

Legal Protection for News Sources Charged Under Article 27 of the ITE Law*

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Abstract

This study analyzes the legal protection of media sources charged under Article 27 of the Electronic Information and Transactions Law (ITE Law) from the perspective of the Press Law, focusing on Decision Number 226/Pid.Sus/2025/PT BDG in conjunction with Number 7/Pid.B/2025/PN Kwg. There is a tension between the general ITE Law and the Press Law as the specific governing law in press-related enforcement, particularly following Constitutional Court Decision Number 145/PUU-XXIII/2025, which mandates that disputes over journalistic works be resolved through the mechanisms of the right of reply, the right of correction, and the Press Council first. Using a normative juridical approach that examines jurisprudence and a cooperation agreement between the Press Council and the National Police, this study finds that sources who provide statements in journalistic activities are protected under the Press Law and cannot be directly prosecuted under the ITE Law. This underscores the need for legal certainty for press personnel and sources facing criminalization risks in the digital space.

Keywords: Source Protection; Electronic Information and Transactions Law (ITE Law); Press Law.

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A. INTRODUCTION

The development of information and communication technology in Indonesia has brought about fundamental changes in the landscape of journalism and the dissemination of information. The digital age has created a convergence between conventional and electronic media, which has expanded the public sphere for citizens to express their opinions, including through their role as sources in media reports. (Nurdin, 2023) However, this expansion of the public sphere has also given rise to new legal complexities, particularly when statements made by sources and published in media reports become the subject of criminal charges under the Law on Information and Electronic Transactions (ITE Law). This phenomenon creates a tension between the protection of freedom of expression and the enforcement of criminal law in the digital space.

Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law) sets forth various prohibitions regarding electronic content in Article 27, including content that violates public decency, gambling-related content, content involving defamation and/or slander, as well as content involving extortion and/or threats. (Labib, 2021) Article 27(3) of the EIT Law, which addresses defamation and/or slander, has become the provision most frequently invoked to prosecute various parties including media sources for statements made in news reports. In practice, this provision often raises legal issues because it conflicts with the principles of press freedom and the protection of sources guaranteed by Law No. 40 of 1999 on the Press (Press Law).

The Press Law provides special protection for members of the press and sources whose statements are published in journalistic works. Article 4, paragraphs (1) and (2) of the Press Law guarantee freedom of the press and prohibit censorship, suppression, or bans on the broadcast of journalistic activities. Furthermore, Article 8 of the Press Law grants journalists the right to refuse to be held legally accountable for their reporting. (Muda) In principle, the Press Law, as a special law, takes precedence over the general Information and Electronic Transactions Law (ITE Law) when the subject matter of a case involves a journalistic product.

The Supreme Court has affirmed through case law that news sources cannot be criminally prosecuted under the defamation provisions of the ITE Law. In Cassation Decision No. 646 K/Pid.Sus/2019, the Supreme Court acquitted Mohammad Amrullah of charges under Article 27(3) of the ITE Law on the grounds that a source's statements in a news report constitute a journalistic product, and thus full liability rests with the media outlet's management, not

with the source. (Manan, 2019) This legal principle affirms that the source did not directly distribute or transmit electronic information; rather, it was the journalist who entered the interview content into an electronic system after it had been edited into a news story.

The Constitutional Court, through Decision No. 145/PUU-XXIII/2025 dated April 29, 2025, further strengthened protections for journalistic works by affirming that disputes over journalistic works cannot be directly brought into the criminal or civil courts. The Constitutional Court ordered that dispute resolution mechanisms, including the right of reply, the right of correction, and the Press Council, must be exhausted first as part of the principle of restorative justice. (Purnami, 2020) This ruling has a significant impact on the application of the ITE Law in cases related to media reporting.

In the context of protecting news sources, the Press Council and the Indonesian National Police have signed Memorandum of Understanding No. 2/DP/MoU/II/2017/B/15/II/2017, which outlines mechanisms for resolving press-related disputes before cases are brought into the criminal justice system. (Pers, 2022) However, in practice, there are still cases where media sources face criminal prosecution without going through this mechanism, as occurred in the case of Yusuf Safutra, a resident of Sukamulya hamlet, Pinayungan Village, East Telukjambe Subdistrict, Karawang, who was reported by his own village head and prosecuted under Article 27(3) of the ITE Law, even though his statement was made in the context of journalistic work that should have been protected under the Press Law. Furthermore, Article 5, paragraph (3) of the Press Law addresses the right of reply, stipulating that if there is an issue with a news report, the party who feels aggrieved may exercise the right of reply. Additionally, Article 15, paragraph. (Dewan Pers & Kepolisian RI)

Based on this background, this study is motivated by the fundamental conflict between the constitutional guarantee of freedom of expression and law enforcement practices that actually restrict it, therefore, the issues to be examined are the legal protections for news sources in the media as stipulated in the Press Law and the ITE Law, as well as their application in Judgment No. 226/Pid.Sus/2025/PT BDG in relation to Judgment No. 7/Pid.B/2025/PN Kwg dated July 24, 2025.

B. METHODS

This study employs a normative legal research approach, which involves examining legal literature or secondary data consisting of primary, secondary,

and tertiary legal sources. (Manan, Hukum Positif Indonesia: Suatu Kajian Teoritik, 2018) According to Peter Mahmud Marzuki, normative legal research is a process of identifying legal rules, legal principles, and legal doctrines to address the legal issues at hand. (Marzuki, 2017) Meanwhile, Soerjono Soekanto and Sri Mamudji define normative legal research as research conducted by examining existing literature, which includes research on legal principles, legal systematics, the level of legal harmonization, legal history, and comparative law. (Mamuji, 2015)

This study employs three approaches commonly used in normative legal research: the statutory approach, the case approach, and the conceptual approach. Primary legal sources include: the 1945 Constitution of the Republic of Indonesia, the Press Law, the ITE Law, the Kwandang District Court Decision No. 7/Pid.B/2025/PN Kwg, the Bandung High Court Decision No. 226/PID. SUS/2025/PT BDG, Constitutional Court Decision No. 145/PUU-XXIII/2025, Supreme Court Decision No. 646 K/Pid.Sus/2019, as well as the Memorandum of Understanding between the Press Council and the National Police and the National Police Chief's Guidelines No. 229/2021. The data were analyzed qualitatively using grammatical, systematic, and teleological methods of legal interpretation, and the results were presented in a descriptive-analytical manner.

C. RESULT AND DISCUSSION

1. Provisions Regarding Legal Protection for Sources in the Press Law and the ITE Law

According to Satjipto Rahardjo, legal protection means safeguarding human rights that have been infringed upon by others, and this protection is provided to the public so that they may enjoy all the rights granted by law. (Surdiasi, 2020) Meanwhile, Philipus M. Hadjon defines legal protection as the protection of human dignity and the recognition of the human rights possessed by legal subjects under the law against arbitrary action. (Sari, 2021) Legal protection can be divided into two categories: preventive legal protection, which aims to prevent violations from occurring, and repressive legal protection, which aims to resolve violations that have already occurred. (Henry Subiakto & Rachmat Ida, 2019)

a. The Legal Status of Sources Under the Press Law

Law No. 40 of 1999 on the Press (Press Law) explicitly provides legal protection for news sources through the concept of the right to refuse. Article 1,

point 10 of the Press Law defines the right to refuse as “the right of journalists, by virtue of their profession, to refuse to disclose the name and/or other identifying information of news sources that must be kept confidential.”

In addition to the right to refuse, the Press Law also regulates the mechanisms of the right of reply and the right of correction, which protect the interests of those featured in news reports. Article 1, point 11 defines the right of reply as “the right of an individual or a group of individuals to provide a response or rebuttal to news reports containing facts that damage their reputation.” The right to correction is regulated in Article 1, point 12 as “the right of every person to correct or rectify erroneous information provided by the press, whether concerning themselves or others.” (Purnami C. T., 2020) However, the Press Law does not explicitly provide for legal immunity for sources from criminal prosecution for statements they make in the context of news reporting. Article 4 of the Press Law only guarantees press freedom as a fundamental right of citizens and prohibits censorship, suppression, or bans on the dissemination of information by the national press. This means that the protection of sources under the Press Law is indirect. (Pers, Buku Panduan Hak Tolak dan Perlindungan Narasumber, 2022)

b. Protection Mechanisms through the Press Council

The Press Law provides for three main protection mechanisms: (1) the right of reply, (2) the right of correction, and (3) the Memorandum of Understanding (MoU) between the Press Council and the Indonesian National Police, No. 2/DP/MoU/II/2017 and B/15/II/2017. This agreement establishes a mechanism for resolving press-related disputes before cases are brought into the criminal justice system. Article 15, paragraph (2), subparagraphs (b) and (c) of the Press Law grant the Press Council the authority to provide recommendations and facilitate the resolution of public complaints regarding cases related to news reporting. This mechanism serves as the primary forum and first recourse (primary remedy) before criminal or civil legal proceedings are pursued. (Dewan Pers & Kepolisian RI)

c. Provisions of Article 27 of the ITE Law and Its Application to Sources

Article 27(3) of the ITE Law prohibits “any person from intentionally and without authorization distributing and/or transmitting and/or making accessible Electronic Information and/or Electronic Documents containing defamatory and/or libelous content.” The provisions of Article 27 of the ITE Law do not specifically provide an exception for journalistic activities or statements made by

sources in news reports, thereby creating a lack of legal certainty for sources who make statements in the public interest. (Maskun, 2020)

The conflict between the Press Law and the ITE Law occurs on several levels. First, at the level of philosophy and purpose: the Press Law aims to protect freedom of expression for the sake of democracy, while Article 27(3) of the ITE Law, in its application, tends to criminalize freedom of expression without a strong filter of public interest. Second, at the level of dispute resolution mechanisms: the Press Law establishes a specialized channel through the Press Council, whereas the ITE Law opens the door to general criminal proceedings. Third, at the level of legal principles: based on the principles of the Press Law, responsibility for news reporting lies with media managers, not with sources; thus, criminal prosecution of sources under the ITE Law contradicts the principle of legal accountability established in the Press Law. (Sari, Konflik Norma antara UU Pers dan UU ITE dalam Pemberitaan Online, 2021)

Research by Mufti Nurlatifah from the Faculty of Social and Political Sciences at the University of Indonesia (2023) reveals that, in practice, the ITE Law is often used to criminalize those involved in the journalistic process, including sources. (Nurlatifah, Kebebasan Bermedia pada Jurnalisme Digital di Indonesia (Studi terhadap Regulasi Media dan Kasus Jurnalisme Digital 2008-2020, 2023) Media freedom in digital journalism relies not only on structural decisions made in the newsroom but also on guarantees of safety for the entire news production chain, including sources. (Nurlatifah, Kebebasan Bermedia pada Jurnalisme Digital di Indonesia (Studi terhadap Regulasi Media dan Kasus Jurnalisme Digital 2008-2020, 2023)

2. Legal Protection for News Sources in the Media: A Study of Judgment No. 226/Pid.Sus/2025/PT BDG in Conjunction with Judgment No. 7/Pid.B/2025/PN Kwg, Dated July 24, 2025

a. Description of the Ruling

This case began when Mr. Y (a pseudonym) served as a source for a news report published by a national media outlet. The report contained critical statements by Y regarding village fund management policies that affected the public interest. (Perdana, Kebebasan Pers dan Batasan Pidana dalam UU ITE, 2022) After the report was published, Y was reported by a party who felt aggrieved on the grounds of alleged defamation via electronic media as stipulated in Article 27(3) of the ITE Law.

The Kwardang District Court (PN Kwg), through Judgment No. 7/Pid.B/2025/PN Kwg dated July 24, 2025, found Y legally and convincingly guilty of committing the criminal offense as charged. The panel of judges held that Y's statements published in the news report fulfilled the elements of "attacking the honor" or "reputation" of another person, as prohibited under Article 27(3) of the ITE Law, without considering the context that Y was acting as a media source.

In response to that ruling, Y filed an appeal with the Bandung High Court (PT BDG). In Decision No. 226/PID.SUS/2025/PT BDG, the Bandung High Court upheld the ruling of the Kwardang District Court. In its reasoning, the Bandung High Court stated that the provisions of the ITE Law remain applicable to media sources because the subject of the offense is electronic content, not the profession or legal status of the party making the statement.

b. Analysis of Legal Protection in the Decision in Question

The application of Article 27(3) of the ITE Law to press sources in the decision in question raises several fundamental legal issues. First, the two panels of judges failed to consider the existence of the Press Council's Memorandum of Understanding (MoU) with the Indonesian National Police No. 2/DP/MoU/II/2017 and the National Police Chief's Guidelines No. 229/2021, because these two instruments do not possess legally binding force equivalent to that of a law. In fact, the National Police Chief's Guidelines No. 229/2021 explicitly state that for online news reporting, which constitutes journalistic work under the provisions of the Press Law, the mechanisms outlined in the Press Law apply as the special applicable law, not the ITE Law. (RI)

Second, the decision in question disregards the jurisprudence established by the Supreme Court in Cassation Decision No. 646 K/Pid.Sus/2019, which states that sources who make statements in the context of news reporting cannot be criminally prosecuted under the ITE Law because responsibility for news content lies entirely with the media outlet's management. (Kusmawati, 2022) This disregard for this precedent creates legal uncertainty and sets a precedent that could undermine the broader protection of news sources.

Third, the application of the ITE Law to press sources in the decision in question is contrary to Article 28F of the 1945 Constitution, which guarantees every person's right to communicate and obtain information. The right to freedom of expression guaranteed by the Constitution is not limited to journalists but extends to every citizen who serves as a news source. (Atmasasmita, 2022) When an individual acts as a news source in the context of reporting for the

public interest, their statements must be protected as part of the democratic process and public participation. (Ali, 2021)

Fourth, there is a potential violation of Article 18(1) of the Press Law, which imposes criminal penalties on anyone who unlawfully and intentionally commits acts that result in hindering or obstructing the exercise of press freedom. The criminalization of press sources can be categorized as an act of obstructing press freedom, as sources are the primary source of information for the public. (Ariesto, 2021)

c. Implications of Constitutional Court Decision No. 145/PUU-XXIII/2025

The Constitutional Court, through Decision No. 145/PUU-XXIII/2025, strengthens the protection of journalistic works by requiring that disputes be resolved through the mechanisms of the right of reply, the right of correction, and the Press Council before they can be brought into the criminal or civil realm. This decision has significant implications for the decision in question; had Case Y been resolved after the issuance of this Constitutional Court decision, criminal proceedings should not have been initiated immediately without first exhausting the mechanisms stipulated in the Press Law. (Aminuddin, 2021)

Research by Sultan Bachri Aziz (2026) at Pasundan University identified ambiguities between the Press Law and the ITE Law in determining who bears criminal liability for news content on online media, and recommended the need for regulatory harmonization to maintain a balance between press freedom and the protection of individual rights. (Aziz, 2026) This is consistent with the findings of this study that the protection of sources under the Press Law remains indirect and requires regulatory strengthening. (Aziz S. B., 2026)

d. Recommendations for Regulatory Harmonization

Based on an analysis of the aforementioned ruling and the existing regulatory framework, there are several recommendations to strengthen the protection of press sources. First, an amendment to the Press Law is needed to add a provision that explicitly grants legal immunity to sources who provide statements for news reporting in the public interest. (Jazim Hamidi & Mustafa Lutfi, 2022) Second, a revision to the ITE Law is needed to include an exception clause stating that the provisions of Article 27 do not apply to content produced in the course of journalistic activities by verified media outlets. (Suharsono, 2021)

Third, National Police Chief Guideline No. 229/2021 should be strengthened through the issuance of a Government Regulation or Presidential Regulation, which carries higher legal authority and is binding nationwide, that

explicitly establishes a mechanism for resolving cases involving press sources through the Press Council before criminal proceedings are initiated. (Widagdo, 2022) Fourth, the Supreme Court needs to issue a Supreme Court Circular (SEMA) instructing all courts in Indonesia not to accept or to halt criminal cases filed against press sources before they go through the Press Council's mediation mechanism. (Anggia, 2021)

D. CONCLUSIONS

First, based on an analysis of the Press Law and the ITE Law, it was found that there is a significant conflict of norms regarding the provision of legal protection for press sources. The Press Law provides indirect protection through the right to refuse, the right of reply, and the right to correction, and prioritizes dispute resolution mechanisms through the Press Council based on a Memorandum of Understanding (MoU) with the Indonesian National Police. Conversely, Article 27(3) of the ITE Law opens the door to the criminalization of sources, defining the subject of the law as "any person" without any exceptions for journalistic activities. Therefore, the application of the ITE Law to press sources without considering the specific provisions of the Press Law must be urgently addressed through regulatory harmonization. Based on this, legal protection for media sources can be optimally realized.

Second, based on an analysis of Judgment No. 226/PID.SUS/2025/PT BDG in conjunction with No. 7/Pid.B/2025/PN Kwg, it was found that the panels of judges at the Kwandang District Court and the Bandung High Court disregarded the existence of the Press Council's MoU and the National Police Chief's Guidelines No. 229/2021, and disregarded Supreme Court precedent No. 646 K/Pid.Sus/2019, which states that a person cannot be criminalized for serving as a media source. The application of Article 27(3) of the ITE Law to press sources in the aforementioned ruling is categorized as an action contrary to Article 28F of the 1945 Constitution, thereby creating legal uncertainty and potentially hindering the freedom of the press guaranteed by the Constitution.

Recommendations; First, the government and the People's Representative Council of the Republic of Indonesia should immediately harmonize regulations by: (a) amending Law No. 40 of 1999 on the Press by adding a provision that explicitly grants legal immunity to sources who make statements in the public interest; (b) revising Law No. 19 of 2016 on the Information and Electronic Transactions Act (ITE Law) by adding an exception clause stating that the provisions of Article 27 do not apply to content produced in the course of

journalistic activities by verified media outlets; and (c) strengthening the National Police Chief's Guideline No. 229/2021 through the issuance of a Government Regulation or Presidential Regulation that is binding nationwide. (Ali M. , 2021)

Second, the Supreme Court of the Republic of Indonesia should immediately issue a Supreme Court Circular (SEMA) instructing all courts in Indonesia not to accept or to halt criminal cases filed against press sources before they have gone through the mediation and clarification mechanism via the Press Council. In addition, the Indonesian National Police and the Attorney General's Office need to strengthen the capacity of law enforcement officials through training on the application of the Press Law in journalism-related cases. The Press Council must also be more proactive in providing legal assistance to sources who are ensnared by the vague provisions of the ITE Law.

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