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The Limits of Freedom of Expression on Social Media and the Establishment of Criminal Liability: A Legal Certainty Perspective Eidence

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Original Article

Abstract

Restrictions on political expression through social media expose a tension between constitutionally protected dissent and the criminal prohibition of incitement, particularly when criminal legislation changes between the alleged conduct and judgment. This doctrinal study examines statutory provisions, constitutional decisions, and the full 120-page judgment in South Jakarta District Court Case No. 675/Pid.Sus/2025/PN Jkt.Sel. It finds that the court applied Article 161(1) of the former Criminal Code rather than Article 247 of the National Criminal Code because the former was more favorable to the defendant. The court distinguished political criticism and emotionally charged speech from a specific post it characterized as encouraging arson, using the Rabat Plan of Action's six factors and the three-part test for restrictions on expression. It imposed six months' imprisonment, suspended subject to a one-year period of supervision. The analysis distinguishes the intent to publish from the culpable mental state required for incitement and separates digital attribution from proof of that mental state. Its contribution is a five-stage doctrinal framework integrating temporal legality, classification of expression, evidentiary reliability, culpability, and proportionality.

Keywords: *Freedom of Expression, Incitement, Temporal Legality, Criminal Culpability, Electronic Evidence*

Abstrak

Kebebasan berekspresi di media sosial menghadapkan perlindungan hak konstitusional pada penerapan norma penghasutan yang mensyaratkan pembuktian secara cermat. Penelitian hukum normatif ini menganalisis pembatasan ekspresi digital, asas hukum pidana antarwaktu, serta pembuktian kesalahan melalui pendekatan perundang-undangan, konseptual, dan kasus terhadap Putusan PN Jakarta Selatan Nomor 675/Pid.Sus/2025/PN Jkt.Sel. Hasil penelitian menunjukkan bahwa hakim memilih Pasal 161 ayat (1) KUHP lama karena dinilai lebih menguntungkan terdakwa daripada Pasal 247 KUHP Nasional. Majelis memisahkan unggahan kritik dan ungkapan emosional dari satu unggahan yang dinilai menghasut pembakaran, lalu menggunakan enam faktor Rencana Aksi Rabat dan pengujian tiga tahap pembatasan hak untuk menilai konteks, niat, risiko, serta legitimasi pemidanaan. Terdakwa dinyatakan bersalah dan dijatuhi pidana penjara enam bulan yang tidak perlu dijalani selama memenuhi syarat pengawasan satu tahun. Penelitian mengidentifikasi kebutuhan membedakan kesengajaan menyebarkan konten dari unsur kesalahan khusus delik, sekaligus menilai autentisitas bukti dan ketepatan norma menurut waktu perbuatan. Kontribusi penelitian berupa kerangka penilaian berlapis yang menghubungkan legalitas, klasifikasi ekspresi, pembuktian, dan proporsionalitas sanksi.

Kata kunci: *Kebebasan Berekspresi, UU ITE, Kesalahan Pidana, Penghasutan; Bukti Elektronik*

1. INTRODUCTION

Social media has become an arena in which criticism of public policy, political disagreement, information sharing, and emotionally charged communication coexist. Unlike speech delivered to a closed audience, an online post can be copied, excerpted, reposted, and read far beyond its original context. This communicative environment complicates the legal distinction between constitutionally protected opinion and expression that satisfies the elements of a criminal offense. The analysis does not presume that all harsh language enjoys absolute protection. Equally, the mere existence of public controversy or disapproval cannot substitute for proof of criminal liability. Scholarship on platform governance helps illuminate why the regulation of online expression must be understood as a relationship among public authorities, private intermediaries, and speakers rather than as a simple conflict between the state and an individual.[1]

Article 28E (3) of Indonesia's 1945 Constitution protects the freedom to express opinions, and Article 28F guarantees communication and access to, and transmission of, information. Those guarantees must be read alongside Article 28J (2), which permits restrictions established by law for legitimate purposes in a democratic society.[2] The decisive question is therefore not whether the state may ever limit expression, but whether a particular restriction rests on an applicable statute, provides sufficiently foreseeable elements, pursues a legitimate aim, and is justified and proportionate in the circumstances of the speech at issue. This inquiry is especially consequential when criminal punishment is invoked rather than civil redress or a platform's own content policy.[3]

Indonesian legal scholarship has long documented the difficulty of separating reputational attacks from expression concerning matters of public interest. Marwandianto and Hilmi Ardani Nasution emphasize proportionality when applying defamation provisions; Julianja identifies interpretive uncertainty under the Electronic Information and Transactions Law (Undang-Undang Informasi dan Transaksi Elektronik, or UU ITE); and Putra and Tantimin assess the restrictions on speech

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1 Mufti Nurlatifah, "Persimpangan Kebebasan Berekspresi dan Tanggung Jawab Sosial pada Regulasi Jurnalisme Digital di Indonesia," *Jurnal IPTEK-KOM* 22, no. 1 (2020): 77–93, https://doi.org/10.17933/iptekkom.22.1.2020.77-93; Nyoman Gede Antaguna and Anak Agung Sagung Laksmi Dewi, "Pembatasan Kebebasan Berpendapat dan Berekspresi di Sosial Media Berdasarkan Peraturan Perundang-Undangan Nomor 19 Tahun 2016 tentang Perubahan atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik (ITE)," *Kertha Wicaksana* 17, no. 2 (2023): 138–46, https://doi.org/10.22225/kw.17.2.2023.138-146; Jack M. Balkin, "Free Speech Is a Triangle," *Columbia Law Review* 118, no. 7 (2018): 2011–56.

2 Juan Matheus, "E-Arbitration: Digitization Of Business Dispute Resolution Pada Sektor E-Commerce Dalam Menyongsong Era Industri 4.0 Di Tengah Pandemi Covid-19," *Lex Renaissance* 6, no. 4 (2021): 692–704.

3 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (1945); Afrizal Razqi and Hananto Widodo, "Pembatasan Kebebasan Berekspresi dan Berpendapat Menurut Undang-Undang Nomor 12 Tahun 2005 tentang Pengesahan International Covenant on Civil and Political Right," *NOVUM: Jurnal Hukum* 10, no. 2 (2022): 61–70, https://doi.org/10.2674/novum.v0i0.46338.

imposed by the earlier statutory regime. These studies establish the importance of rights-sensitive interpretation. Their central objects and legal periods, however, do not fully address the changes in substantive criminal law that took effect in 2026 or the demands of proving intent in cases spanning the transition.[4]

More recent studies examine the interaction between online expression and Constitutional Court Decision No. 105/PUU-XXII/2024. Hanafi considers the conflict between individual liberties and restrictions on digital platforms; Mutiara and Silalahi analyze the ruling's implications for reputational offenses; and Aziz, Muslim, and Ramadhan question the legal certainty of Article 27A of the amended UU ITE. Their contribution lies in clarifying the scope of particular speech offenses. Yet an account confined to the UU ITE does not resolve the temporal application of provisions that ceased to operate when the National Criminal Code entered into force on January 2, 2026, particularly where the alleged expression predated that transition.[5]

Other scholarship addresses related but distinct questions. Maturbongs and colleagues examine online defamation under the UU ITE and the National Criminal Code, while Vanessa and Firmansyah focus on the admissibility and authenticity of electronic evidence. The first line of analysis centers on offense definitions; the second addresses evidentiary media. Neither alone provides an operational sequence that integrates temporal applicability, the linguistic character of a statement, attribution to a particular speaker, the specific mental element required by the offense, and the legal consequences of conviction. This distinction between material criminal law and rules of proof is essential to an analysis of online incitement.[6]

The prosecution of Laras Faizati Khairunnisa, registered as South Jakarta District Court Case No. 675/Pid.Sus/2025/PN Jkt.Sel, offers a concrete illustration of the

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[4] Marwandianto and Hilmi Ardani Nasution, "Hak atas Kebebasan Berpendapat dan Berekspresi dalam Koridor Penerapan Pasal 310 dan 311 KUHP," *Jurnal HAM* 11, no. 1 (2020): 1–25, https://doi.org/10.30641/ham.2020.11.1-25; Sufiana Julianja, "Pembatasan Kebebasan Berkespresi dalam Bermedia Sosial: Evaluasi Undang-Undang Informasi dan Transaksi Elektronik dalam Perspektif Hak Asasi Manusia," *Padjadjaran Law Review* 6, no. 1 (2018), https://jurnal.fh.unpad.ac.id/index.php/plr/article/view/387; Aldo Ernandi Putra and Tantimin, "Kajian Hukum Pasal 27 Ayat 3 UU ITE terhadap Kebebasan Berpendapat Masyarakat," *JUSTITIA: Jurnal Ilmu Hukum dan Humaniora* 9, no. 5 (2022): 2366–74.

[5] Hanafi, "The Dialectics of Freedom of Expression and Legal Restrictions on Digital Platforms: An Analysis of Human Rights Principles, the Electronic Information and Transactions Law, and Constitutional Court Decision Number 105/PUU-XXII/2024," *International Journal of Law, Environment, and Natural Resources* 5, no. 1 (2025): 57–75, https://doi.org/10.51749/injurlens.v5i1.132; Adelia Nelma Mutiara and Wilma Silalahi, "Pencemaran Nama Baik di Era Digital Pasca Putusan Mahkamah Konstitusi Nomor 105/PUU-XXII/2024: Antara Perlindungan Reputasi dan Kebebasan Berekspresi," *Causa: Jurnal Hukum dan Kewarganegaraan* 16, no. 7 (2026), https://doi.org/10.6679/d6gp6n27; Abdul Aziz et al., "Pengaturan Delik Penyerangan Kehormatan atau Nama Baik melalui Media Elektronik dalam Pasal 27A UU Nomor 1 Tahun 2024: Antara Kepastian Hukum dan Kebebasan Berekspresi," *Jurnal Pustaka Cendekia Hukum dan Ilmu Sosial* 4, no. 2 (2026): 3524–31, https://doi.org/10.70292/pchukumsosial.v4i2.535.

[6] Bahrunsyah Maturbongs et al., "Penegakan Hukum terhadap Tindak Pidana Pencemaran Nama Baik melalui Media Sosial dalam Perspektif UU ITE dan KUHP Nasional," *Lex Journal: Kajian Hukum dan Keadilan* 10, no. S1 (2026): 176–207, https://doi.org/10.25139/lex.v10iS1.12691; Vanessa and Hery Firmansyah, "Analysis of the Validity of Electronic Evidence in Criminal Trial Proceedings and the Implementation of Its Admissibility (Judgment Study)," *Indonesian Journal of Law and Economics Review* 20, no. 4 (2025), https://doi.org/10.21070/ijler.v20i4.1395.

intersection of public criticism, an alleged call to violence, and criminal responsibility. The disputed Instagram Stories were posted on August 29, 2025. On January 15, 2026, the court convicted the defendant under the fourth alternative charge, Article 161(1) of the former Criminal Code, and imposed six months' imprisonment, not to be served provided she committed no further offense during one year of supervision. This study examines the full 120-page judgment, rather than relying solely on the disposition published in the Supreme Court's decision directory, and differentiates the court's findings from the prosecution's allegations and the defense submissions.[7]

The case is particularly significant because its temporal dimension is legally dispositive. The alleged speech occurred before the National Criminal Code became effective on January 2, 2026, whereas judgment was delivered afterward. Article II of Law No. 1 of 2024 also made the continued application of specified offenses in the UU ITE contingent upon the commencement of the new Code. Accordingly, the court had to identify the applicable substantive offense before deciding whether the content satisfied its elements. The procedural law governing electronic evidence likewise requires attention to the transitional provisions of the new Code of Criminal Procedure. Similar wording across statutes cannot by itself resolve these issues.[8]

The study does not claim to be the first examination of political incitement or of the Laras judgment. Haidi analyzed the interpretation of Article 160 of the former Criminal Code after Constitutional Court Decision No. 7/PUU-VII/2009; Rachman, Yamin, and Imawanto cautioned against expansive uses of incitement provisions; and Sofian's 2026 study addressed the quality of judicial reasoning in several political-expression cases, including Laras. The narrower gap addressed here is the need for an ordered doctrinal assessment that links the law applicable at the time of the conduct with constitutional protection, offense-specific culpability, electronic attribution, and sentencing. This is a proposed analytical synthesis, not a claim of bibliographic priority over all previous work.[9]

Against this background, the article asks two questions. First, how should the constitutional boundary of expression on social media be identified during the transition from the UU ITE to the National Criminal Code? Second, how should criminal culpability and electronic evidence be evaluated to ensure that liability for online expression rests on sufficiently certain legal grounds? The study aims to identify applicable criminal provisions according to the time of the conduct *(tempus delicti),*

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7 Putusan Nomor 675/Pid.Sus/2025/PN Jkt.Sel, 15 Januari 2026, Pengadilan Negeri Jakarta Selatan ___ (2026).

8 Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana (2023); Undang-Undang Nomor 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana (2025).

9 Toufan Hazmi Haidi, "Tindak Penghasutan dalam Pasal 160 KUHP Pasca Putusan Mahkamah Konstitusi Nomor 7/PUU-VII/2009," *Jurist-Diction* 5, no. 4 (2022): 1581–602, https://doi.org/10.20473/jd.v5i4.37359; M. Taufik Rachman et al., "Ruang Gelap Pasal 160 KUHP Perspektif Hak Asasi Manusia," *Ganec Swara* 19, no. 2 (2025): 588–93, https://doi.org/10.59896/gara.v19i2.251; Ahmad Sofian, "Batas Penafsiran Penghasutan dan Kualitas Alasan Hukum dalam Perkara Ekspresi Politik," *Halu Oleo Law Review* 10, no. 2 (2026): 172–205, https://doi.org/10.33561/holrev.v10i2.209.

distinguish public criticism from incitement by applying the statutory elements, and formulate a disciplined evidentiary inquiry. Its wider relevance lies in showing how legal certainty and procedural safeguards operate when states criminalize controversial digital communication.

2. RESEARCH METHODOLOGY

This article employs doctrinal (normative) legal research through statutory, conceptual, and case-law approaches. The statutory approach examines constitutional guarantees of expression and the interaction among the UU ITE, the former Criminal Code, the National Criminal Code, and transitional rules of substantive and procedural criminal law. The conceptual approach addresses the principle of legality, criminal culpability, incitement, legal certainty, and proportionality. The case-law approach analyzes the complete judgment in South Jakarta District Court Case No. 675/Pid.Sus/2025/PN Jkt.Sel. These approaches permit a legal assessment of judicial reasoning; they do not establish empirical rates of censorship, prosecution, or platform behavior.[10]

Primary legal materials comprise the 1945 Constitution, Law No. 1 of 2024 amending the UU ITE, Law No. 1 of 2023 establishing the National Criminal Code, Law No. 20 of 2025 establishing the new Code of Criminal Procedure, Law No. 8 of 1981 as the preceding procedural regime, and the relevant constitutional and district court decisions. Secondary materials consist of academic writing on criminal-law doctrine, proof, freedom of expression, incitement, and digital evidence. International instruments and interpretive materials are used as persuasive guidance for constitutional analysis, not as independently enacted domestic offense provisions. The distinction matters because international safeguards cannot replace statutory elements that must be proved under Indonesian criminal law.[11]

Legal materials were identified through the examination of statutory texts, judicial decisions, and relevant scholarly publications. Close reading of the Laras judgment focused on pages 91–120, which discuss the selection of the alternative charge, temporal applicability, elements of incitement, the Rabat Plan of Action's six factors, the three-part restrictions test, sentencing reasons, and the dispositive orders. Textual interpretation was used to analyze Article 161(1) of the former Criminal Code; systematic and conceptual interpretation was used to assess its relation to the National Criminal Code and human rights norms. The analysis expressly separates what the judges concluded from the authors' evaluation of the sufficiency of those reasons. No

[10] Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi revisi (Kencana, 2017).

[11] United Nations Human Rights Committee, *General Comment No. 34: Article 19, Freedoms of Opinion and Expression* (2011).

interviews, field observation, or independent forensic examination of the electronic devices were conducted.

3. RESEARCH RESULT AND DISCUSSION

3.1. Constitutional Boundaries of Digital Expression and the Temporal Operation of Criminal Offenses

Freedom of expression protects unpopular opinions, criticism of government policy, and language that may cause offense to its targets. Its practical significance in a democratic system is greatest when a speaker challenges an institution or disputes a prevailing view. Article 28J(2) of the Constitution does not confer an unrestricted power to criminalize offensive content. Restrictions require a legal basis, an identifiable legitimate purpose, and a reasoned account of why intervention is justified in the circumstances. Criminalization also entails a qualitatively different burden from responses based on professional ethics, social disapproval, or a platform's terms of service.[12]

These constitutional safeguards operate alongside Law No. 39 of 1999 on Human Rights and Indonesia's treaty obligations under the International Covenant on Civil and Political Rights (ICCPR), ratified by Law No. 12 of 2005. Article 19 of the ICCPR distinguishes the freedom to hold opinions from the freedom to impart expression and permits restrictions only on defined grounds. The Human Rights Committee's General Comment No. 34 emphasizes accessibility, foreseeability, and safeguards against unbounded discretion. In this study, those norms are used to assess the legitimacy and clarity of domestic restrictions; they do not themselves create a new criminal offense.[13]

Saparina and Dewi connect freedom of expression to the political values of *Pancasila*, while Nurlatifah describes how digital communication alters the relationship between expression and social responsibility. Read together, the studies suggest that ethical responsibility must not be conflated with criminal guilt. An offensive or socially irresponsible statement is not necessarily an act satisfying all the elements of a criminal offense. Failure to distinguish these categories makes it harder for speakers to anticipate the legal consequences of their conduct and weakens the predictability demanded by the principle of legality.[14]

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[12] Marwandianto and Nasution, "Hak atas Kebebasan Berpendapat dan Berekspresi dalam Koridor Penerapan Pasal 310 dan 311 KUHP"; Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

[13] Undang-Undang Nomor 12 Tahun 2005 tentang Pengesahan International Covenant on Civil and Political Rights (2005); United Nations Human Rights Committee, *General Comment No. 34: Article 19, Freedoms of Opinion and Expression*.

[14] Amalya Salsa Saparina and Dinie Anggraeni Dewi, "Implementasi Nilai-Nilai Pancasila Melalui Praktik Kebebasan Berpendapat di Indonesia," *Jurpis: Jurnal Pendidikan Ilmu Sosial* 18, no. 1 (2021): 49–62; Nurlatifah, "Persimpangan Kebebasan Berekspresi dan Tanggung Jawab Sosial pada Regulasi Jurnalisme Digital di Indonesia."

For legal analysis, at least three categories must be distinguished. The first comprises opinions and criticism of public policy, including vigorous criticism that does not accuse a particular individual of a specified act. The second concerns statements imputing conduct to an identifiable person and potentially engaging the applicable law of defamation. The third comprises communications urging criminal acts or violence, which must be assessed under the elements of incitement or another specifically defined offense. Neither the emotional intensity of a message nor adverse audience reactions can determine the category on its own. The legally operative features are the content, target, communicative purpose, and statutory offense definition.[15]

Under the UU ITE as amended in 2024, Article 27A addressed attacks on personal honor or reputation through electronic systems. Constitutional Court Decision No. 105/PUU-XXII/2024 limited the meaning of 'another person' so that government institutions, organizations, corporations, professions, and official positions were not treated as individual complainants within that provision. The Court also narrowed the relevant accusation to conduct capable of damaging an individual's honor or good name. For Article 28(2), it emphasized hostility linked to legally protected identity characteristics and the risk of discrimination, hostility, or violence. Accordingly, personal defamation and identity-based incitement remain analytically distinct categories of criminal regulation.[16]

The constitutional judgment did not create general immunity for harmful expression. Rather, it narrowed statutory interpretation to prevent criticism of institutions, allegations about identifiable individuals, and hostility toward protected groups from being subjected to an undifferentiated criminal standard. Hanafi's work supports a rights-oriented reading of this ruling. The present analysis adds a temporal inquiry: even a constitutionally permissible interpretation can only be applied through a provision that governed the relevant conduct under the rules of criminal law applicable over time. The date of the post is therefore a threshold question, not merely a chronological detail.[17]

Article II(1) of Law No. 1 of 2024 expressly provided that certain criminal provisions, including Article 27A and Article 28(2) of the UU ITE and their associated penalties, would remain effective only until Law No. 1 of 2023 establishing the National Criminal Code took effect. The new Code commenced on January 2, 2026. It would thus be legally inaccurate to treat Article 27A of the UU ITE and Article 433 of the new

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[15] Julianja, "Pembatasan Kebebasan Berkespresi dalam Bermedia Sosial: Evaluasi Undang-Undang Informasi dan Transaksi Elektronik dalam Perspektif Hak Asasi Manusia"; Hanafi, "The Dialectics of Freedom of Expression and Legal Restrictions on Digital Platforms: An Analysis of Human Rights Principles, the Electronic Information and Transactions Law, and Constitutional Court Decision Number 105/PUU-XXII/2024."

[16] Putusan Nomor 105/PUU-XXII/2024, Mahkamah Konstitusi Republik Indonesia ___ (2025); Mutiara and Silalahi, "Pencemaran Nama Baik di Era Digital Pasca Putusan Mahkamah Konstitusi Nomor 105/PUU-XXII/2024: Antara Perlindungan Reputasi dan Kebebasan Berekspresi."

[17] Aziz et al., "Pengaturan Delik Penyerangan Kehormatan atau Nama Baik melalui Media Elektronik dalam Pasal 27A UU Nomor 1 Tahun 2024: Antara Kepastian Hukum dan Kebebasan Berekspresi."

Code as concurrently available, parallel bases for conviction after that date without a temporal analysis. The correct inquiry identifies the rules governing the alleged conduct and then applies the Code's provisions concerning changes in criminal legislation.[18]

Article 433 of the National Criminal Code addresses defamation through allegations of specified conduct that harm another person's honor or reputation and are intended to become generally known. Subsection (2) addresses written or pictorial dissemination, while subsection (3) recognizes circumstances involving the public interest or necessary self-defense. These elements and exceptions must be examined separately. A complainant's subjective offense, the prominence of the post, or the number of its viewers does not replace proof of a concrete allegation and the legally required communicative purpose. In particular, a criminal court must avoid using the language of public controversy as a proxy for statutory elements.[19]

A change in statutory law does not automatically terminate every prosecution arising from conduct committed before January 2026. Article 3 of Law No. 1 of 2023 governs the temporal application of criminal provisions, including the operation of the more favorable law and the consequences when conduct ceases to be criminalized. The assessment must compare the actual conduct and the offense charged rather than merely match article numbers. Law No. 1 of 2026 on Criminal Penalty Adjustments forms part of the regulatory context, but only amendments relevant to the particular offense can affect the analysis. This case-specific approach protects legality without mistakenly assuming that all pre-2026 prosecutions are extinguished.[20]

Incitement must also be distinguished from defamation. A message may contain no factual allegation about a person yet urge listeners to commit a criminal act; conversely, even strongly negative assessments of public institutions may lack any call to illegal action. Haidi's analysis of incitement after Constitutional Court Decision No. 7/PUU-VII/2009 and the concerns raised by Rachman and coauthors demonstrate the need to restrain expansive readings of incitement offenses. The inquiry should therefore identify the prohibited act that the speaker is alleged to have encouraged and explain how the words and surrounding circumstances satisfy the relevant statutory definition.[21]

Moderation by a private platform must be kept distinct from criminal adjudication. A service provider may restrict a post's reach under its terms of service or an applicable legal obligation; removal or suspension, however, is not a judicial determination that

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[18] Undang-Undang Nomor 1 Tahun 2024 tentang Perubahan Kedua atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik (2024); Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

[19] Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana; Maturbongs et al., "Penegakan Hukum terhadap Tindak Pidana Pencemaran Nama Baik melalui Media Sosial dalam Perspektif UU ITE dan KUHP Nasional."

[20] Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana; Undang-Undang Nomor 1 Tahun 2026 tentang Penyesuaian Pidana (2026).

[21] Haidi, "Tindak Penghasutan dalam Pasal 160 KUHP Pasca Putusan Mahkamah Konstitusi Nomor 7/PUU-VII/2009"; Rachman et al., "Ruang Gelap Pasal 160 KUHP Perspektif Hak Asasi Manusia."

the user committed an offense. Setiawan, Kasmawati, and Nurlaili analyze the tension between controlling disinformation and preserving users' legal certainty. International scholarship makes a complementary point: Klonick describes platforms as private systems of governance, while Balkin conceptualizes online speech as a triangular relationship among states, intermediaries, and speakers. These perspectives reinforce a separation of legal regimes: contractual platform sanctions, administrative state interventions, and criminal penalties must each rest on their own authority and procedural safeguards.[22]

Consequently, the boundary of lawful digital expression cannot be drawn between supposedly 'positive' and 'negative' posts. A defensible legal assessment must identify the protected interest, the person or institution targeted, whether the statement conveys opinion, a factual allegation, a threat, or a call to action, and the offense that was legally applicable when the conduct occurred. It must then evaluate the justification and proportionality of any restriction. This resolves the first research question in part: legal certainty is advanced by a reviewable classification of communication and statutory elements, not by an impressionistic judgment about the civility of the message.[23]

3.2. Criminal Culpability, Electronic Evidence, and the Laras Prosecution

Criminal responsibility cannot be established simply because the existence of a post can be demonstrated. The prosecution must first show that the conduct fulfills the objective elements of the offense and can be attributed to the accused. It must then establish the form of culpability required by the provision, capacity for criminal responsibility, and the absence of applicable grounds excluding liability. Article 36 of the National Criminal Code articulates the central distinction between intentional and negligent conduct and provides for punishment of negligence where the law expressly so requires. Negligence therefore cannot be substituted for intent where the charged offense requires knowledge, purpose, or a specified intention. A digital record proves a communication event; it does not by itself determine criminal blameworthiness.[24]

In electronic communication, intending to compose or post a message is not necessarily the same as intending to engage in criminal incitement or defamation. A user may know that a Story will be visible to others without thereby possessing the culpable mental state prescribed by a particular offense. The investigation must connect the

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[22] M. Syafieq Ihza Setiawan et al., "Implementasi Kewajiban Moderasi Konten oleh Platform Media Sosial terhadap Disinformasi dalam Perspektif Kepastian Hukum," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4, no. 2 (2026): 4703–11, https://doi.org/10.61104/alz.v4i2.4961; Kate Klonick, "The New Governors: The People, Rules, and Processes Governing Online Speech," *Harvard Law Review* 131, no. 6 (2018): 1598–670.

[23] Antaguna and Dewi, "Pembatasan Kebebasan Berpendapat dan Berekspresi di Sosial Media Berdasarkan Peraturan Perundang-Undangan Nomor 19 Tahun 2016 tentang Perubahan atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik (ITE)."

[24] Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana; Aris Munandar Ar et al., "Peran Niat (Mens rea) dalam Pertanggungjawaban Pidana di Indonesia," *JIMMI: Jurnal Ilmiah Mahasiswa Multidisiplin* 1, no. 3 (2024): 240–52, https://doi.org/10.71153/jimmi.v1i3.140.

speaker's words with the target, anticipated audience, surrounding conduct, and purpose required by the statute. Virality is not an evidentiary shortcut to intent. View counts and reposts demonstrate dissemination, but their relationship to the defendant's own understanding or purpose requires further reasoning and supporting evidence.[25]

Motive and intention are related but distinct analytical concepts. Motive explains why a person acted in personal, political, or emotional terms; criminal intent concerns the accused's awareness or will in relation to the prohibited conduct. A person who expresses anger about public services may have a political or emotional motive. The court must still ask whether the communication deliberately encouraged an identified criminal offense and what evidence supports that inference. Henok's analysis of motive in criminal proof is useful precisely because it cautions against treating strong emotion as proof of the mental element of the charged offense.[26]

For incitement, the analysis begins with the conduct that the audience was allegedly encouraged to perform. Criticism, ridicule, or rejection of a government policy does not amount to incitement merely because its rhetoric is forceful. Conversely, an explicit solicitation of criminal conduct does not acquire immunity because it appears during a demonstration or political dispute. Constitutional Court Decision No. 7/PUU-VII/2009 interpreted Article 160 of the former Criminal Code as a material offense. That interpretation bears on reasoning about the relationship between communication and harmful consequences, although its effect on a prosecution under Article 161 must be considered in light of the distinct statutory text rather than assumed by analogy.[27]

The distinction between Articles 160 and 161 of the former Criminal Code is visible in the Laras judgment. Having examined the alternatives in the indictment, the judges selected the fourth charge under Article 161(1) (judgment, pp. 91–92). The relevant questions concerned the defendant as a legal subject, the public dissemination of written material encouraging criminal conduct, and the purpose of making its contents known or more widely known. Selection of that charge does not mean that the identity-based hate-speech allegation under the UU ITE or the electronic-data offense was proved. Temporal legality, the offense-specific mental element, and sentencing must be evaluated separately.[28]

Because the disputed conduct took place in 2025 and judgment was entered after the new Code took effect, temporal legality is a substantive issue rather than a procedural footnote. The adjudicator must determine which criminal law governed the original act, examine the relevant statutory changes, and identify any more favorable

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[25] Adrianus Herman Henok, "Konstruksi Motif dalam Pembuktian Perkara Pidana," *Honeste Vivere* 33, no. 2 (2023): 113–29, https://doi.org/10.55809/hv.v33i2.242; Ar et al., "Peran Niat (Mens rea) dalam Pertanggungjawaban Pidana di Indonesia."

[26] Henok, "Konstruksi Motif dalam Pembuktian Perkara Pidana."

[27] Putusan Nomor 7/PUU-VII/2009, Mahkamah Konstitusi Republik Indonesia ___ (2009); Haidi, "Tindak Penghasutan dalam Pasal 160 KUHP Pasca Putusan Mahkamah Konstitusi Nomor 7/PUU-VII/2009."

[28] *Putusan Nomor 675/Pid.Sus/2025/PN Jkt.Sel, 15 Januari 2026*.

provision. In particular, Articles 27A of the UU ITE and 433 of the National Criminal Code cannot be treated as freely interchangeable provisions governing the same conduct without considering the effective dates and transitional rules. The relevant criminal law is tied to the time of the alleged act, not to the date an academic article is written.[29]

Sofian's 2026 analysis already evaluates judicial reasoning across several political-expression cases, including the Laras proceedings; this article makes no claim to an exclusive or first examination of that case. What the full judgment adds is evidence that the judges themselves employed the Rabat Plan of Action's six factors, the three-part restrictions test, and a separate assessment of intent. Accordingly, the present contribution is a critical appraisal of the boundaries of those inferences: how far the Rabat framework may appropriately be extended to non-identity-based incitement, whether proof of publication is distinguished from proof of criminal intention, and whether the court's choice of law is internally coherent.[30]

Attribution of an online account presents an independent evidentiary question. A username, displayed profile, or screenshot may show that information appeared on an account, but it does not invariably identify the person who authored or controlled the disputed post. Accounts may be shared, compromised, or accessed through several devices. Attribution should therefore be corroborated, where available, by account-access records, device information, testimony, contemporaneous communications, and forensic examination. These possibilities are not claims that account compromise occurred in the Laras case; rather, they identify safeguards required for a legally sound approach to criminal attribution across social media prosecutions.[31]

The assessment of electronic evidence must also distinguish authenticity, integrity, relevance, and lawful acquisition. Authenticity concerns whether the record is what the proponent claims it to be; integrity concerns whether the data has been materially altered; relevance concerns its connection to the alleged offense; and lawful acquisition addresses the authority and procedure used to obtain it. A screenshot, even where visually persuasive, may omit context or technical metadata. An electronic exhibit is therefore neither automatically inadmissible nor automatically conclusive. The court must specify which evidentiary proposition it supports and how its reliability has been established.[32]

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[29] Undang-Undang Nomor 1 Tahun 2024 tentang Perubahan Kedua atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik; Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

[30] Sofian, "Batas Penafsiran Penghasutan dan Kualitas Alasan Hukum dalam Perkara Ekspresi Politik."

[31] Vanessa and Firmansyah, "Analysis of the Validity of Electronic Evidence in Criminal Trial Proceedings and the Implementation of Its Admissibility (Judgment Study)."

[32] Vanessa and Firmansyah, "Analysis of the Validity of Electronic Evidence in Criminal Trial Proceedings and the Implementation of Its Admissibility (Judgment Study)"; Eddy O. S. Hiariej, *Teori dan Hukum Pembuktian*, 1st ed. (Erlangga, 2012).

Article 235 of Law No. 20 of 2025 on the new Code of Criminal Procedure recognizes electronic evidence and provides rules concerning authentication and lawful acquisition. Its application in a case that commenced under the previous procedural regime requires examination of transitional rules rather than the assumption that the new procedural code retroactively governs every investigative step. For contemporary proceedings, authentication also remains analytically distinct from attribution: a faithful digital copy may establish the content of a post without alone proving who created it, what they intended, or whether every element of the offense is satisfied.[33]

For steps governed by the former Code of Criminal Procedure, the recognition of electronic information and documents as legally valid evidence under Article 5 of the UU ITE must be read in conjunction with the procedural rules on admissibility, proof, and judicial evaluation. The enactment of a new procedural code does not validate an unlawfully obtained record merely by changing its classification. Nor does recognition of electronic evidence remove the obligation to assess relevance and integrity. The point is to determine which procedural framework governed each evidentiary act while preserving safeguards applicable to the defendant's right to contest the prosecution's proof.[34]

Operationally, a screenshot should, where possible, be evaluated alongside the original post or a reliably exported copy, account records, the surrounding communication thread, and other corroborating evidence. Investigators and judges should distinguish a record's visible text from the account holder's authorship, the circumstances of posting, and the meaning reasonably conveyed to the audience. In cases involving disputed deletion, editing, or access, forensic evidence may clarify the integrity and provenance of data. This study does not claim to have conducted such an examination; it identifies its legal relevance to a disciplined evidentiary assessment.

The next step is to interpret the communication in context. A sentence isolated from a longer post may have a meaning different from the same sentence read alongside images, earlier statements, and contemporaneous events. Irony, political anger, audience familiarity, and calls to direct action may all affect a reasonable assessment. Nevertheless, context cannot erase words explicitly soliciting a criminal act, just as a provocative tone cannot alone create the missing elements of an offense. Courts must explain why the context strengthens or weakens a specific inference about the alleged criminal act and the speaker's mental state.[35]

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[33] Undang-Undang Nomor 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana; Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana (1981).

[34] Undang-Undang Nomor 1 Tahun 2024 tentang Perubahan Kedua atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik; Undang-Undang Nomor 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana.

[35] Undang-Undang Nomor 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana; Rachman et al., "Ruang Gelap Pasal 160 KUHP Perspektif Hak Asasi Manusia."

The audience also matters. Publicly accessible communication may satisfy a publicity requirement, but the significance of wide dissemination depends on the charged offense. A post's potential reach, the speaker's influence, and the audience's responsiveness may bear on the risk that communication will encourage unlawful conduct. Their relevance must be justified rather than presumed. The same communication may have different practical consequences when directed at an organized group at a volatile moment or at a diffuse audience unlikely to act. That distinction is especially important when the legal prohibition turns on incitement rather than merely the fact of public dissemination.[36]

Proportionality does not enter the analysis solely when a court selects a sentence. It also informs the legitimacy of criminal intervention in expressive conduct. The adjudicator should ask whether the relevant restriction is provided by law, addresses a legitimate interest, and is necessary and proportionate in light of the concrete threat. These standards do not displace the statutory requirements of an Indonesian criminal offense. Instead, they constrain interpretation and prevent the prosecution from treating public disagreement, institutional embarrassment, or social disapproval as sufficient reasons for punitive intervention.[37]

On the basis of these doctrinal distinctions, the study proposes a five-stage assessment. Stage one identifies the time of the act and the law applicable to it. Stage two classifies the communication by the protected interests and the specific statutory prohibition. Stage three establishes electronic provenance, authenticity, integrity, lawful acquisition, and attribution. Stage four determines whether the objective and mental elements of the offense are proved and whether any applicable exception or defense must be considered. Stage five assesses the adequacy of the legal reasons for restricting expression and the proportionality and individualization of any sanction. The stages are sequential because uncertainty at an earlier stage can make later conclusions legally unsound.

Table 1. *A Five-Stage Doctrinal Framework for Online Expression*

Stage	Legal question	Issue to be determined
1. Temporal legality	When did the conduct occur, which rule governed it, and does a later provision operate more favorably?	Applicable substantive criminal law and procedural regime.
2. Classification of speech	Does the content express criticism, an allegation, identity-based hostility, a threat, or an exhortation to commit an offense?	Correct statutory elements, without analogical expansion.

[36] Haidi, "Tindak Penghasutan dalam Pasal 160 KUHP Pasca Putusan Mahkamah Konstitusi Nomor 7/PUU-VII/2009"; Sofian, "Batas Penafsiran Penghasutan dan Kualitas Alasan Hukum dalam Perkara Ekspresi Politik."

[37] United Nations Human Rights Committee, *General Comment No. 34: Article 19, Freedoms of Opinion and Expression*; M. Ainul Syamsu, *Penjatuhan Pidana dan Dua Prinsip Dasar Hukum Pidana*, 1st ed. (Kencana, 2016).

Stage	Legal question	Issue to be determined
3. Attribution and evidence	Who created and controlled the message? Are the records authentic, complete, relevant, and lawfully obtained?	Reliability of attribution and evidence of conduct.
4. Culpability and defenses	Are the objective elements and offense-specific mental state proved? Do applicable exceptions or defenses arise?	Legally justified determination of criminal responsibility.
5. Reasons and proportionality	Does the judgment explain each inference and justify the necessity and individualization of the sanction?	Reasoned and proportionate judicial outcome.

The framework operates within a hierarchy of legal sources. The Constitution establishes the baseline protection of expression; legislation defines offenses and their temporal operation; constitutional adjudication narrows permissible statutory meanings; and rules of evidence govern the inferential route from an electronic record to criminal responsibility. International human rights standards supply interpretive guidance but cannot justify punishment beyond the enacted elements. A five-stage method is therefore intended to discipline legal reasoning, not to transform broad standards of 'harmful speech' into independent criminal prohibitions.

Compared with studies that focus chiefly on restrictions on expression, the wording of defamation offenses, or the admissibility of electronic evidence, this framework integrates inquiries that are often treated separately. Its contribution is a replicable sequence of legal questions for future doctrinal assessment of online speech prosecutions. It is not presented as an empirically validated predictive model; its effectiveness in the everyday practices of police, prosecutors, courts, and platforms would require separate empirical research. This methodological limit is central to the scope of the claim of originality.[38]

3.3. Judicial Reasoning in the Laras Case: Incitement, Intent, and Proportionality

Direct examination of South Jakarta District Court Judgment No. 675/Pid.Sus/2025/PN Jkt.Sel shows that the prosecution advanced alternative charges involving identity-based incitement under the UU ITE, unlawful interference with electronic data, incitement under Article 160 of the former Criminal Code, and public dissemination of written incitement under Article 161(1). The court proceeded on the fourth alternative. Its choice established the relevant elements and prevented the remaining charges from being treated as if they had also been proved. The disputed conduct consisted of four Instagram Story items published on August 29, 2025.

[38] Sofian, "Batas Penafsiran Penghasutan dan Kualitas Alasan Hukum dalam Perkara Ekspresi Politik"; Setiawan et al., "Implementasi Kewajiban Moderasi Konten oleh Platform Media Sosial terhadap Disinformasi dalam Perspektif Kepastian Hukum."

Throughout the analysis, allegations in the indictment are distinguished from the court's findings, the defense submissions, and the authors' doctrinal evaluation.[39]

The judges did not treat every post alike. One item was understood as an expression of grief, while other posts contained abusive criticism of the police without, in themselves, instructing others to commit a crime. The decisive focus was a photograph accompanied by a request that viewers burn the National Police Headquarters building and commit acts of violence against police personnel. The court connected this wording to offenses concerning arson and unlawful deprivation of liberty under the former Code. Doctrinally, the differentiation matters: insulting or emotionally disturbing language is not inherently criminal incitement; a communication urging a defined criminal act, by contrast, calls for careful analysis of its wording, context, and required intention.[40]

The court expressly addressed the transition between criminal codes. The conduct occurred in August 2025, but the National Criminal Code was in force by the time of judgment in January 2026. Referring to Articles 3, 618, and 622 of Law No. 1 of 2023, the judges compared Article 161(1) of the former Code, carrying a maximum of four years' imprisonment, with Article 247 of the new Code, carrying up to four years and six months' imprisonment or a Category V fine. They considered the former provision more favorable and applied it. The temporal-law analysis was therefore part of selecting the substantive basis for conviction, not an afterthought following the determination of culpability.[41]

A more difficult issue concerns the structure of the incitement offense. The judges regarded Article 161(1) of the former Code as a formal offense, meaning that completed arson was not a necessary condition for the offense to be complete. The defense invoked Constitutional Court Decision No. 7/PUU-VII/2009, which interpreted Article 160 as a material offense. The court declined to transfer that construction automatically to Article 161 and emphasized the preventive function of criminal law. Academic evaluation must avoid both extremes: the constitutional decision concerning Article 160 cannot simply be disregarded, but the text and elements of the distinct Article 161 offense must also be examined. The absence of a completed arson requirement does not eliminate the need to reason carefully about the alleged call to action, risk, and mental state.[42]

To assess the post's inciting quality, the court used the Rabat Plan of Action's six-factor framework: social and political context, the speaker's status, intent, content and form, extent of dissemination, and the likelihood of harm, including its imminence. The judgment acknowledged that the Rabat framework was developed principally in the

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[39] *Putusan Nomor 675/Pid.Sus/2025/PN Jkt.Sel, 15 Januari 2026*.
[40] *Putusan Nomor 675/Pid.Sus/2025/PN Jkt.Sel, 15 Januari 2026*.
[41] *Putusan Nomor 675/Pid.Sus/2025/PN Jkt.Sel, 15 Januari 2026*.
[42] *Putusan Nomor 675/Pid.Sus/2025/PN Jkt.Sel, 15 Januari 2026*; *Putusan Nomor 7/PUU-VII/2009*.

context of advocacy of hatred on national, racial, or religious grounds, before employing it analogically to assist the assessment of incitement in this case. That analytical extension must be distinguished from the prohibited use of analogy to expand criminal liability. Rabat may assist in evaluating context, risk, and intent; the legal basis of conviction must remain the actual elements of Article 161(1).[43]

Regarding the mental element, the judges found that the defendant consciously operated a public Instagram account, prepared a photograph pointing toward National Police Headquarters, and published it with exhortatory text during a period of heightened protest. They rejected the contention that the wording was merely spontaneous frustration or metaphor, connecting its language with a foreseeable danger of violence. Nonetheless, awareness of publishing a post, an intention that its contents become publicly known, and an intention to encourage a particular criminal act are distinct propositions. Each requires a separate evidentiary inference. Account ownership and public visibility can support attribution and publicity, but neither should independently substitute for proof of the culpable mental state prescribed by the offense.

The court additionally examined the restriction on expression by reference to Article 19(3) of the ICCPR. The three-part inquiry asks whether interference is established by law, pursues a legitimate objective such as protecting public order or the rights of others, and is necessary in a democratic society. In its reasoning, criticism of state institutions' performance or integrity was treated as protected expression, while a request to burn a public building was considered capable of justified restriction. The authors distinguish that judicial conclusion from further questions about the evidentiary basis for assessing harm, the necessity of penal intervention, and the relation between the seriousness of the demonstrated risk and the severity of the sanction.

The judgment identifies multiple categories of evidence: screenshots, exported account data, digital storage media, a mobile phone, and social media account records, supplemented by testimony and statements made in court. The judges concluded that the defendant herself posted the disputed content through an account under her control. Those case-specific findings strengthen attribution. They do not establish a general rule that all screenshots are authentic without examination. This doctrinal study relies on the court's description of the evidence and does not independently certify the integrity of the exported files, access histories, or forensic processes used during the investigation. The distinction between judicial evidentiary findings and independent technical verification must remain explicit.[44]

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[43] *Putusan Nomor 675/Pid.Sus/2025/PN Jkt.Sel, 15 Januari 2026*; United Nations Office of the High Commissioner for Human Rights, *Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred That Constitutes Incitement to Discrimination, Hostility or Violence*, A/HRC/22/17/Add.4, appendix (2013).

[44] *Putusan Nomor 675/Pid.Sus/2025/PN Jkt.Sel, 15 Januari 2026*.

The determination of culpability must finally be distinguished from the choice and implementation of punishment. The court found no justification or excuse excluding liability. In selecting a sanction, however, it considered that the defendant had not organized violence, had no prior criminal record, and supported her family financially. Drawing on the new Code's sentencing purposes and individualization principles, the judges imposed six months' imprisonment but ordered that the sentence need not be served if she committed no further offense during a one-year period of supervision; they also directed her release from detention upon pronouncement of judgment. This was a conviction, not an acquittal. The supervision condition concerns the individualized implementation of punishment rather than the negation of criminal guilt.[45]

Three findings emerge from close reading of *the ratio decidendi*. First, the court distinguished criticism from incitement by examining the particular message, its context, and associated risk rather than the offensiveness of its tone alone. Second, temporal application was resolved by comparing statutory provisions before the court analyzed the elements of the selected charge. Third, the judgment separated the determination of culpability from the individualization of punishment. The article's contribution is to integrate these findings with standards for electronic attribution and evidentiary authenticity. Its criticisms of the assessment of risk and the extension of Rabat are doctrinal evaluations by the authors, not representations that the judgment establishes a universal rule for every subsequent case.[46]

Table 2. *Analysis of South Jakarta District Court Judgment No. 675/Pid.Sus/2025/PN Jkt.Sel*

Dimension	Court finding recorded in judgment	Significance for this analysis
Charge and provision	Fourth alternative charge under Article 161(1) of the former Criminal Code (pp. 91–92).	The conviction does not establish the alternative UU ITE charges.
Temporal legality	Comparison between Article 161 and Article 247 of the National Criminal Code (pp. 91–92).	The more favorable law is selected before determining culpability.
Nature of speech	The court distinguished offensive criticism from a post urging arson (pp. 102–104).	The content of each post must be independently classified.
Assessment of risk	Six Rabat factors and ICCPR three-part test (pp. 99–111).	Rabat is interpretive guidance, not an independent criminal offense.
Evidence and culpability	Account data, posted content, electronic exhibits, and the defendant's control (pp. 88–95, 112).	Attribution and mental state involve distinct inferences.
Disposition and sentence	Conviction; six months' imprisonment not served subject to one year of supervision (pp. 119–120).	Guilt must be separated from the implementation of punishment.

[45] *Putusan Nomor 675/Pid.Sus/2025/PN Jkt.Sel, 15 Januari 2026*.
[46] *Putusan Nomor 675/Pid.Sus/2025/PN Jkt.Sel, 15 Januari 2026*.

4. CONCLUSION

The constitutional boundary of online expression depends on the applicable statutory offense, its legitimate purpose, and the time at which the alleged conduct occurred. Constitutional Court Decision No. 105/PUU-XXII/2024 narrowed the permissible interpretation of certain UU ITE provisions, while Article II of Law No. 1 of 2024 ended the operation of specified UU ITE criminal prohibitions, including Article 27A, upon the commencement of the National Criminal Code on January 2, 2026. Courts must therefore analyze temporal legality rather than combine earlier and later provisions as though they remained simultaneously available without qualification.

The complete Laras judgment demonstrates the practical importance of that sequencing. The judges selected Article 161(1) of the former Criminal Code as the more favorable applicable provision, distinguished emotionally charged criticism from a call to burn a building, and employed both the Rabat Plan of Action's six factors and the three-part restrictions test. They found the offense proved yet imposed a six-month prison sentence that did not require incarceration provided the defendant committed no offense during a one-year supervision period. The legitimacy of limiting expression, proof of criminal culpability, and individualization of punishment are thus related but analytically separate judicial decisions.

The article proposes a five-stage doctrinal method combining temporal legality, classification of expression, lawful attribution and assessment of electronic evidence, proof of objective and mental elements, and proportionality in judicial reasoning and sentencing. The case illustrates why the Rabat framework should function as an interpretive aid rather than a source of additional offense elements and why an intention to publish must not be conflated with an intention to incite. The framework is a conceptual synthesis, not a model whose practical efficacy has been established empirically. Its proper contribution is to make the steps leading from contested online expression to criminal liability more explicit, reviewable, and consistent with legal certainty.

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