

Between Protected Expression and Reputational Harm: An Empirical Socio-Legal Study of Judicial Pardon in Indonesia's Digital Defamation Cases

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Abstract. This article examines the empirical boundaries of judicial pardon in Indonesia's digital defamation cases, focusing on the practical tension between protected expression and reputational harm in law-enforcement practice. Using an empirical socio-legal design, the study combines qualitative analysis of statutes and court decisions with empirical data drawn from documented digital-rights complaints, public reports on criminalization of online expression, internet-use statistics, and selected case materials concerning Article 27A of Law No. 1 of 2024 and Article 54(2) of Law No. 1 of 2023. The empirical orientation enables the article to assess not only what the law provides, but also how digital defamation disputes emerge, how reputational harm is experienced, and how broadly framed criminal provisions may affect public participation. The findings indicate that the application of judicial pardon requires verified factual indicators, including the communicative context of the expression, the identity and position of the complainant, the scale and persistence of digital dissemination, the actual consequences suffered by the affected person, and the offender's post-offence conduct. The article argues that judicial pardon should operate as an evidence-sensitive sentencing mechanism: it should protect lawful criticism from punitive excess while ensuring that serious, malicious, and empirically demonstrable reputational attacks are not trivialized. The study concludes that empirical data are essential for developing proportionate judicial-pardon criteria in Indonesia's evolving digital-defamation landscape.

Keywords: digital defamation; freedom of expression; reputational harm; proportionality; constitutional rights

1. Introduction

Digital platforms have become central arenas for individuals to express opinions, criticize public policies, exchange information, and participate in public matters. Their expansion through social media, forums, messaging applications, and other platforms has made the digital sphere an integral part of Indonesia's democratic public space.

Digital communication has changed the scope and practice of expression, requiring a renewed balance between restriction and protection. Online statements may circulate instantly, be reproduced indefinitely, lose their original context, and remain accessible for long periods. Thus, criticism, complaints, satire, or opinions may be perceived as attacks on honor, while freedom of expression cannot justify false accusations or degrading statements that seriously undermine dignity. The digital sphere therefore requires legal frameworks capable of protecting human dignity.

Indonesian constitutional law protects both expression and dignity. Articles 28E(3) and 28F

guarantee expression and access to information, while Article 28G(1) protects personal integrity, honor, dignity, and security. Article 28J allows proportionate limits to respect the rights of others, and Article 19 ICCPR similarly permits restrictions necessary to protect rights or reputations. Digital defamation therefore requires proportional protection of both interests rather than an absolute choice between them.

Under Indonesian law, electronic defamation is principally regulated by Article 27A of Law No. 1 of 2024. The provision prohibits intentionally attacking another person's honor or reputation through electronic information or documents by making a particular allegation publicly known, while also introducing limitations including its classification as a complaint-based offence. Constitutional Court Decision No. 105/PUU-XXII/2024 clarified that Article 27A primarily protects the honor or reputation of individual persons, not institutions, government bodies, corporations, professions, or public offices merely criticized in public debate. This interpretation helps prevent criminal defamation from being used broadly against public participation and democratic criticism.

Despite these developments, distinguishing legitimate expression from unlawful defamation remains difficult. Characterisation depends on context, wording, communicative purpose, the status of the person discussed, and actual consequences. Opinion, satire, consumer complaints, factual allegations, and deliberate fabrication may produce different legal implications even when they cause discomfort or reputational harm. Uncertainty may create a chilling effect, discouraging criticism, reporting of misconduct, and public debate. Indonesian studies warn that broad criminal-defamation interpretation may protect reputation but may also suppress criticism and civic participation.

In this context, judicial pardon becomes relevant. Article 54(2) of Law No. 1 of 2023 authorizes judges, considering the minor nature of the offence, the offender's circumstances, circumstances at the time of the offence, subsequent developments, justice, and humanity, to refrain from imposing punishment or measures. Criminal responsibility therefore need not automatically result in punishment where sanctions would be disproportionate. Judicial pardon differs from acquittal because the offence may be legally proven and the defendant criminally responsible, while punishment is still considered unnecessary. It may therefore operate as individualized justice and a safeguard against mechanical punishment.

However, judicial pardon does not automatically solve digital defamation. Open-ended terms such as "minor nature," "personal circumstances," "justice," and "humanity" provide flexibility but risk inconsistent interpretation. Similar conduct may therefore be treated differently unless clearer criteria are developed. Clearer parameters are especially important because online expression cannot be assessed only by wording or statutory penalty. Courts should consider whether the statement is fact, opinion, satire, complaint, warning, or criticism; whether it concerns public interest; the status of the affected person; verification efforts; intention; dissemination scale; platform, duration, repetition, anonymity, coordination, and actual social, professional, economic, or psychological consequences.

The technological dimensions of the conduct must also be taken into account. Relevant considerations may include the number of persons reached by the content, the platform used, the duration of its availability, the likelihood of repeated circulation, the use of anonymous or coordinated accounts, and the extent to which the publication produced actual social, professional, economic, or psychological consequences for the affected person. A statement sent privately to a limited group, for instance, may not cause the same degree of harm as a deliberately amplified allegation circulated to thousands of users. Nevertheless, limited circulation cannot by itself eliminate the possibility of serious reputational injury, particularly where the audience consists of employers, family members, professional colleagues, or members of the affected person's immediate

community.

Circumstances arising after the offence should likewise play a significant role. The voluntary removal of the content, publication of a correction, an acknowledgment of error, a sincere apology, restoration of the victim's reputation, reconciliation between the parties, compensation, and the absence of repeated conduct may support the use of judicial pardon. Yet these factors should not operate automatically. An apology issued only after prosecution has commenced, for example, may carry different weight from an immediate and voluntary attempt to prevent further harm. Similarly, reconciliation between the parties does not necessarily erase the broader public consequences of deliberately disseminated false information.

The absence of clearly articulated standards creates two opposing risks. If judicial pardon is granted without clear parameters, its application could lead to inconsistencies in the legal protection of honour and dignity. Serious digital attacks may result in more lenient sentencing when the offender expresses remorse or if imprisonment is deemed unnecessary. Such an approach may underestimate the lasting and replicable nature of online reputational harm. Once defamatory content has been copied, archived, or redistributed, its consequences may persist even after the original publication has been deleted.

Conversely, an excessively restrictive approach to judicial pardon may allow criminal law to remain disproportionately punitive toward speech that substantially belongs within the sphere of protected expression. Individuals may be convicted and punished for consumer complaints, political criticism, public-interest disclosures, satire, or emotional statements that cause limited harm and are expressed without a genuine intention to degrade another person. In such cases, the criminal process may produce consequences that are more severe than the harm caused by the original expression. These consequences may include detention, financial costs, employment disruption, social stigma, and the deterrence of others from participating in legitimate public debate.

The central challenge is therefore not merely whether judicial pardon should be available in digital defamation cases, but how the boundaries of its application should be constructed. The relevant framework must prevent the concept from becoming an unrestricted form of judicial discretion, while also avoiding criteria so rigid that they defeat the individualized and humanitarian purpose of Article 54(2) of the Criminal Code. Judicial pardon should not be understood exclusively as a benefit granted to the offender. Its application must also take account of the victim's dignity, the extent of reputational harm, the possibility of restoration, the public interest served by the expression, and the broader democratic significance of protecting lawful criticism.

Existing Indonesian scholarship on judicial pardon has generally examined its philosophical foundations, its relationship with sentencing objectives, its position within substantive and procedural criminal law, and its comparison with similar mechanisms in other jurisdictions. In parallel, studies on digital defamation have primarily focused on the interpretation of the Electronic Information and Transactions Law, the chilling effect of criminal prosecution, the constitutional protection of freedom of expression, and proposals for the decriminalization of defamation. These two bodies of scholarship have not yet been sufficiently integrated.

In particular, limited attention has been devoted to developing specific judicial-pardon criteria for digital defamation cases in which protected expression and reputational harm overlap gap is significant because digital defamation cannot be evaluated adequately through a purely formal determination that the statutory elements of an offence have been fulfilled. Nor can judicial pardon be applied solely on the basis of compassion toward the offender. A principled assessment requires a structured balancing of the nature and value of the expression, the intention and conduct of the offender, the vulnerability and position of the victim, the scale and persistence of digital

dissemination, and the possibility of restoring the harm caused.

Against this background, this article examines the urgency of regulating the application of judicial pardon in digital defamation cases through an empirical socio-legal lens. It addresses two principal questions: first, how judicial pardon is positioned in Indonesia's criminal-law framework when digital expression and personal dignity conflict in concrete disputes; and second, what empirically verifiable indicators should guide judges in determining whether judicial pardon is justified.

This research uses an empirical socio-legal method. The study does not rely solely on statutory interpretation, but examines how digital-defamation norms operate in practice by combining legal analysis with empirical materials. The legal materials include the 1945 Constitution of the Republic of Indonesia, the International Covenant on Civil and Political Rights, Law No. 1 of 2023 on the Criminal Code, Law No. 1 of 2024 amending the Electronic Information and Transactions Law, criminal-procedure rules, and Constitutional Court decisions concerning digital defamation and freedom of expression. The empirical materials consist of publicly available reports on digital-rights violations and criminalization of online expression, internet-use statistics, selected court and complaint data, and documented case narratives involving digital defamation disputes.

Through this empirical analysis, the article argues that judicial pardon in digital defamation cases requires a structured and evidence-sensitive framework. Such a framework should distinguish protected criticism from malicious reputational attacks, consider the democratic value and measurable consequences of digital expression, and evaluate whether punishment remains necessary after restorative measures have been undertaken. Clearer parameters are essential to ensure that judicial pardon operates neither as an instrument of impunity nor as an exceptional remedy that is practically unavailable. Properly regulated, it may serve as a proportional judicial mechanism that preserves freedom of expression in the digital sphere while maintaining meaningful protection for the honour and dignity of persons subjected to degrading expression.

2. Method

This study employs an empirical socio-legal research method to examine the application of judicial pardon in Indonesia's digital defamation cases. The approach combines doctrinal legal analysis with empirical grounding because the issue concerns not only the interpretation of legal norms, but also their interaction with digital-communication practices, enforcement patterns, and reputational harm in concrete disputes. The doctrinal analysis focuses on the 1945 Constitution, Article 19 of the International Covenant on Civil and Political Rights, Article 27A of Law No. 1 of 2024, Article 54(2) of Law No. 1 of 2023, criminal-procedure rules, and relevant Constitutional Court decisions.

The empirical materials consist of publicly accessible internet-use statistics, digital-rights and criminalisation reports, selected judicial decisions, complaint data, documented case narratives, and secondary socio-legal studies. Data collection is conducted through document-based inquiry, while analysis is carried out qualitatively through legal interpretation, thematic coding, triangulation, and proportionality-based assessment. These methods are used to identify empirically verifiable indicators—such as the nature of the expression, complainant status, dissemination scale, actual harm, culpability, and post-offence restoration—that can guide judicial reasoning on whether punishment remains necessary after criminal liability has been established.

3. Discussion

This empirical socio-legal study produces four principal findings. First, judicial pardon must be positioned as a sentencing mechanism rather than as a defense against criminal liability. Second, the current formulation of Article 54(2) of the Indonesian Criminal Code does not provide sufficiently specific criteria for its application to digital defamation. Third, empirical indicators are necessary to assess the nature of the expression, the offender's culpability, the degree of digital harm, and post-offence restoration. Fourth, further regulation is required to ensure that judicial pardon protects freedom of expression without diminishing the legal protection of personal honour and dignity.

The Legal Position of Judicial Pardon in Digital Defamation Cases

The first finding concerns the legal stage at which judicial pardon may be considered. Article 54(2) of Law No. 1 of 2023 authorises a judge to refrain from imposing punishment or measures after considering the minor nature of the offence, the offender's personal circumstances, the circumstances surrounding the offence, subsequent developments, justice, and humanity. The provision therefore operates after the court has determined that an offence has been committed and that the defendant is criminally responsible.

This position distinguishes judicial pardon from an acquittal, a justification, an excuse, or a statutory exclusion. Judicial pardon does not mean that the defendant's conduct was lawful. It means that the conduct remains criminal, but punishment is considered unnecessary or disproportionate in the circumstances of the case. Indonesian scholarship generally places judicial pardon within the sentencing stage and views it as a means of achieving substantive justice where the automatic imposition of punishment would be excessive.

This distinction is particularly important in digital-defamation cases. Before considering judicial pardon, the court must first determine whether the online expression satisfies the elements of Article 27A of Law No. 1 of 2024. The court must examine whether there was an allegation concerning a particular matter, whether it attacked the honour or reputation of an individual, whether it was communicated through electronic information or an electronic document, and whether the required intention was established.

The court must also determine whether the expression falls within a statutory or constitutional area of protection. Article 27A cannot be interpreted separately from Articles 28E(3), 28F, 28G(1), and 28J of the 1945 Constitution. The provision must also be read in conjunction with the exclusions for conduct undertaken in the public interest or in self-defence. Accordingly, criticism, opinion, satire, consumer complaints, journalistic reporting, and public-interest disclosures should not automatically be classified as criminal defamation merely because they offend, embarrass, or inconvenience the person concerned.

Constitutional Court Decision No. 105/PUU-XXII/2024 reinforces this limitation by narrowing the scope of persons whose honour may be protected through Article 27A. The decision indicates that the provision primarily protects the reputation of natural persons and should not be used by institutions, corporations, government bodies, professions, or public offices merely to shield themselves from criticism. Recent studies regard the decision as an important effort to prevent the criminal-defamation provision from being used too broadly against democratic participation and criticism of public power.

The sequence of legal analysis should therefore be clear. The court must first determine whether the expression is criminal. If the statement constitutes protected criticism, does not fulfil the elements of Article 27A, or falls within a legal exclusion, judicial pardon is unnecessary. The correct outcome should be an acquittal or another decision reflecting the absence of criminal liability.

Using judicial pardon for protected expression would create a conceptual error. Although no punishment would be imposed, the speaker would still be formally declared guilty of a criminal offence. Such a finding may contribute to a chilling effect by suggesting that criticism is criminal but may occasionally be forgiven by a judge. Freedom of expression would then depend on judicial mercy rather than legal protection.

Judicial pardon should therefore be reserved for an intermediate category. It applies where digital defamation has been legally proven, but the limited seriousness of the conduct and the surrounding circumstances make punishment unnecessary. This position preserves the distinction between lawful expression, punishable defamation, and criminal conduct that technically constitutes defamation but does not justify the imposition of a penalty.

The Gap in the Existing Regulation

The second finding is that Article 54(2) provides a legal basis for judicial pardon but does not contain sufficiently specific criteria for digital-defamation cases. The terms used in the provision, including the “minor nature” of the offence, the offender’s personal circumstances, justice, and humanity, remain open to broad interpretation. The openness of these terms is not inherently problematic. Judicial discretion is necessary because criminal cases cannot always be resolved through rigid and uniform rules. Judicial pardon is intended to allow judges to consider the individual circumstances of a case and avoid punishment that would be formally lawful but substantively unjust. However, broad discretion without a structured framework may produce disparities, such as unequal judicial-pardon decisions where the Criminal Code does not provide adequate indicators for determining when an offence should be regarded as minor. Judicial discretion must be controlled through substantive criteria and transparent judicial reasoning.

The problem becomes more complex in digital defamation because the seriousness of an online statement cannot be determined merely from its wording. Digital communication allows content to be reproduced, archived, shared, and removed from its original context. A statement consisting of only a few sentences may cause extensive reputational damage if it is circulated repeatedly or published through an account with a large audience. Conversely, severe or impolite language does not always cause serious harm. A statement may have been sent to a limited audience, immediately deleted, corrected voluntarily, or understood by its recipients as an emotional reaction rather than a factual allegation. The assessment of whether an offence is minor must therefore consider the context and consequences of the communication rather than relying solely on the literal wording of the content. The lack of clear parameters creates two opposing risks. The first is the excessive use of judicial pardon. A court may regard an offence as minor merely because the offender apologized, had no prior conviction, or did not obtain an economic benefit. Such reasoning may underestimate the long-term reputational, professional, social, and psychological consequences experienced by the victim.

The second risk is the underuse of judicial pardon. A court may impose punishment whenever the formal elements of Article 27A have been established, without separately considering whether punishment remains necessary. This approach would reduce Article 54(2) to a provision without practical effect and preserve an automatic relationship between conviction and punishment.

The gap therefore lies not in the absence of judicial-pardon authority, but in the absence of offence-specific guidance. Article 54(2) provides the general authority, while digital-defamation cases require more concrete criteria to determine when an offence is sufficiently minor and when punishment would be disproportionate.

A Simple Framework for Applying Judicial Pardon

The third finding is that judicial pardon can be applied more consistently through a simple three-stage framework supported by empirically verifiable indicators. The framework does not replace judicial discretion. It organizes the relevant considerations so that judges assess similar cases through comparable legal questions and explain the factual basis for granting or refusing pardon.

Table1. Three Stages Framework

Stage	Principal question	Legal consequence
1. Criminality	Does the expression satisfy Article 27A, and is it outside constitutional or statutory protection?	If not, judicial pardon should not be used.
2. Seriousness	How serious are the expression, culpability, digital harm, and consequences?	Determines whether the offence may be regarded as minor.
3. Necessity	Is punishment still necessary after considering restoration, justice, and humanity?	If punishment is disproportionate, judicial pardon may be granted

Stage One: Determining Whether the Expression Is Criminal

At the first stage, the court must classify the contested expression. The classification should distinguish between an allegation of fact, an opinion, criticism, satire, emotional language, a consumer complaint, a warning, and a public-interest disclosure. An allegation of fact is capable of being assessed as true or false. An opinion or value judgment ordinarily cannot be proven in the same manner. Statements such as “the service was irresponsible” or “the policy was harmful” are different from a specific allegation that a named person committed fraud or another unlawful act.

The court should examine the communication as a whole. Words should not be separated from their context, audience, tone, preceding interaction, and communicative purpose. A phrase that appears defamatory when isolated may constitute sarcasm, criticism, quotation, or part of a broader discussion when read in context. The public-interest value of the statement must also be considered. Expression relating to public services, public spending, official conduct, corruption, consumer safety, professional misconduct, or abuse of authority generally deserves stronger protection than an allegation concerning the purely private life of an ordinary individual. The status of the person affected is relevant but not decisive. Public officials and public figures do not lose their right to reputation. However, they should ordinarily tolerate stronger criticism concerning the performance of their public functions. Criminal law should not be used merely to protect officials from embarrassment, harsh evaluation, or political disagreement. If the court concludes that the expression is protected, does not fulfil the offence elements, or is covered by a legal exclusion, the analysis ends at this stage. Judicial pardon is not required.

Stage Two: Assessing the Seriousness of the Offence

If criminal liability is established, the court should assess whether the offence is sufficiently minor to justify judicial pardon. Four factors should guide this assessment: the nature of the expression, the offender’s culpability, the degree of digital harm, and post-offence restoration.

First, the nature and value of the expression. The court should determine whether the communication had a legitimate purpose. A statement may cross the boundary into defamation while still containing an element of public criticism, personal grievance, consumer warning, or discussion of a socially relevant issue. This expressive value may reduce the necessity of punishment, although it does not automatically eliminate criminal responsibility. By contrast, expression whose sole or dominant purpose is to humiliate, threaten, mobilize harassment, or destroy another person’s reputation carries little legitimate value. Judicial pardon should be approached more cautiously in such cases.

Second, the offender’s degree of culpability. The court should distinguish among deliberate

fabrication, reckless publication, failure to verify information, an honestly held but mistaken belief, and an impulsive emotional response. These forms of culpability are not equivalent. A person who knows that an allegation is false but circulates it to damage another person's reputation demonstrates a high degree of culpability. A person who possesses some supporting information but expresses an inaccurate conclusion may have a lower level of culpability, particularly where there was no calculated intention to cause reputational harm. Relevant questions include whether the offender attempted to verify the information, contacted the person concerned for clarification, corrected the statement after receiving accurate information, or deliberately ignored facts showing that the allegation was false.

Third, the degree of digital harm. The assessment should not depend solely on the number of views, followers, or shares. Quantitative reach is relevant, but the character of the audience may be equally important. An allegation communicated to an employer, professional organization, family group, or local community may cause serious harm despite reaching relatively few people. The court should consider the platform used, the number and characteristics of recipients, the duration of publication, repeated uploads, coordinated dissemination, search-engine visibility, the likelihood of continued circulation, and whether the offender encouraged other users to attack the victim. Actual consequences should also be examined. These may include loss of employment, professional sanctions, damaged business relationships, family conflict, social exclusion, threats, psychological distress, and continuing stigma. The absence of financial loss does not mean that the injury to dignity was minor. The power relationship between the parties is also relevant. An individual criticizing a powerful public official does not occupy the same position as a large or coordinated account targeting a private individual. The use of social, political, institutional, or technological influence to expose a vulnerable person to public hostility should weigh against judicial pardon.

Fourth, post-offence restoration. Article 54(2) expressly permits consideration of circumstances arising after the offence. This element allows judges to assess whether the harm has been acknowledged and meaningfully repaired. Relevant conduct includes promptly deleting the content, issuing a correction, publishing an apology to the same audience, preventing further circulation, compensating measurable losses, restoring the victim's reputation, participating in mediation, and refraining from repeating the conduct. An apology should be assessed according to its substance rather than its mere existence. A private apology may be inadequate where the allegation was made publicly. A vague statement of regret may not correct a specific false accusation. Similarly, deletion after the content has been widely distributed does not fully restore the victim's reputation. Restoration must correspond to the form and scale of the original harm. Where the allegation was publicly disseminated, the correction or apology should ordinarily be publicly accessible to a comparable audience.

Stage Three: Determining the Necessity of Punishment

At the final stage, the court must determine whether punishment continues to serve a legitimate sentencing purpose. Judicial pardon may be appropriate where criminal liability has been established, but punishment would not materially contribute to prevention, rehabilitation, protection of the public, restoration of the victim, or recognition of the legal wrong (Aries, 2022)

The court should consider whether the offender poses a risk of repetition, whether the victim's injury has been meaningfully acknowledged, whether the relevant content remains accessible, and whether non-penal measures have substantially restored the situation, based on a proportionality-based test (Rondinel, 2026).

The criminal process itself may also have consequences for the defendant, including legal expenses, reputational damage, employment disruption, and social stigma (Hoskins, 2023). These

consequences are typically considered distinct from formal punishment and generally should not factor into sentencing decisions (Hoskins, 2023).

Judicial pardon will generally be more appropriate where:

the expression had some legitimate personal or public-interest purpose;

the offender's culpability was relatively low;

the dissemination was limited;

the reputational harm was not severe or was capable of restoration;

the offender promptly corrected the information or apologised;

the parties achieved meaningful reconciliation;

the conduct was not repeated; and

punishment would produce a burden disproportionate to the offence.

These factors are cumulative considerations rather than mandatory conditions. The absence of one factor does not automatically prevent judicial pardon. The judge must evaluate the circumstances as a whole.

Judicial pardon should ordinarily not be granted where the case involves deliberate fabrication of serious allegations, knowledge of falsity, repeated publication, coordinated attacks, exploitation of the victim's vulnerability, disclosure of private information unrelated to the public interest, extensive reputational harm, refusal to correct the allegation, or continued dissemination after a warning.

In such circumstances, the offence cannot reasonably be classified as minor, and punishment may remain necessary to protect the victim's dignity and affirm the legal boundary against malicious reputational attacks.

The Required Direction of Further Regulation

The fourth finding concerns the form and content of further regulation. The present study does not suggest that every detail should be incorporated into the Criminal Code. An excessively detailed statutory formula may make judicial pardon rigid and undermine its individualized character.

A more appropriate approach would be to establish general parameters through an authoritative judicial guideline, such as a Supreme Court regulation or sentencing guideline. The guideline should regulate the reasoning process rather than predetermine the result.

At a minimum, further regulation should contain four elements. First, it should confirm the procedural sequence. Judicial pardon may only be considered after criminal liability has been established. It must not replace the examination of the offence elements, constitutional protection, public-interest exclusions, or self-defense. Second, it should require judges to consider the nature of the expression, the offender's culpability, the degree of digital harm, and post-offence restoration. These factors provide a sufficient structure without creating a complicated mathematical formula. Third, it should identify circumstances that generally support or oppose pardon. This distinction would improve consistency while preserving the judge's authority to depart from the general guidance where the specific circumstances justify a different conclusion. Fourth, it should require a reasoned decision. A court should not grant judicial pardon merely by referring to justice, humanity, reconciliation, or the offender's personal circumstances. The judgment must explain why the offence is considered minor and why punishment is no longer necessary.

The reasoning should identify:

the legal character of the expression;

its relationship to the public interest;

the status and vulnerability of the person affected;

the offender's intention and degree of fault;
the scope and persistence of dissemination;
the actual or reasonably foreseeable harm;
the restoration undertaken after the offence; and
the reasons punishment would be disproportionate.

The requirement of reasoned decisions is important for both the offender and the victim. For the offender, it ensures that pardon is based on legal considerations rather than personal sympathy. For the victim, it demonstrates that the court has acknowledged the wrongful nature of the conduct and the injury to dignity, even though no punishment is imposed.

Published and reasoned decisions would also enable the gradual development of judicial standards. Courts could compare later cases with earlier decisions, thereby reducing unexplained disparities. Judicial pardon would develop as a principled sentencing doctrine rather than as an occasional and unpredictable act of leniency.

Maintaining the Boundary Between Freedom and Dignity

The boundary identified in this study may be expressed through three categories.

The first category consists of protected expression. This includes criticism, opinion, satire, public-interest communication, and other statements that do not satisfy the elements of criminal defamation or fall within a legal exclusion. Such expression should not require judicial pardon because it should not produce criminal liability. The second category consists of serious digital defamation. This includes deliberately false allegations, repeated or coordinated dissemination, targeted harassment, exploitation of a vulnerable victim, and conduct causing substantial or continuing reputational harm. Judicial pardon should generally not apply because the offence cannot reasonably be regarded as minor. The third category is the intermediate category in which judicial pardon becomes relevant. In this category, the elements of defamation have been established, but the expression retains some legitimate context, the offender's culpability is limited, the harm is relatively minor or has been meaningfully restored, and punishment would be disproportionate.

This distinction ensures that judicial pardon does not function as a general exemption from responsibility for harmful speech. At the same time, it prevents criminal punishment from being imposed mechanically on every expression that formally fulfils the elements of digital defamation. Judicial pardon can therefore contribute to a more proportionate response to digital-defamation cases, but only if its application remains structured and transparent. The concept must protect individuals from unnecessary punishment without turning personal dignity into a secondary interest.

The protection of dignity does not always require imprisonment, fines, or another penal measure. In relatively minor cases, acknowledgment of wrongdoing, correction of information, public apology, restoration of reputation, and reconciliation may provide a more meaningful response. However, these non-penal outcomes must be evaluated according to their actual ability to repair the harm rather than treated as formal requirements.

Ultimately, the central issue is not whether freedom of expression is more important than dignity, or whether dignity should always limit expression. Both are legally protected interests. The task of judicial pardon is narrower: to determine whether punishment remains justified after the court has found that the boundary of lawful expression was crossed.

The study therefore concludes that further regulation is necessary to establish a clear intermediate space between protected expression and serious digital defamation. A simple framework based on criminality, seriousness, and the necessity of punishment provides a workable

foundation. Within the seriousness assessment, the court should focus on empirically verifiable indicators: the nature of the expression, culpability, digital harm, restoration, and the factual evidence supporting each of those elements.

Through this framework, judicial pardon may operate consistently with Article 54(2) of the Criminal Code while respecting the constitutional guarantees of freedom of expression and personal dignity. It would neither excuse malicious digital attacks nor allow minor expressive wrongdoing to result automatically in criminal punishment.

4. Conclusion

The Electronic Information and Transactions Law provides the principal legal framework for addressing cyberbullying in Indonesia through provisions governing online defamation, threats, hate speech, and other unlawful electronic communications. However, Law No. 1 of 2024 does not expressly recognize cyberbullying as an independent criminal offence, resulting in legal enforcement that depends on the interpretation of dispersed provisions and creating challenges in ensuring consistent legal certainty.

Although Law Number 1 of 2024 enables the prosecution of cyberbullying offenders, it has not comprehensively regulated victim protection. Legal protection remains primarily focused on criminal sanctions, while essential victim oriented measures, including legal assistance, psychological rehabilitation, restitution, restoration of reputation, and effective access to justice, continue to rely largely on the Law on the Protection of Witnesses and Victims. Therefore, strengthening the ITE Law with explicit provisions on victim protection is necessary to ensure a more comprehensive and effective legal response to cyberbullying.

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