

## **Sentencing Based on The Principle of Justice for Victims of Serious Crimes Committed by Minors**

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### **Abstract**

This article analyzes the paradigm shift in the prosecution of criminal cases under the Electronic Information and Transactions Law (ITE Law), from a retributive-formal orientation toward a restorative-proportional orientation within the Indonesian criminal justice system. The urgency of this study arises from the fact that the implementation of the ITE Law has frequently generated legal issues, including multiple interpretations, the criminalization of expression, and tensions between reputation protection, freedom of expression, and legal certainty. The second amendment to the ITE Law through Law Number 1 of 2024 was explicitly motivated by the need to address interpretive ambiguities and controversies within society, while Constitutional Court Decision Number 105/PUU-XXII/2024 further narrows the interpretation of several important provisions, particularly Article 27A, Article 45 paragraph (4), Article 28 paragraph (2), and Article 45A paragraph (2). This research employs a normative juridical method using statutory, conceptual, case-based, and limited comparative approaches grounded in the principle of restorative justice. The research findings indicate that the prosecution of ITE Law cases can no longer be interpreted merely as the transfer of cases to court after the fulfillment of formal legal elements; rather, it constitutes a substantive selection process that considers victims' interests, loss recovery, proportionality, social impact, and the protection of constitutional rights. This article contributes by formulating a limited restorative prosecution model for ITE Law cases, namely by providing opportunities for the termination of prosecution based on reconciliation only in cases with interpersonal characteristics, where no serious public harm arises and where the requirements of Prosecutor's Regulation Number 15 of 2020 are fulfilled.

**Keywords:** ITE Law; Restorative Justice; Prosecution; Dominus Litis; System Justice Criminal

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### **INTRODUCTION**

Digital transformation has expanded the scope of social, economic, political, and cultural interactions within Indonesian society (Koestiono et al., 2025). However, the expansion of the digital sphere has also generated new forms of conflict, particularly those related to reputation, speech, dissemination of electronic information, digital threats, online fraud, and the misuse of electronic systems (Rahman, 2025; Riska Farwati et al., 2023). Since the enactment of Law Number 11 of 2008 concerning Electronic Information and Transactions, digital criminal law in Indonesia has been developed to provide legal certainty regarding increasingly complex electronic activities. The Supreme Audit Agency of the Republic of Indonesia (Badan Pemeriksa Keuangan Republik Indonesia [BPK]) noted that the 2008 Electronic Information and Transactions Law (ITE Law) was established because the globalization of information has positioned Indonesia as part of the global information society, while advances in information technology have given rise to new forms of unlawful acts (Aprilianti, 2025).

However, in practice, the criminal law approach to ITE Law cases has not always produced substantive justice (Flora et al., 2023; Taufiq, 2013). Several cases involving digital expression, particularly defamation and interpersonal speech, demonstrate

tension between reputation protection and freedom of expression (Alforova et al., 2022; Almeida, 2026; Ashik, 2022; Mashdurohatun et al., 2025; Szinek, 2022; Tokat, 2022). The government, through Law Number 1 of 2024, acknowledged that several provisions of the ITE Law, as previously amended by Law Number 19 of 2016, continue to generate multiple interpretations and controversies within society. Therefore, these provisions require revision to promote greater justice and legal certainty. Thus, the urgency of this research lies not only in technological development but also in the necessity to reorganize the state's approach to applying criminal law in resolving digital conflicts.

The paradigm shift has become increasingly evident following the emergence of several legal instruments and policies. First, the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 provides a legal basis for the termination of prosecution based on restorative justice. This regulation, which came into effect on July 22, 2020, specifically regulates the mechanism for terminating prosecution through a restorative justice approach. Second, the Joint Decree of the Minister of Communication and Information Technology, the Attorney General, and the Chief of the National Police of the Republic of Indonesia in 2021 established guidelines for implementing certain provisions of the ITE Law and serves as a reference for law enforcement authorities. Third, Law Number 1 of 2024 and Constitutional Court Decision Number 105/PUU-XXII/2024 have narrowed the scope of interpretation of several norms within the ITE Law. The Constitutional Court, for example, stated that the phrase "other people" in Article 27A and Article 45 paragraph (4) is conditionally unconstitutional unless interpreted as excluding government institutions, groups of people with specific identities, institutions, corporations, professions, or positions. The Constitutional Court also interpreted the phrase "an act" as referring to conduct that degrades a person's honor or reputation.

Although studies on restorative justice and the ITE Law have continued to develop, an important research gap remains. Safitri and Wahyudi (2022) discussed the restorative justice approach in criminal acts of defamation through social media as an implementation of the *ultimum remedium* principle. Afiff Senen (2021) also examined the reconceptualization of law enforcement against perpetrators and victims of ITE Law-related crimes based on restorative justice principles, including at the investigation, prosecution, and trial stages. However, research that specifically positions prosecution as the strategic point of paradigm transformation following the enactment of Prosecutor's Regulation Number 15 of 2020, the 2021 Joint Decree Guidelines for ITE Law Implementation, Law Number 1 of 2024, Constitutional Court Decision Number 105/PUU-XXII/2024, and their harmonization with the National Criminal Code remains relatively limited.

Based on this background, this article aims to: first, analyze the normative basis of the paradigm shift in the prosecution of ITE Law cases toward restorative justice; second, identify the criteria for ITE Law cases that are appropriate and inappropriate to be resolved through the termination of prosecution based on restorative justice; and

third, formulate a limited restorative prosecution model that maintains a balance between victims' interests, legal certainty, protection of freedom of expression, and public interests. This research is expected to provide both theoretical and practical benefits. Theoretically, it contributes to the development of criminal law and restorative justice discourse by positioning prosecution as a strategic filter in the ITE Law case resolution process, particularly following the enactment of various new legal instruments. Practically, the findings of this study can serve as a reference for public prosecutors in determining which ITE Law cases are suitable for termination of prosecution through restorative justice, as well as providing input for policymakers in formulating more specific technical guidelines that maintain a balance between victim protection, freedom of expression, and legal certainty.

## **METHOD**

This research employed a normative juridical method because it focused on examining positive legal norms, legal principles, prosecution doctrines, and restorative justice principles in the context of ITE Law crimes (Huda, 2021; Pujiati, 2024; Sonata, 2014; Yanova et al., 2023). The research applied four approaches. First, the legislative approach examined Law Number 11 of 2008, Law Number 19 of 2016, Law Number 1 of 2024, Law Number 1 of 2023 concerning the Criminal Code, Law Number 1 of 2026 concerning Criminal Adjustments, the Prosecutor's Office Law, and Prosecutor's Office Regulation Number 15 of 2020. Second, the conceptual approach examined the concepts of restorative justice, *ultimum remedium*, *dominus litis*, proportionality, legal certainty, and victim protection. Third, the case approach analyzed Constitutional Court Decision Number 105/PUU-XXII/2024. Fourth, a limited comparative approach was applied by referring to general principles of restorative justice developed by UNODC.

The research was conducted through several stages. The first stage involved the inventory of primary legal materials, including national legal instruments regulating the ITE Law, prosecution, termination of prosecution, restorative justice, and criminal law harmonization. The second stage involved the collection of secondary legal materials, including journal articles and scientific publications from 2021–2026 using the keywords "ITE Law", "restorative justice", "termination of prosecution", "digital defamation", and "Article 27A of the ITE Law". The third stage involved norm extraction based on the following units of analysis: offense type, victim subject, criminal sanctions, forms of loss, potential for recovery, reconciliation requirements, case exclusions, and public interest considerations. The fourth stage consisted of prescriptive analysis to formulate a limited restorative prosecution model.

The validity of the analysis was maintained through normative triangulation by comparing the provisions of the ITE Law with Prosecutor's Regulation Number 15 of 2020, the 2021 Joint Decree on Guidelines for the Implementation of the ITE Law, Constitutional Court decisions, and international restorative justice principles. UNODC recognizes restorative justice as a flexible and participatory approach that can complement conventional criminal proceedings by providing opportunities for victims,

offenders, families, and communities to address the harm caused by criminal acts. Therefore, the evaluation criteria in this study were not limited to the fulfillment of criminal elements but also considered whether prosecution could achieve proportional justice, restoration, and protection of rights.

## **RESULTS AND DISCUSSION**

### **Restorative justice changes orientation prosecution from formalism case going to recovery conflict**

Research results show that Prosecutor's Regulation Number 15 of 2020 has become an important milestone in changing the function of the prosecutor's institution. Restorative justice under this regulation is interpreted as a criminal case resolution mechanism involving perpetrators, victims, the families of perpetrators or victims, and related parties to seek a fair settlement by emphasizing the restoration of the original condition rather than retaliation. This definition demonstrates that prosecution is no longer solely oriented toward proving guilt and imposing punishment but also considers the resolution of the social consequences arising from criminal acts.

However, the implementation of restorative justice is not a mechanism without limitations (Karjono et al., 2024; Noor et al., 2024; Rumengan, 2022; Syah Awaluddin, 2024). Prosecutor's Regulation Number 15 of 2020 requires, among other conditions, that the suspect must be a first-time offender, the criminal act must only be punishable by a fine or imprisonment of no more than five years, and the value of evidence or loss must not exceed Rp2,500,000.00. In addition, there must be efforts for recovery, a peace agreement between the parties, and a positive response from society. The regulation also excludes certain cases, such as crimes against state security, public order, morality, criminal acts with minimum imprisonment provisions, narcotics offenses, environmental crimes, and criminal acts committed by corporations.

In the context of ITE cases, the results of this study indicate that not all forms of digital crimes can be resolved through restorative justice. Interpersonal cases, such as individual defamation, minor threats, or digital communication conflicts that do not create broader social impacts, are more appropriate to be considered for restorative mechanisms. Conversely, ITE cases involving identity-based hate speech, attacks on electronic systems, sexual exploitation, online gambling, large-scale fraud, or actions that disrupt public order are not appropriate to be resolved solely through private reconciliation.

### **Law Number 1 of 2024 and Constitutional Court Decision Narrowing the Scope of Criminalization of Digital Expression**

Law Number 1 of 2024 updates several provisions of the ITE Law because previous norms were considered to still generate multiple interpretations and controversies. This shift is significant because prosecutors can no longer interpret ITE provisions merely as formulations of prohibition but must also consider their constitutional limitations.

Constitutional Court Decision Number 105/PUU-XXII/2024 provides further clarification on this matter. The Constitutional Court limits the meaning of the phrase “other people” in Article 27A and Article 45 paragraph (4), stipulating that electronic defamation provisions cannot be used to protect the reputation of government institutions, institutions, corporations, professions, or positions as subjects referred to as “other people.” Furthermore, the Constitutional Court interprets the phrase “an act” as conduct that degrades a person's honor or reputation, rather than merely an expression of criticism or disagreement.

Regarding Article 28 paragraph (2) and Article 45A paragraph (2), the Constitutional Court also emphasizes that hate-related content must be understood as information that substantively contains acts of incitement or dissemination of hatred based on certain identities, conducted intentionally and publicly, and creating a real risk of discrimination, hostility, or violence.

These findings generate direct consequences for prosecution practices. Prosecutors must conduct substantive filtering from the pre-prosecution stage through the prosecution stage. If a case only contains criticism toward institutions, public positions, public policies, or officials acting in their public capacity, the criminal approach must be positioned as ultimum remedium. Before offering a restorative justice mechanism, prosecutors must first ensure that the alleged conduct genuinely fulfills the elements of the offense based on the constitutional interpretation provided by the Constitutional Court.

#### **Restorative prosecution model- limited in ITE case**

Based on analysis legal materials, restorative prosecution model - limited can formulated through four stage.

**Table 1. Limited Restorative Prosecution Model in ITE Cases**

| <b>Stage</b>              | <b>Question key</b>                                                                                 | <b>Implications prosecution</b>                                           |
|---------------------------|-----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| Selection legality        | Whether actions fulfil element ITE offenses after Law 1/2024 and the Constitutional Court Decision? | If the element No fulfilled, the matter No worthy to be continued.        |
| Selection legal interests | Is the victim a individuals who experience loss concrete, not institutions or position?             | If the object protection No individual, prosecution must be very limited. |
| Restorative selection     | Whether there is recognition, restoration, peace, and response positive public?                     | If met, termination prosecution can considered.                           |
| Selection interest public | Whether case cause hatred, violence, discrimination, harassment public, or broad victims?           | If yes, the matter No worthy completed only through mechanism private.    |

Source: Compiled from various legal sources, including the ITE Law, Prosecutor's Regulation Number 15 of 2020, the 2021 Joint Decree on ITE Law Implementation Guidelines, Constitutional Court Decision Number 105/PUU-XXII/2024, and UNODC restorative justice principles.

This model put prosecutor as controller things that are not only inspect completeness files, but also assess proportionality the use of criminal law. In

perspective this, *dominus litis* is not just authority bestow matter, but rather authority ethical-juridical. For ensure that incoming cases to court of course need adjudication criminal.

The findings of this study reinforce the view that restorative justice in ITE cases must be placed within the framework of *ultimum remedium*. Safitri and Wahyudi (2022) have shown that restorative justice in defamation cases via social media is closely related to the implementation of the *ultimum remedium* principle. This article expands on this view by positioning prosecution as a crucial point, as prosecutors stand between the investigation and the trial. At this point, prosecutors can prevent relational and recovered cases from escalating into criminal prosecutions that could escalate the conflict.

This finding is also related to research Afiff Senen (2021) which emphasizes the need for a reconceptualization of restorative justice in enforcing the ITE Law at the investigation, prosecution, and trial levels. However, this article demonstrates that such reconceptualization needs to be strictly limited. Restorative justice should not be a transactional instrument to purchase case dismissal, especially in cases that impact the public interest. In identity-based hate speech cases, for example, the victims are not always individuals; the impact can extend to vulnerable groups and social order. Therefore, reconciliation between the perpetrator and a particular party does not automatically eliminate the public interest in pursuing prosecution.

Furthermore, Constitutional Court Decision No. 105/PUU-XXII/2024 strengthens the role of public prosecutors as guardians of the constitutionality of law enforcement. Following this ruling, prosecutors cannot simply assess whether electronic content has been disseminated. They must assess whether the content truly attacks an individual's honor, whether there are allegations of specific acts that defame the individual, whether the victim is a natural person, and whether there has been any concrete harm. Therefore, restorative justice-based prosecutions must begin with legal screening, not directly through mediation.

From the perspective of restorative justice theory, this approach aligns with the idea that crime is not only a violation of the state, but also a breakdown in social relations that needs to be restored (Adrianto, 2023; Prasetyo et al., 2025; Syah Awaluddin, 2024). The UNODC emphasizes that restorative justice provides an opportunity for affected parties to participate in resolving and repairing the harm caused by the crime. However, in a modern criminal justice system, restitution must not override the principles of legality, voluntariness, equality of parties, and protection of victims. Therefore, a limited restorative model is more appropriate than an absolute restorative model.

In the context of harmonizing national criminal law, Law Number 1 of 2026 concerning Criminal Adjustment demonstrates that adjusting criminal provisions outside the Criminal Code and the national Criminal Code is necessary to avoid disparities in law enforcement, duplication of regulations, and negative impacts on legal certainty and a sense of justice. This is relevant for ITE cases because several digital

criminal norms overlap with offenses in the Criminal Code, particularly defamation, insults, threats, violations of morality, and public order. Therefore, prosecution of ITE cases must be directed towards harmonization, not simply an accumulation of articles.

Practically, this research offers three implications. First, prosecutors need more specific internal guidelines for expression-based ITE cases, especially following Constitutional Court Decision No. 105/PUU-XXII/2024. Second, the penal mediation process in ITE cases must ensure free, uncoerced consent and not subject victims to coercion. Third, termination of prosecution must be accompanied by clear documentation of reparations, such as an apology, clarification of content, deletion or correction of information, proportional compensation, and a commitment not to repeat the offense.

## CONCLUSION

In conclusion, the Indonesian juvenile justice system does not yet recognize the concept of transferring juvenile offenders to adult criminal procedures or imposing adult sanctions on juvenile offenders, as applied in the United States. Through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (Undang-Undang Sistem Peradilan Pidana Anak [UU SPPA]), Indonesia emphasizes restorative justice and child protection, focusing more on guidance and rehabilitation than on punishment. Although this system aligns with international instruments such as the Convention on the Rights of the Child, it faces normative and sociological dilemmas when addressing serious crimes, such as murder, committed by children. In such circumstances, the limitation that the maximum sentence imposed on children is half of the adult sentence, combined with the absence of a special mechanism based on specific criteria for handling children who commit serious crimes, creates challenges in achieving substantive justice for victims.

A comparison between the Indonesian and United States legal systems reveals significant differences in the treatment of juvenile offenders involved in serious crimes, such as murder. While Indonesia applies a restorative and protective approach through its juvenile justice system, the United States, through mechanisms such as juvenile jurisdictional waivers, allows a more flexible and retributive response that places greater emphasis on accountability and justice for victims. This disparity highlights the limitations of Indonesia's current legal framework in addressing the seriousness of juvenile offenses. As a balanced solution, the application of criminal sanctions for serious crimes based on specific criteria, as previously discussed, is expected to provide protection for children's rights while ensuring proportional justice for victims.

Such a system demonstrates that the state does not disregard the consequences of serious crimes, even when committed by children, while still ensuring opportunities for rehabilitation and recovery for victims and their families. It also conveys that offenders must be held accountable in proportion to the severity of their crimes. This approach would allow for case-by-case assessments and individualized sentencing without compromising international child protection standards. Implementing such a framework

would enhance the responsiveness and fairness of Indonesia's legal system in addressing serious crimes committed by children. However, revising the maximum sentencing limits for juvenile offenders requires comprehensive review and careful legislative reform to prevent violations of children's rights and ensure that the juvenile justice system remains oriented toward rehabilitation and social reintegration.

## REFERENCES

- Adrianto, I. (2023). Konsep penerapan restorative justice oleh penyidik kepolisian dalam pasal-pasal KUHP baru. *Janaloka*, 2(8).
- Affiff Senen, Z. (2021). Rekonseptualisasi penegakan hukum terhadap pelaku dan korban Undang-Undang Informasi dan Transaksi Elektronik berbasis *restorative justice*. *Jurnal Lex Renaissance*, 6(2). <https://doi.org/10.20885/jlr.vol6.iss2.art4>
- Alforova, T. M., Koba, M. M., Lehka, O. V., & Kuchuk, A. M. (2022). Right to freedom of expression v. reputation protection (Based on ECtHR practice materials). *The Age of Human Rights Journal*, 18, 311–330.
- Almeida, B. S. dos S. M. de. (2026). *Navigating cyberspace: Unraveling the future of freedom of expression in the age of digital platforms*.
- Aprilianti, A. (2025). Efektivitas dan implementasi Undang-Undang Informasi dan Transaksi Elektronik sebagai hukum siber di Indonesia: Tantangan dan solusi. *Begawan Abioso*, 15(1). <https://doi.org/10.37893/abioso.v15i1.1002>
- Ashik, S. M. M. H. (2022). *Limiting freedom of expression in digital platforms: Between state obligations and intermediary moderation in a multicultural context* (Master's thesis, McGill University, Canada).
- Flora, H. S., Sitanggang, T., Simarmata, B., & Karina, I. (2023). Keadilan restoratif dalam melindungi hak korban tindak pidana cyber: Manifestasi dan implementasi. *Jurnal Ius Constituendum*, 8(2). <https://doi.org/10.26623/jic.v8i2.6365>
- Huda, M. C. (2021). *Metode penelitian hukum (Pendekatan yuridis sosiologis)* (I. Muhsin, Ed.). The Mahfud Ridwan Institute.
- Karjono, A., Malau, P., & Ciptono, C. (2024). Penerapan restorative justice dalam hukum pidana berbasis kearifan lokal. *Jurnal USM Law Review*, 7(2). <https://doi.org/10.26623/julr.v7i2.9571>
- Koestiono, F., Hapsari, A. P., Permadi, R., Muchlis, M., & Metalia, D. (2025). Pengaruh media sosial terhadap pembentukan opini publik tentang hukum. *Jurnal ISO: Jurnal Ilmu Sosial, Politik dan Humaniora*, 6(1). <https://doi.org/10.53697/iso.v6i1.3287>
- Mashdurohatun, A., Sugihartono, B., Masrifah, N., Adhi, A. I. K., & Glaser, H. (2025). Combating digital defamation: Regulations, challenges and protecting reputation. *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 3(3), 486–514.
- Noor, G., Sari, A., Sinta, W., & Pramudita, D. (2024). Tinjauan filosofis keadilan restoratif dalam lensa teori keadilan. *Hukum dan Politik dalam Berbagai Perspektif*, 3.
- Prasetyo, D. S., Setyorini, E. H., & Michael, T. (2025). Penadahan digital: Analisis sistematis kebutuhan pengaturan dalam UU ITE. *Journal of Innovation Research and Knowledge*, 4(12).
- Pujiati. (2024). *Metode penelitian yuridis normatif di bidang hukum*. Deepublish.
- Rahman, F. (2025). Demokrasi digital dan ujaran kebencian: Antara kebebasan



- berekspresi dan represi politik. *MEDIASI: Jurnal Kajian dan Terapan Media, Bahasa, Komunikasi*, 6(3).
- Riska Farwati, W., Yuliyanti, W., & Rahayu Ningsih, W. P. (2023). Ujaran kebencian dan perundungan di dunia maya: Tantangan etika dalam ruang digital Indonesia. *JISPENDIORA: Jurnal Ilmu Sosial, Pendidikan dan Humaniora*, 2(3). <https://doi.org/10.56910/jispendiora.v2i3.1001>
- Rumengan, R. (2022). Asas keadilan restoratif (*restorative justice*) dalam penanganan perkara tindak pidana informasi dan transaksi elektronik. *Lex Crimen*.
- Safitri, M. N., & Wahyudi, E. (2022). Pendekatan *restorative justice* dalam tindak pidana pencemaran nama baik melalui media sosial sebagai implementasi asas *ultimum remedium*. *Esensi Hukum*, 4(1).
- Sonata, D. L. (2014). Metode penelitian hukum normatif dan empiris: Karakteristik khas dari metode meneliti hukum. *Fiat Justisia*, 8(1), 15–35. <https://doi.org/10.25041/fiatjustisia.v8no1.283>
- Syah Awaluddin. (2024). Keadilan restoratif: Konsep dan pengaturannya dalam sistem hukum Indonesia. *Amandemen: Jurnal Ilmu Pertahanan, Politik dan Hukum Indonesia*, 1(1).
- Szinek, J. (2022). *The impact of digital platforms and social media on freedom of expression and pluralism—In specific terms*. *Prawo w Dzialaniu*, 49, 134–151.
- Taufiq, M. (2013). Penyelesaian perkara pidana yang berkeadilan substansial. *Yustisia Jurnal Hukum*, 2(1). <https://doi.org/10.20961/yustisia.v2i1.11058>
- Tokat, Y. (2022). *Are internet regulation and freedom of speech at odds? How can the Balkanization of the Internet affect users' freedoms on the Internet?*
- Yanova, M. H., Komarudin, P., & Hadi, H. (2023). Metode penelitian hukum: Analisis problematika hukum dengan metode penelitian normatif dan empiris. *Badamai Law Journal Magister Hukum Universitas Lambung Mangkurat*, 8(2).