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Human Rights Defenders and Digital Democracy:

A Limited Space in Indonesia’s Digital Era

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| **Article**  | **Abstract** |
| **Keywords:****Human Rights Defenders; Freedom of Speech; Digital Democracy.****Artikel History**Received:Reviewed: Accepted: Published: **DOI:**  | The dynamics of democracy in Indonesia continue to develop along with technological advances that allow the formation of new communication and information exchange spaces. It is also the root of the emergence of digital democracy. Many parties have the opportunity to use this technology, including activists or human rights defenders who continue their struggle to voice human rights. However, the grim reality awaits them, with rampant cases of silence, restrictions, theft of personal data, and even the use of violence targeted at these human rights defenders. The Indonesian constitution and other national legal instruments protect freedom of expression, including freedom of expression in the digital space. However, the presence of the ITE Law forms a brick wall that applies arbitrarily so that it causes the victims to fall from the activist side when doing advocacy. This article uses socio-legal methods, and the data comes from literature studies and in-depth interviews. There is a need for a safe and healthy digital democratic environment and upholding the values ​​of impartial human rights. |
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# INTRODUCTION

The internet has increased global communication, human interaction, and access to information.[[1]](#footnote-1) It has also been seen as a "major progress" in promoting free speech worldwide. In addition, technological advances have also created the term Digital Democracy, namely a shift in political contestation in the online space.[[2]](#footnote-2) This assumes of optimism that the internet is essentially a public space, that is, a space where freedom of information is born and comes with healthy, universal, and strong conditions. The information society generated by technological advances has begun to move to form virtual public spaces as a means of representing the will and desires of people to declare their existence.[[3]](#footnote-3) The existence of these new technologies invites us to rethink democracy in the digital era. However, there are serious concerns about free speech on the internet; firstly, some countries have claimed that free speech on the internet will lead to political instability." For example, communication on social media, such as Twitter and Facebook, played a significant role in igniting the Arab revolution (or known as the Arab Spring) that swept across the Middle East and North Africa in 2011.[[4]](#footnote-4) Second, freedom of speech on the internet allows for a potentially controversial speech about social interests and sensitive individuals. By enabling close contact between different cultures, freedom of speech increases the risk of others being harmed by online expressions. Due to the existence of different cultures, people can easily insult the beliefs of others through expressions on the internet. Free speech can also be a hate speech that has the potential to cause intercultural or cross-cultural conflicts.[[5]](#footnote-5) This has the potential to cause riots, violence, conflict, or anxiety.

Indonesia considers freedom of opinion as one of the rights that is protected and fulfilled based on the constitution of the 1945 Constitution.[[6]](#footnote-6) Freedom of expression in public in the 1945 Constitution after the second amendment has been regulated in article 28E paragraph (3), which states, "Everyone has the right to freedom of association, gather, and express opinions." However, the rights to freedom of opinion and expression are not classified as non-derogable rights (rights that cannot be reduced under any circumstances). Therefore, the exercise of the right to freedom of opinion and expression may be limited. However, it is essential to note that restrictions on the rights to freedom of opinion and expression should not be imposed arbitrarly. Limitations prescribed by law and necessary to respect the rights or reputations of others and protect national security, public order, public health, or morals. In the digital realm itself, Indonesia has Law no. 11 of 2008 concerning Information and Electronic Transactions (UU ITE), which has been amended through Law no. 19 of 2016. This law can criminalize anyone who writes in electronic media, including the internet, on defamation charges. Article 27 Paragraph (3) of the ITE Law states a prohibition against "intentionally and without rights distributing and/or transmitting and/or making accessible electronic information that contains insults and/or defamation." Meanwhile, Article 28, paragraph (2) of the ITE Law mentions hate speech acts which read, "Every person intentionally and without rights disseminates information aimed at causing hatred or hostility to certain individuals and/or community groups based on ethnicity, religion, race, and ethnicity." The ITE Law in Indonesia is a form of limitation on the right to freedom of opinion and expression on the internet.

Freedom House, international digital rights research, and advocacy organization, reported a decline in the scores for freedom in the internet space, including freedom of opinion and expression, in the last three years.[[7]](#footnote-7) Freedom House stated that online media journalists and human rights activists often face pressure directly and through cyber in the form of online harassment. Death threats and online pressure activities are also experienced by some journalists, activists, and the general public in Indonesia. Indeed, Article 1 of the Declaration on Human Rights Defenders states that everyone has the right, individually or collectively, to promote and fight for the protection and fulfillment of human rights and freedoms at the national and international levels.[[8]](#footnote-8) Furthermore, the crisis of narrowing civil space has not only taken away most of the freedoms of society but has also made human rights defenders a new vulnerable group. Further study of the existence and implementation of the ITE Law is urgently needed to find appropriate boundaries in the practice of freedom of opinion and freedom of expression in Indonesia's digital space[[9]](#footnote-9). This article discusses how freedom of expression in Indonesia's digital space can be balanced, thus providing a safe space for human rights defenders to advocate for people's human rights.

# RESEARCH METHODS

This research is a socio-legal study; that combines analysis of social theory and law in a multidisciplinary manner.[[10]](#footnote-10) The focus is on the phenomenon of interaction in the digital space related to human rights advocacy carried out by human rights activists. The data was obtained in the form of primary data, namely through in-depth interviews with related parties, namely academia, Non-Governmental Organizations, and independent Human Rights Defenders. Primary data is also collected through social media observations traced through keyword search methods and digital track records, while secondary data is collected through literature studies covering legal, non-legal, and journalistic media. This study aims to analyze the restrictions on freedom of expression in the digital space and the limited implementation of digital democracy in Indonesia.

# ANALYSIS AND DISCUSSION

# The Dynamics of Digital Democracy

In terms of traditional democratic theories, in a democracy, everyone has the right to participate in government, either directly or through representatives. Another important thing is that in a democracy, there are the principles of political equality, or as Dahl thought, "Only in a democratic government can a relatively high level of political equality be fostered,"[[11]](#footnote-11) so that there is recognition of the dignity of each human. The flexible elements of democracy cannot escape globalization and technology's strong influence and demands. The modern world system that is increasingly complex requires the dynamics of democracy to be able to follow developments that occur in reality. Digitization is driving democracy to be faster, more complex, and borderless. The most significant opportunity for the practice of digital democracy is the expansion of interaction spaces between stakeholders in democracy. In the sense of "traditional" democracy so far, the concept of democracy opens spaces for dialogue between democratic actors. Each party in the democratic stakeholder can express opinions in the public sphere without being worried by the political risks that may occur, including the risk of feelings of fear and other forms of coercion. Digital democracy has a role in expanding the reach of public participation spaces. The use of digital tools to improve transparency and accountability in governance and he potential for digital technologies to enable the formation of more inclusive and representative democracies. We argue that more research on how digital technologies can be used to support democracy upgrade is needed.[[12]](#footnote-12) The added value of the practice of digital democracy is the realization of equality for every citizen to participate in politics.[[13]](#footnote-13)

Castell provides his understanding of digital democracy and calls it a series of interactions between the public, political parties, governments, local communities, and social networks, or as a dialectical interaction between technology and society.[[14]](#footnote-14) The internet is considered capable of generating new forms of participation in social life, such as encouraging a more enlightening exchange of ideas, changing political debates, carrying out socio-societal changes, and reforming the political system.[[15]](#footnote-15) The starting point for the emergence of the role of the internet in democracy in Indonesia, namely from 1994 to early 2000 when the internet began to be used by the pro-democracy movement in Indonesia until David T. Hill and Krishna Sen wrote that communication technologies such as the Internet played a role central to overthrow the Suharto dictatorship.[[16]](#footnote-16) The first step of digital democracy was seen in the momentum of the General Election in 2014 through the kawalpemilu.org[[17]](#footnote-17) website which functions to facilitate public votes and oversee the performance of the General Election Commission. With a crowdsourcing and big data approach, this site, which Ainun Najib initiated, brings together the initiatives and intentions of citizens to oversee and control the election process facilitated by the internet. The election escort site was then transformed into kawalppresident.org. This example is an explicit illustration of the significant role of the internet in today's democracy. This is in line with the wave of use of internet technology, especially social media in various parts of the world that today the internet no longer only enables a person to exercise the right to express his opinion freely but is also able to voice human rights[[18]](#footnote-18) and encourage the progress of society towards a better direction and has a role to fulfill citizens' right to the truth. Without access to adequate information provided by the internet, the idea of ​​transparency, accountability of public officials, eradicating corruption or public participation in the policy-making process, is more difficult to materialize.

However, this development is not without negative implications. One of the impacts is the emergence of false information (disinformation, fake news, hoaxes) and even hate speech.[[19]](#footnote-19) One of these facts is driven by the low sensitivity of the people to the truth of information or news; they are lazy to do fact checking so any information/news that is taken for granted and is even disseminated to a broader circle of friends. The prospects and challenges of digital democracy go hand in hand. Wilhelm[[20]](#footnote-20)[[21]](#footnote-21) proposes several views on digital democracy, namely (1) the availability of infrastructure that can spur the public's spirit to participate in politics; (2) ensuring that information can be accessed by all users, including marginal groups who have not been facilitated; (3) maintaining the quality of discussion in a Castells-style network community; (4) loss of public space under the pressure of dominating market forces. These four challenges become the people’s homework, given the pluralism of users and the increasing circulation of information. The presence of the ITE Law is one of the challenges in question, it causes the emergence of 4 new criminal patterns: revenge actions, legal barter, silencing critics, and shock therapy, which are biased from their original goals. Initially, these articles were intended to arrest cybercriminals. Still, now they are more often used to criminalize citizens who use the internet and social media to express complaints, opinions, thoughts, polemics, and even criticism of regional leaders.

Even though the ITE Law has been revised as of 26 October 2016 and ratified as Law No. 19/2016, the problem has not yet been resolved to its root, namely the existence of these articles in the ITE Law. Efforts to release guidelines for implementing the ITE Law through a Joint Decree (SKB) signed by the Attorney General, the National Police Chief, and the Minister of Communication and Information did not produce the expected results. Cases of criminalization under the ITE Law have increased since the SKB was signed on June 23, 2021. As many as 80% of the total victims of criminalization were reported under the ITE Law in July-August 2021.[[22]](#footnote-22) Even more unfortunate, the implementation of the ITE Law guidelines has not been widely understood by law enforcement officials. Whereas a good understanding on the part of the police is one of the steps to sort out which cases are not worthy of being criminalized. In one of the criminalization cases in South Sulawesi, the police clearly stated that they were unaware of this SKB, so they continued to process the report under Article 27 paragraph 3 of the ITE Law. It takes a concerted effort from those who believe that internet technology can be used for democracy so that this problem is handled properly. It will cause severe problems in Indonesian democracy if it is not resolved quickly. SAFEnet also reported the same thing, with many victims being trapped in Article 27 Paragraph (3) and Article 28 Paragraph (2), so these two articles are often referred to as the rubber article.

The second revision of the ITE Law or Law Number 1 of 2024, which was signed by President Joko Widodo, still maintains old problems. In the second revision of the ITE Law, there are still rubber articles that are used to criminalize civilians, including Article 27 Paragraphs (1) to (4), Article 28 Paragraphs (1) and (2) which are often used to silence criticism, to punishment provisions in Articles 45, 45A, and 45B. These problematic articles will prolong the threat to the public's access to information and the right to freedom of expression in Indonesia. "In fact, the DPR and the government are still adding new provisions such as Article 27 A concerning attacks on people's honor or good names and Article 27 B which has the potential to criminalize critical communities," said Nenden. Haris and Fatia also have submitted a judicial review for the defamation article to the Constitutional Court. The Constitutional Court was asked to declare that the defamation article was unconstitutional. Article 14[[23]](#footnote-23) and Article 15[[24]](#footnote-24) of Law Number 1 of 1946 in conjunction with Law 4 of 1976 were declared to be against the provisions of the 1945 Constitution. In their decision, the Constitutional Court judge stated that Article 14 and Article 15 of Law Number 1 of 1946 concerning The Criminal Law Regulations (state gazette of the Republic of Indonesia II number 9) conflict with the 1945 Constitution of the Republic of Indonesia and do not have binding legal force. However, according to human rights scholar, Herlambang Wiratraman, the lawsuit will not have a significant impact because what is being sued is an article in the old ITE Law. Meanwhile, the legislators have now approved the second revision of the ITE Law.

**Human Rights Defenders and Freedom of Speech in the Digital Age**

The foundation of freedom of expression in Indonesia is contained in Pancasila which encourages the occurrence of "People led by wisdom in deliberation or representation" so that people are given the freedom to express their thoughts orally or in writing. This aims to avoid the occurrence of irregularities committed by state institutions and actors that are not in line with Indonesia's national goals, namely the welfare of the nation. The ideals contained in the Pancasila were then strengthened by several legal foundations related to freedom of expression, namely, the 1945 Constitution, Law No. 9 of 1998 concerning Freedom to Express Opinions in Public, Law no. 39 of 1999 concerning Human Rights, Law No. 40 of 1999 concerning the Press and TAP MPR No. XVII/MPR/1998 on Human Rights. In Law no. 9 of 1998 in Article 1 paragraph (1) concerning the Freedom of Expressing Opinions in Public, it is stated that "freedom of expression is the right of every citizen to express thoughts orally and in writing freely and responsibly in accordance with the provisions of the applicable laws and regulations." Furthermore, Article 5 states, "Citizens who express their opinions in public have the right to express their thoughts freely and obtain legal protection". In MPR Decree No. XVII/MPR/1998 article 19, namely: "Everyone has the right to freedom of association, assembly and expression".

The brick wall in the practice of freedom of expression in Indonesia appears in the form of the ITE Law, a regulation that initially had several objectives, namely: to educate the nation's life; provide the widest possible opportunity for everyone to advance their thinking and abilities in the field of using and utilizing information and technology as optimally as possible, and responsibly; and the last is to provide a sense of security, justice, and legal certainty to users and providers of information technology. However, the ITE Law is sometimes used to trap other parties with hate speech reasons. The emergence of *Surat Edaran* (SE) No. SE/2/11/2021 concerning Ethical Cultural Awareness to Create a Clean, Healthy, and Productive Digital Space for Indonesia as a guideline for implementing the ITE Law released by the National Police Chief in 2021 has proven to have no significant impact. In practice, there are often unfair trials by state actors against citizens who are accused of violating the ITE Law on expressions or utterances conveyed publicly in the digital space.

Although the internet has been around since the 1960s, Frank La Rue, former United Nations special rapporteur on Freedom of Expression and Access to Information 2008-2014 wrote in his report on May 16, 2011 that the internet has become the most potent instrument. In the 21st century, increases transparency in overseeing government, provides access to information, and facilitates citizens to participate in building a democratic society. The internet not only allows one to exercise the right to express opinions freely but also to voice human rights and promote the progress of society for the better. The internet also plays a role in fulfilling the right to truth. The existence of the internet as part of world globalization has succeeded in becoming the most prominent forum that accommodates the participation of the general public in the form of expression and speech. The internet has become a unique medium for human communication processes on earth. Some of the main actors in the interaction system on the internet are (1) the sender or speaker; (2) the recipient or listener; and (3) media or service providers.[[25]](#footnote-25) In this sense, social media includes a popular form of electronic communication that allows people to create online communities to share information, ideas, private messages, and other content so that information can be exchanged, collected, aggregated, and disseminated in a fraction of a second. The Internet is a device or container that allows people to express, communicate, or provide information, therefore, the right to free speech on the internet must be protected from interference. Human rights instruments recognize that the protection of free speech under international human rights law extends to the Internet. Article 19 of the Covenant on Civil and Political Rights, which protects freedom of speech, must apply to the internet." This means that the right to free speech on the internet must be protected in the same way as the general right to free speech. Although the Covenant on Civil and Political Rights does not guarantee "the right to the Internet." ", Article 19(2) explicitly protects expression and information regardless of platform channel. "The text and history of the drafting of the Covenant on Civil and Political Rights also shows that negotiating states intend that the term 'media' includes not only the specific channels of communication available at the time (e.g., newspapers and increasingly radio and television) but also technologies that were yet to be invented."[[26]](#footnote-26)

Persecution of activists and the general public is often carried out in the digital space, which negatively affects outside life. Ni Kadek Vany from LBH Bali explained that there was an attempt to take over his cell phone after participating in a demonstration regarding the RKUHP in September 2019. This not only happened to her but also to several other fellow activists and demonstration participants from various backgrounds. In academia, restrictions on freedom of expression against students are increasingly widespread, Udayana University has formed a supervisory body that requires each discussion forum to obtain permission first and in the implementation of the platform must be accompanied by one of the representatives from the university's supervisory body. The system was implemented after the massive participation of Indonesian students who held demonstrations related to the draft of the new Criminal Code. The latest case is the emergence of spamming actions against citizens who open discussion rooms and become speakers on Twitter which focuses on implementing Minister of Communication Regulation No. 5 of 2020 concerning Private Scope Electronic System Operators or PSE regulations. The widespread use of the ITE Law, often brought up by national news, has inspired the general public to use the regulation when involved in a dispute. LBH Bali faces the same problem, the legal aid agency said that there are still many residents who ask for legal assistance and intend to use the ITE Law as a way out of the problems they are experiencing.

One of the cases that succeeded in attracting the attention of the general public was related to the efforts to silence human rights activists carried out by the official Coordinating Minister for Maritime Affairs and Investment Luhut Binsar Pandjaitan who reported Lokataru Director Haris Azhar and KontraS Coordinator Fatia Maulidiyanti to the Metro Jaya Police on suspicion of criminal defamation and a Rp100 billion lawsuit due to discussions related to a study made by Kontras and a number of NGOs regarding mine ownership in Intan Jaya Papua.[[27]](#footnote-27) In international guidelines, one of which is the Rabat Plan of Action[[28]](#footnote-28), a new utterance or expression may be prohibited by the state when the expression is classified as hate speech, but to qualify as the spread of hate speech, it must first be seen: (1) The context in expression; (2) The position and status of the individual who conveys the expression; (3) The intention of the delivery of the expression to advocate hatred and incitement; (4) The charge strength of the expression; (5) The reach and impact of the expression on the audience; and (6) The possibility and potential dangers that threaten the above-conveyed expression. The vulnerability of the abuse of this article on Incitement to Hatred requires law enforcement officials to be more careful in assessing an expression with severely harmful content so that it can be punished. Meanwhile, in this event, the hazard qualifications have not been met.

Violations of digital rights experienced by human rights defenders are not limited to arbitrary restrictions on freedom of expression[[29]](#footnote-29) but also violations of privacy through the leakage of personal data and terror known as doxxing. In this case, human rights defenders are practically interpreted broadly to refer to anyone who carries out peaceful activities in defense of human rights. Human rights defenders benefit civil society groups that support the protection of individuals and groups engaged in human rights work throughout the world, regardless of their profession, gender, race, religion, ethnicity or group association.[[30]](#footnote-30) Violations of digital rights often occur along with the momentum when activists launch criticism of government policies. As has been the case in previous years, digital attacks have always had a broader context, likewise, with the massive digital attacks in the three highest months. One of the controversial political issues last year was the implementation of the *Tes Wawasan Kebangsaan* on the staff of the Corruption Eradication Commission (KPK). Civil society organizations consider the test to have violated the law. For example, Indonesia Corruption Watch (ICW) assessed that the said test violated human rights and suspected a conspiracy to dismiss KPK employees. Since May 2021, ICW and other civil society organizations have actively rejected it, including conducting online discussions about the test. At that time, they were not only attacked by the buzzers as a subtle form of attack but also violently. A similar digital attack also occurred on activists in Pontianak, West Kalimantan, who held a discussion about the whole aspect of the test in June 2021.

Another befallen victim was Daniel Tangkilisan, an environmental activist. As time goes by, there are more and more illegal shrimp farms. In 2022, Daniel Tangkilisan and his friends will fight to reject illegal shrimp farming in the #SAVEKARIMUNJAWA campaign. He was then reported to the police because of his comments on Facebook. In a video upload regarding the condition of Karimunjawa which is affected by shrimp pond waste, Daniel Tangkilisan wrote via the comment’s column, "*Masyarakat otak udang menikmati makan udang gratis sambil dimakan petambak. Intine sih masyarakat otak yang itu kaya ternak udang itu sendiri. Dipakani enak, banyak & teratur untuk dipangan*." Based on a report from a resident on February 8, 2023, Jepara Police detained him on Thursday, December 7, 2023. After being released, he was detained again before his case file was declared P21 by the Jepara District Prosecutor's Office. After undergoing a series of trials, Daniel Tangkilisan was finally sentenced to 7 months in prison and a fine of IDR 5 million or a subsidiary of 1 month because he was deemed proven to have violated the Law on Information and Electronic Transactions (UU ITE). Daniel is subject to Article 28 paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law No. 11/2008 concerning Information and Electronic Transactions (UU ITE). However, after an appeal was submitted, the Semarang High Court granted the appeal of Karimunjawa environmental activist, Daniel Tangkilisan, free from legal action. Through decision no. 374/Pid.Sus/2024/PT ​​SMG, the Semarang High Court granted Daniel's appeal to be released from the lawsuit and provided corrections to the previous decision.

The methods of threats and attacks against human rights defenders are increasingly diverse, including digital technology. The ITE Law, which is expected to be a regulation to protect the digital rights of all levels of society in Indonesia, has turned into a silencer weapon for those who struggle to advocate and defend the protection of the human rights of the Indonesian people. Criticism of public officials should not be seen as personal attacks aimed at hurting their dignity and worth but as an effort to convey previously ignored aspirations. Efforts are needed to create an inclusive, responsive, and participatory political climate at every decision-making level. The National Human Rights Commission (Komnas HAM) has created Standard Norms and Regulations (SNP) regarding Freedom of Opinion and Expression. This can be used as a guideline by law enforcement officials to provide space for the protection of civil liberties. When handling cases of rubber articles of the ITE Law, the SNP created by Komnas HAM can be guided by so that cases do not need to drag on to court. The protracted process in court can create fear for the public to speak critically. In the future, it is necessary to think about how legal instruments are created in line with the doctrine of civil freedom and expression. This simultaneously avoids the creation of vertical conflicts between civil society and the state, which often require expensive settlement costs.

# CONCLUSION

Advances in technology have created a new phenomenon to identify the exchange of information and communication in the digital space known as digital democracy. The change from the conventional system to a modern world democratic system closely related to technology should open up a wider and more effective public participation space. However, the existence of the ITE Law is a significant challenge for the safe and healthy implementation of digital democracy. Although the restriction effect will affect all levels of society, human rights activists or defenders are the most prominent victims of this regulation. Relevant regulatory changes are needed by providing more explicit boundaries regarding prohibited hate speech and not just opinions or criticism directed at public officials.

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(1) Any person who, by broadcasting false news or notifications, deliberately causes trouble among the people, shall be punished with a maximum prison sentence of ten years.

(2) Any person who broadcasts news or issues a notification, which may cause trouble among the people, while he reasonably believes that the news or notification is a lie, shall be punished by imprisonment for a maximum of three years. [↑](#footnote-ref-23)
24. Article 15:

Any person who broadcasts news that is uncertain or news that is excessive or incomplete, even though he understands that it is at least reasonable to suspect that such news will or can easily cause trouble among the people, shall be punished by imprisonment for a maximum of two years. [↑](#footnote-ref-24)
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