) could be equated to the term “making known to the public” in Article 27(3) and therefore referred to the uploading of information on “publicly accessible” social media/websites. A summary of the Joint Decree guidelines for Article 27(3) and Article 28(2) is given in [Annex A](#) to this report.

The Joint Decree was issued by the National Police, the Attorney General, and the Minister of Communication and Information Technology, and was not endorsed by the judiciary. It has been argued that the the Joint Decree was only a policy regulation that applied to the issuing agency, i.e., that it is not legislation and therefore not binding on judges.⁵⁴ Indeed, the Joint Decree is not seen as legally binding, since it is not legislation as per Establishment of Legislative

Number 11 Year 2008 on Information and Electronic Transactions as amended by Law Number 19 Year 2016, June 23, 2021 [hereinafter “Joint Decree”].

⁵³ Constitutional Court Decision [translation], Case No. 76/PUU-XV/2017, paras. 20, 43, and 44.

⁵⁴ Constitutional Court Judgment [translation], Case No. 78/PUU-XXI/2023, para. 118.

Regulations No. 12 of 2011⁵⁵ and the EIT Law does not have a provision for the issuance of a Joint Decree.⁵⁶

In 2022, during Indonesia's Universal Periodic Review, five recommendations were explicitly put forward to improve freedom of opinion and expression in Indonesia through the revision of the EIT Law.⁵⁷ In its national report, the Government of Indonesia acknowledged faults in the EIT Law, highlighted efforts to amend it, and emphasized the Joint Decree's role "as a guideline for law enforcement officers" applying the law "thus ensuring its consistency in protecting freedom of expression."⁵⁸

In March 2024, TrialWatch and ICJR made a submission to the UN Human Rights Committee highlighting the ineffectiveness of the Joint Decree based on data obtained about cases that were registered or pursued after the Joint Decree's introduction, despite being in clear violation of the criteria for criminal investigation and prosecution laid out in the Decree.⁵⁹ The present report builds on these findings.

⁵⁵ Republic of Indonesia, Law No. 12 of 2011, Establishment of Legislative Regulations, Article 7(1) (Article 7 paragraph (1) of Law No. 12 of 2012 regulates the types and hierarchy of statutory regulations as follows: Constitution of the Republic of Indonesia of 1945, People's Consultative Council Decree, Law/Government Regulation In Lieu of Law, Government Regulation, Presidential Regulation, Province Regulation, and Regency/Municipality Regulation.).

⁵⁶ Adhigama Budiman et al., *supra*, pg. 23 ("In state administrative law, there is also some confusion as to whether a Joint Decree on Guidelines should be regarded as a regulation (regeling) or a decision (beschikking), as the Joint Decree has both characteristics and according to the ITE Law text, there is no provision for the issuance of Joint Decrees.").

⁵⁷ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Indonesia, U.N. Doc. A/HRC/52/8, Dec. 21, 2022, para. 140.

⁵⁸ UN Human Rights Council, Working Group on the Universal Periodic Review, National Report Submitted Pursuant to Human Rights Council Resolutions 5/1 and 16/21: Indonesia, U.N. Doc. A/HRC/WG.6/41/IDN/1, Sept. 1, 2022, paras. 24 and 150.

⁵⁹ Clooney Foundation for Justice, Reforms of Indonesia's Cyberlaw Are Inadequate, Say TrialWatch and ICJR, Mar. 10, 2024, *available at* <https://cfj.org/news/reforms-of-indonesias-cyberlaw-are-inadequate-say-trialwatch-and-icjr/>.

Amended EIT Law

On December 5, 2023, Indonesia's parliament passed amendments to the EIT Law, which came into force on January 2, 2024.⁶⁰ These amendments will govern until the new Criminal Code takes effect in January 2026.⁶¹

The amended Article 27(3) (now Article 27A) reduces the prison sentence for cyberdefamation from four years to two years. Moreover, the law explicitly provides for a public interest exception.⁶² The elucidation/explanation to Article 27A, however, limits the public interest exception, stating that any criticism of the government must be “constructive” and in the form of “supervision, correction, and suggestions in the public interest.” This exception affords the authorities discretion to deem legitimate criticism ‘unconstructive’ or not delivered in an appropriate manner. It is thus highly susceptible to abuse. In April 2025, Indonesia's Constitutional Court affirmed the importance of the public interest defense to defamation, stating: “In a democratic country, criticism is important as part of freedom of expression ... even if it contains disagreement with actions or deeds of others.”⁶³

Article 28(2), as amended, criminalizes the intentional distribution or transmission of electronic information and/or documents that incite, invite, or influence others “so as to create a sense of hatred or hostility towards certain individuals and/or community groups based on race, nationality, ethnicity, skin color, religion, belief, gender, mental disability, or physical disability.” The revised provision is a step forward. Article 28(2) requires an intention to incite and eliminates the catchall ‘intergroup’ that was prone to misuse.

Finally, Article 28(3) of the amended EIT Law criminalizes “intentionally spreading Electronic Information and/or Electronic Documents where one knows the information is fake and it causes public unrest/riots within the community.” Prior to this amendment, the EIT Law did not have a provision criminalizing the spreading of misinformation; however, the Hoax Provisions were frequently invoked in addition to charges under the EIT Law against online

⁶⁰ Baker McKenzie, Indonesia: Breaking Down the Second Amendment to the EIT Law – New Provisions on Electronic Certificate Providers, Prohibited Contents and Mandatory Use of Indonesian Law, Feb. 19, 2024, *available at* <https://insightplus.bakermckenzie.com/bm/data-technology/indonesia-breaking-down-the-second-amendment-to-the-eit-law-new-provisions-on-electronic-certificate-providers-prohibited-contents-and-mandatory-use-of-indonesian-law>.

⁶¹ Simon Butt, Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?, 32(2) Griffith Law Review, pgs. 190–214 (2023).

⁶² Republic of Indonesia, Law No. 1 of 2024 about Second Amendment of Law No. 11 of 2008 Concerning Information and Electronic Transactions, [hereinafter “Amended EIT Law”], Article 45(4).

⁶³ Constitutional Court Decision No. 115/PUU-XXII/2024, at 286 (unofficial English translation).

speech. As per civil society reports, both Article 28(2) and Article 28(3) of the EIT Law have been invoked against human rights defenders in relation to the recent protests in Indonesia in August-September 2025.⁶⁴

C. Hoax Provisions

Indonesian authorities have often relied on the ‘Hoax Provisions’ in Articles 14 and 15 of Law No. 1/1946 to suppress free speech. Article 14(1) provides for up to ten years’ imprisonment for “[a]ny person who, by way of disseminating false news or information, intentionally causes disruption among the public.” Article 14(2) provides for up to three years’ imprisonment for “[a]ny person disseminating news or issuing information that can cause disruption among the public, while such person ought to expect that such news or information is false.” Article 15 provides for up to two years’ imprisonment for “[a]ny person disseminating uncertain or exaggerated or incomplete information, while such person understands [or] should at the least expect that such information will or can easily cause disruption among the public.” The Hoax Provisions themselves do not provide for any specific defenses.

Civil society organizations such as the International Commission for Jurists criticised the Hoax Provisions for being “vague, overbroad and imprecise” and a relic from Indonesia’s colonial past.⁶⁵ The law is borrowed from the Dutch East Indies Military Rules, which prohibited the dissemination of false information. It was passed in 1946, one year after Indonesia gained independence from colonial rule, as an emergency law when the country was in transition.⁶⁶ Among other things, the provisions were “often abused to silence individual’s [sic] legitimate expression.”⁶⁷ The data gathered for this report shows they have often been combined with charges under the EIT Law to criminalize online speech.

In March 2024, the Constitutional Court of Indonesia declared the Hoax Provisions unconstitutional on the ground that they unduly restricted the right to

⁶⁴ SAFEnet, International Civil Society Strongly Condemn Digital Crackdown by the Government of Indonesia and Big Tech, Sept. 10, 2025, *available at* <https://safenet.or.id/2025/09/international-civil-society-strongly-condemn-digital-crackdown-by-the-government-of-indonesia-and-big-tech/>.

⁶⁵ ICJ, Indonesia: Criminalization of Disinformation Threatens Freedom of Expression, Dec. 1, 2023, *available at* <https://www.icj.org/indonesia-criminalization-of-disinformation-threatens-freedom-of-expression/>.

⁶⁶ Constitutional Court Judgment [translation], Case No. 78/PUU-XXI/2023, *Expert Testimony*, pgs. 96–100.

⁶⁷ Lembaga Kajian & Advokasi Independensi Peradilan, Press Release: Revocation of “Fake News” Provisions is (Hopefully) Not Fake, Mar. 23, 2024, *available at* <https://leip.or.id/press-release-revocation-of-fake-news-provisions-is-hopefully-not-fake/>.

free speech and lacked legal certainty.⁶⁸ However, concerns about the criminalization of fake news persist because of the fake news provisions in the amended EIT Law, as well as in the new Criminal Code, as discussed further below.

D. New Criminal Code

With respect to defamation in writing (libel), the new Criminal Code reduces the potential prison sentence as compared to the EIT Law to one year and six months.⁶⁹ It also explicitly codifies the public interest speech exception (which, as discussed above, was incorporated into the EIT Law in 2016).⁷⁰ With respect to hate speech, the Criminal Code reduces the penalty to four years. As with the amended EIT Law, the Code specifies the groups that are covered by the law (namely, groups based on race, nationality, ethnicity, skin color, religion, belief, sex, mental disability, or physical disability), eliminating the catchall ‘intergroup.’ The Criminal Code also includes a requirement that violence or property damage result from the speech in question—which was not required under the EIT Law.⁷¹

Despite these positive developments, grave pitfalls remain. The defamation provisions fail to distinguish between value judgments and statements of fact⁷² and criminalize insults, despite the fact that the Joint Decree stated that insults that are categorized as mockery, ridicule, and/or inappropriate words should not be prosecuted. Correspondingly, the provision on hate speech does not define the term “hostility.” And unlike the amended EIT Law, the Code does not require an intention to incite violence, allowing for prosecutions where violence occurred without showing that the speaker intended it or knew it was likely to occur.

⁶⁸ Constitutional Court Judgment [translation], Case No. 78/PUU-XXI/2023, paras. 3.18–3.18.6.

⁶⁹ Republic of Indonesia, Law No. 1 of 2023 on Criminal Code, Government Gazette of the Republic of Indonesia, (2023), Article 433(2) (Under Section 433(1), slander i.e. a verbal “assault” on someone’s honor or reputation, is punishable with imprisonment for a maximum of nine months.), *available at* <https://the-world-is-watching.org/wp-content/uploads/2023/02/2023-Indonesia-Penal-Code.pdf> [hereinafter “New Criminal Code”].

⁷⁰ *Id.* at Article 433(3).

⁷¹ *Id.* at Article 243.

⁷² Like the colonial-era Penal Code, Indonesia’s new Criminal Code offers only a partial defense of truth. According to Article 434(2) of the Penal Law enacted on December 6, 2022, proving the truth of an accusation is only permissible in two circumstances: (1) if the defendant claims a defense of public interest or self-defense, or (2) if an official is accused of misconduct while performing official duties. If the defendant fails to substantiate the truth of the allegation, and the claim contradicts what they know to be true, they may face a more severe charge of calumny, carrying a maximum sentence of three years.

The new Criminal Code also replicates several articles of the old Criminal Code relating to defamation. Defamation that is not “slander or libel” is criminalized under Article 436 for simple defamation, equivalent to Article 315 of the old Criminal Code.⁷³ The offences of calumny,⁷⁴ calumny complaints,⁷⁵ false allegations/calumnious insinuation⁷⁶ and defamation of the dead⁷⁷ are also retained—the only difference being that the new Criminal Code increases penalties if offences are committed online.⁷⁸

Concerningly, the new Criminal Code has also retained a provision that makes insulting government or state institutions punishable with imprisonment of up to one and a half years.⁷⁹ If the act causes riots or other forms of unrest in the community, the punishment is enhanced to three years.⁸⁰ The Code also introduces separate provisions for defamation of the President and Vice President, punishable with four years imprisonment if statements are made online.⁸¹ Importantly, the corresponding provisions in the old Criminal Code were struck down as unconstitutional in 2006.⁸² The UN Human Rights Committee has called upon Indonesia to “revise the legal framework” and “decriminalise defamation of the President and public officials.”⁸³

⁷³ New Criminal Code, Article 436 (Article 436 states: “[d]efamation that are not slander or libel which are committed against someone either in public verbally or in writing, as well as in front of the persons who are insulted verbally or by action or in writing which are sent to or received by them, shall be sentenced due to minor defamation.”); Republic of Indonesia, Kitab Undang-Undang Hukum Pidana (Penal Code of Indonesia), Government Gazette of the Republic of Indonesia, (1946) [hereinafter “Old Criminal Code”] (The crime of light insult is punishable under Article 315 of the old Criminal Code.); see also R. Soesilo, *The Criminal Code (KUHP) and its Complete Commentaries Article by Article*, Politeia, pg. 225 (1995).

⁷⁴ Old Criminal Code, Articles 311–312; New Criminal Code, Article 434.

⁷⁵ Old Criminal Code, Article 317; New Criminal Code, Article 437.

⁷⁶ Old Criminal Code, Article 318; New Criminal Code, Article 438.

⁷⁷ Old Criminal Code, Article 320; New Criminal Code, Article 439.

⁷⁸ New Criminal Code, Article 441.

⁷⁹ Old Criminal Code, Article 207; New Criminal Code, Article 240.

⁸⁰ New Criminal Code, Article 240(2).

⁸¹ New Criminal Code, Articles 218–219.

⁸² Constitutional Court Judgment [translation], Case No. 013-022/PUU-IV/2006.

⁸³ UNHRC, Concluding Observations on the Second Periodic Report of Indonesia, U.N. Doc. CCPR/C/IDN/CO/2, May 3, 2024, para. 33(c).

The Criminal Code also introduces a new provision on fake news, which criminalizes the broadcasting of “news that is uncertain, exaggerated, or incomplete” where it is “reasonably suspected that such news can result in riots within the community,” providing for a prison sentence of up to two years.⁸⁴ While this includes a likelihood of violence, unlike the Hoax Provisions, it does not define “uncertain, exaggerated, or incomplete.”

As noted above, the new Criminal Code will come into force on January 2, 2026.

There have thus been a proliferation of changes to the law, in different directions, creating significant uncertainty regarding what is meant to be criminalized.

A chart of the various provisions outlined above is here:

Offence	Law/Code Reference	Description	Maximum Penalty
Defamation	Article 27(3): EIT Law	“Any person who intentionally and without right distributes and/or transmits and/or causes to be accessible Electronic Information and/or Electronic Documents with contents of insults and/or defamation.” [Note: In 2016, the EIT Law was amended to clarify that Article 27(3) should be interpreted with reference to Articles 310 and 311 of the	Article 45(3): imprisonment up to a maximum of 4 years and/or a fine of up to IDR 750 million.

⁸⁴ New Criminal Code, Article 264.

		Criminal Code. Article 310 defines slander/libel as “intentionally harm[ing] someone’s honor or reputation by charging him with a certain fact, with the obvious intent to give publicity thereof.”] As per Article 310(3), “Neither slander nor libel shall exist as far as the principal obviously has acted in the general interest or for a necessary defense.” Article 311 of the Criminal Code states that “Any person who commits the crime of slander or libel in case proof of the truth of the charged fact is permitted⁸⁵, shall, if he does not produce said	
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⁸⁵ As per Article 312 of the Criminal Code, proof of truth is only permitted to determine whether the accused acted in the general interest or for his defense; or if an official is charged with the commission of the offence in the exercise of his office.

		proof and the charge has been made against his better judgment, be[] guilty of calumny.”	
	Article 27A: Amended EIT Law	“[I]ntentionally attack[ing] the honor or good name of another person by alleging a matter, with the intention that it is publicly known in the form of Electronic Information and/or Electronic Documents carried out through an Electronic System.”	Article 45(4): imprisonment up to a maximum of 2 years and/or a fine of up to IDR 400 million.
	Article 433: New Criminal Code	Article 433(1)-Slander: “Any person by oral means assaulting the honor or reputation of another person by conveying an accusation of a matter, with the intent for such matter to be known publicly.” As per Article 433(2), if these acts are carried out in writings or pictures that are	Slander–Article 433(1): imprisonment up to a maximum of 9 months or a criminal fine of category II. Libel–Article 433(2): imprisonment up to a maximum of 1 year and 6 months or a criminal fine of category III.

		broadcast, displayed or attached in public places, it is punishable as libel. Article 433(3) provides for the defences of public interest or necessity of self-defense. [<i>Note:</i> The new Criminal Code also has the offence of calumny as in the old Criminal Code, which is punishable with three years' imprisonment or a fine.]	
Hate Speech	Article 28(2): EIT Law	"[A]ny person who intentionally and without right disseminates information aimed at causing hatred or hostility among individuals and/or certain groups based on ethnicity, religion, race, or intergroup [a term that refers to different types of social groupings]."	Article 45(2): imprisonment up to a maximum of 6 years and/or fine of IDR one billion.

	Article 28(2): Amended EIT Law	“Any Person [who] intentionally and without the right to distribute and/or transmit Electronic Information and/or Electronic Documents that incites, invites, or influences others so as to create a sense of hatred or hostility towards certain individuals and/or community groups based on race, nationality, ethnicity, skin color, religion, belief, gender, mental disability, or physical disability.”	Article 45A(2): imprisonment up to a maximum of 6 years and/or fine of IDR one billion.
	Article 243(1): New Criminal Code	“[A]ny person who displays, performs, or paste text or image so that they are visible to the public or play a recording so that it is heard by the public or disseminated through information technology, which contain statement of hostility with the intention that its	Article 243(1): imprisonment up to a maximum of 4 years or a criminal fine of category IV.

		contents are known or better known to the public, against one or more groups of Indonesian population based on race, nationality, ethnicity, skin color, religion, beliefs, gender, mental disability, or physical disability that results the occurrence of violence against people or goods.”	
Fake News	Articles 14 & 15 of Law No. 1/1946	Article 14: “(1) Any person who, by way of disseminating false news or information, intentionally causes disruption among the public... (2) Any person disseminating news or issuing information that can cause disruption among the public, while such person ought to expect that such news or information is false.” Article 15: “Any person	Article 14(1): imprisonment up to a maximum 10 years. Article 14(2): imprisonment up to a maximum 3 years. Article 15: imprisonment up to a maximum 2 years.

		disseminating uncertain or exaggerated or incomplete information, while such person understands [or] should at the least expect that such information will or can easily cause disruption among the public.”	
	Article 28(3): Amended EIT Law ⁸⁶	“[I]ntentionally spreading Electronic Information and/or Electronic Documents where one knows the information is fake and it causes public unrest/riots within the community.”	Article 45A(3): imprisonment up to a maximum of 6 years and/or a fine of IDR one billion.
	Article 263 & 264: New Criminal Code ⁸⁷	Article 263: “(1) Any Person who broadcast or disseminate news or notifications that they know that the news or notifications are fake resulting in riots within the community...”	Article 263(1): imprisonment up to a maximum of 6 years or a criminal fine of category V. Article 263(2): imprisonment up to a maximum of 4 years or a

⁸⁶ Amended EIT Law, Article 28(3).

⁸⁷ New Criminal Code, Articles 263–264.

		(2) Any Person who broadcast or disseminate news or notifications despite it should be reasonably suspected that the news or notifications are fake which can result in riots within the community.” Article 264: “Any Person who broadcast news that is uncertain, exaggerated, or incomplete while they know or it is reasonably suspected that such news can result in riots within the community.”	criminal fine of category IV. Article 264: imprisonment up to a maximum of 2 years or a criminal fine of category III.
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Given that both the revised EIT Law and new Criminal Code contain troubling gaps, and are in some respects inconsistent with each other, there is a serious risk that abusive prosecutions will continue to take place not only while the revised EIT Law is in effect but also once the new Criminal Code comes into effect. Further, the inconsistencies between the two laws suggest that enforcement may require significant guidance. The implementation of the Joint Decree and its failure to stem abusive prosecutions offers lessons in how Indonesia can address these gaps.

METHODOLOGY



As outlined above, this report evaluates the implementation of the EIT Law, specifically provisions relating to defamation and hate speech, following the adoption of the Joint Decree. For this purpose, researchers gathered data on cases initiated or prosecuted under Articles 27(3) and 28(2) since the issuance of the Joint Decree. This data was gathered using publicly available sources such as news reports, civil society reports, court databases, and judgments. Case details were traced using the Case Tracking Information System from each district court in Indonesia. In-court trial monitoring was not conducted for this report.

The final database consisted of 73 cases, 60 of which were filed after the Joint Decree came into force (June 2021-January 2024). In the remaining 13 cases, complaints were filed prior to the Joint Decree but investigations/prosecutions continued after the Decree. The status of the cases was last updated on October 30, 2023, based on information available to the researchers at that time.⁸⁸ While these numbers do not represent the total number of cases registered under Article 27(3) and Article 28(2) since the Joint Decree came into force, the trends and patterns they exhibit shed light on the manner in which the Joint Decree has been implemented.

For each case, researchers identified and analysed the following information: date of incident, profiles of both the complainant and the accused, the nature of the speech in question, the provisions invoked by the prosecution, and the legal processes, including whether the defendant was detained, length of detention, the status of the case, outcome and the length of proceedings (incident to outcome). The findings from the analysis are outlined in Section III below.

For cases where the trial was completed, the Supreme Court Directory was searched for a copy of the trial court judgment. If the judgment was not available in the directory, a physical copy was requested from the District Court where the case was heard. Of the 20 cases in the dataset where trial was concluded/the court dismissed the case, the judgments were obtained (for 19 cases, the trial court judgment was obtained and for the remaining case, the judgment of the High Court was obtained). These judgments have been analysed in the Legal Analysis section of the report.

This report also presents a deep-dive analysis of six cases, which were representative of the trends identified in the broader dataset. For these cases, the researchers gathered more extensive information by interviewing the defendants and/or their lawyers, and obtaining additional case materials, such

⁸⁸ For some cases, where notable developments took place after October 2023 (as per public sources) the case status was updated to reflect these developments.

as the Police Examination Report, indictments, judgments from appeal/cassation proceedings, and submissions from the defence, where available.

Finally, the research for this report includes in-depth interviews with law enforcement officials: police, prosecutors, and judges involved in prosecuting cases under the EIT Law. Researchers contacted over 20 law enforcement institutions to gather data on their understanding and interpretation of the Joint Decree. Eleven institutions responded, and researchers interviewed respondents from three police departments, four District Attorneys' Offices, and four District Courts. The findings from these interviews are included in Section IV of the report.

In the report's final stages, researchers conducted a focus group discussion with experts and academics in Indonesia who specialise in human rights and the EIT Law, alongside senior researchers from the National Human Rights Institution.

Limitations

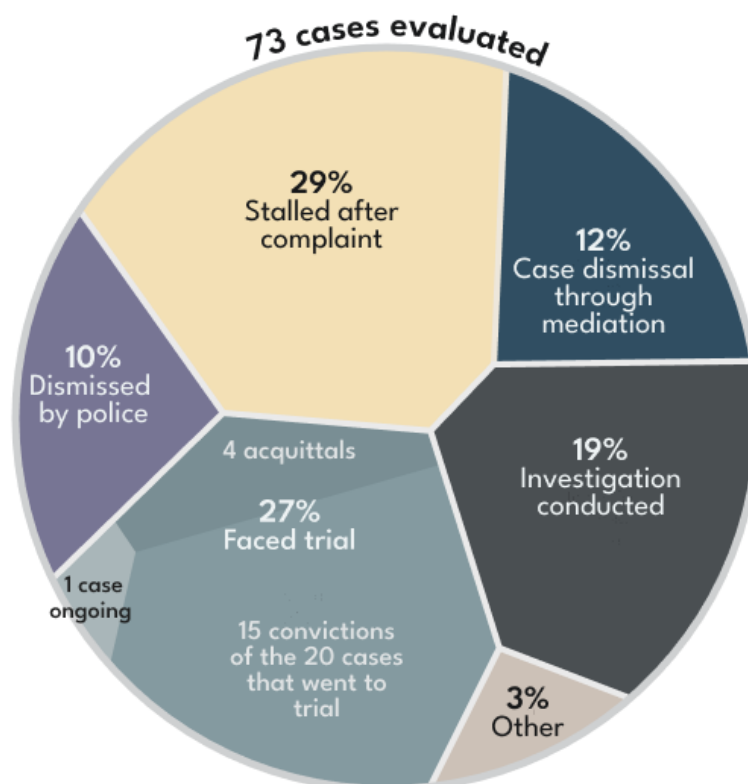
The research for this report had certain limitations. For each case, an analysis was conducted about whether the case fell into any of the exceptions identified by the Joint Decree. For cases that did not result in a final judgment, researchers relied on secondary sources, including reputable news outlets and civil society organizations, to determine the underlying speech/expression, and the analysis was conducted on this basis. Information was verified through multiple sources to the extent possible, including reaching the defendant for an interview.

Further, while attempting to conduct interviews with law enforcement officials, requests to interview were disseminated in physical form and via electronic mail. Nevertheless, communication challenges arose with several regional agencies, as some of these agencies either lacked telephone connectivity or had no contact information to verify their willingness to participate. As a result, eleven interviews were conducted, which are discussed in Section VII of the Report.

OVERVIEW OF FINDINGS: IMPLEMENTATION OF THE JOINT DECREE

Out of the 73 cases analysed for this report, 41 were filed under Article 27(3), 26 under Article 28(2) and six under both. Fifteen of the 73 cases also included charges under Article 14 and/or Article 15 of Law No. 1/1946. Twenty-six of the 73 cases included charges under the Criminal Code—predominantly Articles 310-311 (defamation and calumny), 156 and 156a (hate speech and religious blasphemy), 207 (defaming authorities or public bodies), and 208 (disseminating defamation against authorities or public bodies).

Based on analysis of the speech at issue in the 73 cases, more than 90 percent of these cases ought to have been excluded by the Joint Decree. Yet the police ultimately terminated less than 10 percent of the cases. The remaining cases were either terminated after mediation (often involving the accused apologising, irrespective of whether the complaint had merit) or taken forward by the police and/or prosecutors in violation of the Joint Decree. Almost thirty percent of the cases appear to have stalled after the initial complaint, meaning that there was no progress on the case after it was reported to the police (as per public sources). This is indicative of a trend where these complaints are neither taken forward nor terminated as they should be under the Joint Decree, but instead are left hanging over accused persons and prolonging stress/harassment despite the protections of the Joint Decree.



A. Defamation

Of the cases registered under Article 27(3), almost 60 percent concerned a matter of public interest. In these cases, accused persons reported or posted on social media about, among other things, corruption,⁸⁹ alleged misuse of authority by public officials,⁹⁰ alleged police misconduct,⁹¹ alleged sexual

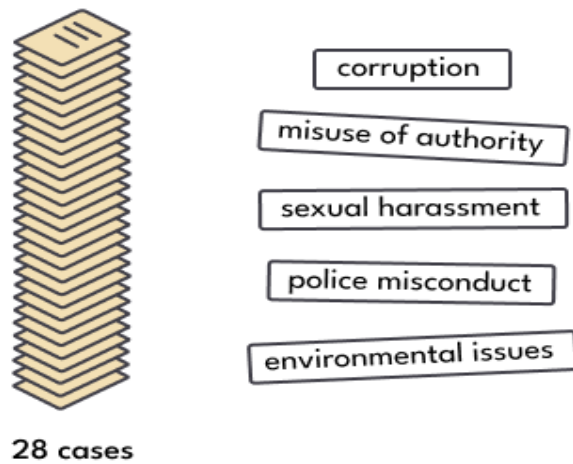
⁸⁹ See Adyatama et al., Kronologi Pelaporan Moeldoko terhadap ICW: dari Somasi Berujung di Polisi (Chronology of Moeldoko's Report Against ICW: From Subpoena to Police), Tempo, Sept. 11, 2021 (Egi Primayogha faced defamation charges after publishing a study that alleged several public officials were involved in the distribution of the drug Ivermectin, aiming to profit from the COVID-19 pandemic.), *available at* <https://www.tempo.co/hukum/kronologi-pelaporan-moeldoko-terhadap-icw-dari-somasi-berujung-di-polisi-475235>; see also Trisno Mais, Tersangka Kasus Pencemaran Nama Baik Polisi di Sulut Dilimpahkan ke Jaksa (Defendant in North Sulawesi Police Defamation Case Transferred to Prosecutors), Detik, Dec. 13, 2022 (Hendra Jakob was found guilty under the EIT's defamation provision for posting a letter on Facebook where he accused the former Regional Police of involvement in extortion and corruption.), *available at* <https://www.detik.com/sulsel/hukum-dan-kriminal/d-6459720/tersangka-kasus-pencemaran-nama-baik-polisi-di-sulut-dilimpahkan-ke-jaksa>).

⁹⁰ See East Jakarta District Court Judgment [translation], Case No. PDM:021/JKT.TIM/EKU/03/2023, Mar. 27, 2023 (acquitting human rights defenders Fatia Maulidiyanti and Haris Azhar of defamation charges under Article 27(3), which stemmed from a video they uploaded discussing links between certain mining operations and military deployments in the Papua region.); see also Medan District Court Decision [translation], Case No. 776/Pid.Sus/2022/PN Mdn, (2022) (finding Ismail Marzuki's social media post criticizing the governor's wife for allegedly leveraging her position to construct a park that would destroy a cultural heritage site to be defamatory under Article 27(3) of the EIT Law.); Constitutional Court, Case No. 113/PUU-XXI/2023 (Alvin Lim was charged with defamation under the EIT Law for posting a video criticizing corruption and case mishandling by the Indonesian National Police, particularly regarding searches and seizures.); Interview with Tinus Restanto Eka, Nov. 29, 2023 (Journalist Tinur Restanto Eka Putra of *kirka.co* was accused of defamation under the EIT Law after reporting on a Tanjungkarang District Court decision involving Firman Rusli, a Pesawaran Regency official, who was sued over a land dispute.).

⁹¹ See Raja Adil Siregar, Wanita Disekap-Dipukuli Polwan di Riau Dilaporkan Kasus ITE (Woman Confined and Beaten by Policewoman in Riau Reported in an ITE Case), Detik, Sept. 26, 2022 (Riri Aprilla Karti was accused of violating the EIT law for posting a video where she disclosed the torture and captivity she endured at the hands of a police officer.), *available at* <https://www.detik.com/sumut/hukum-dan-kriminal/d-6313074/wanita-disekap-dipukuli-polwan-di-riau-dilaporkan-kasus-ite>; see also SAFEnet, Kasus Anin (Anin's Case) (Activist Anindya Shabrina Prasetyo was charged with defamation under the EIT Law after sharing on Facebook her experience of being sexually harassed by police during a raid on a Papuan Student Alliance event.), *available at* <https://safenet.or.id/id/2018/12/kasus-anin/>.

harassment allegations on college campuses⁹² and environmental concerns.⁹³ In one case, for example, the management of a football club filed an Article 27(3) complaint against twenty-three of its players who took to social media when they did not get their salary for two months.⁹⁴ Seventy-five percent of these cases were either taken forward by the police/prosecutors or stalled out—meaning that they were never terminated. This violated the 2016 amendments to the EIT Law and the Joint Decree, which codified the public interest exception, as well as international standards.

**28 out of 47 cases involved
topics of public interest**



The authorities showed little regard for the other limitations established by the Joint Decree—in over fifty percent of the cases, the speech was an opinion or assessment and thus should not have been criminalized under either the Joint

⁹² See Eko Faizin, Mahasiswa FISIP Unri Dipolisikan Dosen Nonaktif Terkait Pencemaran Nama Baik (FISIP Unri Student Reported by Inactive Lecturer for Defamation), Suara, Feb. 9, 2023 (RMS, a Riau University student, was accused of defamation, misconduct, and spreading false information under the EIT Law and Criminal Code after urging the Education Minister to address campus sexual violence cases.), *available at* <https://riau.suara.com/read/2023/02/09/203826/mahasiswa-fisip-unri-dipolisikan-dosen-nonaktif-terkait-pencemaran-nama-baik>.

⁹³ District Court of Jepara, Case No. 14/Pid.Sus/2024/PN (Environmental activist Daniel Frits was charged with defamation and hate speech under the EIT Law after criticizing shrimp farming in the Karimun Jawa region in a Facebook post.).

⁹⁴ Tempo, Kalteng Putra Laporkan 23 Pemain Setelah Unggah Tunggakan Gaji, ICJR: Kebenaran Tak Bisa Dipidana” (Kalteng Putra Reports 23 Players After Posting About Unpaid Salaries, ICJR: Truth Cannot Be Criminalized), Jan. 30, 2024, *available at* <https://www.tempo.co/hukum/kalteng-putra-laporkan-23-pemain-setelah-unggah-tunggakan-gaji-icjr-kebenaran-tak-bisa-dipidana--92329>.

Decree or international standards.⁹⁵ For example, university lecturers faced criminal charges for expressing their opinion about the university dean.⁹⁶ Further, 15 percent of the Article 27(3) cases involved speech that could be classified as ridicule, mockery or inappropriate words. A local journalist faced criminal charges for editing the photo of a District head to include horns on his head accompanied by text criticizing him for ignoring the rights of the villagers to obtain certificates for their land.⁹⁷ Ordinary citizens facing criminal charges for petty disputes or name-calling over WhatsApp groups.⁹⁸

Overall, more than 85 percent of the cases filed under Article 27(3) were based on speech that should not have been criminalized under the Joint Decree, with

⁹⁵ In all Article 27(3) cases where the statement in question concerned a ‘verifiable fact’ as opposed to an ‘opinion/assessment,’ we treated it as false since the project was unable to assess the truth of the statement.

⁹⁶ Semua Bisa Kena, Saat Ahli Pidana Dijerat Pidana (When a Criminal Law Expert is Charged with a Crime), Jan. 8, 2024, *available at* <https://semuabisakena.jaring.id/2024/01/08/saat-ahli-pidana-dijerat-pidana/>.

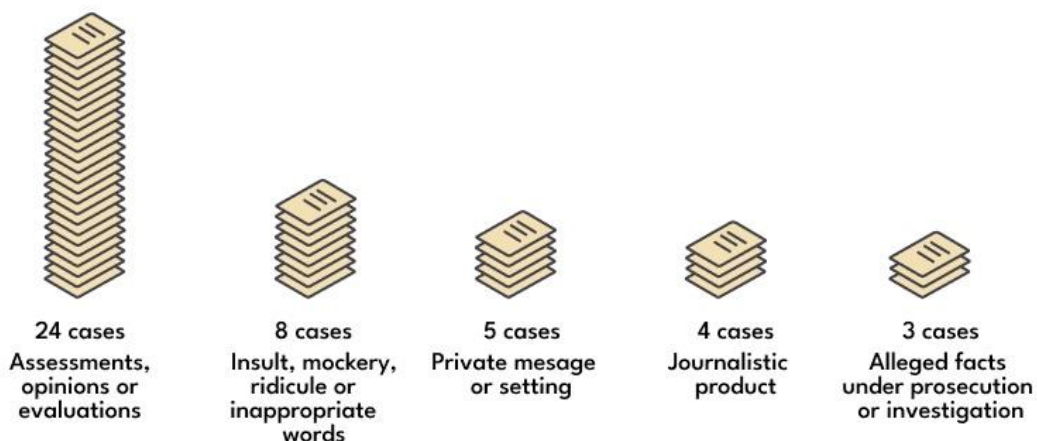
⁹⁷ UCA News, Indonesian Police Charge Catholic for Defaming State Official, *available at* <https://www.ucanews.com/news/indonesian-police-charge-catholic-for-defaming-state-official/102660>.

⁹⁸ See District Court of Manggala, Case No. 33/Pid.Sus/2022/PN Mgl (The defendant was charged with defamation under Article 27(3) for sending messages to a private WhatsApp number that she reasonably believed belonged to the complainant, expressing her frustration over the failure of the complaint to repay her a loan. However, this case should never have gone to trial, as it failed to meet a fundamental requirement of Article 27(3)—namely, that “causing [defamatory speech] to be accessible” means “making it known to the public.” Sending a private WhatsApp message clearly does not satisfy this standard. Although the defendant was eventually acquitted, this case further highlights how this law is being misused, instilling fear among individuals and discouraging free speech due to concerns about being dragged into lengthy and costly litigation.); see also Kepanjen District Court Judgment [translation], Case No. 434/Pid.Sus/2022/PN Kpn (The court found the defendant guilty of defamation under Article 27(3) over a Facebook post in which she discussed alleged fraudulent actions related to a business venture she had invested in. The conviction was based on the complainants’ subjective accounts of emotional and reputational harm, as well as expert witness testimony concluding that the defendant’s post met the standard for defamatory speech.); District Court of Tanjungpinang, Case No. 196/Pid.Sus/2023/PN Tpg (After Said Ahmad Syukri became involved in a heated argument in a public WhatsApp group chat, he was charged under the EIT Law’s defamation provision.); Medan District Court, Case No. 2364/Pid.Sus/2022/PN, pgs. 2–3, 20–24 (Sevinia was found guilty under Article 45(3) of Law No. 19/2016 of the EIT Law for posting images of the victim on her Instagram Story, comparing his physical appearance unfavorably to her husband and stating that she would never be interested in someone like him.).

the breakdown of these cases explained below. In all but three cases, police/prosecutors either actively pursued the cases or never terminated them.

47 cases under article 27(3)

which prohibits persons from “knowingly and without authority” distributing information or documents “with contents of affronts and/or defamation”



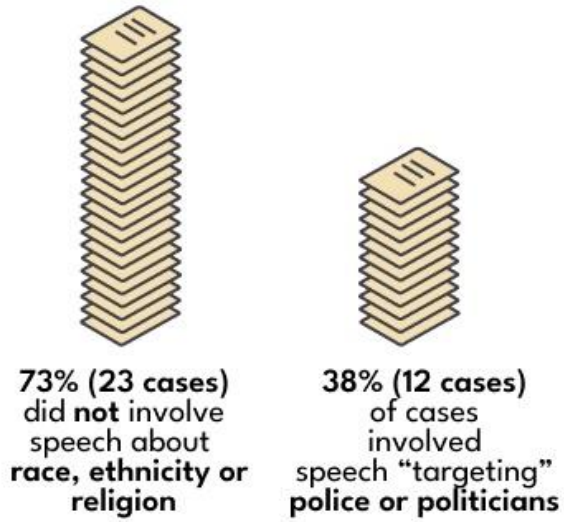
B. Hate Speech

With respect to Article 28(2), 100 percent of the cases were based on speech that should not have been criminalized per the Joint Decree. In none of the cases was there an evident intent to incite hatred; the resulting investigation and prosecution was thus carried forward in contravention of the Joint Decree and international standards. The content of the speech did not meet the requirement under the Joint Decree that it “call[], influence[], motivate[], or incite[]/pit[] people against each other in order to create hatred and/or hostility.” Instead, it constituted speech that the Joint Decree explicitly states should not be criminalized: “conveyance of opinion, non-consenting statement or dislike towards an individual or group of society.” In more than 90 percent of these cases police/prosecutors either actively pursued the cases or never terminated them.

Strikingly, in over 70 percent of the cases, the speech did not reference race, ethnicity, or religion. In almost 40 percent of the cases, the so-called “target group” were police officials or politicians—reflecting the weaponization of Article 28(2) by persons in power, instead of groups that should be protected from hate speech.

32 cases under article 28(2)

which prohibits disseminating information “aimed at inflicting hatred” against individuals and/or certain groups such as ethnic, religious, or racial groups



C. Profiles of Complainants and Accused Persons

Overall, more than half of the 73 cases brought under Article 27(3) and Article 28(2) were filed by people in positions of power. Cases were filed by politicians, government officials, police officers and their relatives, as well university deans, celebrities and businessmen. Neither the EIT Law nor the Joint Decree restricts who can file a complaint, other than to indicate that Article 27(3) is an absolute complaint offense, meaning that complaints can only be filed by the victim of the crime (and can only be filed by natural persons).⁹⁹ Indonesia's Constitutional Court affirmed this stance in a 2025 decision, stating that "the person entitled to file a complaint is the victim whose name or identity is mentioned when their honor is attacked" and that this person must be a natural person, not a legal entity.¹⁰⁰

The cases identified for this report implicated at least 135 accused persons, 41 percent of whom were part of civil society (including human rights defenders, journalists, academia, lawyers, politicians and students). In 48 percent of the cases, the accused persons were ordinary citizens. These numbers confirm that in addition to civil society, ordinary citizens are frequently targeted under the EIT Law, which has prompted the #semuabisakena (everyone can be charged) movement against the EIT Law.

⁹⁹ Criminal Code, Art. 319.

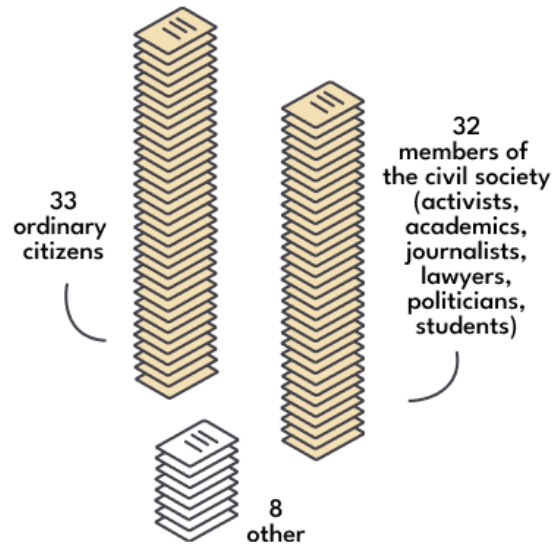
¹⁰⁰ Constitutional Court Decision No. 105/PUU-XXII/2024 at 372 (unofficial English translation).

The Law Weaponised by the Powerful

Half of all cases filed by people in positions of power



89% of all cases filed against members of civil society or ordinary citizens



This graph illustrates that the EIT Law's vague wording, coupled with its arbitrary application, benefits powerful parties, while the accused often is in a more vulnerable position. The Joint Decree does not offer guidance on cases in which there is a power imbalance between defendants and complainants. For instance, accusations of defamation are often utilized as a form of retaliation, leading to repression of speech challenging persons in power.¹⁰¹

D. Procedure and Penalty

With respect to detention and punishment, in 14 of the 73 cases identified, the accused persons were subject to pretrial detention. Eleven of these cases were filed under Article 28(2). Charges under this provision may result in detention,¹⁰² as the Indonesian procedural code permits detention for those accused of crimes with a possible penalty of five or more years of imprisonment.¹⁰³ Some cases that led to pretrial detention under Article 28(2) involved comments

¹⁰¹ Adhigama Budiman *Et Al.*, Mengatur Ulang Kebijakan Tindak Pidana di Ruang Siber Studi Tentang Penerapan UU ITE di Indonesia, ICJR, pg. 116 (2021).

¹⁰² Of these 11 cases, two involved alleged violations of both Article 27(3) and Article 28(2).

¹⁰³ Indonesian Criminal Procedural Code, Art 21.

considered offensive to religion, such as calling the Bible “fake,”¹⁰⁴ and claiming Prophet Mohammad is “close to the jinn,”¹⁰⁵ and for criticising public officials (as a result of the wide interpretation of “intergroup”), such as former President Joko Widodo,¹⁰⁶ a former head of police¹⁰⁷ and a governor.¹⁰⁸ The defendants in these cases were mostly ordinary citizens. Of the 13 cases, accused persons in nine cases were ultimately convicted.

Based on the public sources and case documents assessed for this report, 20 of the 73 cases identified went to trial—of which, 15 ended in conviction (with one overturned on appeal) and four in acquittals. Twelve of the 15 convictions were under the EIT Law. The remaining three were under the Hoax Provisions (where they had alternatively been charged with EIT Law violations).¹⁰⁹

In the cases that led to convictions under the EIT Law, district courts imposed prison sentences—the average sentence was 8.5 months imprisonment—along

¹⁰⁴ Ciamis District Court, Case No. 186/Pid.Sus/2021/PN.Cms., pgs. 11–13.

¹⁰⁵ The defendant was charged with Article 28(2) along with Article 156 of the Criminal Code (blasphemy) and Article 14 of Law No. 1/1946 and was ultimately convicted under Article 14. *Id.* at pgs. 12, 355, 478, 602.

¹⁰⁶ See West Jakarta District Court Judgment [translation], Case No. 890/Pid.Sus/2022/PN.Jkt.Brt, (2022), pgs. 62–63 (Holding that Roy Suryo violated Article 28(2) of the EIT Law by reposting a meme depicting the former President’s head on a Buddhist temple statue, noting that his actions offended both Buddhists and supporters of the former President, classified as an “intergroup” under the law.); see also Semua Bisa Kena, Kisruh Organisasi Hingga Pencemaran Nama Presiden (Organizational Disputes and Defamation of the President), July 7, 2022 (Mohammad Hisbun Payu was charged under the hate speech provision of the EIT Law for posting a critical comment about former President Widodo on his Instagram story, stating, “What sin did the Indonesian people commit to deserve a cursed president like Jokowi?”), *available at* <https://semuabisakena.jaring.id/2022/07/07/kisruh-organisasi-hingga-pencemaran-nama-presiden/>.

¹⁰⁷ Detik, Ditahan negara Posting ‘Orang-orang Pilihan Sambo’, Masril Akhirnya Bebas (Detained for Posting ‘Ferdie Sambo’s Chosen People,’ Masril Finally Released), Aug. 27, 2022 (Masril was detained for 26 days by Polda Metro Jaya for reposting a video titled “Orang-orang Pilihan Ferdie Sambo” that discussed Ferdie Sambo, a former high-ranking Indonesian National Police officer, and his alleged connections to online gambling.), *available at* <https://www.detik.com/jateng/hukum-dan-kriminal/d-6257069/ditahan-gegara-posting-orang-orang-pilihan-sambo-masril-akhirnya-bebas>.

¹⁰⁸ Mataram District Court, Case No. 256/Pid.Sus/2022/PN, pgs. 4–6 (Sri Sudarjo, the Chairman of KSU Rinjani, faced hate speech charges under the EIT Law for posting a video on YouTube alleging embezzlement of the National Economic Recovery by the Government and the Governor of West Nusa Tenggara.).

¹⁰⁹ In Indonesia, prosecutors often present courts with a range of provisions under which they can convict—for example, Article 27(3) of the EIT Law can be charged along with Article 14 of Law No.1/1946 (in the alternative).

with fines ranging from Rp. 1,000,000 (equivalent to \$70) to Rp. 150,000,000 (equivalent to \$9150). Notably, failure to pay the fines can result in an additional sentence of imprisonment. In the cases analysed for this report, persons facing charges under Article 27(3) were sentenced to imprisonment ranging from 4 months to one year, while convictions under Article 28(2) led to prison sentences ranging from five months to 18 months, again suggesting that Article 28(2) was seen as ‘more serious.’

Charges under Article 27(3) and Article 28(2) led to harms apart from custodial penalties. Persons facing charges were repeatedly summoned to the police station for interrogation. In most cases that were resolved through “restorative justice mechanism/mediation,” the accused persons apologised for their statements to avoid criminal prosecution, despite their speech being protected by the Joint Decree and not constituting a criminal offence.

Only rarely did courts reference the principles set forth in the Joint Decree or constitutional protections. In the case of human rights defenders Haris Azhar and Fatia Maulidiyanti, for example, the prosecutor argued that the Joint Decree only applied to the issuing agencies and did not apply to the East Jakarta District Court, which was trying the case.¹¹⁰ Yet the District Court applied the Joint Decree to find that the defendants had not violated the EIT Law (discussed further below). In the case of environmental defender Daniel Frits, the High Court quashed the conviction on the ground that he had been defending the right to a healthy environment, enshrined in Indonesia’s constitution (discussed further below). These are rare examples where the Indonesian courts acknowledged that the prosecution violated the Joint Decree and/or constitutional protections.¹¹¹

¹¹⁰ Constitutional Court Judgment [translation], Case No. 78/PUU-XXI/2023, *President’s Statement*, para. 118.

¹¹¹ District Court of Manggala Judgment [translation], Case No. Number 33/Pid.Sus/2022/PN Mgl, pgs. 32, 34–35 (While the court in this case acknowledged that, under the Joint Decree, its focus should be on the defendant’s intent rather than the victim’s subjective feelings, its decision to acquit the defendant of defamation under Article 27(3) was not based on this principle. Instead, the court ruled in her favor, finding that she had not publicly disseminated the information since the statements in question were private messages sent via WhatsApp to a number she believed belonged to the complainant.).

CASE STUDIES

Of the 73 cases collected for this report, the researchers selected six cases for a deep-dive analysis. These selected cases offer noteworthy insights into the issues in prosecuting these cases. Three of these cases were filed under Article 28(2), two cases under Article 27(3) and in the last case, both provisions were invoked in the indictment. In addition to charges under the EIT Law, some of these cases also invoked Articles 14 and 15 of Law No. 1/1946 and the provisions of the Criminal Code. Four of these cases resulted in a final judgment of conviction/acquittal, one case was terminated through a “restorative justice mechanism” and the other remains stalled/pending with the police, reflective of the trends in the larger dataset.

A. Roy Suryo

In June 2022, Roy Suryo, a former Minister of Youth and Sports in the Indonesian government, was reported to the police for a post on Twitter. In this post, Roy Suryo reposted a meme (image with a caption) that had gone viral online. In the meme, a stupa/statue of the Borobudur temple (a famous Buddhist temple) had been modified to resemble former President Joko Widodo.¹¹² The caption on this image stated: “no wonder the ticket price is expensive, it appears that opung [grandfather] has built a statue of ‘I Gede Utang Jokowi’ [‘Jokowi has a lot of debt’] to add to the funds to build the new capital.”¹¹³ This meme was a response to the government’s announcement that it would increase the price of tickets to the Borobudur temple to IDR 750,000 (\$52) for domestic tourists.¹¹⁴

¹¹² See West Jakarta District Court Judgment [translation], Case No. 890/Pid.Sus/2022/PN.Jkt.Brt, pg. 56. (2022).

¹¹³ VOI, Roy Suryo Suspect of Blasphemy: As Former Minister, Should Be Wise in Social Media, Aug. 11, 2022 (provides a screenshot of Suryo’s Twitter post), *available at* <https://voi.id/en/bernas/200237>. Indonesia’s former President Widodo led an initiative to move the nation’s capital from Jakarta to a newly planned city, Nusantara, located in East Kalimantan. This decision is driven by the need to address Jakarta’s persistent challenges, including extreme congestion, pollution, and the alarming pace at which the city is sinking. However, numerous civil society groups have voiced strong opposition to the project, warning it will result in severe environmental damage and loss in biodiversity, accelerate deforestation, displace Indigenous communities, and incur substantial financial burdens on the population. See Edna Tarigan & Victoria Milko, Why Is Indonesia Moving its Capital from Jakarta to Borneo?, The Associated Press, Mar. 8, 2023, *available at* <https://apnews.com/article/indonesia-capital-kalimantan-climate-borneo-environment-eb0f8ad12e07bb105546296d88192834>; see also Bill Birtles, Deep in the Jungles of Borneo, Indonesia’s President Has Created a \$45 Billion Headache for his Successors, ABC News, Mar. 6, 2024, *available at* <https://www.abc.net.au/news/2024-03-07/indonesias-new-capital-in-the-jungles-of-borneo-nusantara/103438328>.

¹¹⁴ John Mcbeth, Tourist Fee Uproar Breaks the Calm of Borobudur, Asia Times, June 8, 2022, *available at* <https://asiatimes.com/2022/06/tourist-fee-uproar-breaks-the-calm-of-borobudur/>.

The plan to increase ticket prices was ultimately rolled back. See Southeast Asia Archaeology,

Separately, former President Widodo had announced in 2019 that the authorities would build a new capital city, a plan that was approved by Parliament in January 2022.¹¹⁵

Roy Suryo reposted the meme on June 10, 2022 with the following comment: “As it is the weekend, Tweets should be on lighter topics. Given the protests against the planned increase of the admission ticket to the Borobudur Temple (from 50 thousand) to 750 thousand that should (reasonably) be POSTPONED, netizen’s creativity abounds by altering an open stupa at Borobudur, FUNNY, he-3x AMBYAR [pitiful].” Suryo subsequently deleted this post on June 14, 2022 and issued a public apology on June 16, 2022.

However, on June 20, 2022, Suryo was reported to the Greater Jakarta Metropolitan Regional Police (Polda Metro Jaya) by a Buddhist businessman named Kurniawan Santoso¹¹⁶ and to the National Police Criminal Investigation Agency (“Bareskrim”) by Kevin Wu, an official of Dharmapala Nusantara, a Buddhist association.¹¹⁷ Suryo was ultimately named a suspect by the Polda Metro Jaya Regional Police on July 22, 2022, based on charges of hate speech under Article 28(2),¹¹⁸ blasphemy,¹¹⁹ and fake news (Article 15 of the Hoax

Government Rescinds Plan to Increase Borobudur Temple Entry Fee, June 17, 2022, *available at* <https://www.southeastasianarchaeology.com/2022/06/17/government-rescinds-plan-to-increase-borobudur-temple-entry-fee/#:~:text=Government%20rescinds%20plan%20to%20increase%20Borobudur%20Temple%20entry%20fee,-17%20June%202022&text=via%20Antara%2C%2014%20June%202022,has%20been%20completely%20walked%20back>.

¹¹⁵ Aisyah Llewellyn, Progress or Folly? Jokowi’s Vision for Indonesia’s New Capital, Aljazeera, Jan. 20, 2022, *available at* <https://www.aljazeera.com/economy/2022/1/20/progress-or-folly-jokowis-vision-for-indonesias-new-capital>.

¹¹⁶ Tria Sutrisna & Nursita Sari, Roy Suryo Dilaporkan ke Polda Metro Jaya Terkait Meme Stupa Candi Borobudur Mirip Jokowi (Roy Suryo Reported to Metro Jaya Regional Police Related to Borobudur Temple Stupa Resembling Jokowi Meme), Kompas, June 20, 2022, *available at* <https://megapolitan.kompas.com/read/2022/06/20/17121381/roy-suryo-dilaporkan-ke-polda-metro-jaya-terkait-meme-stupa-candi?page=all>.

¹¹⁷ Hasanudin Aco, Siapa Kevin Wu? Sosok yang Laporkan Roy Suryo ke Polisi hingga Jadi Tersangka (Who is Kevin Wu? The Person Who Reported Roy Suryo to the Police, Making Him a Suspect), Tribun News, July 22, 2022, *available at* <https://www.tribunnews.com/nasional/2022/07/22/siapa-kevin-wu-sosok-yang-laporkan-roy-suryo-ke-polisi-hingga-jadi-tersangka>; Rakhmad Hidayatulloh Permana, Roy Suryo Tersangka, Ini Jejak Kasus Meme Stupa yang Menjeratnya (Roy Suryo Suspected, This Is the Development of the Stupa Meme Case that Entangled Him), Detik, July 22, 2022, *available at* <https://news.detik.com/berita/d-6192947/roy-suryo-tersangka-ini-jejak-kasus-meme-stupa-yang-menjeratnya>.

¹¹⁸ EIT Law, Articles 28(2) and 45(2).

¹¹⁹ Old Criminal Code, Article 156a.

Provisions).¹²⁰ The case proceeded based on the complaint filed by Kurniawan Santoso, not Kevin Wu.

Suryo was detained by the police on August 5, 2022 and remained in detention throughout his trial on the orders of prosecutors and the judge.¹²¹ Suryo's trial started in October 2022. He was charged with violating Article 28(2) of the EIT Law, and in the alternative,¹²² knowingly and publicly expressing sentiments or committing an act constituting abuse or blasphemy against a religion under Article 156a of the Criminal Code, or disseminating news the accuracy of which is not certain, or news that has been exaggerated or is incomplete, under Article 15 (1) of Law No. 1 of 1946.

In December 2022, Suryo was found guilty under Article 28(2) of the EIT Law and sentenced to nine months of imprisonment.

The Panel of Judges relied on the fact that Suryo's post had attracted a negative reaction on social media, prompting Suryo to delete the post and issue a public apology.¹²³ They reasoned that several Buddhists, including the complainant and other witnesses, felt "disappointment and anger" upon reading his post.¹²⁴ In convicting Suryo, the Judges used the term "intergroup" to expand the group to not just Buddhists, but "many sympathizers/supporters of the President," who would feel offended by seeing the face of the President on the statue.

During trial, Suryo raised the defence that he had neither modified the image nor circulated it online but merely reposted it with the intention of bringing attention to the planned increase of the Borobudur Temple admission ticket price.¹²⁵ The judges rejected these arguments, stating that of all the Twitter handles that shared the meme, Suryo had the largest following (approximately

¹²⁰ See Rendika Ferri Kurniawan, Roy Suryo Resmi Ditahan, Ini Kasus yang Menjeratnya (Roy Suryo Officially Detained, This is the Case That Entangled Him), Kompas, Aug. 6, 2022, available at <https://www.kompas.com/tren/read/2022/08/06/063000465/roy-suryo-resmi-ditahan-ini-kasus-yang-menjeratnya?page=all>; District Court of West Jakarta, Case No. 890 / Pid.Sus /2022 / PN.Jkt.Brt., pgs. 57–58.

¹²¹ See West Jakarta District Court Judgment [translation], Case No. 890/Pid.Sus/2022/PN.Jkt.Brt, pg. 1 (2022).

¹²² As noted above (para. 42), in Indonesia, prosecutors have the discretion to charge the defendant with multiple offenses. However, the Panel of Judges will ultimately determine which, if any, of the alternative charges are made out.

¹²³ See West Jakarta District Court Judgment [translation], Case No. 890/Pid.Sus/2022/PN.Jkt.Brt, pgs. 59–60 (2022).

¹²⁴ *Id.* at pg. 65.

¹²⁵ *Id.* at pg. 24.

90,000 followers) and that “as a public figure, telematics expert, former member of the House of Representatives, and former Minister of Youth and Sports” he “ought to have been aware of the possibility that the Multiple Quote Tweet can be read/viewed by other people of different religions and backgrounds.”¹²⁶ The court did not address Suryo’s intention, failing to fulfil the Joint Decree’s requirements that a motive to create hatred or hostility must be proven, as discussed in the Legal Analysis section below.

Both Roy Suryo and the prosecution appealed this judgment before the Court of Appeal of the Special Capital Region of Jakarta. The prosecution asked for a more severe punishment. The Court upheld Suryo’s conviction and imposed an additional fine of IDR150,000,000.00 (approximately \$9500) and an additional sentence of 2 months’ imprisonment in case of inability to pay.¹²⁷ This decision was issued on February 10, 2023.¹²⁸ Roy Suryo then submitted a cassation application to the Supreme Court.¹²⁹ On May 2, 2023, the Supreme Court rejected the cassation appeal, thus giving Suryo’s conviction permanent legal force.

B. Ismail Marzuki

In February 2021, Ismail Marzuki, a journalist, human rights defender and the owner of an online media company named mudanews.com, was reported to the police for a video he uploaded on Facebook and YouTube.¹³⁰ In early 2021, Marzuki and a few others had held a protest in front of the North Sumatra Regional Police Headquarters to demand protection of a cultural heritage site, Benteng Putri Hijau. During the protest, Marzuki carried posters featuring a picture of Nawal Lubis, the wife of the Governor of North Sumatra (Edi

¹²⁶ *Id.* at pg. 61.

¹²⁷ Patrick Greenwalt, Country Update: Indonesia, Legal Impediments to Religious Freedom in Indonesia, US Commission on International Religious Freedom, pg. 2, *available at* <https://www.uscifr.gov/sites/default/files/2024-01/2024%20Indonesia%20Country%20Update.pdf>.

¹²⁸ *Id.*

¹²⁹ CNN Indonesia, Tolak Kasasi, MA Kuatkan Vonis 9 Bulan Penjara Roy Suryo (Cassation Rejected, Supreme Court Upholds Roy Suryo’s 9-Month Prison Sentence), May 4, 2023, *available at* <https://www.cnnindonesia.com/nasional/20230504125436-12-945176/tolak-kasasi-ma-kuatkan-vonis-9-bulan-penjara-roy-suryo>.

¹³⁰ See Medan District Court Decision [translation], Case No. 776/Pid.Sus/2022/PN Mdn, pg. 39 (2022); see also Mudanews, Pemimpin Redaksi Mudanews.com Sampaikan Nota Keberatan, Pekerjaan Wartawan Dilindungi UU Pers (Editor-in-Chief Mudanews.com Submits Memorandum of Objection, Journalists’ Work Protected by Press Law), Apr. 19, 2022, *available at* <https://desernews.com/pemimpin-redaksi-mudanews-com-sampaikan-nota-keberatan-pekerjaan-wartawan-dilindungi-uu-pers/>.

Rahmayadi), with the following slogans: “*Just because Bunda [Mother]*¹³¹ *NL [Nawal Lubis] is the wife of ‘ALL-POWERFUL PERSON’*”; “*Save Benteng Hijau from Bunda NL*” and “*Chief of North Sumatera Regional Police*¹³² *should immediately investigate Bunda NL regarding the damage to Benteng Putri Hijau.*”¹³³ These slogans referred to allegations that Nawal Lubis had obtained a Building Permit for an educational park, which would be a “learning place for the community” on how to improve agriculture and livestock activities, and the heritage site was at risk for damage from the construction of this park.¹³⁴ Marzuki recorded the protest in a two-minute video, where he also made the following remarks: “*The location of Benteng Putri Hijau is a protected area and is listed as a cultural heritage of North Sumatra located in Deliserdang. Just because Bunda NL is the wife of an all-powerful person, it does not mean Bunda NL should not be investigated regarding the buildings located within the location of Benteng Putri Hijau [which is classified as a cultural heritage] as stipulated in the Decree of the Regent of Deliserdang.*”¹³⁵

Marzuki uploaded the video of this protest on his personal Facebook account and the YouTube channel of mudanews.com. Subsequently, Marzuki was reported to the police by one of the owners of land in Sector 1 of Benteng Putri Hijau¹³⁶ and by Nawal Lubis herself (through her legal representative) for violating Article 27(3) of the EIT Law.¹³⁷

Marzuki wrote to the North Sumatra Police Chief requesting that he be provided the legal protection due to journalists under Law No. 40 of 1999 concerning the Press (stating that journalists should be protected by the law while “conducting

¹³¹ “TRANSLATOR: Bunda is another term for ‘mother’ but commonly used to informally address women as a substitute of using the formal salutation of Madame or Mrs.” See Medan District Court Decision [translation], Case No. 776/Pid.Sus/2022/PN Mdn, pg. 39 (2022).

¹³² “TRANSLATOR: abbreviated into KapoldaSU.” See *id.*

¹³³ *Id.* at pg. 40.

¹³⁴ *Id.* at pg. 9.

¹³⁵ *Id.* at pgs. 64–65.

¹³⁶ Police Report, No. LP/62/II/2021/Sumut/SPKT, Jan. 12, 2021; Sumutpos, Koordinator Aparat Minta Ismail Marzuki Dibebaskan (Coordinator Asks Ismail Marzuki to Be Freed), Mar. 11, 2023, *available at* Koordinator Aparat Minta Ismail Marzuki Dibebaskan | SumutPos (jawapos.com).

¹³⁷ Police Report, No. 294/II/2021/Sumut/SPKT, Feb. 9, 2021; Sumutpos, Koordinator Aparat Minta Ismail Marzuki Dibebaskan (Coordinator Asks Ismail Marzuki to Be Freed), Mar. 11, 2023, *available at* Koordinator Aparat Minta Ismail Marzuki Dibebaskan | SumutPos (jawapos.com).

the activities of [their] profession”).¹³⁸ The police did not consider his request. Marzuki was named a suspect on May 24, 2021, although he was not detained during investigation or trial.¹³⁹

The case proceeded based on the complaint of Nawal Lubis, not the one from the landowners. Marzuki’s trial started in April 2022 in Medan District Court,¹⁴⁰ and he faced charges of defaming Nawal Lubis under Article 27(3) of the EIT Law or alternatively, under Article 310(2) of the Criminal Code, which criminalizes libel.¹⁴¹ One year later, on April 27, 2023, he was found guilty of violating Article 27(3) and sentenced to six months imprisonment.¹⁴²

During the trial, a witness who participated in the protest along with Marzuki explained the context of the video: that Nawal Lubis had obtained a Building Permit for an educational park and the purpose of the protest was to save the heritage site from damage from the construction of this park.¹⁴³ The Panel of Judges acknowledged that Marzuki had attributed damage to the heritage site to Lubis for that reason¹⁴⁴ yet ultimately did not examine the truth of this claim and relied on testimony of select expert witnesses, as explained in the Legal Analysis section below.

The Court did not refer to the Joint Decree in its analysis. Indeed, its decision appeared to contravene the Joint Decree’s requirement that speech constituting opinions or concerning matters of public interest not be prosecuted under Article 27(3) — in his protest, Marzuki had merely called for Lubis to be investigated.

¹³⁸ Republic of Indonesia, National Law No. 40 of 1999 on the Press, Article 8 [hereinafter “Press Law”].

¹³⁹ See Medan District Court Decision [translation], Case No. 776/Pid.Sus/2022/PN Mdn, pg. 1 (2022).

¹⁴⁰ Tambah Komentar, Kasus Pengrusakan Situs Cagar Budaya Benteng Putri Hijau, Istri Edy Rahmayadi Pernah Laporkan Kader PDIP (The Case of Destruction of the Benteng Putri Hijau Cultural Heritage Site: Edy Rahmayadi’s Wife Once Reported a PDIP Cadre), Lensa Medan, Nov. 20, 2024, *available at* <https://www.lensamedan.co.id/2024/11/kasus-pengrusakan-situs-cagar-budaya.html#comment-form>.

¹⁴¹ See Medan District Court Decision [translation], Case No. 776/Pid.Sus/2022/PN Mdn, pg. 63 (2022).

¹⁴² *Id.* at pg. 69.

¹⁴³ *Id.* at pg. 45.

¹⁴⁴ *Id.* at pg. 66.

Ismail Marzuki and the prosecution appealed the judgment before the Medan Court of Appeals,¹⁴⁵ with the prosecution requesting enhanced punishment. On February 9, 2023, the Court of Appeals upheld the Medan district court's decision. In August 2023, Marzuki submitted a cassation application to the Supreme Court, which appears to have been dismissed in June 2024.

C. Thomas Madilis

Thomas Madilis, a resident of Negeri Amahai, a village in the Maluku province of Indonesia, was reported to the police for violating the EIT Law in June 2022. Madilis was reported for Facebook posts that criticised the local police for prioritizing eating contests (the local police had recently broken the Indonesian record for drinking the most nutmeg juice and eating congee) instead of other issues.¹⁴⁶

In one post he stated, "Ambon city of music is an icon of Maluku in a civilization of progress. The MURI [Indonesia World Records Museum] record should be for the birth of many Malukan singers with music quality that could compete internationally, rather than chasing MURI records for eating papeda (a type of congee) and nutmeg juice...." This statement referred to the music talent in Ambon, which was designated as a City of Music by UNESCO in 2019. In another post, Madilis commented "Gosh, what happened to TNI-Polri [the police] in Maluku? Why are they obsessed with Muri [records]?"

Madilis was reported to the Maluku regional police by some local youth associations on the basis of these Facebook posts. He was detained on June 25, 2022.¹⁴⁷ He was charged with violating Article 28(2) of the EIT Law as well

¹⁴⁵ Farid Achyadi Siregar, PT Medan Kuatkan Vonis Pria Penghina Istri Gubsu Edy (Medan High Court Upholds Sentence for Man Who Insulted North Sumatra Governor's Wife), Detik, July 17, 2023, *available at* <https://www.detik.com/sumut/hukum-dan-kriminal/d-6827700/pt-medan-kuatkan-vonis-pria-penghina-istri-gubsu-edy>.

¹⁴⁶ Winda Herman, Polisi tangkap pemuda Maluku Tengah karena hujat TNI-Polri di Facebook, berikut ini postingannya (Police Arrests Central Moluccan Youngster for Blasphemy Against TNI-Polri on Facebook, Here Is the Post), Ambon Antara News, June 28, 2022, *available at* <https://ambon.antaranews.com/berita/126721/polisi-tangkap-pemuda-maluku-tengah-karena-hujat-tni-polri-di-facebook-berikut-ini-postingannya>.

¹⁴⁷ Lukman Mukadar, Hujat Rekor MURI Minum Jus Pala, Pemuda Amahai Ditangkap Polisi & Terancam 10 Tahun Penjara (Blasphemous Against MURI's Record for Drinking Nutmeg Juice, Amahai Youngster Arrested by Police & Threatened with 10 Years in Prison), Tribun News, June 27, 2022, *available at* <https://ambon.tribunnews.com/2022/06/27/hujat-tnipolri-di-medsos-thomas-madilis-pemuda-amahai-ditangkap-terancam-10-tahun-penjara>; Lukman Mukadar, Hina Gubernur Maluku di Medsos, Thomas Madilis Jadi Tersangka (Humiliating the Governor of Maluku on Social Media, Thomas Madilis Becomes a Suspect), Tribun News, Mar. 14, 2023, *available at* <https://ambon.tribunnews.com/2023/03/14/hina-gubernur-maluku-di-medsos-thomas-madilis-jadi-tersangka>.

as both Hoax Provisions.¹⁴⁸ Madilis's detention was then suspended on June 28, 2022, after he posted an apology video and signed a letter promising not to repeat similar acts.¹⁴⁹ The Acting Head of Public Relations of the Maluku Regional Police stated that Thomas Madilis had been released through a restorative justice settlement.¹⁵⁰ Under the Joint Decree, this case should not have triggered criminal proceedings, let alone detention, because Madilis's statements did not call for, influence, motivate or incite people against each other and he had no evident motive to create hatred and/or hostility. It is relevant to note that Madilis was reported and named a suspect for violating the EIT Law again in 2023 for making statements critical of the Governor of Maluku and his wife.¹⁵¹

D. Dandhy Laksono

Dandhy Dwi Laksono is a journalist and filmmaker known for his documentaries about social issues, such as *Sexy Killers* (2019) about coal mines and *Asimetris* (2018) about the palm oil industry. On September 23, 2019, Dandhy wrote a Twitter thread about ongoing riots and unrest in Jayapura and Wamena, both cities in Papua, which were reportedly triggered by racist slurs made against Papuan students.¹⁵² According to Human Rights Watch, the riots resulted in 33

¹⁴⁸ Lukman Mukadar, Hujat Rekor MURI Minum Jus Pala, Pemuda Amahai Ditangkap Polisi & Terancam 10 Tahun Penjara (Blasphemous Against MURI's Record for Drinking Nutmeg Juice, Amahai Youngster Arrested by Police & Threatened with 10 Years in Prison), *Tribun News*, June 27, 2022, *available at* <https://ambon.tribunnews.com/2022/06/27/hujat-tnipolri-di-medsos-thomas-madilis-pemuda-amahai-ditangkap-terancam-10-tahun-penjara>.

¹⁴⁹ Ode Alfin Risanto, Sudah Minta Maaf, Pemuda Amahai yang Hujat Rekori Muri Minum Jus Pala Akhirnya Dibebaskan (Already Apologizing, Amahai Youngster Who Blasphemed Muri's Record for Drinking Nutmeg Juice Finally Freed), *Tribun News*, June 29, 2022, *available at* <https://ambon.tribunnews.com/2022/06/29/sudah-minta-maaf-pemuda-amahai-yang-hujat-rekor-muri-minum-jus-pala-akhirnya-dibebaskan>.

¹⁵⁰ *Id.*

¹⁵¹ Liputan Malteng, Polda Maluku Pastikan Saat Ini Thomas Madilis Berstatus Tersangka Kasus ITE (The Maluku Regional Police Confirm that Thomas Madilis Is Currently a Suspect in an ITE Case), Mar. 14, 2023, *available at* https://malteng.liputan.co.id/article_read/polda-maluku-pastikan-saat-ini-thomas-madilis-bers1678780412.

¹⁵² Arya Dipa, Filmmaker Dandhy Laksono Named 'Hate Speech' Suspect for Tweeting About Clashes in Papua, *The Jakarta Post*, Sept. 27, 2019, *available at* <https://www.thejakartapost.com/news/2019/09/27/filmmaker-dandhy-laksono-named-hate-speech-suspect-for-tweeting-about-clashes-in-papua.html>; For greater context on the clashes between Papuans and the Indonesian government, see Kate Lamb, West Papua: Thousands Take to Streets After Week of Violence, *The Guardian*, Aug. 26, 2019, *available at* <https://www.theguardian.com/world/2019/aug/26/west-papua-thousands-expected-at-fresh-protests-after-week-of-violence>; Human Rights Watch, Indonesia: Investigate Riot Deaths in

deaths and 8000 people being displaced.¹⁵³ Dandhy's Twitter post contained photos of two school students being shot, accompanied by the following text:¹⁵⁴

"JAYAPURA (photo 1)

Papuan students in exodus from campuses in Indonesia open a post at Uncen [University of Cendraswih]. Officers transport them from campus to Waena Expo [a cultural park]. Riot. Some were killed.

WAMENA (photo 2)

High school students protested the teacher's racist attitude. Faced by the military force. The city rioted. Many had gunshot wounds."

In the ensuing Twitter thread, Dandhy provided links to news articles and context for the events, explaining that in Wamena the "sequence [of events] is as follows: alleged racism - demonstration - gun shots - angry mob – arson," and in Jayapura "students were banned from setting up a post on the Cendrawasih University campus." He stated that news was being compiled, "but it's not easy to gather information because access to coverage for journalists is also not free." Dandhy also lamented that the events in Jayapura and Wamena "show that in Papua there seems to be only one way to solve all problems: violence."

Six days later, on September 29, 2019 at around 10:45pm, Dandhy was arrested at his residence by the Greater Jakarta Metropolitan Regional Police (Polda Metro Jaya).¹⁵⁵ Dandhy's arrest was based on an alleged violation of Article 28(2) of the EIT Law as well as the Hoax Provisions.¹⁵⁶ After being arrested, Dandhy spent about four hours under interrogation, with the police asking him questions regarding the Twitter posts, his motivations and intentions, and who told him to make the posts. At 4:00am, Dandhy was declared a suspect, and released. Under the Joint Decree, this case should have been terminated because Dandhy was only reporting facts, did not call for or incite any hatred or hostility, and had no evident intent to incite hatred or hostility. However, news

Papua, Oct. 7, 2019, *available at* <https://www.hrw.org/news/2019/10/07/indonesia-investigate-riot-deaths-papua>.

¹⁵³ Human Rights Watch, Indonesia: Investigate Riot Deaths in Papua, Oct. 7, 2019, *available at* <https://www.hrw.org/news/2019/10/07/indonesia-investigate-riot-deaths-papua>.

¹⁵⁴ Dandhy Laksono (@Dandhy_Laksono), Twitter (now X), Sept. 23, 2019, *available at* https://twitter.com/dandhy_laksono/status/1176019900050984961.

¹⁵⁵ Arya Dipa, Filmmaker Dandhy Laksono Named 'Hate Speech' Suspect for Tweeting About Clashes in Papua, The Jakarta Post, Sept. 27, 2019, *available at* <https://www.thejakartapost.com/news/2019/09/27/filmmaker-dandhy-laksono-named-hate-speech-suspect-for-tweeting-about-clashes-in-papua.html>.

¹⁵⁶ Detik, Ini Cuitan soal Papua yang Bikin Dandhy Laksono Jadi Tersangka (This is a Tweet About Papua that Makes Dandhy Laksono a Suspect), Sept. 27, 2023, *available at* Ini Cuitan soal Papua yang Bikin Dandhy Laksono Jadi Tersangka (detik.com).

articles from 2023 suggest that Dandhy continues to be a ‘suspect’ in this case.¹⁵⁷

E. Fatiah Maulidiyanti and Haris Azhar

In September 2021, prominent human rights defenders Fatiah Maulidiyanti and Haris Azhar were reported to the police by Luhut Binsar Pandjaitan, the Coordinating Minister for Maritime and Investment Affairs and a retired army general, for violating the EIT Law. This complaint concerned a YouTube video posted by Azhar to his YouTube channel titled: “THERE IS LORD LUHUT BEHIND THE ECONOMY MILITARY OPS RELATIONS IN INTAN JAYA!! CHIEF OF STATE INTELLIGENCE AGENCY AS WELL!!NgeHAMtam”.

The YouTube video featured a conversation between Azhar and Maulidiyanti in which the two discussed the findings of an investigative report published by a coalition of human rights organizations, entitled “The Political Economy of the Military Deployment in Papua” (the “Report”).¹⁵⁸ The Report described links between active and retired Indonesian military figures and entities involved in gold mining in Intan Jaya (in Central Papua province).¹⁵⁹ The Report stated that Pandjaitan had ties to a mining company working in Papua. Specifically, the Report alleged that the Australian company West Wits Mining gave Indonesia company Tobacom Del Mandiri (“TDM”) 30% of the shares it held in a mining project in Papua.¹⁶⁰ The Report states that TDM was itself a subsidiary of the Toba Sejahtera Group (“TS Group”), a corporate entity in which the Report alleged Pandjaitan held shares.¹⁶¹

¹⁵⁷ Ilham Safutra, Tiga Tahun setelah Tersangka, Kasus Dandhy Masih Terkatung-katung (Three Years After Suspect Status, Dandhy’s Case Still Adrift), Jawapos, Sept. 23, 2022, *available at* Tiga Tahun setelah Tersangka, Kasus Dandhy Masih Terkatung-katung - Jawa Pos.

¹⁵⁸ Haris Azhar, ADA LORD LUHUT DIBALIK RELASI EKONOMI-OPS MILITER INTAN JAYA!!JENDERALBIN JUGA ADA!! NgeHAMtam, YouTube, Aug. 20, 2021, *available at* <https://www.youtube.com/watch?v=1xMlnuOtBAs&t=13s>; Kontras et al., Ekonomi-Politik Penempatan Militer di Papua: Kasus Intan Jaya (The Political Economy of Military Deployment in Papua: The Case of Intan Jaya), Aug. 20, 2021, *available at* <https://jatam.org/id/lengkap/ekonomi-politik-penempatan-militer-di-papua-kasus-intan-jaya>.

¹⁵⁹ Kontras et al., Ekonomi-Politik Penempatan Militer di Papua: Kasus Intan Jaya (The Political Economy of Military Deployment in Papua: The Case of Intan Jaya), Aug. 20, 2021, *available at* <https://jatam.org/id/lengkap/ekonomi-politik-penempatan-militer-di-papua-kasus-intan-jaya>.

¹⁶⁰ *Id.* at pgs. 17–18 (“In Derewo River Gold Project, West Wits Mining also shared 30% of the shares with PT Tobacom Del Mandiri (TDM).”).

¹⁶¹ *Id.* at pg. 18 (“TDM itself is part of PT Toba Sejahtera Group.”).

The first of the two exchanges in the YouTube video mentioned in the complaint was as follows:¹⁶²

Fatihah Maulidiyanti

"Now, we also know that shares in Toba Sejahtera Group are also owned by one of our public officials"

Haris Azhar

"Who"

Fatihah Maulidiyanti

"his name is Luhut Binsar Panjaitan"

Haris Azhar

"LBP the lord. The Lord"

Fatihah Maulidiyanti

"Lord Luhut"

Haris Azhar

"Ok"

Fatihah Maulidiyanti

"So Luhut can be said as having a stake in the mining operations that are ongoing today in Papua"

In the second exchange, Azhar and Maulidiyanti discussed mining operations involving three companies, and Azhar satirically asked, "how can we take over these companies...", to which Maulidiyanti responded: "so we are criminal ourselves."¹⁶³

On August 26, 2021, six days after Azhar posted the YouTube video, Pandjaitan wrote to both Azhar and Maulidiyanti asking them to explain the reason they posted the video, make a public apology and promise not to reoffend. The letter threatened defamation charges under the Indonesian Criminal Code and the EIT Law.¹⁶⁴ Azhar and Maulidiyanti sent response letters through their legal counsel, with Azhar explaining the information in the YouTube video came from the Report. Despite this, Pandjaitan issued a second letter on September 2,

¹⁶² Indictment of Fatiah Maulidiyanty [translation], Case No. PDM:021/JKT.TIM/EKU/03/2023, Mar. 27, 2023, pg. 4.

¹⁶³ Indictment of Fatiah Maulidiyanty [translation], Case No. PDM:021/JKT.TIM/EKU/03/2023, Mar. 27, 2023, pg. 3; East Jakarta District Court Judgment [translation], Case No. PDM:021/JKT.TIM/EKU/03/2023, Mar. 27, 2023, pg. 8.

¹⁶⁴ International Federation for Human Rights, Indonesia: Judicial Harassment Against Fatiah Maulidiyanti and Haris Azhar, Mar. 31, 2023, *available at* <https://www.fidh.org/en/issues/human-rights-defenders/indonesia-judicial-harassment-againstfatia-maulidiyanti-and-haris>.

2021.¹⁶⁵ Both responded; Maulidiyanti stated that she was criticizing Pandjaitan in his official capacity as a minister, not as an individual.¹⁶⁶

On September 22, 2021, Pandjaitan filed a complaint for criminal defamation against Azhar and Maulidiyanti. In the complaint, he alleged violations of Article 27(3) of the EIT Law amounting to IDR 100 billion in damages, almost one hundred times the statutory fine. The Complaint referred to use of the phrase “Lord Luhut,” the statement “So Luhut can be said as having a stake in the mining operations that are ongoing today in Papua” and the remark, “so we are criminal ourselves.”¹⁶⁷

Roughly five months later, on March 18, 2022, Azhar and Maulidiyanti were named as suspects and summoned to the Greater Jakarta Metropolitan Regional Police (Polda Metro Jaya) for questioning.¹⁶⁸ On March 27, 2022, the Jakarta Prosecutor issued separate indictments for Azhar and Maulidiyanti.¹⁶⁹ They faced the following charges: Article 27(3) of the EIT Law or, in the alternative, defamation under Article 310 of the Criminal Code, or transmitting false news or information, or uncertain, exaggerated or incomplete information, under the Hoax Provisions.¹⁷⁰

The trial against Azhar and Maulidiyanti started in April 2023. Several national and international human rights NGOs, including the Clooney Foundation for Justice, submitted amicus briefs before the district court highlighting that the

¹⁶⁵ Amnesty International, Indonesia: Human Rights Defenders Accused of Defamation, *available at* <https://www.amnesty.org.uk/urgent-actions/human-rights-defenders-accused-defamation>.

¹⁶⁶ Front Line Defenders, Human Rights Defenders Fatiah Maulidiyanti and Haris Azhar Face Criminal Defamation Charges, Mar. 8, 2023, *available at* <https://www.frontlinedefenders.org/en/case/human-rights-defenders-fatia-maulidiyanti-and-haris-azhar-acquitted-defamation-charges-east#case-update-id-56549>.

¹⁶⁷ East Jakarta District Court Judgment [translation], Case No. PDM:021/JKT.TIM/EKU/03/2023, Mar. 27, 2023, pg. 7.

¹⁶⁸ Front Line Defenders, Human Rights Defenders Fatiah Maulidiyanti and Haris Azhar Face Criminal Defamation Charges, Mar. 8, 2023, *available at* <https://www.frontlinedefenders.org/en/case/human-rights-defenders-fatia-maulidiyanti-and-haris-azhar-acquitted-defamation-charges-east#case-update-id-56549>.

¹⁶⁹ Indictment of Fatiah Maulidiyanti [translation], Case No. PDM:021/JKT.TIM/EKU/03/2023, Mar. 27, 2023, pgs. 2–24; Indictment of Haris Azhar [translation], Case No. PDM:022/JKT.TIM/EKU/03/2023, Mar. 27, 2023, pgs. 1–2 and 24.

¹⁷⁰ Indictment of Fatiah Maulidiyanti [translation], Case No. PDM:021/JKT.TIM/EKU/03/2023, Mar. 27, 2023, pg. 1; Indictment of Haris Azhar [translation], Case No. PDM:022/JKT.TIM/EKU/03/2023, Mar. 27, 2023, pgs. 6–7.

speech in question was protected by the right to freedom of expression.¹⁷¹ In January 2024, the Court acquitted Azhar and Maulidiyanti of all charges.

The Panel of Judges held that the definition of “insult and/or defamation” in Article 27(3) “cannot be disassociated” from the guidelines laid down in the Joint Decree.¹⁷² Referring to the Joint Decree, the Judges found that “the conversation between Haris Azhar and Defendant Fatiah Maulidianty and Owi¹⁷³ does not qualify as insult and/or defamation as the statement made in the podcast video constituted a review, comment, analysis, opinion and assessment of the Rapid Assessment conducted by the Coalition of Civil Society.”¹⁷⁴ The Panel of Judges also found that the elements of Article 310 of the Criminal Code and the Hoax Provisions had not been fulfilled. Accordingly, Azhar and Maulidiyanti were acquitted of all charges. A detailed analysis of the judgment is provided in the Legal Analysis section below.

The prosecution filed an appeal against this verdict, which was rejected by the Supreme Court on September 24, 2024, thereby confirming their acquittal.

F. Daniel Frits Maurits Tangkilisan

Daniel Frits Maurits Tangkilisan is an environmental human rights defender and member of the Karimunjawa Fight Movement. The Karimunjawa Fight Movement aims to raise awareness of the harmful impact of intensive shrimp farming practices and advocates for the protection of the Karimunjawa National

¹⁷¹ Indoleft, National, International Groups Submit Amicus Curiae in Fatia-Haris Defamation Case, Jan. 5, 2024, *available at* <https://www.indoleft.org/news/2024-01-05/national-international-groups-submit-amicus-curiae-in-fatia-haris-defamation-case.html>; INCLO, Joint Amicus: Charges Relating to the Alleged Dissemination of ‘False Information’ Do not Withstand Scrutiny Under Constitutional and International Provisions, Dec. 18, 2023, *available at* <https://inclo.net/latest/statements/joint-amicus-charges-relating-to-the-alleged-dissemination-of-false-information-do-not-withstand-scrutiny-under-constitutional-and-international-provisions/>; ICJ, Indonesia: ICJ Asks Court to Ensure that Defamation and ‘False Information’ Laws not Be Used to Silence and Criminalize Human Rights Defenders, Nov. 30 2023, *available at* <https://www.icj.org/indonesia-icj-asks-court-to-ensure-that-defamation-and-false-information-laws-not-be-used-to-silence-and-criminalize-human-rights-defenders/>; Clooney Foundation for Justice, Indonesian Human Rights Defenders Prosecuted for Discussion of Investigative Report Should Be Acquitted of Defamation, May 12, 2023, *available at* <https://cfj.org/news/indonesian-human-rights-defenders-prosecuted-for-discussion-of-investigative-report-should-be-acquitted-of-defamation/>.

¹⁷² East Jakarta District Court Judgment [translation], Case No. PDM:021/JKT.TIM/EKU/03/2023, Mar. 27, 2023, pg. 5.

¹⁷³ Owi was another speaker in the video who joined Azhar and Maulidianty for a portion of the conversation.

¹⁷⁴ East Jakarta District Court Judgment [translation], Case No. PDM:021/JKT.TIM/EKU/03/2023, Mar. 27, 2023, pgs. 9–10.

Park, a declared marine reserve renowned for its coral reefs.¹⁷⁵ Frits was reported and arrested for violating the EIT Law based on comments he made in a Facebook post about the shrimp ponds in Karimunjawa.

On November 12, 2022, Frits posted a video of Cemara beach along with the following text on Facebook: “Cemara beach, 10 November, 2022, 14.24. Ten days after the beach has been cleaned by the Environmental Office of Jepara (reportedly with a one-billion-rupiah funding paid by the pond owners who were required to clean the area within 20 days) and visited by officials following an awareness raising event on education for pond owners. What do you think:....” and tagged several government officials.¹⁷⁶ Two users commented on his post, one lamenting that “the residents of Karimunjawa and Kemujan are not sufficiently united in their ejection of the breeding ponds, even though the environmental damage caused by the ponds is clear,” and the other commenting “Maybe the people are getting a lot of free shrimps.”

Frits posted two replies to these comments. In the first, he said: “Shrimp-brained community enjoying free shrimps while being eaten by the pond owners. Basically, people with shrimp brains are just like the shrimps being bred. Easy to feed, abundant in number & orderly ready to be eaten.” In the second, he said: “A community enjoying the ponds such as the free shrimps, mosque, musalla (prayer room), volleyball field that were built with money of the pond owners, is exactly like the shrimps being bred. Easy to feed, large in quantity and orderly ready to be eaten. They don’t realize that their source of income itself is being devoured. Just see, the consequences will manifest soon.” These comments were reported to the police by several residents of Karimunjawa as violating the EIT Law.

On December 7, 2023, Frits was arrested and interrogated, and ultimately released on December 8. On January 24, 2024, the Public Prosecutor indicted him under Article 28(2) of the EIT Law and Article 27(3) in the alternative and placed him in custody again. He remained in custody for the duration of his trial, which started on February 1, 2024. On April 4, 2024, he was found guilty under Article 28(2) and sentenced to seven months’ imprisonment and fined 5 million rupiah.

The Panel of Judges relied on the fact that 70 Karimunjawa residents filed complaints against Frits. As recounted in the judgment, the residents felt insulted because the words “shrimp brain community” meant that “the brains of Karimunjawa residents are equated with the brains of shrimp,” implying that they

¹⁷⁵ Front Line Defenders, Daniel Frits Maurits Tangkilisan, *available at* <https://www.frontlinedefenders.org/en/profile/daniel-frits-maurits-tangkilisan>.

¹⁷⁶ Daniel Frits Maurits Tangkilisan, Facebook (Nov. 10, 2022, 2:24 PM), *available at* <https://www.facebook.com/examplepost>.

were dim-witted. The residents also took umbrage with the comment that the mosque and musolla were built from the money of “pond owners,” even though they existed long before there were shrimp farmers in Karimunjawa.

The Judges found that Frits’s post and the subsequent complaint had caused hatred in the community: “[t]he group that supports the filing of complaint against the Defendant is considered as supporters of farmers while those who do not support the filing of complaint against the Defendant are considered supporters of tourism.” The Judges found that these rifts in the community proved that “the information disseminated by the Defendant has caused hatred for a group of people.” The Judges did not consider whether Frits intended to incite hatred, as required by the Joint Decree and international standards. The court instead held him liable for any controversies that arose around the filing of the complaint against him. A detailed analysis of the judgment is provided in the Legal Analysis section below.

An appeal was filed against this verdict. On May 21, 2024, the High Court overturned the district court decision and released Frits from all charges. The High Court held that Frits made the statement to defend the right to a healthy environment, which is enshrined in Indonesia’s Constitution.¹⁷⁷ The case was eventually brought before the Constitutional Court, which found, among other things, that the term victim in the EIT Law can apply only to individuals, excluding corporations, government agencies, public officials, and groups.¹⁷⁸

It is relevant to note that apart from Frits, three other environmental defenders from the #SaveKarimunjawa Movement were reported to the police in November 2023 for violations under Article 27(3) and Article 28(2) for a video opposing what they said was illegal intensive shrimp farm on Karimunjawa.¹⁷⁹ The investigation against them was terminated in May 2024 on ground that no criminality was discovered, shortly after Frits was acquitted by the High Court.¹⁸⁰

¹⁷⁷ Basten Gokkon, Indonesian Activist Freed in Hate Speech Case After Flagging Illegal Shrimp Farms, Mongabay, May 22, 2024, *available at* <https://news.mongabay.com/2024/05/daniel-frits-maurits-tangkilisan-indonesia-environmental-activist-exonerated-illegal-shrimp-farm-hate-speech-karimunjawa-marine-protected-area/>.

¹⁷⁸ Constitutional Court Decision No. 105/PUU-XXII/2024 at 459 (unofficial English translation).

¹⁷⁹ SAFEnet, Seruan Bersama Masyarakat Sipil: Hentikan Kriminalisasi Seluruh Aktivis #SaveKarimunjawa (Joint Civil Society Call: Stop the Criminalization of All #SaveKarimunjawa Activists), Jan. 19, 2024, *available at* <https://safenet.or.id/id/2024/01/seruan-bersama-masyarakat-sipil-hentikan-kriminalisasi-seluruh-aktivis-savekarimunjawa/>.

¹⁸⁰ Tempo, Polda Jateng Hentikan Penyelidikan terhadap Tiga Warga Karimunjawa Penolak Tambak Udang (Central Java Police Halt Investigation into Three Karimunjawa Residents Opposing Shrimp Farms), May 25, 2024, *available at* <https://www.tempo.co/hukum/polda-jateng-hentikan-penyelidikan-terhadap-tiga-warga-karimunjawa-penolak-tambak-udang-55560>.

LEGAL ANALYSIS



This section analyses Indonesia's implementation of Article 27(3) and Article 28(2) against international standards on defamation and hate speech. After laying down the respective international standards, this report examines gaps in the provisions and the extent to which these gaps were addressed by the Joint Decree. It then looks at how police, prosecutors and the courts have implemented the laws based on the cases in the dataset. Finally, this section examines the extent to which each gap is addressed by the revised EIT Law (that is currently in force) and the new Criminal Code.

This section also includes a brief analysis of Indonesia's fake news laws, based on international standards and the issues that arose in the cases in the dataset. It concludes with a brief spotlight on the fair trial concerns arising from the overreliance on 'expert opinions' by Indonesian courts in the cases analysed for this report.

A. Applicable Law

This analysis draws upon the International Covenant on Civil and Political Rights ("ICCPR"),¹⁸¹ to which Indonesia is party, and jurisprudence from the United Nations Human Rights Committee, which is tasked with monitoring implementation of the ICCPR. Additionally, this report draws on the following regional treaties and related guidelines and jurisprudence: the African Charter on Human and Peoples' Rights,¹⁸² the European Convention on Human Rights ("ECHR"),¹⁸³ and the American Convention on Human Rights.¹⁸⁴

B. Defamation

Article 19 of the ICCPR guarantees the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media."¹⁸⁵ The right to freedom of speech is, however, subject to certain restrictions.

Article 19(3) of the ICCPR sets out a tripartite test to determine whether a restriction of speech is lawful: the restriction must be (i) provided by law and (ii)

¹⁸¹ ICCPR.

¹⁸² Banjul Charter.

¹⁸³ ECHR.

¹⁸⁴ ACHR.

¹⁸⁵ ICCPR, Article 19(2).

necessary (*iii*) for respect of the rights or reputations of others, national security or of public order (*ordre public*), or of public health or morals.¹⁸⁶ This list is exhaustive and cannot be used as a pretext for other objectives.¹⁸⁷ Similarly, according to the Human Rights Committee, any restriction on speech must: (*i*) be provided by law (the principle of legality); (*ii*) serve a legitimate objective (those enlisted under Article 19(3)); and (*iii*) be necessary to achieve and proportionate to that objective.¹⁸⁸ This test has also been adopted by Indonesia's Constitutional Court.¹⁸⁹

States often cite the protection of the “rights and reputation of others” as a key justification for limiting free speech in the context of criminal defamation laws.¹⁹⁰ It is worth noting that the term ‘rights’ in this context refers to human rights as captured in the ICCPR and international human rights law, and ‘others’ refers to both individuals and communities as natural persons, but not to institutions or public entities.¹⁹¹ Indonesia's Constitutional Court has held that government institutions or groups of people cannot be the victims of criminal defamation.¹⁹²

Defamation laws are, however, themselves subject to certain exclusions and exceptions, intended to balance both the right to freedom of expression and the rights and reputation of others.¹⁹³ These exceptions to defamation include:

- a. **Truth:** The Human Rights Committee has emphasized that truth is an important defense in the context of criminal laws that penalize defamation.¹⁹⁴ The UN Special Rapporteur on Freedom of Expression

¹⁸⁶ ICCPR, Article 19(3).

¹⁸⁷ UNHRC, General Comment No. 34 (2011), paras. 22 – 30.

¹⁸⁸ ICCPR at Articles 19(2)–(3); UNHRC, *Kim v. Republic of Korea*, U.N. Doc. CCPR/C/64/D/574/1994, Nov. 20, 1998, para. 12.2.

¹⁸⁹ Constitutional Court Decision No. 105 PUU-XXII/2024, at 442 (unofficial English translation).

¹⁹⁰ ECtHR, Guide on Article 10 of the European Convention on Human Rights: Freedom of Expression, Aug. 31, 2024, para. 123; UNHRC, *Adonis v. Phillipines* (Comm. No. 1815/2008), U.N. Doc. CCPR/C/103/D/1815/2008/Rev.1, Oct. 4 to Nov. 4 2011, para. 4.2; For Indonesian case law, see Constitutional Court Judgment [translation], Case No. 78/PUU-XXI/2023 para. 3.19.1.

¹⁹¹ UNHRC, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, Sept. 12, 2011, para. 28.

¹⁹² Constitutional Court Decision No. 105 PUU-XXII/2024, at 448 (unofficial English translation).

¹⁹³ Amal Clooney & David Neuberger, *Freedom of Speech in International Law*, Oxford University Press, pg. 198 (2024).

¹⁹⁴ UNHRC, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, Sept. 12, 2011, para. 47.

and Opinion has stated that “no one should be penalized for statements that are true.”¹⁹⁵

- b. **Good Faith:** With respect to speech relating to public figures, the Human Rights Committee has concluded that even false comments about public figures should not be penalized or “render[ed] unlawful” if they were “published in error but without malice.”¹⁹⁶ This protects speech that was made in good faith, i.e. without malice or the intention to defame.
- c. **Opinion:** The Committee has also found that criminalizing the expression of opinion is contrary to respect for freedom of expression.¹⁹⁷ The only exception to this is public denials or justification of genocide or similar international crimes.¹⁹⁸
- d. **Public Interest:** Certain types of speech are afforded heightened protection due to the recognition that they foster public accountability and protect democracy.¹⁹⁹ The Human Rights Committee has emphasized that “the value placed by the Covenant upon uninhibited expression is particularly high” in circumstances of public debate concerning public figures in the political domain and public institutions.²⁰⁰ The Human Rights Committee has affirmed this stance, and the ECtHR has stated that it requires “very strong reasons” to justify restrictions on political debate.²⁰¹

Under international law, any restriction on freedom of expression must also meet necessity and proportionality requirements. A law restricting speech will “violat[e] the test of necessity if the protection could be achieved in other ways that do not restrict freedom of expression.”²⁰² A restriction must be the “least

¹⁹⁵ UN Special Rapporteur F. La Rue, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Expression (2012) UN Doc A/67/357, para. 50.

¹⁹⁶ UNHRC, General Comment 34, ¶ 47.

¹⁹⁷ Amal Clooney & David Neuberger, *Freedom of Speech in International Law*, Oxford University Press, chapter 2 (insulting speech) (2024).

¹⁹⁸ CERD Committee, General Recommendation No. 35, para. 14 (2013); see also ECtHR, *Pastörs v. Germany*, App. No. 55225/14, Oct. 3, 2019, paras. 36 - 37.

¹⁹⁹ See General Comment No. 34, para. 38; see also Office of the Special Rapporteur for Freedom of Expression Inter American Commission on Human Rights, *The Inter-American Legal Framework Regarding the Right to Freedom of Expression*, paras.32–56.

²⁰⁰ See General Comment No. 34, para. 38.

²⁰¹ ECtHR, *Alekhina v. Russia*, App. No. 38004/12, July 17, 2018, para. 212.

²⁰² UNHRC, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, Sept. 12, 2011, para. 33.

intrusive instrument amongst those which might achieve their protective function.”²⁰³

The imposition of prison sentences for defamation does not satisfy the requirements of necessity and proportionality. The UN Human Rights Committee has explained that “imprisonment is never an appropriate penalty” for defamation offenses.²⁰⁴ It has urged “States parties [to] consider... decriminalization” of defamation, given the availability of a civil remedy for reputational harm.²⁰⁵ According to the Committee, “the application of the criminal law should only be countenanced in the most serious of [defamation] cases and imprisonment is never an appropriate penalty.”²⁰⁶

The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (the “*UN Special Rapporteur on Freedom of Expression*”) and the Rapporteur’s counterparts in the Organization of American States (OAS) and Organization for Security and Cooperation in Europe (OSCE) have similarly stated that “criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.”

Regional human rights courts broadly agree. The European Court of Human Rights has often held that imprisonment is a disproportionate penalty for defamation claims,²⁰⁷ and the African Court on Human and Peoples’ Rights has noted that “[a]part from serious and very exceptional circumstances for example, incitement to international crimes,” speech “cannot be sanctioned” by custodial penalties.²⁰⁸ The Inter-American Court has likewise held that where

²⁰³ *Id.* at para. 34.

²⁰⁴ *Id.* at para. 47.

²⁰⁵ *Id.* at para. 47; see also UN General Assembly, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, U.N. Doc. A/UN HRC/20/17, June 4, 2012, para. 84.

²⁰⁶ UNHRC, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, Sept. 12, 2011, para. 47.

²⁰⁷ ECtHR, *Belpietro v. Italy*, App. No. 43612/10, Sept. 24, 2013, paras. 52–53 and 113–114; see also ECtHR, *Raichinov v. Bulgaria*, App. No. 47579/99, Apr. 20, 2006, para. 50 (In finding a speech restriction disproportionate, one “factor on which the Court places particular reliance is that the applicant was not subjected to a civil or disciplinary sanction, but instead to a criminal one.”).

²⁰⁸ African Court of Human Rights, *Lohé Issa Konaté v. The Republic of Burkina Faso*, App. No. 004/2013, Dec. 5, 2014, para. 165.

speech concerns a public official, criminal penalties are not generally appropriate.²⁰⁹

Indonesia's Constitutional Court has taken the position that a person's reputation and honor is a protected legal interest, and the imposition of criminal sanction for violating that right does not necessarily contradict the defendant's constitutional rights.²¹⁰ Contemporary practice from other States, however, suggests that the prosecution of criminal defamation is increasingly seen as incompatible with international human rights law. In Europe, some states have repealed their criminal defamation laws, have stopped prosecuting offenses under them, or have at least eliminated the possibility of imprisonment.²¹¹ Similar developments have occurred in Africa with Malawi,²¹² Zimbabwe,²¹³ Kenya,²¹⁴ Lesotho,²¹⁵ and Liberia,²¹⁶ all of which eliminated their criminal defamation laws in the last decade. The same trend has also begun to take root in Asia and the Pacific region: New Zealand (1992), Sri Lanka (2002), Niue (2007), Timor-Leste (2009), Kyrgyzstan (2015), and the Maldives (2018) have all abolished criminal defamation.²¹⁷ In many of these countries, courts or

²⁰⁹ See Inter-American Court of Human Rights (IACtHR), *Álvarez Ramos v. Venezuela*, Series C No. 380, Aug. 30, 2019, para. 129.

²¹⁰ Constitutional Court Decision No. 105 PUU-XXII/2024, at 443 (unofficial English translation).

²¹¹ United Nations Educational, Scientific and Cultural Organization (UNESCO), *The 'Misuse' of the Judicial System to Attack Freedom of Expression: Trends, Challenges and Responses*, pg. 10 (Dec. 2022), *available at* <https://unesdoc.unesco.org/ark:/48223/pf0000383832>.

²¹² Southern Africa Litigation Centre, *Malawi High Court Declares Criminal Defamation Unconstitutional*, July 17, 2025, *available at* <https://www.southernafricalitigationcentre.org/malawi-high-court-declares-criminal-defamation-unconstitutional/>

²¹³ International Press Institute, *Zimbabwe Court Rules Criminal Defamation Unconstitutional*, Feb. 4, 2016, *available at* <http://legaldb.freemedia.at/2016/02/04/zimbabwe-court-rules-criminal-defamation-unconstitutional/>.

²¹⁴ High Court of Kenya at Nairobi, *Jacqueline Okuta & Another v. Attorney General & Others*, Petition No. 397 of 2016, Feb. 6, 2017, *available at* <http://kenyalaw.org/caselaw/cases/view/130781>.

²¹⁵ CPJ, *Lesotho Constitutional Court Declares Criminal Defamation Unconstitutional*, May 22, 2018, *available at* <https://cpj.org/2018/05/lesotho-constitutional-court-declares-criminal-def/>.

²¹⁶ Center for Media Studies & Peace Building, *President George Weah Signs New Press Freedom Act Which Repeals Libel, IFEX*, Mar. 5, 2019, *available at* <https://ifex.org/president-george-weah-signs-new-press-freedom-act-which-repeals-libel/>.

²¹⁷ UNESCO, *The 'Misuse' of the Judicial System to Attack Freedom of Expression: Trends, Challenges and Responses*, pg. 9 (Dec. 2022), *available at* <https://unesdoc.unesco.org/ark:/48223/pf0000383832>.

lawmakers have expressly declared criminal penalties for defamation to be disproportionate or to otherwise contravene basic constitutional rights to free speech and freedom of the press.²¹⁸

Indonesia has not only retained criminal defamation on its books, but it has also failed to comply with other requirements of international law. The law is not defined clearly and precisely per the principle of legality; value judgments are criminalized; there is no unqualified defence of truth; statements made in good faith about public figures and speech that is in public interest can be prosecuted. This section deals with each of these issues in turn.

Principle of Legality

In order to comply with the principle of legality, legislation restricting speech must be “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly... [and] may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.”²¹⁹ The UN Special Rapporteur on Freedom of Expression has further noted that any restriction on speech “must be provided by laws that are precise, public and transparent; it must avoid providing authorities with unbounded discretion.”²²⁰ If a law “provide[s] individuals with limited guidance about the lines dividing lawful from unlawful behavior,” then it likely does not conform to the principle of legality.²²¹

Article 27(3) of the EIT Law fails the legality requirement because key terms in the law are undefined, vague and overbroad. The provision criminalizes “distribution” and “transmission” of “insults” without providing clarity on these terms. The elucidation to Article 27(3) defines “distributing,” “transmitting” and

²¹⁸ See, e.g. High Court of Kenya at Nairobi, *Jacqueline Okuta & Another v. Attorney General & Others*, Petition No. 397 of 2016, Feb. 6, 2017, pg. 13 (“[T]he harmful and undesirable consequences of criminalizing defamation, viz. the chilling possibilities of arrest, detention and two years imprisonment, are manifestly excessive in their effect and unjustifiable in a modern democratic society.”), *available at* <http://kenyalaw.org/caselaw/cases/view/13078>; *Maldives Independent, Anti-Defamation Law Repealed*, Nov. 14, 2018 (Noting that, during the debate on repealing the Maldives’ criminal defamation law, “most lawmakers said it contravened the constitutional rights to free speech and press freedom.”), *available at* <https://maldivesindependent.com/politics/anti-defamation-law-repealed-142649>.

²¹⁹ UNHRC, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, Sept. 12, 2011, para. 25.

²²⁰ UN General Assembly, Report of the Special Rapporteur on the Promotion and Protection of Freedom of Expression, U.N. Doc. A/74/486, Oct. 9, 2019, para. 6(a).

²²¹ UN General Assembly, Report of the Special Rapporteur on the Promotion and Protection of Freedom of Expression, U.N. Doc. A/71/373, Sept. 6, 2016, para. 13.

“making accessible,” though these explanations are very broad.²²² The inclusion of the term ‘insults’ alongside defamation suggests that Article 27(3) sweeps more broadly than classical defamation would, but it is unclear what is meant to be covered.

The Joint Decree did not provide much additional clarity. As to ‘distribution,’ ‘transmission’ and ‘making accessible,’ it simply states: “The focus ... [is] on the action of the accused who knowingly and with intent distributes/transmits/makes accessible information whose content is an affront to the dignity of a person.”²²³ It also reiterated the 2008 Constitutional Court ruling that held that the offence of defamation in Article 27(3) “refers to and cannot be separated from the provisions of Article 310 and Article 311 of the Criminal Code.”²²⁴ Article 310 of the Criminal Code, which speaks of “harm[ing] someone’s honor or reputation by charging him with a certain fact,” is also vague.

Our dataset shows the perils of such vagueness: despite the issuance of the Joint Decree, Article 27(3) was applied against a wide range of speech.²²⁵ In at least 16 defamation cases analysed for this report, the police had included charges under other provisions in the Criminal Code (including Article 310 and 311) in addition to Article 27(3). This suggests significant uncertainty regarding what is exactly covered by that Article, as opposed to other provisions.

In 2023, Fatiah Maulidiyanti and Haris Azhar challenged Article 27(3) of the EIT Law, Article 310 of the Criminal Code and Articles 14 and 15 of Law No. 1/1946 before the Indonesian Constitutional Court on the ground that they violate the right to legal certainty and freedom to exercise their fundamental rights.²²⁶ They argued that these laws open up the possibility that any person could be criminalized for exercising their opinion in public, despite it being a constitutionally protected right.²²⁷ As discussed above, Maulidiyanti and Azhar faced charges for a YouTube video where they discussed mining operations in Papua.

²²² Dian Rositawati et al., *Protecting Expression: Criminal and Human Rights Law Analysis of Court Judgments in Indonesia*, LeIP, Stanford Center for Human Rights and International Justice, & Norwegian Embassy Jakarta, June 2023, at 51 [hereinafter “Rositawati”] (defining the terms “distributing”, “transmitting” and “making accessible,” of Article 27(3)).

²²³ Joint Decree, Article 27 (3), para. g.

²²⁴ Joint Decree, Article 27 (3), para. a.

²²⁵ See *supra* Section Joint Decree and its Implementation, paras. 34–35; *infra* Section Truth, paras. 33–35.

²²⁶ Constitutional Court Judgment [translation], Case No. 78/PUU-XXI/2023, para. 3.8.2.

²²⁷ *Id.* at para. 3.8.3.

With respect to Article 310(1) of the Criminal Code, the Petitioners argued that it “is an extremely subjective and disproportionate clause as there exists no clear boundaries by which to objectively determine the degree of the affront against honor or reputation that is punishable by law.”²²⁸ They further argued that the issuance of the Joint Decree itself proves that Article 27(3) is unclear and contrary to the guarantee of legal certainty.²²⁹ It was argued that the element of “attacking honor” is not clearly defined, and that “honor and reputation/good name” are applied relatively and subjectively, giving the example that calling someone “Lord” may be insulting to some, and not to others.²³⁰

The Court declared Article 310(1) to be “conditionally unconstitutional” and held that the Petitioner’s arguments on the unconstitutionality of Article 310(1) had “legal grounds in part.”²³¹ The Court did not rule on the constitutionality of Article 27(3) on the ground that it had already been modified by the amendment to the EIT Law in 2023; therefore, the petition had lost its object and would not be considered further.²³²

Importantly, the Court struck down Articles 14 and 15 of Law No. 1/1946 holding that the provisions were “broad and unclear and thus can be interpreted in an unlimited and diverse manner.”²³³ These findings are relevant for not just the provisions on fake news, but for laws that criminalize freedom of expression online in general. This judgment is discussed in further detail in the section on ‘Fake news’ below.

The revised EIT Law and the new Criminal Code have, however, retained an overbroad definition of defamation, similar/identical to Article 310 of the old Criminal Code. Both laws define defamation as “attacking the honor or good name/reputation” of a person by making an accusation. The commentaries to the provisions do not provide much additional clarity. The commentary to Article 27A of the revised EIT Law merely states that “attacking honor or good name is an act that degrades or damages the good name or dignity” of a person “to their detriment.” Similarly, the commentary to Article 433 states that the defamatory

²²⁸ *Id.* at para. 3.8.6.

²²⁹ *Id.* at paras. 108–109; The 1945 Constitution of Indonesia, Article 28D(1) (Article 28D(1) guarantees legal certainty and states that “[e]very person shall have the right of recognition, guarantees, protection and certainty before a just law, and of equal treatment before the law.”).

²³⁰ Constitutional Court Judgment [translation], Case No. 78/PUU-XXI/2023, paras. 101–102.

²³¹ To clarify its stance on the provision, the Court referenced Article 433(1) (the defamation provision) of the new Criminal Code, and said that Article 310(1) also applied to defamation by “verbal means” as specified by Article 433(1). *Id.* at paras. 3.19.2–3.20.

²³² *Id.* at para. 3.17.1.

²³³ *Id.* at para. 3.18.6.

speech should cause a “loss to th[e] person.” As will be elaborated below, these explanations do not specify whether value judgments, or truthful speech, are covered by these definitions.

Opinions & Insulting Speech

The Human Rights Committee has said that defamation laws “should not be applied with regard to those forms of expression that are not, of their nature, subject to verification.”²³⁴ It has also held that the mere fact that “forms of expression are considered to be insulting ... is not sufficient to justify the imposition of penalties.”²³⁵

The European Court of Human Rights has likewise stressed the difference “between statements of fact and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself.”²³⁶ By their nature, value judgments may be insulting. In 2005, for example, the European Court heard a case where the applicant used the phrase “No shame and no scruples!” to publicly describe the Governor of Ulyanovsk Region (Oblast) in Russia.²³⁷ Despite the phrase’s unpleasant connotations, the European Court held that the contested statement was “a quintessential example of a value judgment that represented the applicant’s subjective appraisal of the moral dimension” of the Governor’s behavior.²³⁸ The European Court has held that national legislation that fails to draw this distinction between value judgments and statements of fact thus reflects an “indiscriminate approach to the assessment of speech” that is “*per se* incompatible with freedom of opinion.”²³⁹

The distinction between facts and value judgments is all the more important when assessing statements made about public figures. As the Organization of American States’ Special Rapporteur for Freedom of Expression has made clear: “[p]olitical criticism often involves value judgments.”²⁴⁰ The European Court has reasoned that an individual “knowingly lays himself open to close

²³⁴ UNHRC, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, Sept. 12, 2011, para. 47.

²³⁵ *Id.* at paras. 11 and 38.

²³⁶ ECtHR, *Fedchenko v. Russia* (No. 5), App. No. 17229/13, Oct. 2, 2018, para. 44.

²³⁷ ECtHR, *Grinberg v. Russia*, App. No. 23472/03, July 21, 2005, para. 9.

²³⁸ *Id.* at para. 31.

²³⁹ ECtHR, *Gorelishvili v. Georgia*, App. No. 12979/04, June 5, 2007, para. 38.

²⁴⁰ OAS, Background and Interpretation of the Declaration of Principles, para. 50, *available at* <https://www.oas.org/en/iachr/expression/showarticle.asp?artID=132>.

scrutiny” by assuming a public position, even for a temporary time.²⁴¹ In this public position, “he should have a higher degree of tolerance for criticism.”²⁴²

On its face, Article 27(3) does not exclude opinions or value judgments, or insults.

The Joint Decree seemed to acknowledge this issue, specifying that content “derived from an assessment, opinion, evaluation” and “insults categorized as mockery, ridicule, and/or inappropriate words” should not be criminalized under Article 27(3).

Our data shows, however, that the Joint Decree was not complied with: over 60 percent of the Article 27(3) cases in the dataset, which were either initiated or pursued after the introduction of the Joint Decree, involved opinions or insulting speech that could be classified as mockery, ridicule or inappropriate words.

For example, on September 20, 2022, lawyer Alvin Lim was reported to the police for calling the Attorney General’s office a “mafia den” in a video on YouTube.²⁴³ One year later, in August 2023, he was determined to be a suspect.²⁴⁴ In addition to Article 27(3), Lim was charged under Article 28(2), Articles 14 and 15 of Law No. 1/1946 and Articles 310 and 311 of the Criminal Code.²⁴⁵ The case still appears to be pending.

In another case dating to June 2022, a former police official put a status on WhatsApp calling another police official (the complainant) a “robber.”²⁴⁶ The case went to trial and the defendant was convicted and sentenced to two months

²⁴¹ See ECtHR, *Grinberg v. Russia*, App. No. 23472/03, July 21, 2005, para. 25; see also ECtHR, *Gorelishvili v. Georgia*, App. No. 12979/04, June 5, 2007, para. 35; ECtHR, *Fedchenko v. Russia* (No. 5), App. No. 17229/13, Oct. 2, 2018, para. 49.

²⁴² ECtHR, *Karman v. Russia*, App. No. 29372/02, Dec. 14, 2006, para. 35.

²⁴³ Diva Lufiana Putri & Rizal Setyo Nugroho, Alvin Lim dan Kasusnya, Pengacara yang Jadi Tersangka Ujaran Kebencian (Alvin Lim and His Case, Lawyer Suspected of Hate Speech), *Kompas*, Sept. 2, 2023, *available at* <https://www.kompas.com/tren/read/2023/09/02/120000765/alvin-lim-dan-kasusnya-pengacara-yang-jadi-tersangka-ujaran-kebencian?page=all#:~:text=Alvin%20Lim%20merupakan%20seorang%20advokat,hukum%20waris%2C%20dan%20hukum%20pajak>.

²⁴⁴ *Id.*

²⁴⁵ Fransiskus Adryanto Pratama, Polri Tetapkan Alvin Lim Jadi Tersangka Pencemaran Nama Baik (National Police Names Alvin Lim as Defamation Suspect), *Tirto*, Aug. 20, 2023, *available at* <https://tirto.id/polri-tetapkan-alvin-lim-jadi-tersangka-pencemaran-nama-baik-gPw9>.

²⁴⁶ Manado High Court Decision [translation], Case No. 66/PID/2023/PT MND, pgs. 1–2.

imprisonment,²⁴⁷ which was increased to six months by the High Court on appeal.²⁴⁸ The High Court relied on the testimony of a ‘linguistic expert,’ who held that the defendant’s speech “contains the element of defamation” and found that there was no error in the District Court judgment.²⁴⁹

By contrast, the European Court considered an article in which a journalist had referred to local officials as “masters of thievery.” In that case, the Court held that the statement was a value judgment; the Court stressed that the defendant “expressed his disapproval of the actions of local officials, choosing the form of a rhetorical question. . . . The Court does not consider that the applicant overstepped the margins of the certain degree of exaggeration or even provocation allowed by journalistic freedom.”²⁵⁰

Indonesian courts do not appear to make the distinction between value judgments and alleged facts, and instead rely on experts’ interpretation of the statement to arrive at a finding of defamation, as in the case above. In another case, the court similarly relied on the analysis of a linguistic expert to determine whether the defendant’s statements during a WhatsApp argument were defamatory—and convicted the defendant on that basis.²⁵¹ In the case of Ismail Marzuki, who raised slogans against Nawal Lubis, the wife of the Governor of North Sumatra calling her “the wife of ‘ALL-POWERFUL PERSON,’” the court relied on an expert who stated that the Governor was not an “an all-powerful person” and so it was not appropriate to call him such because “the powers he holds are also regulated by law and have limitations.”²⁵²

This example reflects another pattern. A study on court judgments in Indonesia entitled “Protecting Expression” explains that Indonesian courts typically examine speech literally— i.e. they only look at the grammatical meaning of the speech, and do not consider its context.²⁵³ Even in the case of Haris Azhar and Fatia Maulidiyanti, the police and prosecutors took the case forward on the basis of Minister Pandjaitan’s allegation that they had insulted him by using the term

²⁴⁷ Kotamobagu District Court Decision, Case No. 366/Pid.Sus/2022/PN Ktg, May 10, 2023, available at <https://103.16.79.91/direktori/putusan/zaedef8dc4ccb196a600303635323438.html>.

²⁴⁸ Manado High Court Decision [translation], Case No. 66/PID/2023/PT MND, pg. 7.

²⁴⁹ *Id.* at pg. 2.

²⁵⁰ Fedchenko v. Russia (No. 5), European Court of Human Rights, App. No. 17229/13, October 2, 2018, para 58.

²⁵¹ District Court of Tanjungpinang, Case No. 196/Pid.Sus/2023/PN Tpg.

²⁵² District Court of Medan Judgment [translation], Case No. 776/Pid.Sus/2022/PN Mdn, pgs. 18–19.

²⁵³ See Rositawati, at 80, 131–132, 134, 136–137, 160–161, and 225–226.

“Lord Luhut” and commenting “so we are criminal ourselves,” without looking at the context of the speech. The case stretched over three years, requiring significant resources and leaving criminal charges hanging over the heads of two prominent human rights defenders. While the court eventually found that “Lord Luhut” was not an insult, but merely a reference to the status of a person and that the remark about being criminals was “a form of humor,”²⁵⁴ the decision was an outlier.

Concerningly, neither the revised EIT Law nor the new Criminal Code distinguish between facts and opinions, both allow for the criminalization of value judgments. Article 27A of the EIT Law eliminates Article 27(3)’s language regarding “contents of insults” and replaces it with the requirement of making an allegation/accusation (ostensibly some sort of defamatory remark).

Truth

Under international law, “penal defamation laws[] should include such defences as the defence of truth.”²⁵⁵ The Human Rights Committee has found a violation of Article 19 when a radio commentator was convicted under a defamation law that permitted the proof of truth only under restricted conditions.²⁵⁶ In a case where an Angolan journalist was charged with defamation for alleging corruption against the President, the Committee emphasized the importance of the defense of truth, finding an Article 19 violation because the “proposed truth defence against the libel charge was ruled out by the Courts.”²⁵⁷

²⁵⁴ District Court of East Jakarta Judgment [translation], Case No. 203/Pid.Sus/2023/PN.JktTim, pg. 231.

²⁵⁵ See UNHRC, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, Sept. 12, 2011, para. 47; see also Amal Clooney & David Neuberger, *Freedom of Speech in International Law*, Oxford University Press, pgs. 114–116 (2024).

²⁵⁶ UNHRC, *Adonis v. Phillipines*, U.N. Doc. CCPR/C/103/D/1815/2008/Rev.1, Oct. 4 to Nov. 4, 2011, para. 3.5 (The law in consideration in this case was “[A]rticle 354 of the Revised Penal Code, according to which ‘every defamatory imputation is presumed to be malicious, even if true, if no good intention and justifiable motive for making it is shown, except in the following cases ... 2. A fair and true report, made in good faith, without any comments or remarks of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.’”).

²⁵⁷ UNHRC, *Marques de Morais v. Angola*, U.N. Doc. CCPR/C/83/D/1128/2002, Mar. 29, 2005, para. 6.8.

The Committee expressed “concern” that South Korea’s defamation law allowed for criminal prosecution for true statements, “except when such statements are made solely for the public interest,”²⁵⁸ similar to the law in Indonesia.

In contravention of international standards, Article 27(3) of the EIT Law did not include a defense of truth. Even the reference to the defamation provisions of the Criminal Code does not cure this lacuna—as per the existing Code, proving the truth of the accusation is only permissible in two circumstances: 1) to determine whether the defendant acted in public interest or self-defense, or 2) if an official is accused of something while carrying out his duties.²⁵⁹ Further, the defence of truth is not only extremely limited, but failure to prove truth can lead to the aggravated charge of calumny.²⁶⁰

While the Joint Decree specified that Article 27(3) is not meant to criminalize content derived from “facts,” the police seem to have ignored this.²⁶¹

In one case, a journalist, Tinus Restanto Eka, was reported to the police for publishing a news report stating that a government official, Firman Rusli, was being sued in a land dispute.²⁶² The article was titled “Firman Rusli Sued for Compensation of IDR8 Billion” – a factual report stating that Rusli was one of the defendants in a civil lawsuit relating to a land dispute, which also included a screenshot of the court records.²⁶³ Rusli reported Tinus to the police one year later, and the police summoned Tinus to the police station for investigation.²⁶⁴

²⁵⁸ UNHRC, Concluding Observations on the Fourth Periodic Report the Republic of Korea, U.N. Doc. CCPR/C/KOR/CO/4, Dec. 3, 2015, para. 46; Amal Clooney & David Neuberger, *supra*, pg. 115.

²⁵⁹ Old Criminal Code, Article 312.

²⁶⁰ If the defendant raises a defense of truth in these cases but fails to substantiate the claim and it is determined that the allegation is contrary to what they know, they may face conviction for the more severe offense of calumny, which carries a maximum sentence of four years. In contrast, standard slander and libel offenses are punishable by maximum sentences of nine months and one year and four months, respectively. See *id.* at Articles 311–312.

²⁶¹ An analysis of the truth/falsity of the statements in cases was not done for this report.

²⁶² Pers Lampung, Catatan Akhir Tahun 2022 AJI Bandarlampung: Belenggu Kebebasan Pers dan Demokrasi (2022 Year-End Report of AJI Bandar Lampung: Shackles on Press Freedom and Democracy), Teraslampung, Dec. 29, 2022, *available at* <https://www.teraslampung.com/catatan-akhir-tahun-2022-aji-bandarlampung-belenggu-kebebasan-pers-dan-demokrasi/>.

²⁶³ Tinus Restanto Eka, Firman Rusli Digugat Ganti Rugi Rp8 Miliar (Firman Rusli Sued for Rp8 Billion in Damages), Kirka.co, Aug. 21, 2021, *available at* <https://kirka.co/firman-rusli-digugat-ganti-rugi-rp8-miliar/>.

²⁶⁴ Interview with Tinus Restanto Eka, Nov. 29, 2023.

As of November 2023, the complaint remained pending and neither Tinus nor his lawyer received a notification on the development of the investigation.²⁶⁵

In another case, a complaint under Article 27(3) was filed against an employee of a company, Septia Dwi Pertiwi, for Twitter posts that exposed alleged illegal and abusive working conditions at the company, including unpaid overtime, salary cuts, wrongful dismissals, and withheld benefits. Many of these posts included screenshots and facts supporting her claim.²⁶⁶ The complaint was filed by the owner of the company, although he was not named in the Twitter posts.²⁶⁷ Despite the fact that the defendant had apparent evidence for her claims—including testimony from former employees, work logs, WhatsApp chats, and verified news reports²⁶⁸—she was declared a suspect and detained for over 5 months pending trial. Eventually, the Court found that the claims in each of her Twitter posts were true and she was acquitted.²⁶⁹ The Court also relied on the Joint Decree in coming to the conclusion that facts and opinions are excluded from Article 27(3).²⁷⁰ Although acquitted, she endured a six-month investigation, five months of pre-trial detention, and the ongoing threat of imprisonment for simply speaking out against workplace abuses.²⁷¹

Even in Fatia and Haris' case the Panel of Judges considered the truth of the statements made in the video, holding that the claim that Pandjaitan had a stake in the mining operations in Papua "is a claim that cannot be refuted as it is established that PT Tobacom Del Mandiri as the subsidiary of PT Toba Sejahtera whose shares are 99% owned by witness Luhut Binsar Pandjaitan has business ties with West Wits Mining involving mining operations in Tanah Papua."

Strikingly, neither Article 27A of the revised EIT Law nor the defamation provisions in the new Criminal Code incorporate a defense of truth. The latter reproduces the approach of the old Criminal Code, where truth may only be proved in certain cases and failure to prove truth could lead to the higher charge of calumny.

²⁶⁵ *Id.*

²⁶⁶ Central Jakarta District Court, Case No. Number 589/Pid.Sus/2024/PN, pgs. 2, 5–7.

²⁶⁷ *Id.* at pg. 54.

²⁶⁸ *Id.* at pgs. 53–56.

²⁶⁹ *Id.* at pgs. 68–72.

²⁷⁰ *Id.* at pgs. 68–72.

²⁷¹ *Id.* at pgs. 1, 3, 83.

Intention to Defame

International standards also protect statements made in good faith, even if not true, at least when the statements relate to public figures. The Human Rights Committee has stated that “[a]t least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error *but without malice*.”²⁷² Similarly, the European Court of Human Rights has emphasized that “[l]ibel defendants ... may thus be relieved of the obligation to prove the truth of the facts alleged in their publications and avoid conviction by simply showing that they have acted *fairly and responsibly*.”²⁷³ The Inter-American Court of Human Rights has also held that courts must consider “the conduct of the individual who expressed the opinion, *his actual malice*, the characteristics of the unfair damage caused, and other information which shows the absolute necessity to resort to criminal proceedings as an exception.”²⁷⁴

National courts likewise require satisfaction of a stringent mental element in cases concerning public figures. For instance, in the national courts of India, the Philippines, South Korea, Hungary, Argentina, Uruguay, and the United States, claims of defamation of public figures require a showing of “actual malice.”²⁷⁵ Under the “actual malice” standard, the speaker or author must demonstrably have acted with specific harmful intent; that is, they either knew they were making a false statement, or made the statement with reckless disregard of its truth or falsity. This higher standard for claims involving public figures is crucial for uninhibited debate about matters of public concern.

In contrast, the *mens rea* requirement in Article 27(3) is “intentionally and without right” implying that the defendant has to be merely aware of his actions, and that there is no requirement to have an intention to defame (let alone the higher standard of *actual malice* required by international law for statements relating to

²⁷² UNHRC, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, Sept. 12, 2011, para. 47 (emphasis added).

²⁷³ See ECtHR, *Kasabova v. Bulgaria*, App. No. 22385/03, July 19, 2011, para. 61 (emphasis added); see also ECtHR, *Radio France and Others v. France*, App. No. 53984/00, Mar. 30, 2004, para. 24; ECtHR, *Standard Verlags GmbH and Krawagna-Pfeifer v. Austria*, App. No. 19710/02, Feb. 2, 2006, paras. 16, 30, and 57.

²⁷⁴ IACtHR, *Tristán Donoso v. Panama*, Series C No. 193, Jan. 27, 2009, para. 120 (emphasis added).

²⁷⁵ See Amal Clooney & David Neuberger, *supra*, pg. 76; see, e.g. *Guinguing v. Court of Appeals*, 508 Phil. 193, 221–223 (Sept. 30, 2005) [Per J. Tinga, Second Division] (Reaffirming the “acceptance in this jurisdiction of the principles applied by the U.S. Supreme Court in cases such as *New York Times* and *Garrison*.”); *Sociedad Interamericana de Prensa*, Uruguay, May 9, 2013, available at <https://en.sipiapa.org/notas/1126437-uruguay>; Supreme Court of India, *R. Rajagopal v. State of Tamil Nadu*, (1994) SCC (6) 632.

public figures). In judgments issued prior to the Joint Decree, courts held that the offence under Article 27(3) is subjective; it depends not on the intent of the defendant but on the feeling of the victim that their good name or honor has been attacked.²⁷⁶ In one judgment, the court held that the victim can determine which part of the information or electronic document attacks their honor or reputation.²⁷⁷

The Joint Decree introduced a requirement of intention, stating that the focus of Article 27(3) is not on the feelings of the victim, but rather “on the action of the accused who knowingly and with intent” makes accessible information that is defamatory. Yet courts and police/prosecutors in Indonesia still did not examine the intention to defame, as evidenced by our dataset.

In one judgment issued after the Joint Decree, a court held that the offence of defamation “concerns the inner attitude of a person who is affronted or who feels that his or her honor has been belittled and affronted.”²⁷⁸ In another, a Court held that “what is meant by intentionally and without right is that the Defendant has committed an act with full awareness of what he has done and the Defendant knows the consequences of his actions.”²⁷⁹

In Marzuki’s case, for example, the Judges did not examine whether Marzuki had the intention to defame, instead referring to the fact that Marzuki “intentionally” organized the rally and uploaded the content on YouTube and Facebook. The Court relied on an expert who testified that the words on the posters carried by the protesters “can be offensive or humiliating to Witness Nawal Lubis,” while rejecting the findings of another expert who testified to the contrary.²⁸⁰ As per the standards referred to above, Marzuki could only have

²⁷⁶ Yogyakarta District Court Judgment, Case No. 382/Pid.Sus/2014/PN.Yyk, *as cited in* Rositawati at 81.

²⁷⁷ *Id.*

²⁷⁸ District Court of Tanjungpinang, Case No. 196/Pid.Sus/2023/PN Tpg at pg. 21 (unofficial English Translation).

²⁷⁹ Kepanjen District Court Judgment [translation], Case No. 434/Pid.Sus/2022/PN Kpn, pg. 48. (unofficial English Translation). see also District Court of Tanjungpinang, Case No. 196/Pid.Sus/2023/PN Tpg, pg. 20 (The court stated that the defendant satisfied the element of intent under Article 27(3), explaining that “‘with intention’ in simple terms is being aware of and realizing one’s actions.”).

²⁸⁰ See Medan District Court Decision [translation], Case No. 776/Pid.Sus/2022/PN Mdn, pg. 31 (“Taking into consideration, although Mitigating Witness Dr. Charles Butar-Butar stated that the words on the poster were not accusatory and there was no element of insult, the Panel of Judges expressed their disagreement, as the incident evidently accused Witness Nawal Lubis (“Bunda NL”) of being the perpetrator who caused damage to Benteng Putri Hijau.”).

been prosecuted if he acted with actual malice, since Nawal Lubis was a public figure.²⁸¹

In another case, two members of Indonesia Corruption Watch (ICW), a prominent anti-corruption organisation in Indonesia, faced a complaint under Article 27(3) for a press release issued by ICW on a study that alleged the involvement of public officials, including General Moeldoko, the then Presidential Chief of Staff, in promoting the circulation of the drug Ivermectin during the COVID-19 pandemic.²⁸² Moeldoko's lawyers issued three warning letters to the researchers, threatening them with police action if they did not retract the statement and apologize.²⁸³ Finally, Moeldoko reported both researchers to the police under Article 27(3) of the EIT Law and Articles 310 and 311 of the Criminal Code. As of November 2023, the complaint was still pending, and there was no letter of dismissal for the case. As per international standards, such a complaint could have been entertained only *if* the researchers acted with malice.

In yet another instance of defamation litigation, the court placed considerable emphasis on the emotional and reputational harm described by the complainants, including feelings of embarrassment, stress, and damage to their

²⁸¹ See *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974) (Defining public figure status as “those who ... have assumed roles of special prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. In either event, they invite attention and comment.”); *Time, Inc. v. Firestone*, 424 U.S. 448, 453 (1976); *Hutchinson v. Proxmire*, 443 U.S. 111 (1979); *Mile Marker, Inc. v. Petersen Publ'g, L.L.C.*, 811 So. 2d 841, 845 (Fla. 4th DCA 2002) (explaining that “public figures” are classified into two categories: (1) general public figures, individuals who possess the “requisite fame or notoriety” within a community and are always considered public figures, and (2) limited public figures, individuals who have voluntarily “thrust themselves to the forefront of” specific public controversies with the intent to influence their resolution. To determine whether a claimant is a limited public figure or a private individual, courts follow a two-step process. First, the court must identify whether a “public controversy” exists. In doing so, the court “should ask whether a reasonable person would have expected persons beyond the immediate participants in the dispute to feel the impact of its resolution.”).

²⁸² Front Line Defenders, Human Rights Defenders Egi Primayogha and Miftachul Choir Reported to the Police on Charges of Defamation, *available at* <https://www.frontlinedefenders.org/en/case/human-rights-defenders-egi-primayogha-and-miftachul-choir-reported-police-charges-defamation>.

²⁸³ Egi Adyatama, Kronologi Pelaporan Moeldoko terhadap ICW: dari Somasi Berujung di Polisi (Chronology of Moeldoko's Reporting of ICW: from Subpoena to Police), *Tempo*, Sept. 11, 2021, *available at* <https://nasional.tempo.co/read/1504917/kronologi-pelaporan-moeldoko-terhadap-icw-dari-somasi-berujung-di-polisi>.

business reputation.²⁸⁴ Rather than focusing on the defendant's intent to defame, the court relied on the complainants' evidence of their subjective experiences.

Neither the revised EIT Law nor the Criminal Code incorporate a sufficiently higher requirement of intention. Article 27A of the revised EIT Law increases the *mens rea* requirement from "knowingly and without right" to "intentionally." Article 36 of the new Criminal Code lays down the general rule that a person can only be liable for a crime committed "intentionally or due to negligence." However, as discussed above, Indonesian authorities look at the intention to publish/publicise the alleged defamatory material, rather than the intention to defame.

Indonesia's Constitutional Court recently examined the elements of "intentionally" and "without rights" with regard to Article 28(2), the hate speech provision in the EIT Law. It reiterated that the defendant must know and want that the act of distributing the information in question would cause hatred or hostility.²⁸⁵ Taken together, the different approaches of the courts to intent are further evidence of the vagueness of the defamation provisions.

Similar to Article 310 in the old Criminal Code, Article 433 of the new Criminal Code merely states that the act of defamation must be with "the intent for such matter to be known publicly."

Concerningly, the new Criminal Code has separate provisions (Article 218-219) prohibiting "assaulting the honor or dignity or prestige" of the President and Vice President. Provisions similar to these were struck down as unconstitutional in 2006.²⁸⁶ The commentary to Article 218 defines the offence as "any act which degrades or damages reputation or pride [of the President/Vice President], including blasphemy or calumny." While Article 433 and Article 218 have public interest exceptions (discussed below), both permit prosecuting speech made in good faith, without an intention to defame, contrary to international standards. Article 218 provides for three-year imprisonment, which can be increased to four years under Article 219 when an individual intentionally makes such comments known to the public.

Public Interest

²⁸⁴ Kepanjen District Court Judgment [translation], Case No. 434/Pid.Sus/2022/PN Kpn, pg. 50.

²⁸⁵ Constitutional Court Decision No. 105 PUU-XXII/2024, at 453 (unofficial English translation).

²⁸⁶ Constitutional Court Judgment, Case No. 013-022/PUU-IV/2006, pgs. 60–61, as cited in Rositawati at 44–45.

The Human Rights Committee has emphasized the importance of safeguarding public debate and the ability to criticize public officials. As established by the HRC, Article 19 of the ICCPR covers “political discourse, commentary on one’s own and on public affairs ... discussion of human rights, [and] journalism.”²⁸⁷ In interpreting Article 19, the Committee has stated: “the value placed by the [ICCPR] upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain.”²⁸⁸

In addition to encouraging the decriminalization of defamation, the HRC has stressed that “a public interest in the subject matter . . . should be recognized as a defence.”²⁸⁹

While Indonesian law provides for a public interest defense for defamation, it is subject to limitations. The Constitutional Court and the 2016 Amendments each clarified that Article 27(3) of the EIT Law should be interpreted with reference to Article 310;²⁹⁰ Article 310(3) admits an affirmative defense where a defendant can prove that they acted in the “general interest” of the public.²⁹¹ In 2011, the Supreme Court of Indonesia held that when public interest is being considered as a defense for defamation, the following two conditions must be satisfied: “First, the nature and contents of the accusation are not solely for the personal benefit of the accuser, but for other people or anyone who will and wants to be in contact with the accused person; Second, the content of what is accused must contain the truth.”²⁹² Applying this standard, the Court acquitted a defendant charged under Article 27(3) for complaining about hospital services online.

Despite this broad understanding of public interest,” courts and police/prosecutors do not seem to apply it in practice. In several cases cited above, the defendants were acting in public interest— whether it was Marzuki pointing to damage to a heritage site, Haris and Fatia drawing attention to a Minister’s commercial interest in a mining project, Tinus reporting on a government official being involved in a land dispute or ICW researchers publishing studies on corruption. In one case, a doctor faced charges under

²⁸⁷ UNHRC, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, Sept. 12, 2011, para. 11.

²⁸⁸ *Id.* at para. 34.

²⁸⁹ *Id.* at para. 47.

²⁹⁰ Adhigama Budiman et al., *supra*, pgs. 12 and 14.

²⁹¹ Old Criminal Code, Article 310(3).

²⁹² Mahkamah Agung Judgment, Case No. 225 PK/PID.SUS/2011, pgs. 36–37, *as cited in* Rositawati at 138.

Article 27(3) for posting warnings about lab tests that revealed dangerous levels of toxic ingredients in beauty products promoted by celebrities.²⁹³ Almost 60 percent of the cases under Article 27(3) analysed for this report that were instituted or continued after the Joint Decree concerned a matter of public interest.²⁹⁴

Further, the requirement in Indonesian law that speech in public interest must “contain the truth” is contrary to international standards. This requirement allows for prosecution of statements made without “actual malice” (as discussed above) and of value judgments that are not susceptible to proof of truth. In one case (prior to the Joint Decree) a court held that “it is true that every member of the public has the right to criticize the performance of public services, but it must be within the corridors of applicable law by conveying substantial information about poor public services, not by accusing a crime that can defame other people.”²⁹⁵ This requirement that public interest speech must be “constructive” leaves the determination of whether the speech is protected in the hands of the authorities.

This notion of “constructive” criticism is present in the revised EIT Law and new Criminal Code. While both have public interest exceptions for “defamatory” speech,²⁹⁶ legislative commentary on Article 27A of the EIT Law limits the public interest exception, stating that any criticism of the government must be “constructive” and in the form of “supervision, correction, and suggestions in the public interest.”

As recently as April 2025, Indonesia’s Constitutional Court reaffirmed the public interest defense to defamation. In a case that examined the defamation provisions in both the old Criminal Code and the amended EIT Law, the Court reiterated that citizens who offer public commentary in the public interest should not be criminalized simply for exercising their constitutional right to express their opinions in public.²⁹⁷ The Court held that the “the meaning of public interest is the interest of the majority of the community, including the interests of the nation and state.”²⁹⁸ Further, it held that the state should not accommodate regulations

²⁹³ South Jakarta District Court, Case No. 99/Pid.Pra/2022/PN, pgs. 3–4, 8–12.

²⁹⁴ Despite stipulations of the Joint Decree, most of these cases were either stalled or taken forward by law enforcement. See *supra* para. 34.

²⁹⁵ Palembang District Court Judgment, Case No. 1345/Pid.B/2014/PN.Plg, as cited in Rositawati at 133.

²⁹⁶ Amended EIT Law, Article 45(7)(a).

²⁹⁷ See Constitutional Court Decision No. 115/PUU-XXII/2024 (unofficial English translation).

²⁹⁸ See Constitutional Court Decision No. 115/PUU-XXII/2024 (unofficial English translation).

that open legal loopholes for the criminalization of citizens who criticize government policies or state administrators for abusing their authority.²⁹⁹

However, in the new Criminal Code, public interest speech can be prosecuted under Article 433 as well as Article 240 (insulting government or state institutions) and Articles 218-219 (assaulting the dignity of the President/Vice President). The commentaries to Article 218 and Article 240 state that criticism must be “as constructive as possible” and in the “form of supervision, correction, and suggestion on matters related to the interest of the community.” This affords the authorities discretion to deem protected criticism “unconstructive” or not delivered in a “proper form” and is thus susceptible to arbitrariness and abuse.³⁰⁰ In 2006, the Indonesian Constitutional Court struck down provisions in the old Criminal Code corresponding to Articles 218-219, on the ground that they depend on subjective interpretation of whether a protest, expression of opinion or thought constitutes a criticism or defamation to the President and / or the Vice President.³⁰¹

While Article 433 also has a public interest speech exception, penalties are increased by one third “if the person against whom the derogation or false accusation is [made is] a public official performing their lawful duty,”³⁰² which strikes at the heart of public interest speech. There are, thus, serious concerns that public interest speech will be criminalized under the new Criminal Code.

Delays in Trial

The Human Rights Committee has held that it is “impermissible for a State party to indict a person for criminal defamation but then not to proceed to trial expeditiously – such a practice has a chilling effect that may unduly restrict the exercise of freedom of expression of the person concerned and others.”³⁰³

The majority of the cases filed under Article 27(3) remain pending at the inquiry/investigation stage with no resolution for years, leaving the accused persons at the mercy of the authorities. One example of the implications of this is the case of Meila Nurul Fajriah, a lawyer and human rights defender working with YLBHI (Indonesia Legal Aid Foundation), who was reported to the police

²⁹⁹ See Constitutional Court Decision No. 115/PUU-XXII/2024 (unofficial English translation).

³⁰⁰ Elucidation on the Amended EIT Law.

³⁰¹ Constitutional Court Judgment, Case No. 013-022/PUU-IV/2006, pgs. 60–61, *as cited in* Rositawati at 44–45.

³⁰² New Criminal Code, Article 441(2).

³⁰³ UNHRC, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, Sept. 12, 2011, para. 47.

for her advocacy for victims of sexual harassment.³⁰⁴ On May 4, 2020, Meila conducted a press conference where she stated that that Jogjakarta Legal Aid had received complaints from as many as 30 victims saying they had been sexually harassed by one former student. This accused student reported Meila to the police for defamation in October/November 2020. Four years later, the investigation of the case suddenly resumed and Meila was declared a suspect in the case on June 24, 2024.³⁰⁵ The investigation was finally terminated in August 2024, after civil society groups, including ICJR, wrote to the police explaining that prosecuting the case would be against the stipulations of the Joint Decree.

In another case, a complaint against the lecturer of a university remained pending for close to five years before being terminated by the police.³⁰⁶ The lecturer was charged under Article 27(3) for criticising the policies of the dean of the university in a closed WhatsApp group. He was declared a suspect two years after the complaint was filed, until the complaint was finally terminated for lack of evidence.³⁰⁷

In the case of Dr. Richard Lee (who was charged for posting warnings regarding toxic ingredients in beauty products), the investigation stretched over 21 months without sufficient evidence.³⁰⁸ The doctor was eventually forced to apply to the court for relief, and the Court declared that the declaration of the doctor as a suspect was invalid as it was not based on sufficient preliminary evidence.³⁰⁹ The court also found that the case should never have proceeded in the first place, as the original complaint was not filed directly by the alleged victim, but by her legal representative—violating the requirement under Article 27(3) of the

³⁰⁴ Front Line Defenders, Meila Nurul Fajriah, *available at* <https://www.frontlinedefenders.org/fr/profile/meila-nurul-fajriah>.

³⁰⁵ Tempo, Profil Meila Nurul Fajriah, Advokat LBH Yogyakarta Pembela 30 Korban Pelecehan Seksual Malah Dijadikan Tersangka (Profile of Meila Nurul Fajriah, Yogyakarta Legal Aid Advocate Defending 30 Sexual Harassment Victims, Now Named as a Suspect), July 28, 2024, *available at* <https://www.tempo.co/arsip/profil-meila-nurul-fajriah-advokat-lbh-yogyakarta-pembela-30-korban-pelecehan-seksual-malah-dijadikan-tersangka-35794>.

³⁰⁶ Muhammad Yunus, Kisah Ramsiah Tasruddin Dosen UIN Alauddin Berjuang Hadapi Ancaman Jeratan UU ITE di Polres Gowa (The Story of Ramsiah Tasruddin, UIN Alauddin Lecturer, Fighting Against the Threat of UU ITE Charges at Gowa Police), SuaraSulsel, Feb. 7, 2022, *available at* https://sulsel.suara.com/read/2022/02/07/150043/kisah-ramsiah-tasruddin-dosen-uin-alauddin-berjuang-hadapi-ancaman-jeratan-uu-ite-di-polres-gowa#goog_rewarded.

³⁰⁷ *Id.*

³⁰⁸ South Jakarta District Court, Case No. 99/Pid.Pra/2022/PN, pgs. 18, 42.

³⁰⁹ South Jakarta District Court, Case No. 99/Pid.Pra/2022/PN, pg. 105.

ITE Law that absolute complaint offenses must be reported personally by the victim.³¹⁰

In another case, the defendant faced charges under Article 27(3) and was arrested for sharing images of the complainant on Instagram, along with captions referencing reports about the complainant's alleged abuse of a security guard.³¹¹ The defendant was subject to detention for 64 days and the case was finally dismissed by the District Court after 7 months due to the prosecution's failure to present the complainant, whose testimony was required under Article 27(3) of the ITE Law.³¹²

Among the Article 27(3) cases analysed for this report, as of October 1, 2024, almost 45% continue to be pending (as per public sources), despite many of them being contrary to the guidelines under the Joint Decree.

C. Hate Speech

Article 20(2) of the ICCPR requires States to prohibit “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.” However, any such prohibition on speech must comply with the requirements of Article 19.³¹³ Therefore, they must be provided by law (principle of legality), be narrowly defined to serve a legitimate interest and be necessary and proportionate to protect that interest.³¹⁴

In order to assess whether the restriction on speech is “necessary,” states must assess the potential harm arising from hate speech, the causal link between speech and harm and the intent of the speaker.³¹⁵ The Rabat Plan of Action, issued by the UN High Commissioner for Human Rights, provides guidance on balancing the prohibition of incitement to national, racial or religious hatred, with

³¹⁰ *Id.* at pgs. 98–99, 101–103. (The court also referred to the Joint Decree, which clarifies that Article 27(3) requires a complaint filed directly by the victim—not their lawyer).

³¹¹ See Statement of Facts for the first charge under Article 36 in conjunction with Article 27(3) and Article 51(2) of Law No. 19/2016 on Electronic Information and Transactions (ITE Law), Serang District Court, Case No. 853/Pid.Sus/2022/PN, pgs. 2–4; the second charge under Article 27(3) jo. Article 45(3) of the same law, *id.* at pgs. 7–8; and the third charge under Article 311 of the Indonesian Criminal Code, *id.* at pgs. 11–14.

³¹² *Id.* at pgs. 89–94.

³¹³ UNHRC, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, Sept. 12, 2011, paras. 50–52.

³¹⁴ See Rabat Plan of Action, para. 18.

³¹⁵ Amal Clooney & David Neuberger, *supra*, pgs. 191–193.

respect for freedom of expression.³¹⁶ The Plan urges that criminal sanctions for expression be “last resort measures to be applied only in strictly justifiable situations.”³¹⁷

As per the Rabat Plan, speech can amount to a criminal offense and be subject to criminal penalties only if it meets a six-part threshold test that requires examination of (a) the social and political context at the time the speech was made and disseminated; (b) the speaker’s position or status within society and vis-à-vis the audience to whom the speech was directed; (c) the speaker’s intent to incite hatred; (d) the content and form of the speech; (e) the extent of the speech act; and (f) the reasonable probability that the speech would cause imminent harm against the target group.³¹⁸

An assessment of whether hate speech restrictions are ‘necessary’ also includes an analysis of the proportionality of the penalty imposed.³¹⁹ In a concurring opinion in *Rabbae v. Netherlands*, two members of the Human Rights Committee suggested that criminal penalties should be limited to speech “that incites the commission of criminal offences or acts of violence.”³²⁰ South Africa’s Constitutional Court found that the country’s incitement law, which criminalized the incitement of “any offence,” was a disproportionate restriction on the freedom of speech – the Court read down the law and held that only incitement to “serious offences” could be criminalized.³²¹

Article 28(2), the hate speech provision in the EIT law, fails to reflect these standards. The law is vague, allowing for a wide array of speech to fall under its trap. Any person/group can claim to be a victim of “hate speech” since the provision does not specify the groups that can be the target groups clearly. Further, it does not require an intention to incite hatred, or an “imminent risk” that the speech will cause harm. This legal stance defies both international law, under which such intention or imminent risk are required, and Indonesia’s own Constitutional Court, which reiterated recently that criminalization of hate speech must focus on intent and incitement to cause real harm, not general

³¹⁶ Rabat Plan of Action.

³¹⁷ *Id.* at para. 34.

³¹⁸ *Id.* at para. 29.

³¹⁹ Amal Clooney & David Neuberger, *supra*, pg. 204.

³²⁰ UNHRC, *Rabbae v. The Netherlands*, July 14, 2016, Individual Concurring Opinion of Committee members Sarah Cleveland and Mauro Politi, paras. 7–8.

³²¹ Constitutional Court of South Africa, *Economic Freedom Fighters and Others v. Minister of Justice and Correctional Services and Others*, Case CCT 201/19, Nov. 27, 2020, para. 51, 57-72, available at <https://www.saflii.org/za/cases/ZACC/2020/25.pdf>.

categories of “hatred” that chill legitimate speech.³²² The Court referred to both the UN Human Rights Committee in General Comment No. 34 and the Rabat Plan of Action when stating that “the prohibition of expression can only be justified if the expression meets strict criteria, namely: (i) it is done with malicious intent (intention to incite), (ii) it is directed specifically at a particular identity group, and (iii) it creates a real and imminent risk of discrimination, hostility, or violence.”³²³

Each of these issues is discussed in detail below, with an analysis of the extent to which these flaws are rectified by the amended EIT Law or the new Criminal Code.

Principle of Legality

As explained above, international law requires that legislation restricting speech be “formulated with sufficient precision” such that it does not “confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.”³²⁴ The Rabat Plan recommends that “States ... consider including robust definitions of key terms such as hatred, discrimination, violence, hostility, among others” so as to avoid opening the door to prosecutions based on criticism, insult, and inappropriate words.³²⁵ The UN Special Rapporteur on Freedom of Expression has, for example, suggested “hatred” be defined as a “state of mind characterized as intense and irrational emotions” of “enmity and detestation towards the target group.”³²⁶ Similarly, hostility should be interpreted as a “manifestation of hatred beyond a mere state of mind.”³²⁷

Article 28(2) fails to meet this requirement. It does not define key terms such as “hatred” and “hostility.” In the absence of such definition, courts reportedly refer to the Indonesian dictionary, expert opinions and even blogs to interpret the elements of crime in Article 28(2).³²⁸ Such subjective interpretation, facilitated

³²² See Constitutional Court Decision No. 105/PUU-XXII/2024 (unofficial English translation).

³²³ Constitutional Court Decision No. 105/PUU-XXII/2024, at 456 (unofficial English translation).

³²⁴ UNHRC, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, Sept. 12, 2011, para. 25.

³²⁵ See Rabat Plan of Action, para. 21.

³²⁶ UN Special Rapporteur, Promotion and Protection of the Right to Freedom of Opinion and Expression, U.N. Doc. A/67/357, Sept. 7, 2012, para. 44(a).

³²⁷ *Id.* at para. 44(e).

³²⁸ See Rositawati at 181, 193 (In one case, the meaning of the various words in Article 28(2) such as “spread”, “information”, “aimed at”, “raise”, “hostility”, “individual”, “group”, “community”, “ethnic”, “religion”, “race”, and “inter-group” was taken from the Indonesian dictionary or expert opinion.).

by the vague language of the provision, makes the law particularly susceptible to abuse.

Article 28(2) also fails to clearly specify the groups that can be the target of hate speech. The term “intergroup” has allowed for individuals associated with any group, ranging from professional organizations to sports teams, political parties and affiliations to bring prosecutions for hate speech.³²⁹

The Joint Decree did not address these gaps. The Decree neither defined hatred or hostility, nor did it restrict the groups that could be the target of hate speech, as will be discussed in further detail below. As a result, prosecutions have been brought based on little more than hurt feelings, as evident in the cases of Daniel Frits and Roy Suryo and others in the dataset, discussed in more detail below.

While the amended EIT Law provides clarity on the identities and groups that can be the target of hate speech, it does not define hatred or hostility.

The hate speech provision in the new Criminal Code similarly does not define the term “hostility,” but it adds a requirement that violence or property damage result from the speech in question.³³⁰ This increases the threshold for prosecutions to be brought under the provision.

Target of Hate Speech

As per international law, the “sole purpose” of laws prohibiting hate speech “is to protect individuals and communities belonging to ethnic, national or religious groups ... from hostility, discrimination or violence.”³³¹ The law cannot be used “to protect belief systems, religions or institutions as such from criticism. The right to freedom of expression implies that it should be possible to scrutinize, openly debate and criticize belief systems, opinions and institutions.”³³²

The United Nations defines hate speech as a communication that attacks or discriminates against a person or a group “on the basis of who they are, or in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other *identity factor*.”³³³

³²⁹ Adhigama Budiman et al., *supra*, pg. 8.

³³⁰ New Criminal Code, Article 243.

³³¹ Rabat Plan of Action, para. 11.

³³² *Id.* at para. 11.

³³³ UN Strategy and Plan of Action on Hate Speech, pg. 2 (2019) (emphasis added), *available at*

In 2017, the Indonesian Constitutional Court interpreted the term “inter-group” under Article 28(2) as including not only religious, ethnic and racial groups, but all entities that are not represented or embodied by the terms ethnicity, religion and race,³³⁴ thereby allowing any person/group of persons to claim to be a victim under the law. Prominent cases prior to the issuance of the Joint Decree that demonstrate the abuse of the law include the conviction of the musician Jerinx for statements made against the Indonesian Medical Association³³⁵ and the prosecution of journalist Mohammad Yusuf based on his report on the land disputes between farmers and a palm oil plantation company (discussed in further detail below).³³⁶

The Joint Decree did not restrict the groups that could be the target of hate speech; instead, the Joint Decree reiterated the 2017 Constitutional Court’s ruling. As a result, Article 28(2) continued to be weaponized to target speech that is deemed critical by any group of people—be it the police, armed forces, government officials, professional associations or companies.

In almost 40 percent of the cases analysed for this report, the so-called “target group” were police officials or politicians. This trend is extremely concerning given the heightened value under the ICCPR on speech concerning “public and political figures.”

In Roy Suryo’s case, for example, the Judges held that apart from Buddhists, supporters of the President were also victims of the images circulated by Suryo. The Judges held that “the Defendant ought to have realized that the President of the Republic of Indonesia is the leader of the country that should be respected.”³³⁷

Suryo was not the only one prosecuted for not respecting the President. In 2022, a 27-year-old man was reported under Article 28(2) for posting the following comment on Instagram: “I don’t know what is the sin of the Indonesian people

<https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>.

³³⁴ Constitutional Court Decision, Case No. 76/PUU-XV/2017, *as cited in* Rositawati at 169, 171–172, & 184.

³³⁵ Rositawati at 165.

³³⁶ *Id.*

³³⁷ West Jakarta District Court Judgment [translation], Case No. 890/Pid.Sus/2022/PN.Jkt.Brt, pg. 70 (2022).

to have a cursed president like Jokowi.”³³⁸ He was arrested and detained for 11 days.

In Madilis’ case discussed above, the law was used to target criticism of the local police. This was not an isolated incident—in another case, three individuals were reported for violating Article 28(2) after posting tweets joking about the police enriching themselves with items confiscated from suspects.³³⁹ The investigation against two of the accused was completed as of April 2023 and they are presumably awaiting trial.³⁴⁰

In yet another case, the chairman of a cooperative was charged under Article 28(2) for posting a YouTube video alleging corruption and the misappropriation of public aid funds by the governor and other officials.³⁴¹ The court relied heavily on the testimony of an expert witness, who stated that the language used by the defendant was not appropriate— that words like “state criminals must be eliminated” and “corrupt cows” could cause uproar in the public and cause hatred towards individuals/groups.³⁴² Ultimately, the court found the defendant guilty, stating that his statements were intended to provoke public hostility against the provincial government, undermine its authority, and create public unrest and demonstrations.³⁴³ The court adopted the interpretation that “intergroup” includes government institutions and political parties.³⁴⁴

Article 28(2) was also used by powerful local groups to silence criticism. In August 2022, Wahyu Dwi Nugroho, a small business owner, was reported for a

³³⁸ Semua Bisa Kena, Kisruh Organisasi Hingga Pencemaran Nama Presiden (Organizational Disputes and Defamation of the President), July 7, 2022, *available at* <https://semuabisakena.jaring.id/2022/07/07/kisruh-organisasi-hingga-pencemaran-nama-presiden/>.

³³⁹ Rakhmad Hidayatullo Permana, Unggahan ‘Baju Bekas Dibawa Pulang’ Berujung Admin Menfess Masuk Tahanan (‘Used Clothes Taken Home’ Upload Leads to Admin Menfess Entering Detention), Detik, Apr. 7, 2023, *available at* <https://news.detik.com/berita/d-6661561/unggahan-baju-bekas-dibawa-pulang-berujung-admin-menfess-masuk-tahanan/2>.

³⁴⁰ The two accused are also charged under fake news, or ‘hoax’ provisions. See Rizky Syahrial & Nursita Sari, Polda Metro Bebaskan Pembuat Hoaks Polisi Tilap Barang Bukti Baju Bekas Impor, Ini Alasannya (Metro Police Frees Hoax Maker About Officer Stealing Evidence of Imported Secondhand Clothes, Here’s the Reason), Kompas, Aug. 1, 2023, *available at* <https://megapolitan.kompas.com/read/2023/08/01/18311061/polda-metro-bebaskan-pembuat-hoaks-polisi-tilap-barang-bukti-baju-bekas>.

³⁴¹ Mataram District Court, Caso No. 256/Pid.Sus/2022/PN, pgs. 4–6.

³⁴² *Id.* at pgs. 90-91

³⁴³ *Id.* at pgs. 97–103.

³⁴⁴ *Id.* at pgs. 74, 84, 91.

TikTok video where he criticized a banner put up by a religious group calling for a boycott of all businesses that were not sanctioned by the group.³⁴⁵ Nugroho, whose business would be impacted by this boycott, took to TikTok after attempts to raise the issue with the neighborhood chief.³⁴⁶ He was summoned several times for investigation and was eventually arrested in March 2023. Nugroho remained in pre-trial detention until August 2023, when he was convicted and sentenced to 5 months imprisonment. Nugroho's case demonstrates the deleterious impacts of facing charges under Article 28(2)—he was repeatedly summoned, arrested and ultimately convicted—only for voicing legitimate complaints about circumstances that could lead to the loss of his livelihood.

The revised Article 28(2) in the amended EIT Law and the new Criminal Code is a step in the right direction—it specifies that the hatred or hostility must be directed towards individuals or groups “based on race, nationality, ethnicity, skin color, religion, beliefs, gender, mental disability, or physical disability.” The hate speech provision in the new Criminal Code also specifies the same target groups. However, the recent use of Article 28(2) against human rights defenders in relation to the protests in August-September, 2025, raises concern that instead of focussing on curbing hate speech against persons due to their identity, the law is still being misused by the government.³⁴⁷

Intention to Incite Hatred

The Rabat Action Plan clarifies that “mere distribution or circulation of material” or “[n]egligence and recklessness are not sufficient for an act to be an offence under article 20 of the Covenant, as this article provides for ‘advocacy’ and ‘incitement.’”³⁴⁸ The term “advocacy” in Article 20 ICCPR has been defined as “explicit, *intentional*, public and active support and promotion of hatred towards the target group.”³⁴⁹

³⁴⁵ South Jakarta District Court, Case No. 283/Pid.Sus/2023/PN, pgs. 3–4. See also Johannes Nugroho, Is Indonesia's ‘Elastic’ Cyber Law Wrecking Ordinary Lives, Destroying Small Businesses?, SCMP, July 15, 2023, *available at* <https://www.scmp.com/week-asia/economics/article/3227681/indonesias-elastic-cyber-law-wrecking-ordinary-lives-destroying-small-businesses>.

³⁴⁶ *Id.*

³⁴⁷ SAFEnet, International civil society strongly condemn digital crackdown by the Government of Indonesia and Big Tech, Sept. 10, 2025, *available at* <https://safenet.or.id/2025/09/international-civil-society-strongly-condemn-digital-crackdown-by-the-government-of-indonesia-and-big-tech/>.

³⁴⁸ Rabat Plan of Action, para. 29.

³⁴⁹ UN Special Rapporteur, Promotion and Protection of the Right to Freedom of Opinion and Expression, U.N. Doc. A/67/357, Sept. 7, 2012, para. 44(b) (emphasis added).

The UN Special Rapporteur on Freedom of Expression has likewise held that “no one should be penalized for the dissemination of hate speech unless it has been shown that they did so with the intention of inciting discrimination, hostility or violence.”³⁵⁰ The intention of the speaker is also relevant while determining whether the restriction on speech is “necessary” under Article 19(3).³⁵¹

In contravention of these standards, Article 28(2) only requires that the offending information was disseminated “intentionally.” As noted in an EU report on the EIT Law, “the fundamental problem of Article 28(2) of the EIT Law is that in order for *mens rea* to be fulfilled, the prosecution need only to prove that the defendant had the intention of spreading the content, instead of proving an intent to incite hatred/violence.”³⁵² In one case, judges concluded that because the defendant had posted the information on his Facebook status, his intention to raise feelings of hatred was clear.³⁵³

The Joint Decree addressed this gap by stating that “[t]he deed prohibited under this article is *where the motive is to incite hatred and/or animosity based on ethnic, religious, racial, or inter-group sentiments.*” The Joint Decree also required law enforcement to prove the motive “by establishing that the content calls, influences, motivates, incites/pits people against each other *in order to create hatred and/or hostility.*” Yet, in none of the cases analysed for this report was there an evident intent to incite hatred.³⁵⁴

As mentioned above, in many cases, authorities used Article 28(2) to suppress criticism of the police, government officials and institutions. Even where the speech in question related to religion or race, law enforcement does not appear to have analyzed motivation to incite hatred. In one case, a bar announced a promotion of complimentary alcoholic beverages every Thursday for men named “Mohammad” and women named “Maria.”³⁵⁵ This was considered offensive to both Muslim and Christian communities and six employees of the bar were charged with Article 28(2), along with blasphemy provisions of the

³⁵⁰ *Id.* at para. 50(b).

³⁵¹ Amal Clooney & David Neuberger, *supra*, pg. 193.

³⁵² Adhigama Budiman et al., *supra*, pg. 9. See also Rositawati at 180 and 193.

³⁵³ Pandeglang District Court Judgment, Case No. 28/Pid.Sus/2018/PN Pdl, pgs. 77–78, as cited in Rositawati at 180.

³⁵⁴ Based on analysis of the speech at issue, at least as publicly reported.

³⁵⁵ South Jakarta District Court, Case No. 834/Pid.Sus/2022/PN, pgs. 6–8 [hereinafter Case No. 834]; South Jakarta District Court, Case No. 835/Pid.Sus/2022/PN, pgs. 4–6 [hereinafter Case No. 835]; South Jakarta District Court, Case No. 836/Pid.Sus/2022/PN, pgs. 5–8 [hereinafter Case No. 836].

Criminal Code, and were arrested pending trial.³⁵⁶ The defendants testified that the campaign's intent was purely promotional.³⁵⁷ The names were chosen based on research identifying the most common names in Indonesia to maximize reach.³⁵⁸ They emphasized they had no intent to offend any religion and had not anticipated the potential for religious sensitivity.³⁵⁹ The court, however, did not examine intent and relied heavily on prosecution experts who explained the religious significance of the names and claimed the campaign promoted hatred or hostility toward Muslims and Christians.³⁶⁰ The defense argued that Article 28(2) requires both *mens rea* and *actus reus*: (a) knowingly and publicly expressing blasphemy or hostility, and (b) evidence that the content actually incited hatred toward a specific group.³⁶¹ Neither was present. The court failed to engage with the defense's arguments and broadly asserted that sufficient evidence showed the defendants had violated Article 28(2) and acted negligently.³⁶² The defendants were sentenced to one year and four months' imprisonment and fined Rp 20,000,000 (convertible to one month's imprisonment if unpaid).³⁶³ This case also led to the business permit of the bar being revoked leading to the closure of 12 establishments in Jakarta, despite the management of the restaurant issuing an apology and clarifying on multiple occasions that there was no intention to insult religious sentiments with the promotion.³⁶⁴

Even in the case of Wahyu Dwi Nugroho mentioned above, the defendant explained that he made the TikTok post to express frustration over the banner by a religious group, Al-Busyiro, directing buyers to shop only from its

³⁵⁶ Case No. 834, pgs. 53–57; Case No. 835, pgs. 48–52; Case No. 836, pgs. 10, 13–28, 53.

³⁵⁷ Case No. 834, pgs. 39–41, 43; Case No. 835, pgs. 19–20, 24, 27, 29–31; Case No. 836, pgs. 34, 36–37.

³⁵⁸ Case No. 834, pgs. 39–41, 43; Case No. 835, pgs. 19–20, 24, 27, 29–31; Case No. 836, pgs. 34, 37.

³⁵⁹ Case No. 834, pgs. 39–41, 43; Case No. 835, pgs. 19–20, 24, 27, 29–31; Case No. 836, pgs. 34, 40.

³⁶⁰ Case No. 834, pgs. 34–39; Case No. 835, pgs. 32–39; Case No. 836, pgs. 29–33.

³⁶¹ Case No. 834, pgs. 45–46; Case No. 835, pgs. 40–41; Case No. 836, pgs. 41–42.

³⁶² Case No. 834, pgs. 60–61; Case No. 835, pg. 55; Case No. 836, pg. 56.

³⁶³ Case No. 834, pg. 62; Case No. 835, pg. 57; Case No. 836, pg. 58.

³⁶⁴ Yandri Daniel Damaledo, Daftar 12 Holywings di Jakarta yang Ditutup Anies & Apa Alasannya? (List of 12 Holywings in Jakarta Shut Down by Anies & What is the Reason?), Tirta, June 28, 2022, available at <https://tirta.id/daftar-12-holywings-di-jakarta-yang-ditutup-anies-apa-alasannya-gttC>.

members.³⁶⁵ In the comments to his post, he further stated that Al-Busyro's events caused road closures, pressured people to donate, and deterred customers from his shop.³⁶⁶ In convicting the defendant, the Court held that the defendant's post "influenced views among the public towards the Al Busyro Council and the Al Busyro Council [felt] insulted."³⁶⁷ The Court stated that the requirement of intention under Article 28(2) was fulfilled because the defendant "committed his actions with full awareness of what he intended to do"³⁶⁸ – the Court did not examine whether he intended to incite hatred.

In Roy Suryo's case, Suryo argued that his intention in reposting the image was not to create hatred, but merely to bring attention to the increase of the temple admission price. The Judges held that given his expertise, Suryo should have "criticiz[ed] the planned increase of the price of the admission ticket to the Borobudur temple in a more civilized manner."³⁶⁹ As mentioned above, the Court focused on the fact that Suryo's social media following was the largest among those who had shared the image, and that the complainant and witnesses felt "disappointment and anger" on seeing the post.

Even in Daniel Frits' case, one witness for the defense testified to Frits' motive, stating that the "Defendant's comment was due to his disappointment that his efforts on social media to educate people to be more environmentally-conscious failed to garner the response he was hoping for." Yet the Judges did not consider this, instead focusing on the fact that Frits' comments had created rifts in the community.³⁷⁰ The Court also held that Frits should have not directed his comments to the shrimp pond owners if his comments were in relation to the community at large.

These cases reflect troubling trends. First, courts look at the impact of the statements rather than the intention of the defendant. In all the cases discussed, the Courts relied on the negative reaction to the social media posts in question, or the feelings of the complainant, rather than the defendant's intention to cause 'hatred or hostility.'

³⁶⁵ South Jakarta District Court, Case No. 283/Pid.Sus/2023/PN, pg. 9.

³⁶⁶ *Id.* at pg. 4.

³⁶⁷ *Id.* at pgs. 19 (unofficial English translation)

³⁶⁸ *Id.* at pgs. 17 (unofficial English translation)

³⁶⁹ West Jakarta District Court Judgment [translation], Case No. 890/Pid.Sus/2022/PN.Jkt.Brt, pg. 75 (2022).

³⁷⁰ See *supra* Section Case Studies, pgs. 31–33.

Second, as was seen in cases under Article 27(3), courts rely on experts to discern the meaning of the defendant's words, rather than the context of the speech, as required by the Rabat Plan of Action.³⁷¹ In Frits's case, neither the police nor the courts considered the environmental damage caused by shrimp farming that Frits was trying to highlight. Instead, the Judges relied on the findings of a linguist, who testified that Frits' comment "means that people are stupid because shrimp brains are a figurative form or expression that describes stupidity."³⁷²

Finally, instead of examining the objective element of whether the defendants had intention to create hatred, Courts rely on their subjective views on how the defendants should have made the comments in question.

Neither the amended EIT Law nor the new Criminal Code address these issues. Article 28(2) of the amended EIT Law requires the intention to distribute or transmit content that incites, invites, or influences others to feel hatred or hostility. Although the element of "incitement" has been added in the amended EIT Law, the intent requirement is linked to the act of distribution and transmission, not to the act of inciting. This law was challenged before the Constitutional Court. The Court acknowledged that the vague wording of the law allowed for speech without any intention to incite hatred, such as reposting or sharing material, to be criminalized. The Court held that criminalization of hate speech must focus on intent and incitement to cause real harm.³⁷³

Article 243 in the new Criminal Code, which governs hate speech disseminated online, only requires an "intent to make the content known by the public" rather than an intention to create hatred or hostility. This law must be revised in line with the judgment of the Constitutional Court.

Imminent Risk of Harm Arising from the Expression

As per the Human Rights Committee, "[w]hen a State... invokes a legitimate ground for restricting freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat" caused by the speech, and establish "a direct and immediate connection between the expression and the threat."³⁷⁴ With respect to hate speech specifically, the Rabat Plan of Action requires "a reasonable probability that the speech would succeed in inciting

³⁷¹ Rabat Plan of Action, para. 29(a).

³⁷² District Court of Jepara Judgment [translation], Case No. 14/Pid.Sus/2024/PN Jpa, pg. 50.

³⁷³ See Constitutional Court Decision No. 105/PUU-XXII/2024 (unofficial English translation).

³⁷⁴ UNHRC, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, Sept. 12, 2011, para. 35.

actual action against the target group” and that “such causation should be rather direct.”³⁷⁵

Indonesia’s Constitutional Court has referred explicitly to the Rabat Plan of Action as an appropriate framework for addressing hate speech. It set out a three-part test, noting that the state “has an obligation to ensure that any restrictions on expression in that space remain subject to the principles of legality, legitimacy of purpose, and proportionality.”³⁷⁶

The potential harm that hate speech may cause is considered relevant by regional human rights bodies as well.³⁷⁷ The Special Rapporteur for Freedom of Expression appointed by the Inter-American Commission of Human Rights has said that States must demonstrate both “the existence of an impending threat that [the speech] could cause real harm” and that the restriction is necessary to prevent the harm.³⁷⁸

As discussed above, Article 28(2) criminalizes the very act of disseminating the information online, and does not require an examination of the potential harm or threat caused by the speech.

Although the Joint Decree does not require an imminent risk of harm, it does identify categories of speech that should be excluded from Article 28(2) prosecutions, stating that “conveyance of opinion, non-consenting statement or dislike towards an individual or group of society does not constitute a prohibited action.”

Despite this, people were prosecuted for merely expressing opinions online without any examination of the nexus between the speech and consequences.

In Dhandy’s case, merely reporting the news and drawing attention to riots in Papua led to him being detained and declared a suspect under Article 28(2). Article 28(2) was also used to arrest six people protesting the special autonomous status of Papua³⁷⁹ on the ground that the calls for protest on social

³⁷⁵ Rabat Plan of Action, para. 29(f).

³⁷⁶ Constitutional Court Decision No. 105 PUU-XXII/2024, at 442 (unofficial English translation).

³⁷⁷ See Amal Clooney & David Neuberger, *supra*, pgs. 194–196.

³⁷⁸ IACmHR, Annual Report of the Inter-American Commission on Human Rights: Report of the Special Rapporteur for Freedom of Expression, OEA/Ser.L/V/II., Doc. 51, pg. 397 (2009).

³⁷⁹ See Jefri Wenda Ditangkap, Juru bicara Petisi Rakyat Papua Jefri Wenda Ditangkap Terkait Provokasi, Dijerat UU ITE (Papuan People’s Petition Spokesperson Jefri Wenda Arrested in Connection with Provocation, Charged with ITE Law), *Tribun News*, May 11, 2022, *available at* <https://www.tribunnews.com/regional/2022/05/11/juru-bicara-petisi-rakyat-papua-jefri-wenda-ditangkap-terkait-provokasi-dijerat-uu-ite>; see also Jefri Wenda Ditangkap, Selain Juru Bicara Petisi Rakyat Papua, Ini Identitas 6 Orang Lainnya yang Ditangkap (In Addition to the

media had the “potential to disturb the community”³⁸⁰—it appears that law enforcement did not identify any specific harm or threat in any of these cases. Article 28(2) has also been used against a student activist for alleging sexual harassment by police officers when they stormed a Papuan study alliance meeting.³⁸¹ As per reports a Papuan lawyer and human rights defender also faced charges under Article 28(2).³⁸² These cases reflect the troubling trend that hate speech laws “are often employed to suppress the very minorities they purportedly are designed to protect.”³⁸³

Courts also do not inquire into the likelihood of the harm while interpreting Article 28(2). In Frits’ case, the Panel of Judges held that to violate Article 28(2) the speech “does not have to cause riots or violence” and the “sense of offence” and “sense of hatred” caused by Frits’ comments was enough to warrant conviction. As stated above, this “sense” of offence or hatred was discerned by the fact that certain people took objection to Frits’ comments, while others sided with him.

Courts in Indonesia look at the comments on social media to see whether a situation has the potential to generate feelings of hatred.³⁸⁴ In one case, the court held that “when the [social media] post in question generates both pro and con comments, it can be concluded that the post contains a provocation” because it leads to the “formation of opposing groups which is a state of hidden conflict and *can lead* to open conflict that is based on ethnic, religion, race and inter-group in nature.”³⁸⁵

Spokesperson for the Papuan People’s Petition, Here Are the Identities of 6 Other People Arrested), *Tribun News*, May 10, 2022, *available at* <https://www.tribunnews.com/regional/2022/05/10/selain-juru-bicara-petisi-rakyat-papua-ini-identitas-6-orang-lainnya-yang-ditangkap>.

³⁸⁰ Redaksi Koreri, Langgar UU ITE, Jubir PRP Jefri Wenda Terancam 6 Tahun Penjara, Denda 1 Miliar Rupiah (Violating the ITE Law, PRP Spokesperson Jefri Wenda Threatened with 6 Years in Prison, a Fine of 1 Billion Rupiah), May 10, 2022, *available at* <https://koreri.com/2022/05/10/langgar-uu-ite-jubir-prp-jefri-wenda-terancam-6-tahun-penjara-denda-1-miliar-rupiah/>.

³⁸¹ SAFEnet, Kasus Anin (Anin’s Case), *available at* <https://safenet.or.id/id/2018/12/kasus-anin/>.

³⁸² SAFEnet, Free Leo Idjie, Lawyer in the Kisor and LK Cases in West Papua, Jan. 24, 2022, *available at* <https://www.tapol.org/news/free-leo-idjie-lawyer-kisor-and-lk-cases-west-papua>.

³⁸³ UNHRC, *Rabbae v. The Netherlands* (Comm. No. 2124/2011), July 14, 2016, Individual Concurring Opinion of Committee members Sarah Cleveland and Mauro Politi, para. 8.

³⁸⁴ Rositawati at 183.

³⁸⁵ South Jakarta District Court Judgment, Case No. 370/Pid.Sus/2018/PN Jkt.Sel., pgs. 69–70, *as cited in* Rositawati at 182.

In another case, where the chairman of a cooperative alleged government corruption, the court relied on the prosecution's expert witnesses to conclude that the defendant's language "[*could*]" cause uproar among the public" and "*could* inspire others to commit violence and/or harm other people or groups."³⁸⁶ Such an approach is contrary to international law that requires the causation between the speech and the alleged harm to be direct.³⁸⁷

These issues could be related to be a fundamental disconnect between Indonesian courts and international law on the purpose of a hate speech law. In Frits' case, the court noted that the purpose of Article 28(2) is to "prevent vigilantism from a group of people who feel hatred due to the information circulated" and "to make sure that a group of people, namely the Karimunjawa community, does not take the law into their own hands against the Defendant." That is, the risk of violence seems to be *from* those being criticized, as opposed to the speech creating a risk of violence *against* those being criticized. This flips the purpose of the law on its head.

Article 28(2) in the amended EIT Law does not require imminent or resulting harm. The Constitutional Court held that the law must be interpreted to require actual consequences or harm, stating that "the concept of freedom is based on the harm principle, whereby state intervention in individual freedom is only legitimate if the expression poses a *real and imminent danger* to the rights or interests of others."³⁸⁸

The new Criminal Code, on the other hand, requires that the speech in question "results in violence against people or property"—thereby increasing the threshold for prosecution and bringing Indonesian law closer to international hate speech standards.

D. Fake News

The former UN Special Rapporteur on Freedom of Expression has stated "efforts to counter [fake news] could lead to censorship, the suppression of critical thinking and other approaches contrary to human rights law."³⁸⁹ The Special Rapporteurs on freedom of expression from the UN, American, African and OSCE systems have issued a Joint Declaration on 'Fake News,' Disinformation and Propaganda, stating that "[g]eneral prohibitions on the

³⁸⁶ Mataram District Court, Caso No. 256/Pid.Sus/2022/PN, pgs. 41, 84, 90.

³⁸⁷ See Rabat Plan of Action, para. 29.

³⁸⁸ Constitutional Court Decision No. 105 PUU-XXII/2024, at 441 (unofficial English translation).

³⁸⁹ Office of the High Commissioner for Human Rights, Freedom of Expression Monitors Issue Joint Declaration on 'Fake News,' Disinformation and Propaganda, Mar. 3, 2017, *available at* <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21287&LangID=E>.

dissemination of information based on vague and ambiguous ideas, including ‘false news’ or ‘non-objective information’, are incompatible with international standards for restrictions on freedom of expression . . . and should be abolished.”³⁹⁰

In urging states to do away with the criminalization of so-called “false news,” the Declaration highlights the “importance of unencumbered access to a wide variety of both sources of information and ideas, and opportunities to disseminate them.”³⁹¹ The UN Special Rapporteur on Freedom of Expression has specifically underscored that “publishing or broadcasting ‘false’ or ‘alarmist’ information” should not be punishable by any imprisonment, as “prison terms are both reprehensible and out of proportion to the harm suffered by the victim.”³⁹²

As mentioned above, Fatiah Maulidiyanti and Haris Azhar challenged Articles 14 and 15 of Law No. 1/1946 before the Indonesian Constitutional Court on the ground that they violate the right to legal certainty and freedom to exercise their fundamental rights.³⁹³ Article 14(2) criminalized “[a]ny person disseminating news or issuing information that can cause disruption among the public, while such person ought to expect that such news or information is false.” Article 15 criminalized “[a]ny person disseminating uncertain or exaggerated or incomplete information, while such person understands [or] should at the least expect that such information will or can easily cause disruption among the public.” The Constitutional Court struck down Articles 14 and 15 as unconstitutional, on the ground that the wording of the provisions—“false news or information” and news “that is uncertain, or news that is exaggerated”—is ambiguous “due to the difficulty of determining the standards or parameters of the ‘truth’ of the information.”³⁹⁴ The Court acknowledged that the “the judgement of whether that information is ‘true’ or ‘exaggerated’ is highly

³⁹⁰ UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression, and the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information, Joint Declaration on Freedom of Expression and ‘Fake News’, Disinformation and Propaganda, U.N. Doc. FOM.GAL/3/17, Mar. 3, 2017, Section 2(a).

³⁹¹ *Id.* at Preamble.

³⁹² UN Commission on Human Rights, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, U.N. Doc. E/CN.4/2000/63, Jan. 18, 2000, para. 205.

³⁹³ Constitutional Court Judgment [translation], Case No. 78/PUU-XXI/2023, para. 3.8.2.

³⁹⁴ *Id.* at para. 3.18.2.

dependent on the judgement of legal subjects who have different backgrounds [and] religious, cultural and social values.”³⁹⁵

The Court held that standards that only allow conveying information that is considered “true” and not exaggerated can “lead to restrictions on the right of everyone to be creative in thinking in order to find the truth itself.”³⁹⁶ The Court further held that Articles 14 and 15 create legal uncertainty and can lead to widespread criminal sanctions given how information spreads on the internet.³⁹⁷

Both Article 14 and 15 require the speech to cause, or have the likelihood to cause, “disruption.” With respect to this element, the Constitutional Court held “there is a lack of clarity regarding the scale or parameter that constitutes the limit of danger”³⁹⁸ and that “what can or may happen is a subjective judgement that has the potential to create arbitrariness.”³⁹⁹

The perils of vagueness and arbitrariness were borne out in the cases in our dataset. Fifteen of the 73 cases filed under Article 27(3) and Article 28(2) also included charges under Article 14 and/or Article 15 of Law No. 1/1946. As mentioned above, three of these defendants were ultimately convicted under the Hoax Provisions rather than the EIT Law. In one such case, Edy Mulyadi, a journalist and politician, was charged with Article 28(2) of the EIT Law, Article 14 and Article 15 of Law No. 1/1946 and Article 156 of the Criminal Code for a YouTube video in which he criticized the proposal to shift the capital of Indonesia from Jakarta to East Kalimantan.⁴⁰⁰ He called the area of the new capital city a “place where the genie dumps children,” which allegedly humiliated the people of Kalimantan. In the video, Edy conveyed criticism that the land was not strategic and unsuitable for investment.⁴⁰¹ He was arrested and detained for over seven months and ultimately convicted under Article 15 and sentenced to 7 months imprisonment.⁴⁰²

³⁹⁵ *Id.*

³⁹⁶ *Id.*

³⁹⁷ *Id.* at para. 3.18.4.

³⁹⁸ *Id.* at para 3.18.5.

³⁹⁹ *Id.*

⁴⁰⁰ Central Jakarta District Court, Case No. 293/Pid.Sus/2022/PN, pgs. 6–7.

⁴⁰¹ *Id.*

⁴⁰² Although the court examined the charge against Edy under Article 28(2), he was ultimately not convicted under this article, as it was an alternative charge. The court instead found him guilty of the primary charge under Article 15 of Law No. 1 of 1946 on Criminal Law.

Edy testified that his remarks were part of his journalistic work and were not meant to insult any group or region.⁴⁰³ He argued that the phrase was a metaphor meant “merely to describe a place that was far away, remote, and had very limited infrastructure.”⁴⁰⁴ In finding Edy guilty under Article 15, the court reasoned that the news conveyed by the defendant about the proposed law was “incomplete” as he did not include clarifications and other sources, which would give a more complete picture to his audience.⁴⁰⁵ The Court further held that there was no requirement that the speech cause unrest, the ‘potential’ of the speech to cause disruption was sufficient.⁴⁰⁶

In one case, the defendant was charged under Article 14(1) of Law No. 1 of 1946 for posting a series of YouTube videos in which his speech was considered offensive to religious sentiments, such as that the Prophet Muhammad was “close to the jinn.”⁴⁰⁷ The court relied on religious expert testimony, including from clerics and scholars who stated that the defendant’s lack of formal religious credentials rendered him unqualified to interpret Islamic texts.⁴⁰⁸ The judgment also reflected and responded to public outrage, citing the widespread offense and unrest his videos provoked as reinforcing the need for criminal liability.⁴⁰⁹ He was sentenced to 10 years’ imprisonment.⁴¹⁰

In another case, a former politician was convicted under Article 14 for a controversial Twitter post that said “How pitiful that your Allah turned out to be weak and had to be defended. As for mine, my Allah is extraordinary, omnipotent, HE is always my defender and my Allah does not need to be defended.”⁴¹¹ The court determined that the defendant’s speech was false by relying on the testimonies of witnesses and a religious expert who affirmed that Allah is all-powerful, leading the court to rule that the defendant’s

⁴⁰³ *Id.* at pgs. 463-466.

⁴⁰⁴ *Id.* at pg. 464.

⁴⁰⁵ *Id.* at pgs. 482-483, 485

⁴⁰⁶ *Id.* at pgs. 484.

⁴⁰⁷ Ciamis District Court, Case No. 186/Pid.Sus/2021/PN.Cms., at pgs. 12

⁴⁰⁸ *Id.* at pgs. 1240-1250, 1265-1280, 1295-1307.

⁴⁰⁹ *Id.* at pgs. 727-890, 1289-1297.

⁴¹⁰ *Id.* at pg. 1307.

⁴¹¹ Central Jakarta District Court Decision, Case No. 90/Pid.SUS/2022/PN.Jkt.Pst, pg. 2 (unofficial English translation).

statement was false.⁴¹² The court relied on public outrage against the post, including on social media.⁴¹³ This reflects patterns identified in cases under Article 28(2).

The fake news provision of the newly amended EIT Law criminalizes intentionally spreading information that one knows is “fake” and that causes public unrest/riots. Importantly, the law requires that the speech cause public unrest; the mere potential to cause unrest is not sufficient. Further, the explanation to the provision states that the disturbance to public order must be physical, not in the digital space. In April 2025, the Constitutional Court affirmed this explanation and held that using Article 28(3) against ‘unrest’ in the digital sphere would violate the Constitution.⁴¹⁴ However, there is not much guidance on how to determine whether information is “fake.” In its concluding observations, the Human Rights Committee noted that the fake news provision in the amended EIT Law was “overbroad and vague.”⁴¹⁵ Indeed, Article 28(3) has been invoked against a human rights defender for allegedly “inciting” the protests in August-September 2025.⁴¹⁶

Article 263 and 264 of the new Criminal Code largely replicate Article 14 and 15 of Law No. 1/1946, which were declared unconstitutional in 2024. Article 263(2) corresponds to Article 14(2): it criminalizes any person who broadcasts or disseminates news or notifications despite reasonably suspecting that the news or notifications are fake which can result in riots within the community. And Article 264 is similar to Article 15: it targets any person who broadcasts news that is uncertain, exaggerated, or incomplete while knowing or reasonably suspecting that such news can result in riots within the community. The main difference between the new Criminal Code and the Hoax Provisions is that the Code uses the term “riots”⁴¹⁷ instead of “disruption.” All other ambiguities in the provisions remain, thus rendering them liable to be struck down as unconstitutional when they come into effect.

⁴¹² *Id.* at pgs. 166-167 (unofficial English translation).

⁴¹³ *Id.* at pg. 168-171 (unofficial English translation).

⁴¹⁴ See also Constitutional Court Decision No. 115 PUU-XXII/2024, at 301 (unofficial English translation).

⁴¹⁵ UNHRC, Concluding Observations on the Second Periodic Report of Indonesia, U.N. Doc. CCPR/C/IDN/CO/2, May 3, 2024, para. 32.

⁴¹⁶ Tempo, Jakarta Police Accuse Lokataru's Delpedro Marhaen of Inciting Anarchic Protests, Sept. 2, 2025, *available at* <https://en.tempo.co/read/2045489/jakarta-police-accuse-lokatarus-delpedro-marhaen-of-inciting-anarchic-protests>.

⁴¹⁷ The elucidation to the new Criminal Code states that “riot” is a condition that causes violence against people or goods committed by a group of people of at least 3 (three) people.

The Overreliance of Courts on Expert Witnesses: Violations of Fair Trial Rights

As discussed in the section above, Indonesian courts rely on expert evidence to determine whether the speech in question constitutes defamation, hate speech or fake news. This reliance can lead not only to unlawful restrictions on the right to free speech, but also violate the right to a fair trial as codified in Article 14 of the ICCPR.

Both regional and international legal bodies have raised concern with the overreliance of courts on prosecution expert witnesses, particularly when such experts are treated as neutral or permitted to opine on legal conclusions. Domestic courts violate the right to a fair trial when they do not critically assess the conclusions of expert witnesses, and instead adopt their opinions as fact without question. This concern arises in cases when courts “limit[] their assessment to... reproducing the conclusions of [expert] reports.”⁴¹⁸ Such passive acceptance of expert opinions undermines the court’s duty to independently evaluate the evidence before it.

The violation is even more pronounced when expert witnesses are permitted not only to determine factual matters but also to make determinations of law. As the European Court of Human Rights has emphasized, “all legal matters must be resolved exclusively by the courts.”⁴¹⁹ When an expert’s examination extends beyond defining particular words and expressions and instead “provide[s], in essence, a legal qualification of the applicant’s actions,” this undermines a defendant’s fair trial rights.⁴²⁰

The United Nations Special Rapporteur on the promotion and protection of human rights while countering terrorism has warned that reliance on one-sided expert analysis not only distorts the evidentiary balance but can also lead to convictions based solely on expert opinion, effectively replacing judicial fact-finding.⁴²¹ The practice threatens fair trial rights and judicial impartiality.⁴²²

⁴¹⁸ ECtHR, *Dmitriyevski v. Russia*, App. No. 42168/06, Oct. 3, 2017, para. 114.

⁴¹⁹ *Id.* at 113.

⁴²⁰ *Id.*

⁴²¹ Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, U.N. Doc. A/HRC/43/46/Add.1, Jan. 22, 2020, paras. 39, 60(d).

⁴²² *Id.*

The unquestioning reliance on expert witnesses undermines a number of fair trial rights that are enshrined in international and regional human rights instruments, namely: (i) the principle of equality of arms, (ii) the independence and impartiality of the tribunal and the presumption of innocence, and (iii) the right to examine witnesses. These rights, each explored in more detail below, are fundamental to the integrity of criminal proceedings at the domestic level.

Principle of Equality of Arms

An essential feature of the right to a fair trial is the principle of equality of arms, which requires that both the prosecution and defense have a genuine opportunity to present their case without being placed at a substantial disadvantage.⁴²³ Courts breach this right when they afford undue weight to prosecution experts or deny the defense access to independent expertise.⁴²⁴ This principle is codified in Article 14 of the ICCPR—specifically, in provisions guaranteeing the right to a fair hearing (14(1)); the right to adequate time and facilities to prepare a defense (14(3)(b)); and the right to examine witnesses under equal conditions (14(3)(e)). The UN Human Rights Committee’s General Comment No. 32 emphasizes that the principle of equality of arms prohibits procedural disadvantages that undermine a fair trial.⁴²⁵

Right to an Independent and Impartial Tribunal

Overreliance on expert opinions undermines the right to an independent and impartial tribunal, a foundational component of the right to a fair trial.⁴²⁶ When prosecution experts dominate the evidentiary record, or when courts fail to critically evaluate their findings, judicial impartiality is compromised.⁴²⁷

⁴²³ UN Human Rights Committee (HRC), General Comment No. 32, Article 14, Right to Equality Before Courts and Tribunals and to Fair Trial, U.N. Doc. CCPR/C/GC/32, Aug. 23, 2007, para. 13, *available at* <https://digitallibrary.un.org/record/606075?v=pdf> [hereinafter “General Comment No. 32”].

⁴²⁴ ECtHR, *Dombo Beheer B.V. v. The Netherlands*, App. No. 14448/88, Oct. 27, 1993; ECtHR, *Bönisch v. Austria*, App. No. 8658/79, May 6, 1985; ECtHR, *Stoimenov v. The Former Yugoslav Republic of Macedonia*, App. No. 17995/02, Apr. 5, 2007 (reiterating that the “principle of equality of arms is part of the wider concept of a fair hearing within the meaning of Article 6 § 1 of the Convention. It requires a “fair balance” between the parties: each party must be afforded a reasonable opportunity to present their case under conditions that do not place them at a disadvantage *vis-à-vis* their opponent or opponents.”).

⁴²⁵ General Comment No. 32.

⁴²⁶ *Id.* at paras. 19, 21.

⁴²⁷ UNHRC, *Khostikoev v. Tajikistan*, U.N. Doc. CCPR/C/97/D/1519/2006 (The Committee found a violation of Article 14(1) where court rulings hindered the preparation of an effective

General Comment No. 32 emphasizes that impartiality has both subjective and objective dimensions: judges must not harbor bias or appear to favor one party over the other, especially through reliance on unbalanced or untested expert testimony.⁴²⁸ This right is compromised in cases where both parties present expert witnesses, but the court fails to meaningfully engage with the defense's expert analysis and instead accepts the prosecution's expert testimony at face value without subjecting it to critical examination or conducting an independent assessment of its validity.⁴²⁹

Overreliance on state-aligned expert witnesses also threatens the presumption of innocence,⁴³⁰ particularly when courts allow experts to determine questions of law such as criminal liability, intent, or the interpretation of statutes.⁴³¹ Doing so risks substituting expert opinion for judicial fact-finding.⁴³²

The cases analysed for this report demonstrate a worrying pattern across Indonesian courts of passive reliance on prosecution experts, at the expense of impartiality.

The Right to Examine Witnesses

The overreliance of Indonesian courts on expert opinions also contravenes the right to examine witnesses. The defense must have a meaningful

defense, such as by “ignor[ing] [counsel’s] objections” and “refus[ing] to allow the possibility for the [defendant] to adduce relevant evidence.”); UNHRC, *Toshev v. Tajikistan*, U.N. Doc. CCPR/C/101/D/1499/2006 (The Committee concluded that the court lacked impartiality where “several of the [defense] lawyers’ requests were not given due consideration.”); Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, U.N. Doc. A/HRC/43/46/Add.1, Jan. 22, 2020, para. 39.

⁴²⁸ General Comment No. 32, para. 21.

⁴²⁹ ECtHR, *Dmitriyevski v. Russia*, App. No. 42168/06, Oct. 3, 2017, paras. 113–115; Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, U.N. Doc. A/HRC/43/46/Add.1, Jan. 22, 2020, paras. 39, 60(d).

⁴³⁰ ICCPR, Article 14(2) (“Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”).

⁴³¹ Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, U.N. Doc. A/HRC/43/46/Add.1, Jan. 22, 2020, paras. 39, 60(d); ECtHR, *Dmitriyevski v. Russia*, App. No. 42168/06, Oct. 3, 2017, paras. 113–115.

⁴³² *Id.*

opportunity to challenge expert opinions presented by the prosecution.⁴³³ This right is enshrined in Article 14(3)(e) of the ICCPR⁴³⁴ and in different regional human rights instruments,⁴³⁵ all of which affirm that defendants must be able to confront and rebut prosecution witnesses, including experts, on equal footing.

When courts treat prosecution experts as decisive, without providing the defense with a meaningful opportunity to challenge their findings, the proceedings lose their adversarial balance. Courts must ensure that expert evidence is open to scrutiny by both parties, and that alternative expertise can be introduced and equally considered where appropriate.

⁴³³ ECtHR, *Mirlashvili v. Russia*, App. No. 6293/04, Dec. 11, 2008, para. 163 (As a rule, these rights require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him or her either when that witness is making a statement or at a later stage of the proceedings); ECtHR, *Lüdi v. Switzerland*, App. No. 12433/86, June 15, 1992, para. 49.

⁴³⁴ ICCPR, Article 14(3)(e) ("In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.").

⁴³⁵ ECHR, Article 6(3)(d) ("Everyone charged with a criminal offence has the following minimum rights: to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."); ACHR, Article 8(2)(f) ("During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts.").

JOURNALIST PROTECTIONS



The UN Human Rights Committee specifically asserts that penalizing media outlets, publishers, or journalists solely for criticizing the government or its political and social system cannot be considered a legitimate restriction on free speech.⁴³⁶ The Committee has also held that “journalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere.” Accordingly, the Committee has held that “[s]tate systems of registration or licensing of journalists are incompatible” with Article 19.

The Human Rights Council⁴³⁷ and United Nations General Assembly⁴³⁸ have passed specific resolutions on the safety of journalists, urging States to align their laws with their human rights obligations to ensure journalists can freely engage in their work without undue interference. They have called upon on States to amend or repeal overly vague defamation and libel laws that give officials excessive discretion and impose harsh penalties, which illegitimately censor journalists or hinder them from informing the public.⁴³⁹ They also condemn all forms of violence against journalists, including arbitrary arrests, harassment and intimidation, and call upon states to prevent violence by promoting training and raising awareness among law enforcement and judicial personnel.⁴⁴⁰

⁴³⁶ UNHRC, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, Sept. 12, 2011, para. 42.

⁴³⁷ Human Rights Council Thirty-Ninth Session, Resolution Adopted by the Human Rights Council on 27 September 2018, The Safety of Journalists, U.N. Doc. A/HRC/RES/39/6, Oct. 5, 2018, para. 10; Human Rights Council Forty-Fifth Session, Resolution Adopted by the Human Rights Council on 6 October 2020, The Safety of Journalists, U.N. Doc. A/HRC/RES/45/18, Oct. 12, 2020, para. 10(h).

⁴³⁸ UN General Assembly, Resolution Adopted by the General Assembly on 18 December 2019, The Safety of Journalists and the Issue of Impunity, U.N. Doc. A/RES/74/157, Jan. 23, 2020, para.14.

⁴³⁹ Human Rights Council Thirty-Ninth Session, Resolution Adopted by the Human Rights Council on 27 September 2018, The Safety of Journalists, U.N. Doc. A/HRC/RES/39/6, Oct. 5, 2018, para. 12; Human Rights Council Forty-Fifth Session, Resolution Adopted by the Human Rights Council on 6 October 2020, The Safety of Journalists, U.N. Doc. A/HRC/RES/45/18, Oct. 12, 2020, para. 10(h); UN General Assembly, Resolution Adopted by the General Assembly on 18 December 2019, The Safety of Journalists and the Issue of Impunity, U.N. Doc. A/RES/74/157, Jan. 23, 2020, para. 14.

⁴⁴⁰ UN Human Rights Council, Resolution Adopted by the Human Rights Council on 29 September 2016, The Safety of Journalists, U.N. Doc. A/HRC/RES/33/2, Oct. 6, 2016, paras. 1 and 5, *available at* <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2FRES%2F33%2F2&Language=E>

Apart from constitutional protections of the right to freedom of speech and expression, Indonesia's Press Law (Law No. 40 of 1999 on the Press) protects press freedom. The law affords journalists legal protection in the performance of their duties.⁴⁴¹ The Press Law also establishes an independent Press Council, tasked with safeguarding press freedom, promoting journalistic ethics, and mediating disputes involving the press.⁴⁴² The Press Council's key functions include: providing recommendations and assisting in resolving public complaints related to press publications; facilitating communication between the press, the public, and the government; enforcing and overseeing the Journalism Code of Ethics; and protecting press freedom from external interference.⁴⁴³

In 2017, the Press Council and the National Police entered into a Memorandum of Understanding (MoU) to manage disputes involving the press and prevent the inappropriate use of criminal law against journalists.⁴⁴⁴ The MoU outlines a collaborative framework for handling cases involving journalists and media outlets in a way that aligns with the Press Law (Law No. 40 of 1999).⁴⁴⁵ The main aim is to ensure that complaints about journalistic work are handled by the Press Council before any criminal investigation or legal action is taken.⁴⁴⁶ The MoU stipulates that if the police receive a public report concerning alleged criminal acts by the media, they must first conduct an investigation and coordinate with the Press Council to determine whether the act constitutes a criminal offense or a violation of the journalistic code of ethics.⁴⁴⁷ The MoU therefore reaffirms the role of the Press Council in handling press related disputes and reflects a commitment to uphold the protections granted to journalists under the Press Law.

&DeviceType=Desktop&LangRequested=False; UN General Assembly, Resolution Adopted by the General Assembly on 19 December 2023, The Safety of Journalists and the Issue of Impunity, U.N. Doc. A/RES/78/215, Dec. 23, 2023, paras. 1 and 13(b), *available at* <https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F78%2F215&Language=E&DeviceType=Desktop&LangRequested=False>.

⁴⁴¹ Press Law, Article 8.

⁴⁴² *Id.* at Article 15.

⁴⁴³ *Id.* at Article 15(2).

⁴⁴⁴ Memorandum of Understanding [unofficial translation], No.2/DP/MoU/II/2017, Articles 1 and 6, *available at* <https://dewanpers.or.id/assets/documents/kesepahaman/040-Mou%20Dewan%20Pers%20-%20Polri.pdf>. [hereinafter "Memorandum of Understanding"].

⁴⁴⁵ *Id.* at Article 2.

⁴⁴⁶ *Id.* at Articles 4 and 5.

⁴⁴⁷ *Id.* at Article 5.

The Joint Decree reiterates the MoU, stating that if the disputed content originated from a press institution, the Press Law, not the EIT Law, should be applied.⁴⁴⁸

Despite these protections, journalists were prosecuted under the EIT Law prior to and after the issuance of the Joint Decree. In 2018, journalist M. Yusuf died while being held in custody for defamation and hate speech charges under the EIT Law.⁴⁴⁹ Yusuf worked with an online news portal and was reported for his articles critical of a palm oil plantation company.

After adoption of the Joint Decree, in Marzuki's case, Judges held that the Press Law did not apply because mudanews.com was not registered with the Press Council and Facebook posts "do not constitute journalistic work."⁴⁵⁰ Similarly, when journalist Tinus Restanto Eka was summoned to the police station regarding his article on Firman Rusli, the police asked him whether the publication he works for (kirka.co) was registered with the Ministry of Law and Human Rights and whether he had a press identity card. The police explained that if the company had an official license, he would not be subject to prosecution under the EIT Law.⁴⁵¹

However, neither the Press Law nor the MoU explicitly require journalists to be registered to claim protections against criminal prosecutions.⁴⁵² In fact, such a

⁴⁴⁸ VOI, ITE Law Implementation Guidelines Signed, Mahfud MD: This Is The Result Of The Discussion, June 23, 2021, *available at* <https://voi.id/en/news/61444>.

⁴⁴⁹ CPJ, CPJ calls on Indonesia to Investigate Death of Detained Journalist, June 26, 2018, *available at* <https://cpj.org/2018/06/cpj-calls-on-indonesia-to-investigate-death-of-det/>; N. Adri, Police to Conduct Autopsy on Deceased Journalist, The Jakarta Post, June 18, 2018, *available at* <https://www.thejakartapost.com/news/2018/06/18/police-to-conduct-autopsy-on-deceased-journalist.html>.

⁴⁵⁰ Medan District Court Decision [translation], Case No. 776/Pid.Sus/2022/PN Mdn, pg. 30.

⁴⁵¹ Interview with Tinus Restanto Eka, Nov. 29, 2023.

⁴⁵² It is important to note that while Article 15(2) of the Press Law outlines the functions of the Press Council—specifically subsection (g), which grants the authority to "register press companies"—neither the Press Law nor the MoU explicitly states that registration is a prerequisite for legal protections. In practice, however, the Press Council has interpreted Article 15(2)(g) as "clearly mandat[ing] media registration." As a result, the Council uses this provision to justify its requirement that journalists be affiliated with a registered press company and that the press company itself be registered with the Council in order to receive protection under the Press Mechanism. See Press Law, Article 15; see generally Memorandum of Understanding; see also Press Release, No. 3/SP/DP/4/2024 Regarding The Press Council's Response to Reports on the Non-Requirement of Competency Tests and Media Registration with the Press Council, *available at* https://dewanpers.or.id/assets/documents/siaranpers/No_3_2024-4-8_Siaran_Pers_-

requirement of registration would be contrary to international standards, as explained by the Human Rights Committee, which has held that in its General Comment No. 34, that “journalism is a function” and not an occupation,⁴⁵³ which is shared not just by official members of media outlets but also by “bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere.”⁴⁵⁴ Importantly, in Tinus’ case, despite the police obtaining evidence of the company’s registration, the case has not been formally terminated.

Neither the amended EIT Law nor the new Criminal Code refer to the Press Law or codify protections for journalists.

[_Tanggapan_Dewan_Pers_Terhadap_Pemberitaan_tentang_Tidak_Harus_UKW_dan_Media_Tidak_Wajib_Terdaftar_di_Dewan_Pers.pdf](#).

⁴⁵³ General Comment No. 34, CCPR/C/GC/34 (2011), para. 44.

⁴⁵⁴ General Comment No. 34, CCPR/C/GC/34 (2011), para. 44.

PERSPECTIVES OF LAW ENFORCEMENT

TrialWatch and ICJR interviewed a total of 11 police officials, prosecutors, and judges on their views on the Joint Decree, with a specific focus on the provisions on defamation and hate speech. Out of the 11 interviewees, three were from the regional police, four from prosecutors' offices and four were judges.

While the police and prosecutors knew about the Joint Decree, three out of four District Court judges admitted they were unaware of or had never read the Joint Decree before the interview. Eight of the eleven believed the Joint Decree was only binding on the police, civil servant investigators and prosecutors, and was not binding on judges.

Importantly, respondents from the police said that the Joint Decree helped standardise ambiguous laws, with a respondent from the Cyber Crime Directorate noting that “previously, investigators were not allowed to reject any incoming reports. Now they can ... determine which cases are prosecutable.” Respondents from the District Attorney's offices said that they treat the Joint Decree as a benchmark for consistent prosecution. One interviewee from the Central Jakarta DA's Office explained, “the SKB guideline serves as a benchmark, to ensure uniformity in prosecution.”

Indeed, although the Joint Decree was not observed in the majority of cases analysed for this report, it was used to filter out some abusive prosecutions. In one case, the dean of a university filed an Article 27(3) complaint against a student who uploaded a video online in which the student stated that the dean had sexually harassed and assaulted her.⁴⁵⁵ The police refused to process the complaint against the student, since the student had filed a police complaint about the sexual harassment first, and as per the Joint Decree, when the defamatory fact alleged is at issue in a legal proceeding, authorities must wait for the outcome of that proceeding to determine the truth of the fact before processing the charge under the EIT Law.⁴⁵⁶

In handling hate speech complaints, respondents from the police, District Attorney's offices, and courts had mixed views. Approximately 66 percent of respondents believed that societal impact should be taken into account, while 33 percent opposed such a stance since they considered hate speech a formal offense. Police opinions differed; some assumed inherent public impact, while others, like an interviewee from the Maluku Regional Police, asserted that “if

⁴⁵⁵ Eko Faizin, Mahasiswa FISIP Unri Dipolisikan Dosen Nonaktif Terkait Pencemaran Nama Baik (FISIP Unri Student Reported by Inactive Lecturer for Defamation), Suara, Feb. 9, 2023, *available at* <https://riau.suara.com/read/2023/02/09/203826/mahasiswa-fisip-unri-dipolisikan-dosen-nonaktif-terkait-pencemaran-nama-baik>.

⁴⁵⁶ See Annex A.

there are no impacts/consequences, it cannot be prosecuted.” An interviewee from the Central Jakarta District Attorney’s office deemed hate speech a “formal offense,” asserting that it “has already been satisfied and doesn’t require further investigation.” Similarly, an interviewee from the Manado District Attorney stated that hate speech “do[es] not require actual consequences to be enacted.”

Respondents from different institutions also had varying views regarding the handling of press products. Police respondents generally agreed that press products were exempt from prosecution under the EIT Law, though they indicated that personal social media posts could be prosecuted individually. Individuals from District Attorney’s offices held mixed views. Some believed press products were exempt if published by a registered press institution,⁴⁵⁷ while others argued penalties were still applicable if ethical standards were breached or if sources were unreliable. Judges were also divided. Some stated that content regulated by the Press Law was exempt, with a judge from the West Jakarta District Court noting, “[i]f it is regulated by the Press Law, then general laws do not apply.” In contrast, others, like a judge from the Medan District Court, maintained that “[t]here are no exceptions ... if someone commits defamation, they can be prosecuted.”

Respondents from the police, District Attorney’s offices, and courts also differed in their definitions and perspectives on whether expressing opinions of public officials constitutes defamation. Some officers stated that opinions were not defamatory, while others said it depended on the language used and specifics of the case. Individuals from the District Attorney’s offices had mixed views. For instance, an interviewee from the Central Jakarta District Attorney’s office indicated that “[e]xpressing thoughts or making criticisms of government officials is not regarded as defamation,” while the interviewee from the Tulang Bawang District Attorney’s Office stated that if the criticism “is personal, it can be penalized.” Judges also held differing perspectives, emphasizing the importance of assessing case facts, and differentiating between criticism and defamation. For example, a judge from the Medan District Court stated that even though “[p]eople have the freedom to criticize,” the courts needed to ensure their “the criticism align[ed] with reality.”

The differences in perspectives among the various actors in the justice system exemplify the arbitrariness caused by vague provisions, and the need to have clear precise guidelines as well as trainings for law enforcement personnel.

⁴⁵⁷ See *supra*, footnote 357.

RECOMMENDATIONS

In light of gaps in the laws and challenges in implementing the Joint Decree, as outlined in this report, this section lays out specific recommendations to bring the new Criminal Code, and its implementation, in line with the right to freedom of expression, which Indonesia is obliged to protect under both international and domestic law. In particular, key developments from the Constitutional Court, amendments to the EIT Law, and Joint Decree should be consolidated and reflected in the law and commentaries and guidelines to the law.

Recommendations to the Legislature:

- i. In accordance with the judgments of the Constitutional Court in 2006⁴⁵⁸ and 2025 (indicating that institutions and officials should not be insulated from criticism)⁴⁵⁹ and in line with recommendations of the UN Human Rights Committee, the legislature should amend the new Criminal Code to decriminalize defamation of the President and Vice-President (Article 218 and 219) and public officials.
- ii. In accordance with the judgments of the Constitutional Court striking down Articles 14 and 15 of Law No. 1/1946,⁴⁶⁰ and providing conditional constitutionality of Article 28(3) of the amended EIT Law⁴⁶¹ as well as relevant international human rights standards,⁴⁶² the legislature should repeal or amend Articles 263 and 264 of the new Criminal Code as they replicate the provisions struck down, with the only difference being that the new Criminal Code uses the term “riots” instead of “disruption.”
- iii. In accordance with the judgment of the Constitutional Court in 2025⁴⁶³ the legislature should amend the hate speech provisions of the new

⁴⁵⁸ Case No. 013-022/PUU-IV/2006

⁴⁵⁹ Constitutional Court Decision No. 105/PUU-XXII/2024 (unofficial English translation).

⁴⁶⁰ Constitutional Court Judgment, Case No. 78/PUU-XXI/2023

⁴⁶¹ Constitutional Court Decision No. 115/PUU-XXII/2024 (unofficial English translation).

⁴⁶² UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression, and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information, Joint Declaration on Freedom of Expression and 'Fake News', Disinformation and Propaganda, U.N. Doc. FOM.GAL/3/17, Mar. 3, 2017, Section 2(a).

⁴⁶³ Constitutional Court Decision No. 105/PUU-XXII/2024 (unofficial English translation).

Criminal Code to ensure that only speech with the intention to incite hatred is prosecuted;

- iv. The legislature should revise the commentaries to the defamation provisions in the new Criminal Code to clarify that all speech on matters of public interest be protected, irrespective of whether it is “constructive” or in the form of “supervision, correction or suggestions”;
- v. The legislature should amend defamation provisions in the new Criminal Code to separate the defense of truth from the public interest exception, in line with UN standards, i.e. to ensure truthful statements are protected even if they are not in public interest and ensure public interest speech is protected even if untrue as long as it is not published with actual malice;

Recommendations to the Executive:

- i. Adopt clear and enforceable implementing guidelines, in line with the Joint Decree, clarifying:
 - That truth cannot be subject to defamation prosecutions;
 - That value judgments (such as opinions and insulting speech) cannot be subject to defamation prosecutions;
 - That accused persons must have an intent to defame rather than a mere intent to disseminate to be charged with defamation;
 - That the purpose of hate speech provisions is to prevent the incitement of hatred and violence against a person or group based on their identity i.e. their race, nationality, ethnicity, skin color, religion, beliefs, gender, mental disability, or physical disability;
 - That the speaker must have an intent to incite violence against the target group, rather than a mere intent to disseminate to be subject to criminal prosecution for hate speech under Article 243 of the new Criminal Code;
 - That there must be a causal link between speech and violence for prosecutions under Article 243 of the new Criminal Code.

These guidelines must be binding on all branches of law enforcement. The National Police and the Attorney General office should ensure that the guidelines are mainstreamed in their internal procedures applicable for prosecuting cases of defamation, fake news and hate speech. Further, law

enforcement institutions should ensure that the standards set out in the guidelines are integrated into their internal trainings to strengthen compliance. Although a Joint Decree is not considered as a legally binding instrument in the Indonesian legal system, it demonstrates the commitment of the institutions signing the decree and therefore, should be enforced by all branches of police and prosecutors.

ii. In accordance with the recommendations of the UN Human Rights Committee, the government should conduct training for judges, prosecutors, lawyers and law enforcement personnel on the right to freedom of expression, including online expression, and incorporating any new guidelines developed. These trainings should specifically:

- Instruct police, prosecutors and courts not to rely on the response to divisive social media posts as evidence to conclude that speech is hateful; rather, they should consider whether the speech was intended to cause, and there was an imminent risk that it would cause, actual violence against the target group;
- Instruct police, prosecutors and courts to consider the context of speech along with its “grammatical meaning”;
- Instruct police, prosecutors and courts not to rely solely on the alleged impact of the speech on the victim/complainant when deciding to prosecute/convict;
- Train police personnel on the specifics of each offence, so that multiple charges are not grouped together and the accused person has clarity on the charges they are facing;

iii. Further, police and prosecutors must ensure that:

- All complaints filed against journalists are referred to the Press Council for resolution, irrespective of whether the journalist or the publication is registered or licensed;
- The investigation of all speech-related complaints be completed within a time-bound manner, acknowledging the chilling effect that the pendency of charges creates, not just for the accused person but the broader public;
- Persons accused of committing speech-related offences are not arrested and subject to pre-trial detention as per international standards that hold that deprivation of liberty is neither necessary

nor appropriate in such cases⁴⁶⁴ (unless the speech reaches certain, very high thresholds which are per se not met in the context of defamation and ‘fake news’);

Recommendations to the Judiciary:

- i. Adopt guidelines or internal regulations in line with the recommendations stated above;
- ii. Consider guidelines akin to the Joint Decree, if adopted by the executive, as trial court judges did in Fatia and Haris’ case⁴⁶⁵ and Septia Dwi Pertiwi’s case.⁴⁶⁶
- iii. Consider the human rights aspects of speech in question, such as the High Court did in Daniel Frits’s case, by considering that Frits made the statement to defend the right to a healthy environment, which is enshrined in Indonesia’s Constitution.⁴⁶⁷
- iv. Apply objective legal standards to speech, and not substitute their subjective views on what the defendant should have said.
- v. Not overemphasize expert opinions while considering whether speech constitutes a criminal offence.

⁴⁶⁴ The UN Human Rights Committee has made clear that where imprisonment is not an appropriate penalty for an offence, pretrial detention pursuant to such an offence is arbitrary. In a case in which a defendant was charged with defamation and calumny, the Committee held that the accused’s pretrial detention was arbitrary because “[i]f defamation should never result in a penalty of deprivation of liberty being imposed on the grounds that it is not an appropriate penalty, then a fortiori no detention based on charges of defamation may ever be considered either necessary or proportionate.” UNHRC, Lydia Cacho Ribeiro v. Mexico, UN Doc. CCPR/C/123/D/2767/2016, Aug. 29, 2018, para. 10.8; see also UN Working Group on Arbitrary Detention, Siraphop Kornaroot v. Thailand, Opinion No. 4/2019, UN Doc. A/HRC/WGAD/2019/4, May 30, 2019, para. 49 (“[T]he Working Group has found that detention pursuant to a law that is inconsistent with international human rights law lacks legal basis and is therefore arbitrary.”).

⁴⁶⁵ East Jakarta District Court Judgment [translation], Case No. PDM:021/JKT.TIM/EKU/03/2023, Mar. 27, 2023.

⁴⁶⁶ Central Jakarta District Court, Case No. Number 589/Pid.Sus/2024/PN.

⁴⁶⁷ Basten Gokkon, Indonesian Activist Freed in Hate Speech Case After Flagging Illegal Shrimp Farms, Mongabay, May 22, 2024, *available at* <https://news.mongabay.com/2024/05/daniel-frits-maurits-tangkilisan-indonesia-environmental-activist-exonerated-illegal-shrimp-farm-hate-speech-karimunjawa-marine-protected-area/>.

ANNEX A

JOINT DECREE GUIDELINES

Article 27 paragraph (3)

- a. In accordance with the legal considerations given in Constitutional Court Decision Number 50/PUU- VI/2008 of 2008, and Elucidation of Article 27 paragraph (3) of the EIT Law, the definition of content that is derogatory and/or slanderous in nature refers to and cannot be separated from the provisions of Article 310 and Article 311 of the ICC. Article 310 of the ICC contains the criminal charge of attacking the dignity of a person by accusing such person of a matter to make it known to the public. Meanwhile, Article 311 of the ICC relates to the action of accusing a person despite the accuser knowing that the accusation is false.
- b. Taking into account the Constitutional Court Decision Number 50/PUU- VI/2008 of 2008 above, it can be concluded that it would not be a violation under Article 27 paragraph (3) of the EIT Law if the content being transmitted, distributed, and/or made accessible is in the form of insults that are categorized as mockery, ridicule, and/or inappropriate words.. For such particular conduct, the charge of minor insult as provided under Article 315 of the ICC can be applied, which based on the Elucidation of Law Number 19 of 2016 on Amendment to Law Number 11 of 2008 and the Constitutional Court Decision does not fit within the scope of Article 27 paragraph (3) of the EIT Law.
- c. A content does not relate to derogatory and/or slanderous expression as defined under Article 27 paragraph (3) of the EIT Law if such content being transmitted, distributed, and/or made accessible is derived from an assessment, opinion, evaluation or fact.
- d. If the alleged fact is a conduct that is at issue in a legal proceeding, it must be proven that such fact had actually transpired before authorities can process the charge of derogatory remark and/or slander under the EIT Law.
- e. The criminal charge under Article 27 paragraph (3) of the EIT Law is an absolute complaint-based criminal charge as described in the provisions of Article 45 paragraph (5) of the same law. As an absolute complaint-based criminal charge, the victim themselves must file the criminal complaint with law enforcement, except where the victim is still a minor or under guardianship.
- f. The victim filing the complaint must be an individual person with specific

- identity, and is not an institution, corporate entity, profession or position.
- g. The focus of the criminal charged specified in Article 27 paragraph (3) of the EIT Law is not on the feelings of the victim, but rather on the action of the accused who knowingly and with intent distributes/transmits/makes accessible information whose content is an affront to the dignity of a person by making an accusation against such person in order [for such accusation] to be known to the public (Article 310 of the ICC).
 - h. The element of “in order [for such accusation] to be known to the public” (in the context of transmitting, distributing, and/or making accessible) as a key requirement (in the complaint-based offense) that must be satisfied under Article 310 and Article 311 of the ICC, which is the reference for Article 27 paragraph (3) of the EIT Law that must be met.
 - i. The qualification of “in order to be known to the public [umum]” can be equated to the term “in order to be known to the public [publik]”. Umum or publik is defined as a significant number of people who are mostly not acquainted with each other.
 - j. The term “known to the public” may be through uploading onto social media on ‘publicly accessible’ setting, or uploading of content onto or broadcasting of material within a group chat application that is open to the public allowing anyone to join the chat, and the group’s content or information traffic is unregulated or unmoderated (open group), allowing anyone to upload and share materials.
 - k. [The dissemination of a content] does not qualify as derogatory expression and/or slander if the content is disseminated through a closed or limited group chat media, such as chat groups whose members are family members, close friends, professional group, office staff, students of a specific campus, or education institution members.

Article 28 paragraph (2)

- a. The primary offense chargeable under Article 28 paragraph (2) of the EIT Law is the dissemination of information that can cause hatred or hostility among individuals or groups of society based on ethnicity, religion, race or social grouping.
- b. The disseminated information may be in the form of image, video, audio or text that can be taken as a call or broadcasting [of message] for other people to feel hatred and/or animosity towards other individuals or groups within society based on ethnic, religious, racial, or group sentiments.
- c. The term “disseminating” may be equated to “making known to public”, which can be the uploading [of materials] onto social media on ‘publicly

accessible' setting, or uploading of content onto or broadcasting of material within a group chat application that is open to the public allowing anyone to join the chat, and the group's content or information traffic is unregulated or unmoderated (open group), allowing anyone to upload and share materials.

- d. The deed prohibited under this article is where the motive is to incite hatred and/or animosity based on ethnic, religious, racial, or group sentiments. Law enforcement authorities must prove this motive by establishing that the content calls, influencing, motivating, inciting/pitting people against each other in order to create hatred and/or hostility.
- e. The term "[social] group" refer to groups that are based on other than ethnicity, religion or race as described under Constitutional Court Decision Number 76/PUU-XV/2017.
- f. Conveyance of opinion, non-consenting statement or dislike towards an individual or group of society does not constitute a prohibited action, except if the message being conveyed can be proven as an attempt to call, influence and/or motivate members of the community, incite/pitting people against each other to create feeling of hate or hostility based on ethnic, religious, racial, or group sentiments.