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STRUCTURAL OVERBREADTH? INDONESIA'S STATUTORY LIMITATIONS ON FREEDOM OF EXPRESSION UNDER INTERNATIONAL HUMAN RIGHTS STANDARDS

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Abstract: *This study critically examines the limitations imposed on freedom of expression within Indonesia's constitutional and statutory frameworks, as well as the criminal offences that enforce these restrictions, in relation to international human rights standards. Although Indonesia has formally committed to the International Covenant on Civil and Political Rights and provides constitutional guarantees of freedom of expression, recent legislative developments, particularly the 2024 EIT Law and the revised National Criminal Code, have maintained or reinstated broadly defined offences, including those penalising criticism of public officials. Using a normative juridical methodology, this analysis evaluates Article 28J of the 1945 Constitution, Law No. 39 of 1999, and related statutes against the standards set forth in Article 19 of the Covenant, General Comment No. 34, and the Siracusa Principles. The findings indicate that: (1) international law requires any restriction on expression to meet a rigorous three-part test; (2) the permissible grounds for such restrictions are exhaustively and narrowly defined, excluding protection of institutional honour or the advancement of political interests; and (3) Indonesian law remains inadequate, allowing vague and disproportionate limitations as well as custodial sanctions. The persistent recurrence of these deficiencies, despite repeated judicial invalidation, highlights a structural challenge that necessitates comprehensive legislative reform.*

Keywords:*Limitation; Freedom of Expression; Human Rights.*

I. INTRODUCTION

Freedom of expression sits close to the foundation of democratic self-government, not merely an individual entitlement but the condition that makes public accountability and the correction of official error possible. Indonesia's post-*reformasi* constitutional order reflects this understanding: Article 28E of the 1945 Constitution guarantees the right to have opinions and to communicate them through any available channel. It was also ratified by the International Covenant on Civil and Political Rights (ICCPR) through Law No. 12 of 2005, which formally bound the state to the treaty's protective architecture.

The question has acquired renewed urgency in recent years. The second amendment to the Electronic Information and Transactions Law, enacted in early 2024, retained and in places sharpened several offences that had drawn sustained domestic and international criticism over the preceding decade. In other situations, the long-awaited national Criminal Code, Law No. 1 Year 2023, became effective in January 2026 and revived some offences, such as insult of the President and insult of public authority, that had either lain dormant since the colonial period or had been previously invalidated by the Constitutional Court. Civil society monitoring reflects the practical consequences: the CIVICUS Monitor placed Indonesia on its global watchlist in mid-2025 and downgraded its civic space rating to "obstructed," citing legal manipulation and the tightening of expression-related statutes as contributing factors, while domestic digital rights organisations have documented a rising number of related prosecutions.[1] Whatever rationale the legislature offers, the cumulative effect has been to place an unusually large share of ordinary political and social communication within reach of the criminal law.

It is not a coincidence that the limitation clauses can lead to this result. Article 28J of the Constitution and Articles 70, 73, and 74 of Law No. 39 of 1999 on Human Rights permit restrictions on rights by law for reasons such as public morality, religious values, security, and "the interests of the nation." However, neither document clearly explains how these reasons should be tested, balanced, or limited in their use. This lack of detail has had real effects in practice. While it makes sense for a constitution to use broad language, even the laws that follow are seen as lacking clear limits on how far human rights can be restricted.[2]

Over roughly two decades, a succession of constitutional review petitions, concerning provisions ranging from insult of the head of state to online defamation and the dissemination of information said to cause unrest, has repeatedly returned to the same underlying objections: that a formulation is too imprecise to be foreseeable,[3] or that it shields an interest the Constitution was never intended to protect from criticism.[4][5] That the legislature has, more than once, reintroduced

[1] CIVICUS, "Monitor Tracking Civic Space: Indonesia on Watchlist as President Prabowo's Government Crushes Civic Freedoms," Monitor Civicus, 2025, https://monitor.civicus.org/watchlist-july-2025/indonesia/.

[2] John O. McGinnis and Michael B. Rappaport, "The Constitution and the Language of the Law," *William & Mary Law Review* 59, no. 4 (2018): 1321–1411.

[3] Mahkamah Konstitusi Republik Indonesia, "Putusan Nomor 013-022 PUU-IV/2006" (Jakarta, 2006).

[4] Mahkamah Konstitusi Republik Indonesia, "Putusan Nomor 78/PUU-XXI/2023" (Jakarta, 2023).

[5] Mahkamah Konstitusi Republik Indonesia, "Putusan Nomor 115/PUU-XXII/2024" (Jakarta, 2024).

language the Constitutional Court had struck down suggests the difficulty recurs across the general architecture of limitation, rather than in any single statute.

The existing Indonesian legal literature engages with parts of this picture without, for the most part, connecting them. One strand examines the constitutional limitation clause and the Human Rights Law in relative isolation from the criminal provisions that operationalise them. A second strand analyses individual offences, typically defamation under the Electronic Information and Transactions Law, without extending the inquiry to the parallel, and since 2023 considerably expanded, set of expression-related offences in the national Criminal Code. A third, smaller body of work invokes international standards in passing, generally citing Article 19 of the ICCPR without working through the fuller interpretive apparatus of General Comment No. 34 and the Siracusa Principles, both of which offer more granular tests of legality, legitimate aim, and necessity than the bare text of the Covenant allows.[6] The pace of legislative and judicial change, including the 2024 EIT Law amendment, the Criminal Code's entry into force in January 2026, and a cluster of Constitutional Court decisions handed down between 2023 and 2025, has further left much earlier scholarship addressing a legal landscape that no longer fully exists.

This study addresses that gap by treating Indonesia's limitation framework as a single, continuous object of analysis: tracing it from the constitutional and statutory limitation clauses through to the criminal offences currently in force under both the Electronic Information and Transactions Law and the national Criminal Code, and assessing the whole against the *three-part test* elaborated in *General Comment* No. 34 and the *Siracusa Principles*. Its contribution lies less in identifying any single defective provision, several of which have already attracted scholarly and judicial attention individually, than in demonstrating that comparable defects recur across instruments and across two decades of legislative revision, pointing to a structural rather than incidental problem. Accordingly, the study aims to determine the extent to which Indonesia's constitutional and statutory provisions restricting freedom of expression. Together with the criminal offences that give them practical effect, satisfy the requirements of legality, legitimate aim, and necessity and proportionality under international human rights law, and to identify the specific points at which domestic law departs from those requirements, an assessment intended to inform the legislative and judicial reform such departures require.

[6] United Nations Human Rights Committee, "General Comment No. 34: Article 19: Freedoms of Opinion and Expression, U.N. Doc. CCPR/C/GC/34" (Geneva, 2011).

II. RESEARCH METHODS

This study adopts a normative juridical method[7], examining limitations on freedom of expression as questions of legal norms rather than enforcement. The analysis employs both a statute approach, which reviews relevant provisions in the 1945 Constitution, Law No. 39 of 1999 on Human Rights, the Electronic Information and Transactions Law, and the Criminal Code. The *comparative approach* references international human rights standards, including Article 19 of the ICCPR, General Comment No. 34, and the Siracusa Principles. Legal materials are analysed qualitatively, supported by scholarly literature, jurisprudence, and the perspectives of the Human Rights Committee.

III. ANALYSIS AND DISCUSSION

a. The Conceptual Starting Point for Limiting Freedom of Opinion and Expression

Any assessment of restrictions on freedom of expression under international human rights law must begin from a single premise: such restrictions are governed by a demanding standard of justification. A preliminary conceptual distinction is essential here, namely the difference between the freedom to hold an opinion and the freedom to express that opinion. General Comment No. 34 affirms that the right to hold opinions occupies an almost absolute position: it may not be criminalised, coerced, or subjected to intimidation, arrest, detention, or imprisonment merely because a person holds a particular view.[8]

The expression of an opinion, by contrast, may indeed be restricted, but only under stringent conditions. Even an expression regarded as deeply offensive remains, in principle, within the protective scope of Article 19 of the ICCPR. The decisive question is therefore not whether particular speech offends the State, the majority, or public officials, but whether the restriction itself satisfies the rigorous requirements of international human rights standards. General Comment No. 34 describes a wide protective scope for Article 19. This scope includes political discourse, commentary on public affairs, journalism, human rights advocacy, artistic and cultural expression, teaching, religious discourse, non-verbal expression, and dissemination through electronic media and the internet. As a result, restrictions on freedom of expression should be treated as exceptions, not the rule. The United Nations Human Rights Committee has warned that the relationship between rights and restrictions, and between norm and exception, should not be reversed. The primary focus must be on protecting the right itself. Limitation is justified only when

[7] Soerjono Soekanto and Sri Mahmudji, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)* (Jakarta: Raja Grafindo Persada, 2001).

[8] *Ibid.*

it meets the requirements of legality, legitimate aim, necessity, and proportionality.[9] This position is reinforced in the Committee's jurisprudence. In Faurisson v France case, set out in Communication No. 550/1993 and adopted on 8 November 1996. The Committee held that the State's authority to restrict expression cannot be construed as a licence to prohibit unpopular or offensive speech; restrictions must be proportionate and must not imperil the existence of the right itself.[10]

The Siracusa Principles further strengthen this conceptual foundation. They specify that no limitation on a right may be recognised beyond those allowed by the Covenant. Limitations must not impair the core of a right. All limitation clauses must be interpreted strictly and in favour of the right at issue. Limitations cannot be applied for purposes other than those for which they were intended, and they must not be imposed arbitrarily. The burden of justification always rests with the State. In summary, a legitimate limitation is not limited to those with a statutory basis. It must also be defensible in accordance with the principles of the rule of law, democracy, and respect for human dignity.[11]

For scholarly analysis, this carries an important methodological consequence. When a State restricts expression, the legal question is not "does the government have a reason?" but rather "does that reason fall within the grounds recognised by human rights law, is it prescribed by law properly so called, and is the restriction genuinely necessary and proportionate?" These questions are operationalised through the three-part test. The three-part test derives from Article 19(3) of the ICCPR, is elaborated in General Comment No. 34, and is further developed in the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights.[12] The test comprises three cumulative requirements: legality, legitimate aim, and necessity–proportionality.[13] Failure of any single element renders the restriction unsustainable. For example, if a restriction seeks to achieve a worthy objective but is based on vague legal grounds, it is not sufficient. Likewise, even when a legal basis is clear, the restriction is still inadequate if the threat it addresses is abstract or if the State uses excessively harsh measures.

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[9] Borja Sánchez Barroso, "Beyond the Principle of Proportionality: Controlling the Restriction of Rights under Factual Uncertainty," *Oslo Law Review* 9, no. 2 (2022): 74–91, https://doi.org/https://doi.org/10.18261/olr.9.2.1.

[10] Human Rights Committee, "Views Communication No. 550/1993, Robert Faurisson v France" (Geneva, 1996).

[11] American Association for the International Commission of Jurists, "The Siracusa Principles on the Limitations and Derogation Provisions," International Covenant on Civil and Political Rights § (1985), http://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf.

[12] American Association for the International Commission of Jurists. *Ibid.*

[13] Human Rights Council, "Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue" (Geneva, 2011).

The first requirement is that a restriction be provided by law. According to General Comment No. 34, this cannot be read in a minimal sense as the mere existence of a statute. The restrictive norm must be publicly accessible, formulated with sufficient precision to enable individuals to foresee what conduct is permitted and what is prohibited, and must not confer unfettered discretion upon those charged with its enforcement. The Siracusa Principles add that laws restricting rights must be of general application, neither arbitrary nor unreasonable, clear and accessible, and must provide adequate safeguards and effective remedies against abuse.[14]

The practical measure is straightforward. Where an ordinary citizen cannot ascertain from the text of the norm what is actually prohibited, or where enforcement officials may select on highly subjective grounds whom to prosecute and whom to leave undisturbed, the legality requirement is substantially unmet. Formulations such as a prohibition on "disseminating opinions that unsettle the State" or on "content disturbing the honour of authority," absent firm delimitation, would be difficult to sustain under human rights standards, precisely because they open space for selective criminalisation. General Comment No. 34 further states that restrictions grounded solely in traditional, religious, or customary law that fail to meet contemporary legality requirements are incompatible with the Covenant.

The second requirement is that a restriction pursue a legitimate aim, and the enumeration is strict. For Article 19(3), the permissible aims are exhaustively limited to respect for the rights or reputations of others; protection of national security; public order (ordre public); public health; or public morals. General Comment No. 34 is emphatic that States may not append additional grounds beyond this list, however politically significant they may appear. Rationales such as "preserving governmental authority," "protecting the sensibilities of officials," "avoiding national embarrassment," or "preventing criticism of institutions" do not constitute autonomous grounds under Article 19(3) ICCPR.

In practice, the State must be able to identify a specific and legitimate aim as the *ratio legis* for any restrictive provision it enacts. When the State claims that expression is restricted for "security," this claim alone is not enough. The State must clarify whether it refers to national security under human rights law, or if it is simply citing political inconvenience. Likewise, if the State invokes "the rights of others," it must specify whose rights are affected, what the threat is, and why the restriction is truly necessary. General, abstract, or symbolic justifications are usually not sufficient at this stage.

[14] Dian Rositawati et al., *Melindungi Ekspresi: Analisis Pidana Dan HAM Putusan Pengadilan Di Indonesia* (Jakarta: Lembaga Kajian dan Advokasi Independensi Peradilan, 2022).

The third requirement constitutes the core of the inquiry. General Comment No. 34 demands that restrictions satisfy strict tests of necessity and proportionality.[15] The Siracusa Principles articulate this with precision: a restriction must respond to a pressing public or social need, pursue a legitimate aim, be proportionate to that aim, and employ the least restrictive means available.[16] Restrictions must not be overbroad, and the State must establish a direct and immediate connection between the expression restricted and the threat asserted.[17] The burden of proof remains with the State throughout, as it is also compatible with the fair trial concept.[18]

Put more simply, the question at this stage is whether the prohibition or sanction is genuinely required, or whether the objective could be achieved through less intrusive means. If a person's reputation can be restored through a right of reply, a correction, or a proportionate civil action, custodial punishment becomes difficult to justify. If order in public spaces can adequately be maintained through regulation of time, place, and manner, a blanket prohibition on expression will tend towards excess. If a threat to national security is merely speculative, prosecution or censorship will not survive the necessity test. Herein lies the most realistic measure offered by human rights law: a legitimate restriction must be narrow, targeted, necessary, and no more extensive than required.[19]

General Comment No. 34 makes clear that the necessity analysis does not end with confirming the legitimacy of the aim. The State must also show that the measure it adopts is truly needed and is the least restrictive option available. The Committee rejects any restriction that could be replaced by an alternative more respectful of freedom of expression. Conversely, a restriction may be justified only when it is closely connected to protecting others' rights, and no equally effective alternative exists.[20] The necessity principle requires a proportionate relationship between the goal pursued and the means used to achieve it.

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[15] Eko Riyadi et al., "Ungerminated Seed: Proportionality Test in the Indonesian Ungerminated Seed : Proportionality Test in the Indonesian Constitutional Court," *Padjadjaran Jurnal Ilmu Hukum* 12, no. 2 (2025): 181–92.

[16] Nina Sun, "Applying Siracusa: A Call for a General Comment on Public Health Emergencies," *Health and Human Rights Journal* 22, no. 1 (2020): 387–390.

[17] Amnesty International Indonesia, *Meredam Suara, Membungkam Kritik: Tergerusnya Kebebasan Sipil Di Indonesia* (Jakarta: Amnesty International Indonesia, 2022).

[18] M. Rizki Yudha Prawira, "Reconceptualizing Justice: Utilizing The Fair Trial Principle As A Standard For A States' Criminal Justice Systems," *Ius Comparatum: Journal of Law Studies* 1, no. 2 (2025): 21–38, https://doi.org/https://doi.org/10.35586/icjls.v1i2.12026.

[19] Toby Mendel, "Restricting Freedom of Expression: Standards and Principles: Background Paper for Meetings Hosted by the UN Special Rapporteur on Freedom of Opinion and Expression" (Halifax, 2010).

[20] United Nations Human Rights Committee, "General Comment No. 34: Article 19: Freedoms of Opinion and Expression, U.N. Doc. CCPR/C/GC/34.", *Ibid.*

b. Clarifying the Legitimate Grounds for Limitation: A Human Rights Perspective

Among the recognised grounds of human rights limitation, national security is the one most frequently misconstrued. The Siracusa Principles supply a definition of considerable importance: national security may justify a restriction only where the measure is taken to protect the existence of the nation, its territorial integrity, or its political independence against force or the threat of force. The Principles further stipulate that national security cannot be invoked to address threats that are merely local or relatively isolated in character, as they pertain to law and order. Not every disturbance, protest, criticism, or social tension may therefore be elevated to the status of a national security concern.

General Comment No. 34 supplies more specific safeguards. Offences such as an expression considered "treason", official secrets and analogous provisions must be crafted and applied with great care, lest they be used to withhold properly public information, or to prosecute journalists, researchers, environmental activists, human rights defenders, and others who disseminate such information.[21] The Committee has considered certain forms of expression, such as calls for a national strike or for mass demonstrations, to be incapable of restriction on national security grounds. National security is thus not an elastic category available for the suppression of political opposition or ordinary social conflict.

National security must accordingly be confined to threats that genuinely bear upon the continuity of the State and its collective safety in a grave sense: violence, threats of violence, military operations, strategic intelligence, or serious assaults on the integrity of the State. Publication of the position of troops engaged in active operations may, in defined circumstances, be restricted. By contrast, analysis of defence policy, criticism of military budgets, reporting on corruption in the security sector, or trenchant criticism of officials cannot automatically be labelled national security matters. Characterising criticism as a security threat without demonstrating a direct and immediate relationship between the expression and a specific, clearly identified danger is inconsistent with human rights standards.[22]

Article 19(3) ICCPR likewise recognises that freedom of expression may be restricted to protect the rights or reputations of others. General Comment No. 34 clarifies that the term "rights" encompasses human rights recognised in the ICCPR and in international human rights standards more generally. Permissible objects of protection include privacy, electoral processes free from intimidation, and the

[21] United Nations Human Rights Committee. *Ibid* p.7.

[22] Mahrus Ali, Irwan Hafid, and Kurnia Dewi Anggraeny, "Criminalization Based on the Principle of Human Rights Limitation," *Jurnal Hukum Novelty* 13, no. 1 (2022): 98–108, https://doi.org/10.26555/novelty.v13i1.a23606.

personal safety of individuals. Restrictions grounded in reputation, however, must be constructed with particular care. Consistent with *General Comment No. 34*, defamation offences must not operate to stifle freedom of expression. Their formulation must recognise the defence of truth, distinguish verifiable facts from opinions or value judgements, and accept the public interest as a defence. The Committee further encourages the decriminalisation of defamation and affirms that imprisonment is never an appropriate penalty in defamation cases invoked in the name of protecting reputation.

The Siracusa Principles add a categorical limitation: restrictions based on others' reputations may not be used to shield the State and its officials from public opinion or criticism. This is of considerable significance, for under human rights standards the honour of the State, the dignity of institutions, and the offended sensibilities of officials do not constitute interests that automatically override freedom of public debate. General Comment No. 34 similarly provides that public figures, including heads of State and heads of government, are legitimately subject to criticism and political opposition; expression that is regarded as insulting to a public official does not, of itself, warrant sanction.[23]

This approach yields a clearer analytical formulation. Where an individual accuses a private person of embezzlement based on fabricated data and deliberately destroys that person's good name, the State may intervene to protect reputation and, potentially, personal safety. Where, however, a person describes a minister's policy as "arrogant," "careless," or "dangerous," the statement falls within the domain of political criticism, which enjoys a very high level of protection. Restriction in the latter case is considerably more difficult to justify, particularly where the sanction is imprisonment.

The Siracusa Principles define public order (ordre public) as the sum of rules that ensure the functioning of society, or the set of fundamental principles on which society is founded.[24] Critically, the Principles state that respect for human rights is itself part of public order. This definition demonstrates that "public order" cannot be understood as a licence to silence unpopular opinion. If respect for human rights forms part of public order, then public order cannot be invoked to eliminate the space for legitimate criticism, opposition, or public discussion.

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[23] Edward L. Carter, ""Error But Without Malice" in Defamation of Public Officials: The Value of Free Expression in International Human Rights Law," *Communication Law and Policy* 21, no. 3 (2016): 301–22, https://doi.org/10.1080/10811680.2016.1184910.

[24] Michael O'Flaherty, "Freedom of Expression: Article 19 of the International Covenant on Civil and Political Rights and the Human Rights Committee's General Comment No 34," *Human Rights Law Review* 12, no. 4 (2012): 627–54, https://doi.org/10.1093/hrlr/ngs030.

General Comment No. 34 accepts that, on public order grounds, a State may in certain circumstances regulate speech-making in particular public places or employ contempt of court to preserve the orderly conduct of proceedings, provided such measures are narrowly tailored, non-discriminatory in application, and confined to what is genuinely required to maintain orderly process. Such restrictions may in no way be used to impair defence rights or to suppress legitimate expression. By contrast, a blanket prohibition on political assembly or expression in all public places, or the dispersal of a peaceful demonstration without any clear legal basis and irrespective of whether it actually threatens public order, cannot be justified under this ground.[25]

The Siracusa Principles further explain that *public health* may ground a restriction only to address a serious threat to the health of the population or of individual members of the population, and that such measures must be specifically directed at preventing disease or injury, or at providing care for the sick and injured. Public health may not, therefore, be invoked indiscriminately. The State must demonstrate a genuine health threat, a reasonable scientific basis, and a clear connection between the restriction and the protection of health.[26]

With respect to *public morals*, both the Siracusa Principles and *General Comment No. 34* establish an essential safeguard. The Principles observe that public morality varies over time and across cultures, while *General Comment No. 34* insists that limitations imposed on moral grounds must be based on principles that do not derive exclusively from a single tradition and must be understood in light of the universality of human rights and the principle of non-discrimination.[27] Consequently, a State may not restrict expression merely because it conflicts with one religious viewpoint or with the morality of a dominant group. Recourse to public morals demands especially strict scrutiny, as this ground is most susceptible to the normalising effects of majoritarian censorship. In practice, narrowly drawn restrictions on sexually explicit material for the protection of children may remain defensible where precisely designed. The prohibition of artistic works, academic discussion, religious criticism, or minority viewpoints merely because the majority deems them "immoral," however, is exceedingly difficult to justify. Under human rights standards, moral offence is not an automatic measure of a restriction's legitimacy. The criteria remain constant: a clear legal basis, a genuinely legitimate aim, and a restriction that is truly necessary and proportionate.

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[25] *Ibid.*

[26] American Association for the International Commission of Jurists, The Siracusa Principles on the Limitations and Derogation Provisions. *Ibid,* p.9.

[27] Lawrence O Gostin et al., "The Legal Determinants of Health: Harnessing the Power of Law for Global Health and Sustainable Development," *Lancet Publishing Group* 393, no. 10183 (2019): 1857–1910, https://doi.org/10.1016/S0140-6736(19)30233-8.

The ordinary limitation regime under Article 19 must be distinguished from Article 20 of the ICCPR. Under the text of the Covenant, propaganda for war and advocacy of national, racial, or religious hatred constituting incitement to discrimination, hostility, or violence must indeed be prohibited by law. General Comment No. 34, however, situates expression under Article 19 in relation to Article 20 from the outset, meaning that States are not free to expand this category at will. Such prohibitions must still be strictly formulated and must not render all crude, offensive, or unpopular speech criminal.

General Comment No. 34 governs not only when a restriction may be justified but also with considerable precision, when a restriction is likely to constitute a human rights violation. The Committee affirms that Article 19(3) ICCPR may never be invoked to suppress advocacy of multi-party democracy, democratic tenets, or human rights. Moreover, attacks upon persons for exercising their freedom of opinion or expression. Such attacks, including arbitrary arrest, torture, threats to life, or killing, can under no circumstances be justified under Article 19(3) ICCPR. The State, by contrast, bears a duty to protect journalists, judges, lawyers, researchers, and human rights defenders from such attacks.

The Committee is also markedly critical of provisions concerning insult to officials, *lèse-majesté*, *desacato*, disrespect for authority, insult to State symbols, and defamation of the head of State or public officials, which attract heavier penalties solely because the target is an official. States may not prohibit criticism of institutions such as the armed forces or the public administration.[28] This constitutes one of the most significant messages of General Comment No. 34: in matters of public and political concern, protection for criticism must operate at a very high level. A democratic State is built not by silencing citizens who criticise government, but by opening space for that criticism.

General Comment No. 34 again provides concrete safeguards in the domain of media and the internet. States may not penalise media outlets, publishers, or journalists solely for being critical of the government or of the political system it espouses. Restrictions on websites, blogs, or internet-based information dissemination systems are permissible only where consistent with Article 19(3) of the ICCPR, and should generally be content-specific rather than generic bans on a site, platform, or system merely because that channel is critical of the government. The Committee further states that general systems of registration or licensing of journalists are incompatible with Article 19, save for limited accreditation schemes genuinely necessary to regulate privileged access to particular places or events and applied on

[28] United Nations Human Rights Committee, "General Comment No. 34: Article 19: Freedoms of Opinion and Expression, U.N. Doc. CCPR/C/GC/34." *Ibid*, p.9.

objective, non-discriminatory terms.[29] As regards counter-terrorism legislation, the Committee cautions that offences such as "encouragement of terrorism," "extremist activity," or "praising," "glorifying," or "justifying" terrorism must be defined with great clarity so as not to occasion unnecessary or disproportionate interference with freedom of expression. The logic of the three-part test applies in full here. A State may protect the public from serious threats, but may not employ counter-terrorism as a shortcut to criminalising journalism, research, or legitimate political criticism.[30]

The Siracusa Principles complete this broader picture with two further propositions. First, limitations may not be applied for purposes other than those for which they were prescribed. Second, even in a public emergency threatening the life of the nation, the applicable regime is not one without limits but a strictly circumscribed derogation regime: there must be an exceptional situation of actual or imminent danger, official proclamation, measures no more extensive than strictly required, proportionate scope, independent review, effective remedies, and absolute respect for non-derogable rights. The Principles affirm that the right to life, the prohibitions of torture and of slavery, the prohibition of retroactive penal legislation, recognition as a person before the law, and freedom of thought, conscience, and religion may not be derogated from under any circumstances. Even in the most extreme conditions, therefore, human rights law recognises no unlimited power.

c. Assessing Indonesian Statutory Restrictions on Freedom of Expression: Human Rights Perspective

The regulation of restrictions on freedom of expression in Indonesia must be read in layers: from limitation clauses at the constitutional and human rights statute level, down to the criminal offences that constitute the most concrete instruments of restriction. At both layers, measured against Article 19 of the ICCPR, General Comment No. 34, and the Siracusa Principles. Based on that approach, the central problem is uniform: limitation is legitimately acknowledged, but the standard of scrutiny is formulated too loosely.[31]

At the constitutional level, Article 28J(2) of the 1945 Constitution of the Republic of Indonesia, along with Articles 70, 73, and 74 of Law No. 39 of 1999 on Human Rights, generally aligns with international standards. Each provision recognises that rights are not absolute, that restrictions must be established by law, and that limitations are connected to respecting others' rights. However at crucial points, Indonesia's national formulation is much more flexible and less practical. For example, domestic

[29] *Ibid,* p.11.
[30] *Ibid.*
[31] Ali, Hafid, and Anggraeny, "Criminalization Based on the Principle of Human Rights Limitation." *Ibid.*

laws do not fully implement the three-part test. The phrase "established by law" addresses legality but does not require laws to be clear, precise, or free from unlimited discretion. The requirements of necessity and proportionality—such as a pressing social need, a clear link between expression and threat, and use of the least restrictive means with the State bearing the burden of proof—are also not clearly stated.

Second, the grounds of limitation are drawn broadly and vaguely. Article 19(3) of the ICCPR contains an exhaustive list of aims that is strictly construed, whereas Article 28J(2) adds "religious values," and the Human Rights Law incorporates "morality," "decency," "security," and "the interests of the nation." The designation of religious values as an independent ground heightens the risk of majoritarian moral justification, which is precisely what General Comment No. 34 paragraph 32 rejects. Third, the terms "security" and "the interests of the nation" are not delimited as tightly as the concept of national security under Siracusa paragraphs 29–30, which confines it to threats against the existence of the nation, territorial integrity, or political independence, and affirms that localised threats cannot be elevated into national security concerns. The Elucidation of Article 73, which construes "the interests of the nation" as the integrity of the nation, still falls short of that precision.

Fourth and most consequential is for criminal law. The national framework does not clearly distinguish protection of individual reputation from protection of the honour of the State or its officials. Siracusa paragraph 37 prohibits invoking reputation to shield the State and officials from criticism, and General Comment No. 34 paragraph 38 affirms that public figures must tolerate a higher level of criticism. Absent this safeguard at the level of general norms, space remains for criminal law to equate criticism of officials with punishable attacks on honour. Article 74 of the Human Rights Law, although congruent in spirit with Article 5 of the ICCPR, functions only as a negative safeguard: it prohibits abuse without supplying an instrument for proportionality review. The thesis at this first layer is therefore clear: the core problem is not the recognition that rights may be limited, but the elasticity of the standard governing that limitation.[32]

These normative weaknesses materialise in the criminal provisions dispersed across the Electronic Information and Transactions Law (Law No. 11 of 2008 in conjunction with Law No. 1 of 2024) and the new Criminal Code (Law No. 1 of 2023). Tested against the *three-part test*, three points of tension recur: vague formulation[33]

[32] Adhigama A Budiman et al., *Mengatur Ulang Kebijakan Tindak Pidana Di Ruang Siber: Studi Tentang Penerapan UU ITE Di Indonesia*, *Metode Penelitian*, vol. 12, 2021.

[33] Yagie Sagita Putra et al., "EIT Law at the Crossroads: Exploring Legal Dilemmas, Freedom of Expression, and Human Rights," *Pakistan Journal of Criminology* 16, no. 3 (2024): 1315–32, https://doi.org/https://doi.org/10.62271/pjc.16.3.1315.1332.

(so-called *"pasal karet"*), aims departing from the exhaustive list, and custodial penalties that fail proportionality. These are the further explanations regarding the various criminal offence provisions which are claimed as a "limitation":

1. Defamation.

Article 27A and Article 45(4) of the EIT Law criminalise attacks on honour, with penalties of up to two years' imprisonment. Articles 433–436, 439, and 441 of the Criminal Code address similar acts, imposing harsher penalties if information technology is used. The terms "attacking honour," "a certain matter," and "another person" remain open to interpretation. Regulation of online honour attacks is consistent with national defamation law. The Constitutional Court Decision No. 105/PUU-XXII/2024 clarified that "another person" refers only to natural persons, not institutions or corporations, in line with General Comment No. 34, paragraph 38.[34] The Criminal Code is comparatively superior in providing a mechanism for proving the truth (Articles 434–435), a mechanism the EIT Law lacks. Under the necessity test, however, both fail: General Comment No. 34, paragraph 47, states that imprisonment is never an appropriate penalty for defamation and encourages decriminalisation. In the Marques de Morais v. Angola case (Communication No. 1128/2002), the Human Rights Committee concluded that the severity of the sanction was disproportionate to the protection of the reputation of a head of State who is properly an object of criticism, while identifying the denial of the defence of truth as an aggravating factor.[35] Based on Southeast Asia Freedom Expression Network (SAFEnet) data, 146 recorded violations of digital expression involving 170 victims were reported in 2024. The number is considered the highest in a decade, providing evidence of a systemic chilling effect.[36]

2. False news.

Articles 263–264 of the Criminal Code penalise the dissemination of false news resulting in public unrest (up to six years' imprisonment). The terms "false," "ought reasonably to suspect," and "incomplete" sit uneasily with the principle of *lex certa*. In Decision No. 78/PUU-XXI/2023 (the Fatia-Haris case), the Constitutional Court invalidated the "disturbance" offence under Law No. 1 of 1946 for interpretive ambiguity, and in Decision No. 115/PUU-XXII/2024 it held that unrest must be physical rather than digital in character.[37] This requirement of an actual consequence brings the Criminal Code closer to the *necessity* standard than the

[34] Mahkamah Konstitusi Republik Indonesia, "Putusan Nomor 105/PUU-XXII/2024" (Jakarta, 2024).

[35] Human Rights Committee, "Rafael Marques de Morais v. Angola, Communication No 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002 (2005)" (United Nation, 2005).

[36] Southeast Asia Freedom Expression Network, "Situasi Hak-Hak Digital Indonesia 2024 Menunjukkan Estafet Represi Di Internet," SAFEnet, 2025, https://safenet.or.id/situasi-hak-hak-digital-indonesia-2024-menunjukkan-estafet-represi-di-internet/.

[37] Mahkamah Konstitusi Republik Indonesia, "Putusan Nomor 115/PUU-XXII/2024."

looser hoax provisions of the EIT Law. Yet, the severity of the penalty continues to raise questions of proportionality.[38]

3. Insult of public authority and of the head of State.

The departure from the legitimate-aim requirement is most evident in this context. Articles 240–241 of the Criminal Code criminalise insults directed at the government or State institutions, while Articles 218–220, together with Article 219 (dissemination by electronic means), criminalise insults against the President or Vice-President. These offences carry penalties of up to three years and six months, increasing to four years if disseminated online. These provisions serve to protect the honour of the State and its officials, which is explicitly prohibited by Siracusa paragraph 37 and criticised by General Comment No. 34 paragraph 38, as constituting lèse-majesté law and undue respect for authority.[39] The historical irony is evident in that the Constitutional Court invalidated the former presidential insult provisions in Decision No. 013-022/PUU-IV/2006[40], and the *haatzaai artikelen*[41] in Decision No. 6/PUU-V/2007,[42] yet comparable substance has been revived. The government's argument that the offences are now complaint-based does not answer the substantive objection: in *Bodrožić v. Serbia and Montenegro* (Communication No. 1180/2003)[43] and *Mukong v. Cameroon* (Communication No. 458/1991)[44], the Human Rights Committee affirmed that the value attached to expression concerning political figures and institutions is especially high in a democratic society.

III. CONCLUSION

The findings demonstrate that international human rights law treats freedom of expression as a qualified right, subject to a strict *three-part test* requiring legitimate grounds, a clear legal basis, and necessity and proportionality. This is based on ICCPR, General Comment No. 34 and the Siracusa Principle. Notably, these standards do not extend protection to the honour of the state or its officials. Evaluated against those standards, Indonesia's framework is deficient at both layers. Article 28J of the Constitution and Law No. 39 of 1999 acknowledge the possibility of limitation but

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[38] Ridwan Arifin et al., "Indonesia's New Penal Code: Harmonizing with Global Justice or Defying International Norms?," *Lex Scientia Law Review* 8, no. 1 (2024): 561–94, https://doi.org/https://doi.org/10.15294/lslr.v8i1.14271.

[39] United Nations Human Rights Committee, "General Comment No. 34: Article 19: Freedoms of Opinion and Expression, U.N. Doc. CCPR/C/GC/34."*Ibid*, p.9.

[40] Mahkamah Konstitusi Republik Indonesia, "Putusan Nomor 013-022 PUU-IV/2006."

[41] Shidarta, "Lagi-Lagi Tentang 'Haatzaai Artikelen," Business Law Binus, 2018, https://business-law.binus.ac.id/2018/02/26/lagi-lagi-tentang-haatzaai-artikelen/.

[42] Mahkamah Konstitusi Republik Indonesia, "Putusan Nomor 6/PUU-V/2007" (Mahkamah Konstitusi Republik Indonesia, 2007).

[43] Human Rights Committee, "Mr. Zeljko Bodrožić v. Serbia and Montenegro, Communication No. 1180/2003, U.N. Doc. CCPR/C/85/D/1180/2003 (2006)." (Minnesota, 2005).

[44] Human Rights Committee, "Womah Mukong v. Cameroon, Communication No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991 (1994)." (Minnesota, 1994).

fail to operationalise the requirements of necessity and proportionality. Expression-related offences under the Electronic Information and Transactions Law and the Criminal Code retain vague provisions, protect institutional honour, and impose custodial sentences. That comparable defects persist across successive revisions, notwithstanding repeated constitutional invalidation, indicates a structural rather than incidental problem. Reform must therefore be legislative rather than judicial: decriminalising defamation, repealing offences that shield State authority from public criticism, and redrafting the remaining provisions to be based on the legality principle.

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