



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 105/PUU-XXII/2024**

Concerning

Criminal Acts of Defamation and Incitement of Hatred in Electronic Media

- Petitioner** : **Daniel Frits Maurits Tangkilisan**
- Type of Case** : Judicial review of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (Law 1/2024) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Article 27A, Article 45 paragraph (4), Article 28 paragraph (2), and Article 45A paragraph (2) of Law 1/2024 are contrary to Article 27 paragraph (1), Article 28D paragraph (1), 28E paragraph (2) and paragraph (3), Article 28G paragraph (1), Article 28I paragraph (2) and paragraph (4), and Article 28J paragraph (2) of the 1945 Constitution
- Verdict** :
1. To grant the Petitioner's petition in part
 2. To declare that the phrase "another person" in Article 27A and Article 45 paragraph (4) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (State Gazette of the Republic of Indonesia of 2024 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 6905) is contrary to the 1945 Constitution of the Republic of Indonesia and conditionally has no binding legal force to the extent that it is not interpreted as "except a government agency, a group of people with a specific or certain identity, an institution, a corporation, a profession, or an office"
 3. To declare that the phrase "something" in Article 27A and Article 45 paragraph (4) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (State Gazette of the Republic of Indonesia of 2024 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 6905) is contrary to the 1945 Constitution of the Republic of Indonesia and conditionally has no binding legal force to the extent that it is not interpreted as "an act that degrades the honor or good name of a person"

4. To declare that the phrase “distributes and/or transmits electronic information and/or electronic documents that are inflammatory, inciting, or influencing others so as to give rise to feelings of hatred or hostility toward an individual and/or a certain community group” in Article 28 paragraph (2) and Article 45A paragraph (2) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (State Gazette of the Republic of Indonesia of 2024 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 6905) is contrary to the 1945 Constitution of the Republic of Indonesia and conditionally has no binding legal force to the extent that it is not interpreted as “only electronic information and/or electronic documents that substantively contain acts/spread of hatred toward certain identities, carried out intentionally and publicly, which create a real risk of discrimination, hostility, or violence”
5. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate
6. To dismiss the remaining petition of the Petitioner

Date of Decision : Tuesday, April 29, 2025

Overview of Decision :

Whereas the Petitioner is an individual Indonesian citizen and an environmental activist who is a member of the Coalition to Safeguard Indonesia’s Sustainability (Koalisi Kawal Indonesia Lestari/Kawali). The Petitioner argue that he suffers constitutional loss as guaranteed in Article 28, Article 28D paragraph (1), Article 28E paragraph (2) and paragraph (3), and Article 28H paragraph (1) of the 1945 Constitution due to the enactment of the norms of Article 27A *juncto* Article 45 paragraph (4) and Article 28 paragraph (2) *juncto* Article 45A paragraph (2) of Law 1/2024, which set out that a person shall be punished for defamation and incitement of hatred.

Regarding the Court’s authority, since the Petitioner’s petition is a review of the constitutionality of statutory norms, *in casu* a material review of Law 1/2024 against the 1945 Constitution, the Court has the authority to hear the petition *a quo*.

Regarding legal standing, the Petitioner has clearly described his qualifications as an individual citizen who considers himself to have suffered a constitutional loss due to the enactment of the statutory norms petitioned for review. The alleged constitutional loss is specific and actual or at least potentially occurs due to the enactment of the norms of Article 27A *juncto* Article 45 paragraph (4) and Article 28 paragraph (2) *juncto* Article 45A paragraph (2) of Law 1/2024, which set out that a person shall be punished for defamation and incitement of hatred. Therefore, without intending to examine the actual case the Petitioner experienced, the alleged constitutional loss described by the Petitioner has a causal relationship (*causal verband*) with the enactment of the statutory norms being petitioned for review. Therefore, if the petition *a quo* is granted, the alleged constitutional loss as the Petitioner describes will not or will no longer occur. Thus, regardless of whether or not the unconstitutionality of the norms that are being petitioned for review is proven, the Court is of the view that the Petitioner has the legal standing to act as a Petitioner in the petition *a quo*;

Regarding the review of the constitutionality of Article 27A *juncto* Article 45 paragraph (4) of Law 1/2024 and Article 28 paragraph (2) *juncto* Article 45A paragraph (2) of Law 1/2024 as argued by the Petitioner, after the Court has examined and carefully read the Petitioner’s petition, the President’s statement, the statement of the House of Representatives, the Petitioner’s expert statement, the President’s expert statement, the evidence submitted by the Petitioner and the President, the Petitioner’s written conclusion, and the President’s written conclusion, the issues of constitutionality of norms that the Court must address are:

- (1) Whether it is true that the phrase “another person” and the phrase “something” in the norms of Article 27A *juncto* Article 45 paragraph (4) of Law 1/2024 are contrary to Article 28D paragraph (1) of the 1945 Constitution because they give rise to multiple interpretations and legal uncertainty in guaranteeing freedom of expression on social media if they are not interpreted as the Petitioner’s *petitum*.
- (2) Whether it is true that the phrase “without right” and the phrase “distributes and/or transmits electronic information and/or electronic documents that are inflammatory, inciting, or influencing others so as to give rise to feelings of hatred or hostility toward an individual and/or a certain community group” in the norms of Article 28 paragraph (2) *juncto* Article 45A paragraph (2) of Law 1/2024 violates the right to a sense of security, the right to be free from discrimination, and the right to equality before the law, thus being contrary to Article 27 paragraph (1), Article 28D paragraph (1), Article 28E paragraph (2) and paragraph (3), Article 28G paragraph (1), Article 28I paragraph (2) and paragraph (4), Article 28J paragraph (2) of the 1945 Constitution and international legal standards if they are not interpreted as the Petitioner’s *petitum*.

Whereas regarding the phrase “another person” and the phrase “something” in the norms of Article 27A *juncto* Article 45 paragraph (4) of Law 1/2024, which, in the Petitioner’s opinion, give rise to multiple interpretations and therefore are contrary to Article 28D paragraph (1) of the 1945 Constitution, the Court considers as follows.

1. Whereas in arguing that the norms of Article 27A *juncto* Article 45 paragraph (4) of Law 1/2024 are contrary to Article 28D paragraph (1) of the 1945 Constitution, the Petitioner does not intend to abolish the norm *a quo*, but petitions the Court to provide clear legal certainty regarding the guidelines on subjects who may be subject to criminal provisions for defamation through electronic media so that the criminal law instrument cannot be used arbitrarily, which is not in line with the principles of democracy [*vide* the Petitioner’s Petition p. 28]. The guidelines that need to be clarified are related to 2 (two) phrases, namely (i) the phrase “another person” which refers to the victim of defamation; and (ii) the phrase “accusing of something”, which refers to the way in which defamation is carried out. In the Petitioner’s opinion, these two phrases are unclear in their regulation of community behavior and law enforcement officers. Regarding the Petitioner’s argument *a quo*, the Court needs first to refer to the provisions of Article II of Law 1/2024 which, in essence, confirms that, among other things, the provisions of Article 27A and Article 45 paragraph (4) of Law 1/2024 shall remain in effect until the enactment of Law Number 1 of 2023 concerning the Criminal Code (2023 Criminal Code). The 2023 Criminal Code will only come into force on January 2, 2026 [*vide* Article 624 of the 2023 Criminal Code]. In this regard, no further explanation is available regarding the background to the provisions of Article II of Law 1/2024. In this regard, the government only states that it is to fill the legal vacuum and anticipate complications in legal issues that might arise from the amendment to the ITE Law [*vide* the President’s Additional Statement, p. 3]. If traced, the provision of Article 27A of Law 1/2024 is, in substance, a transformation of the norm of Article 27 paragraph (3) of Law 11/2008. Furthermore, the Elucidation of Article 27 paragraph (3) of Law 11/2008 states that the application of this provision refers to the provisions on defamation and/or slander as regulated in the Criminal Code. This means that the constitutionality of the norm of Article 27 paragraph (3) of Law 11/2008 cannot be separated from the basic legal norms in Article 310 and Article 311 of the Criminal Code that regulate defamation of individuals [*vide* Paragraph **[3.17]** of Constitutional Court Decision Number 50/PUU-VI/2008].

In this regard, when Law 11/2008 was amended with Law 1/2024, the 2023 Criminal Code was enacted and, without the Court intending to examine the constitutionality of the 2023 Criminal Code, the norm of Article 310 of the Criminal Code had amended, as stated in Article 433 paragraph (1) of the 2023 Criminal Code that reads, “Any Person who orally attacks the honor or good name of another person by accusing them of something, with the intent that such thing becomes publicly known, shall be punished for defamation with imprisonment for a maximum of 9 (nine) months or a fine of up to category II”. Furthermore, the Elucidation of Article 433 paragraph (1) of the 2023 Criminal Code explains that, “The nature of the act of defamation is when an act of insult is committed by accusing, whether verbally, in writing, or by means of images, which attacks a person’s honor and good name, thereby causing harm to that person. The act being accused of does not need to be a criminal offense. Under the provisions of this article, the object of the Criminal Act is an individual person. Insulting a

government agency or a group of people is not included within the provisions of this article". This means that, under Article 433 paragraph (1) of the 2023 Criminal Code, government agencies and groups of people are excluded parties. In substance, the formulation of the norm of Article 27A of Law 1/2024 is the same as the formulation of the norm of Article 433 paragraph (1) of the 2023 Criminal Code, with an adjustment regarding the substance of the ITE Law, where the defamation in question uses electronic media. However, in the formulation of the norm of Article 27A of Law 1/2024, there are no exceptions referring to the Explanation of Article 433 paragraph (1) of the 2023 Criminal Code. In this context, the Petitioner is concerned that the application of the norm of Article 27A of Law 1/2024 may give rise to arbitrary actions, as its reach may extend beyond individuals (*natuurlijk*). Under Article 27A of Law 1/2024, due to the lack of clarity regarding the limitations of the phrase "another person" whose honor or good name is attacked, the norm of the article *a quo* is vulnerable to abuse. In fact, Article 433 paragraph (1) of the 2023 Criminal Code also uses the phrase "another person" to refer to victims of defamation. By referring to Article 433 paragraph (1) of the 2023 Criminal Code and the Elucidation, once again, without intending to examine the constitutionality of the norms contained in the 2023 Criminal Code, in this regard, it has been determined that parties that cannot be victims of criminal acts of defamation are government agencies or groups of people.

Furthermore, the General Elucidation of Law 1/2024 states that Law 11/2008 was amended due to objections raised by the community during its implementation. Therefore, to provide fair legal certainty, the Court is of the opinion that an affirmation of the constitutionality of the phrase "another person" in the norm of Article 27A of Law 1/2024 is needed to provide clarity regarding the fulfillment of the state's obligations to protect, advance, uphold, and fulfill human rights, as regulated in Article 28I paragraph (4) of the 1945 Constitution. This affirmation is essential to provide legal certainty in upholding Article 27A of Law 1/2024, where the provision of Article *a quo* is related to Article 45 paragraph (7) of Law 1/2024 which, in essence, provides that the act of attacking the honor or good name of another person by accusing of something shall not be punishable if the act is carried out in the public interest or because of being forced for self-defense. To clarify the meaning of the public interest, the Elucidation of Article 45 paragraph (7) of Law 1/2024 states that it means protecting the interests of the community expressed through the right to freedom of expression and the right to democracy, for example, through demonstrations or criticism. In a democratic country, criticism is essential to freedom of expression and should be as constructive as possible, even when it conveys disagreement with another person's actions or deeds. Basically, criticism, in the context of Article 27A of Law 1/2024, is a form of supervision, correction, and suggestions regarding matters relating to the interests of the community [*vide* Elucidation of Article 45 paragraph (7) letter a of Law 1/2024]. This means that, without the Court intending to examine the actual case that the Petitioner experienced, constructive criticism, *in casu* toward government policies for the benefit of the community, is an essential thing as a means of balancing or a means of public control which must be guaranteed in a democratic state under the rule of law, as stipulated in Article 28E paragraph (3) of Law 1/2024. The restriction of the right to freedom of opinion and expression will actually erode the control or supervision function necessary to prevent the abuse of power in government administration.

In this regard, the application of Article 27A of Law 1/2024, in the Court's opinion, still needs to refer to the provisions of the Criminal Code, *in casu* Article 310 of the Criminal Code, which is currently still in force, taking into account the interpretation in Constitutional Court Decision Number 78/PUU-XXI/2023 pronounced in a plenary session open to the public on March 21, 2024, particularly the interpretation of Article 310 paragraph (1) of the Criminal Code that provides defamation of a person or individual. This means the article applies only to defamation directed at individuals. Regarding the exception of legal subjects, *in casu* victims as referred to in Article 27A of Law 1/2024 as argued by the Petitioner, the Court first needs to emphasize the correlation between Article 27A of Law 1/2024 and Article 45 paragraph (5) of Law 1/2024 which states that, in essence, violations of the provision on prohibitions in Article 27A of Law 1/2024 constitute a complaint-based offense which can only be prosecuted on the basis of a complaint from the victim or the person who has been the victim of the criminal act or the person whose good name has been defamed. In this case, even if a legal entity is a victim of defamation, it cannot be the complainant or reporting party. Pursuant to this, because legal entities cannot report defamation committed through electronic media, under the provision of Article 45 paragraph (5) of Law 1/2024, only (individual) victims whose good name has been defamed can

report to law enforcement officials regarding criminal acts against them, and not their representatives. Therefore, it does not make sense if the provision of Article 27A of Law 1/2024 is applied to an institution that must be represented by a person. In this regard, in the Court's opinion, to prevent arbitrary actions by law enforcement officers in the application of the phrase "another person" in Article 27A of Law 1/2024, the Court needs to emphasize that the phrase "another person" refers to individuals or private persons. Therefore, the provision of Article 27A of Law 1/2024 cannot be applied if the victim of defamation is not an individual or private person but a government agency, a group of people with a specific or certain identity, an institution, a corporation, a profession, or an office. However, this exception does not preclude the excluded party from filing a lawsuit by civil means. Thus, to guarantee legal certainty as regulated in Article 28D paragraph (1) of the 1945 Constitution, Article 27A of Law 1/2024 must be declared conditionally unconstitutional to the extent that the phrase "another person" is not interpreted as "except a government agency, a group of people with a specific or certain identity, an institution, a corporation, a profession, or an office".

2. Whereas, regarding the phrase "something" in the norm of Article 27A of Law 1/2024, the Petitioner challenges its constitutionality due to creating ambiguity or multiple interpretations in its enforcement, thereby the Petitioner, in his *petitum*, petitions that it be interpreted as "the commission of an act". In the Court's opinion, the phrase "something" in question relates to the way of accusing someone of something, with the intent that such thing becomes publicly known. The norms of Article 27A *juncto* Article 45 paragraph (4) of Law 1/2024, the constitutionality of which is being petitioned for review, regulate the prohibition of acts that attack the honor or good name of "another person" by "accusing of something" through an electronic system. The element of "accusing of something" is the core of the formulation of the crime of defamation as known in the Indonesian criminal law system, including in Article 310 paragraph (1) of the Criminal Code and Article 433 paragraph (1) of the 2023 Criminal Code. However, unlike the Criminal Code, which explicitly mentions "certain acts" as the main element of defamation, Article 27A, *juncto* Article 45 paragraph (4) of Law 1/2024, uses the term "something" without further explanation. The phrase "something" in the norm *a quo* can lead to multiple interpretations if no clear normative limitations are provided. According to the Great Dictionary of the Indonesian Language (KBBI), the word "something" has a very general and varied meaning, including events, circumstances, affairs, problems, and matters about or concerning. The word "something", which is so open, causes uncertainty in legal interpretation, particularly if the phrase becomes the basis for imposing criminal sanctions. Whereas in criminal law, the principle *nullum crimen sine lege certa* requires that every criminal provision be formulated clearly and unambiguously to guarantee the right to legal certainty and protection from arbitrary action.

The use of the phrase "something" in the context of the crime of defamation can lead to confusion between the act of defamation and ordinary insult, which, doctrinally, are two different forms of crime. In this case, an insult is more of an emotional expression that does not accuse of specific actions, for example, by using harsh words, such as remarks or swearing. This difference is relevant not only to the structure of the crime elements but also to the determination of the level of culpability (*mens rea*), the burden of proof, and the proportion of the criminal threat imposed. If the phrase "something" is interpreted too broadly, there will be a disproportionate combination of two different forms of action, ultimately creating legal uncertainty. In this case, the Court needs to emphasize that, under Law 1/2024, an amendment to Law 11/2008, the provisions on insults have been removed from Article 27 paragraph (3), leaving only the provisions regarding defamation. In a construction like this, the phrase "something" without clear parameters/criteria in its use will cause legal uncertainty, because various forms of insults that have previously been categorized separately may be drawn into the meaning of defamation through broad interpretation. This will make the article *a quo* a "waste basket article", "changing back and forth (*mulur mungkreŧ*)", "catch-all provision" which accommodates various forms of expression that actually have different dimensions and legal consequences. Therefore, to guarantee legal certainty as regulated in Article 28D paragraph (1) of the 1945 Constitution, Article 27A and Article 45 paragraph (4) of Law 1/2024 must be declared conditionally unconstitutional to the extent that the phrase "something" is not interpreted as "an act that degrades the honor or good name of a person".

Thus, pursuant to the description of the legal considerations above, to prevent the expansion of interpretation, guarantee fair legal certainty, and avoid the misuse of criminal law as an instrument

to silence freedom of expression, in the Court's opinion, the phrase "another person" in the norms of Article 27A and Article 45 of Law 1/2024 must be declared conditionally contrary to the 1945 Constitution to the extent that it is not interpreted as "except a government agency, a group of people with a specific or certain identity, an institution, a corporation, a profession, or an office". Meanwhile, the phrase "something" in the norms of Article 27A and Article 45 paragraph (4) of Law 1/2024 must also be declared conditionally contrary to the 1945 Constitution to the extent that it is not interpreted as "an act that degrades the honor or good name of a person". However, because the Court's interpretation differs from the Petitioner's petition, the petition regarding the unconstitutionality of the norms of Article 27A and Article 45 paragraph (4) of Law 1/2024 is legally justifiable in part.

Whereas furthermore, in the Petitioner's opinion, the phrase "without right" in the norms of Article 28 paragraph (2) *juncto* Article 45A paragraph (2) of Law 1/2024 which, has given rise to the interpretation that there are parties who have the right to convey or spread incitement of hatred as referred to in the norm *a quo* and does not provide substantial limitations on the content of information that is considered to "inflammatory, inciting, or influencing others", thereby any form of expression may be criminalized if it turns out to give rise to "feelings of hatred or hostility" towards certain groups, is contrary to the principle of fair legal certainty, violates the right to feel safe, the right to be free from discrimination, and the right to equality before the law as stipulated in Article 27 paragraph (1), Article 28D paragraph (1), Article 28E paragraph (2) and paragraph (3), Article 28G paragraph (1), Article 28I paragraph (2) and paragraph (4), Article 28J paragraph (2) of the 1945 Constitution and does not comply with international standards as stipulated in Article 20 paragraph (2) of the ICCPR. Regarding this, the Court considers the following.

1. The phrase "without right" has been found not only in the norm of Article 28 paragraph (2) of Law 1/2024, but also in almost all norms on prohibited acts in Chapter VII of the ITE Law. The amendment to the norm of Article 28 paragraph (2) of Law 1/2024 states, "Any Person who intentionally and without right distributes and/or transmits electronic information and/or electronic documents that are inflammatory, inciting, or influencing others so as to give rise to feelings of hatred or hostility toward an individual and/or a certain community group because of race, nationality, ethnicity, skin color, religion, belief, gender, mental disability, or physical disability." The norm *a quo* still maintains the phrase "without right" which, in the Petitioner's opinion, may be interpreted that there are parties who have the right and parties who do not have the right to convey incitement of hatred through electronic media because of nationality, skin color, belief, gender, mental disability, or physical disability.

The elements of intentionally and without right in the norm of Article 28 paragraph (2) of Law 1/2024 are a single unity which, in the legal application, must be proven by law enforcers. The elements of "intentionally" and "without right" mean that the perpetrator "intends" and "knows" consciously that the actions are carried out without right. In other words, the perpetrator consciously intends and knows that the act of "distributing" and/or "transmitting" electronic information and/or electronic documents will give rise to feelings of hatred or hostility. The element "without right" in the provisions of Article 28 paragraph (2) of Law 1/2024 is a formulation of the unlawful nature (*wedderrechtelijkheid*), as a constitutive element of a more specific criminal act. In criminal law, the term unlawful can be interpreted as contrary to the law, contrary to rights, or without authority or without right. The formulation of the unlawful element, in this case the element "without right", is intended to prevent criminal penalties toward just any people carrying out the act of distributing and/or transmitting electronic information and/or electronic documents and knowing that the electronic information and/or electronic documents give rise to feelings of hatred or hostility. Thus, in essence, Article 28 paragraph (2) of Law 1/2024 regulates unlawful acts to provide every person with legal protection of their honor or dignity, as stipulated in Article 28G paragraph (1) of the 1945 Constitution. This means that the element "without right" in the norm of Article 28 paragraph (2) of Law 1/2024 is an element intended to protect human rights in accordance with the pattern of normative formulation of criminal law in several international instruments that accommodate the element "without right", which was adopted from the 2001 Budapest Convention on Cybercrime. In this regard, the element "without right" has constitutional value in protecting certain professions (for example, the press, researchers, and law enforcement officers) in carrying out their professional activities. In addition, the inclusion of the element "without right" is also in line with the practice of regional and international instruments in criminalizing hate speech or xenophobic content. Therefore, the phrase "without right" must be read correlatively with the act of distributing and/or transmitting, so that the phrase without right means in the context of who has the

right and who does not have the right to distribute and/or transmit electronic documents, not in the context of who has the right and who does not have the right to carry out acts of incitement of hatred as argued by the Petitioner. Thus, the phrase “without right” is still needed in the formulation of norm *a quo* to protect persons who have a legitimate legal interest to distribute or transmit content as referred to in Article 28 paragraph (2) of Law 1/2024. Because the element “without right” is not an instrument that limits freedom of expression through fulfilling the right to a sense of security for others as guaranteed in Article 28G of the 1945 Constitution. In this regard, the use of the phrase “without right” is an effort by the state to protect or balance the legal rights of people who have a legitimate legal interest to distribute or transmit electronic content in an electronic system, for example, in the case of the distribution or transmission of electronic content containing hate speech by persons who are legally authorized and have the right to do so, such as in academic studies, reviews, or academic research, law enforcement, and reporting/journalism. Therefore, if the element “without right” is removed or deleted, it can be used to criminalize certain professions protected by law. Moreover, if the element “without right” is removed and Article 28 paragraph (2) of Law 1/2024 becomes a formal crime with a maximum prison sentence of 6 (six) years and/or a fine up to Rp 1,000,000,000.00 (one billion rupiah), as in the Petitioner’s *petitum*, then this will actually make it easier to criminalize the act of distributing content that is considered inflammatory. The construction of formal crimes with the threat of criminal penalties, including detention, will be counterproductive to efforts to protect human rights. However, this does not necessarily mean that this gives rise to discrimination that is contrary to Article 27 paragraph (1) and Article 28I paragraph (2) of the 1945 Constitution, as argued by the Petitioner. In this context, the element “without right” will serve as a clear benchmark for law enforcement to determine whether the perpetrator can be prosecuted. Meanwhile, regarding the phrase “without right” in Article 45A paragraph (2) of Law 1/2024, the constitutionality of which is also being petitioned by the Petitioner, as it is a secondary norm of the norm of Article 28 paragraph (2) of Law 1/2024, within the limits of reasonable reasoning, the phrase “without right” in Article 45A paragraph (2) of Law 1/2024 is also legally unjustifiable. Therefore, the Petitioner’s argument challenging the constitutionality of the norm of the phrase “without right” in the norms of Article 28 paragraph (2) *juncto* Article 45A paragraph (2) of Law 1/2024 is legally unjustifiable;

2. Regarding the phrase “distributes and/or transmits electronic information and/or electronic documents that are inflammatory, inciting, or influencing others so as to give rise to feelings of hatred or hostility toward an individual and/or a certain community group” in the norms of Article 28 paragraph (2) *juncto* Article 45A paragraph (2) of Law 1/2024, which in its application has the potential to give rise to arbitrariness and does not provide legal certainty, before considering the Petitioner’s argument *a quo*, the Court first emphasizes that Article 28 paragraph (2) *juncto* Article 45A paragraph (2) of Law 1/2024 is a criminal provision which is categorized as material crime, namely a crime which requires the occurrence of certain consequences (in this case, the emergence of feelings of hatred or hostility) as a supplementary condition for proving the existence of a criminal act. In a material crime, the element of the act’s consequences determines whether a criminal act exists. This means that, without any clear limitations on the content or substance of “electronic information and/or electronic documents” in the norms of Article 28 paragraph (2) *juncto* Article 45A paragraph (2) of Law 1/2024, it is very likely or has the potential for arbitrary application, which will give rise to legal uncertainty. This is the source of the constitutional issue challenged by the Petitioner. Even though the enactment of the norms of Article 28 paragraph (2) *juncto* Article 45A paragraph (2) of Law 1/2024 has an objective that is in line with the state’s obligation to prevent the spread of identity-based hate speech, but strict limits is needed, so that it is not used excessively or overly against legitimate forms of expression in a democratic society. The absence of substantive limitations on the content of prohibited information in the norms *a quo* can lead to subjective, unmeasured law enforcement and even ensnare people with no malicious intent or who are simply reposting or quoting from other sources. Moreover, Article 20 paragraph (2) of the ICCPR states that “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. In this case, any act/spread of hatred against a nation, race, or religion that constitutes incitement of a discriminatory nature, spreading hostility or violence, must be prohibited by law. Furthermore, the UN Human Rights Committee in General Comment No. 34 and Rabat Plan of Action has also emphasized that prohibitions on expression can only be justified if the expression meets strict criteria, namely: (i) done with malicious intent (intention to incite), (ii) directed directly against a particular identity group, and (iii) creates a real,

imminent risk against the emergence of discrimination, hostility or violence. There is also a similar guideline in the Camden Principles on Freedom of Expression and Equality that states, “The term ‘advocacy’ is to be understood as requiring an intention to promote hatred publicly towards the target group” [*vide* Camden Principles, Principle 12.1.ii]. The Camden Principles require an intention to act/spread general and targeted hatred that poses a real risk to public order or the rights of others. This means that the term “act/spread” requires the intention to spread hatred against a particular target group openly. Therefore, in the absence of any limitations regarding the form or content of “electronic information and/or electronic documents” referred to in the norms of Article 28 paragraph (2) *juncto* Article 45A paragraph (2) of Law 1/2024, these norms have the potential to be used to ensnare any expression that is not tendentious (neutral), even expression that is not intended to cause hatred, if the consequences of hatred or hostility arise indirectly, through the response of a third party. In such conditions, there is potential to criminalize legitimate expression, including expressions containing criticism, satire, or neutral expressions used incorrectly by others. Thus, to ensure that the criminal provisions in the norms *a quo* are used proportionally, law enforcement must be restricted only to electronic information that substantially contains invitations, recommendations, or the spread of hatred towards an identity (advocacy of hatred), carried out intentionally in public, and clearly leads to forms of discrimination, hostility, or violence against protected groups. With these restrictions, the norm of Article 28 paragraph (2) of Law 1/2024 is in line with the constitutional principles stipulated in the 1945 Constitution and is also in accordance with several international legal instruments, such as Article 20 paragraph (2) of the ICCPR.

3. To ensure legal protection for vulnerable groups and, at the same time, guarantee that legitimate expression *in* democratic society is not subject to arbitrary criminal sanctions, the Court is of the view that the phrase “distributes and/or transmits electronic information and/or electronic documents that are inflammatory, inciting, or influencing others so as to give rise to feelings of hatred or hostility toward an individual and/or a certain community group” in the norm of Article 28 paragraph (2) of Law 1/2024 must be declared conditionally contrary to the 1945 Constitution to the extent that it is not interpreted as “only electronic information and/or electronic documents that substantively contain acts/spread of hatred toward certain identities, carried out intentionally and publicly, which create a real risk of discrimination, hostility, or violence”. Meanwhile, regarding the phrase “distributes and/or transmits electronic information and/or electronic documents that are inflammatory, inciting, or influencing others so as to give rise to feelings of hatred or hostility toward an individual and/or a certain community group” in the norm of Article 45A paragraph (2) of Law 1/2024, the constitutionality of which is also being petitioned by the Petitioner because it is a secondary norm of the norm of Article 28 paragraph (2) of Law 1/2024, then within the limits of reasonable reasoning, the argument itself is also legally justifiable. However, because the Court’s interpretation differs from that petitioned by the Petitioner, the petition regarding the unconstitutionality of the norms of Article 28 paragraph (2) and Article 45A paragraph (2) of Law 1/2024 is legally justifiable in part.

Pursuant to all the descriptions of the legal considerations above, it is concluded that the norms of Article 27A *juncto* Article 45 paragraph (4) and Article 28 paragraph (2) *juncto* Article 45A paragraph (2) of Law 1/2024 do not provide fair legal protection and legal certainty and not guarantee a sense of security, thus contrary to Article 28D paragraph (1) and Article 28G paragraph (1) of the 1945 Constitution, as argued by the Petitioner. However, because the Court’s verdicts differ from the Petitioner’s *petitums*, the Petitioner’s argument is legally justifiable in part. The verdicts are as follows.

1. To grant the Petitioner’s petition in part;
2. To declare that the phrase “another person” in Article 27A and Article 45 paragraph (4) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (State Gazette of the Republic of Indonesia of 2024 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 6905) is contrary to the 1945 Constitution of the Republic of Indonesia and conditionally has no binding legal force to the extent that it is not interpreted as “except a government agency, a group of people with a specific or certain identity, an institution, a corporation, a profession, or an office”.

3. To declare that the phrase “something” in Article 27A and Article 45 paragraph (4) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (State Gazette of the Republic of Indonesia of 2024 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 6905) is contrary to the 1945 Constitution of the Republic of Indonesia and conditionally has no binding legal force to the extent that it is not interpreted as “an act that degrades the honor or good name of a person”.
4. To declare that the phrase “distributes and/or transmits electronic information and/or electronic documents that are inflammatory, inciting, or influencing others so as to give rise to feelings of hatred or hostility toward an individual and/or a certain community group” in Article 28 paragraph (2) and Article 45A paragraph (2) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (State Gazette of the Republic of Indonesia of 2024 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 6905) is contrary to the 1945 Constitution of the Republic of Indonesia and conditionally has no binding legal force to the extent that it is not interpreted as “only electronic information and/or electronic documents that substantively contain acts/spread of hatred toward certain identities, carried out intentionally and publicly, which create a real risk of discrimination, hostility, or violence”.
5. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate.
6. To dismiss the remaining petition of the Petitioner.