

## Juridical Implications of Constitutional Court Decision Number 78/PUU-XXI/2023 on Freedom of Expression in Indonesia

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### ABSTRACT

Freedom of expression constitutes a constitutionally protected right under the 1945 Constitution of the Republic of Indonesia. Nevertheless, its implementation continues to encounter significant challenges, particularly due to the existence of vague criminal provisions that generate legal uncertainty and create the risk of criminalizing legitimate expressions. This issue became central to the judicial review of Articles 14 and 15 of Law Number 1 of 1946 concerning Criminal Law Regulations, culminating in Constitutional Court Decision Number 78/PUU-XXI/2023. This study aims to examine the Constitutional Court's legal reasoning and to analyze the juridical implications of the decision for the protection of freedom of expression in Indonesia. Employing normative legal research, this study applies statutory, conceptual, and case approaches. The analysis is conducted qualitatively on primary, secondary, and tertiary legal materials. The findings indicate that the Court emphasized that any restriction on freedom of expression must meet the requirements of clarity, precision, and proportionality. The Court held that ambiguous criminal norms violate the principles of legal certainty (*lex certa*) and constitutional protection of rights. Consequently, the Court declared the contested provisions unconstitutional and legally non-binding. The decision establishes a constitutional benchmark for assessing other restrictive criminal norms, including those contained in the new Criminal Code and the amended Electronic Information and Transactions (EIT) Law. Thus, the ruling reinforces constitutional safeguards for freedom of expression and provides normative guidance for legislators and law enforcement authorities in formulating and implementing criminal law policies.

**Keywords:** Freedom of Expression; Constitutional Court Decision; Legal Certainty

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### INTRODUCTION

Freedom of expression is a fundamental human right recognized universally and guaranteed constitutionally within Indonesia's legal framework. As a state founded upon the principles of constitutional democracy and the rule of law (*rechtsstaat*), Indonesia is obligated to regulate and safeguard the exercise of this right in accordance with constitutional mandates. Article 28E paragraph (3) of the 1945 Constitution guarantees every individual the right to associate, assemble, and express opinions. Complementarily, Article 28F affirms the right of every person to communicate and obtain information for the development of oneself and one's social environment. These constitutional guarantees reflect the centrality of freedom of expression within Indonesia's democratic order.

Indonesia's commitment to protecting freedom of expression is further reinforced by its ratification of the International Covenant on Civil and Political Rights (ICCPR) through Law Number 12 of 2005. Article 19 of the Universal Declaration of Human Rights (UDHR) (1948) and Article 19 paragraph (2) of the ICCPR (1966)

recognize the right of every individual to seek, receive, and impart information and ideas through any media and regardless of frontiers. Domestically, Law Number 39 of 1999 concerning Human Rights strengthens this protection in Article 14 paragraph (2), which guarantees the right to seek, obtain, possess, store, process, and convey information using all available means.

These normative instruments collectively affirm that freedom of expression constitutes an essential civil liberty that underpins democratic governance. Public expression, including criticism of governmental policies and state institutions, functions as a mechanism of social control and democratic accountability. The vibrancy of democratic life can be assessed, among other indicators, through the degree of protection afforded to civil liberties and freedom of expression.

However, constitutional recognition of freedom of expression does not imply its absolute character. In accordance with the doctrine of limitation of rights, restrictions may be imposed by law, provided that such limitations pursue legitimate aims and satisfy the principles of legality, necessity, and proportionality. In practice, the regulation of these limitations has generated complex legal issues, particularly where criminal provisions are drafted in vague or overly broad terms. Ambiguous norms concerning the dissemination of false information, defamation, or public disorder have frequently been criticized for contravening the principles of *lex certa* and legal certainty.

The rapid development of digital communication technologies has further complicated the regulatory landscape. Social media platforms and online communication channels have expanded the scope of public discourse, while simultaneously intensifying concerns regarding misinformation, hate speech, and potential social conflict. The state thus occupies a dual position: it must guarantee freedom of expression while also ensuring the protection of public order and individual dignity.

In Indonesia, the Electronic Information and Transactions (EIT) Law has been subject to sustained criticism for containing provisions that are considered overly broad and susceptible to misuse. Certain articles have been characterized as “rubber provisions” due to their elasticity in interpretation, thereby enabling selective or subjective enforcement. Similar concerns have historically surrounded Articles 14 and 15 of Law Number 1 of 1946 concerning Criminal Law Regulations, which criminalized the dissemination of false news capable of causing public disorder. These provisions, inherited from the colonial legal framework, have long been regarded as problematic due to their indeterminate terminology and potential to suppress dissent.

A prominent illustration of these issues arose in the case involving human rights activists Fatia Maulidiyanty and Haris Azhar, who were reported for defamation following public criticism of alleged involvement of public officials in mining activities in Papua. Although both were eventually acquitted, the protracted legal proceedings demonstrated the chilling effect that ambiguous criminal provisions may exert on public discourse.

In response to these constitutional concerns, the Constitutional Court issued Decision Number 78/PUU-XXI/2023 on March 21, 2024. The Court declared Article 14 paragraphs (1) and (2) and Article 15 of Law Number 1 of 1946 unconstitutional and without binding legal force. The judicial review was filed by civil society actors who

argued that the contested provisions violated constitutional guarantees of freedom of expression due to their vague and multi-interpretable nature.

In its legal reasoning, the Court emphasized that criminal norms restricting freedom of expression must be formulated with sufficient clarity and precision to prevent arbitrary enforcement. Terms such as “false news” and “public disorder” were deemed excessively broad and incapable of providing adequate legal certainty. By annulling these provisions, the Court reaffirmed the constitutional requirement that any limitation on fundamental rights must conform to the principles of legality and proportionality.

Nevertheless, the juridical implications of this decision extend beyond the annulled provisions. Similar regulatory patterns remain present in the new Criminal Code and the amended EIT Law. Consequently, further scholarly analysis is necessary to assess how this decision functions as a constitutional standard for evaluating analogous norms and to determine its broader impact on legislative reform and law enforcement practices.

Accordingly, this study examines the juridical implications of Constitutional Court Decision Number 78/PUU-XXI/2023 for the protection of freedom of expression in Indonesia. It analyzes the Court’s constitutional interpretation and evaluates its potential to shape future criminal law policy, with the objective of contributing to legal harmonization and the strengthening of constitutional safeguards for freedom of expression within Indonesia’s democratic framework.

## **METHOD**

According to Peter Mahmud Marzuki (2008:35), legal research is a systematic process aimed at identifying legal rules, principles, and doctrines to resolve specific legal issues. Legal research methodology constitutes a scientific method characterized by structured procedures for collecting, analyzing, and evaluating legal materials to establish normative validity. Scientific knowledge, in this context, is knowledge whose validity has been systematically examined and verified (Efendi & Ibrahim, 2016:3). Within this framework, the present study is designed using a structured doctrinal apparatus to ensure analytical rigor and comprehensive results.

This research adopts a normative (doctrinal) legal research model, which examines statutory regulations and library-based legal materials as its primary objects of analysis (Soekanto & Mamudji, 2003:56). The study relies exclusively on secondary data consisting of primary, secondary, and tertiary legal materials. It seeks to analyze the juridical implications of Constitutional Court Decision Number 78/PUU-XXI/2023 concerning the protection of freedom of expression in Indonesia.

Consistent with the normative legal research paradigm, this study employs three complementary approaches: the statute approach, the conceptual approach, and the case approach (Marzuki, 2008:93). The statute approach examines relevant legislation governing freedom of expression, its permissible limitations, and criminal provisions concerning false information. It includes a comparative analysis between the annulled provisions and substantively similar norms contained in subsequent legislation. The conceptual approach constructs the theoretical and philosophical foundation of the research by examining legal doctrines and constitutional principles, including freedom of expression within the human rights and democratic framework, the legality principle (*lex certa*), legal certainty, and proportionality. The case approach

analyzes the Constitutional Court's ratio decidendi in Decision Number 78/PUU-XXI/2023, particularly its constitutional reasoning in annulling vague criminal provisions and its broader function in safeguarding constitutional rights through judicial review.

The legal materials utilized in this study comprise: (1) primary legal materials, including constitutional provisions, statutes, international human rights instruments, and Constitutional Court decisions; (2) secondary legal materials, such as textbooks, academic journal articles, and scholarly commentaries; and (3) tertiary materials, including legal dictionaries and relevant authoritative online sources. These materials were collected through library research and subsequently analyzed using qualitative descriptive methods. The analytical process follows a deductive reasoning pattern, moving from general legal principles to specific legal issues through structured legal argumentation. By employing doctrinal analysis, statutory interpretation, and constitutional reasoning, this research aims to formulate systematic conclusions regarding the juridical implications of the Constitutional Court's decision and the necessity for legislative harmonization to ensure effective constitutional protection of freedom of expression in Indonesia.

## **RESULTS AND DISCUSSION**

### **1. Constitutional Deficiencies of Criminal Provisions Regulating False Information**

The findings demonstrate that Constitutional Court Decision Number 78/PUU-XXI/2023 represents a substantive constitutional correction of criminal provisions regulating false information in Indonesia. The Court determined that Articles 14 and 15 of Law Number 1 of 1946 failed to satisfy essential constitutional requirements, particularly the principles of legal certainty (*lex certa*) and proportionality. These provisions contained vague and indeterminate terms—such as “false news,” “uncertain information,” and “public disturbance”—without clear normative parameters, thereby allowing overly expansive interpretation by law enforcement authorities.

Such ambiguity undermined the predictability of criminal law and created a significant risk of arbitrary enforcement. The Court emphasized that criminal sanctions imposed without precise legal formulation are incompatible with the rule of law, as individuals must be able to reasonably foresee the legal consequences of their conduct. Furthermore, the severity of criminal penalties attached to broadly defined offenses was deemed disproportionate to the legitimate objective of maintaining public order. Consequently, the Court concluded that the contested provisions enabled the criminalization of constitutionally protected expression and therefore violated constitutional guarantees of freedom of expression.

### **2. Constitutional Standards for Limiting Freedom of Expression**

A central contribution of the decision lies in its articulation of constitutional standards governing permissible restrictions on freedom of expression. The Court established that limitations on expression must cumulatively satisfy the principles of legality, legitimate purpose, necessity, and proportionality, derived from democratic rule-of-law doctrine and international human rights norms.

The legality requirement mandates that criminal norms be clearly formulated, precise, and free from ambiguity. The legitimacy requirement demands that

restrictions pursue constitutionally recognized objectives, such as the protection of public order or national security. The necessity and proportionality requirements ensure that criminal sanctions constitute a measure of last resort and do not exceed what is strictly required to achieve their legitimate aim.

Importantly, the Court affirmed that public criticism of government institutions and public officials constitutes a core element of democratic participation and therefore merits heightened constitutional protection. By integrating these doctrinal standards, the Court reinforced constitutional democracy and prevented the instrumentalization of criminal law as a tool to suppress dissent.

### **3. Juridical Implications for Criminal Law Enforcement**

The annulment of the contested provisions generates significant juridical consequences for criminal law enforcement. The decision produces a decriminalization effect with respect to conduct previously prosecuted under the invalidated norms. Pursuant to the principle of *lex mitior*, individuals cannot be subjected to criminal liability under provisions that no longer possess binding legal force.

This doctrinal consequence obliges law enforcement authorities to discontinue investigations and prosecutions based solely on the annulled provisions. Courts must likewise ensure that criminal sanctions are not imposed absent valid statutory grounds. Beyond procedural implications, the decision also carries restorative consequences, including the potential rehabilitation of individuals adversely affected by the unconstitutional norms.

These implications illustrate that constitutional adjudication functions not merely as abstract normative review but as an effective mechanism for safeguarding individual rights within the criminal justice system.

### **4. Democratic Implications and the Reduction of the Chilling Effect**

The research further demonstrates that the decision strengthens democratic governance by mitigating the chilling effect associated with vague criminal provisions. Prior to the ruling, the indeterminate scope of criminal liability generated legal uncertainty that discouraged public participation in political discourse, particularly within digital communication platforms.

By invalidating ambiguous norms, the Court fosters a more secure constitutional environment for open debate and civic engagement. This development advances substantive democratic principles by ensuring that individuals may express opinions, criticize public policy, and participate in public discourse without disproportionate fear of criminal prosecution.

### **5. Continuing Normative Challenges in Subsequent Legislation**

Despite its progressive character, the decision does not entirely eliminate normative ambiguity in Indonesian criminal legislation. The research identifies that similar formulations persist in subsequent legal frameworks, including provisions in the new Criminal Code and the amended Electronic Information and Transactions (ITE) Law, which refer to “public disorder” or “disturbance in society” without sufficiently precise definitional boundaries.

This continuity reveals a legislative paradox: although unconstitutional norms have been formally annulled, substantively analogous formulations reappear in newer statutory instruments. Consequently, the effectiveness of constitutional protection depends upon consistent interpretative discipline by courts and law enforcement

authorities. To prevent recurring constitutional violations, criminal liability must be strictly confined to situations involving demonstrable and measurable harm to public order, supported by a clear causal nexus between expression and concrete consequences.

## **6. General Evaluation**

Overall, the findings confirm that Constitutional Court Decision Number 78/PUU-XXI/2023 constitutes a pivotal development in strengthening constitutional protection of freedom of expression in Indonesia. The decision not only invalidates constitutionally defective criminal provisions but also establishes binding normative standards that guide legislative drafting, judicial interpretation, and law enforcement practices. However, the long-term effectiveness of this constitutional advancement depends upon legislative harmonization and consistent application of constitutional principles across the criminal justice system. The decision therefore operates both as a corrective intervention and as a normative framework for future regulation of freedom of expression within Indonesia's democratic constitutional order.

## **Discussion**

The findings indicate that Constitutional Court Decision Number 78/PUU-XXI/2023 constitutes a substantive constitutional correction of criminal provisions regulating false information in Indonesia. By annulling Articles 14 and 15 of Law Number 1 of 1946, the Court reaffirmed the centrality of the principles of legal certainty (*lex certa*) and proportionality within a democratic rule-of-law state. The vague formulations contained in these provisions—such as “false news,” “uncertain information,” and “public disturbance”—were found to lack precise normative boundaries, thereby creating space for expansive and potentially arbitrary interpretation. Such indeterminacy not only undermined predictability in criminal law but also exposed constitutionally protected expression to disproportionate criminal sanctions. Through its reasoning, the Court articulated cumulative constitutional standards for limiting freedom of expression—legality, legitimate purpose, necessity, and proportionality—while emphasizing that public criticism of government institutions forms an essential component of democratic participation. In doing so, the decision strengthens constitutional democracy by preventing the instrumentalization of criminal law as a mechanism to suppress dissent.

Beyond its normative clarification, the decision generates significant juridical and democratic implications. The annulment of the contested provisions produces a decriminalization effect pursuant to the principle of *lex mitior*, requiring the termination of investigations and prosecutions based solely on invalidated norms and potentially enabling restorative measures for affected individuals. The ruling thus demonstrates that constitutional adjudication functions not merely as abstract review but as a concrete safeguard within the criminal justice system. Moreover, by eliminating vague criminal formulations, the decision mitigates the chilling effect that previously discouraged public participation in political discourse, particularly in digital spaces. Nevertheless, the persistence of similarly ambiguous terminology in subsequent legislation—such as references to “public disorder” in the new Criminal Code and the amended ITE Law—reveals an ongoing legislative paradox. Accordingly, the long-term effectiveness of the decision depends upon legislative harmonization and disciplined constitutional interpretation to ensure that criminal liability is strictly limited

to demonstrable harm, thereby sustaining robust protection of freedom of expression within Indonesia's democratic constitutional order.

## CONCLUSION

Based on the foregoing analysis, the following conclusions are drawn:

1. Constitutional Court Decision Number 78/PUU-XXI/2023 affirms that criminal norms restricting freedom of expression must not be formulated in vague or multi-interpretable terms, as such formulation contravenes the principle of legal certainty and the constitutional guarantee of freedom of expression under the 1945 Constitution. The Court determined that the reviewed provisions created space for the criminalization of expression that should receive constitutional protection. Accordingly, the decision establishes a constitutional standard requiring that any limitation on freedom of expression be clearly defined, firmly grounded, and proportionately structured within a democratic rule-of-law framework.
2. The decision carries broader juridical implications as a benchmark for assessing and applying criminal provisions regulating freedom of expression. Although the contested norms were annulled, potential ambiguity persists in the new Criminal Code, particularly through the term "disturbance" in Articles 263 and 264, as well as in Article 28 paragraph (3) and Article 45A paragraph (3) of the amended ITE Law, which employ the phrase "disturbance in society." Therefore, the decision is not merely corrective in nature but also functions as a constitutional foundation for future judicial review and for the application of strict and restrictive interpretation to ensure sustained protection of freedom of opinion and expression.

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