



General Assembly

Distr.: General
13 December 2023

English only

Human Rights Council

Fifty-third session

19 June–14 July 2023

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[29 May 2023]

* Issued as received, in the language of submission only.



Indonesia: Information and Electronic Transactions Law Needs Reforms to Guarantee Freedom of Expression

The Asian Legal Resource Centre (ALRC) wishes to draw the attention of the United Nations Human Rights Council to the Information and Electronic Transactions (ITE) Law Number 11 of 2008. The ITE law has several draconian provisions that curtail the freedom of press and the freedom of expression and opinion as a whole.

Demands for massive changes to the ITE Law were submitted by representatives of a number of civil society organizations that are members of the Serious Coalition for the Revision of the ITE Law in a public hearing (RDPU) with Commission I of the DPR RI at the Parliament Building, Monday 27 March 2023. The Serious Coalition is a member of civil society that focuses overseeing the second revision of the ITE Law which will be formed in 2021.

In the midst of the commitment to change the two revisions of the ITE Law, there are many legislative processes that continue to experience changes. The ratification of Law No. 12 of 2022 concerning Crimes of Sexual Violence is a small part that the ITE Law, especially Article 27 paragraph (1) of the ITE Law, is no longer relevant.

Likewise, the presence of Law no. 27 of 2022 concerning Personal Data Protection (PDP). At the end of 2022, the draft Criminal Code (KUHP) was also ratified to become Law Number 1 of 2023 (New Criminal Code).

The ALRC considers that there are several important reasons for revising the ITE Law. First, there is a legislative situation that has a serious impact that needs to be considered in the second revision of the ITE Law, in particular many articles that need to be harmonized with existing laws and regulations. Second, the importance of paying attention to the substance of information regulation and electronic transactions in a democracy. Third, the need for special arrangements so that there are no attempts to criminalize victims.

The case of Mrs. Baiq Nuril and Mr. Saiful Mahdi, both of whom received amnesty from President Joko Widodo, are proof that the government and the Parliament acknowledge that there are problems in the ITE Law. Therefore, this second revision of the ITE Law is a momentum to completely revise the problematic articles in the ITE Law. Moreover, based on the Coalition's study and research, the content regulated in the ITE Law completely ignores several aspects. Among them do not meet the legality principle of criminal law; does not reach exceptions to conditions of overmatch and nowhere excess for victims of criminalization, and the formulation of UU ITE norms opens discriminatory spaces and perpetuates human rights violations.

There are a number of articles that are problematic and threaten press freedom. First, Article 27 paragraph (3) regarding defamation. This article has been included in the new Criminal Code so that it has the potential to cause duplication and legal uncertainty. This article is often used as an instrument of revenge or to silence journalists and sources.

The next article that threatens press freedom is Article 28A paragraph (1) concerning incitement, solicitation and influencing other people so as to create feelings of hatred or hostility towards individuals and or community groups based on ethnic, religion and race. One example of the use of this article to prosecute journalists is the case of journalist [Banjarhits.id/Kumparan.com](https://www.banjarhits.id/Kumparan.com) Mr. Diananta Putra Sumedi. He was sentenced to 3 months and 15 days in prison by the panel of judges at the Kotabaru District Court on August 10, 2020 because he was found guilty of spreading information that caused hatred or hostility towards certain individuals and/or community groups based on ethnic, religion and race after publishing a news item titled Land Taken by Jhonlin, Dayak Complains to the South Kalimantan Regional Police.

Another dangerous article is Article 28A paragraph (2) which stated "everyone intentionally distributes electronic information and/or electronic documents that he knows contain false notifications that cause uproar in society. Provisions for notification of lies can target journalistic products considering that in the last two years a number of journalistic works have been labelled as hoaxes by the National Police.

Among them was the Kompas.id news entitled Running Out of Oxygen, 63 Patients at RSUP DR. Sardjito Died in a Day on July 4 2021 and a series of reports # Useless of Police Report from Projectmultatuli.org which was labelled as a hoax by the police.

In addition to the issue of sentencing, according to AJI Article 40 paragraphs 2a and 2b which is still being maintained in the second revised draft of the ITE Law from the government. This article concerns the government's authority to prevent and cut off access to electronic information and documents that have unlawful content. According to SAFEnet, there were indeed changes to the government's problematic articles in the proposed revision of the ITE Law. Among them are Article 27 paragraph (1) concerning expressions that violate decency; paragraph (3) regarding attacks on honour and reputation; threats of defamation, and paragraph (4) regarding threats to disclose secrets, as well as Article 45 concerning criminal threats. Likewise, in Article 28 (false reporting – consumers and misleading), the burden of proof is on consumers, and the penalty is in Article 45A. Likewise the changes in Article 29.

According to SAFEnet the existence of some of these articles is being maintained and other problematic articles in the ITE Law are not revised which have disrupted the way the Internet works, has the potential to hinder international cooperation, and will further injure the digital rights of Indonesian citizens. In fact, digital rights should be protected by the Constitution and human rights protection instruments, namely the Universal Declaration for Human Rights and Article 19 of the International Covenant on Civil and Political Rights (ICCPR) which have been ratified by Indonesia.

The ALRC observes that the required revision is not limited to the 7 criminal articles proposed by the Ministry of Communication and Informatics (Kominfo), but other articles that are obstacles to freedom of expression and freedom of the press.

The ALRC requests the Council, and the Special Procedures mandates of the UN:

1. To intervene constructively so that the House of Representative of Indonesia (DPR-RI) is encouraged to revise the problematic provisions in the Information and Electronic Transactions (ITE) Law Number 11 of 2008 in accordance with the spirit of democracy, human rights and rule of law.
2. To urge the House of Representatives of Indonesia must involve public participation through substantive public consultation in order to obtain input and critic to revise the ITE Law.
3. Officially invite the UN Special Rapporteur on the right to freedom of expression to visit Indonesia as soon as possible. The Indonesian Government should let the mandate-holder appraise the grass roots problem on the ground for themselves and from their own opinion.