

Legal Protection of Religious and Cultural Symbols from Hate Speech in The Digital Space Era

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ABSTRACT: The expansion of digital space makes religious and cultural symbols increasingly vulnerable to hate speech on social media. This study examines how adequately the Indonesian legal system protects religious and cultural symbols against digital hate speech and identifies enforcement obstacles. Utilizing a normative juridical method with statutory, conceptual, and comparative approaches, it analyzes Law No. 1/2024 (Second Amendment to the ITE Law), the Criminal Code, Human Rights Law, and international instruments alongside secondary sources. The results indicate that while Indonesia's normative framework offers multilayered protection notably via Article 28(2) of the ITE Law and Article 156a of the Criminal Code it remains fragmented, overlapping, and ill equipped for borderless, asymmetric digital communication. Furthermore, enforcement faces severe structural obstacles: perpetrator anonymity, jurisdictional limits over transnational platforms, low digital legal literacy, and the absence of clear state platform co-regulatory mechanisms. The study concludes that strengthening legal protection requires doctrinal harmonization, a platform accountability framework, restorative justice oriented enforcement, and ongoing digital literacy programs. These measures are essential to proportionally balance freedom of expression with the protection of collective identity values in the digital sphere.

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I. INTRODUCTION

The development of information and communication technology has fundamentally transformed the character of public space, shifting a considerable part of social interaction from physical space into a borderless digital space that operates continuously without being restricted by distance and time (Koos, 2022). This transformation carries a paradoxical consequence: digital space has become an arena of unprecedented democratization of information, while at the same time functioning as a new vector for the dissemination of hatred, including hatred directed at religious and cultural symbols that form the core of collective identity in a plural society such as Indonesia. Indonesia, as a nation built upon ethnic, religious, racial, and intergroup diversity, places religious and cultural symbols not merely as private markers of identity but as constitutive elements of social cohesion, so that any degradation of these symbols has the potential to trigger horizontal conflict extending far beyond the digital sphere itself (Cahyono, 2016).

Empirical data on social media use in Indonesia illustrates the scale of the problem being examined. The high penetration of social media platforms has been accompanied by a parallel increase in the intensity of hate speech content, in which insults toward religious symbols, places of worship, religious attire, and ethnic or customary attributes have become a recurring pattern of digital conflict (Azhar & Soponyono, 2020). Several notable cases including disputes over religious tolerance narratives that triggered mass unrest, as well as viral insults toward customary and ethnic symbols on social media platforms demonstrate that hate speech against religious and cultural symbols is not a marginal legal issue but rather a persistent threat to the constitutional guarantee of freedom of religion, belief, and cultural expression under the 1945 Constitution of the Republic of Indonesia.

At the normative level, the Indonesian legal system has attempted to respond to this phenomenon through a multilayered regulatory architecture. Article 28 paragraph (2) of Law Number 1 of 2024 on the Second Amendment to Law Number 11 of 2008 on Electronic Information and Transactions (hereinafter the ITE Law) prohibits the intentional and unauthorized dissemination of information aimed at inciting hatred or hostility toward individuals or groups based on ethnicity, religion, race, and intergroup relations, with criminal sanctions of imprisonment up to six years and a maximum fine of one billion rupiah (Febriansyah & Purwinarto, 2020). This provision operates alongside Article 156a of the Criminal Code concerning the expression of feelings of hostility and blasphemy, as well as Law Number 39 of 1999 on Human Rights, which affirms every individual's right to be free from discrimination and to live in dignity without threat. Despite this seemingly comprehensive normative architecture, the practical application of these provisions in the context of religious and cultural symbols in digital space continues to encounter substantial ambiguity, particularly regarding the boundary between legitimate criticism, artistic or religious commentary, and unlawful hate speech (Chandra, 2021).

The urgency of this study is reinforced by the growing scholarly attention to hate speech regulation across comparative jurisdictions. Internationally, the tension between the protection of religious sentiment and the guarantee of freedom of expression has been extensively examined within the framework of the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights, which has developed a nuanced doctrine distinguishing between offensive expression that remains protected and expression that amounts to incitement or gratuitous insult against a religious community (Evans, 2010). Comparative legal scholarship on platform regulation further shows that democratic states differ considerably in how they allocate responsibility between the state and private platform providers for moderating hateful content, reflecting divergent constitutional traditions concerning the primacy of free expression versus the protection of human dignity (Kohl, 2022). These comparative insights are directly relevant to the Indonesian context because domestic regulation of hate speech against religious and cultural symbols cannot be separated from the transnational architecture of digital platforms that host and disseminate such content.

Beyond the normative dimension, sociolegal analysis of hate speech in Indonesia demonstrates that its proliferation is driven by a combination of structural and behavioral factors, including public dissatisfaction with government policy, low legal and digital literacy, emotional provocation, and the anonymity afforded by social media (Cahyono, 2016). These findings suggest that legal protection for religious and cultural symbols cannot rely solely on punitive criminal enforcement but must be integrated with preventive strategies such as cyber patrol, legal socialization, and interagency cooperation. At the same time, forensic linguistic studies of hate speech content circulating on Indonesian social media platforms reveal that insults against religious and cultural symbols frequently employ euphemism, coded language, and satire, which complicates the legal identification of unlawful intent under existing statutory formulations (Syahid, Sudana, & Bachari, 2022; Syafruddin, Thaba, & Ananda, 2024).

Several previous studies have examined hate speech regulation in Indonesia from various angles, including the criminal policy dimension of hate speech under the ITE Law (Azhar & Soponyono, 2020), the criminal accountability of social media perpetrators (Febriansyah & Purwinarto, 2020), the perspective of Islamic law on hate speech regulation (Badrut Tamam, 2021), and restorative justice approaches in resolving hate speech cases (Katim, 2022). However, a review of this literature indicates that the great majority of existing studies address hate speech in a general sense, without specifically isolating religious and cultural symbols as a distinct protected legal object that carries unique constitutional and sociological weight. This gap is significant because the protection of symbols as opposed to the protection of individuals from personal defamation engages a different set of legal interests, namely the collective dignity of a religious or cultural community, the preservation of social harmony, and the constitutional guarantee of freedom of religion and cultural expression under Articles 28E and 29 of the 1945 Constitution.

Based on this background, the present study is directed at answering two principal research questions. First, to what extent does the existing Indonesian legal framework provide adequate protection for religious and cultural symbols against hate speech disseminated through digital space, when assessed against both domestic statutory provisions and comparative international standards? Second, what structural and practical obstacles hinder the effective enforcement of this legal framework, and what strategic measures can be formulated to strengthen the protection of religious and cultural symbols without disproportionately restricting freedom of expression? By focusing the discussion on these two questions, this study seeks to contribute a more specific and doctrinally grounded analysis of symbol based hate speech protection, distinguishing it from the broader and more generic treatment found in prior literature, while offering a synthesis between domestic regulatory practice and international comparative standards relevant to digital governance of hate speech (Butler & Turenne, 2022; Enarsson, 2024).

II. METHOD

This study employs a normative juridical method, which positions law as a prescriptive and autonomous normative system that is examined through primary, secondary, and tertiary legal materials rather than through field based empirical observation (Wiraguna, 2024). The normative approach was selected because the central problem of this research concerns the coherence, adequacy, and doctrinal structure of positive legal norms governing hate speech against religious and cultural symbols, which is a question that lies squarely within the domain of doctrinal legal analysis rather than social behavioral inquiry (Suganda, 2022).

Three complementary approaches were applied within this normative framework. First, the statute approach was used to examine relevant Indonesian legislation, including Law Number 1 of 2024 on the Second Amendment to the ITE Law, Law Number 1 of 2023 on the Criminal Code, Law Number 39 of 1999 on Human Rights, and the Joint Decree of the Minister of Communication and Informatics, the Attorney General, and the Chief of the Indonesian National Police concerning implementation guidelines for hate speech-related provisions. Second, the conceptual approach was applied to clarify the theoretical construction of key concepts such as “hate speech,” “religious symbol,” and “cultural symbol,” drawing upon doctrinal literature and comparative legal scholarship to formulate an operational definition suitable for the Indonesian legal context. Third, a comparative approach was employed to juxtapose the Indonesian regulatory model with international human rights standards and comparative platform regulation frameworks developed in Europe and other jurisdictions, in order to identify normative gaps and potential doctrinal enrichment (Kohl, 2022; Butler & Turenne, 2022).

The data used in this study consist entirely of secondary legal materials, categorized into three tiers. Primary legal materials comprise the 1945 Constitution of the Republic of Indonesia, the ITE Law, the Criminal Code, the Human Rights Law, and relevant international instruments such as the International Covenant on Civil and Political Rights.

Secondary legal materials consist of scholarly journal articles, case commentaries, and legal doctrine relevant to hate speech and symbol protection, including national studies indexed in Sinta-accredited journals and international studies indexed in Scopus-indexed journals. Tertiary legal materials include legal dictionaries and encyclopedic references used to support terminological clarity.

The data collection technique applied in this study is documentary study (library research), in which legal materials were systematically identified, inventoried, and classified according to their relevance to the two research questions formulated above. The collected materials were then analyzed descriptively qualitatively through a process of legal interpretation, encompassing grammatical, systematic, and teleological interpretation techniques, in order to reconstruct the coherence of the existing legal framework and to identify normative and practical obstacles in its enforcement (Wiraguna, 2024). This analytical process was further sharpened through a comparative reading against international and comparative jurisprudence, allowing the study to situate Indonesian regulatory practice within a broader global discourse on the governance of hate speech in digital space (Karo, 2022; Sadat, Lawelai, & Suherman, 2022).

It should be emphasized that this study does not employ empirical methods such as surveys, interviews, or case based fieldwork; its findings are therefore doctrinal in character and oriented toward *das sollen* argumentation concerning what the law ought to be, rather than *das sein* description of factual conditions in society. This methodological choice is consistent with the nature of the research problem, which requires a systematic evaluation of normative coherence rather than the measurement of social phenomena.

III. RESULT AND DISCUSSION

The Adequacy of the Indonesian Legal Framework in Protecting Religious and Cultural Symbols from Hate Speech in Digital Space

The Indonesian legal system regulates hate speech against religious and cultural symbols through a multilayered regulatory structure that integrates criminal law, information technology law, and human rights law. At its core, Article 28 paragraph (2) of the ITE Law prohibits the intentional and unauthorized dissemination of information aimed at inciting hatred or hostility toward individuals or groups based on ethnicity, religion, race, and intergroup relations, with criminal sanctions of imprisonment up to six years and a maximum fine of one billion rupiah (Febriansyah & Purwinarto, 2020). This provision is reinforced by Article 156a of the Criminal Code, which criminalizes acts of religious blasphemy, and by Law Number 39 of 1999 on Human Rights, which affirms the obligation to respect human dignity as the foundation for protecting victims of hate speech. Taken together, this framework demonstrates that the Indonesian legislature has recognized religious and cultural symbols as legitimate objects of legal protection, not merely as incidental elements within broader anti-discrimination provisions.

However, a closer doctrinal reading reveals that this multilayered structure suffers from at least three forms of normative inadequacy when confronted with the specific characteristics of digital hate speech targeting religious and cultural symbols. First, the statutory formulation of “hatred or hostility” under Article 28 paragraph (2) of the ITE Law remains conceptually broad and does not explicitly distinguish between attacks directed at religious and cultural symbols such as places of worship, religious attire, sacred objects, or customary attributes and attacks directed at individuals or groups as legal subjects. This conflation is problematic because the harm caused by symbol-based hate speech is primarily collective and dignitary in nature, affecting the shared identity of a religious or cultural community, whereas the existing statutory language is oriented toward a more individualized conception of victimhood (Cahyono, 2016; Kartika & Nurhayati, 2023). Comparative literature on the criminal protection of religious sentiment demonstrates that European jurisdictions have long grappled with the same conceptual difficulty, ultimately developing a doctrine that treats offense to religious feelings as a distinct legal interest from incitement to hatred against persons, a distinction that remains underdeveloped within Indonesian statutory drafting (Alcácer Guirao, 2019; Alcácer Guirao, 2021).

Second, the fragmented distribution of hate speech provisions across the ITE Law, the Criminal Code, and sector-specific regulations generates interpretive uncertainty regarding which provision applies to a given instance of symbol-based hate speech, particularly when the content in question straddles the boundary between religious blasphemy, ethnic insult, and general defamation. This fragmentation is compounded by the absence of harmonized sentencing guidelines, resulting in inconsistent judicial outcomes across similar cases (Cahyono, 2016). The Joint Decree of the Minister of Communication and Informatics, the Attorney General, and the Chief of the Indonesian National Police concerning implementation guidelines for hate speech provisions represents an important step toward harmonization, yet its status as a non-binding administrative guideline limits its capacity to resolve genuine doctrinal conflicts between overlapping statutory provisions (Katim, 2022).

Third, and most significantly for the digital context, the existing legal framework was substantially designed around a model of bounded, jurisdictionally locatable communication, whereas hate speech targeting religious and cultural symbols in digital space is frequently disseminated through platforms whose servers, moderation policies, and corporate governance structures are located outside Indonesian jurisdiction. This jurisdictional mismatch is not unique to Indonesia; comparative scholarship on platform regulation demonstrates that even in jurisdictions with sophisticated legal traditions, extending constitutional protections of religion, speech, and assembly from physical public space to privately owned digital space remains doctrinally contested, since online platforms are generally treated as private actors not bound by the same public law obligations as the state (Kohl, 2022). The transatlantic divergence between the European

Union's emphasis on state-centric platform accountability and the American emphasis on platform self-regulation illustrates that the governance of digital hate speech is inherently a matter of institutional design choice rather than a purely technical legal question, and Indonesia's regulatory framework has yet to articulate a clear position within this spectrum (Kohl, 2022; Butler & Turenne, 2022).

At the same time, it would be inaccurate to characterize the Indonesian legal framework as entirely deficient. The criminalization of hate speech under Article 28 paragraph (2) of the ITE Law, when read in conjunction with Article 156a of the Criminal Code, does provide a normatively coherent foundation for prosecuting the most severe instances of symbol-based hate speech, particularly cases involving explicit blasphemy or direct incitement to religiously or ethnically motivated violence. Empirical patterns observed in Indonesian hate speech jurisprudence demonstrate that courts have been willing to apply these provisions robustly where the unlawful intent is unambiguous (Cahyono, 2016). The doctrinal challenge, therefore, is not the absence of protective norms as such, but rather the insufficient specificity of these norms in addressing the collective, symbolic, and transnational dimensions of contemporary digital hate speech. This finding directly answers the first research question by demonstrating that Indonesian law provides a normatively adequate but structurally fragmented and conceptually under-specified framework for protecting religious and cultural symbols, one that requires targeted doctrinal refinement rather than wholesale reconstruction.

Enforcement Challenges and the Role of Digital Platforms in Realizing Effective Protection

Beyond the question of normative adequacy, the effectiveness of legal protection for religious and cultural symbols in digital space is fundamentally constrained by structural obstacles in law enforcement. The first and most persistent obstacle is the anonymity afforded by digital platforms, which allows perpetrators of hate speech to conceal their identity behind pseudonymous accounts, thereby complicating the evidentiary process required for criminal prosecution under Indonesian procedural law (Cahyono, 2016). This anonymity is further compounded by the ease of creating disposable accounts, the use of virtual private networks to obscure geographic origin, and the cross-border hosting of content, all of which weaken the capacity of Indonesian law enforcement agencies to identify and apprehend perpetrators in a timely manner. Forensic-linguistic analyses of hate speech content circulating on Indonesian social media further reveal that perpetrators frequently employ satire, euphemism, and coded symbolic references when attacking religious and cultural identities, a linguistic strategy that allows content to remain formally ambiguous while still conveying a discernible message of contempt, thereby complicating the application of statutory elements requiring clear unlawful intent (Syahid, Sudana, & Bachari, 2022; Syafruddin, Thaba, & Ananda, 2024).

The second major obstacle concerns the low level of digital legal literacy among the general public, which manifests in two interrelated ways. On one hand, potential victims

of symbol-based hate speech including religious communities and customary groups often lack awareness of the legal remedies available to them, resulting in significant underreporting of offenses. On the other hand, a considerable proportion of digital content creators lack adequate understanding of the legal boundaries between protected expression, such as religious commentary, satire, or cultural critique, and unlawful hate speech, leading to inadvertent violations that further strain the capacity of law enforcement institutions (Cahyono, 2016; Badrut Tamam, 2021). This literacy gap is not merely an educational deficiency but a structural condition that shapes the overall pattern of hate speech proliferation, since low legal awareness interacts with emotional provocation and social polarization to accelerate the spread of hateful content targeting religious and cultural symbols (Sadat, Lawelai, & Suherman, 2022).

The third obstacle, and arguably the most consequential for future regulatory reform, concerns the limited accountability mechanisms applicable to digital platform providers. Under the current Indonesian legal framework, platform providers are primarily treated as passive intermediaries subject to takedown obligations rather than as active participants bearing substantive responsibility for the systemic risks generated by their content moderation architecture. This intermediary-centric model stands in contrast to emerging international regulatory approaches, particularly the European Union's Digital Services Act, which imposes affirmative obligations on very large online platforms to conduct systemic risk assessments and to implement proportionate mitigation measures against the amplification of hateful content, including content targeting religious communities (Enarsson, 2024). Comparative jurisprudence from the European Court of Human Rights similarly demonstrates an evolving doctrine concerning platform liability for user-generated hate speech, balancing the protection of victims' dignity against the risk of excessive private censorship (Enarsson, 2024). Indonesia's regulatory framework, by contrast, has not yet developed a comparably structured co-regulatory mechanism that clearly delineates the respective responsibilities of the state, platform providers, and civil society organizations in mitigating hate speech targeting religious and cultural symbols.

A further structural challenge lies in the punitive orientation of the existing enforcement model, which relies predominantly on criminal sanctions without adequately integrating restorative approaches capable of addressing the underlying social rupture caused by symbol-based hate speech. Restorative justice mechanisms, particularly police discretion informed by dialogue between offenders, victims, and religious or customary leaders, have been identified as a promising complementary strategy for resolving hate speech cases in a manner that rebuilds social cohesion rather than merely imposing retributive punishment (Katim, 2022). This is particularly relevant for cases involving religious and cultural symbols, where the ultimate objective of legal intervention should extend beyond individual punishment to the restoration of communal trust and the prevention of escalation into horizontal conflict. Public discourse tools such as memes and satirical

content, which frequently circulate during moments of political or religious tension, illustrate how digital cultural production can simultaneously function as a vehicle for reconciliation and as a channel for symbolic hostility, underscoring the need for enforcement strategies that are sensitive to the communicative context rather than relying solely on literal textual analysis (Tinambunan & Prasetyo, 2020).

Taken together, these findings answer the second research question by demonstrating that the obstacles to effective protection of religious and cultural symbols in Indonesian digital space are not primarily normative but institutional and structural in nature. Strengthening protection therefore requires a threefold strategy: first, doctrinal refinement to sharpen the statutory distinction between symbol-based and individual-based hate speech; second, the development of a co-regulatory accountability framework that imposes proportionate obligations on digital platform providers operating within Indonesian jurisdiction, informed by comparative models such as the Digital Services Act; and third, the integration of restorative justice mechanisms and sustained digital legal literacy programs to address the behavioral and structural drivers of hate speech at its source. This integrated approach reflects the global regulatory trend identified in comparative literature, which increasingly recognizes that effective governance of digital hate speech cannot rely on state action alone but must involve a coordinated distribution of responsibility across public institutions, private platforms, and civil society (Karo, 2022; Kohl, 2022).

IV. CONCLUSION

This study concludes, first, that the Indonesian legal framework governing hate speech against religious and cultural symbols in digital space anchored in Article 28 paragraph (2) of the ITE Law, Article 156a of the Criminal Code, and Law Number 39 of 1999 on Human Rights provides a normatively adequate but structurally fragmented foundation for protection. The framework recognizes religious and cultural symbols as legitimate objects of legal concern, yet its statutory formulations remain insufficiently specific in distinguishing collective, symbol-based harm from individualized victimization, and remain doctrinally underdeveloped in addressing the transnational and platform-mediated character of contemporary digital communication. Second, the effective enforcement of this framework is constrained less by an absence of applicable norms than by structural obstacles, namely the anonymity of perpetrators, low digital legal literacy among both potential victims and content creators, the absence of a clearly defined co-regulatory accountability mechanism for digital platform providers, and an enforcement culture that remains predominantly punitive rather than restorative.

Based on these findings, this study recommends three interrelated strategic measures. First, legislative and judicial bodies should pursue doctrinal harmonization that explicitly differentiates symbol-based hate speech from individual-based hate speech within the ITE Law and the Criminal Code, thereby reducing interpretive ambiguity in judicial practice. Second, Indonesian policymakers should develop a co-regulatory framework for

digital platform accountability, drawing selectively upon comparative models such as the European Union's Digital Services Act, while remaining attentive to Indonesia's distinct constitutional balance between freedom of expression and the protection of religious and cultural dignity. Third, law enforcement institutions should expand the integration of restorative justice mechanisms alongside sustained digital legal literacy initiatives, so that legal protection for religious and cultural symbols is achieved not solely through retributive punishment but through the durable restoration of social cohesion. Future research would benefit from complementing this normative analysis with empirical studies examining the actual implementation of hate speech provisions in judicial decisions, in order to test the doctrinal propositions developed in this study against practical enforcement outcomes.

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