

# Restorative Justice as a New Paradigm in the Enforcement of Hate Speech Laws in Indonesia

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## Abstract

Law enforcement against hate speech in Indonesia has predominantly relied on a repressive approach under the Electronic Information and Transactions Law (ITE Law), often failing to uphold the principles of substantive justice. This article evaluates the effectiveness of the current approach and proposes restorative justice as a more humane and participatory alternative paradigm. Using the socio-legal research method, this study analyzes the concept of restorative justice in addressing hate speech through interviews with legal stakeholders and legal literature and scientific analyzes. This discussion finds, first, that law enforcement against hate speech under the ITE Law remains suboptimal and fails to fully reflect the principles of substantive justice. A punitive-centric approach often neglects critical social dimensions, including the perpetrator's background, the victim's circumstances, and the broader cultural context—resulting in legal disparities and the risk of societal over-criminalization. Second, a shift toward restorative justice is imperative. This paradigm offers a more humanistic and transformative framework by prioritizing the restoration of social relations, victim recovery, and the active accountability of offenders. Its inclusive and dialogical nature fosters reconciliation and contributes to a more just, inclusive, and sustainable legal system.

**Keywords:** Criminal Law; Digital; Hate Speech; Modernization; Restorative Justice;



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## Introduction

The era of globalization profoundly brings significant influence to all aspects of life, including social, economic, and cultural fields<sup>1</sup>. The development of information and communication technology enables increasingly boundless global connections, provides rapid access to

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<sup>1</sup> Yongqiang Liu and others, 'Rural Vitalization Promoted by Industrial Transformation under Globalization: The Case of Tengtou Village in China', *Journal of Rural Studies*, 95, September (2022), 241–55 <https://doi.org/10.1016/j.jrurstud.2022.09.020>

information, and allows for massive cross-border communication <sup>2</sup>. Recently, Technological advancements have also contributed to the emergence of polarization in the exercise of freedom of expression. The state has guaranteed that freedom of speech, both oral and written, belongs to the entire society <sup>3</sup>. However, freedom of expression in this digital era has also led to the emergence of cybercrimes such as the spread of hate speech, cyberbullying, and offensive content, which can have serious impacts on individuals and society as a whole <sup>4</sup>.

One of the most prevalent cybercrimes is hate speech. Such behavior can trigger conflicts and disturbances, as well as foster biased views or prejudices against certain groups <sup>5</sup>. Hate speech is generally considered a form of intimidation that often causes unrest among individuals and communities due to factors such as ethnic background, religious beliefs, racial identity, and socioeconomic status (referred to as SARA). This concept is sometimes extended to expressions that foster an atmosphere of prejudice and intolerance, which are considered to trigger discrimination, hostility, and violent attacks <sup>6</sup>. With the increasing number of internet users (netizens), the spread of content containing images, photos, videos, audio, and words that can cause insults, defamation, and blasphemy, has become more rampant. Many parties feel aggrieved due to the rampant hate speech that is currently prevalent and increasingly pursued through legal channels <sup>7</sup>.

The danger of hate speech against democracy is undeniable. European countries that have had a terrible experience with hate propaganda, like the Nazis, generally have stricter regulations to prohibit hate speech. While America, where civil liberties are an important part of national history, chooses to tolerate hate speech. However, hate crimes are regulated under their laws. In some cases, the United States also has precedents for punishing hate speech that is strongly considered a cause of violence. The danger of

<sup>2</sup> Ni Komang Sutrisni and others, *The Compliance of Governance on Family Data Protection Regulation, Journal of Human Rights, Culture and Legal System*, 2024, iv <https://doi.org/https://doi.org/10.53955/jhcls.v4i3.293>

<sup>3</sup> Bambang Tri Bawono, 'The Urgency of Restorative Justice Regulation on Hate Speech', *Bestuur*, 11.2 (2023), 364–83 <https://doi.org/https://dx.doi.org/10.20961/bestuur.v11i2.82508>

<sup>4</sup> Malliga Subramanian and others, 'A Survey on Hate Speech Detection and Sentiment Analysis Using Machine Learning and Deep Learning Models', *Alexandria Engineering Journal*, 80 (2023), 110–21 <https://doi.org/10.1016/j.aej.2023.08.038>

<sup>5</sup> Matteo Vergani and others, 'PROTOCOL: Mapping the Scientific Knowledge and Approaches to Defining and Measuring Hate Crime, Hate Speech, and Hate Incidents', *Campbell Systematic Reviews*, 18.2 (2022) <https://doi.org/10.1002/cl2.1228>

<sup>6</sup> Jerico Mathias, 'Hate Speech and Its Threat to Law Enforcement', *The Indonesian Journal of International Clinical Legal Education*, 3.1 (2021), 15–26 <https://doi.org/10.15294/ijicle.v3i1.43172>

<sup>7</sup> Kurniawan Kurniawan and others, 'Legal Regulation of Hate Speech Offences with a Restorative Justice Approach', in *Proceedings of the International Conference on "Changing of Law: Business Law, Local Wisdom and Tourism Industry" (ICCLB 2023)* (Atlantis Press, 2023) [https://doi.org/10.2991/978-2-38476-180-7\\_98](https://doi.org/10.2991/978-2-38476-180-7_98)

hate speech is also emphasized by the United Nations, which in 1966 issued the International Covenant on Civil and Political Rights (ICCPR) that prohibits "advocacy of hatred that constitutes incitement to discrimination, hostility, or violence." However, regulations limiting hate speech are controversial because they restrict freedom of speech, a fundamental aspect of democracy. Critics of hate speech bans believe that maintaining freedom of speech as a fundamental right is more valuable than the harm that can be prevented by punishing speech deemed dangerous <sup>8</sup>.

It is important to oppose hate speech, especially because hate movements are increasingly crossing into the mainstream. With hate speech in cyberspace, it poses a threat to social order by violating social norms. Perceptions of social norms, whether supporting or opposing prejudice, have been found to influence how individuals react online. Governments around the world are facing increasing demands to understand and combat hate ideology and violent extremism both online and offline <sup>9</sup>, including the Indonesian government. Hate speech crimes are not a new form of crime recognized under Indonesian positive law. Hate speech is a criminal offense that can be found in the Indonesian Penal Code (KUHP). However, with the advancement of technology, which has made electronic media and social media the primary means for the public to communicate, obtain information, and express opinions, hate speech has transformed from a common crime into a cybercrime. With this development, hate speech as cybercrime has also been regulated in Law Number 19 of 2016, an amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law). The qualification of hate speech, according to the ITE Law, is the use of the Internet or other electronic means aimed at publishing hate speech <sup>10</sup>.

In enforcing the ITE Law, the element of intent (*dolus*) as an important part of the crime is often not formulated objectively by the public prosecutor and is minimally elaborated by the judge in the decision-making considerations. However, the fault is the basis of criminal liability, by the principle "*geen straf zonder schuld*" (no punishment without guilt) <sup>11</sup>. This issue is related to applying the monistic doctrine, which views the elements of criminal acts and culpability as a unity. As a result, the subjective element (intent) is considered secondary once the objective element has been fulfilled

<sup>8</sup> Jerico Mathias and Rosamine Blessica, 'Hate Speech and the Freedom Discourse', *Indonesia Media Law Review*, 1.1 (2022), 1–22 <https://doi.org/10.15294/imrev.v1i1.56673>

<sup>9</sup> Steven Windisch, Susann Wiedlitzka, and Ajima Olaghere, 'Online Interventions for Reducing Hate Speech and Cyberhate: A Systematic Review', *Campbell Systematic Reviews*, 17.1 (2021) <https://doi.org/https://doi.org/10.1002/cl2.1133>

<sup>10</sup> Farol Medeline, Elis Rusmiati, and Rully Herdita Ramadhani, 'Forensik Digital Dalam Pembuktian Tindak Pidana Ujaran Kebencian Di Media Sosial', *PAMPAS: Journal of Criminal Law*, 3.3 (2023), 310–25 <https://doi.org/10.22437/pampas.v3i3.19691>

<sup>11</sup> Alkautsar Bagas, Nani Mulyati, and Elwi Danil, 'Pertanggungjawaban Pidana Dengan Menggunakan Bukti Tidak Langsung (Circumstantial Evidence)', *Jurnal Ius Civile*, 8.2 (2024), 1–16 <https://doi.org/https://doi.org/10.35308/jic.v8i2.10182>

<sup>12</sup>. In contrast to the dualistic doctrine, which separates criminal acts from criminal liability, the monistic doctrine places fault as an independent element that must be proven separately. If related to the enforcement of hate speech crimes as regulated in the ITE Law, it has caused inequality and injustice to society<sup>13</sup>.

Applying law that follows positivist thinking usually uses rigid logic, namely the deductive method. In this approach, all events or facts are considered to have to conform to the content of the legal rules, even though not all these facts necessarily constitute a legal violation. This way of thinking narrows legal interpretation, as if trapped in an "iron cage," because the conclusion has been predetermined from the start through the general rules used. As a result of this mindset, law enforcement officers often focus solely on what is written in the law without considering whether their decisions are truly just or not. This attitude opens opportunities for legal abuse, as often seen in the application of the ITE Law, where legal rules are used without considering the value of justice that should be the core of the law itself <sup>14</sup>.

Recent cases like Buni Yani, Ahmad Dhani, Asma Dewi, and others demonstrate this. It is known that in handling these cases, the application of the ITE Law tends to be subjective. This happens due to the influence of the monistic doctrine, which makes the subjective element merely secondary. When the objective element is satisfied, the intentional element's fulfillment complements it. Thus, a new approach is needed to deal with offenders. In this case, cybercrime perpetrators, especially those involved in hate speech, should be approached with restorative justice so that perpetrators of crimes in general, and particularly cybercrime perpetrators, do not always end up with prison sentences but can instead be directed towards corrective, restorative, and rehabilitative approaches <sup>15</sup>.

Indonesian's criminal procedural law instruments have regulated the formal procedures that must be followed in resolving criminal cases. However, unfortunately, this formal system is often used in practice as a means of oppression by law enforcement. The restorative justice approach focuses on creating justice and balance for the victim and the perpetrator. Restorative justice itself has the meaning of restorative justice. Restorative

<sup>12</sup> Fathur Rauzi, Muhammad Zaki Pahrul Hadi, and Janou Willems, 'Motive Evidentiary in Premeditated Murder: Aligning the Norms and Practical', *Jurnal Hukum Novelty*, 14.2 (2023), 192 <https://doi.org/10.26555/novelty.v14i2.a25954>

<sup>13</sup> Nikita Sud, 'Unjust Energy Transition: Vignettes from the COPs, Climate Finance and a Coal Hotspot', *World Development*, 190 (2025), 106906 <https://doi.org/10.1016/j.worlddev.2024.106906>

<sup>14</sup> Taufik Mohammad, Azlinda Azman, and Ben Anderstone, 'The Global Three: A Malaysian Lens on the Challenges and Opportunities Facing Restorative Justice Planning and Implementation', *Evaluation and Program Planning*, 72 (2019), 1-7 <https://doi.org/10.1016/j.evalprogplan.2018.09.007>

<sup>15</sup> Jahyun Chun, 'Enforced Reconciliation without Justice: The Absence of Procedural, Retributive, and Restorative Justice in the "Comfort Women" Agreement of 2015', *Asian Journal of Social Science*, 49.2 (2021), 84-92 <https://doi.org/10.1016/j.ajss.2020.09.001>

includes the restoration of relationships between the perpetrator and the victim. This restoration of relationships is based on a mutual agreement between the perpetrator and the victim. The victim can convey the losses suffered, and the perpetrator is allowed to atone through mechanisms such as compensation, reconciliation, community service, or other agreements <sup>16</sup>.

Non-penal resolution is a form of criminal law policy that leads to the reform of criminal law. The Institute for Criminal Justice Reform, or ICJR, holds the view that the direction of reforming Indonesia's criminal justice system or criminal law in the future should be carried out with a humanistic paradigm and approach that strengthens legal processes and restorative justice <sup>17</sup>. Thus, an alternative resolution for hate speech crimes through non-penal resolution with the concept of restorative justice can take the form of mediation based on criminal law policy and involving law enforcement officers and community institutions<sup>18</sup>. This approach demands the active involvement of law enforcement not only as law enforcers but also as facilitators of social conflict resolution, sensitive to community dynamics. Furthermore, involving community institutions is considered crucial to restoring public trust in the legal system, as well as strengthening the legitimacy of conflict resolution that does not solely result in imprisonment. Thus, mediation within the restorative justice framework is not only a technocratic solution but also a reconciliatory strategy that can repair social relations damaged by hate speech while still affirming the principle of accountability for the perpetrators. This approach becomes increasingly relevant in the digital era, where hate speech spreads rapidly but cannot always be effectively addressed solely through punitive logic <sup>19</sup>.

Several previous studies, such as the research conducted by Jordi Mas Grau, show that restorative justice is still a nascent jurisdictional paradigm that requires further consolidation if it is to serve as an alternative to the hate crime punishment model <sup>20</sup>. Olga Junaby shows that restorative justice has the potential for radical and partial transformation in how we

<sup>16</sup> Abdul Kadir Jaelani and Resti Dian Luthviati, 'The Crime Of Damage After the Constitutional Court ' s Decision Number 76 / PUU-XV / 2017', *Journal of Human Rights, Culture and Legal System*, 1.1 (2021), 31–41 <https://doi.org/https://doi.org/10.53955/jhcls.v1i1.5>

<sup>17</sup> Rudi Natamiharja and others, 'Criminal Law Policy in Blasphemy Enforcement Based on Restorative Justice', *Jurnal Bina Mulia Hukum*, 8.1 (2023), 1–20 <https://doi.org/10.23920/jbmh.v8i1.1178>

<sup>18</sup> Katherine McAuliffe, Julia Marshall, and Abby McLaughlin, 'Beyond Punishment: Psychological Foundations of Restorative Interventions', *Trends in Cognitive Sciences*, 29.2 (2025), 149–69 <https://doi.org/https://doi.org/10.1016/j.tics.2024.11.011>

<sup>19</sup> Liyuan Zhu and Kevin Lo, 'Non-Timber Forest Products as Livelihood Restoration in Forest Conservation: A Restorative Justice Approach', *Trees, Forests and People*, 6 (2021), 100130 <https://doi.org/https://doi.org/10.1016/j.tfp.2021.100130>

<sup>20</sup> Jordi Mas Grau and others, 'Exploring Alternatives to the Hate Crimes Model. Perceptions of Civil Society Organizations Regarding the Application of Restorative Justice for Bias-Motivated Crimes', *Contemporary Justice Review*, 26.3 (2023), 299–318 <https://doi.org/https://doi.org/10.1080/10282580.2023.2301558>



understand and enforce justice, particularly in the sentencing of hate crimes<sup>21</sup>. Furthermore, research by Ali Hakim Lubis states that restorative justice can be an alternative to punishment to achieve justice for both perpetrators and victims of hate speech crimes,<sup>22</sup>. Michael A. Peters argues that instead of criminalizing hate speech, there should be laws that urge society to oppose it<sup>23</sup>. Further research by Jerico Mathias shows that hate speech accompanies intellectual freedom in digital media. Therefore, there needs to be synergy between the community and law enforcement agencies to tackle this crime<sup>24</sup>.

Amid various issues and challenges in addressing hate speech in Indonesia, as well as the results of several existing studies, a significant question still arises regarding whether the current law enforcement truly reflects the principle of justice. Therefore, it is important to conduct an in-depth analysis of the effectiveness of the current law enforcement system in addressing hate speech, especially considering the need for modernization of criminal accountability with a restorative justice-based approach, which is considered a more humane and just alternative solution, as it not only focuses on punishment but also on restoring social relationships between the perpetrator, the victim, and the community.

## Methodology

This research uses the socio-legal research method to determine the effectiveness of implementing hate speech law enforcement in Indonesian regulations, particularly the Criminal Code and the Electronic Information and Transactions Law, by employing the theory of legal effectiveness<sup>25</sup>. Furthermore, this research uses a conceptual approach to analyze the concept of restorative justice as an alternative to addressing hate speech in Indonesia. The types of data used are primary data and secondary data<sup>26</sup>. The technique for collecting primary data involved interviews with several legal expert sources, including members of the DPR, prosecutors, the police, activists, and advocates. In addition, this research also uses secondary data

<sup>21</sup> Olga Jubany and Isabelle Carles, 'Researching Diverse Understandings of Justice and the Potential of Restorative Measures for Hate Crimes', *Droit et Cultures [En Ligne]*, 86.1 (2024) <https://doi.org/https://doi.org/10.4000/130de>

<sup>22</sup> Ali Hakim Lubis and Elfrida Ratnawati, 'Restoratif Justice Terhadap Pelaku Tindak Pidana Ujaran Kebencian', *Unes Law Review*, 5.3 (2023), 756-63 <https://doi.org/https://doi.org/10.31933/unesrev.v5i3.349>

<sup>23</sup> Michael A. Peters, 'Limiting the Capacity for Hate: Hate Speech, Hate Groups and the Philosophy of Hate', *Educational Philosophy and Theory*, 54.14 (2022), 2325-30 <https://doi.org/10.1080/00131857.2020.1802818>

<sup>24</sup> Mathias and Blessica.

<sup>25</sup> Abdul Kadir Jaelani and Muhammad Jihadul Hayat, 'The Proliferation of Regional Regulation Cancellation in Indonesia', *Journal of Human Rights, Culture and Legal System*, 2.2 (2022), 121-38 <https://doi.org/https://doi.org/10.53955/jhcls.v2i3.55>

<sup>26</sup> Dinda Agustin Wulandari, Abdul Kadir Jaelani, and Hilaire Tegnau, 'Income Tax Regulations for Child Content Creators of TikTok Platform: Inefficacy of Indonesian Legal Frameworks', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 2.2 (2024), 169-91 <https://doi.org/10.53955/jsderi.v2i2.35>

involving literature studies in the form of documents, regulations, archives, books, and proven scientific research results.

## Results and Discussion

### *The Existing Condition of Hate Speech Law Enforcement in Indonesia*

The functioning of law in society can be viewed from two sides: the dogmatic and the sociological side. From the dogmatic side, the functioning of law can be seen through Kelsen's theory, which is linked to issues of law enforcement, legal interpretation, and legal construction. The functioning of the law can also be interpreted as law enforcement activities. Law enforcement is essentially a process of realizing legal objectives. As stated by Chambliss and Seidman about the influences of social forces in the functioning of the law, the same applies to the functioning of the criminal justice system in the enforcement of the ITE Law <sup>27</sup>.

Referring to the Supreme Court registration site, there were 508 cases in court using the ITE Law from 2011 to 2018. The most common cases are criminal offences related to insults and defamation, according to Article 27, Paragraph (3) of the ITE Law. The second is hate speech cases under Article 28 of the ITE Law. These two articles have very flexible interpretations, making it easy for many people to get caught up in the ITE Law <sup>28</sup>. This is also supported by data presented by the Southeast Asian Freedom of Expression Network (SAFEEnet). SAFEEnet reports that from the enactment of the ITE Law in 2008 until 2019, police received 271 reports related to the ITE Law. Generally, the reporters use Article 27 Paragraph (1) related to content that violates decency, Article 27 Paragraph (3) related to defamation, Article 28 Paragraph (2) related to hate speech, and Article 29 related to threats of violence. It is acknowledged that in practice, the ITE Law has become a new threat to the protection of civil liberties in Indonesia, particularly freedom of opinion and expression <sup>29</sup>. Although revisions have been made to the ITE Law, reporting has decreased. However, the articles being reported have not changed. The revised ITE Law is considered to contain multi-interpretative articles and is still used to entrap freedom of expression and people's right to

<sup>27</sup> Mhd Azhali Siregar, Rahul Ardian Fikri, and Ayuda Silitonga, 'Principles of Legal Protection of Health Services from The Perspective of Socio-Legal Studies', *International Journal of Synergy in Law, Criminal, and Justice*, 1.2 (2024), 276-284 <https://doi.org/10.70321/ijslcj.v1i2.58>

<sup>28</sup> Abdurrahman Alhakim, 'Urgensi Perlindungan Hukum Terhadap Jurnalis Dari Risiko Kriminalisasi UU Informasi Dan Transaksi Elektronik Di Indonesia', *Jurnal Pembangunan Hukum Indonesia*, 4.1 (2022), 89-106 <https://doi.org/10.14710/jphi.v4i1.89-106>

<sup>29</sup> Devi Tri Indriasari and Ade Armando, 'The Governance of Information Technology and Deliberative Democracy: Study of The Law on Information and Electronic Transactions (ITE)', *Eduvest - Journal of Universal Studies*, 3.5 (2023), 895-912 <https://doi.org/10.59188/eduvest.v3i5.807>

speak. As a result, people are increasingly questioning the effectiveness of law enforcement against hate speech <sup>30</sup>.

For example, in the case of Ahmad Dhani Prasetyo, the court should, at the stage of consideration, in addition to considering whether the act is proven to be unlawful, also consider the absence of a victim. If there are indeed facts that prove the objective blame in the criminal act at the constate stage, but at the qualifying stage the defendant cannot be held criminally responsible. Because, in the defendant, there is absolutely no fault. The absence of wrongdoing is seen from the lack of intentionality. It is said so because the person concerned did not intend or desire the act of insult and defamation against an individual. In other words, there is no connection whatsoever between the inner attitude and the words spoken. Thus, at the constitutive stage, the judge should not impose a sentence, but rather the defendant should be acquitted of the public prosecutor's charges <sup>31</sup>.

The theory of legal effectiveness provides a link to this issue. Soerjono Soekanto. Soerjono Soekanto stated that the main problem affecting law enforcement effectiveness is related to various factors. First, from the perspective of the effectiveness and validity of law enforcement, there are several issues concerning its connection with the existing regulatory framework, namely the Criminal Code (KUHP). The application of the ITE Law contains inconsistencies with the Criminal Code generally. The enforcement of the ITE Law is ineffective because it does not align with the community's interests as originally intended. Initially, the ITE Law aimed to regulate administrative law in the context of electronic transaction information. The ITE Law also contains ambiguous formulations that subsequently lead to broad interpretations and are used to fulfill elements. Conversely, the vagueness of the formulation also prevents the public from understanding it. Moreover, the legal threat is not proportional and does not correspond to the act committed<sup>32</sup>.

The application of the ITE Law tends to be subjective, as its interpretation is influenced by monistic teachings that render the subjective element merely secondary. If the objective element is deemed fulfilled, the fulfillment of the intentional element serves as a complement. During the investigation stage, the fulfillment of the elements is susceptible to force and even fabrication. In such cases, the norms accommodate all facts. However, the fact is not necessarily an unlawful act. Interpretation in a syllogism is like being in an iron cage, because the answer (conclusion) is secretly already available in its

<sup>30</sup> Zaka Firma Aditya and Sholahuddin Al-Fatih, 'Indonesian Constitutional Rights: Expressing and Purposing Opinions on the Internet', *International Journal of Human Rights*, 25.9 (2021), 1395–1419 <https://doi.org/10.1080/13642987.2020.1826450>

<sup>31</sup> Ahmad Sirulhaq, Untung Yuwono, and Abdul Muta'ali, 'Lack of Critical Approach in the Hate Speech Research as Ideological Practice in Indonesia', ed. by Nuriadi and others, *SHS Web of Conferences*, 173 (2023), 04004 <https://doi.org/10.1051/shsconf/202317304004>

<sup>32</sup> Léo Fitouchi and Manvir Singh, 'Punitive Justice Serves to Restore Reciprocal Cooperation in Three Small-Scale Societies', *Evolution and Human Behavior*, 44.5 (2023), 502–14 <https://doi.org/10.1016/j.evolhumbehav.2023.03.001>



major premise. The influence of positivism has made law enforcement officers only uphold the letter of the law rather than justice as the substance of the law itself. The ITE Law's implementation shows that this condition has led to the abuse of gaps or weaknesses in the laws. The enforcement of the law against hate speech has caused inequality and hurt the sense of justice in society<sup>33</sup>.

*Second*, there are serious obstacles in terms of the quality of human resources and the professionalism of law enforcement officers. In many cases, the authorities tend to carry out their duties in a formalistic manner, merely applying the text of the law without considering the essence of justice that is the spirit of the law itself. Such a legalistic approach opens the door to abuse, especially when there are weaknesses or gaps in the formulation of legal articles. This situation is seen in the implementation of the ITE Law, where certain parties often exploit the vagueness of the norms to suppress freedom of expression or criminalize citizens. The lack of deep understanding of the spirit of the law and weak integrity also exacerbate this issue<sup>34</sup>.

*Third*, the limitations of law enforcement support facilities, especially in handling cybercrime, remain a serious obstacle. Handling cybercrime requires support from advanced technology such as digital forensic software, high-capacity storage servers, and secure and reliable network infrastructure. Unfortunately, many law enforcement institutions at the regional level do not yet have access to such facilities. As a result, the process of collecting, storing, and analyzing digital evidence becomes less optimal, even risking the creation of legal loopholes that can be exploited by criminals. These limitations not only hinder the effectiveness of law enforcement but also weaken public trust in the authorities' ability to respond to the dynamics of technology-based crime<sup>35</sup>.

*Fourth*, public participation and awareness of the law are still relatively low. Many citizens do not fully understand their legal rights and obligations, making them tend to be passive or even apathetic towards the legal process. The lack of legal literacy also causes the community to easily get caught up in practices that violate the law, whether intentionally or not. The low trust in law enforcement and legal institutions also exacerbates the gap between the law and the community. *Fifth*, legal culture. Related to legal culture as a factor in law enforcement, in this case regarding the effectiveness of law enforcement against social media users. Social media has successfully transformed the practice of one-way communication from a single media

<sup>33</sup> Frei Fitri Astuti and Laila Nur Jannah, 'Flexibility in Accessing Legal Information Through Social Media and Its Implications for Law Enforcement', *Journal of Indonesian Constitutional Law*, 2.1 (2025), 23–36 <https://doi.org/10.71239/jicl.v2i1.37>

<sup>34</sup> Refki Idham, 'PENEKAKAN HUKUM TERHADAP TINDAK PIDANA PENGHINAAN ATAU PENCEMARAN NAMA BAIK MELALUI MEDIA SOSIAL: Studi Putusan Nomor 53/Pid. Sus/2018/PN Kbu', *Petitum*, 1.1 (2021), 83–94. <https://doi.org/10.61104/alz.v3i2.1018>

<sup>35</sup> Theresia B Sumarno, Parulian Sihotang, and Widhyawan Prawiraatmadja, 'Exploring Indonesia's Energy Policy Failures through the JUST Framework', *Energy Policy*, 164 (2022), 112914 <https://doi.org/https://doi.org/10.1016/j.enpol.2022.112914>

institution to many audiences (one-to-many) into a dialogic communication practice among many audiences (many-to-many). Through social media, every individual can share information with each other by combining technology in the form of text, images, videos, or audio. Various internet applications based on social media are increasingly prevalent and capable of captivating internet users worldwide <sup>37</sup>.

Based on the various factors that have been outlined, it appears that the ineffectiveness of law enforcement in addressing hate speech through the ITE Law still does not reflect the principle of substantive justice for society. The dominant penal approach so far tends to emphasize punishment only, without considering the social context, the motives of the perpetrator, or the psychological impact on the victim and the wider community. The model of law enforcement that is purely repressive often results in inequality and even has the potential to criminalize ordinary citizens who do not deeply understand the boundaries of digital law. Therefore, there needs to be modernization through a restorative justice approach. Restorative justice emphasizes the social relationship restoration, dialogue between the perpetrator and the victim, and resolutions that prioritize participatory justice rather than mere punishment. This approach provides space for the perpetrator to take moral responsibility while also paving the way for the victim to achieve complete recovery. Thus, restorative justice not only becomes an alternative solution but also a representation of a more just, inclusive legal system that aligns with the values of democracy and human rights in the digital era<sup>38</sup>.

### ***Modernizing Hate Speech Law Enforcement Through Restorative Justice-Based Criminal Accountability***

In functioning law enforcement, the three pillars of law, justice, certainty, and utility must be the foundation both in the stages of law formation and in its application <sup>39</sup>. According to Wolf Middendorf, law enforcement will be effective if three interrelated factors are met: the existence of good laws; swift and certain implementation; and appropriate or adequate and uniform punishment. Law enforcement is identical to upholding justice. Hans Kelen stated that justice in the sense of legality is a quality not related to the content of positive legal norms but to their application. In this sense, justice

<sup>37</sup> Elan, Ampuan Situmeang, and Junimart Girsang, 'Efektivitas Undang-Undang Iti Dalam Menangani Ujaran Kebencian Melalui Media Sosial Di Kota Batam', *Jurnal Pendidikan Kewarganegaraan Undiksha*, 10.3 (2022), 83-100 <https://doi.org/10.23887/jpku.v10i3.51205>

<sup>38</sup> Shokhrukh-Mirzo Jalilov and others, 'Unveiling Economic Dimensions of Peatland Restoration in Indonesia: A Systematic Literature Review', *Ecosystem Services*, 71 (2025), 101693 <https://doi.org/https://doi.org/10.1016/j.ecoser.2024.101693>

<sup>39</sup> Tira Andhika Handayani and Wawan Kurniawan, 'THE EFFECTIVENESS OF THE LAW ENFORCEMENT OF HEALTH PROTOCOLS IN EFFORTS TO PREVENT AND CONTROL COVID-19 BY SATPOL PP, BANDUNG CITY', *International Journal of Latin Notary*, 1.2 (2021), 72-84 <https://doi.org/10.61968/journal.v1i2.12>

is the application of the law in accordance with what is established in a legal system. Therefore, justice is defined as the defense of the legal order that should be applied. The enforcement of just law in hate speech must also be based on the principles of certainty and utility that underpin both the law-making stage and its implementation stage<sup>40</sup>.

The development of criminal law is essential for the enforcement of criminal law in Indonesia. It is said because of the issue of criminalization as a result of the dynamics of criminal law in relation to the changes occurring in society that need to be secured by criminal law<sup>41</sup>. In the scope of criminal politics, the process of criminalization is a policy in the effort to combat crime by using criminal law as an alternative, in addition to still employing non-criminal law measures. The rationality of criminal policy in crime prevention points to the integration between criminal policy and social policy. Criminal policy consists of two main components: penal policy, which involves the application of criminal law, and non-penal policy, which pertains to non-criminal law<sup>42</sup>. Thus, efforts to combat crime can broadly be divided into two criminal policies, namely through the penal route (criminal law) and through the non-penal route (not outside criminal law). Both functions must operate in synergy, complementing one another. Therefore, when addressing hate speech cases, it is essential to adopt an integrated approach that combines both criminal and social policies, as well as uniting crime prevention efforts with penal and non-penal measures.

In the context of implementing the ITE Law, criminal law should be the *ultimum remedium*, not the *primum remedium*. Peace must be pursued through mediation based on restorative justice. The restorative justice approach is expected to achieve substantive justice. Justice based on the peace of the perpetrator, victim, and society is the moral and ethical foundation of restorative justice; therefore, it is carried out as the "just peace principle"<sup>43</sup>. This principle reminds us that justice and peace are fundamentally inseparable. Peace without justice is oppression; justice without peace is a new form of persecution/pressure. It is called just peace ethics because the restorative justice approach aims to repair the damage caused by crime, an effort that is carried out by bringing together victims, perpetrators, and the community. The initial goal of restorative justice is to

<sup>40</sup> Mairon G Bastos Lima, 'Just Transition towards a Bioeconomy: Four Dimensions in Brazil, India and Indonesia', *Forest Policy and Economics*, 136 (2022), 102684 <https://doi.org/10.1016/j.forpol.2021.102684>

<sup>41</sup> Beni Kharisma Arrasuli, 'Eksistensi Hukum Pidana Adat Dalam Rancangan KUHP: Problematika Asas Legalitas Dan Over-Kriminalisasi', *Unes Law Review*, 6.1 (2023), 722–36. <https://doi.org/10.31933/unesrev.v6i1.879>

<sup>42</sup> Yuda Pratama Darmawan, Lies Suetani, and Yani Pujiwati, 'Criminal Policy on Countering Organized Crime Against Land Ownership in the Perspective of Criminal Law Reform', *JUSTISI*, 11.2 (2025), 456–72 <https://doi.org/10.33506/js.v11i2.3902>

<sup>43</sup> Nur Amalina Putri Adytia and others, 'The Rechtelijk Pardon Concept in Reforming the Penal System to Realize Restorative Justice in Indonesia', *Indonesia Law Reform Journal*, 4.1 (2024), 91–101 <https://doi.org/10.22219/ilrej.v4i1.33101>

address the shortcomings of traditional preventive justice and retributive justice. Preventive justice achieves specific deterrence against offenders through imprisonment and general deterrence against potential offenders through the deterrent effect of punishment, but it neglects the reintegration of offenders into society. Retributive justice prioritizes punishment and retribution for offenses but does not address the rehabilitation of victims and society <sup>44</sup>.

Restorative justice has become one of the three main models of justice, alongside retributive justice, and distributive justice. Restorative justice emphasizes the victims and their needs and gives them an important role to play in achieving justice and developing rehabilitation programs<sup>45</sup>. The restorative approach emphasizes the restoration of losses and actively involves the victim in the resolution process. In practice, the restorative justice method is often resolved after an agreement is reached between the complainant and the accused, with the aim of restoring the victim's losses to their original condition or at least approaching that state. The guidelines for implementing this approach have been regulated in the Chief of Police Circular Letter Number 08 of 2018, which directs the resolution of cases through peaceful means<sup>47</sup>. In addition, the government has also taken action by issuing the Joint Decree of the Minister of Communication and Information of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Chief of Police of the Republic of Indonesia, Number 229 of 2021, Number 154 of 2021, and Number KB/2/VI/2021 regarding the Guidelines for the Implementation of Certain Articles in Law Number 11 of 2008 concerning ITE as amended by Law Number 19 of 2016 on June 23, 2021. In addition, the Coordinating Ministry for Political, Legal, and Security Affairs has also sent a letter to the Honorable Chief Justice of the Supreme Court, Number B-96/HK.00.00/07/2021 dated July 14, 2021, stating that the joint decision is intended to be used as a guideline for investigators and public prosecutors in enforcing the law related to the ITE Law to prevent multiple interpretations in its application. The Joint Decision Letter (SKB) between the Minister of Communication and Information of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Chief of

<sup>44</sup> Xinrui Zhang and Jiashu Zhang, *The Application of Restorative Justice in China's Environmental Crime: An Evolutionary Game Perspective*, Crime, Law and Social Change (Springer Netherlands, 2024), LXXXII <https://doi.org/10.1007/s10611-024-10165-7>

<sup>45</sup> Indah Dwi Qurbani, Raphael J Heffron, and Arrial Thoriq Setyo Rifano, 'Justice and Critical Mineral Development in Indonesia and across ASEAN', *The Extractive Industries and Society*, 8.1 (2021), 355–62 <https://doi.org/https://doi.org/10.1016/j.exis.2020.11.017>

<sup>47</sup> Ian D Marder, 'Mapping Restorative Justice and Restorative Practices in Criminal Justice in the Republic of Ireland', *International Journal of Law, Crime and Justice*, 70 (2022), 100544 <https://doi.org/https://doi.org/10.1016/j.ijlcj.2022.100544>

Police at mid-2021 became a significant opportunity for the application of restorative justice in the handling of ITE Law cases <sup>49</sup>.

There are several reasons why the concept of restorative justice can be applied as a legal reform in addressing hate speech. First, the focus is on the victims. Crime victims suffer hardships, however they rarely become part of the criminal justice system. By incorporating restorative justice, victims are involved in resolving these offenses. Second, restorative justice reduces the rate of reoffending. Restorative justice requires the involvement of all stakeholders, including the perpetrator and the wider community. The participation of the perpetrator in the resolution process enhances their understanding of the violation and its impact on the victim. Community involvement strengthens the perpetrators' willingness to change. Change occurs either through shameful behavior or through support and encouragement from community members. Third, the principles and values of restorative justice can be easily assessed and reviewed within the context of the criminal justice system. For example, when using restorative justice in the administration of young offenders, there is a higher level of victim-offender satisfaction, a lower rate of reoffending, and a higher rate of offenders who pay reparations through the implementation of restorative justice practices such as victim-offender mediation. In the context of hate speech crimes, controlling and resolving the crime is not simple. Furthermore, the application of restorative justice in this field is speculative. However, there are several adaptations of restorative justice in addressing hate speech, particularly in the context of young offenders and making them understand the impact of their actions on the victims <sup>50</sup>.

Although promising, restorative justice is still rarely chosen in the criminal justice system. The resolution of hate speech cases places more emphasis on retribution rather than restoration. In addition, imprisonment has been the main penalty for criminals proven guilty in court. Bagir Manan stated that obstacles in implementing reconciliation between victims and perpetrators often stem from the very formalistic attitude of law enforcement, who say that the legal process will continue even after reconciliation; in other words, the unlawful nature will not be erased by reconciliation. The goal of punishment is considered unachieved if the parties have reconciled with each other. Although the goal of law enforcement is not to enforce the law, but rather to achieve order, peace, and tranquility within a harmonious and just societal order. The current criminal justice system is considered no longer able to provide protection for human rights and transparency for public

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<sup>49</sup> M Mujiyanto, H P Sibuea, and S Kuba, 'Implementation of Restorative Justice in Settlement of Hate Speech Cases through Social Media in the ITE Law', *Research Horizon*, 3.2 (2023), 98–107. <https://doi.org/10.54518/rh.3.2.2023.98-107>

<sup>50</sup> Teresa Lancry A.S. Robalo and Razwana Begum Bt Abdul Rahim, 'Cyber Victimization, Restorative Justice and Victim-Offender Panels', *Asian Journal of Criminology*, 18.1 (2023), 61–74 <https://doi.org/10.1007/s11417-023-09396-9>



interests, which is increasingly felt to be lacking. The reality shows that many people prefer to resolve their criminal cases outside the system.

This has become one of the challenges in the implementation of restorative justice. In addition, there are other factors that hinder its widespread application in the enforcement of hate speech laws<sup>51</sup>, among them, first, the change in legal paradigms. Restorative justice involves a paradigm shift in law from a retributive approach focused on punishment to a reconciliation approach focused on restoration and reconciliation. This change may face resistance from some parties who still hold traditional views on punishment. Second, the Dominant Legal System: The legal system in Indonesia is still dominated by a retributive approach that emphasizes punishment and sentencing as the primary solution. Restorative justice is an alternative approach that requires a paradigm shift and a different approach. This challenge involves changing attitudes and practices within the existing legal system. Third, Ignorance and Awareness: The community's knowledge and awareness about the concept and benefits of restorative justice remains limited. This low level of understanding can hinder public acceptance and participation in the implementation of restorative justice <sup>53</sup>.

Nevertheless, law enforcement officers handling this crime state that adopting this restorative model seems to represent a paradigmatic shift in their routine practices during the sentencing process of hate speech offenders. This approach no longer solely emphasizes punishment but rather focuses on efforts to restore social relationships, acknowledge wrongdoing by the perpetrator, and achieve a more humane and balanced justice for all parties involved. In the context of hate speech, this opens a space for dialogue between the perpetrator and the victim and encourages the creation of an understanding of the real impact of such actions. Although still facing challenges, particularly in terms of regulations and the readiness of the authorities, the restorative model is beginning to be seen as a more constructive alternative in handling cases that touch on social sensitivities and group identities <sup>54</sup>.

## Conclusion

In conclusion, this research finds that, *first*, law enforcement in the effort to combat hate speech through the ITE Law is still not operating optimally and does not yet fully reflect the principle of substantive justice that is equitable for all segments of society. The dominance of a penal approach that

<sup>51</sup> Ferry Fathurokhman, 'The Necessity of Restorative Justice on Juvenile Delinquency in Indonesia, Lessons Learned from the Raju and AAL Cases', *Procedia Environmental Sciences*, 17 (2013), 967–75 <https://doi.org/10.1016/j.proenv.2013.02.115>

<sup>53</sup> Adwi Mulyana Hadi, Anik Iftitah, and Syahrul Alamsyah, 'Restorative Justice Through Strengthening Community Legal Culture in Indonesia: Challenges and Opportunity', *Mulawarman Law Review*, 8.1 (2023), 32–44 <https://doi.org/10.30872/mulrev.v8i1.1140>

<sup>54</sup> Jize Jiang and Zhifeng Chen, 'Victim Welfare, Social Harmony, and State Interests: Implementing Restorative Justice in Chinese Environmental Criminal Justice', *Asian Journal of Criminology*, 18.2 (2023), 171–88 <https://doi.org/10.1007/s11417-022-09376-5>

focusses on punishment often neglects social dimensions such as the background of perpetrator, the condition of victim, and the socio-cultural context underlying the occurrence of hate speech. This creates an imbalance in law enforcement, wherein the law ceases as function as a tool of protection and instead risk becoming an instrument of criminalization. There needs to be a renewal of hate speech law enforcement methods through a restorative justice approach. *Second*, the application of restorative justice approaches has become an urgency that cannot be ignored in the reform of the legal system, especially in addressing hate speech cases. This approach offers a more humanistic and transformative paradigm by emphasizing restoration of social relationships, healing for victims, and the active responsibility of perpetrators to rectify consequences of their actions. By involving all parties in a participatory manner, including perpetrators, victims, and community, this approach facilitates dialogue, peaceful resolution, and reconciliation, ultimately contributing to the development of a more just, inclusive, and sustainable legal order.

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