



The State of Digital Freedom in Indonesia an Assessment of Online Censorship, Privacy, and Free Expression

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Abstract

This article provides an assessment of the state of digital freedom in Indonesia, with a focus on online censorship, privacy, and free expression. The research methodology used in this study was a combination of normative legal approach and literature review, which provided a comprehensive analysis of the legal framework that governs digital rights in Indonesia. The discussion highlights the importance of human rights in the digital realm, and how the legal framework in Indonesia aligns with international human rights standards. The study found that the current state of digital freedom in Indonesia is mixed, with laws and regulations in place to protect privacy and freedom of expression, but concerns about online censorship and restrictions on these rights in practice. The implementation of laws such as the ITE Law has led to the prosecution of individuals for online speech, raising concerns about the impact on freedom of expression. To improve the state of digital freedom in Indonesia, several suggestions are made. Firstly, the implementation of laws and regulations related to digital rights must be consistent with international human rights standards. Secondly, efforts should be made to address the gaps between the legal framework and the reality of digital rights on the ground. This may involve greater transparency and accountability in the enforcement of laws and regulations related to digital rights. Additionally, there is a need for greater public awareness and education about digital rights, both among citizens and among policymakers and law enforcement officials.

Keywords: *online censorship, internet freedom, digital privacy, human rights, freedom of expression*

INTRODUCTION

Indonesia is a country with a large and growing internet user base, with around 196 million active internet users in 2021. However, the country's legal and regulatory framework for digital freedom is complex and can be restrictive. The Electronic Information and Transactions Law (UU ITE) has been used to criminalize online speech, and the government has the power to block websites and monitor social media platforms. The government has also imposed internet shutdowns in certain regions, particularly during political unrest. There

are concerns about privacy protection, with weak data protection regulations and reports of government surveillance. The right to free expression is also limited, with restrictions on online speech, criminal defamation laws, and attacks on journalists and media organizations. Digital activists and human rights defenders face risks of harassment, intimidation and legal action.

Despite these challenges, there is a growing digital activism movement in Indonesia, with social media and online campaigns being used to promote digital freedom and challenge censorship. Legal challenges to the ITE Law have been launched, and civil society organizations and media groups are advocating for greater transparency, accountability, and respect for digital rights. The Digital Revolution, marked by the invention of the internet and internet-based social media, has given rise to a generation known as digital natives, who were born and raised in a world where digital technology is an integral part of everyday life. However, it is important to be aware of the potential negative consequences of excessive use of internet-based social media, as digital natives may feel that they have unlimited freedom to express their opinions and ideas. They may not realize that their posts can have both positive and negative impacts and could even pose a threat to national security.¹ Therefore, it is the responsibility of the state to regulate and supervise digital natives, ensuring that they use the internet responsibly and in compliance with ethical and legal standards in Indonesia.²

Freedom House's report in 2021 highlights the various infrastructural limitations and restrictions that are placed on internet access and content in Indonesia. These limitations include slow internet speeds, poor-quality connections, and restrictions on access to certain types of content. Additionally, the report notes that many governments block or filter content, particularly material that is protected by international human rights standards. The report also highlights the failure of some countries' constitutions and laws to protect key rights such as freedom of expression, access to information, and press freedom, including on the internet. These protections are often not enforced by a judiciary that lacks independence, leaving citizens vulnerable to government censorship and repression. The report highlights the importance of protecting digital rights in order to ensure that individuals have access to information, can express themselves freely, and are protected from government censorship and repression. It emphasizes the need for governments to invest in infrastructure and regulatory frameworks that promote access to the internet and ensure that individuals can use it without fear of retribution or censorship. It also calls for the protection of key rights such as freedom of expression, access to information, and press freedom, both online and offline, in order to promote a free and open society that values the free flow of ideas and information.

¹ Ni Putu et al., "Wise Use of Social Media in National Defense," *Journal of Digital Law and Policy* 2, no. 1 (2022), <https://ejournal.catuspata.com/index.php/jdlp/article/view/198/152>.

² Adya Prabandari, "Digital Natives and Freedom of Speech on Social Media in Indonesia," 2020, <https://doi.org/10.4108/eai.26-9-2020.2302572>.



Figure 1. Freedom on the Net 2021
[Source: Freedom House]³

There are several laws and regulations in Indonesia that allow for online censorship, including the Electronic Information and Transactions (ITE) Law, which has been criticized for its vague and broad provisions that can be used to silence dissenting voices. The government also has the authority to block websites and social media platforms deemed to violate morality or threaten national security. The impact of online censorship on digital freedom in Indonesia is significant, as it limits access to information, stifles free expression, and creates a climate of fear and self-censorship among citizens.⁴

Indonesia has a rapidly growing digital economy, with millions of citizens using digital technologies for communication, commerce, and entertainment. However, there are significant privacy risks associated with these technologies, such as data breaches, cyber-attacks, and government surveillance. The Personal Data Protection Bill, which aims to regulate the collection, use, and sharing of personal data, has been in the works for several years but has yet to be passed into law. As a result, individuals in Indonesia may have limited control over their personal data and are vulnerable to privacy violations.

Indonesian citizens face several barriers to expressing themselves freely online, including government restrictions on content, online harassment and threats, and restrictive defamation laws. The government has used the ITE Law to prosecute individuals for online speech, leading to concerns about the chilling effect on freedom of expression. Online harassment and threats, particularly targeting women and minority groups, are

³ Freedom House, “Freedom On The Net 2021 Indonesia,” 2021, <https://freedomhouse.org/country/indonesia/freedom-net/2021>.

⁴ Damar Juniarto, “Internet Shutdown In Indonesia: The New Normal Policy To Censor Information Online?,” 2020, <https://safenet.or.id/2020/10/internet-shutdown-in-indonesia-the-new-normal-policy-to-censor-information-online/>.

also prevalent and can create a hostile environment for free expression. Defamation laws, both criminal and civil, are often used to silence dissenting voices and discourage criticism of powerful individuals and institutions. The current state of digital freedom in Indonesia is constrained by online censorship, privacy risks, and barriers to free expression. While there have been some efforts to address these issues, such as the proposed Personal Data Protection Bill, more work is needed to ensure that digital technologies are used in a way that upholds individual rights and freedoms.

METHODS

A normative legal approach and literature study are used as the methods in this research. Normative legal approach was conducted by defining the normative principles as guidelines to assist digital freedom in Indonesia (human rights, democratic values, rule of law), and also evaluate Indonesian laws, regulations, and policies related to online censorship, privacy, and free expression against these principles. So that this evaluation can be used to identify gaps or areas for improvement, and suggest recommendations for policy makers and other stakeholders.⁵

This study also applies the literature review method by conducting a comprehensive review of the existing literature on digital freedom in Indonesia, including academic articles, reports, and news sources. Identify common themes or patterns in the literature, and use them to develop a framework for understanding the state of digital freedom in Indonesia. Analyze the literature to assess the current state of online censorship, privacy, and free expression in Indonesia, and identify gaps or areas for further research.⁶

RESULT AND DISCUSSION

Human Rights in the Digital Realm

The digital realm has become an integral part of our lives, and as we increasingly conduct our daily activities online, it is essential to understand our rights as digital citizens. These rights include not only fundamental rights such as freedom of expression, privacy, and access to information but also more substantial rights such as the right to a reliable and affordable internet connection and the right to access digital services without discrimination.⁷

In the digital realm, fundamental rights include the right to freedom of expression, privacy, and access to information. Freedom of expression includes the right to express oneself freely online without fear of censorship or repression, while the right to privacy entails the protection of personal data from unauthorized access or use. Additionally, individuals have the right to access information online and to use this information to make informed decisions about their lives. These fundamental rights play a crucial role in ensuring that

⁵ J. David Creswell John W. Creswell, *Research Design Qualitative, Quantitative, and Mixed Methods Approaches*, Fifth (London: SAGE Publications, 2017).

⁶ Geoffrey Samuel, *An Introduction to Comparative Law Theory and Method* (London: Bloomsbury Publishing, 2014).

⁷ Linnet Taylor, "What Is Data Justice? The Case for Connecting Digital Rights and Freedoms Globally," *Big Data and Society* 4, no. 2 (December 1, 2017), <https://doi.org/10.1177/2053951717736335>.

individuals can participate fully in the digital world and enjoy the benefits that it offers, while also protecting them from potential harms.⁸

Substantial rights in the digital realm also include the right to a reliable and affordable internet connection and the right to access digital services without discrimination. Access to the internet is becoming increasingly important for individuals to participate fully in modern society, including access to education,⁹ employment opportunities, and communication with others. This includes the right to a reliable and affordable internet connection, particularly for those living in rural or marginalized communities. Additionally, individuals have the right to access digital services without discrimination, such as access to government services, online marketplaces, or educational resources, regardless of their race, gender, or socio-economic status. These substantial rights are essential for ensuring that all individuals have equal opportunities to participate in the digital world and access its benefits.¹⁰

The importance of digital infrastructure cannot be overstated when it comes to protecting our digital rights. Governments have a responsibility to invest in digital infrastructure that supports access to the internet and digital services while also protecting individual rights such as privacy and freedom of expression. This infrastructure includes the development of robust and secure digital networks, which are critical for ensuring that individuals can access the internet and digital services without fear of interference or surveillance. Additionally, the protection of personal data is essential for safeguarding individual privacy and preventing unauthorized access or use of sensitive information. Finally, promoting digital literacy and skills is crucial for ensuring that individuals can navigate the digital world safely and make informed decisions about their digital rights and responsibilities. By investing in digital infrastructure that supports these principles, governments can help protect individual rights and promote a thriving digital ecosystem for all.¹¹

There are both ongoing challenges and opportunities in protecting digital rights. While progress has been made in recognizing and protecting digital rights, there are still many challenges that must be addressed, including online harassment, disinformation, and cybercrime. These issues can have serious consequences for individuals and communities, and they require ongoing attention and resources to combat.¹² At the same time, there are also opportunities to leverage digital technologies to promote and protect our rights. For example, digital tools can be used to organize and advocate for change, allowing individuals and groups to connect and collaborate across borders and amplify their voices. Additionally, emerging technologies such as blockchain

⁸ Svetlana M. Mironova and Svetlana S. Simonova, "Protection of the Rights and Freedoms of Minors in the Digital Space," *Russian Journal of Criminology* 14, no. 2 (2020): 234–41, [https://doi.org/10.17150/2500-4255.2020.14\(2\).234-241](https://doi.org/10.17150/2500-4255.2020.14(2).234-241).

⁹ Frank B. McCluskey and Melanie L. Winter, "Academic Freedom in the Digital Age," *On the Horizon* 22, no. 2 (2014): 136–46, <https://doi.org/10.1108/OTH-09-2013-0033>.

¹⁰ Oksana Vinnyk, "Limits of Digital Freedom: Legal Aspect," *Entrepreneurship, Economy and Law*, no. 2 (2021): 36–41, <https://doi.org/10.32849/2663-5313/2021.2.07>.

¹¹ Petros Iosifidis and Nicholas Nicoli, "The Battle to End Fake News: A Qualitative Content Analysis of Facebook Announcements on How It Combats Disinformation," *International Communication Gazette* 82, no. 1 (February 1, 2020): 60–81, <https://doi.org/10.1177/1748048519880729>.

¹² Timothy Recuber, "Race, Racism and Mnemonic Freedom in the Digital Afterlife," *Information Communication and Society* 24, no. 5 (2021): 684–99, <https://doi.org/10.1080/1369118X.2021.1874474>.

and artificial intelligence offer new possibilities for protecting individual rights and enhancing digital security. Overall, the ongoing challenges and opportunities in protecting digital rights underscore the need for continued attention and investment in this critical area.

ELSAM as human rights organization that is also concerned with digital rights issues. Policy Paper No. 38 is a report by the Institute for Policy Research and Advocacy (ELSAM), an Indonesian human rights organization, that examines the impact of Indonesia's content moderation regulation on freedom of expression. The regulation in question is Government Regulation No. 71 of 2019 on the Implementation of Electronic Systems and Transactions, which requires online platforms to remove content deemed to be "prohibited" by the government within 24 hours of receiving a request from the authorities. The report argues that the regulation has had a negative impact on freedom of expression in Indonesia. Specifically, it highlights the following issues:¹³

- 1) Overly broad definition of "prohibited" content: The regulation's definition of prohibited content is vague and broad, which has led to the removal of content that is not necessarily illegal or harmful.
- 2) Lack of due process: The regulation does not provide adequate due process protections for individuals whose content is removed, which can lead to arbitrary or unjustified removals.
- 3) Chilling effect on free speech: The report argues that the regulation has had a chilling effect on free speech in Indonesia, as individuals and organizations are hesitant to express themselves online for fear of having their content removed.
- 4) Limited transparency and accountability: The report notes that there is limited transparency and accountability in the implementation of the regulation, making it difficult to assess the impact of content removals and hold authorities accountable for their actions.

The report concludes that the content moderation regulation has had a negative impact on freedom of expression in Indonesia and recommends that the government revise the regulation to ensure that it better protects the rights of individuals to express themselves online. Specifically, the report recommends that the government narrow the definition of prohibited content, provide adequate due process protections, increase transparency and accountability, and ensure that the regulation is consistent with Indonesia's international human rights obligations.

Legal Framework on Digital Rights Issues

Indonesia has a complex legal and regulatory framework that governs digital freedom, which includes a range of laws, regulations, and policies. Three of the most important laws related to digital freedom are the Electronic Information and Transactions Law (UU ITE), the Pornography Law, and the Electronic Information and Transactions Law (UU ITE).¹⁴ The Electronic Information and Transactions Law (UU ITE) was first introduced in 2008 and has since been revised several times. The law covers a wide range of issues related to

¹³ Pingkan Audrine & Indra Setiawan, "Impact of Indonesia's Content Moderation Regulation on Freedom of Expression" (Jakarta, 2021), <https://www.cips-indonesia.org/publications/impact-of-indonesia's-content-moderation-regulation-on-freedom-of-expression>.

¹⁴ Suyanto Sidik, "Dampak Undang-Undang Informasi Dan Transaksi Elektronik (UU ITE) Terhadap Perubahan Hukum Dan Sosial Dalam Masyarakat," *Jurnal Ilmiah Widya* 1 (2013), <http://e-journal.jurwidyakop3.com/index.php/jurnal-ilmiah/article/view/99>.

digital activities, including online transactions, digital signatures, and electronic documents. One of the most controversial aspects of the UU ITE is its provisions on cybercrime and online speech. The law criminalizes online speech that is deemed to be defamatory, discriminatory, or insulting, and can be used to prosecute individuals for criticizing the government or public figures. This has raised concerns about the law's impact on freedom of expression and has led to calls for reform. In addition, the ITE Law has been criticized for being too broad and vague, which has led to uncertainty and confusion about what types of online speech are legal.¹⁵

The Pornography Law, which was introduced in 2008, is another law that has an impact on digital freedom in Indonesia. The law seeks to regulate the production, distribution, and consumption of pornography, but has been criticized for being overly broad and vague. The law defines pornography as any content that violates moral values, and this has led to concerns that the law could be used to restrict a wide range of content, including content that is not actually pornographic. The law has also been criticized for being sexist, as it primarily targets women and female sexuality.

The Electronic Information and Transactions Law (UU ITE) was updated in 2016 and is meant to provide a framework for the development of the information and technology sector in Indonesia. The law covers a wide range of issues related to digital activities, including e-commerce, data protection, and cybersecurity. The law is designed to promote the development of the digital economy in Indonesia, but has been criticized for being too focused on economic issues and not providing adequate protection for individual rights, such as freedom of expression and privacy.¹⁶ In addition to these laws, there are a number of other regulations and policies that impact digital freedom in Indonesia. For example, the government has the power to block websites and social media platforms that are deemed to be spreading fake news, hate speech, or other harmful content. This has led to concerns that the government is using its power to limit access to information and stifle dissent.

Another concern is the government's use of surveillance technology to monitor individuals' online activities. The government has been known to use software and tools to monitor social media platforms and other online activities, which has raised concerns about privacy and freedom of expression. Indonesia's legal and regulatory framework for digital freedom is complex and can be restrictive. While laws such as the UU ITE, the Pornography Law, and the Law on Information and Technology are intended to promote digital activities and protect individuals' rights, they have been criticized for being overly broad and vague, and for limiting freedom of expression and privacy. As such, there is a need for ongoing efforts to reform and improve Indonesia's legal and regulatory framework for digital freedom, in order to better protect individuals' rights online.¹⁷

There is a connection between Indonesian and global regulation concerning digital rights, as Indonesia is a signatory to various international human rights conventions and treaties that uphold the right to privacy, freedom of expression, and access to information. Some of the key global frameworks for digital rights include

¹⁵ Dedi Wahyudi and Novita Kurniasih, "MEMBANGUN GENERASI 'GREAT' BERETIKA MENUJU INDONESIA EMAS," *Tarbawiyah Jurnal Ilmiah Pendidikan* 3, no. 1 (June 27, 2019): 46, <https://doi.org/10.32332/tarbawiyah.v3i1.1453>.

¹⁶ Konstantinos Kouroupis and Dimitrios Vagianos, "Freedom of Expression and Digital Rights in Social Media: Challenges and Risks," *Journal of Data Protection and Privacy* 4, no. 3 (June 1, 2021): 294–302.

¹⁷ M. Nanda Setiawan, "Mengkritisi Undang-Undang ITE Pasal 27 Ayat (3) Dilihat Dari Sosio-Politik Hukum Pidana Indonesia," *DATIN Law Jurnal*, no. 3 (2021): 1–21, <https://ojs.umb-bungo.ac.id/index.php/DATIN/article/view/561/554>.

the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the UN Guiding Principles on Business and Human Rights.

In recent years, there have been increasing efforts at the global level to establish norms and standards for digital rights. For example, in 2016, the UN Human Rights Council adopted a resolution affirming that the same human rights that apply offline also apply online, and calling on governments to respect and protect these rights. Additionally, the General Data Protection Regulation (GDPR) adopted by the European Union in 2018 has set a global standard for data protection and privacy.

Indonesia has taken steps to align its regulations and policies with global norms and standards for digital rights. For example, the proposed Personal Data Protection Bill is in line with the GDPR, and Indonesia has participated in international discussions on issues such as online censorship and cybersecurity. However, there are still gaps between Indonesian regulations and global norms, particularly in the area of freedom of expression. For example, the ITE Law has been criticized for being inconsistent with international human rights standards on free expression.¹⁸

The United Nations has made human rights and internet protection a significant topic of discussion. A 2012 UN Resolution recognized that online expressions are entitled to the same protection as offline expressions. However, the Indonesian government has blocked internet and data services in certain regions due to protests, which has caused controversy as the blocking of specific platforms or sites is seen as excessive. There are several legal instruments, both at the international and national levels, that are used to protect digital rights.

There are several legal instruments, both at the international and national levels, that are used to protect digital rights:

1) International Covenant on Civil and Political Rights (ICCPR):¹⁹

This is a human rights treaty adopted by the United Nations General Assembly in 1966, which Indonesia ratified in 2005. It provides for the protection of a range of civil and political rights, including freedom of expression, privacy, and the right to a fair trial, all of which have implications for digital rights.

2) Universal Declaration of Human Rights (UDHR):²⁰

This is a foundational document in the field of human rights, adopted by the United Nations General Assembly in 1948. It includes the right to freedom of expression, which has been interpreted by international human rights bodies to include online expression.

3) General Data Protection Regulation (GDPR):²¹

This is a regulation adopted by the European Union in 2016 that sets out rules for the protection of personal data. It applies to all organizations that process the personal data of EU residents, regardless of where the organization is based.

¹⁸ Iin Indriyana, Anita Trisiana, and Josita Amelia, "Dampak Undang-Undang Informasi Dan Transaksi Elektronik Terhadap Masyarakat Indonesia," *Journal of Civics and Education Studies* 8, no. 2 (2021): 117–31, <http://dx.doi.org/10.32493/jpkn.v8i2.y2021.p117-131>.

¹⁹ United Nations, "International Covenant on Civil and Political Rights" (1966), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

²⁰ United Nation, "The Universal Declaration on Human Rights" (1948).

²¹ EU GDPR, "GDPR Portal : Site Overview," 2018, <https://www.eugdpr.org/>.

4) Law No. 19 of 2016 on Electronic Information and Transactions (UU ITE):²²

This is the primary law in Indonesia that regulates digital rights. It provides for the protection of personal data, privacy, and freedom of expression online. However, some provisions of the law have been criticized for being overly broad and potentially limiting freedom of expression. This law also provides for the regulation of online content, including provisions related to defamation and hate speech. However, it has been criticized for being used to restrict freedom of expression and target journalists and activists.

5) Government Regulation No. 71 of 2019 on the Implementation of UU ITE:²³

This regulation provides further detail on the implementation of the EIT Law, including provisions related to the protection of personal data and the role of internet service providers in implementing content restrictions.

The International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR) are international human rights instruments that protect the right to freedom of expression, access to information, and privacy. As a signatory to both the ICCPR and UDHR, Indonesia has a legal obligation to uphold these rights. The General Data Protection Regulation (GDPR) is a European Union regulation that establishes standards for data protection and privacy. While Indonesia is not a member of the EU, the proposed Personal Data Protection Bill is aligned with the principles of the GDPR and aims to regulate the collection, use, and sharing of personal data. The Information and Electronic Transactions (ITE) Law in Indonesia are regulations that govern online activities and provide a legal framework for online censorship. These laws have been criticized for their vague and broad provisions that can be used to restrict free expression and limit access to information. However, the Indonesian government has argued that these laws are necessary to protect national security and public morality. The implementation of these laws in Indonesia has been uneven, and there have been instances where they have been used to restrict free expression and violate privacy rights. For example, the ITE Law has been used to prosecute individuals for online speech, leading to concerns about the chilling effect on freedom of expression. While these instruments provide a legal framework for digital rights in Indonesia, there are gaps between the legal framework and the reality of digital rights on the ground. More work is needed to ensure that the implementation of these laws upholds individual rights and freedoms and does not unduly restrict access to information or free expression.

CONCLUSION

In conclusion, the state of digital freedom in Indonesia is mixed. While there are laws and regulations in place to protect privacy and freedom of expression, there are also concerns about online censorship and restrictions on these rights in practice. The implementation of laws such as the ITE Law has led to the prosecution of individuals for online speech, which has raised concerns about the impact on freedom of expression. To improve the state of digital freedom in Indonesia, several suggestions can be made. Firstly, the

²² Republik Indonesia, "UU Informasi Dan Transaksi Elektronik," Pub. L. No. Undang-Undang Nomor 19 Tahun 2016 perubahan atas Undang-Undang Nomor 11 Tahun 2008 (2016).

²³ Pemerintah Republik Indonesia, "Peraturan Pemerintah (PP) Nomor 71 Tahun 2019 Tentang Penyelenggaraan Sistem Dan Transaksi Elektronik" (2019), <https://peraturan.bpk.go.id/Home/Details/122030/pp-no-71-tahun-2019>.

implementation of laws and regulations related to digital rights must be consistent with international human rights standards. Secondly, efforts should be made to address the gaps between the legal framework and the reality of digital rights on the ground. This may involve greater transparency and accountability in the enforcement of laws and regulations related to digital rights. Additionally, there is a need for greater public awareness and education about digital rights, both among citizens and among policymakers and law enforcement officials. The state of digital freedom in Indonesia is a complex issue that requires ongoing attention and action. By promoting greater respect for privacy and freedom of expression, and by aligning its regulations and policies with international norms and standards, Indonesia can continue to improve the state of digital freedom and promote a more just and equitable digital landscape.

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