

Normative analysis of the interpretation of the element of defamation in the decision of the East Jakarta PNTL No. 203/PID.SUS/2023 reviewed from the decision of the MK 50/PUU-VI/2008

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Article Info

Article history:

Received : Nov 16, 2025

Revised : Dec 20, 2025

Accepted : Jan 17, 2026

Keywords:

Defamation;
Judicial Interpretation;
Freedom of Expression;
ITE Law.

ABSTRACT

The application of Article 27 paragraph (3) of the Electronic Information and Transactions Law still causes debate, especially regarding the interpretation of defamation in the digital space. The Constitutional Court, through Decision Number 50/PUU-VI/2008, has emphasized the importance of limiting the interpretation of this norm by requiring a clear distinction between opinion and factual allegations that can be verified. However, in judicial practice, the consistency of the application of these constitutional parameters is still questionable. This study aims to analyze how the East Jakarta District Court interpreted the element of defamation in Decision Number 203/Pid.Sus/2023 and assess its conformity with the interpretation parameters formulated by the Constitutional Court. This study uses a normative legal research method with a regulatory approach, a case approach, and a conceptual approach. Data was obtained through a literature study of court decisions, regulations, and relevant legal literature, then analyzed qualitatively through legal reasoning and normative comparison. The results of the study show that the East Jakarta District Court acquitted the defendant based on the qualification of the statement as an opinion, without systematically elaborating on the testing of the factual content and context of the statement. This interpretation does not fully reflect the constitutional parameters that require a step-by-step analysis, particularly regarding the verifiability of statements and potential attacks on a person's honor. This study concludes that there is a discrepancy between the interpretation standards set by the Constitutional Court and their application in the verdict. The contribution of this study lies in emphasizing the importance of a more structured interpretation framework to ensure legal certainty while protecting freedom of expression in electronic defamation cases.

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1. INTRODUCTION

The development of information and communication technology has brought significant changes in the way people express their opinions, convey criticism, and interact in the digital public sphere. Social media and electronic platforms have become the main means of exchanging ideas, but at the same time they have given rise to various new legal issues, particularly those related to the boundary between freedom of expression and the protection of a person's reputation. In the context of Indonesian criminal law, this issue often intersects with the application of Article 27 paragraph (3) of the Electronic Information and Transactions Law (EIT Law), which regulates defamation. This provision often causes controversy because it is considered open to interpretation and has the potential to criminalize expressions that are actually opinions or criticism, thus creating tension between legal certainty and the protection of citizens' constitutional rights (Diah Iswari & Rudy, 2023).

In response to this problem, the Constitutional Court, through Decision Number 50/PUU-VI/2008, has provided a binding constitutional interpretation, emphasizing that Article 27 paragraph (3) of the ITE Law can only be applied to statements that contain factual allegations, not mere opinions. The Court emphasized the importance of fact-checking, namely the obligation for judges to first assess whether a statement contains factual claims that can be verified. This decision is intended as a normative guideline so that law enforcement does not deviate from the principles of the rule of law and the protection of freedom of expression. However, in judicial practice, the implementation of these constitutional parameters still shows inconsistencies, both in convictions and in acquittals (Zalil et al., 2025).

One clear example of this can be seen in the East Jakarta District Court Decision Number 203/Pid.Sus/2023. In this case, the panel of judges concluded that the defendant's statement was an opinion and therefore did not constitute defamation, and the defendant was acquitted. Although the verdict resulted in an acquittal, which at first glance appears to be in line with the spirit of protecting freedom of expression, legal problems arise in the basis of the considerations. The judges did not conduct an in-depth examination of whether the statements deemed to be opinions contained elements of implied factual allegations that could be tested for truth, as required by the Constitutional Court. This raises serious questions about the consistency of the application of constitutional norms in first-level court practice (Aulia et al., 2024).

Previous studies have generally placed the issue of the ITE Law in the context of excessive criminalization, the social impact on freedom of expression, or analysis of verdicts that result in punishment. Legal literature also widely criticizes Article 27 paragraph (3) of the ITE Law as a vague article that is prone to abuse. However, studies that specifically highlight the inconsistency between first-level court decisions and the normative parameters of the Constitutional Court, particularly in acquittal decisions, are still relatively limited. In fact, even inaccuracies in the interpretation of acquittal decisions have the potential to perpetuate legal uncertainty and obscure the standards of analysis that should serve as guidelines for judges (Moh. Yusuf DM & Roki Hardianto, 2022).

Based on these conditions, this study focuses on how the East Jakarta District Court interprets the element of defamation in Article 27 paragraph of the ITE Law in Decision Number 203/Pid.Sus/2023 when compared to the normative parameters established by the Constitutional Court through Decision Number 50/PUU-VI/2008, as well as whether the judges' interpretation in the decision has been consistent with the constitutional obligation to clearly distinguish between opinion and factual allegations that can be tested for truth. This study uses a normative legal approach by combining a regulatory approach, a case approach, and a conceptual approach related to the distinction between opinion and factual statements. Through a comparative analysis between the normative provisions formulated by the Constitutional Court and the legal considerations used by the East Jakarta District Court, this study seeks to offer a more systematic understanding of the interpretation standards that should be applied in electronic defamation cases (Prasetya et al., 2020).

The novelty of this study lies in its focus of analysis, which not only looks at the problems of the ITE Law from the perspective of criminalization, but also from the perspective of the acquittal of defendants who do not fully comply with the Constitutional Court's constitutional standards. This study shows that the problem with the application of Article 27 paragraph (3) of the ITE Law does not stop at the threat of criminalization, but also includes the failure of judges to consistently apply the method of factual analysis. Thus, this study is expected to contribute theoretically to the development of criminal

law and constitutional law, as well as practically to law enforcement officials in establishing legal certainty and protecting freedom of expression in the digital age.

2. METHOD

This study is a normative legal study designed to examine the interpretation of defamation in Article 27 paragraph (3) of the ITE Law through analysis of legal norms and court decisions. The research design combines a regulatory approach, a case approach, and a conceptual approach to obtain a complete picture of the interpretation standards that should be applied by judges. The legislative approach was used to examine the provisions of Article 27 paragraph (3) of the ITE Law and Constitutional Court Decision Number 50/PUU-VI/2008 as binding normative references, while the case approach focused on analyzing East Jakarta District Court Decision Number 203/Pid.Sus/2023. The conceptual approach is used to examine legal doctrines and thoughts regarding the distinction between opinion and factual allegations in criminal law, particularly those related to defamation and freedom of expression. The legal materials used consist of primary legal materials in the form of legislation and court decisions, secondary legal materials in the form of books, scientific journals, and previous research results, as well as tertiary legal materials as supporting materials.

The research procedure was carried out in stages and systematically, beginning with an inventory of relevant legal materials, followed by the grouping of norms and legal considerations related to the elements of defamation. Operationally, the analysis flow was carried out in steps resembling a research algorithm, namely: identifying the formulation of norms and interpretation parameters from the Constitutional Court, describing the legal considerations of the judges in the East Jakarta District Court decision, then comparing the two reasoning frameworks to assess the consistency of their application. The testing is carried out through qualitative analysis using legal interpretation methods, particularly systematic and conceptual interpretation, to assess whether the judges have correctly applied the obligation to distinguish between opinion and factual allegations. The results of the analysis were then synthesized to draw conclusions about the conformity of the judges' interpretations with applicable constitutional standards. All stages of this research were supported by relevant legal literature references so that the arguments constructed had a strong scientific basis and were academically accountable.

3. RESULTS AND DISCUSSION

The research results were obtained through a review of the legal considerations of the East Jakarta District Court judge in Decision Number 203/Pid.Sus/2023 and the constitutional interpretation formulated by the Constitutional Court in Decision Number 50/PUU-VI/2008. The main focus of the research results was directed at how judges identify and assess the elements of defamation in Article 27 paragraph (3) of the ITE Law, particularly in relation to the qualification of the defendant's statement. From an examination of the first-level decision, it was found that the judge focused the analysis on the final conclusion regarding the nature of the statement without constructing a detailed reasoning regarding the stages of testing the content of the statement. This finding is important because the element of defamation cannot be separated from a careful assessment of whether a statement is an opinion or contains factual allegations whose truth can be verified (Mandasari Saragih et al., 2023).

To clarify the research results and make it easier for readers to understand the position of each ruling, the results of the analysis are presented in the following comparative table. This table is intended to briefly present the key aspects analyzed in both decisions, while also showing the differences in the focus of interpretation of the element of defamation.

Table 1. Results of the Analysis of the Interpretation of the Element of Defamation

Analysis Aspects	East Jakarta District Court Decision No. 203/Pid.Sus/2023	Constitutional Court Decision No. 50/PUU-VI/2008	Research Findings
Focus of statement assessment	Direct assessment of the nature of the statement	Emphasis on normative limits of interpretation	Differences in the depth of analysis
Testing of factual content	Not described systematically	Emphasized as an important prerequisite	This element is not elaborated at the first level

Distinction between opinion and fact	Concluded briefly	Emphasized that it must be clearly distinguished	Distinction has not been elaborated operationally
Implications for the elements of the offense	Elements are considered not fulfilled	Provides limiting parameters	Parameters have not been fully applied

Based on the table, the results of the study show that the decisions of the East Jakarta District Court tend to place the judge's conclusions at the center of the analysis, while the Constitutional Court emphasizes the importance of a strict and structured framework of interpretation. This difference is not only technical in nature, but also reflects different approaches to understanding the relationship between the protection of reputation and freedom of expression. Thus, the results of the study indicate a gap between the constitutionally formulated standards of interpretation and the practice of legal reasoning at the general court level, which will be the basis for further discussion in the following section (Setyaningrum et al., 2022).

3.1 Interpretation of Defamation Elements in East Jakarta District Court Decision Number 203/Pid.Sus/2023

East Jakarta District Court Decision Number 203/Pid.Sus/2023 shows a pattern of reasoning by the judge that relies on the final conclusion regarding the nature of the defendant's statement. In his legal considerations, the judge stated that the statement in question was an opinion, so it did not fulfill the elements of defamation as regulated in Article 27 paragraph (3) of the ITE Law. This conclusion was then used as the basis for declaring that the elements of the offense were not fulfilled and the defendant must be acquitted. However, upon careful examination, these considerations were not accompanied by a methodological description of how the judge arrived at the conclusion that the statement was an opinion (Väliverronen & Saikkonen, 2021).

The absence of an explanation regarding the distinguishing indicators between opinion and factual statements shows that the judge did not construct a step-by-step analysis. The judge did not describe the context in which the statement was made, did not assess the structure of the sentence used, and did not explore the possibility of an implied factual meaning that could damage the honor of another party. In fact, in defamation cases, especially those occurring in the digital space, the meaning of a statement often does not stand literally, but is influenced by the social context, the relationship between the parties, and the purpose of the statement. To systematically illustrate the pattern of interpretation used by the judge in this decision, the following table summarizes the stages of analysis apparent in the legal considerations (Fatimah et al., 2024).

Table 2. Patterns of Interpretation of Defamation Elements by the East Jakarta District Court

Assessment Stage	Judge's Considerations	Explanation
Identification of statement	Viewed as a personal expression	Social and legal context not analyzed
Assessment of nature of statement	Qualified as an opinion	Basis for qualification not explained
Fulfillment of elements of offense	Elements deemed not fulfilled	Conclusion drawn directly

The table shows that the process of interpreting defamatory elements stops at the categorization stage, without continuing with substantive testing of the statement. With this pattern of reasoning, legal interpretation becomes highly dependent on the judge's initial perception, rather than on a method of analysis that can be traced and tested objectively. This implies weak interpretation standards, as there is no clear measure to distinguish between protected opinions and factual statements that potentially violate the law (Henry Soelistyo Budi et al., 2024).

Such an approach to interpretation has the potential to create legal uncertainty. In other cases with similar characteristics, judges may reach different conclusions simply because of differences in perspective, rather than differences in the structure of the statement or its factual context. When the interpretation standard is not explicitly formulated, it becomes difficult to maintain consistency in the application of Article 27 paragraph (3) of the ITE Law, both in verdicts that impose criminal penalties and in verdicts that acquit the defendant (Dodge, 2019).

Therefore, even though this ruling ended with the acquittal of the defendant, the way the judge interpreted the element of defamation still leaves fundamental issues. An acquittal that is not accompanied by an in-depth analysis of the content of the statement has the potential to weaken the function of the verdict as a guideline for future judicial practice. Thus, the main problem in this verdict does not lie in the final outcome, but in the quality and completeness of the legal reasoning used in assessing the elements of the offense (Balasingam, 2018).

3.1.1 Identification of Statements as Personal Expressions

In this ruling, the judge began the assessment by considering the defendant's statement as a personal expression. This view implicitly places the statement in the realm of subjectivity, thereby deeming it to have no legal weight that could give rise to criminal liability. However, this identification was not accompanied by an analysis of the context in which the statement was made in the digital public sphere (Leszczyński, 2020).

In electronic defamation cases, the identification of statements should consider the medium, the audience reach, and the relationship between the parties involved. Statements conveyed through electronic media have the potential for a wider impact than private communications. Without considering these aspects, the identification of statements becomes too narrow and potentially ignores the social dimension of the act being assessed (Antoshkina et al., 2023).

In addition, ignoring the context also closes off the possibility of implicit meaning in the statement. An expression that appears to be a personal opinion may contain assumptions or claims that refer to certain facts. Therefore, the identification of statements cannot be done simply, but requires careful assessment of the content and circumstances of its delivery (Tharanidharan et al., 2024).

3.1.2 Qualification of Statements as Opinions

After identifying the statements as personal expressions, the judge then qualified them as opinions. This qualification became the main basis for declaring that the element of defamation was not fulfilled. However, the legal considerations did not provide an explanation of the basis or indicators used to reach this conclusion (Zukić & Zukić, 2024).

The qualification of opinion without methodological argumentation makes the judge's conclusion difficult to test objectively. The judge did not elaborate on whether the statement contained claims that could be assessed as true or false, or whether the statement was merely a subjective assessment without factual reference. In fact, the difference between opinion and factual allegations is central to the assessment of the element of defamation. The final nature of the opinion qualification also halts the analysis of other elements of the offense. Once a statement has been declared an opinion, other elements such as an attack on honor or reputation are no longer analyzed in substance. This approach suggests that the initial qualification is the sole determinant in the overall legal consideration (Zifana et al., 2022)

In the context of legal certainty, this method of interpretation has the potential to cause inconsistencies between decisions. Other judges may give different qualifications to similar statements, due to the absence of clear and structured measures. As a result, the application of Article 27 paragraph (3) of the ITE Law becomes highly dependent on the subjectivity of the assessor (Perdana & Yusuf, 2020).

3.1.3 Implications of Interpretation on the Fulfillment of Criminal Elements

The combination of identifying statements as personal expressions and qualifying them as opinions has direct implications on the fulfillment of criminal elements of defamation. In this ruling, the criminal elements are considered unfulfilled without detailed examination of each element required by law (Indara & Ternando, 2024).

These implications not only affect the final outcome of the defendant's acquittal, but also the quality of the ruling as a product of legal reasoning. A ruling that does not contain a complete analysis of the elements of the offense has the potential to weaken the function of the ruling as a guideline for future judicial practice (Qalbi & Ramadhani, 2022).

In addition, this approach also has the potential to blur the line between the protection of freedom of expression and the protection of reputation. Without in-depth analysis, the acquittal of the defendant can be perceived as the result of mere labeling, rather than the application of clear legal standards. Therefore, the implications of the interpretation in this decision cannot be separated from criticism of the method used to assess the elements of the offense. The main issue lies not in the acquittal of the defendant, but in the absence of a systematic analytical framework for interpreting the elements of defamation (Agustini et al., 2020).

3.2 Interpretation Parameters for Defamation Based on Constitutional Court Decision Number 50/PUU-VI/2008

Constitutional Court Decision Number 50/PUU-VI/2008 formulates a framework for interpreting defamation that is oriented towards protecting the constitutional rights of citizens. The Court

emphasized that Article 27 paragraph (3) of the ITE Law cannot be applied broadly without limits, as it has the potential to threaten freedom of expression. Therefore, the Court stipulated the obligation to distinguish between opinion and factual allegations as a key prerequisite in the application of this article. This affirmation is intended to ensure that criminal law is not used to silence criticism or expression of opinion (Afisa et al., 2024).

The Constitutional Court also emphasized that only statements containing factual allegations that can be tested for truth can fall within the scope of defamation. Thus, statements that are subjective assessments, expressions of emotion, or personal opinions cannot be automatically criminalized. This approach shows that the Court does not only view the elements of the offense textually, but also considers the constitutional implications of the application of criminal norms in the digital public sphere. To clarify the parameters of interpretation formulated by the Constitutional Court, the following table summarizes the main aspects relevant to the assessment of the elements of defamation (Hadi, 2024).

Table 3. Interpretation Parameters for Defamation Elements According to the Constitutional Court

Parameters	Interpretation	Legal Consequences
Nature of statements	Opinions must be distinguished from facts	Opinions are not punishable
Verifiability	Allegations of fact must be testable	They form the basis of evidence
Limitations on norms	Freedom of expression must not be violated	The article is not applied broadly

These parameters indicate that the Constitutional Court considers the method of interpretation to be an integral part of fulfilling the elements of a crime. It is not enough for judges to simply state that a statement is an opinion or a fact; they must explain the reasons and basis for their assessment. With this approach, the application of Article 27(3) of the ITE Law becomes more measurable and accountable both academically and constitutionally (Fahriza & Arif Sahlepi, 2024).

If these parameters are used as a reference in judicial practice, then every decision, including those that result in the acquittal of the defendant, should contain a clear analysis of the content of the statement. The absence of such analysis, as seen in the decision of the East Jakarta District Court, shows that the interpretation standards formulated by the Constitutional Court have not been fully internalized in practice. This condition emphasizes the need to strengthen the role of Constitutional Court decisions as substantive guidelines, not merely formal normative references (Petersen, 2022).

3.2.1 Distinction between Opinion and Factual Allegations

The Constitutional Court emphasizes that the difference between opinion and factual allegations is the main foundation in the application of Article 27 paragraph (3) of the ITE Law. This affirmation aims to ensure that criminal law is not used to criminalize subjective opinions or criticism. Opinions are understood as personal assessments that do not contain factual claims that can be tested for truth (Elliot & Holt, 2020).

This distinction provides significant protection for freedom of expression. In a democratic society, the space to express opinions, criticism, and assessments is an integral part of public life. By limiting criminalization to factual allegations, the Constitutional Court seeks to prevent criminal law from being used repressively (Gosztanyi et al., 2025).

In addition, this distinction also serves as a methodological guide for judges. Judges are required to explain why a statement is categorized as an opinion or a fact, rather than simply stating a conclusion. Thus, the decision becomes more transparent and can be tested rationally. The consistent application of this distinction also contributes to legal certainty. When the assessment criteria are clear, the scope for subjectivity on the part of judges can be minimized, resulting in more consistent rulings between cases (Prahassacitta & Harkrisnowo, 2021).

3.2.2 Verifiability of Statements as an Objective Measure

In addition to distinguishing between opinion and fact, the Constitutional Court places verifiability as an objective measure in assessing the element of defamation. Allegations used as the basis for criminal prosecution must be verifiable, either through evidence or rational reasoning. This principle prevents the criminal prosecution of statements that are speculative or emotional in nature. Verifiability shifts the focus of assessment from feelings of offense to the substance of the statement. Thus, criminal law is no longer used as a response to subjective discomfort, but as a means of protection against honor that is truly harmed by false accusations (Feka et al., 2025).

This principle also encourages judges to conduct a more in-depth analysis of the evidence and context of the case. Judges must not only assess the form of the statement, but also whether the statement has a factual basis that can be proven or refuted. If verifiability is used as the main benchmark, the potential for criminalization of expression can be reduced. Criminal law continues to function as an *ultimum remedium*, not as an instrument to restrict freedom of expression (Assagaf, 2023).

3.2.3 Restrictions on the Application of Articles for the Protection of Constitutional Rights

The Constitutional Court also emphasized that the application of Article 27 paragraph (3) of the ITE Law must be carried out restrictively. This restriction is intended to ensure that criminal norms do not conflict with constitutional principles, particularly the protection of freedom of expression. Restricting the application of the article does not mean eliminating the protection of reputation. On the contrary, the restriction aims to place the protection of reputation within a proportional framework. Allegations of untrue facts can still be prosecuted, while opinions and criticism remain protected (Riyadi & Hadi, 2021).

With this approach, the Constitutional Court seeks to maintain a balance between two equally important interests. The right to individual honor is protected, but not at the expense of citizens' right to freely express their opinions. Therefore, the restrictions on the application of Article 27 paragraph (3) of the ITE Law as formulated by the Constitutional Court are an important element in developing a fair, proportional, and rule of law-compliant interpretation of defamation (Hine, 2023).

4. CONCLUSION

This study shows that the objective formulated in the introduction, namely to examine the consistency of the interpretation of defamation in Article 27 paragraph (3) of the ITE Law with constitutional parameters, has been answered through the results and discussion presented. The results of the study show that the interpretation of defamation by the East Jakarta District Court in Decision Number 203/Pid.Sus/2023 has not been fully developed through a systematic analysis as required by the Constitutional Court in Decision Number 50/PUU-VI/2008. The defendant's acquittal was based on the qualification of the statement as an opinion, but without adequate testing of the factual content and context of the statement. This finding confirms the inconsistency between the constitutionally formulated interpretation standards and their application in first-level court practice, so that the research objective of assessing this consistency can be declared achieved. Based on these conclusions, this study opens up room for further development, both theoretically and practically. In the future, the results of this study can be used as a basis for formulating more operational interpretation guidelines for judges in handling electronic defamation cases, particularly regarding the distinction between opinions and factual allegations whose truth can be verified. In addition, further research can be directed at analyzing other decisions at various levels of the judiciary to assess the extent to which the Constitutional Court's parameters have been consistently internalized. Thus, this study not only contributes to the development of criminal and constitutional law studies but also has prospects for practical application in strengthening legal certainty and protecting freedom of expression in the digital age.

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