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# THE LEGAL SECURITY IN ELECTRONIC TRANSACTIONS TO PROTECT FREEDOM OF SPEECH: THE CONCEPT OF FORMING LEGISLATION ON ELECTRONIC TRANSACTIONS

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**ABSTRACT**

*The main objective of this study is to conduct a comprehensive study of the rules in criminalization which is one of the last alternatives in the law enforcement process. The Law on the Formation of Legislation in Indonesia provides Limitations of norms for violations of each legal norm formed does not violate human rights. The method used in this study was a sociological legal approach. The results of the study indicate that the norms contained in the Electronic Transaction Law in Indonesia should be a tool for law enforcers to carry out social engineering which is not a means to legalize the interests of power in Indonesia. This finding highlights the need to change the law as a constructive social engineering tool, and not as a mechanism to serve personal interests. Strengthening general provisions and clarifying norms is essential to prevent and prioritize the protection of freedoms interpreted as fundamental human rights. This study underlines the importance of aligning law enforcement with democratic values in the digital era.*

## 1. Introduction

Technological capabilities have brought about significant changes in human behavior.[1] The development of technology has been significant, so that there was development in various aspects of community life.[2] Included in this is electronic technology, both in the form of communication tools and others that support the progress of humanity. In this case, the benefits of technology, in

1 Muhammad Irwan Padli Nasution., Keunggulan Kompetitif dengan Teknologi Informasi. *Jurnal Elektronik*, 2014, page 1-9

2 Andri Winjaya Laksana., Cybercrime Comparison Under Criminal Law in Some Countries, *Jurnal Pembaharuan Hukum*, Vol.V No.2, April-August 2018, page. 217-226

addition to having a positive impact[3] also has the potential to have a negative impact on the progress of the nation and state.

The mandate of the 1945 Constitution of the Republic of Indonesia states that every citizen has the right to live their lives properly.[4] This makes this guarantee must be applied regardless of the conditions and situations. As stated by Ni'matul Huda[5], studying legal sources provides clues about where and how the law exists. In-depth knowledge of legal sources distinguishes a legal scholar from someone who simply knows the law. According to Bagir Manan, the term "source of law" has different meanings, so be careful in studying and examining legal sources. Advances in global technology and information have implications for the use of the internet for e-commerce, e-business, and e-banking activities, as well as providing cyber freedom (cyberliberty) both for commerce (commercial cyberliberty) and social (civil cyberliberty).[6]

In terms of its relationship contained in the constitution of the Republic of Indonesia, we can examine the existence of rights in order to utilize technological advances in the form of electronic transactions.[7] Electronic transactions are a form of activity or activity[8] both positive and negative in order to utilize electronic facilities and infrastructure, namely computer devices, electronic media and other facilities.

Utilization of technology[9] in this case becomes the most important instrument in the process of seeing the use value in supporting activities or activities carried out by the community. In the legislation[10] its validity is used to prevent negative use related to electronic transaction activities used. In the case of actions or activities carried out are negative, of course, either detrimental to the individual himself, other people or groups including detrimental to the interests

3 Budi Susilo., Dampak Positif Perkembangan Teknologi Informasi Terhadap Tumbuh Kembang Anak, *Sindimas*, Vol.1, No. 1, 2019, page. 139-143.

4 Muhammad Junaidi., *Hukum Konstitusi: Pandangan dan Gagasan Modernisasi Negara Hukum*, Depok, Rajawali Pers, 2018, page 22

5 Ni'matul Huda., *Hukum Tata Negara Indonesia*, Jakarta, Raja Grafindo Persada, 2015, page. 23

6 I Gede Adhi Mulyawarman (etc)., Blocking Dangerous Content in Electronic Communications Networks : Evidence from Netherlands, United States and Singapore, *Journal of Human Rights, Culture and Legal System*, Vol.4 No.1, March 2024, page. 237-262

7 Tasya Safiranita Ramli., Aspek Hukum Atas Konten Hak Cipta Dikaitkan Dengan Undang-Undang Nomor 19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik, *Jurnal Legislasi Indonesia*, Vol.17 No.1, March 2020, page. 62-69

8 Budi Agus Riswandi., Hukum dan Teknologi: Model Kolaborasi Hukum dan Teknologi dalam Kerangka Perlindungan Hak Cipta di Internet, *Jurnal Hukum Ius Quia Iustum,* Vol.23 No.3, July 2016, page. 345-367

9 Suyanto Sidik., Dampak Undang-Undang Informasi dan Transaksi Elektronik (UU ITE) Terhadap Perubahan Hukum Dan Sosial Dalam Masyarakat, *Jurnal Ilmiah Widya*, Vol.1 No.1, May-June 2013, page. 1-7

10 Ricca Anggraeni., Memaknakan Fungsi Undang-Undang Dasar Secara Ideal Dalam Pembentukan Undang-Undang, *Masalah-Masalah Hukum*, Jilid.48 No.3, July 2019, page.283-293

of the state. The state in this case is very interested in ensuring that public interests are protected considering that the function of the state is to create a social order[11] and structured and controlled politics. In particular, there is a prospect that state functions must be explicitly translated into the form of state administration. Locke distinguishes four state functions:[12] legislation, decision-making, use of domestic force in law enforcement, and These troops are abroad. Locke calls the first function legislative power, the second function executive power, and the third function federal power, which includes the power of war and peace and foreign power.[13] Such state efforts related to negative actions are to provide binding legal sanctions for every citizen in the event of an electronic transaction violation. The sanctions imposed by the Republic of Indonesia regarding the misuse of electronic transactions that are detrimental to the interests of individuals, groups or the state are not half-hearted, namely criminal witnesses. Criminal sanctions in legal terminology are included in the category of ultimum remedium.[14] It is included in the category of sanctions that are formed in order to accommodate problems that are very difficult to overcome due to violations. Therefore, violations of electronic transaction misuse are criminal acts that are categorized as serious and require serious handling.[15] However, applying the term Ultimum remedium[16] in the formation of legislation is not without reason.[17] The considerations and formulation of the norms should not only be seen from the perspective of effectiveness, but also human rights that must be protected.[18]

Research conducted by Ridha Wahyuni[19] entitled Reflections on the Haris-Fatia Free Decision on the Development of Protection of the Right to Freedom of Opinion in Indonesia: A Human Rights Perspective states that the right to

11 Agus Riwanto, Seno Wibowo Gumbira., Politik Hukum Penguatan Fungsi Negara Untuk Kesejahteraan Rakyat (Studi Tentang Konsep Dan Praktik Negara Kesejahteraan Menurut UUD 1945), *Jurnal Hukum dan Peradilan*, Vol.6 No.3, 2017, page. 337-360

12 Edward Mazzoleri Wibowo., *Hakikat Negara, Tugas Fungsi Negara, Bentuk-Bentuk Negara Dan Pemerintahan, Serta Tujuan Negara*, Jimbaran, Universitas Udayana, 2022, page 34

13 Agussalim Andi Gadjong., *Pemerintahan Daerah Kajian Politik dan Hukum*, Ctk. Pertama, Bogor, Ghalia Indonesia, 2007, page. 65

14 Nathalina Naibaho., Rethinking the Ultimum Remedium Principle to Support Justice and Strong Law Enforcement Institutions in Environmental Crimes, *The 1st Journal of Environmental Science and Sustainable Development Symposium, IOP Conf. Series: Earth and Environmental Science*, 716, 2021, page. 1-9

15 Laras Adysti Nariswari, Febby Mutiara Nelson., Application of the Ultimum Remedium Principle in the Formulation of Legislation and Law Enforcement related to Banking Crimes, *Legal Brief*, Vol.12 No.2, 2023, page. 251-260

16 Titis Anindyajati, (etc)., The Constitutionality of Criminal Sanction Norms as Ultimum Remedium in the Making of Laws, *Jurnal Konstitusi*, Vol.12 No.4, Desember 2015, page. 872-892

17 Hamidah Abdurrachman., Application of Ultimum Remedium Principles in Progressive Law Perspective, *International Journal of Criminology and Sociology*, Vol.10, 2021, page. 1012-1022

18 Laras Adysti Nariswari., *Op.Cit*, page. 251-260

19 Ridha Wahyuni, (etc)., Refleksi Putusan Bebas Haris-Fatia Terhadap Perkembangan Perlindungan Hak Kebebasan Berpendapat di Indonesia: Perspektif Hak Asasi Manusia, *Innovative: Journal of Social Science Research*, Vol.4 No.5, 2024, page. 1822-1837

freedom of opinion is part of human rights that must be protected, although freedom of opinion can also be limited by law, but in In the exercise of this right, it must still be protected and respected, especially if the exercise of freedom of opinion is based on research results supported by valid and verified data. So in the context of the legal case that befell Haris-Fatia, at least the judge has been able to implement an examination process through progressive law enforcement because the judge in formulating his legal considerations is based on existing legal norms, especially the protection of the right to freedom of opinion which has been regulated in the constitution, law. -national and international laws and looking at the legal interests and justice that exist in society. This legal decision can also be a positive precedent and reference for future judges in examining and deciding similar cases. This is important to guarantee the protection of the right to freedom of expression in Indonesia.

## 2. Research Methods

The method used in this study was a sociological legal approach. The sociological legal approach is used as a means to conduct a more in-depth study of the workings of various policy products and regulations.[20] This method allows for in-depth study of the material on the study of norms imposed in relevant electronic transaction laws to be applied or not. The sociological legal approach uses primary data and secondary data as legal materials. Meanwhile, the analysis is carried out qualitatively as a step to determine the extent to which the applicable legal norms work and are effective to implement.

## 3. Results and Discussion

### 3.1 The Idea of Interpretation and Applicability of Legal Norms

As a country of law, the term legislation[21] which is effective is very much a guideline for the Republic of Indonesia to affirm its position. The influence of the written legal system left behind through the colonization process is one of the reasons for the direction of law in force in Indonesia today.

When the Dutch [22] colonized, doctrinal legal views greatly influenced the character of the applicable legal system. This can be proven by the existence of a criminal code with a written legal nature that is still valid until now. HAS Natabaya said that the advantages of legislation as part of written law can

20 Rachmad Safa'at., Ambivalensi Pendekatan Yuridis Normatif Dan Yuridis Sosiologis Dalam Menelaah Sistem Kearifan Lokal Masyarakat Adat Dalam Pengelolaan Sumber Daya Alam, *Lex Jurnalica*, Vol.10 No.1, April 2013. Page. 46-62

21 Michael Frans Berry., Pembentukan Teori Peraturan Perundang-Undangan, *Muhammadiyah Law Review,* Vol.2 No.2, July 2018, page. 87-91

22 Abdullah., Program Legislasi Nasional Dalam Prospeks Undang-Undang Nomor 10 Tahun 2004 Tentang Pembentukan Peraturan Perundang-Undangan. *Jurnal Legislasi Indonesia*, Vol. 2 No.1, 2018, page. 31-36

create more legal certainty, are easy to recognize, and easy to make and replace if it is no longer needed or is no longer appropriate.[23]

The nature and view of seeing the law from the element of legal positivism[24] or doctrinal[25] has become an influence to apply according to what is in the text. The meaning that is adjusted to the text makes the user of the text the implementing authority of the legislation.

The meaning of the text can change if or be interpreted differently if the judicial institution that conducts the validity test[26] on the meaning that has been applied in the text of a draft of a statutory regulation. The institution that in its capacity carries out testing in this case is the Supreme Court[27] which in its capacity tests statutory regulations under the law while the Constitutional Court[28] tests the law against the Constitution.

However, of course, efforts to place such testing are not considered as a means of implementing the law as a means of considering the validity and validity of a regulation according to the interpretation of the will.[29] If it is not right, then a new alternative test is carried out to determine the extent to which the interpretation of a form of regulation is appropriate according to the situation and conditions of the legal need to apply. The validity of a form of interpretation must be positioned rationally considering that the conditions of interpretation without limits are very detrimental to society,[30] where there is an authoritarian nature that can be present in the implementation of laws and regulations. The judicial institution will be an alternative means that is made even though laws and regulations are considered valid.[31]

The public will feel the loss first from an act of implementing the law if they are not careful in implementing the laws and regulations of course. Whereas in our

23 Mukhlis Taib., *Dinamika Perundang-undangan di Indonesia*, Bandung, PT Refika Aditama, 2017, page. 19

24 A. Sukris Sarmadi., Membebaskan Positivisme Hukum Ke Ranah Hukum Progresif (Studi Pembacaan Teks Hukum Bagi Penegak Hukum), *Jurnal Dinamika Hukum*, Vol.12 No.2, 2012, page. 331-343

25 Muh Ridha Hakim., The Implementation of Rechtsvinding Based on Progressive Law, *Jurnal Hukum dan Peradilan*, Vol.5 No.2, 2016, page. 227

26 Nanang Sri Darmadi, Kedudukan dan Wewenang Mahkamah Konstitusi Dalam Sistem Hukum Ketatanegaraan Indonesia, *Jurnal Hukum Unissula*, Vol.XXVI No.2, August 2011, page. 667-690

27 Saldi Isra., Titik Singgung Wewenang Mahkamah Agung dengan Mahkamah Konstitusi, *Jurnal Hukum dan Peradilan*, Vol.4 No.1, 2015, page. 17-30

28 Antoni Putra., Dualisme Pengujian Peraturan Perundang-Undangan*. Jurnal Legislasi Indonesia*, Vol.15 No.2, 2018, page. 69-79

29 Janpatar Simamora., Tafsir Makna Negara Hukum dalam Perspektif Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, *Jurnal Dinamika Hukum*, Vol.14 No.3, 2014, page. 547-561

30 Hwian Christianto., Penafsiran Hukum Progresif Dalam Perkara Pidana*. Mimbar Hukum*, Vol. 23 No.3, 2011, page. 479-500.

31 Muhammad Junaidi., Reposisi Eksekutif Review Terhadap Peraturan Daerah dalam Kerangka Otonomi Daerah, *Halu Oleo Law Review,* Vol.1 Issue.1, 2017, page. 64-74.

law, the application of human rights protection[32] is a fundamental legal principle in implementing applicable laws as well as possible.

Apart from being a form of public security,[33] the laws and regulations related to electronic transactions in force in Indonesia are one of the opinions that the applicable legal position places more emphasis on the interpretation of the implementer[34] the dominant law in interpreting it. The term rubber article against the electronic transaction law in Indonesia makes the view of the existing article very much adjusted to the wishes of the implementer of the law.

The phrase everyone intentionally and without the right to distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation[35] has become the view of its interpretation according to the wishes of the interpreter's authority. The validity of legal norms will be dynamic which in its terminology is referred to as a rubber article.[36]

This happened in the case of Prita Mulyasari who had previously been positioned as a suspect in a criminal case of defamation of Omni International Hospital. Although in the Review in Decision 225/PK/PID.SUS/2011, the person concerned was finally acquitted,[37] Prita Mulyasari's position when she was named a suspect by law enforcement reflected the distinction between the phrases opinion and insult cannot be separated in the legal norms of the Electronic Transaction Law.

In addition to Prita Mulyasari, there is also the impact of unclear norms that resulted in the determination of suspects and even defendants, namely Fatiya and Haris Azhar. In the decision 202/Pid.Sus/2023/PN.Jkt, the defendant Haris Azhar's team was not legally and convincingly proven guilty of committing a crime as charged by the Public Prosecutor in the First Charge, Second Primary Charge, Second Subsidiary Charge and Third Charge, which also applies to Fatiya.[38]

32 Eko Hidayat., Perlindungan Hak Asasi Manusia dalam Negara Hukum Indonesia*. ASAS: Jurnal Hukum Ekonomi Syariah,* Vol.8 No.2, 2016, page. 80-87

33 Bagus Wicaksena., Sri Milawati Asshagab, Analysis of E-Commerce Regulations in Indonesia Towards Trans Pacific Partnership Provisions, *Jurnal Hukum Unissula*, Vol.38 No.2, December 2022, page.133-147

34 Hwian Christianto., *Op.Cit*, page. 479-500.

35 Zul Afiff Senen., Rekonseptulisasi Penegakkan HukumTerhadap Pelaku Dan Korban Undang-Undang Informasi Dan Transaksi Elektronik Berbasis Restorative Justice**,** *Lex Renaissan*, Vol.6 No.2, 2021, page.265-279

36 Kendry Tan., Analisa Pasal Karet Undang-Undang Informasi Dan Transaksi Elektronik Terhadap Asas Kejelasan Rumusan*. Jurnal Hukum Samudra Keadilan*, Vol.17 No.1, 2022, page. 14-29.

37 Nerissa Arviana, Sari Mandiana, Jusup Jacobus Setyabudhi., Analysis of Prita Mulyasari Case on Judicial Review Verdict No. 225 PK/PID.SUS/2011, *International Journal of Law, Humanities & Social Science*, Vol.4 Issue. 2, 2020, page. 54-70

38 Ridha Wahyuni (etc)., Refleksi Putusan Bebas Haris-Fatia Terhadap Perkembangan Perlindungan Hak Kebebasan Berpendapat di Indonesia: Perspektif Hak Asasi Manusia*. Innovative: Journal of Social Science Research*, Vol.4 No.5, 2024, page. 1822-1837

The charges given to Fatiya and Haris Azhar make it clear that the position of the norms of the Electronic Transaction Law is very much targeting the right to express opinions. Haris Azhar in his statement at the trial stated that the things that were charged based on the accusations against state official Luhu Binsar Panjaitan were statements obtained based on data and research[39], so it cannot be said to be a form of personal defamation but a form of expressing opinions.

## 3.2 The Use of Insult Norms in the Electronic Transaction Law

Insults are of a general criminal nature, although in the context of this norm, reporting/complaint efforts need to be made first.[40] Such a form considering the nature of the norm is very much in contact with the term personal rights[41] every citizen. Therefore, the legality aspect is very important in order to guarantee the rights of every citizen in the application of regulatory norms.

Legality is not just about legal force norms.[42] Legality in legal norms is the validity reviewed from the formal aspect[43] and the material aspect of a norm of statutory regulations.[44] The formal and material aspects are closely related to the formation of regulations. In this context, the formation of regulations, including the regulatory side of the formation of regulations in each phrase of regulatory norms, must be placed in an effort to minimize errors in the use of regulations when they are used later. The phrase[45] in regulations is certainly very important in order to ensure that a legal norm is effective and efficient.

Phrases that contain insults and/or defamation[46] become problematic that provides[47] a larger portion of broad authority and is free to interpret it by the

39 *Ibid*

40 Sry Wahyuni, Citra (etc)., Penerapan Sanksi Terhadap Tindak Pidana Penghinaan Dalam Undang-Undang Informasi Dan Transaksi Elektronik*. Jurnal Penelitian Dan Pengkajian Ilmiah Sosial Budaya*, Vol.1 No.1, 2022, page. 138-148

41 Muhammad Reza Suryadinata dan Tomy Michael., Hak Kebebasan Berpendapat di Media Elektronik Ditinjau dari Pasal 27 Ayat (3) Nomor 19 Tahun 2016 Undang-Undang Informasi dan Transaksi Elektronik. *Innovative: Journal of Social Science Research*, Vol.3 No.5, 2023, page. 4606-4613

42 RR Dewi Anggraeni, Acep Heri Rizal., Pelaksanaan Perjanjian Jual Beli Melalui Internet (E-Commerce) Ditinjau Dari Aspek Hukum Perdataan. *SALAM: Jurnal Sosial dan Budaya Syar-i*, Vol.6 No.3, 2019, page. 223-238

43 Fathorrahman., Pengaturan dan Implikasi Pengujian Formil Undang-Undang di Mahkamah Konstitusi. *HUKMY: Jurnal Hukum*, Vol.1 No.2, 2021, page. 133-148

44 Punik Triesti Wijayanti and Dona Budi Kharisma., Analisis Penerapan Undang-Undang Ite Ditinjau Dari Legal Drafting Theori Oleh Teori Formil Rick Dikerson. *Souvereignty: Jurnal Demokrasi dan Ketahanan Nasional*, Vol.1 No.4, 2022, page. 578-584

45 Bakhrul Amal., Tinjauan Hukum Terhadap Frasa Tanpa Persetujuan Korban" Dalam Permendikbud Nomor 30 Tahun 2021 Tentang Pencegahan dan Penanganan Kekerasan Seksual, *Crepido*, Vol.3 No.2, 2021, page. 86-95

46 Anton Hendrik Samudra., Pencemaran Nama Baik Dan Penghinaan Melalui Media Teknologi Informasi Komunikasi Di Indonesia Pasca Amandemen UU ITE*. Jurnal Hukum & Pembangunan*, Vol.50 No.1, 2020, page. 91-105

47 Muhammad Junaidi (etc)., Pemahaman Tindak Pidana Transaksi Elektronik Dalam Undang-Undang No 19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik. *Budimas: Jurnal Pengabdian Masyarakat*, Vol.2 No.2. 2020, page. 109-118

implementers of laws and regulations. While in terms of the enactment of laws and regulations, legal norms will be considered to be able to reduce basic rights in terms of expressing opinions which are one of the rights inherent in national and international law. In Law Number 1 of 2024 concerning the second amendment to Law Number 11 of 2008 concerning Electronic Transactions[48] which applies to electronic transactions, there is not a single article that explains the meaning of insulting and/or defamatory content. The absence of an explanation in the explanation section or an understanding in the general provisions is a justification for the views that have been put forward previously.

### 3.3 Certainty of Norms in the Normation of Electronic Transaction Criminalization

In Malaysia, freedom of expression is guaranteed by Article 10 of the Federal Constitution, which gives citizens the right to express opinions, assemble and associate. However, this freedom is subject to restrictions imposed by law, such as the Sedition Act 1948, the Communications and Multimedia Act 1998, and the Internal Security Act. These restrictions are often imposed for reasons of public order, national security, or protecting inter-ethnic relations. Although it provides a legal framework for free speech, its practice is often debated due to accusations of misuse of the law to limit criticism of the government or silence dissenting views. This creates challenges in balancing the protection of human rights and the maintenance of social stability in Malaysia.

In the United States, legal protection of free speech is guaranteed by the First Amendment to the US Constitution, which prohibits the government from making laws that abridge freedom of speech, the press, or the right to peaceably assemble. This right covers various forms of expression, including criticism of the government, protests, and political speech. However, this freedom is not absolute and has limitations, such as hate speech that incites violence, defamation or direct threats. Courts are often an arena for balancing freedom of expression and protecting the public interest, with a strong emphasis on the principle of protecting expression as a core part of democracy.

The function of general provisions[49] and explanation[50] is very important in a theory of legislation considering that there will be legal certainty or accuracy in applying legal norms including arbitrary actions by law enforcement officers in the name of law and justice. Efforts to formulate the content of insults and/or defamation are one source of abuse if the limitations of these legal norms are

48 Amri Dunan dan Bambang Mudjiyanto., Pasal Karet Undang-Undang Informasi Dan Transaksi Elekronik Bermasalah*. Majalah Semi Ilmiah Populer Komunikasi Massa*, Vol.3 No.1, 2022, page. 26-37

49 Bustanuddin Bustanuddin., Analisis Fungsi Penjelasan dalam Pembentukan Peraturan Perundang-undangan di Indonesia. *INOVATIF| Jurnal Ilmu Hukum*, Vol.6 No.7. 2013, page. 79-90

50 Kaharudin Putra Samudra., Penegasan Terhadap Kedudukan Dalam Bab Penjelasan Suatu Peraturan Perundangan-Undangan*. Opini,* 2022, page.53-58

not carried out[51] in the explanation section and in the general provisions section.

Therefore, in the practice of state administration, the law makers, enforcers, and implementers are state administrators who have positions that contain elements of power. However, they cannot use their power arbitrarily, because there are limitations on their role, which are determined by the ideals of social justice and by the practical limitations of the power itself. The effectiveness of law enforcement is determined by the validity of the law; meaning whether the law is formed to be implemented by people or bodies that truly have authority, namely recognized power. In this sense, legal regulations can have an influence to limit power.[52]

In the sense of procedures for forming laws and regulations, general provisions[53] are interpreted as containing academic formulations regarding the meaning of terms and phrases. While the explanation functions[54] as an official interpretation of the legislator of certain norms in the body. Therefore, the explanation only contains a description of words, phrases, sentences or equivalents of foreign words/terms in the norm which can be accompanied by examples. Explanations as a means of clarifying norms in the body must not result in ambiguity of the intended norm.

If the explanation and/or is strengthened in the general provisions, it is very possible to form legal certainty[55] in order to guarantee the rights of every citizen constitutionally. Legal certainty or legal accuracy is very important in order to guarantee the benefits of law aimed at the welfare of society, including in this case, especially in terms of not having wrong norms that result in someone being subject to criminal sanctions without clear reasons. According to Radbruch, justice and certainty are parts that must be included in the law. On the other hand, the aspect of legal benefits contains an element of relativity. This is because the purpose of justice (as the content of the law) is to bring benefits to society, not legal ethical values. The value of goodness for humans can be associated with three things that are the goals of its benefits: individuals, groups, and culture.[56] The aspect of legal justice is presented as a process to ensure legal balance in community life, while the aspect of legal certainty is understood as a legal construction to ensure legal truth, which is simply understood not just as a process. Realization of law, written norms

51 Osgar S. Matompo., Pembatasan Terhadap Hak Asasi Manusia Dalam Prespektif Keadaan Darurat*. Jurnal Media Hukum*, Vol.21 No.1, 2014, page. 57-72

52 Bambang Arumanadi, Sunarto., *Konsepsi Negara Hukum Menurut 1945,* Semarang, IKIP Semarang Press, 1990, page 29

53 Muhammad Junaidi., *Teori Perancangan Hukum,* Semarang, Universitas Semarang, 2021, page.24

54 Bagus Hermanto (etc)., Penegasan Kedudukan Penjelasan Suatu Undang-Undang: Tafsir Putusan Mahkamah Konstitusi. *Jurnal Legislasi Indonesia*, Vol.17 No.3, 2020, page. 251-268

55 Mohamad Sinai., *Bahasa Indonesia Hukum dalam Perspektif Kepastian Hukum, Doctoral Dissertation,* Malang, Universitas Brawijaya. 2013

56 M. Fauzi., Menimbang Konstruksi Hukum Kepailitan Bank; Perspektif Nilai-Nilai Dasar Dan Tujuan Hukum, *Risalah Hukum*, Vol. 6 No.1, 2010, page. 1-8

formulated in the form of laws and regulations, but the legal instrument is able to realize the will of the community to take laws. This means legitimate fulfillment and is now a legal term that means the realization of happiness. legal welfare is very necessary in the sense that the law must be able to guarantee the fulfillment of what is expected by society, not only groups but also individuals as its manifestation.

The realization of the concept of the three fundamental valuesof Gustav Radbruch's law, including the dimensions of justice, utility, and legal certainty, certainly has the potential to cause tension between individual dimensions. Justice and performance may be at odds, and justice and legal certainty may be at odds. There may also be tension between benefits and equality. To avoid this situation, Gustav Radbruch proposed a solution by providing a standard priority order, to decide cases that prioritize justice, benefit second, and legal certainty as the third standard. The doctrine of priority standards is divided into extremes such as the ethical-legal school which only focuses on justice, the utilitarian school which only focuses on the benefits of law, and the dogmatic legalistic school[57] which only focuses on law (legal positivism). his theory. He upholds justice and legal certainty which are relatively always wise[58]. However, many parties have different views, including prioritizing the aspect of legal certainty, depending on legal developments. According to the author, all three should be carried out simultaneously.

Indonesia's Information and Electronic Transactions Law, first enacted in 2008 and amended several times since then, is designed to regulate and protect cyberspace activities and electronic transactions. Evaluation of this policy shows Positive Impacts, namely that the Information and Electronic Transactions Law has helped reduce cybercrime and provided legal protection for internet users and digital businesses, and Negative Impacts, namely that the Information and Electronic Transactions Law could be used to limit freedom of expression and threaten democracy, especially if used to crack down on public opinion or criticism of the government.[59]

Some of the above things make recommendations in this study so that in the future the policy of implementing regulations in the Electronic Transaction Law is not just punishment[60]punishment alone. Efforts to position the normative position of sanctions in the Electronic Transaction Law are to ensure that violations of electronic transaction activities can be handled properly. The right to express an opinion must be guaranteed consistently in this case, especially in the context of opinions in providing input to the government. Efforts made to

57 Nurul Qamar and Farah Syah Rezah., The Dichotomy of Approach in The Study of Legal Science: A Critical Review, *SIGn Jurnal Hukum*, Vol.4 No.2, 2022, page. 191-201

58 *Ibid.*

59 Julyzar Idris, Achmad Supandi., Evaluasi Kebijakan Undang-Undang Informasi dan Transaksi Elektronik di Indonesia; Potret Bibliometric Analysis, *Transparansi: Jurnal Ilmiah Ilmu Administrasi*, Vol.7 No.1, June 2024, page. 149-162

60 Nur Ainiyah Rahmawati., Hukum Pidana Indonesia: Ultimum Remedium Atau Primum Remedium*. Recidive: Jurnal Hukum Pidana dan Penanggulangan Kejahatan*, Vol.2 No.1, 2013, page. 39-44

support these recommendations are to clarify the explanatory provisions including the general understanding outlined in the general provisions regarding phrases that contain insults and/or defamation.

## 4. Conclusion

The existence of unclear normative issues in the Law on Electronic Transactions has had a serious impact on freedom of expression. The threat to every citizen of criminal norms against the activity of expressing opinions through the electronic transaction law makes it necessary to reformulate, especially strengthening the interpretation of general provisions and explanations of each norm that emphasizes the exception of expressing opinions on matters related to the administration of government. This solution is in order to overcome the problem of phrases containing insults and/or defamation that are not mentioned in the general provisions or in the explanation that create the potential for abuse by law enforcement. So that the existing criminalization depends on the implementer of the law which of course has the potential for abuse of interpretive authority not to happen again in the future.

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