

## Influencer Criminalization For Content Harming The Public: A Study Of Criminal Liability In The Digital World

Sherly Adam<sup>1</sup>, Akhdiari Harpa Dj<sup>2</sup>, Hamdani<sup>3</sup>

Universitas Pattimura Ambon, Indonesia<sup>1</sup>, Universitas Sulawesi Barat, Indonesia<sup>2</sup>, Universitas Tanjungpura, Indonesia<sup>3</sup>,

Received: March 15, 2025

Revised: April 01, 2025

Accepted: April 20, 2025

Published: April 25, 2025

Corresponding Author:

Author Name : Sherly Adam

Email :

[sherly74adam@gmail.com](mailto:sherly74adam@gmail.com)

**Abstract:** *In today's digital era, influencers play an important role in shaping public opinion and public behavior through social media. As micro-celebrities, influencers have a strong emotional connection with their followers, which makes them a more trusted source of information than official institutions. However, this large influence poses the risk of disseminating inaccurate information, and even potentially harming the public. This phenomenon is even more complex when influencers spread misinformation or disinformation that has physical, psychological, or social impacts. Although the ITE Act has regulated the dissemination of digital content, it has not explicitly addressed the legal liability of influencers who disseminate harmful content. This creates a legal loophole that influencers can exploit to spread sensational content without considering the negative impacts. This study uses a normative juridical approach to examine the extent to which the ITE Law can accommodate criminal liability for influencers, as well as recommend legal reforms that are more responsive to digital dynamics. This research aims to provide a fairer and more contextual legal construction to overcome challenges in law enforcement in the digital world, while maintaining a balance between freedom of expression and public protection.*

**Keywords:** *Digital-Criminalization; Influencer-Liability; Public-Harm Content.*

## INTRODUCTION

In today's digital era, the existence of influencers has not only become part of marketing strategies, but has transformed into social actors that shape public opinion and behavior at large. Influencers have the ability to influence mass perception through social media that is fast, massive, and personal. Influencers play the role of *micro-celebrities* who have an emotional connection with their followers, which ultimately makes them trusted more than official sources of information.<sup>1</sup> This certainly creates a new dynamic in the dissemination of information, where validity and accuracy become relative, replaced by popularity and

<sup>1</sup> Kassi, Y., Sakmaf, M. S., & Suryana, A. (2024). Navigating Influencer Liability on Social Media: Balancing Profits and Legal Risks. *Sinergi International Journal of Law*, 2(3), 231-246.



personality appeal. As a result, people are easily exposed to narratives that are not necessarily true, and even risk causing physical, psychological, and social harm.

This situation is even more complex when the content conveyed contains elements of misinformation or even disinformation that can be clearly detrimental to the public. When influencers promote health products without certification, spread conspiracy theories, or encourage behavior that is against the law (such as prank content that harms others), the potential harm that arises is not only individual, but systemic. This phenomenon suggests that digital power has reversed the position of authority: from the state and formal institutions to non-state public figures who do not necessarily understand the limits of legal responsibility. In this context, the discourse on the urgency of criminalizing influencers becomes relevant to be discussed critically, in order to create a balance between freedom of expression and public protection in the digital space.

Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) has actually provided a legal framework for the dissemination of harmful information in the digital space. Articles 27 to 29 of the ITE Law contain a ban on content that contains content that violates morality, insults, defamation, the spread of hatred, and threats of violence. However, specifically, this regulation has not explicitly touched the realm of *influencer liability*, which is the inherent legal liability of individuals with great influence in cyberspace who disseminate content to a wide audience. This becomes problematic when this normative vacuum is used by some parties to produce sensational content that has the potential to harm society at large.

The criticism lies in the lack of a contextual approach in the ITE Law to new phenomena such as digital influencers. This regulation is still based on the *individual-user* paradigm, not *the public-figure user* which has a significant reach and influence on public opinion. In practice, when an influencer spreads false information related to health, finance, or law, positive law can only be taken action if it is proven that there are clear *elements of mens rea* and *actus reus*. In fact, in the era of social media, public losses are often collective and have systemic impacts. Therefore, legal updates that are more responsive and contextual to digital developments require an approach that is not only repressive, but also preventive,<sup>2</sup> As proposed by several legal experts who encourage the need for special regulations regarding *digital influencer accountability* as a form of legal adaptation to the dynamics of the information age.

The low awareness of digital ethics among influencers reinforces the urgency to not only look at this issue from a purely moral point of view, but also from a progressive legal perspective. Influencers often operate in an algorithmic ecosystem that drives sensational content for the sake of impression and monetization,

---

<sup>2</sup> Hafid, N. S., Rusmana, D., & Shaleh, C. (2025). Penerapan Teori Pidana dalam Pencegahan dan Penanggulangan Kriminalitas: Studi Kasus dan Tantangan Implementasi. *Legalite: Jurnal Perundang Undangan dan Hukum Pidana Islam*, 10(1), 85-104.



rather than for educational value or social responsibility. This phenomenon creates *moral hazard*, where economic benefits take precedence over safety or the truth of information. In this context, digital ethics that are supposed to be a guide to behavior have become neglected. As stated by Ess (2013) in his book *Digital Media Ethics*, digital actors must have a deep understanding of collective responsibility for the impact of content disseminated, a principle that is currently very minimal in online content practices in Indonesia.

Unfortunately, this lack of legal literacy and digital ethics not only reflects individual negligence, but also the weakness of digital education and regulatory systems that touch key actors such as influencers. The current digital literacy curriculum is still general and does not specifically target groups with great social influence. This is where the state should be present not only as a regulator, but also as an education facilitator that targets the digital community in a structured manner. As explained, digital literacy is part of *digital resilience*, but its implementation is still fixated on the general public and has not yet targeted key groups such as popular content creators.<sup>3</sup> Therefore, there is a need for a reform of the digital policy approach that integrates the principles of law, ethics, and media education in one systemic framework to create a more responsible and healthy digital ecosystem.

To build a legal framework that is fair and adaptive to the dynamics of the digital society, the state needs to reinterpret the concept of criminal liability in the context of social media and digital platforms. In conventional criminal law, the elements of *mens rea* and *actus reus* are the basis for determining guilt, but in a digital space that is viral and uncontrollable, this approach is often inadequate. Content that harms the public can be spread massively without explicit malicious intent from the creator, but still have a significant impact. Therefore, the concept of *strict liability* without the need to prove subjective wrongdoing should be considered in certain contexts, especially when influencers have structural power over public opinion and have benefited materially from their content. This discourse is in line with the views of progressive criminal law experts such as emphasizing the importance of legal flexibility in the face of rapidly changing social realities.<sup>4</sup>

Furthermore, criminal liability for influencers cannot be separated from the role of digital platforms themselves as mediators as well as reinforcing content distribution. Law enforcement that focuses solely on individuals without involving digital corporate accountability mechanisms would be an unequal effort. In this context, there needs to be a synergy between national criminal policy and global platform governance. For example, the system of *flagging* and *taking down* content must be accompanied by reporting and transparency obligations by platforms to national legal authorities. This approach is in line with the principle of *co-regulation*, which is collaboration between the state and the private sector in the

<sup>3</sup> Hassoun, A., Beacock, I., Carmody, T., Kelley, P. G., Goldberg, B., Kumar, D., ... & Consolvo, S. (2025). Beyond Digital Literacy: Building Youth Digital Resilience Through Existing "Information Sensibility" Practices. *Social Sciences*, 14(4), 230.

<sup>4</sup> Jubaidi, D., & Khoirunnisa, K. (2023). The Significance Of The Living Law Concept In The New Criminal Code: A Perspective Of Progressive Law. Available at SSRN 5068325.



supervision of digital content that has been adopted in the Digital Services Act in the European Union. Indonesia also needs to move in this direction by strengthening law enforcement authority and building an algorithmic audit system and platform transparency so that law enforcement against harmful content is truly effective and fair.

## METHOD

This research uses a **normative juridical** approach, which is a legal research method that focuses on the analysis of applicable positive legal norms, both in the form of laws and regulations, legal doctrines, and relevant court decisions. This approach is used to examine the extent to which applicable legal provisions, especially Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law), can accommodate the phenomenon of criminal liability against influencers who disseminate content that is detrimental to the public.

The data used in this study is sourced from primary and secondary legal materials. Primary legal materials include laws and regulations such as the ITE Law, the Criminal Code (KUHP), and related implementing regulations. Secondary legal materials include legal literature, scientific journals, expert opinions, and previous studies relevant to the topic of criminal liability in the digital world. The data analysis technique is carried out in a normative qualitative manner by examining legal norms, interpreting the sound of related articles, and identifying legal gaps in the regulation of criminal liability for influencers in the digital space. The goal is to provide a legal construction that is responsive to social dynamics, as well as to recommend a fair and contextual law enforcement model in the era of digital transformation.

## RESULTS AND DISCUSSION

### The Relevance of Law Number 19 of 2016 in Regulating Digital Content That Harms the Public

#### 1. Strengths and Weaknesses of the ITE Law Articles in Dealing with Content That Harms the Public

In the ever-evolving digital era, the role of information and communication technology is increasingly profound in daily life. One of the legal tools presented to regulate the use of this technology in Indonesia is Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE), which aims to provide legal certainty in various activities that take place in cyberspace. However, along with the rapid development of social media and the emergence of various online platforms, new challenges have arisen related to content that can harm the public, both in the form of misleading information, detrimental to

consumers, and content that violates moral norms.<sup>5</sup> Articles 27 and 28 of the ITE Law are the main legal instruments used to overcome this phenomenon.<sup>6</sup> Although these articles have significant power in regulating digital content, there are still weaknesses in their implementation that require further attention. Therefore, in this paper, we will discuss in more depth the strengths and weaknesses of these articles in dealing with content that is detrimental to the public, as well as the challenges of their application in an increasingly complex digital era.

Articles 27 and 28 in Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law), which have been revised several times, are legal tools that function as an umbrella to regulate the behavior of citizens in the digital space, including in terms of the dissemination of content that has the potential to harm the public. Article 27 paragraph (1) explicitly prohibits the dissemination of information containing moral content, while Article 28 paragraphs (1) and (2) regulate the spread of fake news that is detrimental to consumers as well as SARA-based hate speech. In the context of the development of social media and the dominance of influencers as key actors in the distribution of online information, these two articles are often used as a reference in taking action against content that is considered to violate social ethics or mislead the wider community. The main strength of these articles lies in their capacity to fill a legal vacuum in a dynamic and rapidly changing digital space.

However, at the conceptual and practical level, there are fundamental weaknesses that need critical attention. One is the absence of clear normative boundaries on key terms such as "decency", "misleading", or "harmful", which instead opens up a wide and often subjective interpretive space. Vague legal norms can cause legal uncertainty and are vulnerable to abuse of authority by law enforcement officials.<sup>7</sup> In practice, this has the potential to lead to overcriminalization, where actions that should be in the space of freedom of expression are actually criminalized based on a narrow interpretation of multi-interpreted articles.

In addition, the ITE Law does not explicitly recognize the distinction between ordinary users and users with large information dissemination powers, such as influencers. In fact, based on the theory of Diffusion of Innovation from Everett M. Rogers, individuals with positions as "opinion leaders" have a very large ability to shape people's perceptions, attitudes, and behaviors.<sup>8</sup> In this context, influencers have a dual role as

---

<sup>5</sup> Wiryanthi, N. P. E. M. (2025). Peran Hukum Dalam Meningkatkan Etika Bisnis di Perusahaan Media Online. *KERTHA WICAKSANA*, 19(1), 18-28.

<sup>6</sup> Putra, M. A. P. (2023). ANALISIS IMPLEMENTASI APARAT PENEGAK HUKUM POLSEK GROGOL PETAMBURAN DALAM PASAL 27 AYAT 2 UU ITE. *Untirta Civic Education Journal*, 8(2), 55-58.

<sup>7</sup> Green, B. A., & Roiphe, R. (2020). When prosecutors politick: Progressive law enforcers then and now. *J. Crim. L. & Criminology*, 110, 719.

<sup>8</sup> Ramadaniar, P., Kuswanti, A., & Muqsith, M. A. (2024). Peran Perempuan sebagai Opinion Leader di Pesantren dalam Menghadapi Kerentanan Pangan Akibat Krisis Iklim. *Publish: Basic and Applied Research Publication on Communications*, 3(2), 169-188.



content producers and as social actors who are able to direct public opinion. Unfortunately, the ITE Law has not accommodated this reality normatively. The absence of legal classifications of influential digital actors leads to the absence of a differential approach in law enforcement, which ideally considers the reach and impact of a digital action.

From the point of view of modern criminal law, the principle of *lex certa* or legal certainty must be the main foundation in the formulation of criminal norms.<sup>9</sup> The unclear meaning in the articles of the ITE Law is clearly contrary to this principle, so that an in-depth revision of the redaction of these articles becomes urgent. In addition, a more inclusive regulatory approach to today's digital ecosystem is also important to be developed. This approach can be realized through the addition of a special article regarding the responsibility of digital platforms and influencers in filtering and conveying information to the public.

Taking into account the development of communication technology and its impact on people's information consumption patterns, the update of the ITE Law must involve the principles of digital democracy, consumer protection, and the right to correct information.<sup>10</sup> This approach will make the ITE Law not only a repressive tool, but also an adaptive and progressive legal instrument in shaping a healthy, fair, and civilized digital society.

## 2. Regulatory Void for Influencers as Special Legal Subjects in the ITE Law

One of the most glaring weaknesses in Indonesia's Electronic Information and Transaction Law (UU ITE) is the regulatory vacuum against influencers as special legal subjects. Influencers, who have great influence in the digital world, are often not considered to be entities that have greater legal responsibilities compared to ordinary internet users. In fact, their social position as digital public figures has a very significant impact on people's behavior, especially in terms of the dissemination of information and opinions. This regulatory vacuum creates a legal gap that hinders the effectiveness of law enforcement, given that many influencers can freely spread risky content, such as hoaxes, hate speech, or product promotions that do not comply with applicable ethical and regulatory standards. For example, there are many cases where influencers are involved in the promotion of health products or investments that have been proven to be illegal or harmful to society, but since there is no specific provision in the ITE Law, sanctions against them have become difficult to implement.

---

<sup>9</sup> Iskandar, D., Zulfaidah, W. N., Almanda, A., Abdinur, I., Putra, D. Y., Andriani, C. Y., & Zulfazrul, Z. (2024). Perkembangan Teori dan Penerapan Asas Legalitas dalam Hukum Pidana Indonesia. *Jimmi: Jurnal Ilmiah Mahasiswa Multidisiplin*, 1(3), 293-305.

<sup>10</sup> Nasional, B. P. H. (2021). Hasil Penyelarasan Naskah Akademik Rancangan Undang-Undang Tentang Perubahan Kedua Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik. *Jakarta: Kemenkumham RI*.





In the study of law, the regulation of influencers as a special legal subject is very important, given the enormous influence they have on society. Communication experts such as McQuail (2010) in his book "Mass Communication Theory" explain that the media, including social media, has the ability to shape public opinion and direct social behavior, especially when it is conveyed by individuals or groups with high credibility in the eyes of the public.<sup>11</sup> Influencers are often considered a more trustworthy source of information than conventional media, given that they are considered closer and more personal to their audience. This causes the potential social impact of the content they spread to be much greater. However, in the absence of clear regulations, influencers are often free to act without thinking about the legal or social consequences of what they share with their followers.

From the perspective of legal theory, the concept of social accountability for individuals who have a great influence in society has long been the focus of discussion. The communication process in the digital public space must be arranged in such a way as to ensure fair participation and do not cause injustice. In this case, influencers as part of the digital public space must have moral and social responsibilities commensurate with the impact they generate. Ignoring this could potentially lead to the misuse of their influence for purposes that harm society, such as the spread of false information or the manipulation of public opinion.

Practically, many countries have implemented stricter regulations to regulate digital influencers and content creators. In the United States, for example, the Federal Trade Commission (FTC) has issued guidelines requiring influencers to clearly disclose if a piece of content constitutes paid promotion, and to ensure that the claims made in the content are not misleading.<sup>12</sup> In South Korea, the government has even begun to review whether to give influencers an obligation to be legally responsible for the content they spread, including defamation or the spread of false information.<sup>13</sup>

If we return to the Indonesian context, the reform of regulations in the ITE Law becomes very urgent. Given the magnitude of influencers' influence on society, it is time for Indonesia to establish a legal framework that distinguishes influencers from ordinary internet users, by establishing ethical standards, information verification obligations, and greater legal responsibilities. In this case, a derivative regulation that governs influencers as separate legal subjects would help clarify the limits and sanctions for those involved in the dissemination of harmful information or the abuse of social influence. In addition, such regulations will

---

<sup>11</sup> Andung, P. A., & Sos, S. (2024). *BUKU AJAR SOSIOLOGI KOMUNIKASI*. SCOPINDO MEDIA PUSTAKA.

<sup>12</sup> Ohlhausen, M. K. (2014). Privacy challenges and opportunities: The role of the Federal Trade Commission. *Journal of Public Policy & Marketing*, 33(1), 4-9.

<sup>13</sup> Indaryanto, N. N. (2022). *Rekonstruksi Regulasi Penegakan Hukum Tindak Pidana Penghinaan Dan Pencemaran Nama Baik Melalui Media Sosial Berbasis Nilai Keadilan* (Doctoral dissertation, UNIVERSITAS ISLAM SULTAN AGUNG).



also encourage the creation of a healthier and more responsible digital ecosystem, where influencers can continue to operate without harming the public, while maintaining social accountability.

From an ethical perspective, this regulatory update should not only focus on sanctions, but also on educating influencers about their social responsibility in disseminating information. Influencers must be trained to understand the social and legal consequences of their actions in cyberspace, as their influence is often enormous in shaping public views and behaviors.<sup>14</sup> Without clear regulations, the great influence that influencers have can risk harming society, both in terms of the information disseminated and in terms of products or services promoted without adequate transparency.

Overall, the need to update existing regulations is not only to close the legal loophole, but also to create a fairer and safer digital space for all parties. Therefore, the revision of the ITE Law targeting special arrangements for influencers is a crucial step in facing new challenges in the digital era, as well as to protect the interests of the community and ensure the sustainability of a healthy digital ecosystem.

### **The Concept of Influencer Criminal Liability in the Perspective of Digital Criminal Law**

#### **1. Reconstruction of the Elements of Mens Rea and Actus Reus in the Context of Digital Content by Influencers**

In the context of the ever-evolving digital age, criminal law faces a major challenge in adapting its classical principles to new emerging phenomena, especially in terms of the dissemination of content through social media platforms by influencers. In conventional criminal law, the two important elements that determine whether a person can be held accountable for a criminal act are mens rea and actus reus. Mens rea refers to the perpetrator's malicious intent or awareness in committing a prohibited act, while actus reus refers to a physical act or tangible action committed by the perpetrator who violates the law. In many traditional law cases, these two elements must be present for an act to be considered a criminal offense. However, in the digital realm, particularly in the creation and dissemination of content by influencers, challenges arise because the content is often not created with explicit malicious intent, even though the impact can be very large and detrimental to society.

One of the important aspects to note in this context is the fact that influencers have symbolic authority that can influence public opinion massively. While there is no explicit intention to harm, many influencers disseminate content that affects society on a large scale, which can lead to social, economic, or even public health losses. Influencers who promote health or lifestyle products often influence the mindset and behavior

---

<sup>14</sup> Syah, R., & Hermawati, I. (2018). Upaya Pencegahan Kasus Cyberbullying bagi Remaja Pengguna Media Sosial di Indonesia The Prevention Efforts on Cyberbullying Case for Indonesian Adolescent Social Media Users. *Jurnal PKS Vol, 17*(2), 131-146.



of their followers in the absence of scientific verification or adequate credibility.<sup>15</sup> In this case, even if there is no obvious malicious intent from the influencer, the influence it has makes them responsible for the impact it causes. This creates a need to revisit the application of the principle of mens rea, where negligence or indifference to information verification can be considered a form of negligence that leads to criminal liability. This is in line with the criminal law theory put forward by Hart which states that in some cases, actions committed without malicious intent can still be criminally punishable if there is negligence that leads to foreseeable harm.<sup>16</sup>

The importance of recognition of negligence, criminal liability should not always be based on explicit malicious intent, but also on the obligation to act with caution and avoid predictable risks.<sup>17</sup> In the context of influencers, this obligation includes the obligation to verify the information disseminated, especially in cases where the content they share risks misleading or harming others. In line with this, negligence especially in the case of failure to check the correctness of the information or its impact can be seen as a legitimate form of mens rea in the context of digital criminal law.

Meanwhile, in terms of actus reus, the expansion of understanding of unlawful acts is very relevant. In the digital world, unlawful acts are not only limited to physical acts, as understood in conventional criminal law, but also include acts that occur in cyberspace, such as the dissemination of false or harmful information. Influencers who upload, disseminate, or even just provide support to misleading narratives through reposts, likes, or comments, can be considered actus reus. In this case, any act that amplifies or distributes potentially harmful content may be considered unlawful. In the context of social media, a person can not only be held accountable for direct actions, but also for the influence they exert on the distribution of content that can pose a danger to the public.<sup>18</sup>

For example, in some cases that have been referenced by the courts, such as cases involving the spread of fake news (hoaxes), it can be seen that the content creator or those who support the content are liable even if there is no obvious malicious intent. The social influence that influencers have strengthens the distribution of harmful information that can ultimately cause real harm to individuals or groups. This emphasizes the importance of understanding that unlawful acts in the digital realm do not always require physical acts or

---

<sup>15</sup> Jamil, R. A., Qayyum, U., ul Hassan, S. R., & Khan, T. I. (2024). Impact of social media influencers on consumers' well-being and purchase intention: a TikTok perspective. *European Journal of Management and Business Economics*, 33(3), 366-385.

<sup>16</sup> Rusydi, M. (2021). Hukum dan Moral: Mengulik Ulang Perdebatan Positivisme Hukum dan Teori Hukum Kodrat HLA Hart & Lon F. Fuller. *AL WASATH Jurnal Ilmu Hukum*, 2(1), 1-8.

<sup>17</sup> DJAIDI, D. D. A. (2022). *PERTANGGUNGJAWABAN HUKUM INFLUENCER DALAM MELAKUKAN REVIEW PRODUK DI MEDIA SOSIAL* (Doctoral dissertation, Universitas Panca Marga).

<sup>18</sup> Alam, S. (2020). Peran influencer sebagai komunikasi persuasif untuk pencegahan COVID-19. *Jurnal Spektrum Komunikasi*, 8(2), 136-148.



explicit malicious intent, but can be understood as an active role in disseminating information that can be harmful.

Therefore, criminal law needs to adapt to cover various actions that occur in the digital realm, as well as introduce new legal guidelines that can provide clear limits on influencer liability. This is important to ensure that while freedom of expression is maintained, there are also mechanisms in place to protect society from the negative impacts that the spread of false or harmful information can cause. These arrangements also need to contain stricter scrutiny of content spread by individuals with significant influence on social media, given the potential for broad social impact.

Thus, the reconstruction of mens rea and actus reus in the digital context, especially those involving influencers, is an important step to ensure that criminal law remains relevant in regulating behavior in the increasingly complex and evolving cyberspace. This adjustment also provides a broader understanding that the law requires not only malicious intent or physical acts to assess criminal liability, but also negligence and an active role in distributing potentially harmful content.

## 2. Application of Strict Liability and the Principle of Proportionality in Determining the Limits of Influencer Responsibility

The application of the principle of strict liability in determining the limits of influencer responsibility is an important step to ensure accountability in the digital world, especially in the rapidly growing era of social media. In this context, strict liability refers to legal liability that is applied without the need to prove the existence of malicious intent or fault (mens rea) of the perpetrator. This is relevant because in the world of social media, where information can quickly spread and have a wide impact, proving the malicious intentions of influencers is a challenge in itself. With this principle, an influencer who spreads potentially harmful content to the public, such as false information, harmful products, or hate speech, can still be held accountable even if they do not intentionally intend to cause harm. This strict liability principle aims to provide protection to the public from the risks posed by the dissemination of irresponsible information.

However, the application of this principle cannot be done carelessly. In order not to cause excessive criminalization, the application of strict liability must be balanced with the principle of proportionality, which ensures that the sanctions given are in accordance with the level of error and the impact caused by the action. This principle of proportionality demands that the law not only look at the actions taken, but also consider factors such as the number of influencers' followers, the real impact of the content disseminated, as well as the influencer's involvement in commercial activities such as paid advertising. For example, an influencer with millions of followers who promotes dangerous products or misinformation has greater legal liability compared to an influencer who has few followers and no involvement in paid promotions. In this case, the law must assess the social and economic context behind each action taken by

the influencer, to ensure that the sanctions imposed are not only based on the amount of harm caused, but also on the capacity of influence possessed by the influencer.

The application of the principle of proportionality also reflects efforts to maintain a balance between the protection of the public interest and the right of individuals to express themselves.<sup>19</sup> On the one hand, influencers have the freedom to express opinions and share information, but on the other hand, this freedom must be limited if the content disseminated can cause real harm to society. In this case, the principle of proportionality provides room for the court or legal authority to consider various factors before imposing sanctions, so that the decisions taken are not excessive or unfair. Therefore, fair and selective digital criminal law will take into account the intentions, impacts, and context of each influencer's actions.

As part of digital criminal law reform, the implementation of strict liability equipped with the principle of proportionality can create a legal system that is more inclusive and responsive to social media dynamics.<sup>20</sup> Digital criminal law must not only prioritize the formality aspect of accountability, but also must respond wisely to the various social factors involved. With this more contextual and selective approach, it is hoped that a fair and equitable legal system can be created, which protects the public from the adverse effects of information disseminated without sacrificing the freedom of opinion that should be maintained in the digital public sphere.

## CONCLUSIONS

The relevance of Law Number 19 of 2016 in regulating digital content that is detrimental to the public is very important considering the rapid development of information and communication technology. The ITE Law, especially Article 27 and Article 28, has a major role in addressing the problem of spreading information that violates moral norms, fake news, and hate speech. Nonetheless, the articles have significant weaknesses, especially related to the vagueness of the definitions of terms such as "misleading" or "harmful," which leaves room for subjective interpretation. In addition, the ITE Law has not adequately accommodated the role of influencers as legal subjects who have a great influence in disseminating information. The absence of specific regulations on influencers leads to legal loopholes that hinder effective law enforcement. Therefore, the reform of the ITE Law is urgently needed in order to create a legal system that is more adaptive to the development of social media and the big role played by influencers in shaping public opinion. In this case, there needs to be a reconstruction of the principles of mens rea and actus reus, as well as the application of the principle of strict liability and the principle of proportionality to determine

---

<sup>19</sup> Saragih, G. M., Ishwara, A. S. S., & Putra, R. K. (2024). Evaluation of the Implementation of Pancasila Values and Human Rights Enforcement in Indonesian Judicial System Through Constitutional Approach. *Reformasi Hukum*, 28(3), 202-217.

<sup>20</sup> Nugraha, R. S., Rohaedi, E., Kusnadi, N., & Abid, A. (2025). The Transformation of Indonesia's Criminal Law System: A Comprehensive Comparative between the Old and New Penal Codes. *Reformasi Hukum*, 29(1).



the limits of influencer responsibility. Thus, clearer and more precise regulation will help create a safer and more responsible digital ecosystem, without sacrificing freedom of expression.

## REFERENCES

- Alam, S. (2020). Peran influencer sebagai komunikasi persuasif untuk pencegahan COVID-19. *Jurnal Spektrum Komunikasi*, 8(2), 136-148.
- Andung, P. A., & Sos, S. (2024). *BUKU AJAR SOSIOLOGI KOMUNIKASI*. SCOPINDO MEDIA PUSTAKA.
- DJAIDI, D. D. A. (2022). *PERTANGGUNGJAWABAN HUKUM INFLUENCER DALAM MELAKUKAN REVIEW PRODUK DI MEDIA SOSIAL* (Doctoral dissertation, Universitas Panca Marga).
- Green, B. A., & Roiphe, R. (2020). When prosecutors politick: Progressive law enforcers then and now. *J. Crim. L. & Criminology*, 110, 719.
- Hafid, N. S., Rusmana, D., & Shaleh, C. (2025). Penerapan Teori Pidana dalam Pencegahan dan Penanggulangan Kriminalitas: Studi Kasus dan Tantangan Implementasi. *Legalite: Jurnal Perundang Undangan dan Hukum Pidana Islam*, 10(1), 85-104.
- Hassoun, A., Beacock, I., Carmody, T., Kelley, P. G., Goldberg, B., Kumar, D., ... & Consolvo, S. (2025). Beyond Digital Literacy: Building Youth Digital Resilience Through Existing "Information Sensibility" Practices. *Social Sciences*, 14(4), 230.
- Indaryanto, N. N. (2022). *Rekonstruksi Regulasi Penegakan Hukum Tindak Pidana Penghinaan Dan Pencemaran Nama Baik Melalui Media Sosial Berbasis Nilai Keadilan* (Doctoral dissertation, UNIVERSITAS ISLAM SULTAN AGUNG).
- Iskandar, D., Zulfaidah, W. N., Almanda, A., Abdinur, I., Putra, D. Y., Andriani, C. Y., & Zulfazrul, Z. (2024). Perkembangan Teori dan Penerapan Asas Legalitas dalam Hukum Pidana Indonesia. *Jimmi: Jurnal Ilmiah Mahasiswa Multidisiplin*, 1(3), 293-305.
- Jamil, R. A., Qayyum, U., ul Hassan, S. R., & Khan, T. I. (2024). Impact of social media influencers on consumers' well-being and purchase intention: a TikTok perspective. *European Journal of Management and Business Economics*, 33(3), 366-385.

- Jubaidi, D., & Khoirunnisa, K. (2023). The Significance Of The Living Law Concept In The New Criminal Code: A Perspective Of Progressive Law. Available at SSRN 5068325.
- Kassi, Y., Sakmaf, M. S., & Suryana, A. (2024). Navigating Influencer Liability on Social Media: Balancing Profits and Legal Risks. *Sinergi International Journal of Law*, 2(3), 231-246.
- Nasional, B. P. H. (2021). Hasil Penyelarasan Naskah Akademik Rancangan Undang-Undang Tentang Perubahan Kedua Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik. Jakarta: Kemenkumham RI.
- Nugraha, R. S., Rohaedi, E., Kusnadi, N., & Abid, A. (2025). The Transformation of Indonesia's Criminal Law System: A Comprehensive Comparative between the Old and New Penal Codes. *Reformasi Hukum*, 29(1).
- Ohlhausen, M. K. (2014). Privacy challenges and opportunities: The role of the Federal Trade Commission. *Journal of Public Policy & Marketing*, 33(1), 4-9.
- Putra, M. A. P. (2023). ANALISIS IMPLEMENTASI APARAT PENEGAK HUKUM POLSEK GROGOL PETAMBURAN DALAM PASAL 27 AYAT 2 UU ITE. *Untirta Civic Education Journal*, 8(2), 55-58.
- Ramadaniar, P., Kuswanti, A., & Muqsith, M. A. (2024). Peran Perempuan sebagai Opinion Leader di Pesantren dalam Menghadapi Kerentanan Pangan Akibat Krisis Iklim. *Publish: Basic and Applied Research Publication on Communications*, 3(2), 169-188.
- Rusydi, M. (2021). Hukum dan Moral: Mengulik Ulang Perdebatan Positivisme Hukum dan Teori Hukum Kodrat HLA Hart & Lon F. Fuller. *AL WASATH Jurnal Ilmu Hukum*, 2(1), 1-8.
- Saragih, G. M., Ishwara, A. S. S., & Putra, R. K. (2024). Evaluation of the Implementation of Pancasila Values and Human Rights Enforcement in Indonesian Judicial System Through Constitutional Approach. *Reformasi Hukum*, 28(3), 202-217.
- Syah, R., & Hermawati, I. (2018). Upaya Pencegahan Kasus Cyberbullying bagi Remaja Pengguna Media Sosial di Indonesia The Prevention Efforts on Cyberbullying Case for Indonesian Adolescent Social Media Users. *Jurnal PKS Vol*, 17(2), 131-146.
- Wiryanthi, N. P. E. M. (2025). Peran Hukum Dalam Meningkatkan Etika Bisnis di Perusahaan Media Online. *KERTHA WICAKSANA*, 19(1), 18-28.