



## The Freedom of Speech Based on Jerinx Case, ITE Law Approach

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### Abstract

Freedom of expression has actually been guaranteed in the law. As a citizen, having an opinion according to what is considered right is certainly a legal thing. The phenomenon of opinion in various social media is currently being loved. The thing that has often been an issue in recent weeks is the truth about the Covid-19 pandemic. Jerinx, a member of a well-known musician band in Bali, often voices opinions that are different from what actually happened. He considers that this pandemic is just a conspiracy of the global elite. The opinions expressed were conveyed through his social media channels, up to a post that forced Jerinx to go to jail for allegedly violating the rules contained in the ITE Law. The purpose of this study is to analyze the accuracy of the use of Articles in the ITE Law which is alleged to be against Jerinx for the posts he has made. By using juridical-normative research methods based on primary, secondary and tertiary legal materials such as legislation, court decisions, legal theory, and can be in the form of opinions of scholars related to existing problems. The results of this study were then analyzed qualitatively with descriptive-prescriptive presentation. There, a fact was found that all the elements of the articles of the ITE Law had been fulfilled to imprison Jerinx.

**Keywords:** *Freedom of Speech, Jerinx, UU ITE*

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### INTRODUCTION

The presence of an increasing and growing social media has brought many changes to the world of communication. Various benefits and functions offered by social media increasingly diverse and unlimited. As well as some of the functions of human activities that used to be done offline, is now connected to the internet and facilitated with social media. Not only is the tool to communicate, but social media is also a good tool in the search for friendship, a place to share photo sharing (documentation) of every activity undertaken even as

a means of promotion for an online store business. Many popular social media types such as Twitter, Facebook etc have varied functions and purposes.<sup>1</sup>

With social media, users can share their complaints, stories, and all expressions of feeling. Due to the ease of accessing these social media networks, people sometimes do not realize that not all expressions of feelings or opinions can be freely expressed through social media. Not infrequently, some posts end in fights and other bad effects. This was then regulated by the government in a regulation to create certain restrictions regarding the use of social media which was coordinated by the ITE Law, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. One of the most common cases related to the ITE Law is cases containing hate speech. Especially during the current pandemic, when talking about hate speech cases, the public will be presented with one of the controversial cases, namely the case of Jerinx, the drummer for the band SID.

In the last few weeks, the public has been shocked by the case of the drummer for a Balinese band, namely I Gede Ari Astina or who is familiarly called Jerinx SID. His name is increasingly sticking out in the world of social media because of his theory which is referred to as a "conspiracy theory". Jerinx often voices his opinion through his personal social media account network. From his social media page, he with his distinctive style of language reveals that Covid-19 is only a conspiracy from the global elite. So, he rejected several government policies and regulations to use masks, maintain distance, wash hands, and so on related to Covid-19.

Jerinx didn't seem to want to stop voicing his distrust of the Covid-19 virus, until he posted a post that tripped him up in a legal case. Jerinx's post which reads "IDI lacks WHO" forced Jerinx to undergo a long legal process.<sup>2</sup> For this post, Jerinx was later reported by the Chairman of IDI Bali, I Gede Putra Suteja, with the suspicion that there was an element of humiliation. From a series of legal processes, in the end Jerinx was charged with Article 28 paragraph (2) in conjunction with Article 45A paragraph (2) Law Number 19 of 2016 concerning Information and Electronic Transactions (ITE) in conjunction with Article 64 paragraph 1 of the Criminal Code and sentenced to 1 year 2 months in prison.<sup>3</sup>

Human Rights become an integral part in the various interactions that occur in cyberspace. Interaction between users of the virtual world is a distance interaction which is not necessarily meet in person. This can lead to potential lies or even the use of one's identity. Discussing issues that occur in cyberspace related to social phenomena related to privacy done through case studies of several phenomena contained on the internet and mapping the problem and conduct assessments with relevant legislation. Patterns of disturbance to human rights have similarities with one another, which in essence is the disruption of one's comfort in the virtual world. The cause of the above problems arises because, firstly, the lack of understanding that everyone has the

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<sup>1</sup> Ayu Gede Willdahlia, Ni Putu, and Suci Meinarni, "UTILIZATION OF COMMENTS IN SOCIAL MEDIA AS A MARKETING METHOD ASSOCIATED TO BUSINESS ETHICS (CASE STUDY: INSTAGRAM)," *South East Asia Journal of Contemporary Business, Economics and Law* 14, no. 3 (n.d.), <http://seajbel.com/vol-14-december-2017-issue-3-economics/#more-1133>.

<sup>2</sup> Pengadilan Negeri Denpasar, Salinan Putusan Perkara Tingkat Pertama Pidana Nomor 828/Pid.Sus/2020/PN Dps, Putusan Pengadilan Negeri Kelas IA (2020).

<sup>3</sup> Republik Indonesia, "UU Informasi Dan Transaksi Elektronik," Pub. L. No. Undang-Undang Nomor 19 Tahun 2016 perubahan atas Undang-Undang Nomor 11 Tahun 2008 (2016).

right to privacy, the second actually happens the opposite, they are very upholding freedom of expression so as to forget there are other rights (person) is disturbed.<sup>4</sup>

The formulation of the problem related to the background above is how accurate is the use of articles in the ITE Law against the case that ensnared Jerinx? The purpose of this research is to find out and analyze the accuracy of the articles in the ITE Law against the case that ensnared Jerinx.

## **METHODS**

This type of research is a juridical-normative research using a status approach and an analytical approach that examines laws and regulations, especially on the ITE Law, and an analytical approach is carried out to examine and analyze how the rules in Article - the article contained in the ITE Law which was used to ensnare Jerinx. According to Soerjono Seokanto and Sri Mamudji, normative juridical research is legal research carried out by examining library materials and statutory regulations.<sup>5</sup>

Based on sources of legal materials, namely primary and secondary legal materials, such as legislation, court decisions, legal theories, and can be in the form of opinions of scholars related to existing problems. The technique of collecting legal materials is then carried out by means of document study techniques through literature studies that are relevant to the problem. The results of this study were then analyzed qualitatively with descriptive-prescriptive presentation.

## *RESULT AND DISCUSSION*

### **Speech Action Theory**

John Searle is the designer of the dialogue action, which is often used as a reference by communication scientists. The essence of the dialogue action theory is that a person delivers what he or she must want to his communicant. There are 3 requirements that must be fulfilled by the communicator, namely generating a discourse, confirming about something or carrying out a proposed action, and fulfilling the desire for willful action.<sup>6</sup> In delivering the message for this theory, there are 4 possibilities that are intertwined, the first is that the action that is tried can be mediocre or on the other hand it can even result in a problem case; second, informed a message about what the communicator wants to try; the three actions of the communicator's dialogue are interpreted by the communicant; fourth, the communicator seeks to influence the communicant.

There is a comparison between the action of will and the action of influence in John Searle's theory. The action of will is an action that is the main attention of the communicator, is for the communicant to control the beliefs of the communicator. On the other hand, the action of influencing is an action that the communicator

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<sup>4</sup> Ni Putu, Suci Meinami, and Emmy Febriani Thalib, "Privacy Related to Cyber Space Activities," in *Proceedings of the International Conference on Innovation in Research (ICIIR 2018) – Section: Economics and Management Science*, vol. 88 (Atlantis Press, 2019), 176–79, <https://doi.org/https://doi.org/10.2991/iciir-18.2019.32>.

<sup>5</sup> Ishaq, *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Desertasi* (Bandung: Alfa Beta, 2017).

<sup>6</sup> Daesy Yanuar, Fit and Ekayanthi, "Analisis Teoritis Pesan Komunikasi Jerinx-Sid," *Global Komunika* 1, no. 2 (2020): 69–75, <https://ejournal.upnvj.ac.id/index.php/GlobalKomunika/article/download/2087/pdf>.

expects from the communicant to not only understand the belief of the message but also implement the belief of the message of the communicator. The very interesting thing in this theory is that the truth is not a very meaningful subject. For this Searle thought, the true meaning of the act of dialogue is not in the delivery of truth, but in the power of communicative influence.

When it comes to the Jerinx problem, Searle's dialogue action theory can be used as the basis for his speaking action. Initially, Jerinx is an example of the dialogue action theory defined by Searle. Second, the fact from the initial analysis is why Jerinx fulfills all three requirements of the dialogue-action theory that Searle provides. Third, Jerinx fulfills the main example of Searle who believes that it is not the truth that Jerinx is aiming for, but the influence of Jerinx's actions after an article on Instagram about "IDI as a lackey of the World Health Organization" which after that was suspected as one of the parties trying to make Bali free of rapid tests. Covid-19.

The truth is not what Jerinx intends to aim for, this can be proven by the subsequent actions that Jerinx tried to reject the implementation of rapid tests related to the Covid-19 pandemic in Bali. Jerinx wants his speaking actions to influence his communicants and also be accompanied by his communicants. And he has got it, although in limited quantities. In this regard, Jerinx in the issue of "IDI lacks the World Health Organization" does not display a good moral idea, because he also knows that he cannot display the fact that IDI is a lackey of the World Health Organization. In terms of being the implementer of Searle's speech action theory, Jerinx has actually drowned himself in the intention that he has recently expressed as his main intention is to try to prevent rapid tests from becoming a priority in the delivery process. The main purpose of the Jerinx article is actually the rejection of the implementation of rapid tests for mothers who are about to give birth as a priority for medical workers rather than the delivery process itself. However, this main goal has been sunk because Jerinx has made baseless accusations that IDI is a lackey of the World Health Organization.

In the other hand, does the case need to apply a censorship? Treats censorship and free speech as a problem of ideas, examining the issues as an aspect of our wider social and political lives and critically examining mainstream arguments against censorship,<sup>7</sup> censorship is a limitation of human rights. What Jerinx said is a human right for everyone. Jerinx has the right to express his opinion as Shipler said that freedom of speech is mightier than the sword.<sup>8</sup> Public Information Openness and Law Number 11 of 2008 concerning Information, Transaction and Electronic (ITE Law). ITE law adopts a cyber defamation, which could charge anyone, including the journalist, by six years imprisonment. This law has been potentially used to attack freedom of expression.<sup>9</sup>

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<sup>7</sup> P.G. Ingram, *Censorship and Free Speech : Some Philosophical Bearings* (Routledge Revivals, 2020).

<sup>8</sup> David K. Shipler, *Freedom Of Speech Mightier Than The Sword* (United States: Vntagebooks, 2015).

<sup>9</sup> Herlambang Perdana Wiratraman, "New Media and Human Rights : The Legal Battle of Freedom of Expression in Indonesia," *11th Annual Student Human Rights Law Conference, Nottingham University, UK, 20-21 March 2010* 2002, no. March 2010 (2010): 20–21, [https://www.nottingham.ac.uk/hrlc/documents/studentconference2010/herlambang\(2010\)newmediaandhumanrights.pdf](https://www.nottingham.ac.uk/hrlc/documents/studentconference2010/herlambang(2010)newmediaandhumanrights.pdf)

### **Implementation of Indonesian Regulation**

The rule of law and democracy is a concept that used by almost every state around the world, including Indonesia. Indonesia showed the country as a rule of law state by guarantee and protection of human rights for every citizen, one of that human rights are the political right to create democracy. Although the protection of human rights guaranteed by the constitution, but there is a limitation of human rights especially for political rights like freedom of association, assembly, and freedom of speaks. Freedom of speech limited by Indonesian government on human right perspective and the impact to Indonesian democracy caused by the limitation. And the freedom of speech regulation could not ignore the democracy but aimed to make every people responsible when using freedom of speaks and following the rules by law.<sup>10</sup> Communication technology with various kinds of social media has given freedom to each individual to express his opinion through various types of communication social media.<sup>11</sup>

Under the ITE Law, the act of expressing an opinion in the virtual world has the potential for a crime that leads to the act of cyber bullying.<sup>12</sup> In the Jerinx Problem, to be able to identify whether the use of Article 28 paragraph (2) of the ITE Law has been properly applied to Jerinx, so the analysis used is to examine each factor in Article 28 paragraph (2) which reads "Everyone with a planned and without the right to disseminate data that intended to create feelings of hatred or hostility towards certain people and/or groups of citizens based on ethnicity, religion, race, and intergroup (SARA)." The initial factor is "everyone", which is defined by "everyone" which is equated with the terminology of "whoever" who is a legal subject who commits a crime and to him can be held accountable for all his actions legally, and which is defined as a legal subject by the Criminal Code. is limited to people. In the case of Jerinx, he acts as a legal subject who is mentally healthy so that he can be considered legally responsible for his actions. The "everyone" factor in this case has been fulfilled.

The second factor is "with planned and without right", if in *Memorie van Toelichting (MvT)* which is defined as planned is *Willens En Wetens* meaning want and know. This can give the impression that a person can be considered planned if he wants to carry out and know what the consequences of the act, the act is desired by the actor and the actor recognizes the consequences of the act. On the other hand, what is defined as without rights is any act that violates the subjective rights of others, the norms in the propriety of citizens or any act that is considered reprehensible by citizens, or without regard to the methods prescribed in the universal provisions or against the law included in the interpretation without rights. . Related to Jerinx's problem, if he posts the word with sanity, so that it shows that Jerinx really understands and wants his post to be read by others or followers. Jerinx also understands and realizes that what is posted wants a lot of people and a lot of opinions and because he is a public figure so that the article has the potential to be divisive for those who read

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<sup>10</sup> P E D Antari, "Tinjauan Yuridis Pembatasan Kebebasan Berpendapat Pada Media Sosial Di Indonesia," *Jurnal Hukum Undiknas* 4, no. 1 (2017): 15–28, <http://journal.undiknas.ac.id/index.php/hukum/article/download/181/116>.

<sup>11</sup> Latipah Nasution, "Hak Kebebasan Berpendapat Dan Berekspresi Dalam Ruang Publik Di Era Digital," *Adalah* 4, no. 3 (2020): 37–48, <https://doi.org/10.15408/adalah.v4i3.16200>.

<sup>12</sup> Ni Putu Suci Meinarni, "TINJAUAN YURIDIS CYBER BULLYING DALAM RANAH HUKUM INDONESIA," n.d.

it because there are pros and cons, which in this case can be seen from the words in the opinion of netizens as reaction to the existence of the Jerinx article, until the second factor in this article has been met.

The third factor is “the distribution of data that creates hatred or hostility towards certain people and/or groups of citizens based on ethnicity, religion, race, or class (SARA)”. Article 1 Paragraph 1 of Law Number 2016 Regarding amendment 19 to the "Electronic Information and Transaction Law" Number 11 of 2008, electronic information is one or a series of electronic information listed, but not limited to text, sound, photos, cards, sketches, electronic information exchange EDI), electronic messages (email), telegram, telex, fax or the like, letters, features, numbers, access codes, symbols or processing perforations that have meaning or can be understood by people, they can understand, Jerinx about you Instagram account articles can be accessed and anyone can access to publish them, so this behavior is considered as "data sharing" behavior.

For a more detailed analysis, will the articles in Jerinx trigger or not trigger hatred or hostility towards certain people and/or groups based on race, religion, race, and intergroup (SARA)? Is IDI as a professional organization in the SARA factor? Quoted from the Constitutional Court Decision Number 76/PUU/XV/2017 dated March 28, 2018, including in his legal considerations, he emphasized that among groups not only include ethnicity, religion, and ethnicity, but there is no representation or inconsistency. All ethnic and religious entities. Informal, but the court commented on the division between groups because they belong to different entities that are not regulated by law, although Article 28(2) and Article 45(2) are excluded/excluded the ITE Law must be abolished / Remove legal protection for several different subjects from the three types of ethnicity, religion and race, the lack of legal protection can violate Article 27 paragraph 1 and 28D paragraph 1 of the 1945 Constitution.

In the case of Jerinks, it was reported in his memorandum of defense in Taman 236 that the notion of "intergroup" in Constitutional Court Decision No. 76/PIU/XV/2017 in accordance with the principle of legality, especially the legality of *Lex Stricta* and *Lex Certa* in principle. Criminal law). Therefore, in order to exclude crimes against society (citizens), the principle of guilt has been abandoned, but crimes related to crimes against individuals can be maintained. Some people think that "... the law in Indonesian criminal law comes from the idea/base of legal certainty". However, in reality, this legality principle faces various forms of relaxation/clarification or suppression/expansion, as well as various problems, including the requirements of StGB Article 1(2) in terms of law and theory development. There are teaching materials. Contrary to the law, in the development of positive law and the principle of legality, it is not only "*nullum delictum sine lege*" but also "*nullum delictum sine ius*". Called “or not. Only legal as an "illegal act". The principle of formal legality and material legality is the recognition of customary criminal law. Law, existing law or unwritten law as a source of law, according to the Netherlands, Greece, Portugal Various other country's Criminal Codes regulate the obligation to temporarily suspend judges from using/pardoning, which is a possible judicial correction of the principle of legality.

Based on this opinion, until the appropriate IDI (Ikatan Dokter Indonesia) (AD) / ART is one of the Indonesian medical organizations and cannot be assigned to certain professional groups listed in the inter-group interpretation (all organizations that do not have representation or approval in terms of race, religion and race). Does Jerinx's article imply hatred Or to incite hostility, it is necessary to study the text of the article to meet the "incite hatred / inciting hostility" factor. "Promotion can be interpreted as a word that causes or arouses hatred, which means a person's disgust, on the other hand parameters are used"

## **CONCLUSION**

Article 28 of the 1945 Constitution guarantees the rights and freedom of opinion, but this freedom does not mean violating the rights and freedom of honor of others. These restrictions are based on the expert opinion of Article 28J of the 1945 Constitution, Article 70 and Article 73 of Presidential Decree No. 39/1999, which essentially stipulates that everyone is obliged to comply with legal restrictions in exercising their rights and exercising their rights. Recognizing and respecting the rights and freedoms of others in the name of justice, moral considerations, religious values, security and order. In this case, Jerinks' position violates the prohibition on expression and fulfills all elements of Article 28 paragraph (2) of the ITE Law. Laws and regulations can lead to widespread social conflict. Therefore, it is appropriate to use Article 28(2) of the Electronic Information and Transaction (ITE) Law Number 19 of 2016 combined with Article 45A(2) and Article 64(1) of the Criminal Code. Code. To reduce the incidence of hate speech from social media, the public should consider the consequences of posting content first. Even if the post contains hate speech that can divide individuals or groups. For Jelinks, if he prioritizes and is not fooled by the emotions that overwhelm him, he will blame those who disagree with him. Of course, your goodness will be easier to achieve, that kindness is not only a reason to punish enlightenment, but also benefits society.

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