

Freedom of Speech in Post-Reform Indonesia: A Lawfare Perspective

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Abstract: This paper examines the use of lawfare as a mode of governance affecting freedom of speech in post-Reformasi Indonesia. While constitutional amendments to the 1945 Constitution formally entrenched freedom of speech, legal mechanisms have increasingly been mobilized to regulate, discipline, and suppress both political and social expression. Drawing on doctrinal legal analysis and political-institutional theory, the article argues that lawfare in Indonesia operates not primarily through overt censorship, but through strategic deployment of criminal, civil, and administrative law, particularly under the Electronic Information and Transactions Law, defamation provisions, and blasphemy regulations. Through analysis of prominent cases such as Deddy Febrianto Holo and Daniel Tangkilisa, Newmont Nusa Tenggara, Riau Andalan Pulp and Paper (RAPP) v. Tempo, Basuki Tjahaja Purnama, alongside Constitutional Court jurisprudence on freedom of speech, the article demonstrates how complaint-driven prosecutions, prosecutorial discretion, and judicial restraint collectively produce a chilling effects on journalists, activists, academics, and political opponents. These practices blur the boundary between legitimate regulation and political repression, embedding coercion within formally lawful processes. The article contributes to Southeast Asian governance scholarship by conceptualizing Indonesian lawfare as a form of legal-institutional power that reshapes democratic contestation while maintaining constitutional legality. It concludes by outlining normative criteria and institutional reforms to reconcile Pancasila-based public order with meaningful protection of freedom of speech.

Keywords: Lawfare; Freedom of Speech; Democratic Governance

1. Introduction

The transition of the Indonesian political landscape from the authoritarian New Order to the era of *Reformasi* promised a constitutional order anchored in the rule of law and the protection of fundamental civil liberties.¹ However, the persistence of a resource-based economy and the reorganization of politico-business elites have created a contemporary landscape in which the state's power is increasingly exercised not through brute force but through the instrumentalization of legal frameworks.² This phenomenon, often characterized as lawfare, represents the strategic mobilization of law as a weapon to retaliate against, intimidate, and punish those whose dissent disrupts the interests of the powerful.³ In Indonesia, this trend is most visible in the systematic suppression of freedom of speech, where activists and local communities defending their environments and livelihoods are transformed from defenders into defendants before the courts.⁴

This paper examines the growing phenomenon of lawfare, in which legal systems are deliberately employed to serve political or private interests instead of acting as impartial arbiters committed to the common good. The primary objective is to analyze the mechanisms through which lawfare is used to target and suppress freedom of speech. Accordingly, this paper addresses three central questions: the processes by which law loses its intrinsic integrity and becomes an instrument of repression; the political and social consequences for free expression, including widespread chilling effects and diminished democratic accountability; and the normative and institutional reforms required to balance social order with strong protections for dissent.

Despite the adoption of anti-SLAPP ("**Strategic Lawsuits Against Public Participation**") provisions, such as Article 66 of Law Number 32 of 2009 on Environmental Protection and Management ("**Environmental Law**"), legal attacks on dissenters have persisted through the weaponization of the criminal justice system.⁵ Provisions relating to criminal defamation, the Law Number 11 of 2008 on Electronic Information and Transactions ("**ITE Law**"), and vague offenses against state ideology or public order have become the primary weaponry used by state and corporate actors to delegitimize activism.⁶ These strategies operate by creating a profound chilling effect, utilizing the law to "launder brute power in a wash of legitimacy" while effectively neutralizing political opposition through calculated judicial harassment.⁷

Previous research into this phenomenon has largely been bifurcated into

1 Agung Wardana, *Turning Defenders into Defendants: The Use of Lawfare against Environmental Activists in Southeast Asia* (Cambridge: Cambridge University Press, 2026), 71–72.

2 Wardana, *Turning Defenders into Defendants*, 64, 72.

3 Wardana, *Turning Defenders into Defendants*, 10–11, 43–44.

4 Wardana, *Turning Defenders into Defendants*, 5, 124.

5 Wardana, *Turning Defenders into Defendants*, 4, 124.

6 Wardana, *Turning Defenders into Defendants*, 55, 142–143.

7 Wardana, *Turning Defenders into Defendants*, 46; Hedi Viterbo, "Lawfare," in *The ABC of the OPT: A Critical Lexicon of the Israeli Occupation*, eds. Orna Ben-Naftali, Michael Sfard, and Hedi Viterbo (Cambridge: Cambridge University Press, 2018), 243.

liberal and critical streams.⁸ The liberal stream, championed by scholars like Pring and Canan, focuses on SLAPPs as threats to the rights of petition and free expression, typically framing the issue as a civil litigation battle between private actors.⁹ Other researchers have explored “legal intimidation” within the Global North, focusing on how libel suits discourage public participation.¹⁰ Conversely, the critical stream, informed by critical criminology, investigates “criminalization” as a technology of power that sustains capitalist modes of production by selectively enforcing laws against dissenters while under-penalizing corporate environmental harm.¹¹ In Indonesia, prior research has emphasized the existence of a “defamation regime” and the role of “crony capitalism” in ensuring the judiciary remains a site for social conflict rather than a neutral arbiter of rights.¹²

This study has been greatly overlooked because it applies the hegemonic lawfare framework to explain how law functions not only as a means of coercion but also as a platform for indirect moral leadership, designed to manufacture public consent for the current political-economic *status quo*. By examining the geographical scope, legal instruments, and external effects of lawfare, this research exposes the structural asymmetries that allow legal technocracy to serve as a mask for a new form of “authoritarian statism”.

2. Methodology

The research adopts a normative legal method combined with a systematic literature study to analyze the mobilization of legal frameworks against critical dissent in Indonesia. Data collection involves a critical review of diverse secondary materials, including scholarly literature, constitutional and statutory texts, judicial decisions, official reports, archival materials, and reputable news sources. These materials are analyzed to trace patterns of legal mobilization targeting political, religious, and social expression.

Methodologically, the article relies on qualitative analysis. As Kittrie explained, premature reliance on quantitative studies risks obscuring the context-specific mechanisms through which lawfare operates. Instead, he argues that scholars should first develop detailed case studies to understand how lawfare functions across different legal and political environments before attempting broader generalization.¹³ This approach aligns closely with Tamanaha’s concern that instrumental views of law generate effects that are institutionally contingent, context-sensitive, and resistant to simple measurement, particularly when legality itself becomes a medium of

8 Wardana, *Turning Defenders into Defendants*, 7-8.

9 Wardana, *Turning Defenders into Defendants*, 7-8; George W. Pring and Penelope Canan, *SLAPPs: Getting Sued for Speaking Out* (Philadelphia: Temple University Press, 1996), cited in Wardana, *Turning Defenders into Defendants*, 7.

10 Wardana, *Turning Defenders into Defendants*, 7, 14; Fiona Donson, *Legal Intimidation* (London: Free Association Press, 2000), cited in Wardana, *Turning Defenders into Defendants*, 7, 14.

11 Wardana, *Turning Defenders into Defendants*, 9, 39-41.

12 Wardana, *Turning Defenders into Defendants*, 10, 66, 113; David Streckfuss, *Truth on Trial in Thailand: Defamation, Treason, and Lese-Majeste* (London: Routledge, 2011), 6, cited in Wardana, *Turning Defenders into Defendants*, 113; Richard Robison and Vedi Hadiz, *Reorganising Power in Indonesia: The Politics of Oligarchy in an Age of Markets* (London: RoutledgeCurzon, 2004), 43, cited in Wardana, *Turning Defenders into Defendants*, 66.

13 Orde F. Kittrie, *Lawfare: Law as a Weapon of War* (Oxford: Oxford University Press, 2016), 331-332; see also Tamanaha, *Law as a Means to an End*, 156-164, 213-214.

coercion.¹⁴ Furthermore, the methodology employs elements of intellectual history and rational reconstruction, drawing on legal history, constitutional aspect, and political-institutional analysis to trace how instrumental conceptions of law have come to dominate legal culture and practice.

3. Conceptual and Theoretical Framework

3.1. Lawfare, Instrumentalism, and Law as a Means to Power

Lawfare is understood in this paper as the strategic use of law as a weapon to achieve political, social, or ideological objectives, rather than as a neutral mechanism for dispute resolution. As Kittrie emphasizes, lawfare is most effective where legal rules, procedures, and institutions are transparent, legitimate, and procedurally dense, allowing coercive outcomes to be produced without overt violence or illegality.¹⁵ This conception of lawfare rests on a deeper conceptual framework: legal instrumentalism. Tamanaha argues that modern legal systems increasingly treat law as a “means to an end”, rather than as a normative order with intrinsic content or moral integrity.¹⁶ In such view, law is a “*hollow vessel*”, capable of being filled with whatever content those in power choose, provided formal legality is maintained.¹⁷

Kittrie’s account of lawfare presupposes precisely this instrumental understanding of law. When law is perceived as a powerful and manipulable instrument, political and social actors are incentivized to capture, deploy, and contest legal mechanisms as weapons in broader struggles over power.¹⁸ As Tamanaha warns, once law is understood instrumentally, “combatants will fight to control and use the implements of law as weapons in social, political, religious, and economic disputes.”¹⁹

3.2. Freedom of Speech under the Indonesian Constitution

Freedom of speech is expressly protected by Articles 28E(3) and 28F of the 1945 Constitution, which guarantee the rights to express opinions and to seek, obtain, process, and disseminate information through all available means. These constitutional guarantees are embedded in Indonesia’s foundational ideology of Pancasila, which emphasizes social harmony, religious values, and collective morality alongside individual rights. Article 28J authorizes statutory limitations on constitutional freedoms to respect the rights of others and to safeguard public morality, religious norms, security, and public order. This interaction among constitutional limitations, expansive statutory offenses, and restrained judicial oversight produces a legal environment in which lawfare can flourish: coercive interventions against speech are normalized through formally lawful processes, thereby allowing political control to be exercised

14 Tamanaha, *Law as a Means to an End: Threat to the Rule of Law* (Cambridge: Cambridge University Press, 2009), 118–132, 213–214.

15 Kittrie, *Lawfare*, 33–34.

16 Tamanaha, *Law as a Means to an End: Threat to the Rule of Law* (Cambridge: Cambridge University Press, 2009), 118–132.

17 Tamanaha, *Law as a Means to an End*, 33–34.

18 Kittrie, *Lawfare*, 33–34.

19 Tamanaha, *Law as a Means to an End*, 195.

without the overt suspension of constitutional guarantees.

3.3. From Higher Law to Instrumental Law: The Erosion of Intrinsic Limits

Tamanaha contrasts contemporary instrumental views of law with earlier legal traditions in which law was understood to possess a necessary content and integrity, often grounded in divine principles, natural law, or moral reason.²⁰ Under these earlier conceptions, law was not infinitely malleable; it was constrained by higher norms that limited what law could permissibly command. According to Tamanaha, this understanding eroded over the past centuries, culminating in a modern legal culture in which law is valued primarily for its efficacy in achieving social ends.²¹ Legal instrumentalism thus transforms law from a normative constraint into a tool of governance, judged by results rather than legitimacy. Kittrie's analysis implicitly relies on this transformation. Lawfare is only possible where law no longer operates as a barrier to power, but as a terrain of contestation—a site in which legal rules, interpretations, and procedures are mobilized strategically.²² Where higher-law constraints have weakened, legality itself becomes a resource to be exploited.

3.4. Legal Framework Governing Freedom of Speech in Indonesia

Freedom of speech in Indonesia is constitutionally guaranteed under Articles 28E(3) and 28F of the 1945 Indonesian Constitution as amended ("**1945 Constitution**"), which affirm the rights to express opinions and to seek, obtain, possess, store, process, and convey information through all available channels. These guarantees, however, are explicitly regulated under Article 28J of the 1945 Constitution, which permits limitations by law for reasons of morality, religious values, security, and public order, reflecting Indonesia's communitarian and Pancasila-based constitutional framework.²³ This broad limitation clause has provided a constitutional foundation for extensive statutory regulation of expression, including in terms of freedom of speech. Furthermore, the Constitutional Court (*Mahkamah Konstitusi*) has consistently interpreted this constitutional framework as supporting a communitarian approach to the protection of rights, whereby freedom of speech, including freedom of speech, is balanced against collective interests rather than regarded as an absolute entitlement. Through its jurisprudence, the Constitutional Court has upheld various speech restrictions while articulating conditional standards of constitutionality, thereby reinforcing legislative discretion and prioritizing social order over rigorous proportionality review.

At the statutory level, freedom of speech is primarily governed and constrained by provisions of the Indonesian Criminal Code (*Kitab Undang-Undang Hukum Pidana* - "**KUHP**", as enacted in Law Number 1 of 2023 on Criminal Code), ITE Law, along with dispersed regulations on defamation, hate

20 Tamanaha, *Law as a Means to an End*, 33–34.

21 Tamanaha, *Law as a Means to an End*, 183 (fn.), 118–132.

22 Kittrie, *Lawfare*, 28–35.

23 Wardana, *Turning Defenders into Defendants*, 66, 71–72.

speech, blasphemy, and public order.²⁴ Under the KUHP, criminal defamation is retained but restructured: defamation and insult are formulated as *delik aduan* (complaint-based offences), formally limiting prosecution to cases initiated by the alleged victim and excluding state-initiated enforcement.²⁵ Despite this procedural narrowing, the substantive elements, such as attacks on honour or reputation through spoken, written, or electronic expression, remain broadly defined, thereby preserving significant discretion in interpretation and enforcement. Blasphemy provisions and public order offences similarly survive the reform, continuing to authorize criminal sanctions for speech deemed to disrupt religious harmony or social stability.²⁶ In parallel, ITE Law extends these speech offences into the digital sphere, facilitating rapid criminalization of online expression and magnifying chilling effects through arrest, detention, and prosecution, even when acquittal or dismissal eventually occurs.

From international perspective, Indonesia as a state party to the International Covenant on Civil and Political Rights (“ICCPR”) is bound to protect freedom of speech under Article 19 of the ICCPR, permitting restrictions only when they are provided by law and are necessary and proportionate to protect legitimate interests such as national security, public order, or the rights of others.²⁷ Despite formal ratification, persistent tensions remain between ICCPR standards and domestic practice. Indonesian courts, including the Constitutional Court (*Mahkamah Konstitusi*), have generally upheld the constitutionality of restrictive speech provisions through doctrines of conditional constitutionality and judicial deference, prioritizing social harmony and moral order over rigorous proportionality review.²⁸

Furthermore, General Comment No. 34 of the Human Rights Committee regulates that any limitation on the right to freedom of speech be prescribed by law and satisfy strict tests of necessity and proportionality.²⁹ International human rights jurisprudence demonstrates the nuanced application of these standards. For example, in *Coleman v. Australia*, the Committee determined that although permit systems may be legitimate to balance competing interests, the state’s punitive measures of fines and imprisonment for a peaceful public address were disproportionate and inconsistent with the Covenant.³⁰ In *Toregozhina v. Kazakhstan*, the arrest and detention of an activist for participating in an “art-mob” was found to violate the Covenant because the state did not establish a specific threat to public order that would justify such intrusive measures.³¹ In contrast, in *Faurisson v. France*, the Committee upheld a restriction where the context of statements incited anti-semitic sentiment, concluding that the restriction was necessary to protect the rights and reputations of the Jewish

24 Wardana, *Turning Defenders into Defendants*, 65, 69, 142-143.

25 Wardana, *Turning Defenders into Defendants*, 72.

26 Wardana, *Turning Defenders into Defendants*, 143-144.

27 Wardana, *Turning Defenders into Defendants*, 66, 71-72.

28 Richard A. Posner, quoted in Tamanaha, *Law as a Means to an End*, 188.

29 Human Rights Committee. *General Comment No. 34. Article 19: Freedoms of opinion and expression*. UN Doc. CCPR/C/GC/34 dated 12 September 2011.

30 Human Rights Committee. *Patrick Coleman v. Australia*. Communication No. 1157/2003, UN Doc. CCPR/C/87/D/1157/2003 dated 10 August 2006.

31 Human Rights Committee. *Bakhytzhan Toregozhina v. Kazakhstan*. Communication No. 2137/2012, UN Doc. CCPR/C/112/D/2137/2012 dated 20 November 2014.

community.³²

3.5. Instrumental Judging, Pragmatism, Institutional Facilitation, and Chilling Effects of Lawfare

Tamanaha identified that Instrumentalism extends beyond legislation into judicial reasoning and legal practice. Richard Posner, a leading proponent of pragmatic jurisprudence, explicitly argues that “legal rules should be viewed in instrumental terms,” emphasizing outcomes and social consequences over rule-bound reasoning.³³ Furthermore, when judges prioritize purposes and outcomes, the rule-bound character of law deteriorates, expanding discretionary space and undermining predictability.³⁴ This erosion of legal certainty creates fertile ground for lawfare, as legal actors can anticipate that rules will be interpreted flexibly in light of perceived social or political imperatives.

In Kittrie’s framework, lawfare does not require judges to be overtly partisan. It requires only that legal institutions operate within a culture that accepts instrumental reasoning, enabling law to be bent toward strategic ends without appearing illegitimate.³⁵ His claim that lawfare should not be evaluated solely by formal legal outcomes, such as convictions or court victories, is crucial. Rather, lawfare often succeeds through process-based effects, known as *chilling effects*: delay, reputational damage, resource exhaustion, and deterrence.³⁶

4. Lawfare Targeting Speech in Indonesia

Freedom of speech is a fundamental element of Indonesia’s post-Reformasi constitutional and democratic framework, supporting political participation, public deliberation, and governmental accountability. However, the legal regulation of expression increases the vulnerability of speech to lawfare, as broadly defined legal norms permit expressive acts to be reclassified as violations of criminal, civil, or administrative law. In Indonesia, lawfare directed at speech is implemented through a combination of criminal enforcement, civil and administrative regulation, and social and religious mobilization. This approach enables legal institutions to discipline expression through formally lawful procedures rather than through explicit censorship.

4.1. The Importance of Freedom of Speech

Freedom of speech, frequently identified as a primary right, refers to the ability of individuals and the media to express opinions and report news without interference from the state or government censorship.³⁷ Legal theory regards the protection of liberty as fundamental to the existence of a free state,

32 Human Rights Committee. *Robert Faurisson v. France*. Communication No. 550/1993, UN Doc. CCPR/C/58/D/550/1993 dated 16 December 1996.

33 Tamanaha, *Law as a Means to an End*, 227–236.

34 Kittrie, *Lawfare*, 34–36.

35 Tamanaha, *Law as a Means to an End*, 1, 6; Wardana, *Turning Defenders into Defendants*, 13, 46; Viterbo, “Lawfare,” 243.

36 Kittrie, *Lawfare*, 331–332.

37 Wardana, *Turning Defenders into Defendants*, 66, 71–72.

often prioritizing it over competing rights or interests.³⁸ This foundational status is based on the conviction that the right to openly criticize government institutions is a central feature of democratic systems.³⁹ The safeguarding of freedom of speech is essential for preserving the integrity of democratic governance. By facilitating the unrestricted exchange of information, ideas, and debate, free speech enables the electorate to make informed decisions, hold public officials accountable, and improve the effectiveness of representative government.

In professional and scientific contexts, protecting speech is necessary to avoid a chilling effect that leads to self-censorship.⁴⁰ For example, government scientists must be able to share research findings without fear of political reprisal, ensuring that public policy is guided by objective expertise rather than political agendas. Within organizations such as political parties, the freedom to express dissent is a matter of moral agency.⁴¹ Without this freedom, members risk becoming instruments of leadership objectives, resulting in either complete conformity to potentially harmful norms or total disengagement that erodes individual responsibility.⁴² In Indonesia, support for expressive freedoms has increased substantially. As of 2024, 48% of Indonesian adults consider the ability to speak freely without censorship to be very important, and a majority of 52% place a high value on unrestricted internet use.⁴³

4.2. Why is Freedom of Speech Vulnerable to Being Attacked by Lawfare?

Freedom of speech is particularly vulnerable to lawfare because contemporary legal systems have increasingly adopted an instrumental approach, viewing legal rules and processes as tools to advance specific political or economic objectives.⁴⁴ This orientation enables powerful actors to strategically deploy the law to legitimize the exercise of power, thereby converting dissent into legal liability. In this environment, speech is not simply regulated but is deliberately targeted for political coercion through the calculated use of criminal, civil, and administrative procedures intended to retaliate against dissenters. The vulnerability of freedom of speech is further intensified by the application of ambiguous legal provisions, such as those concerning criminal defamation, public order offenses, state ideology, and blasphemy. These provisions often contain vague, easily manipulated concepts, granting law enforcement and state officials significant discretion in determining what constitutes a threat to national security or public order. By shifting political disputes from the public sphere to the courtroom, lawfare reframes environmental or social grievances as technical legal issues, diverting

38 Tamanaha, *Law as a Means to an End*, 174-176.

39 Wardana, *Turning Defenders into Defendants*, 1323-1324.

40 Tamanaha, *Law as a Means to an End*, 205-206.

41 Damià del Clot, *Lawfare – Judicial Warfare in Spain: The Strategy of Repression Against the Catalan Independence Movement* (Liverpool: Liverpool University Press, 2023), 53.

42 Clot, *Lawfare – Judicial Warfare in Spain*, 68.

43 Pew Research Center, *Free Expression Seen as Important Globally, but Not Everyone Thinks Their Country Has Press, Speech and Internet Freedoms*, April 24, 2025, chart of country results (Indonesia), accessed January 26, 2026, https://www.pewresearch.org/wp-content/uploads/sites/20/2025/04/pg_2025.04.24_free-speech_report.pdf.

44 Tamanaha, *Law as a Means to an End*, 1, 6; Wardana, *Turning Defenders into Defendants*, 44.

attention from the substantive merits of the speech.⁴⁵

A central mechanism that exposes speech to risk is the cultivation of a chilling effect, where the objective of litigation is not necessarily to prevail in court but to harass, vex, exert undue pressure, or stifle individuals from exercising their rights.⁴⁶ Lawfare constitutes an “unequal war” in which dominant elites, who control media and legal institutions, can inflict significant harm on dissenters by depleting their financial resources and social standing.⁴⁷ This dynamic creates a “choiceless choice” for activists: they must either conform to restrictive institutional norms or confront the violence inherent in the law through sustained judicial harassment and the threat of severe sanctions.⁴⁸ The resulting climate of fear suppresses public participation, as individuals recognize that speaking out may transform them from advocates for rights into defendants in legal proceedings. Furthermore, freedom of speech is threatened by the erosion of constitutional protections and the rise of “Judicial States”, in which the judiciary collaborates with the executive branch to safeguard the *raison d’état* (reason of state).⁴⁹ In these contexts, judges may adopt purposive or pragmatic approaches that prioritize social policy or political order over the rigorous protection of fundamental rights.

4.3. Lawfare v. Legitimate Enforcement

To establish that lawfare, rather than general institutional weakness or cultural factors, serves as the primary driver of speech suppression, it is necessary to distinguish lawfare from legitimate law enforcement. Although freedom of speech is neither absolute nor non-derogable and may be restricted to protect the public interest, lawfare is characterized by its instrumental intent and selective application.⁵⁰ Intent is a central criterion for identifying lawfare, as the primary objective of such legal actions is often not to prevail on the merits but to generate a significant “chilling effect.”⁵¹ This abusive intent is particularly evident in the prosecution of “discursive crimes” under the ITE Law and criminal defamation statutes. In such proceedings, the legal focus is deliberately shifted from the factual accuracy of statements to the defendant’s purported intent or motive to harm reputations or incite unrest.

Selectivity constitutes another critical indicator, manifesting as “secondary criminalisation,” in which the state selectively enforces laws to target opponents while protecting allies.⁵² This practice includes “over-criminalising” dissent, such as prosecuting environmental defenders for allegedly spreading communism or desecrating national symbols, while simultaneously “under-

45 Wardana, *Turning Defenders into Defendants*, 55-56.

46 Wardana, *Turning Defenders into Defendants*, 8, 37; Pring and Canan, *SLAPPs: Getting Sued for Speaking Out* cited in Wardana, *Turning Defenders into Defendants*, 8.

47 Clot, *Lawfare – Judicial Warfare in Spain*, 82.

48 Jens Meierhenrich, *The Political Economy of Lawfare* (manuscript), 702; Wardana, *Turning Defenders into Defendants*, 45; Viterbo, “Lawfare,” 243.

49 Clot, *Lawfare – Judicial Warfare in Spain*, 105, 150.

50 Human Rights Committee, *Patrick Coleman v. Australia*, Communication No. 1157/2003 (2006), para 7.3 (noting that even legitimate systems, like permit requirements, violate the Covenant if the state’s reaction is disproportionate or used to curtail speech on issues of public interest)

51 Wardana, *Turning Defenders into Defendants*, 8, 37, 150-151.

52 Wardana, *Turning Defenders into Defendants*, 5, 40, 124, 142-143, 150.

criminalising” the substantial social and environmental harms perpetrated by dominant extractive industries. Such selective enforcement exemplifies the most dangerous prosecutorial power: the ability to “pick people” deemed undesirable, rather than selecting cases that genuinely warrant prosecution in the public interest.⁵³ This selectivity produces a pervasive chilling effect, as the objective of such litigation is frequently not a courtroom victory but rather the depletion of a dissenter’s financial resources and social standing through the legal process itself. Legitimate enforcement aims for neutral application of the law, whereas lawfare employs the legal system as an “hollow vessel” or as a tool to target individuals deemed undesirable, rather than addressing cases that genuinely warrant prosecution.

4.4. Mechanisms of Lawfare Targeting Speech in Indonesia

In Indonesia, lawfare targeting speech operates through three principal mechanisms: criminal enforcement, civil and administrative regulation, and social and religious mobilization.⁵⁴ Criminal law enables direct intervention against expression, while civil and administrative processes facilitate indirect forms of control through legal and regulatory means.⁵⁵ These mechanisms are often reinforced by social and religious actors who mobilize legal complaints and public pressure, shaping the practical enforcement of speech-related laws.⁵⁶ In addition, it is important to understand the Constitutional Court’s position on lawfare targeting speech.

4.4.1. Criminal Lawfare

In Indonesia, criminal lawfare refers to the deliberate use of the state’s punitive mechanisms to suppress and silence dissent.⁵⁷ It is enabled by specific statutory mechanisms that reframe political critique as technical legal violations. Criminal prosecutions commonly utilize the ITE Law, particularly Article 27, which facilitates the prosecution of online speech and political criticism as criminal defamation. Unlike traditional Western notions of lawfare, which often emphasize civil litigation between private parties, the Indonesian context is dominated by the criminal justice system as approximately 93.4% of lawfare cases recorded between 2010 and 2022 involved criminal proceedings.⁵⁸ This trend toward authoritarian statism employs legal processes to regulate civil society and contain political dissent under the guise of legality. By transferring political disputes into the courtroom, criminal lawfare enables those in power to legitimize repression as a neutral enforcement of law and order (“launder brute power in a wash of legitimacy”).⁵⁹

53 *Legislative Reforms to End Lawfare by State and Local Prosecutors: Hearing before the Subcommittee on the Constitution and Limited Government of the Committee on the Judiciary, House of Representatives, 119th Cong., 1st sess., March 4, 2025* (statement of Chip Roy, Chair, Subcommittee on the Constitution and Limited Government), 3.

54 Wardana, *Turning Defenders into Defendants*, 11, 25, 124.

55 Wardana, *Turning Defenders into Defendants*, 47, 124, 150.

56 Wardana, *Turning Defenders into Defendants*, 25, 56, 143.

57 Wardana, *Turning Defenders into Defendants*, 11, 124.

58 Wardana, *Turning Defenders into Defendants*, 8, 17, 124 (Wardana performed a quantitative and qualitative analysis of 75 specific cases in Indonesia recorded between 2010 and 2022).

59 Wardana, *Turning Defenders into Defendants*, 10, 13; John L. Comaroff and Jean Comaroff, “Law and Disorder in the Postcolony: An Introduction,” in *Law and Disorder in the Postcolony*, eds. J. Comaroff and J. L.

The ITE Law has become a principal instrument for targeting online speech and political criticism.⁶⁰ Provisions related to online criminal defamation permit the prosecution of activists and academics who expose corruption or criticize public officials on social media. For example, environmental activists such as Deddy Febrianto Holo and Daniel Tangkilisan received prison sentences for online statements considered to have caused unrest or defamed officials while advocating for local communities. These cases demonstrate how the law transforms systemic grievances into technical disputes over the legal interpretation of digital content.

Beyond digital platforms, criminal defamation and blasphemy prosecutions function as discursive crimes that emphasize the defendant's intent or motive rather than the factual accuracy of their statements.⁶¹ These legal provisions often rest on ambiguous and malleable concepts, thereby granting the state exclusive authority to define threats to public order, state ideology, or national security.⁶² This dynamic enables authorities to engage in the politics of othering, branding critics as criminals, communists, or terrorists to delegitimize opposition and justify repression. A significant historical example is the Newmont Nusa Tenggara case, in which a gold mining company reported an activist to the police for criminal defamation after he warned communities about industrial pollution.⁶³

Specifically in the Indonesian context, police discretion and pre-trial detention function as strategic deterrents that exert undue psychological and financial pressure on individuals to discourage civic engagement.⁶⁴ Law enforcement frequently weaponizes the criminal justice system, which accounts for nearly all recorded lawfare cases in the country, by employing fabricated charges that lack substantive merit.⁶⁵ These include the prohibition of spreading Marxism-Leninism under the KUHP and Article 162 of the Mining Law, which criminalizes the 'hindering' of extractive activities. Furthermore, provisions regarding the desecration of national symbols and online defamation under the ITE Law are utilized to 'other' dissenters as unpatriotic criminals. This approach creates a "choiceless choice" for activists, compelling them to either accept the state's developmental agenda or endure judicial harassment and the violence inherent in the law.⁶⁶ Additionally, the use of criminal procedures offers a cost-effective strategy for corporations, as state agencies manage legal proceedings and bear the financial burden, rather than private entities.

4.4.2. Civil and Administrative Lawfare

Civil lawfare in Indonesia constitutes a deliberate use of the legal system to impose significant financial burdens on dissenters, thereby

Comaroff (Chicago: University of Chicago Press, 2006), 1, quoted in Viterbo, "Lawfare," 243.

60 Wardana, *Turning Defenders into Defendants*, 69, 142.

61 Wardana, *Turning Defenders into Defendants*, 54, 144-145.

62 Wardana, *Turning Defenders into Defendants*, 53, 142-143, 145.

63 Sumbawa Besar District Court Decision Number 04/Pid.B/2007/PN.SBB — Public Prosecutor v. PT Newmont Nusa Tenggara.

64 Wardana, *Turning Defenders into Defendants*, 54, 56, 128.

65 Wardana, *Turning Defenders into Defendants*, 11, 124, 142-143, 148-149.

66 Meierhenrich, *The Political Economy of Lawfare* (manuscript), 702; Wardana, *Turning Defenders into Defendants*, 45, 51; Viterbo, "Lawfare," 243.

replacing physical violence with the coercive force of law to achieve political objectives.⁶⁷ Although the criminal justice system remains the primary instrument of legal retaliation, civil lawsuits constitute approximately 6.6% of hegemonic environmental lawfare cases.⁶⁸ These lawsuits predominantly invoke Article 1365 of the Indonesian Civil Code, a broad tort law provision that has been exploited to demand disproportionate compensation. State and corporate actors frequently exploit this provision to demand disproportionate compensation, exemplified by the 3.56 trillion rupiah (US\$247 million) sought in various cases between 2010 and 2022.⁶⁹ Such demands function as a form of “shock therapy” intended to deter public participation through a chilling effect.

Such a mechanism is frequently deployed through civil lawsuits against journalists, activists, and academics whose work disrupts the interests of politico-business elites. For journalists, the strategic use of civil defamation is exemplified by Riau Andalan Pulp and Paper (“**RAPP**”) v. Tempo, in which an investigative newspaper was sued and ordered to pay compensation for reporting on illegal logging.⁷⁰ RAPP contended that Tempo’s reporting on illegal logging constituted an “unlawful act” that resulted in significant reputational harm. Tempo, in turn, defended its reporting as legitimate investigative journalism serving the public interest. However, the court’s reasoning prioritized the protection of corporate reputation over the substantive issues raised by the logging allegations. By ordering compensation for “unlawful” reporting, the court illustrated how lawfare can transform substantive environmental disputes into technical “language games” focused on financial loss, rather than facilitating a neutral inquiry into the facts of illegal logging.

Activists and local community leaders face similar threats; for instance, the Newmont Minahasa Raya company sued biologist Rignaldo Djamaluddin for US\$750,000, a sum that would take a public academic over three centuries to pay, after he exposed industrial pollution.⁷¹ PT Newmont Minahasa Raya invoked Article 1365 to seek US\$750,000 in damages after Jamaluddin exposed industrial pollution. Newmont contended that Jamaluddin’s public statements constituted an unauthorized and unlawful attack on their operations, whereas Jamaluddin maintained a moral and legal obligation to protect the environment. The court’s emphasis on the technical “unlawfulness” of the disclosure, rather than the accuracy of the pollution claims, illustrates instrumental intent, in which the legal process is employed to deplete the dissenter’s resources. Notably, the damages sought would require a public academic over three centuries to repay.

Administrative lawfare operates as a more subtle mode of governance, using licensing and regulatory frameworks to discipline and suppress social speech.⁷² This approach is a hallmark of “authoritarian statism,” where the

67 Wardana, *Turning Defenders into Defendants*, 13, 124.

68 Wardana, *Turning Defenders into Defendants*, 124 (Wardana’s original empirical data).

69 Wardana, *Turning Defenders into Defendants*, 124 (Wardana’s original empirical data).

70 South Jakarta District Court of the Republic of Indonesia Decision Number 1089/Pdt.G/2007/PN JKT. SEL — PT Riau Andalan Pulp and Paper (RAPP) v. PT Tempo Inti Media Tbk (Tempo).

71 North Jakarta District Court Decision Number 186/Pid.B/2019/PN.Jkt.Utr — Public Prosecutor v. Rignaldo Jamaluddin.

72 Wardana, *Turning Defenders into Defendants*, 13.

state regulates civil society by containing political dissent through formally lawful administrative procedures. One key instrument in this jurisdiction is compulsory registration of civil society organizations (CSOs), which can be used to deregulate or retaliate against environmental and human rights organizations whose advocacy hinders capital accumulation.⁷³ Additionally, broadcasting regulations and the ITE Law are used to silence online speech and political criticism, often by charging activists with “online defamation” for content deemed to incite unrest. By combining these civil and administrative weapons, state and corporate powerholders in Indonesia can “launder brute power in a wash of legitimacy,” making the suppression of activists and the silencing of dissent appear to be a neutral exercise of “law and order”.

4.4.3. Social and Religious Mobilization

Social and religious mobilization in Indonesia functions as a significant mechanism of hegemonic lawfare, wherein mass organizations and interest groups employ legal instruments to exert political coercion against dissenting speech.⁷⁴ This approach frequently entails the instrumentalization of legal frameworks to “launder brute power in a wash of legitimacy,” thereby transforming political or religious disagreements into issues of criminal liability. By channeling social conflicts into the courtroom, these groups aim to assert intellectual and moral authority over public discourse while suppressing voices that challenge the prevailing *status quo*.⁷⁵

A key aspect of this mechanism is the deployment of reporting campaigns by mass organizations, which exploit Indonesia’s complaint-driven prosecution system to target activists, academics, and political opponents.⁷⁶ Such organizations often mobilize around so-called “discursive crimes,” including blasphemy or criminal defamation, relying on ambiguous legal concepts that provide law enforcement and state officials with broad discretion to define threats to public order or ideology.⁷⁷ The widespread occurrence of criminal lawfare in the region demonstrates a preference for the criminal justice system over civil litigation, as the state assumes the costs of prosecution rather than the complainant.

The interplay between social pressure and formal legal processes produces a substantial chilling effect, with mass mobilizations frequently serving as a “legitimizing narrative” that compels the judiciary to prioritize public order or state ideology over the robust protection of fundamental speech.⁷⁸ Lawfare strategies capitalize on these dynamics to effect a transformation of subjectivity, employing the court’s formal authority to categorize dissenters as “criminals,” “communists,” or “terrorists.”⁷⁹ This environment compels dissenters to make a “choiceless choice”: either conform to restrictive social

73 Wardana, *Turning Defenders into Defendants*, 54.

74 Wardana, *Turning Defenders into Defendants*, 25, 43, 46.

75 Wardana, *Turning Defenders into Defendants*, 46, 51, 55-56.

76 Wardana, *Turning Defenders into Defendants*, 25, 56, 143.

77 Wardana, *Turning Defenders into Defendants*, 53, 142-145.

78 Wardana, *Turning Defenders into Defendants*, 48-49, 51; Luban, “Carl Schmitt and the Critique of Lawfare,” 460.

79 Wardana, *Turning Defenders into Defendants*, 55-56, 142-143, 150.

and religious norms or endure the coercive force of the law through extended judicial harassment and the threat of severe penalties.

The central case of Basuki Tjahaja Purnama ('Ahok') illustrates how the ITE Law and traditional blasphemy provisions can be combined to transform a participant in democratic contestation into a criminal defendant.⁸⁰ These legal attacks often follow distinct patterns of mass reporting, in which mass organizations leverage complaint-driven prosecutions and social pressure to initiate formal legal proceedings. In such high-stakes environments, the courts frequently exhibit judicial deference or restraint, prioritizing "Pancasila-based public order" over the entrenchment of individual freedom of speech.⁸¹ This judicial behavior serves to legitimize prosecutions by utilizing the "rhetoric of the rule of law" to manufacture public consent for the silencing of dissenters. Consequently, the application of blasphemy provisions results in a profound chilling effect, as the legal system is weaponized to perform a "subjectivity transformation" that fixes a deviant identity, such as that of a "blasphemer", onto political opponents to delegitimize their movements. By "othering" critics through formally lawful procedures, hegemonic lawfare effectively neutralizes opposition while allowing the state to "launder brute power in a wash of legitimacy."

4.4.4. The Stance of the Constitutional Court in Judicial Review

Indonesia's Constitutional Court (*Mahkamah Konstitusi*) has played an ambivalent role in shaping the legal boundaries of freedom of speech through constitutional review. In Constitutional Court Decision No. 50/PUU-VI/2008, the Court upheld criminal defamation provisions as conditionally constitutional, emphasizing the need to balance freedom of speech with the protection of individual reputation.⁸² Similarly, Constitutional Court Decision No. 2/PUU-VII/2009 affirmed that freedom of speech may be restricted in the interests of public order and morality, reinforcing the broad limitation framework under Article 28J of the Constitution.⁸³

In reviewing blasphemy-related norms, including in Constitutional Court Decision No. 76/PUU-XV/2017, the Court declined to invalidate substantive restrictions, instead deferring to legislative judgment on religious harmony.⁸⁴ Judicial review of the ITE Law, notably in Constitutional Court Decisions No. 50/PUU-VI/2008 and No. 5/PUU-VIII/2010, reflects a similar pattern of judicial restraint, with the Court offering incremental interpretive guidance rather than robust proportionality review.⁸⁵ While constitutional

80 North Jakarta District Court Decision Number 1537/Pid.B/2016/PN JKT.UTR dated 9 May 2017 – Ir. Basuki Tjahaja Purnama ('Ahok').

81 North Jakarta District Court Decision Number 1537/Pid.B/2016/PN JKT.UTR dated 9 May 2017 – Ir. Basuki Tjahaja Purnama ('Ahok').

82 Constitutional Court of the Republic of Indonesia Decision Number 50/PUU-VI/2008 (judicial review of criminal defamation provisions).

83 Constitutional Court of the Republic of Indonesia Decision Number 2/PUU-VII/2009 (judicial review concerning limits on freedom of speech and public order).

84 Constitutional Court of the Republic of Indonesia Decision Number 76/PUU-XV/2017 (judicial review of blasphemy-related norms).

85 Constitutional Court of the Republic of Indonesia Decision Number 50/PUU-VI/2008; Constitutional Court of the Republic of Indonesia Decision Number 5/PUU-VIII/2010 (judicial review of the Electronic

litigation has occasionally clarified procedural limits and curbed the most expansive interpretations of speech offenses, its overall impact remains limited, as the Court has consistently prioritized social order and legislative discretion over strong protection of expressive freedom.⁸⁶

5. Consequences of Lawfare on Freedom of Speech in Indonesia

Lawfare targeting speech in Indonesia produces political consequences that extend beyond individual prosecutions or isolated legal disputes. By embedding coercion within formally lawful processes, lawfare reshapes the conditions under which political participation, knowledge production, and democratic accountability occur. Its primary political effects are visible in three interrelated domains: the chilling of journalistic and academic activity, the normalization of self-censorship in public discourse, and the weakening of opposition politics and democratic oversight.⁸⁷

5.1. Chilling Effects on Journalists, Academics, and Civil Society

Speech-related lawfare produces a chilling effect across journalism, academia, and civil society by leveraging criminal, civil, and administrative mechanisms not primarily to resolve disputes, but to impose cumulative burdens.⁸⁸ Through defamation charges, civil liability, regulatory scrutiny, and licensing risks, legal processes themselves function as instruments of punishment rather than neutral adjudication. Exposure to investigation, summons, litigation, and administrative sanctions generates financial costs, reputational harm, and psychological pressure that persist regardless of formal legal outcomes. In this context, the process of legal exposure becomes the penalty, reshaping how individuals and organizations assess the risks of engaging in lawful expression.

These pressures manifest in parallel across key domains of knowledge production and public discourse. Journalists narrow the scope of investigative reporting, particularly on politically or economically powerful actors. Academics withdraw from public engagement, expert testimony, and research in sensitive areas.⁸⁹ Civil society organizations similarly scale back advocacy as legal uncertainty and resource depletion undermine their operational capacity.⁹⁰ Over time, this convergence of constraints contracts the space for critical discourse and weakens the epistemic foundations of democratic policymaking, as evidence-based critique is displaced by caution, silence, or conformity.

5.2. Self-Censorship in Digital and Offline Public Discourse

Information and Transactions Law (ITE Law)).

86 Simon Butt and Tim Lindsey, *The Constitution of Indonesia: A Contextual Analysis* (Oxford: Hart Publishing, 2012), 235–260.

87 Tamanaha, *Law as a Means to an End*, 213–214.

88 Kitztrie, *Lawfare*, 331–332.

89 Tamanaha, *Law as a Means to an End*, 156–160; see also discussion of expert-witness retaliation in Section 4.

90 Tamanaha, *Law as a Means to an End*, 156–160; see also discussion of expert-witness retaliation in Section 4.

ITE Law, as described in Section 4, incentivizes users to avoid political commentary, criticism of public officials, or discussion of sensitive social issues, as posts may be reported, reinterpreted, and criminalized. Importantly, self-censorship does not require universal enforcement; highly publicized prosecutions function as warning signals that discipline expression far beyond the immediate defendants.⁹¹ Offline discourse is similarly constrained. Public forums, academic seminars, organizational meetings, and community discussions are increasingly governed by informal norms of caution, in which participants avoid dissenting views to avoid legal exposure. This normalization of restraint transforms freedom of speech from a constitutional right into a calculated risk, exercised selectively rather than robustly.⁹² From a political perspective, self-censorship represents a structural distortion of democratic communication. When individuals pre-emptively silence themselves, public deliberation becomes skewed toward dominant narratives, and the appearance of consensus masks underlying dissent. Lawfare thus reshapes subjectivity, producing compliance not through force, but through anticipatory obedience to legal threat.⁹³

5.3. Impact on Opposition Politics and Democratic Accountability

The cumulative effect of chilling and self-censorship is to weaken opposition politics and democratic accountability. In democratic systems, freedom of speech enables opposition actors to challenge incumbents, expose misconduct, and mobilize public support. Lawfare disrupts these functions by converting political contestation into legal vulnerability.⁹⁴ Opposition politicians, activists, and supporters face heightened risks when criticizing government policy, particularly on issues involving national development, religion, or state ideology. Criminal investigations and legal complaints divert time, resources, and attention away from political organizing, while the stigma of prosecution undermines credibility. Even unsuccessful cases impose asymmetric costs that disproportionately burden non-incumbent actors, reinforcing existing power hierarchies.⁹⁵ Moreover, lawfare alters the incentives of political institutions themselves. When courts, prosecutors, and police become arenas of political struggle, legal accountability mechanisms are repurposed to protect incumbents rather than constrain them. Judicial restraint and deference to public-order rationales further insulate executive action from meaningful review, diminishing horizontal accountability.⁹⁶ At the systemic level, these dynamics contribute to a form of managed democracy, in which elections and constitutional guarantees formally persist, but substantive contestation is curtailed. Lawfare enables the regulation of opposition without suspending democratic procedures, preserving legality in form while hollowing out democratic practice in substance.⁹⁷

5.4. Lawfare and the Transformation of Democratic Contestation

91 Kittrie, *Lawfare*, 331–332.

92 Tamanaha, *Law as a Means to an End*, 227–233.

93 Tamanaha, *Law as a Means to an End*, 233–236.

94 Kittrie, *Lawfare*, 34–36.

95 Tamanaha, *Law as a Means to an End*, 195–199.

96 Tamanaha, *Law as a Means to an End*, 227–236.

97 Kittrie, *Lawfare*, 36–38.

Taken together, these political consequences demonstrate that lawfare targeting speech does not merely suppress individual voices; it restructures democratic contestation itself. By embedding coercion within legality, lawfare displaces political conflict from the public sphere into legal arenas, where asymmetries of power are amplified rather than neutralized.⁹⁸ In this environment, freedom of speech becomes conditional, precarious, and unevenly distributed. Those with access to legal resources, political protection, or institutional power can speak with relative impunity, whereas critics and dissenters face disproportionate risks. The result is a democratic order in which legality is preserved, but the emancipatory function of free speech is systematically weakened.⁹⁹

6. Institutional and Legal Reform Options

Enhancing judicial review and implementing comprehensive prosecutorial guidelines are essential institutional safeguards against the weaponization of the law. In Indonesia, Decree of the Chief Justice of the Supreme Court Number 36/KMA/SK/II/2013 of 2013 on Implementation of the Guidelines for the Handling of Environmental Cases provides guidance to judges on identifying SLAPP cases. Additionally, reform advocates contend that this should be strengthened by introducing an “interim decision” requirement, which would obligate judges to rule on the bad-faith nature of a case before a full trial proceeds.¹⁰⁰ The implementation of an interim decision, if conducted prior to the proceedings, could have substantially altered the outcomes of the ‘Ahok’ and Newmont Nusa Tenggara cases. Requiring an interim decision would have obligated judges to evaluate the presence of bad faith or retaliatory intent at an early stage, which could have prevented the resource depletion observed in the Newmont case. Additional reforms include the adoption of summary dismissal procedures and the imposition of deterrent sanctions on those who initiate lawfare.¹⁰¹ Structural reforms, such as reorganizing judicial circuits, have also been proposed to reduce the concentration of political bias in specific jurisdictions. To address the “subjectivity transformation” that categorizes defenders as criminals or terrorists, legal frameworks should be revised to recognize “eco-defense” or “duty-based” resistance as valid justificatory defenses.¹⁰² This would enable defendants to argue that their actions constituted not only an exercise of rights but also a legal and moral obligation to protect the environment and local livelihoods from structural injustice.

7. Conclusion

To restore law’s legitimate role as a protector of rights, Indonesia must clarify and narrow statutes like the ITE Law and criminal defamation provisions, and precisely define terms such as “public order” and “bad faith.” Building a transparent and stable legal framework, alongside procedural reforms like independent prosecutorial guidelines, a public interest test, and interim decision requirements,

98 Tamanaha, *Law as a Means to an End*, 219–224.

99 Tamanaha, *Law as a Means to an End*, 213–214.

100 Wardana, *Turning Defenders into Defendants*, 112, 1299.

101 Wardana, *Turning Defenders into Defendants*, 953, 1316, 1319.

102 Wardana, *Turning Defenders into Defendants*, 55–56, 1119, 1122–1123.

will prevent litigation from being misused to silence critics. If such safeguards had existed, cases like Ahok and Newmont Nusa Tenggara could have ended differently. The fight against lawfare is ultimately the fight for a legal order that robustly protects free expression and democracy.

Safeguarding freedom of speech requires insulating the judiciary from political influence and ensuring merit-based judicial appointments. A shift toward a responsive law model that values dialogue and conciliation over litigation is also essential. Normative and institutional reforms should prioritize strong protections for dissent while balancing social order. By promoting judicial independence, clear legal standards, and a culture of open debate, Indonesia can transform its legal system from a tool of repression into a true guardian of democracy and the common good.

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