

Freedom of Expression and Electronic Defamation on Social Media: A Juridical Analysis of the Haris Azhar and Fatia Maulidiyanti Decisions

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Received: 28 May 2026

Accepted: 26 August 2026

Published: 31 August 2026

Abstrak

Perluasan media sosial sebagai ruang kritik publik telah meningkatkan ketegangan hukum antara kebebasan berekspresi dan perlindungan reputasi di Indonesia. Penelitian ini menganalisis putusan bebas Haris Azhar dan Fatia Maulidiyanti oleh Pengadilan Negeri Jakarta Timur, penolakan kasasi penuntut umum oleh Mahkamah Agung, serta relevansi perubahan terbaru dalam hukum informasi elektronik Indonesia. Penelitian menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, kasus, konseptual, dan perbandingan. Bahan hukum primer meliputi Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Undang-Undang Nomor 19 Tahun 2016, Undang-Undang Nomor 1 Tahun 2024, putusan pengadilan tingkat pertama dan Mahkamah Agung, serta Putusan Mahkamah Konstitusi Nomor 105/PUU-XXII/2024. Bahan sekunder mencakup literatur hukum Indonesia dan artikel ilmiah mengenai ujaran digital, tata kelola platform, moderasi konten, dan chilling effect. Hasil analisis menunjukkan bahwa pertimbangan pengadilan membentuk perbedaan yang signifikan secara hukum antara kritik yang ditujukan pada kebijakan atau jabatan publik dan serangan terhadap kehormatan pribadi. Putusan kasasi Mahkamah Agung memperkuat perbedaan tersebut sebagai pedoman yurisprudensial yang persuasif, meskipun Indonesia tidak menganut stare decisis. Perubahan undang-undang pada 2024 dan penafsiran Mahkamah Konstitusi pada 2025 semakin mempersempit jangkauan yang sah dari tindak pidana pencemaran nama baik elektronik. Penelitian ini menegaskan bahwa pembatasan ekspresi daring seharusnya berfokus pada serangan yang dapat dibuktikan terhadap reputasi individual dan tidak mengubah kritik berbasis riset untuk kepentingan publik menjadi pencemaran nama baik pidana.

Kata kunci: kebebasan berekspresi; hak asasi manusia; media sosial; pencemaran nama baik elektronik; kritik kepentingan publik.

Abstract

The expansion of social media as a forum for public criticism has intensified the legal tension between freedom of expression and protection of reputation in Indonesia. This study analyses the acquittals of Haris Azhar and Fatia Maulidiyanti by the East Jakarta District Court, the subsequent rejection of the prosecutor's cassation by the Supreme Court, and the relevance of recent changes to Indonesia's electronic information law. The study applies normative juridical research using statutory, case, conceptual, and comparative approaches. Primary legal materials include the 1945 Constitution, Law Number 19 of 2016, Law Number 1 of 2024, the district court and Supreme Court

decisions, and Constitutional Court Decision Number 105/PUU-XXII/2024. Secondary materials include Indonesian legal scholarship and five recent Elsevier journal articles on digital speech, platform governance, content moderation, and chilling effects. The analysis finds that the judicial reasoning draws a legally significant distinction between criticism directed at public policy or public office and attacks on personal honour. The Supreme Court's cassation ruling strengthens that distinction as persuasive jurisprudence, although Indonesia does not apply stare decisis. The 2024 statutory amendment and the Constitutional Court's 2025 interpretation further narrow the legitimate reach of electronic defamation law. The study argues that restrictions on online expression should focus on demonstrable attacks on individual reputation and should not convert research-based public-interest criticism into criminal defamation. This approach provides a more coherent balance between constitutional expression, reputation, legal certainty, and democratic oversight.

Keywords: *freedom of expression, human rights, social media, electronic defamation, public-interest criticism*

INTRODUCTION

Social media has become a central infrastructure for contemporary public debate. Citizens no longer depend exclusively on professional news organisations to publish criticism, circulate research, or scrutinise public power. Digital platforms allow activists, academics, journalists, and ordinary users to participate in public discourse with a speed and reach that conventional communication channels rarely provide. This development strengthens democratic participation, but it also increases the frequency of disputes concerning reputation, disinformation, harassment, and the legal boundaries of criticism. Comparative scholarship shows that social media users who participate in public debate may perform functions similar to citizen journalists and may therefore require legal protection that reflects the public value of their speech rather than their professional status alone.¹

The technological design of social media also affects the practical exercise of free expression. The visibility of a statement depends on platform architecture, recommendation systems, search functions, moderation rules, and user control over distribution. This means that freedom of expression online is not determined only by the state's criminal law. It is also shaped by the design choices and governance structures of private platforms. Recent research on decentralised social networks illustrates that design can either facilitate or constrain meaningful user control and that value-based design remains relevant to the protection of expression. The legal analysis of online speech should therefore distinguish at least three layers: constitutional rights, criminal restrictions imposed by the state, and the private governance of digital platforms.²

Within Indonesian constitutional law, freedom of expression receives explicit protection. Article 28E paragraph (3) of the 1945 Constitution guarantees the

¹ Joanna Szegda and Grzegorz Tylec, "The Level of Legal Security of Citizen Journalists and Social Media Users Participating in Public Debate: Standards Developed in the Jurisprudence of the European Court of Human Rights (ECtHR) and the European Court of Justice (ECJ)," *Computer Law & Security Review* 47 (2022): 105740, <https://doi.org/10.1016/j.clsr.2022.105740>.

² Tao Huang, "Decentralized Social Networks and the Future of Free Speech Online," *Computer Law & Security Review* 55 (2024): 106059, <https://doi.org/10.1016/j.clsr.2024.106059>.

freedom to associate, assemble, and express opinions, while Article 28F protects the right to communicate and to seek, obtain, possess, store, process, and convey information through available channels. At the same time, Article 28J permits statutory limitations designed to respect the rights and freedoms of others and to satisfy legitimate considerations in a democratic society. The constitutional problem is therefore not whether expression may ever be restricted. The central issue is how judges should distinguish a legitimate restriction protecting personal reputation from a criminal intervention that suppresses criticism of public power.³

The controversy has been especially visible in the application of Indonesia's Law on Electronic Information and Transactions. At the time relevant to the Haris Azhar and Fatia Maulidiyanti prosecution, Article 27 paragraph (3) in conjunction with Article 45 paragraph (3) of Law Number 19 of 2016 regulated electronic defamation by reference to the criminal law of insult and defamation. Law Number 1 of 2024 subsequently revised the statutory structure and introduced Article 27A, which focuses on an intentional attack on another person's honour or reputation by alleging a matter and making it publicly known through an electronic system. The change is important because it places the legal controversy in a transitional period. The alleged conduct arose under the earlier formulation, while the broader normative direction of Indonesian electronic defamation law changed during and after the litigation.⁴

The Haris Azhar and Fatia Maulidiyanti cases provide a concrete setting for examining this tension. Their prosecution concerned a social-media discussion of research and allegations related to economic and political interests in Papua and the role of a public official. The East Jakarta District Court acquitted Haris Azhar in Decision Number 202/Pid.Sus/2023/PN Jkt.Tim and Fatia Maulidiyanti in Decision Number 203/Pid.Sus/2023/PN Jkt.Tim on 8 January 2024. The decisions treated the impugned statements in their context as criticism, commentary, analysis, and dissemination of research rather than as a criminal attack on personal honour. The cases consequently raise a doctrinal question that is broader than the personal dispute between the parties: what legal criteria should separate protected public-interest criticism from punishable electronic defamation?⁵

The prosecutor sought cassation against the acquittals, and the Supreme Court rejected the cassation in Decisions Number 5712 K/Pid.Sus/2024 and Number 5714 K/Pid.Sus/2024. The significance of those decisions must be stated through the Court's actual reasoning and dispositive outcome, not through a broad doctrine attributed by analogy. Indonesian Supreme Court decisions may guide interpretation and promote consistency, but Indonesia does not operate a stare decisis system in which a single cassation decision formally binds all later courts in the common-law sense. This article therefore treats the Supreme Court reasoning as

³Republic of Indonesia, The 1945 Constitution of the Republic of Indonesia, arts. 28E(3), 28F, and 28J(2).

⁴Republic of Indonesia, Law No. 19 of 2016 on the Amendment to Law No. 11 of 2008 on Electronic Information and Transactions; Republic of Indonesia, Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions, art. 27A.

⁵East Jakarta District Court, Decision No. 202/Pid.Sus/2023/PN Jkt.Tim, January 8, 2024; East Jakarta District Court, Decision No. 203/Pid.Sus/2023/PN Jkt.Tim, January 8, 2024.

highly relevant jurisprudential guidance and compares it with the trial-court reasoning and subsequent Constitutional Court interpretation.⁶

Earlier Indonesian scholarship has repeatedly identified uncertainty in the interpretation of online defamation provisions. Studies have associated broad or inconsistent enforcement with a risk that citizens may avoid lawful criticism because of potential criminal liability. That concern should not be overstated. The concept of a chilling effect describes a behavioural response to legal risk and therefore requires careful empirical support. Nevertheless, uncertainty in offence elements, enforcement standards, and judicial interpretation can create a rational incentive for speakers to self-censor, particularly when the subject of criticism is a powerful public official.⁷

International scholarship adds another dimension. Platform governance literature increasingly treats human rights as relevant not only to state restrictions but also to the rules used by private digital intermediaries. Nave and Lane argue that online platforms should align their content rules and human-rights due-diligence practices with recognised human-rights standards when addressing unlawful content. At the same time, empirical research on Germany's NetzDG cautions against assuming that every regulatory intervention automatically produces overblocking or a chilling effect. Maaß, Wortelker, and Rott found no robust evidence of such effects in their large Facebook dataset. Together, these studies support a more precise proposition: speech regulation should be assessed according to its legal design, enforcement practice, and measurable consequences, rather than through a categorical assumption that all regulation is either necessary or repressive.⁸

This study addresses a gap between case-specific Indonesian analysis and the broader literature on digital speech governance. Much of the existing Indonesian discussion focuses on the ambiguity of the ITE Law, constitutional guarantees, or the potential criminalisation of criticism. Recent international research focuses more heavily on platform regulation, moderation, decentralisation, and the governance of harmful content. The present article connects these bodies of scholarship to three linked legal developments: the district court acquittals, the Supreme Court's rejection of cassation, and the post-case statutory and constitutional developments under Law Number 1 of 2024 and Constitutional Court Decision Number 105/PUU-XXII/2024. The novelty lies in reading the case as a doctrinal boundary-setting exercise between public-interest criticism and personal defamation, rather than

⁶Supreme Court of the Republic of Indonesia, Decision No. 5712 K/Pid.Sus/2024, September 11, 2024; Supreme Court of the Republic of Indonesia, Decision No. 5714 K/Pid.Sus/2024, September 11, 2024.

⁷ Arju Sethiawanza, "Peran Hukum Dalam Menjaga Kebebasan Berpendapat Di Media Sosial: Antara Hak Dan Kewajiban," *Jurnal Kajian Hukum dan Kebijakan Publik* 2, no. 1 (2024): 632-638; Ridho Dwi Rahardjo and Wiwik Afifah, "Kesesuaian Permenkominfo Nomor 05 Tahun 2020 Dengan Prinsip Kebebasan Berpendapat Dan Berekspresi Dalam Hak Asasi Manusia," *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 2, no. 2 (2022): 472-486, <https://doi.org/10.53363/bureau.v2i2.48>.

⁸ Sabrina Maaß, Jil Wortelker, and Armin Rott, "Evaluating the Regulation of Social Media: An Empirical Study of the German NetzDG and Facebook," *Telecommunications Policy* 48, no. 5 (2024): 102719, <https://doi.org/10.1016/j.telpol.2024.102719>;; Eva Nave and Lottie Lane, "Countering Online Hate Speech: How Does Human Rights Due Diligence Impact Terms of Service?," *Computer Law & Security Review* 51 (2023): 105884, <https://doi.org/10.1016/j.clsr.2023.105884>.

simply as an example of either unrestricted free speech or excessive criminalisation.⁹

Accordingly, this study asks two questions. First, how did the courts legally distinguish protected criticism from punishable defamation in the Haris Azhar and Fatia Maulidiyanti cases? Second, how should that distinction be understood after the 2024 amendment to the ITE Law and the Constitutional Court's 2025 interpretation of Article 27A and Article 45 paragraph (4)? The answers are important for judges, prosecutors, investigators, legislators, platform governance actors, and civil-society organisations because legal certainty in this area depends on a workable distinction between scrutiny of public affairs and attacks on individual reputation.

RESEARCH METHOD

This research uses a normative juridical method. It examines law as a system of norms, principles, judicial reasoning, and authoritative legal materials rather than measuring social behaviour through surveys or interviews. The method is appropriate because the principal research questions concern the interpretation of offence elements, constitutional guarantees, judicial reasoning, and the legal effect of subsequent statutory and constitutional developments. Normative legal research requires transparent identification of primary and secondary materials and a structured method for linking legal propositions to authoritative sources.¹⁰

Four approaches are combined. The statutory approach examines the constitutional guarantees and restrictions, the ITE Law applicable to the prosecuted conduct, and Law Number 1 of 2024. The case approach analyses the two East Jakarta District Court acquittals, Supreme Court Decisions Number 5712 K/Pid.Sus/2024 and Number 5714 K/Pid.Sus/2024, and Constitutional Court Decision Number 105/PUU-XXII/2024. The conceptual approach addresses freedom of expression, reputation, public-interest criticism, legality, and proportional restriction. International and foreign scholarship is used contextually, not as a formal comparative-jurisdiction study; sources are selected for relevance, authority, and direct engagement with digital speech rather than by publisher brand.

Primary legal materials are interpreted textually, systematically, and contextually. The analysis does not treat the terms "balancing test" or "proportionality" as labels that the trial court necessarily used expressly. Instead, it asks whether the reasoning substantively compares the protected value of public-interest expression with the legitimate protection of personal honour. This distinction is methodologically important. A researcher should not attribute a formal doctrinal test to a court unless the judgment actually adopts that test. The study therefore describes the judicial reasoning according to its operative logic and then evaluates that logic against constitutional and human-rights principles.

⁹ Nur Rahmawati, Muslichatun Muslichatun, and Muhammad Marizal, "Kebebasan Berpendapat Terhadap Pemerintah Melalui Media Sosial Dalam Perspektif UU ITE," *Widya Pranata Hukum* 3, no. 1 (2021): 62-75.

¹⁰ Yulia Audina Sukmawan and Dwi Damayanti, "Metode Penelitian Hukum Normatif Dan Empiris Sebagai Strategi Penguatan Perspektif Kajian Ilmu Hukum," *Notary Law Journal* 4, no. 3 (2025): 114-128, <https://doi.org/10.32801/nolaj.v4i3.116>.

RESULTS AND DISCUSSION

Case Posture and the Applicable Legal Framework

The first analytical step is to separate the procedural history from the broader constitutional debate. Haris Azhar and Fatia Maulidiyanti faced criminal accusations arising from an online discussion concerning research on political and economic relations in Papua. The prosecution relied, among other provisions, on the former Article 27 paragraph (3) in conjunction with Article 45 paragraph (3) of the ITE Law. The district court did not accept the proposition that the impugned discussion, considered in context, satisfied the criminal elements of defamation. This matters because criminal liability cannot be established merely by showing that a statement was critical, unpleasant, controversial, or reputationally damaging. The prosecution must connect the proven conduct to each statutory element and to the protected legal interest of personal honour.

The distinction between an official's public role and private personality is central. Democratic accountability requires room for citizens to question public decisions, institutional conduct, policy networks, conflicts of interest, and matters of public expenditure or public administration. Public office necessarily increases exposure to scrutiny because the officeholder exercises authority that affects others. This does not eliminate the official's personal right to reputation. It changes the contextual inquiry. A court must ask whether the statement targets the person's private dignity or whether it criticises conduct, policy, institutional responsibility, or a public-interest issue connected to official power.

The district court's contextual approach is consistent with the proposition that not every critical statement should be extracted from the discussion in which it appears. A word, label, or rhetorical expression may have a different legal meaning when used in a research discussion about public affairs than when used as a direct personal accusation detached from any evidentiary or policy context. The legal task is therefore not a dictionary exercise. It requires evaluation of the subject matter, audience, purpose, factual basis, relationship between speaker and target, and the extent to which the statement contributes to public debate.

Article 27A of Law Number 1 of 2024 focuses on an intentional attack on the honour or reputation of 'another person' through an allegation made public electronically. The analysis must distinguish a natural person, including a public official in a personal capacity, from criticism directed at an institution, corporation, profession, office, policy, or governmental function. A public official does not lose personal reputation rights, but the court must determine whether the impugned statement attacks that individual's honour or instead scrutinises official conduct or a public-interest matter.¹¹

Doctrinal Chronology and the Transition from Article 27(3) to Article 27A

The legal sequence examined in this article is important because the case cannot be read through a single statutory snapshot. The impugned discussion was prosecuted under the formulation then applicable, while the 2024 amendment reorganised the electronic-defamation provision and the Constitutional Court later

¹¹ Kadek Ferdian Dwi Arsa and I Dewa Gede Herman Yudiawan, "Kebebasan Berpendapat Dan Perlindungan Reputasi Dalam Penerapan Pasal 27 Ayat (3) UU ITE," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4, no. 1 (2026): 6158-6168, <https://doi.org/10.61104/alz.v4i1.3541>.

supplied a more specific constitutional limitation. A production-ready doctrinal analysis therefore has to keep three questions separate: which offence formulation governed the prosecuted conduct, what the trial and cassation courts actually decided, and how later legislation and constitutional interpretation affect the future boundary of the offence. Collapsing those stages would risk treating later law as though it had always been the text applied by the trial court. Separating them, by contrast, allows the article to identify continuity without confusing chronology.

The continuity lies in the protected legal interest. Across the materials examined, the central concern is personal honour or reputation rather than a generalized right of government, an office, a profession, or an institution to be insulated from criticism. The statutory amendment sharpens that focus by using the language of an intentional attack on another person's honour or reputation, while the Constitutional Court's later interpretation narrows the category of the protected target. The Haris Azhar and Fatia Maulidiyanti decisions are significant within that sequence because the courts assessed the contested expression in relation to research, public affairs, and the official role of the complainant. The doctrinal point is not that statements about public officials are automatically protected, but that the object of the statement must be identified before criminal liability can be analysed.

The same chronology also helps distinguish adjudicative authority. The East Jakarta District Court decisions resolved the criminal cases before them. The Supreme Court's rejection of the prosecutor's cassation preserved those outcomes and increased their jurisprudential significance, but it did not transform the reasoning into a common-law rule of *stare decisis*. The Constitutional Court, in a later proceeding concerning the amended provision, performed a different function by setting a constitutional limit on the permissible interpretation of the statutory wording. For future cases, these materials should therefore be read cumulatively but not interchangeably: the trial judgments supply contextual reasoning, the cassation decisions reinforce the outcomes, the statute supplies the offence elements, and the Constitutional Court supplies a binding constitutional construction of the amended norm within the scope of its judgment.

This layered reading is particularly important for legal certainty. Investigators and prosecutors need a predictable basis for deciding whether a complaint concerns an identifiable individual's reputation or a contested evaluation of policy, institutional conduct, research findings, or public administration. Judges, in turn, need to show in written reasons how the alleged statement satisfies the offence elements before moving to broader constitutional justification. The result is a sequence rather than a slogan: identify the applicable provision, identify the protected person and alleged matter, classify the form and context of the expression, test the statutory elements, and only then consider whether criminal restriction is justified in light of constitutional expression and the protection of reputation.

Table 1. Doctrinal Sequence of the Authorities Analysed in This Article

Authority / stage	Legal function in this article	Question answered	Analytical consequence
1945 Constitution, Articles 28E, 28F, and 28J	Constitutional guarantee and limitation framework	What interests must be balanced when expression is restricted?	Expression is protected, but lawful restrictions may protect the rights of

			others when clearly justified.
Law Number 19 of 2016, former Article 27(3) and Article 45(3)	Historical offence framework for the prosecuted conduct	What statutory framework was invoked in the Haris Azhar and Fatia Maulidiyanti cases?	The case analysis must begin with the law applicable to the alleged conduct rather than with later wording.
East Jakarta District Court Decisions Nos. 202 and 203/Pid.Sus/2023/PN Jkt.Tim	Trial-court qualification of the contested speech	How was the discussion characterised in its factual and communicative context?	Context, research dissemination, public affairs, and the distinction between official scrutiny and personal attack became central.
Supreme Court Decisions Nos. 5712 and 5714 K/Pid.Sus/2024	Cassation-stage confirmation of the outcomes	What is the jurisprudential significance of the acquittals after cassation?	The outcomes gain persuasive and institutional weight without creating strict stare decisis.
Law Number 1 of 2024, Article 27A	Current statutory formulation discussed by the article	What reputational interest does the amended electronic-defamation provision protect?	Analysis should focus on an intentional attack on the honour or reputation of another person.
Constitutional Court Decision No. 105/PUU-XXII/2024	Constitutional interpretation of the amended norm	Who falls outside the phrase another person for the purpose of the provision?	The offence cannot be converted into a general shield for institutions, offices, professions, corporations, or identifiable groups.

Source: Authors' synthesis of the constitutional, statutory, and judicial materials analysed in this article.

Judicial Qualification of Criticism, Defamation, and Public-Interest Speech

The strongest doctrinal contribution of the Haris Azhar and Fatia Maulidiyanti litigation is the judicial qualification of the speech. The court did not begin and end with the fact that the complainant considered the statements insulting. It examined whether the content functioned as a personal attack or as part of a public discussion of research and public affairs. This approach reflects a fundamental criminal-law principle: the subjective reaction of the complainant cannot substitute for proof of the offence elements. Reputation is legally protected, but criminal defamation requires a legally cognisable attack on that protected interest.

The distinction is also compatible with the constitutional position of public criticism. Freedom of expression would have little practical value if it protected only statements that are polite, uncontroversial, or agreeable to public officials. Critical speech often uses strong language because it seeks to contest an exercise of power or expose an alleged problem. The relevant legal question is whether that language crosses the line into a punishable attack on personal honour. Indonesian scholarship on freedom of expression in social media similarly argues that constitutional

protection and restrictions must be read together rather than treating either right as absolute.¹²

The following five-factor structure is the authors' reconstruction of the reasoning; it is not presented as a formal test expressly announced by the Supreme Court. Factor one is the object of the statement: private personality, public office, public policy, institutional conduct, or another matter of public concern. Factor two is communicative form: factual allegation, opinion, rhetorical evaluation, quotation, or dissemination of research. Factor three is the contextual and evidentiary basis of the statement. Factor four is whether the statement satisfies the statutory concept of an attack on individual honour or reputation. Factor five is whether criminal restriction is justified when constitutional and human-rights protections for public-interest expression are taken into account. The table below identifies the source and observable indicator for each factor.

Table 2. Authors' Reconstructed Five-Factor Analytical Framework

Factor	Primary legal/source basis	Operational indicator	Implication
Object of speech	Constitution + offence wording + case reasoning	Private person vs public office/policy/institutional conduct	Public-interest context does not immunise false personal accusations but raises scrutiny of criminal restriction
Communicative form	Case reasoning	Fact allegation, opinion, comment, research dissemination, rhetoric	Different forms require different proof and contextual reading
Context/evidentiary basis	Case reasoning + legality	Source material, discussion context, audience, good-faith basis	Prevents extracting one phrase from the whole communication
Attack on individual honour	ITE offence elements	Identifiable natural person; alleged matter; purpose/publication; legally cognisable reputational attack	Complainant offence alone is insufficient
Justification for criminal restriction	1945 Constitution; ICCPR Article 19 as ratified; CC interpretation	Legal basis, legitimate protection, necessity/proportionality considerations	Criminal law should remain a last, precisely bounded response

This structure prevents two opposite errors. The first error is to criminalise any severe criticism because it causes offence. The second is to immunise any statement merely because the speaker labels it criticism. Public-interest speech does not remove duties of accuracy, good faith, and responsibility. The legal protection is strongest when the statement is connected to research, verifiable material, policy analysis, or a genuine contribution to public debate. A knowingly

¹² Muhammad Irfan Pratama, Abdul Rahman, and Fahri Bachmid, "Kebebasan Berpendapat Dan Berekspresi Di Media Sosial Dalam Perspektif Hak Asasi Manusia," *Qawanin Jurnal Ilmu Hukum* 3, no. 1 (2022): 1-16, <https://doi.org/10.56087/qawaninjih.v3i1.406>.

fabricated personal accusation made under the label of activism would present a different legal problem.

Applying the Reconstructed Framework to Research-Based Public Criticism

The five-factor framework becomes most useful when it is applied in sequence rather than treated as five independent labels. The first inquiry is the object of the speech. Where expression concerns an individual's private life or makes a concrete allegation directed at personal honour, the reputational interest is immediately engaged. Where the same words arise in a discussion of a public policy, institutional conduct, an official decision, or a research report, the legal meaning cannot be fixed solely by the complainant's reaction. The court must determine what the speaker was actually evaluating. This is why the object-of-speech factor is placed first: it identifies whether the case is principally about personal reputation or scrutiny of public power before the remaining factors are assessed.

The second and third factors, communicative form and contextual or evidentiary basis, prevent courts from treating every sentence as if it were a freestanding factual accusation. A statement may function as an allegation of fact, an opinion, a rhetorical evaluation, a quotation, a summary of research, or a response within a longer discussion. Those forms do not receive automatic immunity, but they raise different evidentiary questions. A research-based evaluation, for example, should be read together with the material being discussed, the purpose of the discussion, the audience, and the connection between the wording and the underlying source. Extracting a phrase from that context can change its apparent meaning and can obscure whether the speaker was presenting a personal attack or participating in a debate about a matter of public concern.

The fourth factor returns the analysis to the statutory core: whether there is a legally cognisable attack on an identifiable natural person's honour or reputation. This factor is the principal safeguard against both over-criminalisation and under-protection. It prevents the offence from being used merely because an institution, office, profession, or public programme has been criticised, while preserving a remedy where a public official is targeted personally in a manner that satisfies the statutory elements. The distinction also explains why public office does not erase reputation rights. The point is narrower: the existence of a public role changes the context of scrutiny, but the court still has to identify the individual legal interest allegedly attacked.

The fifth factor concerns justification for criminal restriction. Once the statutory elements are seriously engaged, the constitutional inquiry asks whether criminal intervention is a justified response rather than simply one available response among many. The manuscript already identifies clarification, correction, reply, civil remedies, professional ethics, and platform procedures as less intrusive responses that may address some forms of reputational harm. Their availability does not abolish criminal defamation, but it matters to the assessment of necessity. This is especially so when the expression is connected to research, advocacy, or public policy, because the public value of the speech is part of the legal context in which the restriction operates.

Taken together, the five factors support a disciplined distinction between protected criticism and punishable defamation. They do not create a special immunity for activists, researchers, journalists, or social-media users, and they do

not make the truth or public-interest label irrelevant. Instead, they require decision makers to explain the path from the words used to the protected legal interest, the offence elements, and the justification for criminal intervention. That explanatory discipline is itself part of legal certainty. Similar cases may still produce different outcomes when their facts differ, but those differences should be traceable to articulated criteria rather than to an undefined impression that criticism was too harsh or too embarrassing for its target.

'Harmful but legal' is used only as an analytical label for content that may cause reputational, social, or other harm but does not satisfy the applicable criminal offence. It does not mean the content is desirable, accurate, or immune from civil, ethical, employment, platform, or other lawful responses. The distinction matters because criminal liability must remain tied to offence elements rather than a general perception of harmfulness.¹³

Constitutional and Human Rights Limits on Restrictions of Expression

The constitutional guarantee of expression and the protection of reputation are not mutually exclusive. The legal system must protect both interests by requiring a precise justification for criminal restriction. Article 28J of the 1945 Constitution authorises statutory limitations, but that authorisation cannot be read as a blank cheque. A restriction must have a legal basis, pursue a legitimate protected interest, and operate in a manner compatible with democratic constitutionalism. In the context of criticism of public power, courts should demand particular clarity because a vague standard may discourage lawful oversight.

Indonesia ratified the International Covenant on Civil and Political Rights through Law Number 12 of 2005. Article 19 ICCPR therefore forms part of the international human-rights framework binding Indonesia, while Human Rights Committee General Comment Number 34 is an authoritative interpretive aid rather than domestic legislation of equal hierarchical status to an Indonesian statute. The materials are used to illuminate legality, legitimate aim, necessity, and the heightened importance of debate on public affairs while the domestic offence remains governed by Indonesian constitutional and statutory law.¹⁴

The concern about chilling effects should therefore be understood as a legal-certainty problem as well as a behavioural one. Indriasari observes that broad electronic regulation can place pressure on online expression when users cannot predict how criticism will be classified. The risk does not establish that every prosecution is unconstitutional. It demonstrates why offence elements and judicial reasoning must be sufficiently clear to allow citizens to predict when speech becomes criminal.¹⁵

¹³ Tae Jung Park and Akshita Rohatgi, "Balancing the Platform Responsibility Paradox: A Case for Amplification Regulation to Mitigate the Spread of Harmful but Legal Content Online," *Computer Law & Security Review* 52 (2024): 105960, <https://doi.org/10.1016/j.clsr.2024.105960>.

¹⁴ United Nations, International Covenant on Civil and Political Rights, December 16, 1966, art. 19; United Nations Human Rights Committee, General Comment No. 34: Article 19, Freedoms of Opinion and Expression, CCPR/C/GC/34, September 12, 2011, paras. 21-38.

¹⁵ Devi Tri Indriasari, "Kebebasan Berekspresi Dalam Tekanan Regulasi: Studi Terhadap Undang-Undang Informasi Dan Transaksi Elektronik (UU ITE)," *Masyarakat Indonesia* 49, no. 2 (2024): 243-256, <https://doi.org/10.14203/jmi.v49i2.1373>.

Judicial consistency is equally important. Putri's study of Indonesian hate-speech judgments identifies uncertainty in judicial thresholds and the assessment of harm. Although hate speech and defamation protect different legal interests, the methodological lesson is relevant. Vague thresholds increase discretion, and discretion without articulated criteria reduces predictability. The Haris and Fatia decisions are valuable to the extent that they make the protected boundary more visible: criticism connected to public policy, research, and an official role should not be transformed into personal defamation without proof that the legal interest of individual honour has actually been attacked.¹⁶

Platform Governance, Chilling Effects, and Comparative Perspectives

The case was decided within criminal law, but its practical environment is a platform-mediated public sphere. A statement may be created by a user, amplified by platform systems, recirculated by other users, excerpted by news media, and then evaluated by police, prosecutors, and courts. Each actor performs a different function. The speaker is responsible for the original expression, while the platform may influence reach through recommender systems and moderation. Law should avoid attributing the platform's amplification logic automatically to the speaker, just as platform regulation should not automatically treat lawful but controversial criticism as content that must be removed.

Human-rights due diligence offers one way to structure platform responsibility. Nave and Lane propose that platform terms of service and moderation practices should be aligned with human-rights standards, especially when platforms address illegal hate speech. Their argument is not directly about Indonesian defamation, but it highlights a broader principle: digital governance should identify the protected right, the relevant harm, and the legal basis for intervention. A similar discipline is needed in criminal enforcement. Authorities should identify the individual reputational interest allegedly harmed and should not rely on an abstract claim that online criticism is socially disruptive.¹⁷

The German NetzDG literature also provides an important caution. Public debate often assumes that stronger content regulation inevitably produces widespread self-censorship. The empirical study by Maaß, Wortelker, and Rott analysed more than seven million Facebook comments and did not find robust evidence of overblocking or chilling effects on the public pages studied. The finding does not prove that chilling effects never occur. It shows that the effect of regulation is an empirical question. For Indonesian legal reform, this means that policy evaluation should use data on complaints, investigations, prosecutions, acquittals, content removal, and user behaviour rather than relying only on competing political narratives.¹⁸

¹⁶ Devita Kartika Putri, "Hate Speech and the Harm in Indonesian Judicial Decisions," *Cogent Social Sciences* 9, no. 2 (2023): 2274430, <https://doi.org/10.1080/23311886.2023.2274430>.

¹⁷ Eva Nave and Lottie Lane, "Countering Online Hate Speech: How Does Human Rights Due Diligence Impact Terms of Service?," *Computer Law & Security Review* 51 (2023): 105884, <https://doi.org/10.1016/j.clsr.2023.105884>.

¹⁸ Sabrina Maaß, Jil Wortelker, and Armin Rott, "Evaluating the Regulation of Social Media: An Empirical Study of the German NetzDG and Facebook," *Telecommunications Policy* 48, no. 5 (2024): 102719, <https://doi.org/10.1016/j.telpol.2024.102719>.

Huang's analysis of decentralised social networks adds a design perspective. User autonomy and free expression can depend on choices about moderation, search, blocklists, and decentralised control. The implication for Indonesian law is that speech governance is becoming structurally plural. Courts regulate criminal liability, legislators define statutory boundaries, constitutional adjudication limits the reach of statutes, and platforms control visibility and moderation. A rights-protective framework should make these responsibilities complementary rather than duplicative. Criminal law should target clearly unlawful attacks on personal reputation, while platform governance can address broader community standards without pretending that every platform violation is a criminal offence.¹⁹

The same approach avoids overreliance on criminal law as the default response to contested online speech. Where reputational harm can be addressed through clarification, correction, reply, civil remedies, or platform procedures, criminal prosecution should remain exceptional. This is particularly important when the contested expression concerns research, advocacy, or public policy. The availability of less intrusive responses does not eliminate criminal defamation as a legal category, but it should influence the assessment of necessity and the proportionality of state intervention.

Persuasive Precedent after Cassation and the 2024-2025 Legal Developments

The Supreme Court's rejection of cassation materially strengthens the jurisprudential significance of the district court outcome. Indonesia does not apply *stare decisis* in the strict common-law sense, so Decision Number 5712 K/Pid.Sus/2024 and Decision Number 5714 K/Pid.Sus/2024 do not automatically bind every court in later cases. Nevertheless, Supreme Court jurisprudence has persuasive and institutional authority, especially when it formulates a clear legal proposition capable of guiding lower courts. The Haris Azhar ruling is significant because it identifies the public-interest character of criticism and distinguishes criticism of official conduct from an attack on private personality.²⁰

The 2024 amendment to the ITE Law reinforces the need for precision. Article 27A speaks in terms of an attack on another person's honour or reputation, not a general offence against institutions, policies, offices, or collective governmental prestige. The wording should direct law-enforcement authorities to identify a natural person whose personal honour is allegedly attacked and to distinguish that interest from criticism of an institution or public position. Such a reading provides greater coherence with constitutional expression because it narrows the offence to the reputational interest that criminal defamation is designed to protect.

Constitutional Court Decision Number 105/PUU-XXII/2024, decided on 29 April 2025, makes that point more explicit. The Constitutional Court held that the phrase "another person" in Article 27A and Article 45 paragraph (4) is conditionally unconstitutional unless understood to exclude government institutions, specifically identifiable groups, institutions, corporations, professions, or offices. It also constrained the meaning of the alleged "matter" so that the provision focuses on

¹⁹ Tao Huang, "Decentralized Social Networks and the Future of Free Speech Online," *Computer Law & Security Review* 55 (2024): 106059, <https://doi.org/10.1016/j.clsr.2024.106059>.

²⁰Supreme Court of the Republic of Indonesia, Decision No. 5712 K/Pid.Sus/2024, September 11, 2024.

conduct that degrades personal honour or reputation. This interpretation is highly relevant to future disputes involving criticism of public institutions or positions because it prevents the electronic defamation offence from becoming a general shield for institutional reputation.²¹

The relationship between the Haris and Fatia jurisprudence and the Constitutional Court decision should not be overstated as a direct causal line. The courts performed different constitutional and adjudicative functions, and the later Constitutional Court case concerned the amended statute. The important point is doctrinal convergence. Both developments point toward a narrower understanding of electronic defamation that focuses on personal honour while preserving a broader space for criticism of institutions, public offices, policies, and matters of public interest.

This convergence supports a practical interpretive framework for future cases. Investigators and prosecutors should first identify the individual reputational interest and the exact factual allegation said to attack that interest. They should then consider whether the expression is directed at private personality or at public conduct, whether it is part of a research or policy discussion, whether it contains verifiable factual assertions or evaluative opinions, and whether criminal prosecution is necessary in light of less restrictive remedies. Judges should articulate these factors in written reasons so that acquittals and convictions both contribute to a predictable body of jurisprudence.

The framework also clarifies the limits of the present study. A judgment protecting research-based criticism does not create a licence for false factual allegations, harassment, threats, or targeted attacks on personal dignity. The legal protection depends on the object, context, purpose, and evidentiary basis of the speech. A future case may legitimately produce a different result if those features differ. The value of the Haris and Fatia decisions lies not in creating an absolute immunity but in demonstrating why courts must classify the speech before imposing criminal liability.

Operational Implications for Future Electronic-Defamation Cases

The doctrinal convergence identified in this study can be translated into a practical sequence for future case handling without turning the authors' reconstruction into a binding judicial test. At the complaint stage, the central task is to identify the exact statement, the person said to be harmed, the medium and audience, and the relation of the expression to a private dispute or a matter of public concern. This first-stage discipline matters because electronic communications are easily excerpted. A complaint based on a screenshot, short clip, or isolated quotation should not prevent investigators from examining the surrounding discussion needed to determine the communicative form and object of the statement.

At the investigation and prosecution stages, the offence elements should remain the organising framework. The authorities should identify the alleged matter, explain why it is said to attack personal honour or reputation, and distinguish that allegation from criticism of an institution, office, policy, profession, or governmental function. Where the expression relies on research or documentary

²¹Constitutional Court of the Republic of Indonesia, Decision No. 105/PUU-XXII/2024, April 29, 2025.

material, the existence and role of that material should be recorded as part of context. This does not require investigators to decide the entire constitutional question at the outset, but it does reduce the risk that a criminal process proceeds on a category error in which institutional criticism is treated as though it were automatically a personal reputational attack.

For judges, the main requirement is reasoned classification. A judgment should state whether the contested expression is treated as fact, opinion, rhetorical evaluation, quotation, or research dissemination; identify the relevant individual reputational interest; and explain the relationship between the statement and the public-interest context. If criminal liability is imposed, the reasoning should show why the statutory elements are satisfied despite the expressive interest involved. If the defendant is acquitted, the reasoning should likewise specify which element or legal qualification is not met. Clear reasoning on both sides is necessary if jurisprudence is to become more predictable rather than merely outcome-oriented.

Platform operators occupy a different legal position. Their community rules may address content that is harmful, misleading, abusive, or otherwise contrary to platform standards even where the criminal offence is not satisfied. The manuscript therefore distinguishes platform governance from state criminalisation. A platform's decision to reduce distribution, add context, restrict a feature, or remove content should not be treated as proof that the speaker committed electronic defamation; conversely, the absence of a criminal offence does not prevent a platform from applying lawful and rights-conscious moderation rules. Maintaining that separation avoids transferring private platform standards into the elements of a criminal offence.

Finally, policymakers and researchers should treat chilling effects as an empirical question that can be studied rather than assumed. The doctrinal analysis in this article identifies circumstances in which uncertainty may rationally encourage self-censorship, particularly where the target of criticism holds public power. Whether the post-2024 framework actually changes complaints, investigations, prosecutions, acquittals, content-removal patterns, or user behaviour requires data beyond this normative study. The most useful future evaluation would therefore connect doctrinal clarity with measurable enforcement outcomes, allowing legal reform to be assessed by both the precision of its rules and its effects in the digital public sphere.

Table 3. Operational Matrix for Handling Contested Online Expression

Actor / stage	Primary question	Minimum analytical record	Principal risk if omitted
Complainant / initial complaint	What exact expression is said to cause reputational harm?	Full statement or recording, surrounding context, target, medium, and public/private subject matter.	An isolated phrase may be treated as the whole communication.
Investigator	Does the complaint concern an identifiable individual and a matter capable of satisfying the offence elements?	Identification of the person, alleged matter, communicative form, and contextual or research basis.	Institutional or policy criticism may be misclassified as personal defamation.

Prosecutor	Is the evidentiary record sufficient to connect the proven expression to each statutory element?	Element-by-element theory of the case and explanation of why criminal process is appropriate.	Prosecution may rely on offensiveness or reputational discomfort rather than the offence text.
Judge	How should the speech be legally classified in context?	Written findings on object, form, context, individual reputation, statutory elements, and constitutional justification.	The judgment may become outcome-oriented and provide little guidance for later cases.
Platform operator	Does content violate platform rules independently of criminal liability?	Transparent application of terms of service and rights-conscious review of moderation decisions.	Private moderation standards may be confused with criminal-law standards.
Policymaker / researcher	Does the legal framework produce predictable and measurable effects?	Data on complaints, investigations, prosecutions, outcomes, removals, and user behaviour.	Claims of chilling effect or regulatory success may remain untested assumptions.

Source: Authors' operational synthesis of the framework and recommendations developed in this article.

CONCLUSION

The Haris Azhar and Fatia Maulidiyanti litigation demonstrates that the protection of freedom of expression in social media depends on a precise legal distinction between criticism of public affairs and attacks on individual reputation. The East Jakarta District Court treated the contested discussion as criticism, commentary, analysis, and dissemination of research concerning a public-interest issue. The Supreme Court's rejection of cassation preserved that outcome and gave the distinction greater jurisprudential weight. The decisions therefore should not be reduced to the proposition that public officials have no right to reputation. Their stronger contribution is the requirement to identify whether the speech is directed at private honour or at the exercise of public power.

The Haris Azhar and Fatia Maulidiyanti litigation is most useful as jurisprudential guidance on the distinction between scrutiny of public affairs and an attack on an individual's reputation. The trial courts' contextual reasoning, the Supreme Court's cassation outcomes, the 2024 statutory amendment, and the 2025 Constitutional Court interpretation should be synthesised rather than treated as interchangeable sources. The five-factor framework in this article is the authors' reconstruction, not a formal binding test announced by the courts. Criminal-law analysis should first determine the statutory elements; civil remedies, correction, reply, professional ethics, or platform moderation may address other harms without expanding the offence beyond its text. This normative study does not measure chilling effects, enforcement frequency, or platform moderation empirically; those questions require future empirical research.

For law-enforcement practice, the principal recommendation is analytical rather than rhetorical. Investigators, prosecutors, and judges should identify the protected individual reputation, classify the speech in context, distinguish fact from opinion and research-based evaluation, assess the connection to public interest, and

explain why criminal intervention is necessary. Legislators and courts should also continue reducing ambiguity in offence elements. Platform operators should maintain content-governance systems that respect human rights while recognising the difference between unlawful content and lawful but controversial speech. Future empirical research should examine whether the post-2024 framework changes complaint patterns, prosecution rates, acquittal rates, or user self-censorship. Such evidence is necessary to determine whether doctrinal clarification produces a more predictable and rights-consistent digital public sphere.

A final limitation concerns the relationship between doctrinal clarity and institutional behaviour. This article can identify a more precise legal boundary by reading the offence elements, the Haris Azhar and Fatia Maulidiyanti decisions, the Supreme Court cassation outcomes, the 2024 statutory amendment, and the Constitutional Court interpretation together. It cannot establish from those materials alone how consistently investigators, prosecutors, judges, or platform operators will apply that boundary in future disputes. Consistency is an empirical institutional question. A later study should therefore examine a defined body of post-2024 complaints and judgments, code the object of the speech, the identity of the complainant, the form of the alleged statement, the presence of a public-interest context, the legal provision invoked, and the procedural outcome. Such a dataset would allow researchers to test whether the doctrinal distinctions identified here are actually reflected in enforcement practice.

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