

## Freedom of Expression vs Political Stability: Legal Interpretation of Commotion in Social Media After the Issuing of a Constitutional Court Decision

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### ABSTRACT

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**Purpose of the study:** This article analyzes the tension between freedom of expression and political stability in the context of the Indonesian Constitutional Court's Decisions No. 90/PUU-XXI/2023, 78/PUU-XXI/2023, 7/PUU-VII/2009, and 50/PUU-VI/2008 on the Dissemination of Information Via Social Media, which are deemed to potentially inducing commotion.

**Methodology:** This article used legal research methods using the statutory, conceptual, and case approaches. The legal materials were examined through a prescriptive analysis to identify new normative constructions related to the cyber commotions, as interpreted in the Constitutional Court decision.

**Results:** The article's main findings show that the Court tends to acknowledge the dangers of vague and ambiguous-norms and relates this issue to the principle of legality, legal certainty, and the permissible limitations of rights under the International Covenant on Civil and Political Rights. The Court underscores the importance of normative clarity to ensure that such provisions do not become repressive instruments against political expression or criticism in digital spaces. In an era where public discourse largely takes place in the digital-space, criminalization based solely on the potential for commotion, without objective criteria, may hinder citizens' participation in democracy.

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**Applications of this Study:** This article recommends reformulating the norms by employing a more contextual, human rights-based approach to prevent the misuse of law that suppresses freedom of expression. A proportional balance between freedom of expression and political stability can be achieved within Indonesia's legal system. The scholarly contribution of this research will greatly assist researchers in understanding the meaning of the freedom of expression on social media and will support stronger law enforcement.

**Novelty/Originality of this Study:** The Constitutional Court's Decision on the Judicial Review of Articles 28(3) and 4A(3) of Law 1/2024 emphasizes the need of exercising prudence while balancing the protection of freedom of expression with measures to maintain public order.

**Keywords:** *Constitutional Court; Decision; Cyber; Commotion.*

#### **ABSTRAK**

**Tujuan penelitian:** Artikel ini menganalisis ketegangan antara kebebasan berekspresi dan stabilitas politik dalam konteks putusan Mahkamah Konstitusi Indonesia Nomor 90/PUU-XXI/2023, Nomor 78/PUU-XXI/2023, Nomor 7/PUU-VII/2009, dan Nomor 50/PUU-VI/2008 tentang penyebaran informasi melalui media sosial yang dianggap berpotensi menimbulkan keresahan.

**Metodologi:** Artikel ini menggunakan metode penelitian hukum dengan pendekatan undang-undang, konseptual dan kasus. Bahan hukum dianalisis menggunakan analisis preskriptif untuk menemukan norma baru terkait dengan keresahan siber yang telah ditafsirkan dalam Keputusan Mahkamah Konstitusi.

**Hasil:** Temuan utama artikel ini menunjukkan bahwa Mahkamah cenderung mengakui bahaya norma yang samar dan multitafsir, serta mengaitkan masalah ini dengan asas legalitas, kepastian hukum, dan pembatasan hak yang diperbolehkan berdasarkan Kovenan Internasional tentang Hak Sipil dan Politik (ICCPR). Mahkamah menggarisbawahi pentingnya kejelasan norma agar ketentuan tersebut tidak menjadi alat represif terhadap ekspresi politik atau kritik di ruang digital. Di era di mana wacana publik sebagian besar terjadi di ruang digital, kriminalisasi yang semata-mata didasarkan pada potensi kerusuhan, tanpa kriteria yang objektif, dapat menghambat partisipasi warga negara dalam demokrasi.

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**Kegunaan penelitian ini:** Artikel ini merekomendasikan perumusan ulang norma menggunakan pendekatan yang lebih kontekstual dan berbasis hak asasi manusia untuk mencegah penyalahgunaan hukum yang menekan kebebasan berbicara. Keseimbangan proporsional antara kebebasan berekspresi dan stabilitas politik dapat dicapai dalam sistem hukum Indonesia. Kontribusi keilmuan dari penelitian ini akan sangat membantu para peneliti dan akademisi dalam memahami makna kebebasan berekspresi di sosial media dan akan membantu penegakan hukum yang kuat.

**Kebaruan/Keaslian Kajian:** Putusan Mahkamah Konstitusi tentang pengujian Pasal 28 ayat (3) dan Pasal 45A ayat (3) UU No. 1 Tahun 2024 menegaskan perlunya kehati-hatian dalam menyeimbangkan upaya perlindungan kebebasan menyampaikan pendapat dengan upaya menjaga ketertiban umum.

**Kata kunci:** Mahkamah Konstitusi; Putusan; Siber; Kerusuhan.

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## INTRODUCTION

The digital era has brought significant changes in how society communicates, including in voicing criticism of state administrators (Aditya & Al-Fatih, 2021). The development of information technologies particularly the emergence of social media, has democratized the public sphere and created a new platform for citizen participation in political discourse and public policymaking (Benyamin & Al-Fatih, 2023). Through platforms such as Twitter (now X), Facebook, Instagram, and TikTok, citizens can directly express their opinions, criticisms, and even satire words about government policies, public officials' behavior, and state institutions' decisions. With their fast-paced, interactive, and viral nature, social media enables the spontaneous and dynamic formation of public opinion, which can significantly influence the direction of national discussions.

In this context, social media is no longer a mere medium for personal communication but has evolved into a deliberative digital space where participatory democracy takes place. This aligns with Habermas' (1996) view on the importance of the public sphere in forming rational collective will (Hexagraha & Setyorini, 2019). In Indonesia, this phenomenon is evident in various events, from protests against the revision of the Anti-Corruption Law (*Undang-Undang Komisi Pemberantasan Korupsi/UU KPK*), the #ReformasiDikorupsi (The Reformation is Corrupted) movement, to criticism of Constitutional Court decisions. These movements show that social media plays a crucial role in building political awareness and social solidarity among citizens.

However, the rapid development of social media also presents new challenges, especially when expressions are perceived as disturbing public order or political stability (Al-Fatih et al., 2022). In such cases, the state often resorts to criminal provisions—such as Article 160 of the

Criminal Code (*Kitab Undang-Undang Hukum Pidana/KUHP*) or Article 28(2) of the Electronic Information and Transactions Law (EIT Law)—to prosecute individuals or groups who voice sharp criticism. This approach raises serious concerns about freedom of expression, as there is potential for criminalizing legitimate political speech. Therefore, it is important to emphasize that the regulation of digital expression must comply with democratic and constitutional principles, so as not to turn into a repressive tool that silences the voice of the people.

From a constitutional perspective, freedom of expression is one of the main pillars of democracy that is explicitly guaranteed by Article 28E(3) of the 1945 Constitution (UD 1945), which states that “Everyone shall have the right to the freedom of association, assembly, and expression of opinion.” However, as in many other countries, the exercise of this freedom is not absolute. When expressions—especially those in the form of statements or mobilization on social media—are perceived as threats to political stability or public order, the state is justified in imposing proportional and constitutional limitations. This tension between the protection of individual rights and the collective interest lies at the heart of the problem in “social media commotion” cases following the Constitutional Court’s controversial decisions.

The phenomenon of “social media commotion” emerged in response to various Constitutional Court rulings deemed politically charged, including Decision No. 90/PUU-XXI/2023 on the Age Limit for Presidential and Vice-Presidential Candidates. This decision triggered a wave of public expression on social media, ranging from rational criticism to provocative speech. Amid the controversy, a crucial legal question arose: Can public expressions considered “digital commotion” be prosecuted under Article 160 of the Criminal Code on Incitement, or even under the provisions of the IET Law?

In several of its rulings, particularly Decisions No. 50/PUU-VI/2008 and No. 7/PUU-VII/2009, the Constitutional Court emphasized that restrictions on freedom of expression must meet three essential criteria: (1) be established by law, (2) serve a legitimate aim, and (3) be proportional. In practice, however, law enforcement officers often use Article 160 of the Criminal Code and Article 28(2) of the IET Law to prosecute individuals deemed to cause commotion on social media. Interestingly, in Decision No. 50/PUU-VI/2008, the Court stated that the term “commotion” in the context of Article 160 of the Criminal Code cannot be interpreted too broadly, especially not to include expressions in mass media or social media. According to the Court, a “commotion” must manifest as concrete and direct actions that physically and factually disrupt public order. In this context, the Court stated:

“The word ‘commotion’ cannot be interpreted as mere psychological unrest or confusion of opinions in mass or social media. There must be concrete evidence that a call or incitement caused a real disturbance to public order” (Constitutional Court Decision No. 7/PUU-VII/2009, p. 120).

The line between lawful expression and unlawful acts is becoming increasingly complex, especially when the distinction between criticism of state institutions and hate speech becomes blurred. This raises concerns about the criminalization of political expression in the digital space (Anggraeniko et al., 2023), which should serve as a venue for healthy public deliberation.

This issue becomes even more critical in the context of political tension. Following Constitutional Court decisions which were perceived as politically biased, the government and law enforcement authorities intensified surveillance of conversations on social media (Al-Fatih et al., 2019). Several activist accounts and ordinary citizens were summoned for allegedly spreading provocation or “incitement.” However, based on the Constitutional Court's parameters, such expressions—so long as they do not cause physical commotion or real disturbances in public spaces—cannot be prosecuted under Article 160 of the Criminal Code or the IET Law. This situation creates a serious tension between the constitutional principles of freedom of expression and the state’s tendency to maintain political stability. In the post-truth era and the age of digital algorithms, narratives contradicting government policies are often quickly labeled as disinformation or hate speech, regardless of their legitimate political context. As a result, the digital public space becomes narrower, and citizens increasingly hesitate to express their views openly.

On the other hand, the state has a legitimate interest in maintaining public order and preventing the escalation of social conflicts. In this regard, restrictions on freedom of expression may be justified under the principle of “necessity in a democratic society,” as stipulated in Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which Indonesia ratified through Law No. 12 of 2005. However, any such restriction must be carried out carefully based on clear laws. The use of criminal provisions to regulate expressions on social media that do not directly threaten state stability will only diminish the quality of constitutional democracy.

In practice, the tension between public expression and state response continues to escalate. Law enforcement tends to apply vague provisions in the IET Law to suppress expressions deemed “disruptive to public order,” even when such expressions constitute legitimate political criticism. This phenomenon raises concerns over the criminalization of free speech in the digital sphere. In fact, freedom of expression on social media is one form of citizen participation in deliberative democracy, which ideally should be guaranteed by the state (Aryanto, 2020).

This situation is further complicated by the growing narrative that “disruptive” digital expression poses a threat to national stability. Such a security-oriented approach risks shifting the meaning of democracy from participatory to repressive. This contradicts the principles enshrined in Article 19(3) of the ICCPR, which Indonesia ratified through Law No. 12 of 2005. This article states that restrictions on freedom of expression can only be justified if imposed by law; necessary to respect the rights of others; and to protect national security, public order, or public morals (Al-Fatih et al., 2023).

A fundamental question that arises is how the Constitutional Court, as the guardian of the constitution, interprets the balance between freedom of expression and the state's interest in maintaining stability. In a constitutional democracy, the Court’s task is not only to ensure that citizens’ rights are protected but also to prevent arbitrary restrictions on those rights (Butt, 2013). Therefore, the Court’s position in interpreting the limits of digital expression is pivotal in determining the direction of digital democracy in Indonesia.

A relevant previous study was written by Hogr Tarkhani in 2021, who said that unrest/instability is one of the few complicated terms that are hard or even impossible to define and cover all its dimensions in a single definition (Tarkhani, 2021). This research is quite different from Tarkhani's perspective. While he showed great concern on political commotion which causes civil instability, this research not only conceptualized commotion solely as a political phenomenon leading to civil instability, but also expanded the scope to include digital commotion on social media, which constitutes a new landscape of instability in the digital democracy era. While Tarkhani focuses on the definitional challenges and the multidimensional nature of instability, this research offers an additional perspective by examining how netizen-driven digital commotion can threaten public order in the absence of physical conflict. However, this research also shows a similarity related to instability, which occurs both among citizens in society and among netizens in social media.

Then, the research of Obiora et al. (2022), which took a place in Nigeria, found that disobedience to court orders and the use of state institutions against political opposition contribute to the decline of democracy, highlighting the importance of a balanced approach to social media regulation to protect freedom of expression and maintain a democratic society (Obiora et al., 2022). The advantages of this paper stands on the idea of *salus populi suprema lex esto*, which determined that people's safety is the highest level of law. This paper highlighted the new *rechtsidee* from the Constitutional Court through its decision to annul the previous terms about social media commotion. As is known, Indonesia and Nigeria might have the similarities related to their patterns of democracy. So, Obiora et al.'s (2022) paper influenced this research how the court has a significant power to threaten social media commotion.

Accordingly, the issue that requires in-depth examination is how to interpret the concept of "commotion" within the frameworks of criminal and constitutional law, and how the Constitutional Court plays a role in maintaining the balance between freedom of expression and political stability. This article departs from that framework, critically analyzing legal developments and Constitutional Court decisions related to speech on social media and their implications for the constitutionality of restricting public expression in the digital era. Thus, the research questions of this paper, namely: 1) What is the meaning of freedom of expression in the digital era? 2) What is the meaning of social media commotion in the Constitutional Court decision? 3) What is the best formula to understand the freedom of expression in social media? This research offers a very strong novelty due to its findings in explaining the impact of social media commotion to the society, both citizens and netizens. The objectives of this research are: (1) To examine the conceptual meaning of freedom of expression in the digital era, (2) To analyze how the Constitutional Court defines and interprets social media commotion in its decision, and (3) To formulate the most appropriate framework for understanding freedom of expression on social media.

## RESEARCH METHOD

This was research which used the normative legal research method (Al-Fatih, 2023), with the jurisprudence, conceptual, and case approaches (Al-Fatih & Siboy, 2021). Legal research method means a systematic process of identifying, analyzing, and interpreting both

primary and secondary legal sources in order to answer legal questions, construct legal arguments, and develop a coherent understanding of legal norms and their application (Negara, 2023). This research takes a part by examining the overlapping norm related to social media commotion within the frameworks of criminal and constitutional law and the role of the Constitutional Court in determining it. Thus, the conceptual approach was used to describe and understand the meaning of commotion, social media commotion, and freedom of expression. This research also takes the example of some cases related to the Constitutional Court decision, such as Decisions No. 90/PUU-XXI/2023, No. 78/PUU-XXI/2023, No. 7/PUU-VII/2009, and No. 50/PUU-VI/2008. The primary legal sources were taken from the Constitution, Criminal Code, IET Law, *Siracusa* Principles, and ICCPR. Then, for the jurisprudence approach, both the conceptual approach and the case approach are subjects of the study. The jurisprudence approach looks at the deeper meaning, purpose, and principles behind laws, rather than just applying them. It regards applying critical thinking on the nature of law, justice, rights, and legal systems.

## RESULTS & DISCUSSION

### **Freedom of Expression in the Digital Space: Between Constitutional Rights and Their Limits**

Freedom of expression is one of the fundamental pillars in a democratic system (Herbert, 2023; Hooven, 2023). In the Indonesian constitutional context, this right is strongly guaranteed through Article 28E clauses (2) and (3) of the 1945 Constitution, which state that every person has the right to the freedom of belief, to express thoughts and attitudes in accordance with their conscience and the freedom of association, assembly, and expression. Additionally, Article 28F of the Constitution provides a basis for the right to seek, obtain, possess, store, process, and disseminate information using all available channels. These guarantees emphasize that freedom of expression is not merely an individual right but a crucial instrument for supervising the exercise of power and ensuring government accountability.

These constitutional guarantees are further reinforced by international and national legal instruments. As a state party to the International Covenant on Civil and Political Rights (ICCPR) since 2005, Indonesia is obligated to uphold Article 19 of the ICCPR, which guarantees the right to hold opinions without interference and the right to seek, receive, and impart information and ideas through any media regardless of frontiers (Hammar, 2022). At the national level, Law No. 39 of 1999 on Human Rights affirms freedom of expression as part of citizens' civil and political rights that cannot be reduced, except under specific circumstances explicitly justified by law.

In the digital era, freedom of expression has expanded in form and reach. Social media platforms, such as Twitter (X), Facebook, Instagram, and TikTok, have become new public spheres where social interaction, the exchange of ideas, and the expression of identity and political aspirations occur massively and spontaneously (Wismashanti, 2023). Habermas (1989) in his concept of the “public sphere,” stated that the public space is a place where citizens can freely engage in discussion and form rational opinions without state or market domination. In

this context, social media has broadened the scope of public space, reaching millions of people beyond geographical and temporal boundaries. Digital democracy is growing rapidly, marked by the active participation of citizens in political processes through digital channels, including online petitions, digital campaigns, and online public debates.

However, these advancements are not without threats from disproportionate legal regulations. In practice, freedom of expression in Indonesia's digital space is frequently curtailed by vague legal provisions, such as Article 160 of the Criminal Code, which addresses incitement, and Article 28(2) of Law No. 11 of 2008 on Electronic Information and Transactions (IET Law), which prohibits the dissemination of information intended to incite hatred or hostility toward individuals or groups based on ethnicity, religion, race, or inter-group relations (Na'imah et al., 2017). These provisions are open to multiple interpretations due to the lack of clear definitions for terms like "incitement" and "hatred," creating space for the criminalization of expressions that are otherwise lawful and constitutionally protected.

Numerous cases show the use of these provisions to target activists, journalists, or netizens who voice criticism against government policies or public officials. Such law enforcement practices create a chilling effect in society, weakening the quality of democracy and civil liberties (Anggraeniko et al., 2023). Instead of serving as tools for regulating healthy digital communication, these legal provisions hinder public participation and obstruct constructive expression. From the perspective of international human rights law, restrictions on freedom of expression are only considered legitimate if they meet four main criteria codified in General Comment No. 34 by the UN Human Rights Committee: legality (must be based on clear and accessible law), legitimacy (must serve a legitimate aim, such as protecting national security or public order), proportionality (must be proportionate to the interest being protected), and necessity (must be truly necessary in a democratic society). These principles are consistent with modern human rights legal theory, which emphasizes minimal and rational restrictions.

As a democratic state governed by law, Indonesia should adopt these four principles as its main reference in drafting and enforcing regulations affecting freedom of expression, including in digital spaces (Aditya & Al-Fatih, 2021). Unfortunately, current legislative and law enforcement practices still show an imbalance between protecting citizens' freedoms and prioritizing political stability or national security. Therefore, discussions on freedom of expression in the digital realm must be framed within the constitutional rights guaranteed by the 1945 Constitution, strengthened by international norms, and implemented through national laws and policies that uphold proportionality and accountability. In a democratic society, digital expression is not only lawful but essential for sustaining public dialogue, exercising social control over power, and realizing an inclusive and participatory society (Al-Fatih & Aditya, 2024).

To address these challenges, there must be harmonization between maintaining order and national security and ensuring that criticism is not criminalized. Legislators and law enforcement officials must reform repressive approaches and replace them with educational and dialogical strategies. Additionally, stronger legal protections should be afforded to individuals who exercise their right to peaceful expression, ensuring they are not silenced by regulations that should protect, not punish. Freedom of expression in digital spaces is not a new anomaly



in constitutional law, but a logical development of a living constitution. Ignoring the digital dimension of constitutional rights discourse is akin to turning a blind eye to 21<sup>st</sup>-century political realities. In the digital sphere, freedom of expression operates not only as a constitutional guarantee but also as a right that is inherently bounded by the need to protect public order, individual reputation, national security, and the rights of others. These limits are not arbitrary; they derive from constitutional principles, proportionality assessments, and the state's obligation to prevent harm, while ensuring that any restriction is necessary and narrowly tailored. Therefore, the state must recalibrate its legal policies to remain responsive to contemporary digital dynamics such as virality, disinformation, algorithmic amplification, and online harassment, without eroding the fundamental democratic freedoms enshrined in the constitution. Properly defining these limits is essential to prevent the digital space from becoming a zone of unchecked harm, while avoiding excessive state intervention that could suppress legitimate expression and democratic participation.

### **The Constitutional Court's Interpretation of "Social Media Commotion": Case Review and Consequences**

Upon closer examination, Articles 28(3) and 45A(3) of Law No. 1 of 2024 do not provide a clear definition of the phrase "false news causing commotion," which opens the door to restricting criticism and potentially criminalizing legally permissible actions based solely on the subjective interpretation of law enforcement authorities (Al-fatih & Aditya, 2024). Specifically, Article 45A(3) of Law No. 1 of 2024 stipulates criminal penalties for anyone who disseminates false news causing commotion, stating that any person committing the act described in Article 28(3) of Law No. 1 of 2024 is subject to imprisonment of up to six (6) years and/or a fine of up to IDR 1,000,000,000 (one billion rupiahs).

Due to the potential for multiple interpretations in Article 28(3)—particularly regarding the phrase "false news causing commotion"—the Constitutional Court, in Decision No. 78/PUU-XXI/2023, gave special attention to three elements: (1) "false news or notification," (2) "commotion or disturbance," and (3) "uncertain or exaggerated news," which were examined systematically by referencing Law No. 1 of 1946. Regarding the elements of "false news or notification" and "uncertain or exaggerated news," the Court observed the inherent ambiguity, stemming from the difficulty in defining clear parameters or standards for the "truth" of something expressed by the public, as these assessments often vary depending on individual perspectives, including religious, cultural, and social values.

Such uncertainty in determining "truth" can easily lead to the assumption that someone has committed an offense simply by sharing information that may be considered incorrect or exaggerated by others. If individuals are only allowed to express what is deemed "true" (i.e., not false or not exaggerated), without any objective or consistent criteria—whether in public spaces or private domains, this will severely limit the freedom to think creatively and discover truth through discourse. As a result, the public would no longer have the freedom to express their opinions as part of democratic participation, despite the fact that democratic decisions require input and information from the people (Wiratraman, 2020). The state, therefore, must not impose absolute requirements that opinions must only reflect "truth" as a condition for

exercising freedom of expression. Instead, it must allow citizens the space to express themselves freely, as guaranteed by the 1945 Constitution.

Furthermore, the Court viewed the phrases “false news or notification” and “uncertain or exaggerated news” in Articles 14 and 15 of Law No. 1 of 1946 as imposing restrictions on the freedom of expression in public, which can be misused as legal grounds to criminalize individuals for spreading information, even if that expression was intended as constructive feedback or criticism. In proving whether or not a certain news article is fake, the state proves this using some portals, such as [turnbackhoax.id](#), [kominfo.go.id](#), [cekfakta.com](#) or [mafindo.or.id](#). The state should assess whether such expressions reflect intent and effort to contribute to public discourse, rather than focusing solely on the “false” or “exaggerated” character of the message. The Constitutional Court thus concluded that these phrases could render the legal provisions in question into so-called “rubber articles” (i.e., vague and stretchable, a popular term in Indonesia to refer to unclear laws) that create legal uncertainty.

Moreover, with the advancement of information technology, people can now easily and quickly access information often without knowing whether it is true, false, or exaggerated—leading to its rapid dissemination. This reality increases the risk that individuals could face criminal sanctions under Articles 14 and 15 of Law No. 1 of 1946, even when they lacked intent to deceive or disrupt public order.

Regarding the term “commotion or disturbance” as mentioned in Article 14, the explanatory notes define “commotion” as something more serious than anxiety, capable of disturbing the emotional state of a significant portion of the population. The Court found that there is a lack of clarity in this term’s threshold for harm—specifically, whether it should also be interpreted as a threat to national security. In the Great Indonesian Dictionary as quoted by Suganda, the word *onar* (commotion) can mean disturbance, unrest, or commotion, which have different degrees of severity and implications (Suganda et al., 2022). As such, the use of this term in the law is inherently ambiguous and open to multiple interpretations, creating legal uncertainty about whether someone’s actions actually meet the criteria for criminal liability.

If this ambiguity persists, individuals may be punished for voicing criticism that—while constitutionally protected—could be subjectively deemed to cause “commotion.” This could ultimately suppress legitimate public oversight of government policies. In the current era of rapid information flow and broad access to media, particularly social media, public expression and criticism of government policies should be viewed as a democratic dynamic—not automatically as commotion which justifies criminal charges. Therefore, if a person shares news or messages—even those of questionable accuracy—via any media platform and such messages spark public debate, that discourse should not be equated with commotion warranting criminal penalties. The state proves whether or not a certain news is fake by using some portals, such as; [turnbackhoax.id](#), [kominfo.go.id](#), [cekfakta.com](#), or [mafindo.or.id](#). Then, the findings from those portals clarified into the court and spreaded into the mainstream media, such as Kompas, Jawa Pos, etc. However, such findings do not possess evidentiary authority under criminal procedures; any legal processes against an individual must be initiated through proper channels, such as personal police reports, formal investigations, and evidentiary examinations that meet the standards of procedural law. Therefore, the use of fact-checking portals should be

understood as complementary to, rather than a substitute for, the formal legal mechanisms required to establish culpability in court.

Similarly, the term “uncertain or exaggerated news” or “incomplete news” in Article 15 of Law No. 1 of 1946, as explained, refers to rumors or news broadcast with additions or omissions. The Court noted that it is difficult to define clear boundaries for “incomplete or exaggerated news,” as this could be interpreted as invalid or unreliable data, overlapping conceptually with “false news” in Article 14. Moreover, the redundancy of these terms, without clear explanatory distinctions in the legislative notes, violates key principles of criminal legal drafting: laws must be written (*lex scripta*), clear (*lex certa*), and strict without analogy (*lex stricta*). Therefore, the vague and broadly defined wording of Articles 14 and 15 renders them unconstitutional under Article 28D(1) of the 1945 Constitution, which guarantees legal certainty and equal treatment under the law.

In summary, the Constitutional Court held that the phrases “false news or notification” and “uncertain or exaggerated news” in Articles 14 and 15 of Law No. 1 of 1946 are problematic and prone to misuse for criminal prosecution, even when the acts in question reflect constructive criticism—something that should be protected, not punished. These terms make the provisions “rubber articles,” generating legal uncertainty. Likewise, the term “commotion” in Article 14 is open to broad interpretation and is outdated given the rapid evolution of digital communication. Public discourse and criticism on government policy in the digital space should be regarded as part of democratic participation, rather than as commotion justifying criminal action.

Law No. 1 of 1946 focuses on false information that causes commotion among the public, without distinguishing whether such commotion occurs in the physical or digital space. In contrast, Law No. 1 of 2024 restricts criminal liability to disturbances of public order in physical space. Article 28(3) of Law No. 1 of 2024 states:

“Any person who deliberately disseminates Electronic Information and/or Electronic Documents known to contain false notifications that cause commotion in society.”

On the other hand, some articles in the new Criminal Code (Law No. 1 of 2023), explain some “fake news” as follows:

1. Article 263 - Broadcasting false news that causes commotion. The article states:

(1) Any person who broadcasts, notifies, or conveys false news or information that causes commotion in the community shall be punished by imprisonment for a maximum of 6 (six) years or a fine.

(2) If the act causes commotion or disturbance of security, the penalty is more severe: a maximum of 10 (ten) years' imprisonment.

2. Article 264 - Broadcasting false news by those who believe it to be true. If someone spreads news that turns out to be false but believes it to be true, the penalty is lighter: A maximum of four years of imprisonment or a fine.

3. Article 264 clause (2):

If the act continues to cause commotion, even if the perpetrator believes the news is true, they can be punished by imprisonment for a maximum of 6 years.

According to the new Criminal Code, the person who spreads "fake news" could be jailed if those actions lead to a commotion. However, the explanatory note clearly limits the definition of "commotion" to disturbances of public order in physical space, not in digital or cyber space. This aligns with Constitutional Court Decision No. 78/PUU-XXI/2023, which requires that criminal prosecution under this article is limited to physical disruptions of public order. This interpretation ensures that Article 28(3), as a material offense emphasizing the consequence of the act, complies with the principles of *lex scripta*, *lex certa*, and *lex stricta*. As for Article 45A(3) of Law No. 1 of 2024, its constitutionality depends on harmonization with the interpretation of Article 28(3). Thus, both articles are conditionally unconstitutional to the extent that the term "commotion" is not interpreted strictly as referring to physical disturbances of public order—not digital commotion. Achieving Balance Between Freedom and Stability: Reformulating the Legal Approach to Digital Expression.

The case of social media commotion in Indonesia highlights the dual role of digital platforms in facilitating both activism and governmental control. Social media has emerged as a powerful tool for mobilizing protests, as seen in the #GejayanMemanggil (Gejayan Calls) movement, which successfully gathered over 5,000 participants in Yogyakarta against controversial laws (Fuadi, 2020). Additionally, the Omnibus Law protests demonstrated how social media can amplify public dissent and influence policy debates (Rafiqi, 2021; Sutan et al., 2021; Priambudi et al., 2021). However, the Indonesian government has also responded to commotion by imposing internet shutdowns, particularly during riots, to curb the spread of misinformation, raising concerns about democratic freedom (Rahman & Tang, 2022).

The transformation of the public sphere into a digital form has created legal challenges that have not been fully anticipated by existing regulatory frameworks. Amid the torrent of information, freedom of expression has expanded in scope while also experiencing intensified surveillance by the state. Law enforcement authorities frequently face a dilemma: how to maintain political stability while ensuring the constitutional rights of citizens (Naufal, 2024). In this context, legal approaches can no longer rely on repressive, conservative paradigms but must instead evolve into adaptive and contextual legal strategies.

An adaptive legal approach is defined as a legal response that keeps pace with social and technological change, particularly in interpreting digital expressions. The digital context demands new sensitivity in assessing expressions that emerge rapidly, often involving symbolic language, satire, or other non-verbal forms of communication (Al-Fatih & Aditya). The mismatch between existing positive laws and the evolving nature of digital expression generates normative tensions that can lead to the criminalization of otherwise lawful speech (Al-Fatih & Aditya). Therefore, legal reform must go beyond the text of the law and consider social context, expressive intent, and the potential impact on a healthy public sphere.

A key issue in regulating digital expression is the misuse of legal instruments by law enforcement, such as the police force and prosecutors. Flexible provisions like Article 160 of the Criminal Code (on incitement) and Article 28(2) of the IET Law (on hate speech) are often employed to target individuals who criticize the government (Purnomo et al., 2023). This problem is compounded by limited digital literacy among law enforcement officers and weak accountability mechanisms. In many cases, individuals expressing peaceful criticism are

prosecuted without adequate legal justification, producing a chilling effect that deters public participation in democratic discourse.

Oversight of potential legal abuse is urgently needed. Internal and external mechanisms to monitor law enforcement must be strengthened. The National Police Commission, the National Human Rights Commission, and the Ombudsman of the Republic of Indonesia should be given broader authority to supervise and evaluate the application of sensitive legal provisions related to expression (Hamid, 2019). Additionally, civil society and independent media play a crucial role in exercising social control over state repression. When oversight is effective, law enforcement can be implemented proportionally and aligned with the principles of democratic rule of law.

To bolster the protection of digital expression, comprehensive reform of criminal law is essential. The revised Criminal Code must embody the principles of constitutional democracy by setting clear boundaries for criminal offenses, ensuring that they do not become tools for silencing legitimate speech. Likewise, the IET Law, which has often been used to prosecute digital expression, must be substantially revised to eliminate vague, ambiguous, and disproportionate provisions. Articles in the IET Law should be framed with a restorative justice approach, focusing on education and reconciliation, rather than punishment alone (Syahriar, 2021).

In this regard, the Constitutional Court has a strategic role as the guardian of the constitution. Through its authority to conduct judicial review, the Court can help harmonize positive law with the principles of freedom of expression. In some of its rulings, the Court has already demonstrated support for human rights. For example, in the Decision Number 114/PUU-XXII/2024, the Court considers that the 1946 Law places emphasis on acts of disseminating false news or information capable of creating public commotion, without distinguishing whether such commotion occurs in physical spaces or non-physical environments. Consequently, disturbances that arise outside the physical sphere may also fall within the scope of the 1946 Law. This stands in contrast to the 2024 Law, which limits the consequences of disseminating false information to riots that disrupt public order in physical spaces. Nonetheless, closer examination of the regulation governing the act of spreading false news or information through information technology that results in public riots as stipulated in Article 28(3) of the 2024 Law reveals legal uncertainty when connected to the elucidation of Article 28(3). The elucidation explicitly states that “riot” refers to a condition that disrupts public order in physical space, not in digital or cyber spaces. In other words, the elucidation provides a clear limitation that the dissemination of false information must result in physically occurring public disorder, excluding turmoil occurring solely in digital or cyber environments.

In addition, that restriction aligns with Constitutional Court Decision No. 78/PUU-XXI/2023, implying that law-enforcement authorities may only pursue legal action against the dissemination of false information that triggers physical disturbances among the public. Such an approach is intended to ensure that the application of Article 28(3) of the 2024 Law as material offense emphasizes the consequences of the act or the resulting riot complies with the principles of *lex scripta*, *lex certa*, and *lex stricta*. Furthermore, regarding the constitutionality

of Article 45A(3) of the 2024 Law, which is also challenged by the Petitioner, once Article 28(3) is interpreted as the primary norm, the legal consequence is that Article 45A(3) must be read in harmony with the constitutional interpretation of Article 28(3) as elaborated above. Based on the foregoing legal considerations, the term “riot” in Article 28(3) and Article 45A(3) of the 2024 Law must be declared unconstitutional and conditionally non-binding insofar as it is not interpreted as referring to a condition that disrupts public order in physical space, rather than in digital or cyber environments.

However, this role must be further strengthened through a more proactive and progressive interpretive approach to laws governing digital communication. The Constitutional Court should not confine itself to a literal reading of statutory provisions but must engage in a dynamic constitutional interpretation that recognizes the evolving nature of digital expression, the fluidity of online interactions, and the heightened risks of state overreach in the digital sphere. Such an interpretive stance is essential to ensure that constitutional guarantees remain effective and meaningful amid rapid technological transformation. At the same time, the Supreme Court and the general judiciary must increasingly assume the function of safeguarding free expression by refusing to legitimize the criminalization of speech that does not satisfy the strict and unequivocal elements of a criminal offense. Judicial bodies should exercise rigorous scrutiny when evaluating cases involving online speech, differentiate between harmful conduct and constitutionally protected expression, and reinforce the principle that criminal sanctions must be applied as a last resort. Through consistent jurisprudence aligned with constitutional values, the judiciary as a whole can establish a robust protective framework that prevents the misuse of criminal law as a tool to suppress dissent, criticism, or legitimate public discourse.

Moreover, strategies to maintain political stability need not conflict with freedom of expression. The state can build political and social resilience through open and healthy public participation, not repression. Stability achieved through conflict prevention and political education is far more sustainable than that achieved through coercion. The government should invest in digital literacy, tolerant civic education, and intergroup dialogues. When the public has a sound understanding of the boundaries and responsibilities of expression, the digital public sphere becomes more constructive and less susceptible to polarization.

Achieving a balance between freedom and stability is not easy—but it is entirely possible, when constitutional principles guide the interpretation of laws governing false information. The contrast between the 1946 Law and the 2024 Law illustrates this tension. While the 1946 Law adopts a broad approach that encompasses commotion occurring in both physical and non-physical spaces, the 2024 Law narrows liability to commotion that disrupts public order in physical space. This more precise limitation offers better protection for digital expression and reduces the risk of over-criminalization. The legal uncertainty surrounding Article 28(3) of the 2024 Law, especially when read together with its elucidation, shows the importance of a clear constitutional boundary. The Constitutional Court, through Decision No. 114/PUU-XXII/2024, affirms that criminal offenses must be linked to concrete physical disturbances, not merely digital turmoil. This ensures that Article 28(3), as a material offense, fulfills the principles of *lex scripta*, *lex certa*, and *lex stricta*. Meanwhile, in this framework, achieving balance becomes a realistic constitutional task. By requiring Article 45A(3) to follow the constitutionally-refined

meaning of “riot,” the judiciary preserves public order without unnecessarily restricting legitimate online expression. Thus, harmony between freedom and stability is attainable through precise norms, clear interpretive limits, and protection against the criminalization of non-physical online activities.

The key lies in political will: the commitment to use law as an instrument of protection, not oppression. When law is applied wisely, digital expression can flourish without undermining social cohesion or state integrity. A democratic rule-of-law state should facilitate citizens’ expression as part of the deliberative process toward more accountable policymaking. In other words, reforming the legal approach to digital expression must be comprehensive and guided by constitutional justice (Kharisma & Satria, 2024). Adaptive legal strategies, robust oversight of law enforcement, criminal law reform, proactive judicial roles, and inclusive stability measures are all essential components of a digital ecosystem that balances freedom with public order. In this framework, freedom of expression is not a threat—it is an asset for a mature and responsive democracy.

## CONCLUSION

As mentioned in the the Constitutional Court’s decision on the judicial review of Articles 28(3) and 45A(3) of Law No. 1 of 2024, freedom of expression underlines the importance of caution in balancing the protection of freedom of expression with efforts to maintain public order. In its ruling, the Court acknowledged that if not clearly defined, phrases such as “false news” and “causing unrest” carry high interpretive risks and could be misused arbitrarily by law enforcement. For this reason, when formulating criminal offenses that affect citizens’ constitutional rights, the Court emphasized the necessity of strict normative limits and objective legal parameters. This ruling also reflects the Court’s effort to adopt a progressive approach, taking into account international standards, such as the ICCPR and the *Siracusa* Principles. The Court stressed that any restriction on the right to expression must be precisely formulated; it must be necessary in a democratic society and must be directed toward legitimate objectives.

In the context of fast-moving, large-scale, and often unverified communication via social media, the Court rejected repressive approaches that could silence public criticism or healthy democratic discourse. It affirmed that citizen expression—even when provocative or controversial—is part of the freedom protected by the Constitution. Thus, the Court’s decision not only affirms the protection of freedom of expression within a democratic rule-of-law framework, but also serves as a vital guideline for lawmakers and law enforcement authorities to avoid the arbitrary use of criminal law against citizen expression. The constitutional interpretation of vague criminal provisions is key to preventing abuse of power and ensuring that the law remains a tool of justice—not a weapon of repression.

This research’s scientific contribution lies in providing a refined interpretation of the Constitutional Court’s reasoning regarding the distinction between physical and digital commotion, particularly in relation to Article 28(3) and Article 45A(3) of the 2024 Law. By

clarifying how the Court construes the term ‘riot’ exclusively as a disturbance occurring in physical space, this study strengthens doctrinal understanding of digital expression and prevents the over-criminalization of online activities that do not result in tangible public disorder. Moreover, this research contributes to the broader constitutional discourse by demonstrating how judicial interpretation can serve as a safeguard for freedom of expression while still preserving public order, thereby offering a conceptual framework for balancing constitutional rights and state stability in the digital era.

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