

# Legal analysis of freedom of expression and online humour in Indonesia

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## Abstract

*This paper examines the issue of freedom of expression in relation to online humour, particularly in Indonesian law. Despite being an inherent individual right within the broad scope of freedom of expression, there is currently no clear demarcation line in Indonesian law to position humour as an integral aspect of this right and of entertainment. Consequently, forms of humour such as memes, parodies, and satire may potentially be considered as insulting due to the subjective nature of humour and the lack of a consistent interpretation. This legal uncertainty raises concerns about the protection of freedom of expression as a fundamental human right in the present era. Despite the protection granted by the Constitution and various laws, Indonesia's legal framework does not explicitly define humour as a constituent of freedom of expression, thus leaving its interpretation to the discretion of the courts.*

**Keywords:** Indonesian law, freedom of expression, humour, online humour.

## 1. Introduction

Humour,<sup>1</sup> parody, memes, and other forms of expression in the digital space would not exist without freedom of expression (Shifman & Blondheim 2010). Specifically, humour is regarded as a part of freedom of expression because it can disseminate and amplify information (Kaye 2015) and enables individuals to express their ideas. The affirmation of freedom of expression has become a benchmark and foundation for a state to be considered democratic (Balkin 2017; Emerson 1964; Voorhoof & Cannie 2010). With this consensus, a democratic state requires freedom of expression in various forms, carried out in various ways, that are good and constitute a fundamental aspect of state administration (Dahl 2005; Scanlon 1972; Strauss 1991).

Support for freedom of expression is also endorsed by the UN Human Rights Council, which argues that it is a right for individuals to hold their own opinions without interference and

<sup>1</sup> In the dictionary, humor is defined more concisely as the "quality of being amusing or comic, particularly when expressed in literature or speech" (Oxford English Dictionary, 2020). However, the utilization of humor in this paper extends beyond that definition, encompassing a broader range of activities that evoke amusement, which is an integral aspect of freedom of expression.

to seek, receive, and convey information and ideas through any media and regardless of frontiers (Aswad 2018). One way in which this is actualized is through the signing of the Universal Declaration of Human Rights in various countries around the world (Messer 1993).

European countries emphasize that freedom of expression encompasses not only positive expressions, but also other forms of expression (Alkiviadou 2022), as illustrated in the case of *Handyside v. United Kingdom* (1976), in which the European Court of Human Rights stated in its ruling:

"Information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society" (Paragraph 49 of the judgment).

On the other hand, in Asian countries, similar concerns are addressed to guarantee that individuals can express themselves through diverse forms and methods (Stone 2019). Meanwhile, in Indonesia, freedom of expression was formulated by the founding fathers of the nation and enshrined in the constitution. It has been consistently acknowledged and safeguarded as an innate human right applicable to all individuals.

In a broader socio-historical context, freedom of expression has been widely recognized as a fundamental human right and is clearly stated in the constitutions of many countries around the world (Morsink 1999), including Indonesia. However, in practice, the extent to which freedom of expression is upheld depends on the political climate and psychological factors present in a given country (Sullivan & Transue 1999). One form of freedom of expression is humour, particularly when it is combined with satire<sup>2</sup> and criticism of government officials, which is often considered taboo. However, fear of punishment can often overshadow such expression (Isnaeni 2017), and those who convey such humour may find that it backfires and leads to criticism and offense.

Based on the above description, this article aims to critically assess the position of humour in Indonesian law as a form of freedom of expression. The lack of comprehensive research on the interrelation of the two variables in Indonesia has led to a subjective interpretation of humour. This is detrimental as humour is not objectively recognized as a part of freedom of expression, and as a result, the law is often enforced against humour as an "unpleasant act" in accordance with applicable regulations. Moreover, there are indications of the emergence of authoritarianism in silencing freedom of expression not only in the real world but also in the digital space (Asiacenter 2022), with the government unilaterally blocking humorous content. This is a concerning trend, particularly as the pandemic subsides.

Furthermore, the focus on online humour in this article is not limited to just one form, but rather is utilized in a wider context. However, it is important to note that the humour presented in this article is closely related to the integral aspect of freedom of expression (Ridanpää 2014).

## **2. Freedom of expression and humour in the digital space**

Historically, humour has been a subject of interest among prominent thinkers throughout history, including Plato, Aristotle, Mikhail Bakhtin, Henri Bergson, Sigmund Freud, Thomas Hobbes, Immanuel Kant, Søren Kierkegaard, Arthur Schopenhauer, and others, albeit often only briefly (Holm 2017, p. 9). Humour has been recognized as a tool for expressing and

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<sup>2</sup> Satire is defined by the Oxford English Dictionary as "the use of humour, irony, exaggeration, or ridicule to expose and criticize people's stupidity or vices, particularly in the context of contemporary politics and other topical issues" (Oxford Dictionary of Phrase and Fable 2005).

disseminating opinions, and it is intricately linked to other fields of knowledge (Alkiviadou 2019). Scholars have examined humour as a component of social, political, and cultural phenomena (Ridanpää 2014), as well as within the domains of psychology (Franzini 2001), psychotherapy (Dimmer et al. 1990; Valentine & Gabbard 2014), neurology (Rodden 2018), and education (Banas et al. 2011), etc.

On the other hand, humour has been recognized as a means of resistance against oppression and slavery (Barber 2021), and as a tool to resist authoritarian rule (Lampland & Nadkarni 2015) in undemocratic states where power is distributed unequally (Bozzini 2013; Bruner 2005; Davies 2007; Dumitrica 2022; Salmi-Niklander 2007). Going back as far as the classical playwright Aristophanes, humour has been used to ridicule those in public office (Schutz 1977). However, the destabilizing effect that humour has on the status quo is a welcome and arousing event, as it can challenge the hierarchical structure of oppressive dominance (Holm 2017, p. 72). Humour has also been identified and interpreted as a distinct political language, and the vocabulary of resistance may not be sufficient to fully comprehend and convey its meaning (Bhungalia 2020).

Humour has been viewed as ambivalent in the political sphere when used as a tool, and it has been argued that it provides an alternative lens through which to view politics, which are typically seen as serious (Ridanpää 2014). This characteristic is more prominent in egalitarian societies (Bhungalia 2020) compared to more culturally and hierarchically dominant societal systems (Dmitriev 2005). Moreover, humour has positioned itself to encourage and materialize various political processes that have significant consequences and impacts on society (Holm 2017, p. 42). Sharon Lockyer and Michael Pickering (2005) see humour as one of the most effective elements of public culture, occurring in all contemporary media and most institutional formats, and as a central aspect of social change (Marwick & Lewis 2017). At the same time, Nicholas Holm (2017, p. 7) emphasizes that humour is not a trivial or dismissible fantasy. Even in the political process, which was originally designed to recruit candidates for state administration, humour played an important role and was acknowledged.

It is a truism that humor is an effective tool for politicians to either make themselves more accessible to the public or their opponents less attractive, especially on television. In other words, candidates are not simply the unwilling foils of the mass media's humor, but also may define themselves and their opponents through the use of humor on the campaign trail (Stewart 2011, p. 202).

However, there is a difference when humour or satire, wrapped in comedy, is used to express political opinions and is interpreted by those who do not appreciate humour or rely on a negative evaluative perspective of humour. According to research by Hannah et al. (2022) the appreciation of humour represents different dimensions and reactions to the presented concept and material of humour. The reception of humorous content will depend on an individual's ability or fluency in translating and understanding the material.

At the jurisprudential level of humour expression cases in the ECtHR, the inconsistency is evident and tends to be non-systematic (Adriaensen et al. 2022). Based on cases from the ECtHR, Godioli et al. (2022) found that this inconsistency is rooted in the gray area where humour tends to reside, oscillating between potentially harmful and lawful expression. Therefore, the court still needs to assess the extent to which the disputed joke truly constitutes hate speech and has the potential to result in legally recognizable harm, or whether it falls within the realm of freedom of expression. On the other hand, humour in contemporary political developments, previously identified as a grammar of resistance, has the power to transgress and evolve through laughter. It serves as a medium for freedom of self-expression (Wilson 1990) and functions as an arena for citizen production in shaping protests (Dumitrica 2022). At the same time, it is also considered the politics of liberation for individuals (Holm 2017, p. 15). In

socio-political reality, humour in the form of stand-up comedy, for example, can simultaneously function as a gatekeeper, supervisor, and critic (Adekunle 2022) and tends to dare to deliver complex material (Schulman 1994). The content material is dominated by socio-political phenomena and popular issues that are currently developing. Even when viewed through an analytical lens, the works of professional stand-up comedians interrelate with critical theory to analyse social life (Bingham & Green 2015), becoming increasingly complex.

On the other hand, in the realm of digital media, the freedom of expression afforded to online humour is captivating and has even emerged as a dominant factor in the dissemination of humour (Shifman & Blondheim 2010). Additionally, protest humour within the confines of freedom of expression and the provocation of laughter can render protests more accessible to different audiences (Dumitrica 2022), while simultaneously engaging individuals or groups that may be unreachable, marginalized (Graefer et al. 2019), or dismissive of mainstream issues. Furthermore, in contemporary times, expressions conveyed through the internet have an extensive reach, enabling the freedom of expression, particularly in the form of humour, to be accessible to over 5.3 billion internet users, accounting for 66 percent of the world's population (ITU 2022). The amalgamation of freedom of expression online and collective humour results in a more effortless spread of humour in the digital domain (Jenkins et al. 2013). Moreover, the movement to express oneself in the digital space is currently trending (Balkin 2017), closely aligning with the values of the right to freedom of expression and opinion.

The interaction of freedom of expression and humour in the digital space, especially on social media, has positioned social media as a leading force in democratization (Graefer et al. 2019). Social media provides a platform for politically inclined youth to engage in novel forms of political expression and interaction (Keating & Melis 2017). Citizens can participate in political discussions while understanding their roles and exercising their rights. Online humour can help build solidarity among like-minded groups, strengthen communal identities, and advance accessible political criticism (Penney 2019). The proper implementation of the idea of freedom of expression in the form of online humour can help democracy take root and develop in a country (Voorhoof & Cannie 2010). Moreover, comedian activists whose humorous content revolves around civil rights and challenges to the misfortunes of life in the world serve as role models for users of the right to freedom of expression and opinion through humour (Bingham & Green 2015).

The freedom of expression in the form of online humour is an essential aspect in this era (Voorhoof & Cannie 2010). Various studies have noted that online humour has a great potential to influence citizens and shape political outcomes in state administration (Marwick & Lewis 2017; Penney 2017, 2019; Ross & Rivers 2017). Its provocation can have a strong grip on everyone. Activists strategically utilize this power as allies of free expression through online humour to capture attention and achieve their publicity goals (Sombatpoonsiri 2015).

### **3. Internet humour in Indonesian law**

According to a report released by We Are Social and Meltwater, Indonesia is projected to have 212.9 million internet users by 2023, which would account for 77 percent of the country's total population. The average internet user in Indonesia spends approximately 7 hours and 42 minutes online per day (Kompas 2023). Given the large number of internet users in Indonesia, creators and distributors of humorous content have the potential to reach a significant portion of the population. Furthermore, during the COVID-19 pandemic, restrictions on movement led to a surge in internet usage, highlighting the crucial role that the internet plays in everyday life (Dewi 2022; Kominfo 2020).

According to various studies, internet users tend to prefer content that is humorous and entertaining rather than serious (Gray et al. 2009; Shifman & Blondheim 2010). However, humorous content in the form of memes, as exemplified by the works of Wladyslaw Chlopicki and Dorota Brzozowska (2021), is considered to exhibit a high level of creativity and sophistication, incorporating allusions to intertextuality and broad cognitive complexity. Moreover, humour that employs information technology as a medium, as noted by Shifman and Blondheim (2010), is associated with 'hard' power related to political economy. Therefore, various movements and trends in online humour should not be underestimated.

In the context of Indonesian law, the concept of humour has not been given a specific definition. Therefore, its interpretation becomes a matter of intertextuality for academics and courts. However, there are very few Indonesian scholars who specialize in the study of humour, if any at all. Consequently, when the interpretation of humour lacks a solid foundation, humour containing certain satirical content may be distorted.

Furthermore, humour can serve as a means of "criticism" to address social issues related to the government in a humorous manner. However, laughter can also be considered a form of provocation (Bingham & Green 2015; Reid et al. 2006). Therefore, humour containing laughter as a form of provocation can be interpreted as an insult to the government or other parties who feel aggrieved by it. This may lead to punishment of the individual, as different dimensions and reactions to the concept and material of humour may arise.

More specifically, satire on certain issues is often conveyed through parodies, memes, comics, and other forms of media. However, satire may sometimes backfire on its creators.

In the current era, the internet has become a primary medium for individuals to exercise their right to freedom of opinion and expression in various forms, which holds significant value (Kaye 2015). This right is guaranteed in Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR), as is also the case in Indonesia. However, the use of online humour as a means to channel expressions and opinions is not always in line with national regulations stipulated by state authorities. In his report, Frank La Rue (2011) describes how freedom of expression in various forms has been hindered in many countries through the creation of criminal laws or new rules. As a result, internet users may face punishment for exercising their right to freedom of expression and opinion.

The restrictions on freedom of expression with regulations can also be observed in Indonesia. The protection of freedom of expression has been lacking, as demonstrated by the enactment of Law Number 11 of 2008 on Information and Electronic Transactions (the ITE Law). Initially, the ITE Law regulation guaranteed the protection of freedom of expression using the internet. However, the regulation partially regulates humiliation or defamation and the spread of hatred or individual hostility. Moreover, a certain article within the ITE Law is utilized and construed as a "rubber article" that can potentially ensnare anyone. In practice, the ITE Law is also applied excessively, causing a chilling effect on individuals who exercise their right to freedom of expression using electronic media such as the internet, Facebook, Instagram, and other social media. Therefore, various online humour forms, including tweets, memes, parodies, and other expressions, can be interpreted differently by individuals or groups. These provisions can ensnare those who create or distribute online humour that has the potential to offend other parties.

#### **4. Guarantee of freedom of expression**

Indonesia's constitutional guarantees of freedom of expression and opinion encompass various forms of expression, including humour, parody, writing, sayings, pictures, and other expressions. The government, state administrators, and other authorities are bound by the

constitution to protect individual rights to freedom of expression. Moreover, Article 28 of the Indonesian Constitution safeguards freedom of association, assembly, and expression of thoughts both orally and in writing. This right is further strengthened by Article 28F, which affirms that everyone has the right to communicate and obtain information for personal and social development, the environment, and the right to seek, obtain, own, store, process, and convey information using all available channels. These constitutional provisions reflect Indonesia's commitment to protecting freedom of expression as a fundamental right that can be enjoyed by every individual. The values of freedom of expression are closely linked to thoughts, beliefs, and inner convictions, which cannot be disputed (Utomo 2021).

Several national regulations support the Indonesian Constitution in upholding freedom of expression. For instance, Law Number 39 of 1999 on Human Rights and Law Number 40 of 1999 specifically regulate various rights to information, protection, as well as the rights to freedom of expression and peaceful assembly. These rules enable pro-freedom of expression and opinion activists and Indonesian comedians to express their humour skills in various forms. These provisions are supported by the ICCPR, which provides international standards for freedom of expression and has been ratified by Indonesia through Law Number 12 of 2005 to support freedom of expression for every individual. The broad scope of Article 19 paragraph 2 of the ICCPR guarantees the right to freedom of all kinds of expression, in harmony with Article 19 of the Universal Declaration of Human Rights. Moreover, the state's obligation to respect human rights has acquired a new dimension, which means that the right to freedom of expression in any media and in any form must be protected by the state and respected by other parties (Benedek & C. Kettemann 2013).

When associated with the administration of the state, freedom of expression is vital for individuals to prevent various abuses of power, to hold accountable the status quo, and to advocate for change movements (Stone 2019). Therefore, several state regulations guarantee the protection of freedom of expression in Indonesia, as indicated in the table below.

Table 1. Several Indonesian regulations guarantee the actualization of freedom of expression in the form of humour

<b>Law</b>	<b>Form of guarantee</b>
Law No. 9 of 1998 on Freedom of Speech in Public	Obtaining legal protection from the state
Law No. 39 of 1999 on Human Rights	Guarantees of legal certainty, protection, non-discrimination, freedom of association and assembly, as well as the guarantee of the right to express opinions and opinions. In addition, there are also guarantees of civil and political rights, guarantees of economic, social, and cultural rights, as well as guarantees of the rights of minority groups
Law No. 40 of 1999 on the Press	The independence of the press from other forms of power and its legal protection

Law No. 32 of 2002 on Broadcasting	Freedom of expression, Protection of intellectual property rights, Non-discrimination, Access to information
Law No. 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights	The right to liberty and security, Freedom of expression, Freedom of assembly and association
Law No. 14 of 2008 on Public Information Disclosure	Guarantees the right of every individual to access information held by public agencies, as well as the obligation of public agencies to proactively disclose certain information

The special role of these provisions guarantees the fundamental nature of freedom of expression to human dignity. In this sense, freedom of expression is considered an absolute value in every democratic regime and country (Liebel 2016). Thus, protection and respect for it become mandatory for the state and other individuals. However, according to David Kayle (2015), restrictions on freedom of expression in any form must be strictly applied and only in exceptional circumstances.

## **5. Restrictions on freedom of expression and Internet humour**

International instruments on human rights constructively regulate the freedom of expression and freedom of opinion, delineating which actions are permissible and impermissible. These regulations are explicitly stated in Article 19 of the ICCPR, such as the respect of the rights or reputations of others, the protection of national security or of public order, or of public health or morals. In doctrinal mechanisms, legal restrictions on the right to freedom of expression often follow directly from global limitation clauses and are also accompanied by internal restrictions (Stone 2019). However, it is essential to understand that any restrictions on the right to freedom of expression must comply with strict criteria conceptualised to avoid conflict with international human rights (Council 2011). State authorities can formulate various forms of restrictions without violating or reducing the right of individuals to express their freedom. This basis allows various countries worldwide to limit or curb freedom of expression based on what has been determined by international human rights instruments. Nevertheless, limitations on freedom of expression are a matter that raises two-sided debates in various studies (Zoller 2009; Zysset 2019) concerning the construction of restrictions. Particularly, the freedom of speech, considered as the 'first freedom', arises from Mchangama's claim (2020) about a future that is closer to a recession of freedom of speech, which represents a tragic development in matters of freedom of expression. Some justify the limitations (Gunatilleke 2021; Webber 2021), while others consider them equivalent to a violation of human rights (Council 2011; Tsakyrakis 2009). The core and criticism of the two debates center on how to define the limitation of freedom of expression (Sturges 2006). However, in the debate, rhetorical arguments about restrictions on freedom of expression often arise, especially concerning the ICCPR as an international instrument widely accepted by many countries, which gives restrictions on freedom of expression international legalization.

In most countries, restrictions on freedom of expression are implemented and enforced, which may include punishment and imprisonment for forms of expression such as humour,

parody, and comedy (Ullmann & Tomalin 2020) and tends to overlook the funny nature that arises from humour. Even in the realm of jurisprudence concerning humour, inconsistencies have been found, and humour is often dealt with in a relatively unpredictable and unsystematic manner (Adriaensen et al. 2022). However, defining restrictions on freedom of expression can be a delicate matter and can lead to conflicts (Sturges 2006). The use of criminal law to punish the exercise of the right to freedom of expression, including detention and torture, is considered a mistake according to LaRue (2011). The UN Human Rights Committee emphasizes that any restrictions on freedom of expression should only be made after fulfilling a necessity and proportionality test and without destroying the right to freedom of expression, as stated in Article 19 (3) of the ICCPR (United Nations 2011).

In order to impose restrictions on freedom of expression, the state must do so in a manner that does not jeopardize the right to freedom of expression for any individual or group. Moreover, the internet, as a new open technology, makes it almost impossible for state authorities to completely control various forms of humorous content, ideas, opinions, and information that can be accessed or shared by internet users (Benedek & C. Kettemann 2013). However, if such a scenario were to occur, it could potentially lead to human rights violations arising from restrictions on internet access, which serves as a vital conduit for the expression of freedom (Gillespie 2010). It is important to understand that in this era, the internet is one of the strongest instruments to increase transparency in the behavior of those in power, access to information, and facilitate the active participation of citizens in building a democratic society (Council 2011). This power is feared by some circles, particularly rulers and state authorities, and the findings of the UN confirm this. In many countries, freedom of expression through internet media is heavily restricted, controlled, manipulated, and censored without any legal basis or clear regulations (Council 2011).

However, the Indonesian Constitution and legal framework emphasize the importance of balancing freedom of expression with other rights and interests. Article 28J Paragraph (2) contains provisions regarding restrictions on freedom of expression that are legally mandated to protect the rights and interests of others. The legal framework for regulating freedom of expression is emphasized in Article 28J, which states that all rights can be limited. The article explains that individuals are obligated to respect the human rights of others while living in a society, nation or state, and must comply with restrictions determined by law for the sake of order and respect for the rights and freedoms of others. However, limitations that involve criminal provisions have created a chilling effect on individuals who wish to exercise their rights. For example, stand-up comedy or other forms of online humour that are disseminated and frequently populate social media platforms such as Facebook and Instagram explore various social gaps experienced by the Indonesian society. However, comedians should avoid being excessively vulgar in delivering their material and are often compelled to explicitly state that their material cannot be conveyed. If they persist in delivering it, whether directly or indirectly, they may face legal consequences or restrictions on freedom of expression. These judicial facts below depict the juridical challenges and interpretive knowledge discretion of judges regarding whether the contested jokes fall under the category of freedom of expression and humour or not.

Cases	Chronology	Decision	Court Findings
Ende Mulyana Aliyudin (defendant) vs. Dedi Mulyadi based on the Decision of the	In 2012, the defendant made a Facebook post and joined Facebook groups to express his opinion about the then Regent of Purwakarta, Dedi	Ende Mulyana Aliyudin was charged with a four-month prison sentence	Violating Article 27 paragraph (3) of the ITE Law which states, "any Person who"

Supreme Court of the Republic of Indonesia Number 364 K/Pid.Sus/2015	<p>Mulyadi, who organized a government event near Dudung's house, who was also a candidate for Regent of Purwakarta. The criticism posted on Facebook was perceived by Dedi Mulyadi as defamatory and filled with hatred. However, for the defendant, who is also a journalist, the post represented a form of social control expression towards the local environment and government authorities.</p>		<p>knowingly and without authority distributes and/or transmits and/or causes to be accessible Electronic Information and/or Electronic Documents with contents of affronts and/or defamation”</p>
The case "Meme Stupa" involving Roy Suryo based on the Decision of the Jakarta High Court with Number 9/PID.SUS/2023/PT DKI	<p>In 2022, Roy Suryo, a former Minister of Youth and Sports of the Republic of Indonesia, was the defendant in a case involving a meme stupa, which initially began on June 7, 2022. The defendant came across a social media post on Twitter from an account named @IrutPagut, depicting a manipulated image of a stupa with the face of the President of the Republic of Indonesia instead of Buddha's face. On June 8, 2022, the post went viral after being featured in the news. On June 10, 2022, the defendant received a mention on Twitter from the account @fly_free_DY to the defendant's Twitter account @KRMTRoySuryo2, and the defendant consciously responded by quoting the image of the stupa, which had been edited into a meme. The defendant added a caption to the image, stating, "Taking advantage of a light weekend tweet. In line with the protest against the</p>	<p>Roy Suryo was prosecuted for the disputed meme and sentenced to nine months of imprisonment and a fine of IDR 150,000,000. If the fine is not paid, it will be substituted with a two-month prison term.</p>	<p>Violating Article 28, paragraph (2) of the ITE Law, it states that the defendant “any Person who knowingly and without authority disseminates information aimed at inflicting hatred or dissension on individuals and/or certain groups of community based on ethnic groups, religions, races, and intergroups (SARA)”</p>

	planned increase in ticket prices to visit Borobudur Temple (from 50,000 IDR to 750,000 IDR per person), which has been postponed, many netizens have creatively transformed one of the iconic open stupas at Borobudur. It's funny, he-3X AMBYAR."		
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The two cases previously described briefly align with the general definition in interpreting freedom of expression and humour. The interpretation depends on the socio-political context in which freedom of expression and humour are produced and disseminated (Godoli et al. 2022). The interpretative challenges in standardizing the definition of freedom of expression and humour cannot be separated from the knowledge and wisdom of judges in interpretation. Pluralistic Indonesia, encompassing ethnic, religious, racial, and inter-group diversity, faces significant challenges in standardizing the definition of freedom of expression and humour, which tend to be in a grey area. At least in interpretation, it should not solely rely on the legal context. Based on ECtHR cases, Godoli et al. (2022) provides an alternative to assist judges in interpretation, particularly regarding humour, through interdisciplinary analysis. Even for similar cases like the two discussed, judges can pay special attention to (1) the rhetorical/semiotic mechanisms underlying the verbal, visual, or textual context; (2) the contrast of humour with previous texts through metaphors, comments, or parodies; (3) The role played by humour, considering humour genre conventions and linking them to the socio-political context in which humour is produced and disseminated; (4) examining the outcomes of the interpretative process where humour and insult intersect in disputed expressions; and (5) the court, in this case, the judges, reconstructing the actual or presumed reception of alleged ambiguous humour.

Restricting humour, which is a manifestation of freedom of expression, is a way to quarantine humour that contains hate speech, especially online hate speech (Ullmann & Tomalin 2020). The increasing prevalence of hate speech on the internet, which conveys offensive messages (Gelber & McNamara 2016), can cause psychological and social disorders (Judge & Nel 2018), and becomes one of the indicators of the need for limitation. However, these regulations in Indonesia are not only used to quarantine harmful humour but are also used as repressive rules to punish creators and disseminators of humorous content. The fact becomes apparent upon the enactment of the ITE Law, where the trend of punishment and prosecution against expressions has increased. Instead of regulating the dissemination of negative content, the ITE Law is widely used as a provision to silence and suppress expressions by invoking the Article on Defamation and Slander, as stated in Article 27 Paragraph (3) of the ITE Law, commonly known as the "Rubber Article". Additionally, various expressions are also criminalized under the offenses specified in Article 27 Paragraph (3) of the ITE Law. Martua Saragih, for instance, was convicted by the Court and became a defendant for highlighting the local government's abuse of authority in waste management. Saragih's case began when the defendant wrote and sent a message through a short messaging service to inform the wider community. It is based on the utilization of technology that the court's decision relied upon Article 27 Paragraph (3) of the ITE Law and was further reinforced by the Supreme Court of the Republic of Indonesia. In the Supreme Court's deliberation, the defendant's cassation plea was considered incapable of absolving the defendant of their wrongdoing for "knowingly and without authority distributing electronic information and documents that contain defamation and

slander" (Supreme Court of the Republic of Indonesia, Decision Number 2671 K/PID.SUS/2015).

Regardless of the judicial outcomes in the Supreme Court of the Republic of Indonesia, both the national and supranational judicial processes tend to neglect the intricate and multifaceted nature of humorous communication (Adriaensen et al. 2022) that is difficult to be identified as humour and is an integral part of freedom of expression, particularly in Indonesia.

## **6. Disparagement humour that leads to punishment**

Restrictions on freedom of expression, as prescribed by International and National Law in Indonesia, aim to minimize insulting humour that may incite conflict. Contemporary methods of understanding humour proliferation organize several theories into a tripartite structure – Relief, Incongruity, and Superiority (Holm 2017). The superiority theory approach, which essentially regards humour and laughter as part of perceiving others as inferior, is especially used to explain humour with offensive language (Billig 2005; Dumitrica 2022; Pérez 2017). Although the theory of superiority was already present in the time of Greek philosophers like Plato and Aristotle who briefly described humour as a way to find solace from the misfortunes of others (Dumitrica 2022; Ford et al. 2014), world history also records many rulers who use humour to ridicule or show malice towards their less fortunate citizens (Dmitriev 2005).

Research conducted by Buie et al (2022) reveals that insulting humour by disparaging others is a dangerous means of expressing humour in popular culture. Jarno Hietalahti et al. (2016) argue that the claim for freedom of expression by publishing tendentious and provocative insulting humour is unfounded, as it threatens and requires defense, which is strictly prohibited. Thus, this understanding may create a polarization of views on the freedom of expression regarding insult humour, whether to support or oppose it.

The Indonesian Constitution contains provisions to restrict any form of humiliation or insult towards others under the pretext of freedom of expression. Legal provisions are the most common method used to limit freedom of expression, and there are at least two important reasons why Indonesia has to restrict freedom of expression by law. Firstly, the Indonesian Constitution explicitly states that Indonesia is a state with legal authority that is the commander in chief. Secondly, the limitation of freedom of expression is an articulation of international law that has been agreed upon and must be followed as a guide.

The limitations on freedom of expression are clearly defined within the legal framework of the Indonesian Constitution. Article 28J paragraph (1) of the Constitution mandates that every individual must respect the human rights of others for the sake of maintaining order in society, nation, and state. The limitations imposed by the Constitution are proportionate and form the highest law in Indonesia, serving as a reference and benchmark for limiting freedom of expression. This strong constitutional basis supports the consolidation of society in exercising their right to freedom of expression, while ensuring that the use of insulting humour or offensive language does not harm other groups or individuals.

The limitation of freedom of expression based on the constitution is a guarantee of state authority to safeguard the democracy of Indonesian society which is pluralistic and heterogeneous in terms of ethnicity, religion, culture, and language. However, as time goes by, state authorities, who are responsible for producing legal regulations to limit freedom of expression, particularly through internet media, have generated controversies surrounding the creation of various rules that restrict freedom of expression.

The impact of limiting freedom of expression can be seen in the case of Dyann Kemala Arrizzqi, who was arrested for reposting a meme online that allegedly insulted DPR Speaker Setya Novanto. This arrest was made under Article 27 paragraph (3) of the ITE Law, as well as

Articles 310 and Article 311 of the Penal Code (Wiwoho 2017). Arrizzqi is not the only one reported in the meme case about the illness of the Chairman of the Indonesian Parliament, Setya Novanto. In the police report, there are 32 Instagram, Twitter, and Facebook accounts that were also reported. This case has sparked controversy, debate, and criticism from supporters of freedom of expression. Advocates of freedom of expression consider the memes as mere jokes that entertain and do not constitute defamation (BBC Indonesia 2017). It can be said that the Setya Novanto meme is a spontaneous reaction of the public to the mega corruption case involving Setya Novanto, who is suspected of 'evading' the corruption investigation by using the excuse of being 'sick'. Henri Subiakto, who participated in drafting the ITE Law, regretted the arrest and stated that satire cannot be criminalized, especially in the context of democracy. Similarly, the government, through Rudiantara, who was then the Minister of Communication and Informatics, believed that the arrest and detention were excessive and did not fulfill a criminal element (Yuliani 2017). Nawawi Bahrudin, the Executive Director of the Legal Aid Institute Pers, firmly stated that memes are social criticism in a democratic country that should be protected rather than silenced (Rahadian 2017).

The use of internet humour as a form of expression is increasingly common, particularly in Indonesia. However, the legality of such expression remains a contentious issue. Indonesian law recognizes freedom of expression, but this right is not absolute and is subject to certain restrictions. The ITE Law is one such restriction. The ITE Law has been used to prosecute individuals for online posts deemed to be insulting, defamatory, or blasphemous. For instance, the case of Ende Mulyana Aliyudin vs. Dedi Mulyadi, which was mentioned earlier, resulted in a judicial verdict declaring Ende Mulyana Aliyudin guilty and sentenced to 4 months in prison. Another case involving online humour is the case of Ismail Ahmad in 2020, who made an online joke on his personal Facebook post about the 'three honest police officers' in Indonesia: the statue of a police officer, a speed bump, and General Hoegeng. This humour had been popularized by former Indonesian President Abdurrahman Wahid and was a well-known satire in Indonesia. However, the local police responded differently by summoning Ismail Ahmad and requesting a public apology for his post about the 'three honest police officers' in Indonesia. Although Ismail Ahmad was not arrested or brought to court, this case drew attention and sparked discussions on social media. In this regard, the public and social media users expressed their frustration when humorous criticism became intertwined with the law. Even Alissa Wahid, the daughter of former Indonesian President Abdurrahman Wahid, responded to the case by stereotyping it as a sign that Indonesia has entered a state of humour emergency (CNN Indonesia 2020). Critics of the ITE Law argue that it has been used to stifle legitimate criticism and suppress dissent. On the other hand, proponents argue that it is necessary to protect public morality and prevent the spread of harmful content. As such, the use of internet humour in Indonesia is a complex issue that requires careful consideration of both freedom of expression and legal restrictions.

The enactment of the ITE Law caused a massive commotion and drew the attention of many parties. Furthermore, cases of violations against the use of freedom of expression through electronic media have been increasing. In light of this, Amnesty Indonesia's (2021) has identified and categorized several laws that are deemed problematic and that threaten freedom of expression in various forms, which are individual rights that cannot be reduced even if these provisions lead to punishment. Among these laws are Articles 27, 28, and 29 of the ITE Law, which criminalize individuals for their freedom of expression, often citing acts such as "immorality", defamation, and hate speech (Utomo 2021).

In this context, the fairness and meaning of expressions are closely interrelated in determining the acceptability of humour, parody, stand-up comedy, insults, or ridicule. This is significant because individuals vary in their appreciation of humour, and the meaning of humour may be based on either negative or positive evaluation.

## 7. Conclusion

Freedom of expression is a fundamental human right protected under international law, including the ICCPR ratified by Indonesia. However, applying freedom of expression in the context of humour can be problematic due to differences in interpretation and state regulations. Humour is a form of expression that can be perceived differently by different people, especially in online settings where individuals from various cultural backgrounds may have varying sensitivities to certain topics.

In Indonesia, the lack of a clear definition of humour in the law has resulted in the potential for various interpretations of what constitutes humour. This could include insults, defamation, and unpleasant acts. Unfortunately, humour, which is an integral part of freedom of expression, has faced negative interpretations from state authorities. This led to limitations on its movement through state regulations that contain criminal provisions, which could result in punishment for those who have violated these regulations.

Limiting humour in Indonesia is in conflict with the ICCPR, which affirms the right to freedom of expression as an inherent and natural human right. The President of Indonesia, Joko Widodo, has acknowledged the potential threat to freedom of expression posed by the Information and Electronic Transactions (ITE) Law, which contains a "Rubber Article" with multiple interpretations (Amnesty Indonesia 2021). The ambiguous language of this article leaves room for judicial interpretation, raising questions about whether humour can be considered part of freedom of expression or is purely an act of crime. In conclusion, Indonesia must balance protecting freedom of expression and upholding the law while ensuring individuals are not unfairly punished for their expression.

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