



Analysis of the Constitutional Court Decision No. 105/PPU-XXII/2024 concerning the Judicial Review of Law No. 1 of 2024 Article 28 Paragraph 2 regarding the phrase "feelings of hatred and hostility" according to the Siyasaḥ Qadhaiyyah

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Abstract: Decision of the Constitutional Court (MK) of the Republic of Indonesia Number 105/PUU-XXII/2024. This decision is in the spotlight because it tests the constitutionality of Article 28 paragraph (2) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law), specifically regarding the phrase "feelings of hatred or hostility." This report places the decision in the context of a broader debate regarding the protection of citizens' constitutional rights, especially freedom of expression, which is often threatened by legal formulations known as "rubber articles." The criminalization of legitimate criticism, manifested in the practice of Strategic Litigation Against Public Participation (SLAPP), has become a crucial issue that demands a strong judicial response. Thus, this decision has significant urgency as a judicial effort to guarantee basic rights and balance the protection of individual reputations with a healthy democratic space. The main objective of this report is to go beyond conventional positive law analysis by examining this MK Decision from the theoretical framework of Siyasaḥ Qadhaiyyah. The aim is to reveal how the principles of justice in the Islamic tradition can provide a rich and in-depth perspective on the Court's decisions, particularly in balancing freedom of expression with protection from hate speech. This approach allows for the exploration of the harmony between the objectives of modern law that are oriented towards justice and the protection of human rights with the essence of justice in Islam. As a theoretical framework, Siyasaḥ Qadhaiyyah is defined as a branch of knowledge in fiqh siyāṣah that specifically discusses the regulation of laws and judicial policies established by those in power. This term is a combination of the words siyāṣah which means "to regulate, manage, or rule" and qaḍhā'iyyah which refers to "ruling, dispute resolution, or justice". The essence of this concept is that every policy and rule, including those related to the judiciary, must be directed towards realizing *maṣlahah* (goodness or welfare) and avoiding *mafsadatan* (damage or harm) for all humanity.

Keywords: Hatred, Enmity, Siyasaḥ Qadhaiyyah

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1. Introduction

The development of information and communication technology has had a significant impact on various aspects of people's lives in Indonesia. (Rabbani & Najicha, 2023), (Huraerah, Abdullah, & Rivai, 2024) On the one hand, this progress makes it easier to exchange information and communicate, but on the other hand, new challenges arise related to the misuse of digital media to incite hatred and hostility that can threaten social harmony and national integration (Kumowal, 2024), (Baihaki, 2020).

Hate is an emotion associated with dislike, hostility, and antipathy for a person, thing, or phenomenon. It is characterized by a tendency to avoid, destroy, and eliminate the source of the hate (Haq & Viktorahadi, nd), (Prasetyo, Sidarta, Borman, & Subekti, 2024) Hostility is a feeling or state in which a person or group dislikes, harbors ill

intentions, or acts unfriendly toward another person or group. This is often expressed through open acts of aggression or opposition (Inshani & Nasution, 2023),(Mardiyah, Ritonga, & Utari, 2025).

The Electronic Information and Transactions Law (ITE Law), particularly Article 28 paragraph (2), has given rise to controversy regarding the potential for violations of this freedom (Rahmadani, Paramita, Haura, & Firman, 2024),(Apandi, Rahayu, Prayugo, & Ariany, 2024). This article prohibits the dissemination of information that could incite hatred or hostility based on ethnicity, religion, race, and intergroup relations (SARA), but the phrase "incite hatred or hostility" is considered open to multiple interpretations and vulnerable to misuse to silence legitimate criticism. This raises concerns that the article could be used as a repressive tool by certain parties, including law enforcement officials, to suppress freedom of expression in the digital space (Lumbanraja, nd),(Sari, Munawar, & Rahmathoni, 2023).

Furthermore, the implementation of Article 28 paragraph (2) of the ITE Law also impacts freedom of expression in the digital space. Numerous cases demonstrate that this article is used to criminalize criticism, which is actually a human right (Marpaung & Sazali, 2025),(Satria, Fitriansyah, Lestrika, & Putriyana, 2025). This phenomenon has a deterrent effect on the public from expressing opinions, both on social media and other digital platforms. The unclear interpretation of this article has led to inequities in law enforcement, with certain parties being more vulnerable to legal entanglements than others (Waluyo, 2022),(Pasaribu, 2024).

The Constitutional Court (MK), as the guardian of the constitution, plays a crucial role in assessing the constitutionality of legal norms. In 2024, the Constitutional Court issued Decision Number 187/PUU-XXII/2024, which reviewed the substance of Article 28 paragraph (2) of the ITE Law. This decision marks a crucial moment in assessing the extent to which the article aligns with constitutional principles, particularly regarding the guarantee of freedom of expression as stipulated in Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia (Aisah, 2024),(Arizona, 2019). In its ruling, the Constitutional Court emphasized the need for strict interpretation of potentially multiple-interpretable phrases to prevent legal uncertainty and violations of citizens' constitutional rights. However, despite the Constitutional Court's interpretation, implementation on the ground still faces challenges, particularly in terms of fair and non-discriminatory law enforcement. As Amnesty International Indonesia noted, threats to freedom of expression will persist until the government and the House of Representatives comprehensively revise the problematic articles in the ITE Law (Indriasari, 2023),(Sulastry, 2022).

Thus, the focus of this research is directed at analyzing the legal considerations of the Constitutional Court in balancing the protection of freedom of expression and efforts to prevent the spread of hate speech that can damage social harmony and examining the extent to which the Constitutional Court decision No. 105/PPU-XXII/2024 has reflected the Qadhaiyyah siyah (Oktaviani, 2024),(Armayanto, 2023). This study is expected to open a new discourse in the implementation of judicial review in the ITE Law in accordance with Islamic law (SULTAN, 2022),(Ekawardani & Cholil, 2025).

The application of the *Siyasah Qadhaiyyah* perspective provides an important theoretical contribution in explaining the dilemma between freedom of expression and restrictions on hate speech, as it offers a legal framework that balances substantive justice and public interest. In this perspective, freedom of expression is not interpreted as an absolute right, but rather as a right that is limited by moral and social responsibilities to prevent harm (*mafsadah*) and maintain social harmony. The *Siyasah Qadhaiyyah* approach also emphasizes that law enforcement must consider the intent, context, and social impact of a statement, not just the formal aspects of the legal act itself. Thus, this theory enriches modern legal analysis with ethical values and public interest that can be used to assess the reasonable limits between protecting the right to freedom of expression and preventing hate speech that has the potential to disrupt social order.

2. Materials and Methods

This study uses a qualitative juridical-normative approach combined with a *siyasah syar'iyah* approach. The juridical-normative approach is used to examine the legal norms contained in the Constitutional Court Decision Number 2/PHPU.PRES-XXII/2024 and related laws and regulations. Meanwhile, the *siyasah syar'iyah* approach is used to analyze justice and the ethics of power from an Islamic legal perspective, particularly through the theory of *siyasah qadhaiyyah*.

This research is library research. Data were obtained from primary legal materials such as Constitutional Court decisions, the Election Law, and the 1945 Constitution, as well as secondary legal materials such as books, journals, scientific articles, and the opinions of classical and contemporary scholars. The data sources in this study consist of primary and secondary legal materials. Data analysis was conducted using descriptive-analytical and interpretive methods.

3. Discussions

3.1. Comparison of the Crime Formulations in the 2016 ITE Law and the 2024 ITE Law

To understand the Petitioner's arguments and the Constitutional Court's considerations, it is important to review the fundamental changes to Article 28 Paragraph (2) of the ITE Law, from the 2016 version to the 2024 version. This change substantially changes the legal construction of the crime of hate speech.

First, crimes that were initially formal have become material. Under the 2016 Electronic Information and Transactions (ITE) Law, spreading information with the potential to incite hatred was already punishable. Conversely, under the 2024 Electronic Information and Transactions (ITE) Law, such acts are only punishable if they result in a specific consequence, namely "a real feeling of hatred or hostility." This change marks a more cautious approach to criminal law enforcement.

Second, there were changes to the objects of hatred mentioned. The phrase "inter-group" was removed, and the object "tribe" was changed to "ethnic." However, other elements such as religion, race, nationality, skin color, beliefs, gender, mental disability, and physical disability were retained and even expanded in the new formulation.

Third, the phrase "without rights" has been removed from the definition of the offense. The phrase "without rights" in the previous law gave rise to problematic interpre-

tations, as if someone had the "right" to spread hatred. This removal is a positive step in preventing discriminatory interpretations.

Finally, there was a reduction in the criminal penalties imposed. These changes demonstrate legislative efforts to improve and balance the provisions of the ITE Law, although the Petitioner believes the new formulation still has dangerous interpretation gaps.

The following is a comparison table that summarizes the main comparisons between the 2016 ITE Law and the 2024 ITE Law:10

Aspect comparison	ITE Law No. 19 of 2016	ITE Law No. 1 2024	Notes
Nature of the offense	Formal (action)	Material (Consequences)	MK confirm characteristic material this crime in the verdict
Object of hatred	Ethnic group, and intergroup	Race, nationality, skin color, religion, belief, gender, disability mental, orp hysical disability	Inter-group in wipe, my milkchanged to ethnic
Unauthorized phrase	There is	There isn't any	Deletion of this phrase prevent interpretation discrimination
Criminal threats	6 years in prison and/or a fine of 1 billion	6 years in prison and/or a fine of 1 billion	The actual MK decision comparewith the 2016 ITE Law which has different threats but improvements in the 2024 ITE Law it has happened

3.2. The Constitutional Court's Interpretation in Constitutional Court Decision No. 105/PPU-XXII/2024 on Article 28 Paragraph 2 of the ITE Law No. 1 of 2024 Regarding Feelings of Hatred and Hostility

Constitutional Court Decision Number 105/PPU-XXII/2024, which was read on Tuesday, April 29, 2025, significantly corrected the potential misuse of Article 28 Paragraph (2) of the 2024 ITE Law. The Court stated that the phrase "causing hatred or hostility" in the article "conditionally contradicts the 1945 Constitution of the Republic of Indonesia".

The Court emphasized that Article 28 paragraph (2) in conjunction with Article 45A paragraph (2) of Law 1/2024 is a criminal provision that is included in the type of material offense, namely an offense that requires the occurrence of certain consequences (in this case, the emergence of hatred or hostility) as a complementary condition for proving the existence of a criminal act. As a material offense, the element of the consequences of an act determines the existence of a criminal act. This means that without clear limitations on the content or substance of "electronic information and/or electronic documents" in the norm of Article 28 paragraph (2) in conjunction with Article 45A paragraph (2) of Law 1/2024, it is very possible or potential for arbitrariness to occur in its application which gives rise to legal uncertainty. This is the source of the constitutional problem questioned by the Petitioner. Although the enactment of the norm of Article 28 paragraph (2) in conjunction with Article 45A paragraph (2) of Law 1/2024 has a goal that is in line with the state's obligation to prevent the spread of identity-based hate speech, there needs to be strict limits so that it is not used excessively or excessively against legitimate forms of expression in a democratic society. The absence of substantial limits on the content of prohibited information, in the a quo norm, can lead to subjective and unmeasured law enforcement, and can even ensnare people who have no malicious intent or who simply repost or quote from other sources. When referring to Article 20 paragraph (2) of the ICCPR states "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law". In this case, any act/spread of hatred against a nation, race, or religion that constitutes incitement that is discriminatory, spreading hostility or violence that must be prohibited by law. Furthermore, the UN Human Rights Committee in General Comment No. 34 and the Rabat Plan of Action have also emphasized that prohibitions on expression can only be justified if the expression meets strict criteria, namely: (i) carried out with malicious intent (intention to incite), (ii) directed directly against a particular identity group, and (iii) creates a real and imminent risk of discrimination, hostility, or violence. Similar guidance is also provided in the Camden Principles on Freedom of Expression and Equality which state "The term 'advocacy' is to be understood as requiring an intention to promote hatred publicly towards the target group" [vide Camden Principles, Principles.

The Camden Principles require the existence of an intention to spread hatred that is general, targeted, and has a real risk to public order or violation of the rights of others. This means that the term "action/dissemination" requires the existence of an intention to spread hatred openly against a specific target group. Therefore, with no restrictions regarding the form or content of "electronic information and/or electronic documents"

referred to in the norm of Article 28 paragraph (2) in conjunction with Article 45A paragraph (2) of Law 1/2024, this norm has the potential to be used to ensnare freedom of expression that is not tendentious (neutral), even expression that is not intended to cause hatred, if the consequences of hatred or hostility arise indirectly, through the response of a third party. In conditions like this, there is the potential for criminalization of legitimate expression, including expressions that contain nuances of criticism, satire, or expressions that are neutral but are used by others incorrectly. Thus, to ensure that the criminal provisions in the a quo norm are used proportionally, law enforcement must be limited only to electronic information that substantially contains calls, suggestions, or the spread of hatred based on identity (advocacy of hatred), which is carried out intentionally in public, and clearly leads to forms of discrimination, hostility, or violence against protected groups. With this limitation, the norm of Article 28 paragraph (2) of Law 1/2024 is in line with the constitutional principles stipulated in the 1945 Constitution of the Republic of Indonesia and is also in accordance with several international legal means, such as Article 20 paragraph (2) of the ICCPR.

Based on the legal considerations above, to ensure legal protection for vulnerable groups, and at the same time also guarantee that legitimate expression in a democratic society is not subject to arbitrary criminal sanctions, according to the Court the phrase "distributing and/or transmitting electronic information and/or electronic documents that are inciting, inviting, or influencing others so as to give rise to feelings of hatred or hostility towards certain individuals and/or community groups" in the norm of Article 28 paragraph (2) of Law 1/2024 must be declared conditionally contrary to the 1945 Constitution of the Republic of Indonesia as long as it is not interpreted as "only Electronic Information and/or Electronic Documents that substantively contain acts/spread of hatred based on certain identities that are carried out intentionally and in public, which give rise to a real risk of discrimination, hostility, or violence"

This conditional unconstitutional interpretation has a very important meaning. The Constitutional Court provides a strict limitation, stating that the phrase can only be interpreted as "only Electronic Information and/or Electronic Documents that substantively contain acts/dissemination of hatred based on a particular identity that are carried out intentionally and in public, which poses a real risk of discrimination, hostility, or violence." Thus, this decision confirms that law enforcement can no longer be based on the subjective perceptions of officials or individuals, but rather there must be "objective evidence" that an expression has had a real impact.

The Court also emphasized that the use of this vague phrase has the potential to threaten freedom of expression, which is a constitutional right as regulated in Article 28E paragraph (3) and Article 28F of the 1945 Constitution. Therefore, the Court encourages strict interpretation so that this norm is not used as a tool to criminalize legitimate and constructive criticism in the public sphere, especially in digital media.

Furthermore, this ruling also clarifies the offenses of hate speech and defamation. This clarification effectively eliminates the potential for criminalization of criticism directed at public institutions, a practice that had previously occurred frequently. This ruling is seen as important jurisprudence that reaffirms the guarantee of freedom of opinion and expression in Indonesia.

This ruling demonstrates the Court's cautious and constitutional stance in assessing regulations that potentially restrict civil liberties. By not immediately invalidating the provisions of the article, the Court places the responsibility on legislators and law enforcement officials to avoid misusing these potentially repressive provisions. This also serves as a warning that criminal norms should not be left open to multiple interpretations, as this could threaten the principles of legal justice and constitutional democracy.

Constitutional Court Decision No. 105/PUU-XXII/2024 is a progressive step in maintaining a balance between the right to freedom of expression and legal protection for individuals in a democratic state. The Court has demonstrated that criminal law should not be used to silence criticism of public institutions or officials. This ruling will set an important precedent in ensuring a healthy democratic space, particularly in the digital age, and limit legal interpretations that could lead to repression of civil liberties. By limiting its application to individuals, the Constitutional Court addresses public concerns about the often-used, loose provisions of the law to silence critical voices. This ruling creates fairer legal certainty and reduces the potential for abuse of power by state officials or institutions.

3.3. Qadhaiyyah's view of the Constitutional Court Decision NO 105/PPU-XXII/2024 Article 28 Paragraph 2

a. Siyasah Qadhaiyyah

The word *siyâsah* comes from the word *Sasa*, meaning to regulate, manage, and rule, or government, politics and policy-making. Terminologically, in *Al-Munjid*, *siyâsah* is stated to create human welfare by guiding them to the path of salvation. And *siyâsah* is the science of government to control domestic tasks and foreign policy and society, namely regulating life on the basis of justice and steadfastness. Abdul Wahab Khallaf in his book entitled *Islamic Legal Politics*, defines *siyâsah* as "legal arrangements created to maintain order and welfare and regulate conditions.

Then, the word *qadhaiyyah* is linguistically derived from the word *qadha*, which means to break or finish. The word *qadha* also means to complete, fulfill, and decide the law. Meanwhile, the person who establishes or decides the law is called a *qadi* (judge). According to Ibn Khaldun, the position of judge is below the caliph. This is because the judge is tasked with resolving disputes and conflicts that arise while still referring to the *Qur'an* and *hadith*. Terminologically, the meaning of *qadha* is to resolve a dispute between two disputants using God's law. Meanwhile, *fuqaha'* (jurists) define *qadha* as a legal institution (court).

Siyasah Qadhaiyyah can be defined as a stipulation that has been regulated in Islam to carry out the judicial function. Based on the understanding of each terminology above, it can be concluded that *Siyasah Qadhaiyyah* is the regulation of the affairs of the people in the state through the judicial institutional process (courts). *Siyasah Qadhaiyyah* specifically discusses the trial of violations of legal regulations and legislation that have been made or stipulated by legislative institutions (*tasyrî'iyah*).

The concept of *qadhâiyyah* (judicial system) in Islamic state administration fundamentally prioritizes the principle of equality before the law. This principle is

currently known as the principle of equality before the law. Islamic courts are also independent and free from the influence of any party in carrying out their judicial functions. In adjudicating a dispute (case), judges are required to place both parties in the same position before the law. As for the requirements that must be met by a court judge, these requirements are: a believer; mukallaf; able to implement amar ma'ruf nahi munkar; knowledge of sharia laws (the meaning of what is commanded and what is forbidden).

Siyasah Qadhaiyyah is expected to create justice and peace in the life of the nation and state, through the upholding of the law. The establishment of a judicial institution in Siyasah is intended to realize law enforcement in society. Thus, it can easily implement Islamic teachings in the field of law enforcement and protection in a country. As for the purpose of the existence of a judicial institution in Islam. It is one of the legal efforts in finding the essence of the truth regarding disputes and legal problems that occur in the state. Whether it concerns civil, criminal or state issues. Based on this, it can be concluded that the main tasks of Siyasah Qadhaiyyah (judicial institution) are as follows: Reconciling the two parties in dispute, determining sanctions for perpetrators who have been proven to have violated the law, creating good deeds and forbidding evil, protecting the lives, property and honor of the community and, creating benefits for all people.

The essence of the principle of siyasa qadhaiyyah is the independence of the judiciary (al qadha), (Al-hisbah area (Al-mazhalim area).

a.) al qadha

The jurisdiction of qaḍhā' (Islamic justice) is a judicial institution that functions to resolve disputes between citizens, both criminal and civil. This judicial institution has existed since the time of the Prophet Muhammad (peace be upon him) and continued to develop after his death, particularly during the Umayyad and Abbasid dynasties. The jurisdiction of qaḍhā' is led by a qāḍī (judge). The judge's duty is to create laws derived directly from the Qur'an, Sunnah, or ijtihad. In the context of today's Indonesia, the jurisdiction of qaḍhā' can be compared to religious courts or general courts.

b.) Al-hisbah area

The area of al-hisbah is a religious task carried out by the authorities in the field of amar m'arf nahi munkar. The person in charge of this institution is called the Muhtasib who is responsible for supervising whether or not general laws and social customs apply which no one should violate, such as crimes that need to be resolved immediately, supervising the law, regulating public order, resolving criminal problems, preventing violations of neighbors' rights, and punishing those who manipulate the Shari'a.

c.) Al mazhalim region

The Wilāyah al-maẓhālīm is a separate judicial body. This institution has the specific task of handling (resolving) disputes between the people and the state. The Wilāyah al-maẓhālīm holds a higher position than the other two judicial authorities, namely Al-qaḍhā' and Al-ḥisbah. The Wilāyah al-maẓhālīm's authority is to decide on various forms of injustice committed by state officials, nobles (sultans), wealthy individuals, and the caliph's family. In this case, the Wilāyah al-maẓhālīm also has the authority to try the

caliph for various deviations he committed in running the government. For example, deviations committed by the caliph against the provisions of sharia law, deviations from the mutually agreed social contract, and various other deviations that could harm the rights and interests of the people. In essence, this institution's authority is to encourage those who act unjustly to act or act justly. Therefore, this position must be held by strong, respected individuals who are respected by the community, have authority, are firm, have a clean path, are not greedy, and possess a *wara'* (virtuous) nature.²⁰ Therefore, no one can intervene, not even the ruling class itself.

b. Constitutional Court

The word "MK" comes from two words: "Makkum" (Court) and "Konstitution." To gain a proper understanding, it is necessary to explain the meaning of each of these two words: "Makkum" and "Konstitution." The word "Makkum" means a body that decides the law on a case or violation (court).

The Constitutional Court (MK) is a judicial body that decides on cases or violations of fundamental law or the Constitution. This can be seen more clearly in terms of the authority granted to the Constitutional Court by the 1945 Constitution, namely, to adjudicate at the first and final levels, with final decisions, to test laws against the Constitution, to decide on disputes between state institutions, to decide on presidential violations, to decide on election disputes, and to decide on the dissolution of political parties.

The Constitutional Court's position is on the same level as the Supreme Court as an independent judicial authority in the Indonesian constitutional system. The Constitutional Court is also called the Sole Interpreter of the Constitution. As the sole interpreter of the constitution, many of its decisions have implications for other powers in its jurisdiction, particularly the legislative body, whose products are reviewed.

The Constitutional Court's position in the Indonesian constitutional system is as a state institution that carries out judicial functions with jurisdiction over constitutional matters. As an exercise of judicial power, the Constitutional Court's constitutional function is to uphold law and justice.

The explanation of Law Number 8 of 2011 concerning amendments to Law Number 24 of 2003 concerning the Constitutional Court (MK Law) states that the duties and functions of the Constitutional Court are to handle constitutional cases so that they are implemented responsibly in accordance with the will of the people and the ideals of democracy. In addition, the existence of the court is also intended as a correction to the state administration experience caused by double interpretations of the constitution. In exercising its authority to decide on judicial reviews of laws against the 1945 Constitution, the Constitutional Court also plays a role as a guardian of the constitution. In addition, because the implementation of other court authorities is also carried out based on the provisions of the 1945 Constitution to resolve cases that must be decided, both in cases of disputes over the authority of state institutions, the dissolution of political parties, disputes over election results, and dismissing the president and vice president during their term of office, the context also includes the role of the court as a guardian of the constitution and interpreter of the constitution.

Its next function is to protect human rights and the constitutional rights of citizens. The guarantee of human rights in the constitution gives the state a constitutional legal obligation to protect, respect, and advance these rights.

From the understanding of *siyasah qadhaiyyah* and the Constitutional Court above, the view of *siyasah qadhaiyyah* towards the Constitutional Court Decision NO. 105/PPU-XXII/2024 Article 28 Paragraph 2 of the Constitutional Court Decision Number 105/PUU-XXII/2024 is not merely an interpretation of legal norms, but a judicial action that has a strong resonance with the principles of *siyasah qadhaiyyah*. This decision is seen by legal experts as an "important milestone" that not only provides legal certainty, but also "re-embodies the awareness of constitutional democracy in Indonesia".

Moreover, this ruling can be analyzed as a modern manifestation of the function of the *Wilāyah al-Maẓhālim* (the Supreme Court). The petition report itself clearly states that the legal process ensnaring the Petitioner is a concrete manifestation of SLAPP aimed at silencing public participation and the Petitioner's voice in voicing environmental issues. Abuse of the law by those in power (in this case, institutions or corporations that use the ITE Law to silence criticism) is a form of *al-maẓhālim* (tyranny) or injustice. In this context, the Constitutional Court, as the highest judicial institution that functions to correct legislative products, takes on the role of *Wilāyah al-Maẓhālim* by stopping the practice of this abuse of power.

The chain of thought that follows is as follows: first, there is substantial injustice that harms the people, namely the use of flexible articles in the ITE Law to criminalize legitimate criticism. Second, the *Wilāyah al-Maẓhālim* in *Siyasah Qadhaiyyah* is an institution specifically established to resolve problems arising from abuse of power by those in power. Third, in the Indonesian legal system, the Constitutional Court has the authority of judicial review to correct substantial injustice in laws. With its ruling, the Constitutional Court directly ended the practice of SLAPPs and restored citizens' constitutional rights, while protecting them from injustice perpetrated by entities in power. This is a clear reflection of the principle of *Wilāyah al-Maẓhālim*, which functions as a balance of power within the framework of a state based on the rule of law.

The legal rationale underlying the Constitutional Court's ruling, namely its strict interpretation and limited scope of the article, strongly aligns with the principles of *Maqasid al-Shariah*. The Constitutional Court's ruling aims to provide fair legal certainty and prevent the "overcriminalization" of legitimate expression, which aligns with the principle of *lex certa*.

The Constitutional Court specifically emphasized that Article 28 Paragraph (2) is a material offense, which requires a real consequence in the form of "feelings of hatred or hostility." This requires "objective evidence" that the expression actually causes the prohibited impact, not merely subjective perception.

This approach demonstrates a balanced application of *Sadd al-Dzarāi*. In a strict interpretation, *Sadd al-Dzarāi* can be used to justify formal offenses, where an act (for example, spreading information) is prohibited because it is considered a means to *mafsadah* (damage) in the form of hate speech. However, if applied without clear boundaries, this principle can actually give rise to greater *mafsadah*, such as threatening

hifdz al-aql (freedom of expression and thought) and hifdz an-nafs (freedom from arbitrary criminalization).

The Constitutional Court's ruling requiring a "real and imminent risk" indicates that the Court did not abolish *Sadd al-Dzarāi* altogether, but rather limited it to prevent it from violating the more fundamental *Maqasid al-Shariah*. In other words, the Constitutional Court sought a balance between protecting society from hate speech and protecting basic constitutional rights. This ruling is an example of how positive law, in this case constitutional jurisprudence, can meet the principle of *Maslahah Mursalah*, namely the establishment of legal solutions not explicitly stipulated in the text of the law but aimed at achieving the public good.

4. Conclusions

Constitutional Court Decision No. 105/PUU-XXII/2024 represents a significant judicial step in responding to the challenges of protecting freedom of expression in the digital era. The Court successfully transformed the ambiguous "rubber clause" in Article 28 paragraph (2) of the ITE Law into a more measured and targeted offense, in line with modern and democratic criminal law principles. By requiring malicious intent and a real risk, the Court effectively limited the scope for misuse of the article as a tool to silence criticism. This ruling is deeply in line with the spirit of *Siyasah Qadhaiyyah*. The Constitutional Court has served as a contemporary institution of justice overseeing legislative power, and its rulings substantially reflect core principles such as judicial independence, justice (*al-adalah*), and the pursuit of general welfare (*maslahah*) for all citizens. This ruling demonstrates that the goals of law, which prioritize the protection of human rights and justice, can be realized through progressive interpretation, which is fundamentally in line with the essence of Islamic justice. While this Constitutional Court ruling is a significant victory for freedom of expression, challenges remain, particularly in harmonizing other criminal laws, including the new Criminal Code. Comprehensive revisions are needed to ensure that the spirit of this Constitutional Court ruling is fully realized throughout the national criminal law system, so that the protection of citizens' constitutional rights can be consistently and effectively guaranteed comprehensive.

This study provides practical implications for policymakers and judicial institutions in formulating guidelines for assessing defects of consent in digital contracts and regulating hate speech, emphasizing the importance of balancing freedom of expression and substantive justice. The results of this study encourage the reform of legal norms in the Civil Code to be more adaptive to the development of digital transactions and the risk of online fraud, through the application of the principle of prudence and protection for parties acting in good faith. Future research should focus on cross-country comparative studies or quantitative approaches to measure the influence of Constitutional Court jurisprudence on the effectiveness of constitutional rights protection and freedom of expression in the digital age.

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