

Penal Policy on Digital Defamation: A Comparative Study of Indonesian and Malaysian Law

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Abstract

The expansion of criminal defamation in digital space, particularly under Indonesia's ITE Law, has raised concerns over disproportionate restrictions on freedom of expression compared to neighboring jurisdictions such as Malaysia. This study aims to examine how Indonesia and Malaysia regulate criminal defamation and to identify key differences in their penal policies. The central issue is whether reliance on criminal law as a primary regulatory instrument leads to disproportionate interference with freedom of expression in both jurisdictions. This research employs a normative juridical method with a comparative law approach, analyzing Article 27A of Law No. 1 of 2024 (ITE Law), the new Indonesian Criminal Code, and Sections 499–502 of the Malaysian Penal Code, complemented by the Defamation Act 1957 and Constitutional Court Decision No. 105/PUU-XXII/2024. The findings indicate three



principal differences. Indonesia maintains a broader scope of criminalization with imprisonment as a dominant sanction, whereas Malaysia tends to prioritize civil remedies. Malaysia also demonstrates more developed defenses grounded in public interest. At the same time, Indonesia's approach remains less structured in distinguishing legitimate criticism from defamation and in translating principles of reputation protection into proportional legal standards. The study concludes that Indonesia's current framework risks over-criminalization and requires reform to ensure proportionality. Criminal sanctions should be applied as a last resort (*ultimum remedium*), supported by mandatory mediation and clearer normative boundaries.

Keywords

Penal Policy, Cyber Defamation, Freedom of Expression, IT Law, Comparative Criminal Law.

Introduction

The digital era presents a paradox between freedom of expression and the protection of personal honor, as information technology accelerates the dissemination of opinions and criticism. While this development expands democratic space, it also creates opportunities for the misuse of social media to attack individual reputation. The increasing incidence of online defamation has led many countries, including Indonesia and Malaysia, to seek an appropriate legal balance between freedom of speech and the protection of dignity.

The civil law system in Indonesia, which is codified, responded to this phenomenon by improving the legal apparatus, particularly in the Criminal Code, as reformed under Law No. 1 of 2023, and Law No. 1 of 2024, the second amendment to Law No. 11 of 2008 on Electronic Information and Transactions. Both of these regulations explicitly contain provisions regarding defamation or honor in digital media. The implementation practices have drawn widespread criticism, especially because they are seen as potentially criminalizing legitimate expressions in a democratic country, including public criticism of state officials.

In response, the Constitutional Court of the Republic of Indonesia issued a progressive decision limiting the legitimacy of defamation complaints to parties directly harmed.¹ The decision, as articulated by A. Hidayat, represents an important milestone in cyber law reform, emphasizing that the protection of personal honor must not function as a “shield” to suppress criticism in the public interest, particularly in relation to the application of Article 27A.²

Further arguments presented in the Constitutional Court proceedings, including expert testimony by Herlambang P. Wiratraman, also refer to SAFENet data indicating a continuing increase in the criminalization of expression in digital spaces. In the second quarter of 2023, at least 27 cases were recorded involving 33 victims, with several incidents drawing significant public attention, particularly the Bima and SFA cases, both of which arose from criticism of local government performance.³ Recent reports similarly indicate a persistent pattern of violations of freedom of expression in the digital sphere.⁴ In the third quarter of 2024, 42 cases were documented, involving 33 victims, reflecting the continued occurrence of such practices despite fluctuations in broader cyber incident trends.

Defamation is an international term that encompasses the full range of legal actions that attack a person's honor or good name. In contrast, defamation and/or “insult” are generally used in Indonesian studies. Malaysia tends to adopt a mixed legal system, maintaining the fundamentals of common law while exhibiting distinct dynamics. Malaysia maintains criminal provisions against defamation (Latin: *diffamare*), which can be divided into 2 categories, namely Libel (written or digital slander) and Slander (verbal slander).

Malaysian law tends to limit the scope of criminalization in order to protect the right to freedom of speech. A case of interest was the fine imposed on a Malaysian news portal for a reader's comment that insulted

¹ Reuters, “Indonesian Court Bans Government, Company from Defamation Complaints,” Reuters, 2025.

² Raden P A Ginanjar, “MK Putuskan Pasal Pencemaran Nama Baik Di UU ITE Tidak Berlaku Untuk Pemerintah, Korporasi Dan Kelompok,” 2025.

³ Mahkamah Konstitusi Republik Indonesia, Putusan Mahkamah Konstitusi Nomor 105/PUU-XXII/2024 tentang pengujian Undang-Undang Nomor 1 Tahun 2024 (2025).

⁴ Anton Muhajir, “Laporan Pemantauan Hak-Hak Digital Triwulan III 2024,” SAFENet, 2025.

the judiciary, despite its removal. The case sparked widespread debate about the limits of media accountability and press freedom in the country.⁵

The comparison of approaches between Indonesia and Malaysia illustrates two poles in responding to online defamation: one is more repressive, and the other is moving towards decriminalization. This divergence reflects broader regional dynamics in defining the proportional limits of state intervention in digital expression, particularly in balancing freedom of expression and the protection of reputation in Southeast Asia.

Research by A. Sugitanata highlights the relationship between democracy, public participation, and social justice within the framework of *maqāṣid al-sharīa*.⁶ Bakashmar examines the concept of actual malice in digital media from a civil law perspective, emphasizing the protection of reputation through non-criminal mechanisms.⁷ A.M. Hadi finds that the regulation of digital crimes under the current ITE Law remains inadequate in ensuring justice and protecting victims. This is reflected in the ambiguity of legal elements, limited victim protection mechanisms, and disproportionate sanctions.⁸ However, existing studies tend to address defamation from a predominantly normative or single-jurisdiction perspective, largely relying on doctrinal analysis of statutory frameworks and judicial materials, resulting in a fragmented understanding that fails to capture the comparative dimension between Indonesia and Malaysia, particularly regarding the proportional use of criminal law in the digital context. The comparative dimension, particularly regarding the effectiveness of law enforcement and the balance between protecting reputation and freedom of expression in

⁵ Global Freedom of Expression, "Attorney General of Malaysia v. Mkini Dotcom Sdn Bhd," Global Freedom of Expression, 2021.

⁶ Arif Sugitanata et al., "Integrasi Maqashid Syariah Terhadap Sistem Pemerintahan Demokratis Dan Otoriter Di Negara Baru Merdeka," *Al-Balad: Jurnal Hukum Tata Negara Dan Politik Islam* 3, no. 3 (2023): 167–86.

⁷ Muhammad Rashaad Bakashmar, Noor Inayah Ya'Akub, and Chan Sai Keong, *Perspectives in Business, Information & Human Sciences* (Kajang, Selangor Darul Ehsan: IKRAM Education Sdn. Bhd. for Infrastructure University Kuala Lumpur, 2024).

⁸ Adwi Mulyana Hadi, "Cyber Crime in Renewing The ITE Law to Realize The Goals of Legal Justice," *Journal of Law, Society, and Islamic Civilization* 12, no. 1 (April 2024): 49, <https://doi.org/10.20961/jolsic.v12i1.85197>.

practice, remains insufficiently explored, despite recent studies highlighting persistent ambiguities in defamation provisions, enforcement biases, and the need for further comparative inquiry. Despite these contributions, no prior study has systematically compared how Indonesia and Malaysia operationalize criminal defamation in practice, particularly in assessing the proportionality of criminal sanctions in balancing reputation protection and freedom of expression in digital contexts. Accordingly, this study compares how both jurisdictions define and enforce online defamation within contemporary digital platforms.

This study examines how digital defamation is regulated under the positive laws of Indonesia and Malaysia, how penal policies in both jurisdictions differ in addressing such offenses, and to what extent law enforcement practices ensure a proportional balance between the protection of reputation and freedom of expression. To provide analytical clarity, this study addresses the following research questions: (1) How is digital defamation regulated under Indonesian and Malaysian law? (2) What are the main differences in penal policy between the two legal systems? (3) How can Indonesia reform its criminal defamation regulation to better balance freedom of expression and reputation protection?

Method

This study uses a normative legal method, focusing on the analysis of statutory regulations and judicial practices, and applies the statute and comparative legal approaches.⁹ The comparative analysis is conducted through a functional approach, examining how each legal system addresses similar legal issues. This approach enables the study to assess not only formal legal provisions but also their practical application and effectiveness in both jurisdictions.

Primary legal materials include the Indonesian Criminal Code, Law No. 1 of 2024 on Electronic Information and Transactions, relevant Constitutional Court decisions, the Malaysian Penal Code, and the

⁹ Putu Oka Surya Atmaja, "Comparative Study Mekanisme Penyelesaian Dalam Sistem Peradilan Pidana Indonesia Dan Inggris," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 8, no. 1 (May 2019): 90, <https://doi.org/10.24843/JMHU.2019.v08.i01.p07>.

Defamation Act 1957. Secondary materials consist of scholarly journals, legal commentaries, and academic publications. Additional supporting materials are derived from selected court decisions, including Decision No. 3564/Pid.Sus/2020 of the Medan District Court.

The collected materials are analyzed qualitatively using a comparative analytical framework to identify similarities and differences between the two legal systems, and to evaluate the proportionality of criminal law policies in balancing reputation protection and freedom of expression.

Result and Discussion

A. Defamation Regulations in Indonesia

The regulation of defamation in Indonesia is currently governed within a dual legal framework, consisting of the Criminal Code (KUHP), which remains applicable during the transitional phase, and the new Criminal Code under Law No. 1 of 2023, alongside Law No. 1 of 2024 on Electronic Information and Transactions (hereinafter referred to as the amended ITE Law). Articles 310 and 311 of the Criminal Code (WvS), which continue to apply during this transitional period before the full enforcement of Law No. 1 of 2023, regulate the general offenses of insult and defamation under the KUHP (Art. 310–311). In this respect, their application may be understood within general principles of temporal criminal law, where cases arising before the full enforcement of Law No. 1 of 2023 (2 January 2026) are still assessed under the previous Criminal Code, while subsequent cases are subject to the new Code, subject to the mandatory application of more lenient provisions where applicable. This transitional condition reflects the application of the legality principle and the doctrine of “*lex mitior*”, whereby the more lenient provision shall apply to the accused when it is more favorable, thereby ensuring legal certainty during the shift from the old to the new Criminal Code.

In Article 310 of the Criminal Code, it is stated that a person who attacks the honor or good name of another person by accusing them of doing something so that it becomes known to the public can be punished for defamation. In parallel with this transitional framework, Law No. 1 of

2023 introduces a recodification of defamation provisions, particularly under Article 433 and related provisions, clarifying that the object of protection is limited to individuals. This limitation has significant implications for legal protection, as it narrows the scope of criminal defamation and reduces the risk of overcriminalization, particularly in cases involving criticism of public institutions. However, it simultaneously raises questions regarding the extent to which reputational harm to collective entities, such as corporations or state institutions, can be effectively addressed within the current legal framework, thereby revealing a potential normative gap between individual protection and collective reputational interests.¹⁰

Furthermore, the *lex specialis* of the ITE Law regulates defamation through electronic media, specifically in Article 27(3) of Law No. 11 of 2008 on ITE, which Article 27A has replaced under Law No. 1 of 2024 (the amended ITE Law). Currently, the applicable positive law governing electronic defamation is Article 27A of the amended ITE Law, which functions as the primary *lex specialis*. Nevertheless, the coexistence of Article 27A of the ITE Law and Article 433 of the Criminal Code raises the potential for normative overlap between *lex specialis* and *lex generalis* regimes, particularly in determining prosecutorial preference, classifying conduct, and assessing the proportionality of sanctions. In the absence of clear doctrinal or statutory guidance, this overlap creates a risk of inconsistent application and selective enforcement.

Although Article 27(3) has been revoked and reformulated under Article 27A of Law No. 1 of 2024, its earlier application remains important for examining transitional judicial responses before Law No. 1 of 2023 is fully applied. This provision stipulates that any person who intentionally attacks the honor or reputation of another by making an accusation, with the intent of making it accessible to the public through Electronic Information and/or Electronic Documents, may be subject to criminal sanctions (Law No. 1 of 2024, Art. 27A). Article 27A of Law No. 1 of 2024 reflects an effort to reduce uncertainty in the interpretation of

¹⁰ Legal Challenges in Criminal Execution of The Environmental Crime Cases in Indonesia: Efforts Toward Criminal Law Reform. Read on Anis Widyawati et al., "Legal Challenges in Criminal Execution of The Environmental Crime Cases in Indonesia: Efforts Toward Criminal Law Reform," *Jambe Law Journal* 9, no. 1 (2026): 53–88, <https://doi.org/https://doi.org/10.22437/k1djt237>.

online defamation provisions, particularly regarding public criticism expressed through digital platforms.¹¹ Within this re-codification framework, Article 433 reinforces the limitation of defamation to individual interests, which, in turn, interacts with the application of sectoral provisions, such as the ITE Law, in shaping the scope of criminal liability. This development reflects a shift toward greater legal certainty; however, its effectiveness in practice remains dependent on consistent interpretation and implementation by law enforcement authorities.

Decision No. 105/PUU-XXII/2024, read on April 29, 2025, tested the constitutionality of Article 27A in conjunction with Article 45 paragraph (4) of the ITE Law. In the decision, the Court emphasized the importance of caution in interpreting the phrase "attacking honor or defamation" to avoid its use to silence legitimate criticism in a democratic society. It highlighted the principles of proportionality and subsidiarity in the application of criminal sanctions against freedom of expression. The study finds that the provisions of Article 27 (3) on defamation, Article 28 (1) and (2) on the dissemination of false information and hate speech, and Article 45 about criminal sanctions. The enforcement of these articles is frequently marked by interpretive uncertainty and subjectivity, creating room for potential abuse as a tool to curtail public criticism of the government and state officials.¹²

Medan District Court Decision No. 3564/Pid.Sus/2020/PN.Mdn demonstrates how online criticism directed at public institutions may still be interpreted as criminal defamation when the expression is considered excessive or degrading. The court emphasized that the manner and context of the expression transformed the criticism into an attack on personal reputation. This judgment reflects a judicial tendency in Indonesia to prioritize the protection of individual reputations, even though it contains elements of legitimate criticism. It can reflect ITE criminal law, whether it is truly aimed at protecting honor or is a suggestion to silence criticism. This condition indicates that, in practice, Indonesia's defamation law

¹¹ Munir, "Kajian Pasal 27 A UU No. 1 Tahun 2024 Tentang Perubahan Kedua Undang-Undang Nomor 8 Tahun 2008 Tentang ITE," *Fundamental: Jurnal Ilmiah Hukum* 13, no. 2 (September 2024): 1–12, <https://doi.org/10.34304/jf.v13i2.284>.

¹² Emi Puasa Handayana, Zainal Arifin, and Zico Junius Fernando, "Criminal Penalties in Cyberspace: Between the Development of Digital Democracy and Authoritarianism," *Indonesian Journal of Criminal Law Studies* 10, no. 1 (2025), <https://doi.org/10.15294/ijcls.v10i1.19652>.

enforcement tends to emphasize punitive measures rather than restorative outcomes. From an effectiveness perspective, criminal sanctions do not always provide optimal protection for victims, as the process is often lengthy and does not necessarily restore reputations. At the same time, such enforcement may disproportionately affect perpetrators, particularly in cases involving public criticism, thereby reflecting an imbalance in the protection of both parties within legal practice.

B. Defamation Regulations in Malaysia

The regulation on defamation in Malaysia has a different basis than in Indonesia, as its legal system is based on the common law tradition, which emphasizes case law and judicial interpretation. The act of defamation is regulated by two legal regimes: criminal law under the Penal Code and civil law under the Defamation Act 1957, which is based on the English Defamation Act.¹³ In the context of online media, criminal law can be used, but the approach is more selective than in Indonesia.

The criminal perspective in Sections 499 to 502 of the Malaysian Penal Code regulates defamation (criminal defamation), with the main element being that a statement intentionally made to damage a person's reputation can be subject to criminal sanctions.¹⁴ However, the application of this article is quite rare and is often criticized for potentially threatening freedom of expression. In addition, the Communications and Multimedia Act 1998, especially Section 233, prohibits using a communications network to convey content that is "disgusting, indecent or threatening," which can include defamatory content. This article is often used as the basis for online defamation cases.¹⁵ Malaysia has other regulations related to cyber defamation, referring to the Malaysia Penal Code (MPC), "Special Defense", which is regulated more comprehensively. Basically,

¹³ Wong Chong Wah and Wong Chun Keat, "Malaysia Media Law Guide: Defamation, Privacy and Data Protection" (Carter-Ruck, August 2025).

¹⁴ Wah and Keat.

¹⁵ Steven Thiru, "Section 233(1)(a) of the Communications and Multimedia Act 1998 Creates a Chilling Effect on Freedom of Speech and Expression, and Should Be Repealed," 2025.

Special Defense for criminal acts of defamation and cyber defamation is for the public good and in good faith.¹⁶

Malaysia's legal approach aligns with the principle of *hifz al-'ird*, emphasizing the protection of honor. This principle holds that honor is an integral part of human rights, to be maintained by the state and society.¹⁷ However, there is a tendency in Malaysia to resolve defamation or honor disputes through civil channels. The Defamation Act 1957 provides that an aggrieved party may file a lawsuit for damages against the perpetrator without going through the criminal process. The court can award compensatory damages or exemplary damages/punitive damages against the defendant, for example in the case of *Ling Wah Press Sdn Bhd & Ors v Tan Sri Dato' Vincent Tan Chee Yioun* [2000] 4 MLJ 77, the Federal Court confirmed the award of damages of RM.7 million to the plaintiff as compensation for the loss of reputation suffered by the victim due to an article published by the defendant. In some cases, the courts also consider public interest and press freedom, especially when statements are made by the media or in the context of public interest.¹⁸ On the other hand, Media Sinar Project argues that the Malaysian government has been increasingly monitoring its citizens' activities in cyberspace, especially targeting journalists, activists, and opposition figures who voice criticism. Legal action against them is often pursued under Article 233 of the Communications and Multimedia Act 1998. The judiciary held that the limitation imposed on freedom of expression was permissible under the Federal Constitution.¹⁹

Based on decisions of regional human rights courts in Europe, the Americas, and Africa, several key principles are used to assess restrictions on freedom of expression to protect an individual's honor or name. This is also adopted by Malaysian law. The European Court of Justice

¹⁶ N Husnita, "Pembaruan Special Defence Dalam Tindak Pidana Pencemaran Nama Baik Melalui Media Elektronik Di Indonesia (Studi Komparasi Dengan Malaysia)," *Jurnal Hukum Lex Generalis* 3, no. 7 (2022): 589–608, <https://doi.org/10.56370/jhlg.v3i7.176>.

¹⁷ Ady Thea DA, "Mengenal Tiga Model Pertanggungjawaban Platform Digital," hukumonline.com, n.d.

¹⁸ Ahmad Masum and Md Rejab Md Desa, "Media and the Libel Law: The Malaysian Experience," *Procedia - Social and Behavioral Sciences* 155 (November 2014): 34–41, <https://doi.org/10.1016/J.SBSPRO.2014.10.252>.

¹⁹ Sinar Project, "Freedom of Expression in the Digital Space" (Sinar Project, August 2025).

emphasized that statements made in the context of public debate and that serve the public interest are afforded a higher level of protection. The benchmark is that freedom of expression in public-interest discourse is crucial. If an expression is closely related to public issues, then its protection must be prioritized. Determining whether an expression falls within the realm of public interest depends greatly on the context of the case; The public status of an individual affects the level of legal protection. Public figures such as politicians or government officials have (less stringent) reputation protection restrictions than ordinary citizens. The characteristics of publications and their impacts need to be distinguished between two forms of expression: statements of facts and opinions (value judgments). Statements of fact must meet the requirements of verifiable truth. At the same time, opinions do not require absolute proof but must still be supported by a sufficient factual basis to be considered legitimate.²⁰ E. Reid holds a similar view, observing that the Russian state is still regarded as deficient in upholding the doctrine of freedom of expression, even where the act of expression carries the potential to damage reputation, which should retain value for both the communicator and the recipient of the information.²¹ This principle is formally recognized by the Russian Federation's ratification of the European Convention on Human Rights, yet its practical implementation in the courts has not been consistent. The normative worth of freedom of expression in relation to the protection of reputation is therefore conditional and context-dependent rather than absolute.

Malaysia's approach differs from Indonesia's, as it prioritizes non-criminal resolution and encourages the use of civil channels. In addition, there is strong discourse from civil society and human rights organizations in Malaysia calling for the decriminalization of defamation to protect freedom of speech and avoid a chilling effect on the media and activists.²²

²⁰ Dian Rositawati and et al., *Melindungi Ekspresi: Analisis Pidana Dan HAM Putusan Pengadilan Di Indonesia* (Jakarta Selatan: LeIP, 2023).

²¹ Elspeth Reid, "Defamation and Political Comment in Post-Soviet Russia," *Review of Central and East European Law* 38, no. 1 (2013): 1–36, <https://doi.org/https://doi.org/10.1163/092598812X13274154887222>.

²² Rajini Kumar Sreedharam and Bavani Ramayah, "Sedition Law and the Bloggers' Freedom of Expression in Malaysia," *Jurnal Undang-Undang Dan Masyarakat* 26, no. 2020 (September 2020): 85–96, <https://doi.org/10.17576/juum-2020-26-10>.

Malaysia generally still maintains criminal provisions regarding defamation. Still, in practice, the law shows caution and a tendency not to make criminal law the primary instrument for responding to offensive digital expression.²³ This approach differs slightly from Indonesia's, which still uses criminal provisions to regulate defamation online.

C. Legal Comparison Of Regulations In Indonesia And Malaysia

R. Atmasasmita stated that comparative law is a scientific discipline that conducts systematic studies through an analytical-critical approach to various legal systems (especially criminal law) by comparing two or more different legal systems.²⁴ This comparative method aims to identify similarities and differences between legal systems, thereby contributing to both theoretical and practical areas. The comparison highlights key differences in legal approaches and implementation of defamation regulations in Indonesia and Malaysia. Here are some comparative points that need to be considered:

Table. Comparative Overview of Defamation Law in Indonesia and Malaysia

Aspect	Indonesia	Malaysia
Legal System	Civil law (codified statutes)	Common law (case-based)
Main Regulation	ITE Law (Art. 27A), Criminal Code	Defamation Act 1957, Penal Code
Use of Criminal Law	Frequently applied	Selectively applied
Primary Remedy	Criminal sanctions (imprisonment possible)	Civil remedies (damages)
Protection of Expression	Relatively limited in practice	More developed through defenses
Boundary Criticism vs Defamation	Less clearly defined	More structured through case law

²³ Chad de Guzman, "Malaysia's Politicians Keep Suing Each Other for Defamation," TIME, 2023.

²⁴ Romli Atmasasmita, *Perbandingan Hukum Pidana Kontemporer*, ed. Edisi revisi (Kencana, 2020).

Enforcement Pattern	Higher number of prosecutions	More restrained enforcement
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1. Legal Approaches: Repressive vs. Selective

Indonesia's legal approach to criminal defamation tends to be repressive, both under the Criminal Code (KUHP) and the IT. Law (ITE). Indonesian criminal law regulates defamation in online media with quite severe sanctions, as reflected in Article 27A of the ITE Law, which provides a clear opportunity for parties who feel insulted to report the matter to the police. This approach is also supported by the Constitutional Court's decision, which emphasized the importance of protecting good names, even while accommodating freedom of expression.²⁵ According to Muladi, ‘currently there has been a shift in the concept of justice in resolving criminal cases, moving from retributive or prosecutorial justice, which is inherent in the criminal justice system, towards restorative justice, emphasizing the restorative or healing aspect for those affected by crime’.²⁶ Meanwhile, Malaysia is more selective in applying criminal law to defamation cases and prefers civil channels through the Defamation Act 1957. Although the Penal Code still provides grounds for criminal action, most defamation cases are resolved through damages and compensation awarded by the court. Use of Section 233 of the CMA is more limited to cases involving malicious intent or content that is clearly detrimental to another party.

2. The Line Between Criticism and Defamation.

One significant difference is the boundaries between criticism and defamation. In Indonesia, the ITE Law addresses the distinction between criticism and defamation through articles that provide broad room for interpretation, which can lead to excessive speech or misuse by parties who feel disadvantaged. This may result in the undue

²⁵ Emaliawati Emaliawati, “Defamation in the Digital Age: An Analysis of the Application of Restorative Justice under Indonesian Criminal Law,” *Intellectual Law Review (ILRE)* 2, no. 1 (2024): 32–45, <https://doi.org/10.59108/ilre.v2i1.62>.
²⁶ Muhtar Hadi Wibowo, Ali Masyhar Mursyid, and Anis Widyawati, “Progressionism Restorative Justice Policies in Achieving Rehabilitative Criminal Justice,” *Indonesian Journal of Criminal Law Studies* 9, no. 1 (2024): 117–38, <https://doi.org/https://doi.org/10.15294/ijcls.v9i1.50292>.

restriction of freedom of expression, particularly when it concerns critical remarks directed at public officials.

Malaysian courts have given priority to the principle of freedom of expression and have avoided using criminal law to punish legitimate criticism, especially in public-interest contexts. For example, in several decisions, the courts have emphasized that comments or statements that contain elements of criticism of public institutions or individuals in public life must be distinguished from allegations of defamation.

3. Effectiveness of Law Enforcement and Protection of Victims

Overall, Indonesia has more legal cases related to online defamation than Malaysia. This can be explained by Indonesia's more repressive legal approach, in which more individuals are involved in legal processes with criminal sanctions. However, this also indicates the risk of a chilling effect, in which individuals or groups become reluctant to express opinions or criticism openly for fear of criminal sanctions. Although Malaysia has shown a tendency to decriminalize defamation, this provision also has a weakness: the potential inability of victims to obtain adequate protection, especially if the defamation is committed by a party who lacks sufficient assets to compensate for losses through civil channels.²⁷

4. Freedom of Expression vs. Protection of Honor/Good Name

A fundamental difference lies in the relationship between freedom of expression and the protection of individual honor. Indonesia, despite its constitutional guarantee of human rights, shows a stronger inclination to safeguard personal honor and reputation by adopting stricter, more repressive regulatory measures. This is clearly reflected in the legislation governing defamation in online media, where there remains a significant risk of narrowing the space for public criticism and freedom of expression.

Malaysia has adopted a more cautious stance, seeking to avoid measures that could unduly endanger freedom of expression by

²⁷ The inability of perpetrators to satisfy compensation obligations through civil remedies highlights the necessity of effective asset recovery mechanisms, particularly in transnational contexts, where enhanced procedural coordination and stronger institutional cooperation among law enforcement agencies are essential. Read on Wahyu Sinta Dewi Pramudita and Anis Widyawati, "Transnational Enforcement Through the Indonesia–Singapore Extradition Framework Against Corruption," *Jurnal USM Law Review* 8, no. 3 (2025), <https://doi.org/10.26623/julr.v8i3.13066>.

confining the use of criminal law to cases that clearly exhibit malicious intent or involve the dissemination of information causing substantial harm. Within the common law tradition, judicial protection of public criticism tends to receive broader constitutional tolerance, particularly when the expression concerns governmental affairs or matters of public interest.

Both Indonesia and Malaysia recognize reputational protection not only in positive law but also through broader ethical principles recognized in Islamic legal thought. In the Qur'an, Surah al-Ḥujurāt verse 12 explicitly prohibits insults, prejudice, and backbiting against others.²⁸ This shows that the legal approach that emphasizes the protection of a person's reputation is grounded not only in positive legal values and human rights but also in Islamic religious ethics. Therefore, criminal law against defamation, if applied proportionately rather than repressively, can be compatible with principles of Islamic law. Defamation is an act that is forbidden and falls into the category of ta'zir punishment (determined by the judge as the bearer of legitimacy in the field of sentencing).²⁹

The differences in how Indonesia and Malaysia apply the law to defamation cases in online media are examined using the Comparative Legal Theory perspective, especially through the concept of legal culture introduced by L.M. Friedman. According to this theory, the implementation of a country's laws is influenced by multiple factors, including social, political, and cultural backgrounds. Thus, Indonesia's repressive policies and Malaysia's selective approach reveal variations in the legal traditions and values adopted by the people of the two countries.³⁰

²⁸ Hailen Ike Yunida et al., "Prasangka Buruk Sebagai Simbol Memakan Daging Bangkai," *Ta'wiluna: Jurnal Ilmu Al-Qur'an, Tafsir Dan Pemikiran Islam* 5, no. 3 (2024): 810–23, <https://doi.org/10.58401/takwiluna.v5i3.1880>.

²⁹ Mareta Bayu Sugara, "Tinjauan Fiqh Jinayah Terhadap Pencemaran Nama Baik," *Jurnal Intelektualita: Keislaman, Sosial Dan Sains* 6, no. 2 (December 2017): 243–54, <https://doi.org/10.19109/intelektualita.v6i2.1609>.

³⁰ Satria Dwie Rahardja and Zainal Arifin Hoesein, "Comparison Of Legal Systems In The Perspective Of Contemporary Issues And Their Application In Indonesia," *International Journal of Social Service and Research* 4, no. 12 (December 2024): 1–2, <https://doi.org/10.46799/ijssr.v4i12.1149>.

Although both countries share a commitment to protecting individuals' good names, they differ in how they respond to online defamation cases. Indonesia prioritizes criminal law to protect individuals from defamation, while Malaysia tends to use civil law and prioritizes freedom of expression. Malaysia's tendency can be seen in the case of the Malaysian Court sentencing former PM Muhyiddin Yassin to pay \$308,078 (1.35 million ringgit) in damages to Lim G. Eng for defamation on Facebook. Muhyiddin was ordered to retract his statement and was barred from repeating the claim, then he said he would appeal.³¹

D. Urgency of Regulation Update in Indonesia

Based on a comparison between legal regulations in Indonesia and Malaysia, several recommendations can be considered for regulatory updates in Indonesia, regarding defamation of honor/good name in online media:

1. Affirming the Boundaries between Criticism and Defamation

One important step is to provide a clearer definition of the distinction between legitimate criticism and defamation in the context of online media. Indonesia could adopt a clearer principle in law, such as that implemented in Malaysia, which states that criticism of public officials or institutions should be exempt from criminal penalties, as long as the criticism is done constructively and does not exceed the limits of reasonableness in the ITE Law or the Criminal Code, to help to reduce the risk of abuse of authority against the injured parties (victims).³²

2. Use of the Principle of Proportionality in Law Enforcement

Indonesia needs to strengthen the principle of proportionality in enforcing defamation laws against online media. This means that the

³¹ Reuters, "Malaysia's Troubled Ex-PM Ordered to Pay \$300,000 to Politician Over Defamatory Remarks," 2024.

³² The need for a clearer distinction between legitimate criticism and defamation also reflects a broader principle of criminal justice reform, namely the importance of separating supervisory and executive functions to ensure legal certainty, institutional accountability, and effective protection of individual rights. Read on Anis Widyawati, Ade Adhari, and Ridwan Arifin, "Who Executes Justice? Comparative Institutional Paths from Verdict to Prison," *Jambura Law Review* 8, no. 1 (2026): 160–89, <https://doi.org/https://doi.org/10.33756/jlr.v1i1.31642>.

criminal sanctions applied must be balanced with the impact of the defamation act and take into account freedom of expression. This is consistent with developments in international legal and human rights norms, which hold that limitations on freedom of speech must be applied with great caution and only in cases that meet specific criteria, such as malicious intent and significant harm. This equality of rights is in line with Islamic law, which holds that humans are equal before the law and entitled to justice, even against opponents.³³

3. Optimizing Alternative Non-Criminal Dispute Resolution

Indonesia can adopt Malaysia's approach by introducing or strengthening non-criminal dispute-resolution mechanisms, such as mediation and arbitration, for online defamation cases. This approach will provide a useful space for victims to obtain compensation or an apology. The positive impact is that it does not go through a long, expensive legal process and on the other hand, restorative justice has a foundation in customary law in Indonesia.³⁴ This can also be a fairer alternative for perpetrators who may not have intended to defame but are caught in a situation detrimental to both parties. In the context of online defamation, Indonesia also needs to develop the concept of restorative justice further. In the context of defamation committed through online platforms, Indonesia also needs to develop the concept of restorative justice further. Accordingly, the state may consider adopting a restorative justice mechanism in defamation cases involving digital platforms, so that the legal process does not center solely on criminal sanctions. Particularly in view of the growing accumulation of similar cases before the police and the resulting pressure on correctional facilities. In addition to alternative civil remedies, Indonesian lawmakers should seriously examine restorative justice in cases of reputational harm or defamation. Such a mechanism may be implemented in defamation cases arising from interactions on digital or social networks if the victim and the offender reach a mutually accepted

³³ Muhammad Hasbulloh Huda, "Nilai-Nilai Dasar Hak Asasi Manusia Dalam Konsep Al-Maqâshid Al-Syari'Ah," *MAQASHID Jurnal Hukum Islam* 2, no. 1 (November 2018): 1–12, <https://doi.org/10.35897/maqashid.v2i1.167>.

³⁴ Hartanto Hartanto, Cahyono Cahyono, and Yosua Richard Y, "Penerapan Restorative Justice Dalam Kasus Pencemaran Nama Baik Di Media Sosial (Nilai Kearifan Lokal)," *TANJUNGPURA LAW JOURNAL* 7, no. 2 (July 2023): 211, <https://doi.org/10.26418/tlj.v7i2.62085>.

settlement. However, this mechanism would not apply to criminal acts with the potential to provoke conflict based on ethnicity, religion, race, inter-group relations, radicalism, or separatism.³⁵

4. Stronger Oversight and Law Enforcement of Social Media

Social media has played a central role in the dissemination of information. Indonesia needs to strengthen oversight of digital platforms used to distribute content that defames personal honor or reputation. This effort should involve not only regulatory measures but also promoting cooperative engagement among the government, platform providers, and civil society to ensure that social media platforms function as safe spaces and are not exploited to spread slander or insults. Unsupervised and unfiltered content on these platforms has the potential to erode the nation's noble values (long established before Pancasila as the state foundation), including customary, cultural, and religious values. The concept of justice embodied in Pancasila and the 1945 Constitution is religious-socialist and universal, serving as a unifying force for the nation. Online media (social media) provides equal opportunities for people to improve their standard of living, depending on their efforts and creativity. Legal reform must be balanced: protecting the public from negative and illegal content without limiting the creativity of content creators. On the other hand, the broadcasting commission, which is primarily responsible for supervising various forms of broadcasting, has not been able to reach online media, especially those owned by private individuals.

5. Implications for Legal Practice in Society from an Islamic Law Perspective.

Regulatory reform and proportionate law enforcement are essential to strengthening legal practice and democratic governance in Indonesia. By safeguarding freedom of expression while protecting personal honor and reputation, the law can reduce persistent tensions between these competing interests. From the perspective of Islamic law, the principle of *hifz al-'ird* within *maqāṣid al-sharī'ah* serves as a normative guideline to ensure that the legal protection of reputation does not become a tool

³⁵ Badia Amin, "Penyelesaian Perkara Tindak Pidana Pencemaran Nama Baik Melalui Media Sosial Berdasarkan Prinsip Restorative Justice," *Legalitas: Jurnal Hukum* 16, no. 2 (December 2024): 103, <https://doi.org/10.33087/legalitas.v16i2.531>.

for suppressing legitimate criticism. This reflects a balance between ḥuqūq al-‘ibād (human rights) and ḥuqūq Allāh (divine rights) in social order.³⁶

Furthermore, adopting non-criminal dispute-resolution and restorative justice mechanisms can minimize the social and economic consequences of defamation cases. Such approaches provide opportunities for accountability and reparation without resorting to imprisonment, thereby reducing stigma and promoting more constructive legal outcomes.³⁷

E. Case Study and Comparison of Legal Practice

Regarding the application of criminal law on defamation of honor/good name in Indonesia and Malaysia, this section discusses several relevant case studies in both countries.

1. Case Study in Indonesia:

One case that illustrates (reflects) the enforcement of defamation law through online platforms in Indonesia is the Medan District Court Decision No. 3564/Pid.Sus/2020/PN.Mdn. In this case, an individual posted content on a social-media platform that defamed a public official. Although the upload contained elements of criticism, the court considered that the expression exceeded the limits of reasonableness and degraded the dignity of the official concerned. This case shows the tendency of Indonesian courts to prioritize protecting individuals' honor and good name, even when legitimate criticism is present. E. Hamzah et al. argue that this decision on criminal liability in criminal acts against honor/good name must apply the principle of proportionality to balance the interests of victims and perpetrators in law enforcement.³⁸

³⁶ Ali Sodikin, "Legal, Moral, and Spiritual Dialectics in the Islamic Restorative Justice System," *Ahkam: Jurnal Ilmu Syariah* 21, no. 2 (2021): 373.

³⁷ Sony Rizky Anugraha and Ahmad Sudiro, "Penyelesaian Tindak Pidana Penghinaan/Pencemaran Nama Baik Melalui Media Sosial Berbasis Restorative Justice Di Kepolisian Daerah Kalimantan Tengah," *Morality* 9, no. 2 (2023): 305, <https://doi.org/10.52947/morality.v9i2.485>.

³⁸ Emir Hamzah, Susilawati, and M F R Lubis, "Tinjauan Yuridis Terhadap Tindak Pidana Pencemaran Nama Baik Yang Dilakukan Melalui Media Informasi Dan Elektronik," *Jurnal Al-Hikmah* 3, no. 4 (2022): 957, <https://doi.org/https://doi.org/10.30743/jhah.v3i4.6259>.

The Indonesian (MK) in Decision No. 105/PUU-XXII/2024 has also emphasized the importance of a balance between freedom of expression and protection of individual dignity. The Court stated that the law should not be used to silence legitimate criticism, thereby signaling that, in the future, restrictions on freedom of expression must be applied carefully and proportionately.³⁹ This Constitutional Court decision also explains that legitimate or constructive criticism, and in the public interest, does not fall into the category of attacking honor/defamation.⁴⁰ Furthermore, referring to Article 433 paragraph (1) of Law No. 1 of 2023, it is expressly stated that the object in this case must be an individual. Based on the official elucidation of Article 433 Paragraph (1) of the Criminal Code, the object of acts of insult or attacks on honor applies solely to individuals in their personal capacity. This implies that insults directed at governmental bodies or collective entities do not fall within the ambit of this provision. Consequently, the normative framework of Article 433, Paragraph (1) of the Criminal Code cannot be invoked when the object is a government institution or a group of persons.⁴¹

2. Case Study in Malaysia:

The approach to defamation in Malaysian online media is beginning to show a trend toward greater openness to freedom of expression. One example is *Pegaam Negara Malaysia v. Lim Guan Eng* (2018), which involved a public official who was sued for defamation for statements on social media deemed detrimental to an individual. However, in this case, the Malaysian courts prioritized the principle of freedom of expression, finding that the statements constituted legitimate criticism of government policy.⁴²

³⁹ Gianluca Fredrick Wou Dupo, I Nyoman Putu Budiarta, and Ida Ayu Putu Widiati, "Kebebasan Berpendapat Dalam Hubungannya Dengan Tindak Pidana Ujaran Kebencian (Studi Putusan Pengadilan Tinggi Denpasar Nomor 72/Pid.Sus/2020/PT.Dps)," *Jurnal Analogi Hukum* 5, no. 2 (2024): 162–66, <https://doi.org/10.22225/ah.5.2.2023.162-166>.

⁴⁰ Indonesia, Putusan Mahkamah Konstitusi Nomor 105/PUU-XXII/2024 tentang pengujian Undang-Undang Nomor 1 Tahun 2024.

⁴¹ Indonesia.

⁴² Jo-Ann Ding and Sin Yew New, "COMMENT | Why Guan Eng Shouldn't Have Been Allowed to Sue Perkasa," 2024.

F. International Legal Perspective and Comparison with Other Countries

It is important to compare international legal practices for dealing with online defamation cases. In a global context, countries with common law and civil law legal systems differ in how they address this issue. European countries place greater emphasis on protecting freedom of expression and restrict it only in very limited circumstances, for example, to protect an individual's honor and privacy rights. At the same time, Africa, Asia, and South America tend to be stricter.⁴³ Meanwhile, several countries with legal systems similar to Indonesia's, such as India, also face the same challenge in balancing freedom of speech and the right to a good name. The Supreme Court in India, in several decisions related to defamation, has stated that although freedom of expression is protected, acts of baseless defamation can be subject to criminal sanctions, but with a more selective and proportionate approach. For example, in the case of *Shreya Singhal vs Union of India*, the Court stated that the Information Technology Act, which previously allowed the detention of individuals for online content deemed "offensive" or "disturbing" was a restriction, which did not meet the constitutional standards that guarantee freedom of expression, and the definition was too broad/vague potentially restricting freedom of speech disproportionately (Supreme Court of India, 2015:5). Countries such as Germany and Canada have an approach that prioritizes dispute resolution through non-penal efforts and restoring relations between the disputing parties, without involving protracted legal processes.⁴⁴

G. Ethical Perspectives on Proportional Defamation Enforcement

The challenge in regulating defamation cases in online media is maintaining a balance between the individual's right to the protection of their honor and the Constitution's protection of freedom of expression. In

⁴³ Andrew T Kenyon, "Libel and Defamation in Journalism," in *Oxford Research Encyclopedia of Communication* (Oxford University Press, 2019), <https://doi.org/10.1093/acrefore/9780190228613.013.834>.

⁴⁴ Jane E Kirtley and Casey Carmody, "Criminal Defamation: Still 'An Instrument of Destruction' in the Age of Fake News," *Journal of International Media & Entertainment Law* 8, no. 2 (2020): 192–93.

Indonesia, this problem is increasingly complex, with the proliferation of various digital platforms that spread information quickly and experience exponential growth, becoming increasingly diverse and broad. The more social media users there are, the greater the challenge of enforcing the law in defamation cases (Supreme Court of India, 2015:8). In this context, *maqāṣid al-sharī'ah* may provide an additional ethical framework for encouraging proportional and fair regulation of online defamation. Islamic ethical principles also emphasize verifying information and protecting against reputational harm in public communication.⁴⁵ These two verses emphasize the importance of verification and protection of honor/good name, while *ijmā' fuqahā'* includes the qualification of slander as part of *kabā'ir*. These principles require *burhān* (strong evidence), so that protection of good name does not turn into repression of legitimate expression. Within Islamic legal thought, sanctions for defamation are generally applied flexibly and proportionately, with greater emphasis on social restoration rather than purely punitive measures.⁴⁶

Law enforcers who should be objective tend to be subjective in determining whether a statement is defamation or merely legitimate criticism. Furthermore, there is often an inconsistency in decisions, where criticism of public policy that is actually valid as an opinion is considered an act of defamation if it is considered detrimental to a particular party.⁴⁷ Therefore, Indonesia needs to create more space for dispute resolution through alternative channels, develop a more responsive legal system, and protect people with good intentions who use digital technology for development.⁴⁸

Article 27A of the ITE Law is often misused to suppress/limit criticism, thereby constraining the balance between protecting honor and

⁴⁵ N Nurussobah, M Said, and S Asiah, "Exposure of Disgrace on Social Media from the Qur'anic Perspective: Fazlur Rahman's Double Movement Study," *Al-Irfani: Journal of Al Qur'anic and Tafsir* 4, no. 1 (2023): 16–32, <https://doi.org/10.51700/irfani.v4i1.533>.

⁴⁶ Selviyana, "Perbandingan Hukum Positif Dan Hukum Pidana Islam Terhadap Tindak Pidana Pencemaran Nama Baik," *Muqarin Review* 2, no. 1 (2023): 62, <https://doi.org/10.15408/mr.v2i1.35186>.

⁴⁷ Asis Asis, "Legal Protection for Defamation Suspects Who Spread Facts on Social Media Reviewed from the ITE Law," *The Journal of Socio-Legal and Islamic Law* 3, no. 1 SE-Articles (August 2024): 15–21, <https://doi.org/10.30651/jssl.v3i1.23904>.

⁴⁸ Selviyana, "Perbandingan Hukum Positif Dan Hukum Pidana Islam Terhadap Tindak Pidana Pencemaran Nama Baik."

freedom of expression. The *maqāṣid al-sharīʿah* framework positions *ḥifẓ al-ʿird* as a basic right while still allowing for *amar maʿrūf* and substantive justice. The absence of the obligation for mediation in the article is contrary to the tradition of *ʿafw* (forgiveness) and *ṣulḥ* (reconciliation), which prioritizes restorative justice for minor defamation; it is sufficient to apply a fine, the right to reply, or public clarification, while imprisonment is a last resort and only when there is evidence of malicious intent and serious impact. Misuse of the article by officials against criticism violates the *maqṣad* of freedom of *amar maʿrūf*; therefore, *al-naqd al-mubāḥ* (legitimate criticism) must be protected, the reporter is limited to the direct victim, and sanctions are applied in stages: mediation, fines or clarification, then imprisonment for extreme cases.

Conclusion

A comparison of defamation regulations in Indonesia and Malaysia reveals two distinct legal paradigms. Indonesia's reliance on criminal law to regulate digital defamation reflects a disproportionate penal orientation, particularly compared to Malaysia's civil-based approach. This condition reflects a transitional phase in Indonesia's criminal law system, in which the previous defamation provisions are being recodified into the new Criminal Code, particularly under Article 433. However, the Constitutional Court Decision No. 105/PUU-XXII/2024 has begun to narrow the scope of criminalization, highlighting the need for more proportionate measures. The absence of clear proportionality standards and mandatory mediation processes, however, still risks stifling legitimate criticism, particularly against public officials. In contrast, Malaysia's legal approach, as seen in the Defamation Act 1957, tends to prioritize civil remedies, using criminal provisions selectively for cases of malicious intent, thereby preserving more space for public discourse. This difference is partly influenced by legal tradition and regulatory orientation. Malaysia's common law system tends to emphasize civil remedies, while Indonesia's civil law system relies more on statutory regulation, with criminal law used more frequently. Differences in legal culture and state approaches to public discourse also contribute to this pattern. Case studies from SAFENet and the Medan District Court show how excessive criminalization in Indonesia

restricts freedom of expression in digital media. However, Malaysia's compensation-focused model occasionally fails to protect victims when perpetrators lack the means to pay.

About the second research question, concerning the effectiveness of law enforcement in protecting both victims and perpetrators, the comparative findings indicate a differentiated pattern across the two jurisdictions.

In terms of effectiveness, Indonesia's criminal-based approach tends to provide strong formal protection of reputation but has not consistently ensured proportional safeguards for freedom of expression, and may disproportionately affect perpetrators. Conversely, Malaysia's approach offers greater protection for freedom of expression through selective use of criminal law and reliance on civil remedies, yet may not always guarantee effective protection for victims, particularly in cases involving limited compensation capacity. These findings show that both systems face distinct challenges in balancing protection for victims and perpetrators. Accordingly, law enforcement effectiveness in both jurisdictions reflects a conditional balance shaped by legal structure, enforcement practice, and competing rights.

For Indonesia, ongoing legal reform under Law No. 1 of 2023 must clarify the distinction between legitimate criticism and defamation, while applying proportionality and subsidiarity to ensure criminal law remains a last resort (*ultimum remedium*). The incorporation of mediation or restorative justice before criminal proceedings, alongside a graded sanction system that starts with public clarification, then proportional fines, and ultimately imprisonment for severe cases, could significantly reduce the risk of excessive criminalization. Moreover, stronger digital literacy and enhanced collaboration with digital platforms are necessary for a more proportionate digital regulatory framework.

Further regulatory refinement, particularly in clarifying the boundaries between legitimate criticism and defamation, alongside the use of mediation and proportionate sanctions, remains essential within the implementation of Law No. 1 of 2023.

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DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

FUNDING INFORMATION

None

ACKNOWLEDGMENT

The authors extend their appreciation to the anonymous reviewer of this article for the insightful comments and suggestions, and also express their gratitude to **Mr. Tandori** for his valuable input.

GENERATIVE AI STATEMENT

During the preparation of this manuscript, the author utilized generative artificial intelligence as a supportive tool to assist in translation and to improve the quality of English writing. Following its use, the author conducted a thorough critical review, editing, and validation to ensure accuracy and scientific integrity. Full responsibility for the final content remains with the author. The use of artificial intelligence was limited to a supportive role and is not recognized as constituting authorship. No data analysis or substantive interpretation was carried out by artificial intelligence without human oversight.

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