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Freedom of Expression in Regulatory Pressure: Case Study on the Electronic Information and Transaction Law

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Abstract
Introduction: This article examined how internet regulations in Indonesia, specifically the Electronic Information and Transactions (EIT) Law, impacted freedom of expression in the digital space from 2008 to 2021.
Methods: Qualitative research was conducted, employing a case study approach, utilizing literature studies and analyzing articles related to the EIT Law and freedom of expression violations.
Findings: The study identified 371 instances where the EIT Law was used to prosecute individuals, often those exposing criminal activity online, highlighting a concerning trend of criminalizing victims. Articles 27, 28, and 29 were particularly problematic due to their ambiguity, creating opportunities to suppress online discourse. This analysis revealed a concerning pattern of the EIT Law being used to restrict digital freedom of expression and public participation, aligning with Althusser's (1970) concept of a repressive state apparatus. The research identified the government, entrepreneurs, and the police as the primary actors utilizing the EIT Law, often to the detriment of civil society members, reflecting the concept of hegemony. This study recommends further research into the EIT Law's impact on digital freedom of expression, focusing on the legislative process, the experiences of those affected by the law, and comparative analyses with other countries. Investigating the evolving landscape of digital rights about state control and corporate.
Originality: This manuscript addressed a significant gap in existing literature by providing an in-depth analysis of the practical implications of Indonesia's Information and Electronic Transactions (ITE) Law on digital freedom of expression.
Keywords: Internet Regulation, Freedom of Expression, Electronic Information and Transaction, Repressive State Apparatus, Public Participation.

Introduction
Numerous scholarly inquiries have been conducted to evaluate the ramifications of information technology regulations restricting freedom of expression within diverse national contexts (Jiayin Lu & Zhao, 2018; Mariano et al., 2017; Olaniyan & Akpojivi, 2021; Prahassacitta & Harkrisnowo, 2021). For instance, Šramel and Horváth (2021) underscore the essential nature of internet regulation, arguing that it is required due to frequent freedom of expression transgressing the collective values of various social groups on platforms like social media (Šramel & Horváth, 2021). Similarly, Koltay (2019) contends that numerous countries have implemented information technology regulations to such an extent that they infringe upon digital freedom of expression, a fundamental facet of human rights (Matsui, 2022). This perspective gains support from the research findings of Benedek, Kettemann, and Singh, both of which stress that internet regulation has become a looming threat to democracy and human rights (Kettemann &

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Benedek, 2019). Additionally, the state policies, be they in democratic or authoritarian nations, are frequently designed to control freedom of expression in the digital realm (Momen, 2019) In a contrasting approach, Sherstoboeva (2019) conducts a comparative study of internet regulations in Russia and those set forth by the Council of Europe, highlighting the discrepancies in applying human rights standards.

Concurrently, investigations regarding enforcing Indonesia's Information and Electronic Transactions (ITE) Law offer a comprehensive legal perspective (Arsawati et al., 2021; Ayesha et al., 2022; Hidayat & Mahardiko, 2020; Jayadi, 2017; Pohan, 2018; RS, 2020). This scholarly endeavor bridges a notable void in the existing literature on internet regulation and its implications for democracy. It achieves this by centering its analysis on the practical implementation of the Electronic Information and Transaction (EIT) Law and its repercussions on the constraints imposed on freedom of expression within the Indonesian context. Unlike prior research, this study adopts the concept of deliberative democracy as a framework for scrutinizing the formulation and execution of the EIT Law. Deliberative democracy, as a field of study, has witnessed a surge of scholarly attention in recent years. This increased focus reflects its growing significance in the academic landscape. Scholars from various disciplines have approached this concept from many perspectives, rendering it paramount in contemporary academic discourse.

First, it's noteworthy that several scholars have delved into the theoretical underpinnings of deliberative democracy. These investigations underscore the vital role of open deliberation and emphasize its philosophical origins within critical theory. Such foundational explorations, as demonstrated by Hammond M. (2019, 2020), help comprehend the philosophical basis underpinning deliberative democratic practices.

Second, numerous research endeavors have shifted their gaze toward the practical aspects of deliberative democracy. These studies often focus on the real-world contexts where deliberative mechanisms are implemented. By doing so, they delve into the challenges and opportunities that emerge in applying deliberative democratic processes. As Mundt M.D.(2019) exemplified, researchers shed light on the practical intricacies, making deliberative democracy more accessible to policymakers and practitioners.

Third, some scholars have chosen to explore the role of government commitment in the deliberative democracy framework. They probe the challenges and prospects of transitioning from traditional political approaches to more deliberative ones. This avenue of research, as seen in the work of Menon S., Hartz-Karp J., and Marinova D. (2021), is instrumental in understanding how governments can navigate the shift towards greater inclusivity and citizen participation.

Fourth, a recurring theme in these deliberative democracy studies is the central importance of grassroots participation. Researchers have investigated the mechanisms utilized to engage ordinary citizens in political decision-making. This emphasis on citizen involvement, as demonstrated by Janković I. (2022), addresses the heart of democratic governance--the active participation of the people. *Fifth*, researchers have shown dedication to advancing innovative frameworks for studying deliberative democracy in diverse contexts. These novel approaches often move beyond conventional institutional perspectives, offering fresh insights into this democratic practice. The work of Zgiep M (2019)., for instance, signifies a shift towards more adaptable and context-sensitive frameworks.

Sixth, some scholars have discussed the intersection of deliberative democracy with other theoretical frameworks, such as constitutional theory and dialogical engagement.

This interdisciplinary exploration, as seen in Valentini C.(2021) 's research, enriches our comprehension of deliberative democracy's place within the broader realm of political theory. *Seventh*, studies in deliberative democracy examine it at both the global and local levels, allowing for comparisons between different approaches in various countries and municipalities. The work of Boswell J. and Corbett J. (2021), for example, offers insights into the diversity of practices and their contextual relevance.

Eighth, the impact of digital technologies and the internet on deliberative democracy has become a prominent area of investigation. Researchers have examined how these technologies can either support or undermine democratic processes. The study by Lu J., Liu Z., and Jin J. (2019) exemplifies the critical examination of digital influences on deliberative democracy.

Ninth, a significant portion of deliberative democracy research centers on identifying the challenges and vulnerabilities inherent in the practice. These studies seek to propose practical solutions and improvements. This body of work, exemplified by Hurtíková H. and Soukop M. (2019), is instrumental in addressing the shortcomings and fortifying the deliberative democratic process.

Collectively, these works contribute to a comprehensive understanding of deliberative democracy by encompassing its theory, practice, challenges, and evolving role within the modern democratic landscape. They inform academic discourse and lay a foundation for further research and policy development in this vital area of democratic governance.

This article is built upon five underlying assumptions regarding information technology governance in Indonesia. *Firstly*, it acknowledges the Internet as a diverse platform accommodating various forms of expression. *Second*, it recognizes the Internet's propensity for hosting negative aspects and behaviors. *Third*, it posits the necessity of regulations to govern internet media. Fourth, it asserts that the EIT Law was originally conceived to ensure the proper functioning of information and transactions in cyberspace while safeguarding consumer rights. *Fifth*, it contends that the practical enforcement of the EIT Law has resulted in numerous instances of using its vaguely defined provisions, thereby jeopardizing freedom of expression on the Internet.

The Internet is a platform for a wide spectrum of civil society's expressions(Kadoussi et al., 2021; Keating & Melis, 2017; Nisa, 2019; Segura, 2021). This fundamental freedom of expression is assured in the Universal Declaration of Human Rights, as codified in Law No. 39 of 1999 concerning Human Rights. Constitutionally, within Indonesia, the right to freedom of expression is enshrined in Article 28 of the 1945 Constitution and has been reaffirmed in Article 28E, which unequivocally states, ‘Everyone has the right to freedom of association, assembly, and expression.’

The Internet's pivotal role as an indispensable tool for advancing many human rights, addressing injustices, and propelling human development and progress. His report emphasized the Internet's crucial role in ensuring these fundamental rights and facilitating positive societal change (Mehrotra, 2021; Reglitz, 2019, 2023; Voytsikhovskyy et al., 2021; Zalnieriute & Milan, 2019).

However, within his comprehensive report, La Rue expressed legitimate concerns regarding the ongoing challenges to freedom of expression and opinion in the virtual realm, even at the hands of state authorities. He noted that freedom of expression in many nations was facing substantial hindrances due to enacting criminal laws or new legislation specifically designed to criminalize actions related to freedom of expression on the

Internet. These legal provisions were frequently justified to safeguard individuals' reputations, preserve national security, or counterterrorism. In practice, though, these laws were frequently exploited to censor internet content that did not align with the preferences or approval of governmental or influential entities.

Conversely, the Internet emerges as a priceless platform within countries where traditional mass media lack independence. This enthusiasm for the Internet is palpable among civil society locally and globally, Indonesia being no exception. The significant events of the 1998 Reformation in Indonesia owe part of their success to the Internet. Mailing lists became a vital channel for disseminating information, offering an alternative space for political discourse, and sharing information. These discussions were often precluded in the tightly controlled mainstream media under the New Order government (Syamsiyatun, 2007).

Nevertheless, cyberspace communication has introduced the potential for conflicts and the looming threat of cybercrime, encompassing fraud and online bullying. In response, internet regulation emerged, primarily enhancing security and establishing certainty in electronic transactions. Regrettably, this regulatory endeavor soon became infiltrated by efforts to curtail freedom of expression (Suko et al., 2021).

In Indonesia, the government initiated the EIT Law. Although this law has encountered numerous challenges spanning its inception, formulation, implementation, and subsequent revisions, it continues to fall under the purview of the government and the People's Consultative Assembly of the Republic of Indonesia. These challenges transcend the law's substantive provisions to encompass the very process of its creation, which has faced criticism for its closed and exclusive nature, notably concerning public participation.

These deficiencies in the law's drafting process have had palpable consequences on its content, resulting in a lack of legal clarity and leaving ample room for diverse interpretations. The diversity of interpretations underscores the dominance of power interests, leading to the resolution of violations in alignment with the objectives of those in authority. Furthermore, the limited involvement of the public in shaping the EIT Law has engendered heightened public resistance, as citizens perceive themselves to be subject to control and manipulation.

The culmination of these issues has resulted in a depoliticization of citizens in what is ostensibly a democratic society. Moreover, the public harbors deep mistrust towards state institutions responsible for implementing the EIT Law, as they are seen as undermining public space and eroding freedom and equality. Considering this context, the primary objective of this article is to elucidate how the utilization of vaguely defined articles in the EIT Law has been exploited to undermine the protection of freedom of expression in the digital domain within Indonesia.

The research question at the core of this study delves into the impact of internet regulations, particularly the EITs law implemented from 2008 to 2021, on freedom of expression within the digital realm in Indonesia. As a dynamic and evolving field, the digital space poses various challenges, especially concerning how laws are applied and whether they safeguard individual rights effectively.

This research examines the ramifications of implementing the EIT law in Indonesia. The study will investigate how this law has affected freedom of expression, focusing on criminalizing individuals who seek to expose wrongdoings and criminals on the Internet. Addressing this concern, the research seeks to contribute to a deeper understanding of the tensions between regulating online activities and protecting fundamental rights in the

digital age.

This research offers a fresh perspective on the impact of Internet regulations, specifically focusing on Indonesia's Information and Electronic Transactions Law. While previous studies have explored the consequences of information technology regulations on freedom of expression, this research stands out by examining the practical implementation of the EIT Law and its implications for digital freedom of expression in the Indonesian context. Utilizing the framework of deliberative democracy, it uncovers how the EIT Law hampers public participation and restricts digital freedom of expression, providing valuable insights for scholars, policymakers, and civil society advocates.

This research provides a novel, empirical examination of Indonesia's Electronic Information and Transactions (EIT) Law, focusing on its implementation and impact on digital freedom through deliberative democracy. Departing from previous studies that emphasize theoretical or legal analyses, this study highlights how the law's ambiguous provisions are exploited to suppress public discourse and restrict civil liberties, thereby undermining democratic engagement in Indonesia's digital sphere. By bridging this gap in the literature, the research offers critical insights into the intersection of internet regulation and democratic participation.

Methods

The qualitative methodology, characterized by its flexibility and adaptability, allows for a nuanced analysis of the dynamic interplay between legal frameworks, democratic principles, and the digital landscape. This research captures the rich tapestry of perspectives, experiences, and contextual nuances that often elude quantitative approaches by engaging with qualitative methods such as in-depth interviews, content analysis, and participant observation. Furthermore, this approach is instrumental in uncovering the subtleties and intricacies of the EIT Law's impact on democratic processes, providing a holistic understanding that transcends mere statistical data.

In sum, the qualitative approach chosen for this research is well-aligned with the complex and multifaceted nature of the research objectives. It enables a comprehensive exploration of the various dimensions of the EIT Law's role in shaping democracy in the digital age. It offers valuable insights that extend beyond the scope of quantitative methodologies. Consequently, it fosters a close relationship between the researcher and the subject under scrutiny, characterized by empathy and, at times, an insider's perspective (Denzin & Lincoln, 2017; Miles & Huberman, 1994; Neuman, 2020). Data for this research was collected through a thorough literature review and the analysis of cases disseminated through news sources and social media platforms.

Results

In John Stuart Mill's seminal work in 1859, freedom of expression is envisioned as a safeguard against authoritarian and corrupt power (Alcalde-Unzu et al., 2011; Barnett, 2011; Conti, 2023; Kramer, 2022; Susanti, 2023). In a democratic society, the rule of law necessitates active government control by its governed citizens. Freedom of expression was pivotal in propelling Indonesia from its authoritarian regime in 1998 (Dahl, 2000, 2001). This freedom is paramount as it calls for transparency and accountability in government administration, encouraging governmental openness and accountability. It further acts as a bulwark against corruption and the resolution of human rights violations while ensuring the active participation of the citizenry in the affairs of the state.

Nonetheless, it is disheartening to note that law enforcement agencies and government officials have employed the EIT Law to curtail freedom of expression, primarily by leveraging the provisions within Article 27. Among these provisions, Article 45, paragraph (1) emerges as the most frequently invoked, often under the pretext of combating defamation. Article 27, paragraph (3) presents a particular challenge due to its inherent vagueness, which has given rise to many interpretations, thereby shrouding the legal landscape in uncertainty.

Unfortunately, the intensifying power struggle between governments and information technology companies has wrought negative consequences for the rights of internet users. Governments progressively assert their authority over tech firms, frequently compelling these enterprises to comply with online censorship and surveillance demands. These developments have precipitated a substantial erosion of freedom of expression within the digital domain. Notably, a report from freedomhouse.org in 2021 underscores that this persisting trajectory has led to a continual decline in global internet freedom for the 11th consecutive year. The global landscape has undergone a notable transformation in norms, with governments increasingly inserting themselves into the digital realm. Among the 70 states scrutinized in the report, 48 have initiated legal or administrative actions directed at technology companies. While some measures intend to mitigate online harm, address data misuse, or rectify manipulative market behaviors, many new laws introduce excessive censorship and data collection requirements upon the private sector. Consequently, users' online activities are now subject to heightened moderation and monitoring by technology providers, often without the safeguards typically associated with democratic governance, including transparency, judicial oversight, and public accountability (Shahbaz & Funk, 2021).

The discernible surge in national regulation of the information technology sector has been partly driven by the imperative for increased self-regulation to address the online landscape's challenges effectively. The absence of a unified global vision for an open and unrestricted internet has prompted governments to adopt diverse approaches to regulating the digital sphere. Policymakers in numerous countries have articulated the necessity to regain control over the Internet from foreign powers, multinational corporations, and, in some cases, even civil society (Akdeniz, 2001; Fallows, 2008; Freuler, 2022; Giacomello, 2004; Qi & Wang, 2021; Tsui, 2003). This power shift from information technology providers to the state becomes most apparent during political unrest, such as protests and elections. As digital repression becomes more pervasive across many nations, it is increasingly evident that social media users harbor apprehensions regarding government initiatives aimed at regulating the Internet. It, in turn, fuels a stronger resolve to protect their digital rights.

Paradoxically, despite the state's authority to oversee social media platforms, implementing such measures frequently adversely affects civil society. The discernible global trend towards enhanced state intervention in digital markets is unmistakable. Among the 70 states scrutinized, 48 have enacted legislative or administrative measures targeting technology companies. While some of these measures are genuinely designed to combat online harassment, extremism, and serious crime and to safeguard users from fraudulent activities, foreign adversaries, and exploitative business practices, they often impose extensive censorship and data collection requirements upon the private sector. These newly introduced regulations lead to heightened oversight and monitoring of users' online activities, often without democratic safeguards, including transparency, judicial oversight, and public accountability.

In the modern world, the Internet has evolved into a critical medium for economic, political, and cultural life worldwide. Many scholars argue that (Hantrais & Lenihan, 2021; Jallab et al., 2023; Rustandi, 2019; Zhuravskaya et al., 2020). Accordingly, numerous countries have sought to regulate information technology use. Each country grapples with choosing between an open or closed regulatory model when formulating information technology regulations. In democratic countries, the people's sovereignty is exercised through democratic means. Habermas (1989) presents a model of deliberative democracy, allowing citizens to actively participate in crafting laws and political policies. This model ensures that civil society plays a vital role in shaping legislation through discourses formed in the public sphere. The pivotal aspect of deliberative democracy is the process of law formation, where discourses impact the formulation of laws in the public sphere with the full involvement of civil society (Lewar & Madung, 2022; Muttaqien & Ramdan, 2023; Villa & Gonsalez, 2022).

In Indonesia, the Ministry of Communication and Informatics, through Ministerial Regulation No. 5, which has been in effect since November 2020, has instituted a mandate to remove 'prohibited' content and new registrations across various technology companies, regardless of their size. This regulation encompasses various digital platforms, including social media applications, content-sharing services, and search engines. In response to notifications, platforms are granted limited timeframes, ranging from four hours in 'urgent' situations to 24 hours, to remove content deemed 'prohibited expeditiously.' Such content typically encompasses expressions that contravene domestic laws, incite community anxiety, or disrupt public order. Authorities have leveraged these regulations to censor content related to LGBT+ issues, criticisms of Islam, and discourse concerning the independence movement in Papua and West Papua provinces.

Failure to adhere to these regulatory requirements carries a range of penalties, including website blocking and the revocation of operating licenses. Beyond concerns about the regulations' broad scope and implications for human rights, the stringent time limits raise doubts about whether even the largest technology companies possess the necessary resources to comply while continuing their operations in the Indonesian market. These abbreviated deadlines also incentivize implementing automated monitoring systems, which can inadvertently and inconsistently flag and censor user-generated content.

Internet regulation in certain countries operates at the intersection of the state and the public sphere. The state, endowed with considerable power, can influence the public sphere by imposing censorship, restrictions, and infringements on citizens' privacy. Attempts to regulate internet content often spill over into regulating access to information technology. Endeavors to regulate access can inadvertently exacerbate disparities. Without dedicated access-related regulations, not all segments of society can fully partake in internet connectivity. Issues such as infrastructure deficiencies (including limited network coverage), economic constraints (inability to afford devices or data packages), and educational limitations (inability to proficiently operate digital devices) can impede access to the Internet (Hosein, 2000).

The impact of new laws and regulations on human rights varies significantly from one country to another. In robust democracies, well-crafted requirements imposed on online platforms can mitigate online harm while concurrently promoting transparency and accountability. However, analogous laws can be manipulated by illiberal politicians and authoritarian regimes to stifle nonviolent expressions of political, social, and religious dissent. Of particular concern are initiatives that bestow the state with expanded authority

over the private sector, thereby facilitating the suppression of dissent and expediting more efficient surveillance and the dissemination of propaganda (as exemplified in the 'Graphic Social Media arrest' on 17th September 2021).

The stability of democracies hinges on establishing legal frameworks and institutions that are purposefully designed to thwart the concentration of power within a select few, be it within the government or the private sector. Unfortunately, the prevailing trajectory marked by heightened regulation in the digital sphere carries an inherent risk. Instead of mitigating and disseminating the influence wielded by technology companies, governments may be inclined to co-opt this power for their ends, potentially at the expense of user rights. The most promising regulatory endeavors aim to combat online criminal activities while ensuring that corporate and state practices adhere to international human rights principles such as necessity, transparency, oversight, and due process. Nonetheless, the most disturbing initiatives harbor the potential for extensive abuse. When subjected to state control, the authority to censor, surveil, and manipulate the populace can give rise to widespread political corruption, erode the democratic process, and facilitate large-scale political repression.

The EIT Law, initially enacted as Law 11/2008, was introduced as a response to the emergence of information technology-related crimes that had become prevalent in Indonesia and various other countries. These cybercrimes are distinct from traditional crimes in that they are committed through cyberspace or involve electronic media. The predominant perspective on cybersecurity encompasses technological, socio-cultural, ethical, and legal dimensions. One tangible manifestation of this legal dimension is the implementation of the EIT Law, which serves the dual purpose of offering legal clarity for the public to engage in transactions and interactions within cyberspace and providing a legal framework for law enforcement agencies to investigate and address crimes or violations of social order occurring in the digital realm. Consequently, this law assumes critical importance, as the absence of regulations about cyber-criminality would obstruct the evidentiary process and impede the maintenance of social order within the digital domain.

Nevertheless, reports from civil society organizations indicate that the deliberative process during the Special Committee Meeting of the People's Consultative Assembly of the Republic of Indonesia, spanning from May 17, 2006, to the concluding meeting on March 19, 2008, lacked debates or input concerning specific provisions that subsequently emerged in the approved EIT Law, particularly those related to insults and defamation. These provisions, specifically outlined in Article 27, paragraph (3), were introduced during the final deliberations within the People's Consultative Assembly. These discussions were conducted behind closed doors, which precluded community representatives from overseeing the process.

Upon scrutinizing the Academic Manuscript of the EIT Law, which serves as a reference for the People's Consultative Assembly, it became evident that there were no clauses related to insults, defamation, or hate speech, as indicated on pages 56-59. Instead, the academic paper primarily focused on various other criminal activities that were comprehensively addressed. These encompassed violations related to website content, such as issues related to pornography and copyright infringement. The section on e-commerce crimes covered many aspects, including online auctions, pyramid marketing, and credit card fraud. The academic text of the EIT Bill also delved into various other criminal activities, including the activities of recreational hackers, whose actions spanned

from seeking financial gain to data sabotage. The bill also tackled virtual gambling, pedophilia, cyberstalking, hate sites, and criminal communications.

In the context of the EIT Bill, Professor Ramli, a representative from the Ministry of Communication and Informatics, pointed out that defamation was considered a prohibited act, contrasting it with a similar bill in the United States, known as the Missions Computer Act. However, a thorough examination of the meeting minutes, as conducted by Permadi, revealed that it required substantial effort to locate substantive discussions about provisions for acts of defamation within the EIT law. While defamation was mentioned as an illustrative example during debates at the Special Committee, the focus was primarily on situations where negative statements were disseminated via e-mail or mailing lists, resulting in a decline in the credibility or reputation of an individual or a legal entity (Suko et al., 2021).

Implementing the EIT Law in Indonesia has been linked to increased freedom of expression violations. In 2020, the country witnessed a significant decline in civil liberties, reaching the lowest point of the past decade. These civil liberties, which encompass freedom of expression, freedom of assembly, and freedom of the press, play a crucial role in the democracy index formulated by the Economist Intelligence Unit (EIU). Indonesia's civil liberties score deteriorated to 5.59 on a scale of 1 to 10, indicating a worsening situation in upholding these essential rights. Freedom of expression is intrinsic to fundamental freedoms and human rights (Jones, 1999).

Moreover, the non-profit organization Freedom House released its 2021 global internet freedom report, which revealed a consistent decline in Indonesia's internet freedom index from 2017 to 2021. This decline is an alarming indicator of the growing influence of digital authoritarianism in Indonesia. The troubling trend in freedom of expression is undeniably linked to implementing the EIT Law. While the law initially intended to facilitate the smooth operation of electronic and e-commerce transactions and protect consumer rights, its practical application has often sparked controversy. The regulation of content and access has effectively translated into restrictions on freedom, resulting in a regression of democratic values.

Notable cases, Prita, a housewife sued by Omni International Hospital in 2009 for expressing dissatisfaction with hospital services via email, illustrates the profound impact of the EIT Law on freedom of expression. Prita was charged under Article 27, paragraph 1 of the EIT Law, which pertains to creating and disseminating information or electronic documents containing insults or defamation. The police also imposed significant financial claims against her, leading to a widespread support movement known as '*Coins for Prita*,' ultimately resulting in her incarceration for several weeks.

Another case involves Baiq Nuril, a former honorary teacher in Mataram, who, in 2013, was sentenced to six months in prison and fined Rp. 500. Baiq Nuril was charged under Article 27, paragraph 1 of Law no. 11/2008 on EIT, related to allegations of defamation. In 2021, an online media journalist named Muhammad Asrul, working for Beritanews, faced criminalization under the EIT Law after writing a story about alleged corruption in Palopo, South Sulawesi. Muhammad Asrul was sentenced to three months for defamation against a regional official in Palopo, South Sulawesi. Additionally, SafeNet documented 371 other cases from 2008 to 2021 where the EIT Law was cited as the source of the problem.

These cases exemplify the significant impact of the EIT Law on freedom of expression in Indonesia. Individuals face legal action and imprisonment for expressing their opinions or concerns, often in the context of their online activities. This trend raises

serious concerns about the state of democracy and free expression in the country. Since implementing the EIT Law in 2008, the Constitutional Court has addressed various community lawsuits.

First, let's consider defamation. Defamation is a significant issue associated with Article 27, paragraph (3) of the EIT Law states, *"Everyone, intentionally and without rights, distributes or transmits or makes it accessible that contains insults and or defamation."* SafeNet's analysis highlights that defamation, with its multiple interpretations, is widely used to suppress lawful expressions by citizens, activists, journalists, and media. It has also been employed to stifle individuals who criticize the police, government, and the president. The defamation provisions in the EIT Law are more general when compared to the Criminal Code, which offers a more detailed breakdown of defamation types.

Additionally, the punishment for defamation under the Criminal Code is notably milder than the EIT Law prescribes. At its inception, two important court decisions were related to the EIT Law: Decision Number 50/PUU-VI/2008 and Decision Number 2/PUU-VII/2009. In these decisions, the court rejected the petitioner's argument that Article 27, paragraph (3), and 45, paragraph (1) contradicted the 1945 Constitution. These articles pertain to offenses against a person's good name carried out in the cyber world (online insults) and hinge on the element of 'in public.' The question arises as to whether the terms 'publicly known,' 'publicly,' and 'broadcast' found in Article 310, paragraph (1), and paragraph (2) of the Criminal Code encompass expressions in cyberspace. Adapting the concepts of 'publicly known,' 'publicly,' and 'broadcasted' from the Criminal Code to incorporate cyberspace falls short, necessitating a distinct and comprehensive formulation, such as the terms 'distribute,' 'transmit,' and 'make accessible,' to account for the unique characteristics of the digital realm.

The *second* significant issue pertains to insults based on ethnicity, religion, race, and intergroup conflicts. Article 28, paragraph 2 of the EIT Law states: *"Everyone intentionally and without rights disseminates information aimed at causing hatred or hostility to specific individuals and community groups based on ethnicity, religion, race, and intergroup."* The concern lies in the interpretation of 'intergroup' in the EIT Law, which differs from the concept used in the Criminal Code. While the Criminal Code refers more to cultural identity groups, the EIT Law's definition is broader and can potentially encompass different political groups. In practice, Article 28, paragraph 2 has been employed in ways that have ensnared religious minority groups(Ramadhan & Munandar, 2021; Ratnasari et al., 2021). This broader interpretation raises concerns about its potential misuse to target cultural but also political or social groups.

A notable case involved lawyer Farhat Abbas, who petitioned for a judicial review of the EIT Law after being charged with Article 28, paragraph (2). He made a statement on Twitter containing elements of insult directed at ethnicity, religion, race, and intergroup about the Deputy Governor of DKI Jakarta, Basuki Tjahaja Purnama (Ahok). Farhat's case began when he was reported to Polda Metro on 10 January 2013 by the Indonesian-Chinese Islamic Association. Ultimately, the police did not proceed with the case report because it was withdrawn, and Farhat reached an amicable resolution. This case illustrates the complex and sometimes controversial nature of enforcing Article 28, paragraph (2) of Indonesia's EIT Law.

The interpretation and application of Article 28, paragraph 2 of the EIT Law have raised concerns regarding the potential for this provision to restrict freedom of expression and target specific groups, including religious minorities. These issues highlight the need

for clarity and precision in the law's language to avoid overreach and ensure it is applied justly and in line with constitutional principles. It is crucial to strike a balance between safeguarding freedom of expression and preventing hate speech or incitement to violence, and this necessitates a careful and well-defined legal framework.

The *third* significant issue relates to wiretapping, as outlined in Article 31, paragraph 1 of the EIT Law, which explains that any person intentionally and without rights or against the law intercepts or intercepts Electronic Information and Electronic Documents in a specific Computer and Electronic System belonging to another person. However, the problem lies in paragraph 4 of the EIT Law, which prescribes a maximum penalty of ten years in prison and a fine of 800 million rupiahs for such actions. The severity of these penalties raises concerns about their potential for misuse and the need for clear guidelines on their application to protect individual rights and privacy.

Although the Supreme Court considered wiretapping regulations valid because they did not conflict with the law, the Constitutional Court granted a judicial review of Article 31, paragraph (4) of Law Number 11 of 2008 concerning EITs. Consequently, the Draft Government Regulation on Wiretapping, which referred to that article, could not be ratified. The Constitutional Court accepted the petition, with Chairman of the Constitutional Assembly Mahfud MD stating that the article had no binding legal force. The court considered that wiretapping must be regulated by a specific law, indicating the need for clear legal provisions and safeguards regarding electronic surveillance and data interception. This issue underscores the importance of upholding individuals' rights and privacy, particularly in the digital age, and ensuring that government actions adhere to due process and the rule of law. Clarity in legal provisions is essential to protect citizens from potential misuse of surveillance powers.

The *fourth* significant issue pertains to the status of electronic documents as legal evidence under Article 5, paragraph (1) of the EIT Law. This article specifies that Electronic Information and Documents and their printouts are legal evidence. However, as noted in Stake (2), Electronic Information and Electronic Documents and their printouts, as referenced in paragraph (1), should be considered an extension of valid evidence under the procedural law applicable in Indonesia. The concern is whether evidence obtained through illegal wiretapping, conducted without proper legal authorization and outside law enforcement, should be considered legal evidence. It raises important questions about the admissibility and validity of such evidence, particularly if it has been obtained in violation of individuals' rights and privacy. The issue highlights the need for clear legal provisions and safeguards to ensure that evidence in legal proceedings adheres to the rule of law and respects individuals' rights, even in cases involving electronic information and documents.

The case of *"Papa Minta Saham (Daddy Wants Shares)"* or the 2015 PT Freeport Indonesia scandal involved Setya Novanto, the former Chairman of the House of Representatives, who submitted a petition for judicial review of the EITs and the Corruption Eradication Commission Law. Novanto's attorney, Syaefullah Hamid, argued that Novanto felt aggrieved by the provisions of Article 5, paragraph (1) and paragraph (2), and Article 44, letter b of the EIT Law. These provisions stipulate that information or electronic documents are a legal means of evidence in investigations, prosecutions, and examinations in court. Novanto also took issue with Article 26A of the Corruption Eradication Commission Law regarding electronic legal evidence, which he believed did not explicitly regulate legal evidence or the authority responsible for making recordings. Novanto argued that recordings made illegally or without the consent of the individuals

being recorded or secretly without the knowledge of the parties involved in the conversation violated the privacy rights of those recorded. As a result, he contended that the recorded evidence should not be admissible because it was obtained illegally.

The panel of judges, led by Chief Justice Arief Hidayat, suggested that improvements be made to the application, as there was no legal basis for the applicant as a member of the House of Representatives. This case underscores the importance of addressing the legality of evidence obtained electronically and the need for clear legal provisions regarding electronic surveillance, privacy rights, and the use of electronic evidence in legal proceedings. The admissibility of evidence obtained electronically, especially in wiretapping cases without proper legal authorization, requires clear legal guidelines to ensure it respects privacy rights and adheres to the rule of law.

Discussion

The Cyber Crime Convention and Indonesia's Information and Electronic Transactions (EIT) Law differ significantly in their scope and application, particularly concerning content-related offenses. While the international convention primarily targets the creation and dissemination of explicit content, such as child pornography, and infringements on intellectual property rights, the EIT Law adopts a broader framework. It includes violations of decency, gambling-related offenses, defamation, extortion, the spread of fake news harmful to consumers, hate speech based on ethnicity, religion, race, and intergroup differences, and threats of violence. Such a wide-ranging approach reflects Indonesia's unique legal landscape and societal needs. However, these broader provisions have sparked concerns regarding overlaps with the existing Criminal Code and the potential for misuse, as will be elaborated in subsequent sections.

One of the EIT Law's most debated aspects is its decency treatment under Article 27(1). This provision criminalizes the intentional distribution, transmission, or public accessibility of electronic information deemed indecent. However, the vague definitions of terms like 'transmit' and 'indecent content' have created significant interpretative challenges. For instance, the broad understanding of 'transmit' could include private conversations, making individuals vulnerable to prosecution for communications taken out of context. Similarly, the subjective nature of 'indecent content' creates uncertainty, raising concerns about its implications for freedom of expression. The severe penalties associated with these offenses exacerbate these issues, fostering a chilling effect on online communication and necessitating clearer guidelines to prevent overreach.

Defamation under Article 27(3) is another contentious area. This provision prohibits the dissemination of electronic information containing insults or defamatory content. Its enforcement often overlaps with similar provisions in the Criminal Code, leading to interpretive inconsistencies. Unlike the Criminal Code, which provides a detailed framework for defamation and related offenses, the EIT Law's language remains vague, enabling subjective applications that can curtail free expression. This vagueness, coupled with stringent penalties, amplifies concerns about the misuse of the law as a tool for retaliation or suppression, particularly against critics of authority figures or government policies.

Similarly problematic is Article 28(1), addressing the spread of false news causing consumer harm. The duplication of content already covered under the Consumer Protection Law raises questions about legislative efficiency and the necessity of such provisions within the EIT Law. This redundancy risks legal confusion and undermines the coherence of Indonesia's regulatory framework. A similar issue arises with Article

28(2), which tackles hate speech based on ethnicity, religion, race, or intergroup differences. While aligned with comparable provisions in the Criminal Code, the EIT Law's broader language and harsher penalties invite criticism over the lack of proportionality and clarity.

Another controversial provision is Article 29, dealing with threats of violence or intimidation. It mirrors provisions in the Criminal Code but introduces ambiguities through its comprehensive yet imprecise wording. This overlap complicates enforcement and underscores the need for streamlined and consistent legal language. Additionally, the regulation of interception procedures under Article 31(4) through government regulations has been criticized for failing to adequately safeguard privacy rights. The Constitutional Court's annulment of this provision reflects the necessity of embedding such sensitive regulations within the law to ensure accountability and transparency.

Despite revisions introduced through Law No. 19/2016, many concerns persist. While some sanctions have been reduced, the law's ambiguous language creates uncertainties, particularly for government critics. Proponents of the law argue that it is essential for maintaining ethics in cyberspace, yet its practical application often veers towards restricting freedom of expression. This divergence from its original intent--promoting digital innovation and economic activities--has drawn criticism from civil society.

The Indonesian government has taken steps to address these criticisms through amendments, such as clarifying definitions, reducing penalties, and incorporating safeguards for free expression. For instance, the revised law specifies the formal complaints mechanism for defamation cases and introduces explicit provisions against cyberbullying. It also strengthens procedural alignments with the Criminal Procedure Code, enhances civil servant investigators' roles, and incorporates the "right to be forgotten" by mandating deleting irrelevant digital information upon court orders. However, provisions granting the government authority to restrict access to harmful content remain contentious, as they risk excessive censorship.

Ultimately, while the revisions to the EIT Law represent progress, they fall short of resolving the fundamental tensions between safeguarding rights and ensuring cybersecurity. Ambiguities in language and overlapping provisions with existing laws impede consistent enforcement and open avenues for abuse. Addressing these challenges through more precise legislative drafting and a commitment to upholding freedoms in the digital age is crucial.

This study acknowledges several limitations that may impact its findings and interpretations. The reliance on secondary data and case studies may restrict the generalizability of the results to broader contexts, as specific examples and regional nuances inherently shape the insights drawn. Additionally, while the focus on Indonesia's EIT Law provides depth, it limits comparative perspectives that could offer a more balanced evaluation of similar laws in other jurisdictions. The study's emphasis on legal provisions also overlooks the practical challenges of enforcement and the lived experiences of individuals affected by these regulations. The research could benefit from incorporating a more diverse range of stakeholders, such as civil society representatives and digital rights advocates, to enrich its analysis of the law's societal implications.

Conclusion

This study exposes a troubling paradox: within Indonesia's democratic framework, the EIT Law undermines digital freedom of expression and public participation,

contradicting deliberative democracy's open dialogue and engagement principles. From its inception through its revisions, the law has stifled public discourse, functioning as a tool to enforce compliance and suppress dissent. Disproportionately wielded against civil society, it serves powerful actors like the government, entrepreneurs, and the police, exemplifying the concept of hegemony in consolidating state dominance. Its vague provisions allow for civil liberty curtailment under the pretext of national security, often benefiting incumbent political groups. Future research should explore the inclusivity of Indonesia's legislative processes, particularly regarding internet regulation, and draw lessons from other countries facing similar challenges. Such inquiry is crucial for balancing freedom of expression with regulation while safeguarding human rights and democratic values in the digital age. This study recommends reforming the EIT Law to address ambiguities and ensure clarity, promoting transparency and inclusivity in legislative processes concerning internet regulation, investing in digital literacy programs, and establishing independent oversight of law enforcement agencies. The findings have broader implications for developing a theoretical framework of digital deliberative democracy and a critical theory of digital hegemony, refining qualitative research methodologies for studying internet regulation, and fostering interdisciplinary collaboration to protect human rights and promote democratic values in the digital age. These recommendations and implications aim to contribute to a more nuanced understanding of the complex dynamics of internet regulation and foster a more just and democratic digital future.

Conflict of Interest

We have no conflicts of interest, whether financial, personal, or about any relationships with individuals or organizations, that could affect the material discussed in this manuscript.

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