

Law, Media, and Democracy in the Digital Era: Freedom of Expression and ITE Regulation in Indonesia

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Abstract:

The digital era presents complexity in the discursive relationship between law, media, and democracy. This research analyzes the interconnection of these three aspects within the context of Indonesian identity. The study employs a literature review approach utilizing the framework of media discourse, focusing on three key areas: agenda setting, framing, and gatekeeping. Data sources include Article 28 of the 1945 Constitution and several articles within the ITE Law. The research reveals that in the practical application of law, media plays a significant role in conveying information and even shaping citizens' understanding of democracy. Several key findings surfaced from this investigation. Firstly, agenda-setting informs the public about the crucial significance of these matters within democracy. Secondly, by utilizing framing discourse, the media can influence public sentiment, whether by underscoring the importance of safeguarding privacy or portraying internet regulations as impeding freedom of expression. Lastly, this study unveiled how media organizations wield substantial control over the topics covered, thus determining what garners public attention. This control not only directs the agenda but also shapes public perceptions of laws related to democracy, underscoring the profound influence of media on societal comprehension.

Abstrak:

Era digital menampilkan kompleksitas dalam hubungan diskursif antara hukum, media, dan demokrasi. Penelitian ini menganalisis keterkaitan ketiga aspek tersebut dalam konteks keindonesiaan. Studi ini menggunakan pendekatan tinjauan pustaka dengan memanfaatkan kerangka wacana media, dengan fokus pada tiga area kunci: penentuan agenda, pembentukan narasi, dan pengaturan akses informasi. Sumber data meliputi Pasal 28 Undang-Undang Dasar 1945 dan beberapa pasal terkait dengan konten internet, cyberbullying dan ujaran kebencian dalam Undang-Undang ITE. Penelitian ini mengungkap bahwa dalam praktik penerapan hukum, media memainkan peran yang signifikan dalam menyampaikan informasi bahkan membentuk pemahaman warga negara tentang demokrasi. Beberapa temuan utama muncul dari penelitian ini. Pertama, penentuan agenda berfungsi untuk memberi informasi kepada publik tentang pentingnya masalah-masalah ini dalam ranah demokrasi. Kedua, dengan menggunakan wacana pembentukan narasi, media dapat memengaruhi opini publik, baik dengan menekankan pentingnya perlindungan privasi maupun menggambarkan regulasi internet sebagai batasan kebebasan berekspresi. Terakhir, penelitian ini mengungkap bagaimana organisasi media memiliki kendali yang signifikan atas topik-topik yang dibahas sehingga menentukan apa yang menarik perhatian publik.

Kendali ini tidak hanya mengarahkan agenda, tetapi juga membentuk persepsi publik tentang hukum-hukum terkait demokrasi, menegaskan pengaruh mendalam media dalam pemahaman masyarakat.

A. Introduction

In the increasingly advanced digital era, the relationship between law, media, and democracy becomes more complex. While technology provides new opportunities to enhance access to information, public participation, and transparency, it also brings serious challenges that need to be addressed to ensure the sustainability of a healthy and well-functioning democracy.¹ As a "bridge" between the government and society, the media holds a key role in disseminating information, facilitating public discourse, and enabling active participation from citizens in the political process.² In this context, the role of media is not limited to delivering news but also includes other important functions such as monitoring government policies, providing a platform for various perspectives, and overseeing the performance of public institutions. The spread of misinformation, hate speech, and other illegal content often becomes complex issues to handle by existing laws³ due to the rules are not very clear.

Academic issues regarding the role of media in democracy encompass several critical challenges and questions. Firstly, there is the issue of media and freedom of expression, where the media must operate without undue government interference or other political interests.⁴ However, in many countries, especially in the digital era, media freedom is often threatened by censorship, content restrictions, or even attacks on journalists. Secondly, issues related to media pluralism have become a buzzword in public, political, and academic discourses.⁵ This ambivalent relationship, taking place within a new system of clientelism, has had a mixed

¹ Megan Boler, ed., *Digital Media and Democracy: Tactics in Hard Times* (Cambridge, Mass.: MIT, 2008), 167-168.

² Sheila S Coronel, "The Role of The Media in Deepening Democracy," n.d., 1-13.

³ B Pratama, D Mutiara, and M Broto, "Legal Perspective of the Internet Hoax," in *Proceedings of the Proceedings of The 1st Workshop Multimedia Education, Learning, Assessment and Its Implementation in Game and Gamification, Medan Indonesia, 26th January 2019, WOMELA-GG* (Proceedings of The 1st Workshop Multimedia Education, Learning, Assessment and its Implementation in Game and Gamification, Medan Indonesia, 26th January 2019, WOMELA-GG, Medan, Indonesia: EAI, 2019), <https://doi.org/10.4108/eai.26-1-2019.2283207>.

⁴ See Introduction section in Merris Amos, Jackie Harrison, and Lora Woods, *Freedom of Expression and the Media* (Leiden; Boston: Martinus Nijhoff Publishers, 2012).

⁵ Danielle Raeijmackers and Pieter Maesele, "Media, Pluralism and Democracy: What's in a Name?," *Media, Culture & Society* 37, no. 7 (October 1, 2015): 1042-59, <https://doi.org/10.1177/0163443715591670>.

outcome on the process of democratic consolidation.⁶ Media monopolies, ownership concentration, and dominant narratives by particular political interests can reduce the diversity of perspectives needed for a healthy democracy.⁷

Various researchers have extensively studied the relationship between law, media, and democracy in Indonesia. Nurhayati and Suryadi investigate the influence of social media on democratic processes in Indonesia, particularly concerning the proliferation of hoaxes, a pressing concern for the government.⁸ Paskarina illustrates how digital activism is a potent tool for pro-democracy advocates, enabling them to challenge the inherent power dynamics of the internet.⁹ Saud and Margono examine the effects of digital media on youth political engagement, illustrating how young people's activities, such as participating in protests, can enhance democracy and shape Indonesia's political landscape.¹⁰ Wardiono et al. analyzes digital democracy in comparison to legal provisions, expert doctrines, and democratic principles, finding that it generally aligns with established norms and principles.¹¹ Karimullah et al. discuss the emergence of political buzzers, highlighting how this phenomenon can perpetuate a culture of antagonistic politics.¹² Meanwhile, Rahmawati and Firman explore the impact of concentrated media ownership on Indonesian democracy, revealing its potential to propagate biased information and limit the diversity of societal viewpoints.¹³

In contrast to earlier studies, this research examines the connection between law, media, and democracy through media-political communication. It focuses on reinterpreting

⁶ Fatima El Issawi, "Media Pluralism and Democratic Consolidation: A Recipe for Success?," *The International Journal of Press/Politics* 26, no. 4 (October 1, 2021): 861–81, <https://doi.org/10.1177/19401612211010480>.

⁷ Anthony G. Wilhelm, *Democracy in the Digital Age: Challenges to Political Life in Cyberspace*, 0 ed. (Routledge, 2002), <https://doi.org/10.4324/9780203902509>.

⁸ Nunik Nurhayati and Rohmad Suryadi, "Democratic Challenges of Indonesia in Social Media Era," *Diponegoro Law Review* 2, no. 2 (October 30, 2017): 349–58, <https://doi.org/10.21456/vol%oviss%ipp1-15>.

⁹ Caroline Paskarina, "Digital Activism and Democracy in Indonesia: Learning from the Foregoing Research Issues (2014-2020)," *Indonesian Journal of Political Research (IJPR)* 1 (2020): 43–58, <https://doi.org/10.22500/8202028955>.

¹⁰ Muhammad Saud and Hendro Margono, "Indonesia's Rise in Digital Democracy and Youth's Political Participation," *Journal of Information Technology & Politics* 18, no. 4 (October 2, 2021): 443–54, <https://doi.org/10.1080/19331681.2021.1900019>.

¹¹ Kelik Wardiono et al., "Digital Democracy: A Study on the Legal Protection for Social Media Users in Indonesia," *International Journal of Multicultural and Multireligious Understanding* 9, no. 2 (February 16, 2022): 594–602, <https://doi.org/10.18415/ijmmu.v9i2.3541>.

¹² Suud Sarim Karimullah, Arif Sugitanata, and Aufa Islami, "Political Buzzers from Islamic Law Perspective and Its Impact on Indonesian Democracy," *PERADA* 5, no. 2 (December 23, 2022): 107, <https://doi.org/10.35961/perada.v5i2.616>.

¹³ Restu Rahmawati and Firman, "Media Ownership and Democracy Processes in Indonesia," *Jurnal Penelitian Politik* 20, no. 1 (October 5, 2023): 35–46, <https://doi.org/10.14203/jpp.v20i1.1446>.

Article 28 of the 1945 Constitution, which guarantees individuals' rights to communication and information access, while also considering the Information and Electronic Transactions Law (ITE). The study sheds light on various challenges that Indonesian society must foresee in order to uphold democracy in the digital age. Among these challenges is the conflict between media freedom of expression and safeguarding individual dignity and privacy, frequently debated in democratic contexts in the digital era.

B. Method

This study utilizes media discourse analysis. There are three key variables. First, agenda setting posits that mass media not only report events but also shape the public agenda by determining the topics that receive primary attention from society.¹⁴ Second, framing asserts that mass media provide information about an event and organize society's perceptions of that event.¹⁵ Finally, gatekeeping refers to the process of news selection and filtering by mass media as a gate controlling the flow of information received by the public.¹⁶ This approach is chosen because it aids in analyzing the complexity of the relationship between mass media and politics, as well as their impact on society and democratic processes. This research positions Article 28 of the 1945 Constitution and the Electronic Information and Transactions Law (ITE) as objects of analysis. Although Article 28 of the 1945 Constitution states that everyone has the right to freedom of expression, this freedom is not without limits as it is regulated within the bounds of applicable laws.

Meanwhile, the Electronic Information and Transactions Law (ITE) is a regulation that governs various aspects related to the use and dissemination of information through electronic media. In contrast, the ITE Law also regulates misuse and violations that may occur in using information and communication technology. Both regulations are interesting subjects of research in the context of the relationship between law, media, and democracy in the digital era within the Indonesian context.

¹⁴ Maxwell E. McCombs, Donald Lewis Shaw, and David H. Weaver, eds., *Communication and Democracy: Exploring the Intellectual Frontiers in Agenda-Setting Theory* (Mahwah, NJ: Lawrence Erlbaum Associates, 1997).

¹⁵ Dietram A. Scheufele, "Framing as a Theory of Media Effects," *Journal of Communication* 49, no. 1 (March 1, 1999): 103–22, <https://doi.org/10.1111/j.1460-2466.1999.tb02784.x>.

¹⁶ Stuart N. Soroka, "The Gatekeeping Function: Distributions of Information in Media and the Real World," *The Journal of Politics* 74, no. 2 (April 2012): 514–28, <https://doi.org/10.1017/S002238161100171X>.

C. Results

This research concludes that the relationship between law and democracy in the digital era, characterized by advancements in information and communication technology, is becoming increasingly complex and requires comprehensive understanding. Holistically, the analysis using the media discourse approach indicates that mass media plays a significant role in shaping public opinion and policymaking in the context of law and democracy in the digital age. Therefore, the mass media must fulfill its responsibility by providing balanced, fair, and accurate coverage of issues related to law and democracy, thus strengthening public awareness of their rights and responsibilities in a democratic society. Regarding law and democracy in the digital era, through the media discourse analysis, this research yields several findings: (1) through agenda-setting theory, in the context of law and democracy, mass media can choose to provide intensive coverage of specific issues such as access to information, privacy, or internet regulation, influencing public awareness of the importance of these issues in the democratic context; (2) through framing theory, by selecting appropriate narratives or framings, mass media can influence the public's interpretation of legal regulations related to democracy, such as emphasizing the importance of privacy protection or portraying internet regulations as a threat to freedom of expression; and (3) through gatekeeping theory, mass media influences the selection of issues to focus on, as well as shaping public agendas and perceptions of legal regulations in the context of democracy.

D. Analysis and Discussion

1. Freedom of Expression and Media Regulation: Between Article 28 of the 1945 Constitution and the ITE Law

Article 28 of the 1945 Constitution of Indonesia provides a firm constitutional basis for freedom of expression. In the context of freedom of expression, this article is related to provisions that guarantee the right to express opinions, convey information, and express oneself freely without fear of censorship or repression by the government.¹⁷ Article 28E paragraph (3) asserts that everyone has the right to express their opinions and statements orally, in writing, or other ways freely. This includes the right to express opinions, provide criticism, and participate in public discussions without the government's or other parties'

¹⁷ Harisman Harisman, "Protection of Human Rights in the Amendment of the 1945 Constitution of The Republic of Indonesia:" (1st International Conference on Law and Human Rights 2020 (ICLHR 2020), Jakarta, Indonesia, 2021), <https://doi.org/10.2991/assehr.k.210506.050>.

unlawful intervention.¹⁸ Article 28F paragraph (1) guarantees freedom of the press, which includes the right to establish mass media and obtain information. Freedom of the press is an important foundation in maintaining informational pluralism, facilitating public access to various perspectives, and ensuring the accountability of the government and public institutions.¹⁹

Although Article 28 of the 1945 Constitution affirms strong principles of freedom of expression, regulating online content remains a complex and challenging issue. In the digital age, online content can spread rapidly and reach a broad audience in a short period, presenting new challenges in maintaining a balance between freedom of expression and the protection of individual rights and public interests. Regulation of online content must consider the principles of freedom of expression guaranteed by the Constitution while also considering the protection of other rights, such as privacy, honor, and personal safety. A balanced and proportional approach to regulating online content must balance freedom of expression and other interests. Effective online content regulation should be based on transparent, proportional, and nondiscriminatory legal principles. Protection of individual rights and public interests should be the primary considerations in policymaking while ensuring that regulatory efforts are not used to limit freedom of expression or hinder informational pluralism.

Article 28G section 1 of the 1945 Constitution of Indonesia provides an important constitutional basis for privacy and personal data protection. In this context, this article has significant implications for individuals' rights to maintain their privacy and control the use of their data by others, including the government and private companies. Article 28G section 1 states that everyone has the right to protection of their personal self, honor, and dignity, as well as the right to live peacefully and securely without interference with their privacy. This underscores the importance of individuals' rights to safeguard their privacy from unlawful or unwanted intervention by others, including the government, companies, or others.²⁰ The implications of Article 28G also include protection of individuals' data. In an increasingly interconnected digital era, personal data collection, storage, and use have become more

¹⁸ Zaka Firma Aditya and Sholahuddin Al-Fatih, "Indonesian Constitutional Rights: Expressing and Purposing Opinions on the Internet," *The International Journal of Human Rights* 25, no. 9 (October 21, 2021): 1395–1419, <https://doi.org/10.1080/13642987.2020.1826450>.

¹⁹ Triono Eddy and Onny Medaline, "Protection of Freedom of Expression as a Human Right in the Framework of a Democratic State," *Migration Letters* 20, no. 7 (October 13, 2023): 277–87, <https://doi.org/10.59670/ml.v20i7.4304>.

²⁰ Faiz Rahman and Dian Agung Wicaksono, "Researching References on Interpretation of Personal Data in the Indonesian Constitution," *Jurnal Penelitian Hukum De Jure* 21, no. 2 (June 24, 2021): 187, <https://doi.org/10.30641/dejure.2021.V21.187-200>.

common and complex. This article asserts that individuals can control their personal information and determine how others use it.

In addition to external oversight, transparency should also be applied in the production and distribution processes of news within the media. Transparent editorial processes, where editorial decisions are explained and accounted for, can help ensure that media content is produced with the necessary integrity and balance.²¹ However, in regulating media oversight and transparency, it is essential to maintain press freedom and freedom of expression. Excessive oversight or inappropriate government intervention can endanger media independence and impede information diversity. Thus, implementing balanced and proportional principles of media oversight and transparency is key to maintaining the integrity and essential role of the media in democratic societies.²² These steps must be supported by the efforts of civil society, government, and media industries to collaborate in creating a media environment that is transparent, accountable, and empowering. Additionally, addressing issues related to media pluralism and press freedom in the context of media oversight and transparency is crucial.

Media pluralism is a principle that emphasizes the importance of diversity in information sources and perspectives within mass media.²³ With media pluralism, society can be exposed to various viewpoints and have broader access to diverse information.²⁴ However, the challenge in maintaining media pluralism lies in specific groups or individuals' domination or concentration of media ownership. Furthermore, attention must be paid to protecting journalists tasked with uncovering information that is important to society. Article 28 of the 1945 Constitution of Indonesia, which guarantees access to information, also protects press freedom and freedom of expression.²⁵ Protecting journalists who work to uncover the truth and perform a social control function is crucial in maintaining a healthy and transparent

²¹ Archon Fung, "Infotopia: Unleashing the Democratic Power of Transparency," *Politics & Society* 41, no. 2 (June 2013): 183–212, <https://doi.org/10.1177/0032329213483107>.

²² Nigel Bowles, James Hamilton, and David A. L. Levy, eds., *Transparency in Politics and the Media: Accountability and Open Government* (London; New York: I. B. Tauris & Co. Ltd., in association with the Reuters Institute for the Study of Journalism, University of Oxford, 2014).

²³ Kari Karppinen, *Rethinking Media Pluralism*, 1st ed, Donald McGannon Communication Research Center's Everett C. Parker Book Series (New York: Fordham University Press, 2013).

²⁴ Patrick Roessler, "Media Content Diversity: Conceptual Issues and Future Directions for Communication Research," *Annals of the International Communication Association* 31, no. 1 (January 2007): 464–520, <https://doi.org/10.1080/23808985.2007.11679073>.

²⁵ Yovan Iristian, "Freedom of Speech as a Pillar of Equality in Indonesia in The Context of Constitutional Law," *Journal of International Multidisciplinary Research* 2, no. 2 (February 2, 2024): 84–101, <https://doi.org/10.62504/crdxyx50>.

democracy.²⁶ By strengthening media oversight and transparency and protecting press freedom and freedom of expression, Indonesia can ensure that mass media remains a vital pillar in developing an inclusive and empowered democracy. Collaborative efforts between the government, civil society, and the media industry are necessary to create a media environment that is healthy, accountable, and respects the fundamental rights of every citizen.

In Indonesia, personal data protection is regulated by Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law), which was later strengthened with the issuance of Law Number 19 of 2016 concerning Amendments to the ITE Law.²⁷ Additionally, there is Government Regulation Number 71 of 2019 concerning the Implementation of the ITE Law, which provides further details on protecting personal data in Indonesia.²⁸ The law defines personal data as any information about an individual that can be directly or indirectly identified, individually or in conjunction with other information. The ITE Law imposes obligations on every data owner or provider of electronic application services to protect the personal data they manage or process. This includes maintaining data confidentiality, preventing unauthorized access, and protecting data from misuse or alteration.²⁹

The ITE Indonesian Law stipulates that the collection and use of personal data must be done with the data owner's consent. Data owners have the right to know the purpose of data collection and use and the right to refuse or withdraw their consent. The law requires every data owner or provider of electronic application services to immediately report any data security breaches that result in loss or disruption to the data owner. These regulations aim to protect the privacy and security of personal data in Indonesia, ensuring that individuals have control over their information and that it is handled responsibly by organizations and service providers.³⁰ Indonesia has revised Law No. 11 Year 2008 on Information and Electronic

²⁶ Awaludin Marwan, Kai Liu, and Clara Ignatia Tobing, "Human Rights On the Internet: Freedom of Expression In Indonesian Law and Practice," *International Journal of Global Community* 6, no. 3-Nov. (November 25, 2023): 303–15.

²⁷ Anak Agung Ayu Nanda Saraswati, "The Need to Protect Freedom of Expression on the Internet Through a Human Rights-Based in Indonesia," *ASEAN Journal of Legal Studies* 2, no. 1 (2019): 54–69.

²⁸ Abraham Ethan Martupa Sahat Marune and Brandon Hartanto, "Strengthening Personal Data Protection, Cyber Security, and Improving Public Awareness in Indonesia: Progressive Legal Perspective," *International Journal of Business, Economics, and Social Development* 2, no. 4 (November 7, 2021): 143–52, <https://doi.org/10.46336/ijbesd.v2i4.170>.

²⁹ Brahmantyo Suryo Satwiko, "Privacy and Data Protection: Indonesian Legal Framework," *Corporate and Trade Law Review* 1, no. 2 (2021): 98–118, <https://doi.org/10.21632/ctlr.1.2.98-118>.

³⁰ Siti Yuniarti, "Protection of Indonesia's Personal Data After Ratification of Personal Data Protection Act," *Progressive Law Review* 4, no. 02 (November 23, 2022): 54–68, <https://doi.org/10.36448/plr.v4i02.85>.

Transactions into Law No. 19 Year 2016, which contains the right to be forgotten but does not yet have provisions on the right to portability.³¹

The ITE Indonesian Law also imposes sanctions for violating provisions regarding protecting personal data, including fines and/or imprisonment for offenders who breach these provisions.³² Protecting personal data in the ITE Law is crucial in safeguarding the security and privacy of data in Indonesia. However, there is still room for improvement, particularly in strengthening oversight, law enforcement, and public awareness of the importance of personal data protection.³³ Therefore, efforts are ongoing to update regulations and enhance the implementation of personal data protection in Indonesia to keep pace with evolving information technology. Effective media oversight is essential to ensure that information conveyed to the public is accurate, balanced, and uninfluenced by particular interests. Media regulatory bodies or other independent institutions can be vital in overseeing media content, upholding journalistic ethics standards, and addressing violations.

2. Indonesia and the Challenges of Democracy in the Digital Era

The mass media has the power to frame specific issues within the context of democracy, which can influence the public's perception of the urgency and relevance of those issues. Mass media can frame issues of access to information and freedom of expression as efforts to enhance government accountability and strengthen public participation or as threats to the stability and security of the state.³⁴ Lastly, mass media also influences the agenda for resolving or finding solutions to issues of access to information and freedom of expression by providing coverage that highlights efforts to improve the implementation of existing regulations or address challenges in effectively realizing these rights. In this study, an analysis of media discourse theory regarding Article 28 of the 1945 Constitution and the ITE Law can be outlined as follows.

³¹ Edmon Makarim, "Digital Identity and Personal Data Protection: Analysis of Rights to Erasure and Data Portability in Indonesia," in *Advancing Rule of Law in a Global Context* (London: CRC Press, 2020).

³² Muhammad Rusli Arafat and Hevi Dwi Oktaviani, "Criminal Threats in The Personal Data Protection Bill in Indonesia," in *Perspective and Impact of Metaverse on Sustainable Development Goals Online International Conferences* (The 4 th Open Society Conference, Universitas Terbuka, Indonesia, 2022), 43–51.

³³ Edmon Makarim, "Privacy and Personal Data Protection in Indonesia: The Hybrid Paradigm of the Subjective and Objective Approach," in *Data Protection Around the World: Privacy Laws in Action*, ed. Elif Kiesow Cortez (The Hague: T.M.C. Asser Press, 2021), 127–64, https://doi.org/10.1007/978-94-6265-407-5_6.

³⁴ W. Lance Bennett and Robert M. Entman, eds., *Mediated Politics: Communication in the Future of Democracy*, Communication, Society, and Politics (Cambridge, UK; New York: Cambridge University Press, 2001).

Agenda Setting

In analyzing the existing regulations in Indonesia, particularly Article 28 of the 1945 Indonesian Constitution, from the perspective of agenda-setting theory, we can observe how the mass media plays a significant role in shaping the public agenda related to access to information and freedom of expression. Article 28 of the 1945 Constitution provides a strong foundation for access to information and freedom of expression, crucial elements in democracy. Mass media has the power to determine the main issues in public discourse, and by providing intensive coverage of access to information and freedom of expression, the mass media can enhance public awareness of the importance of these rights in fostering a healthy democracy. At this point, the government needs to think about maximizing mass media's role in socializing democratic aspects related to its foreign policy.³⁵

In exploring the existing regulations in Indonesia, especially in the context of the Electronic Information and Transactions Law (ITE Law), the perspective of agenda-setting theory provides important insights into how mass media influences the public agenda regarding the issues regulated in the law. The ITE Law contains several articles that have the potential to become important issues in the democratic agenda, and social media plays a key role in setting the focus and urgency of these issues.³⁶ First, mass media has the power to determine the main issues in public discourse through intensive and continuous reporting. Some articles in the ITE Law, especially those related to disseminating information that can incite social conflict or hate speech in Article 45A section (2), may become the main focus of media coverage.³⁷ By providing intensive coverage of these issues, mass media can strengthen public awareness of the importance of the rules in the ITE Law.

Secondly, mass media can frame the issues regulated in the ITE Law according to specific perspectives or narratives. For example, mass media can frame articles on hate speech as efforts to protect vulnerable groups from the spread of hatred or as threats to freedom of expression.³⁸ How the media frames these issues will affect public perceptions of the urgency

³⁵ See Jürgen Rüländ, "Democratizing Foreign-Policy Making in Indonesia and the Democratization of ASEAN: A Role Theory Analysis," *TRANS: Trans -Regional and -National Studies of Southeast Asia* 5, no. 1 (January 2017): 49–73, <https://doi.org/10.1017/trn.2016.26>.

³⁶ Nurhayati and Suryadi, "Democratic Challenges of Indonesia in Social Media Era."

³⁷ Ahmad Tholabi Kharlie, Fathudin Fathudin, and Muhammad Ishar Helmi, "The Role of the Law on Electronic Information and Transactions in Overcoming Challenges of Democracy in Indonesia," *International Journal of Advanced Science and Technology* 28, no. 20 (2019): 1178–84.

³⁸ Eric Heinze, *Hate Speech and Democratic Citizenship*, First Edition (Oxford, United Kingdom: Oxford University Press, 2016).

and relevance of the regulations in the ITE Law. Lastly, social media can also influence the agenda for resolving or finding solutions to the issues regulated by Indonesian laws.³⁹ By providing coverage that highlights efforts to improve implementation or address shortcomings in law enforcement, mass media can influence discussions and policies taken by the government and relevant institutions.⁴⁰

However, in the context of democracy, it is important to note that overly strict internet regulations or misuse of the ITE Law can also threaten freedom of expression and access to information, essential prerequisites for effective political participation and the realization of inclusive democracy. The role of the mass media in influencing society's perceptions and interpretations of the ITE Law can also be a subject of critical analysis in understanding how internet regulations affect the democratic space. Greater use of the media in setting democratic issues could threaten the improvement of civil society in carrying out democratic reforms.⁴¹ It is important for the mass media to provide balanced and equitable coverage of the issues regulated in the ITE Law and to strengthen public awareness of the importance of maintaining a balance between protecting social order and safeguarding freedom of expression in a democratic society.

Framing

The framing theory provides valuable insights into how mass media can influence public perception of the rights regulated in Article 28 of the 1945 Indonesian Constitution by framing relevant issues. This underscores the importance of the mass media's role in shaping public understanding and support for fundamental rights in privacy, data protection, and access to information. In the context of Article 28G, mass media can frame the issues of privacy and protection of personal data as efforts to safeguard individuals' rights from unauthorized surveillance or misuse of data by other parties, including the government or private companies. In the context of Article 28I, mass media can frame the right to access

³⁹ Herpita Wahyuni et al., "The Influence of Social Media on the Omnibus Law-Making Process in Indonesia," in *Advances in Digital Science*, ed. Tatiana Antipova, vol. 1352, *Advances in Intelligent Systems and Computing* (Cham: Springer International Publishing, 2021), 498–510, https://doi.org/10.1007/978-3-030-71782-7_44.

⁴⁰ Matthew A. Baum and Philip B.K. Potter, "The Relationships Between Mass Media, Public Opinion, and Foreign Policy: Toward a Theoretical Synthesis," *Annual Review of Political Science* 11, no. 1 (June 1, 2008): 39–65, <https://doi.org/10.1146/annurev.polisci.11.060406.214132>.

⁴¹ Hans Antlöv, Derick W. Brinkerhoff, and Elke Rapp, "Civil Society Capacity Building for Democratic Reform: Experience and Lessons from Indonesia," *VOLUNTAS: International Journal of Voluntary and Nonprofit Organizations* 21, no. 3 (September 2010): 417–39, <https://doi.org/10.1007/s11266-010-9140-x>.

information to strengthen government accountability, facilitate public participation in decision-making processes, and support transparency in governance. The government and citizens need to be aware of the importance of communication ethics in receiving and disseminating technological information.⁴² Both parties can work together in the digital era by effectively framing messages through mass media or social media. How they frame these issues will affect public perception of the urgency and relevance of the rights regulated in Article 28 of the 1945 Constitution.

Meanwhile, in analyzing the provisions of the ITE Law from the perspective of framing theory, we can observe how mass media influences public perception of internet regulations and freedom of expression within the context of democracy.⁴³ The ITE Law, especially provisions related to internet content, cyberbullying, and hate speech in Article 45A section (2), significantly impacts freedom of speech and access to information in the digital space.⁴⁴ Mass media can frame the provisions of the ITE Law as efforts to protect society from abuse and threats in the digital environment. For example, provisions regulating the dissemination of harmful or misleading content can be presented as necessary steps to maintain social order and protect individuals from the negative impacts of spreading false or harmful information.⁴⁵ In the context of democracy, it is important to recognize that freedom of expression and broad access to information are essential prerequisites for effective political participation and the realization of inclusive democracy

However, it is important to note that mass media framing does not always result in uniform societal perceptions. There are various perspectives and interpretations of the provisions of the ITE Law, depending on the sources and interests of the media involved. What must be realized is that the mass media can also frame several provisions that could threaten freedom of expression and democracy. If not closely monitored, the authority possessed by media owners can frame and regulate internet content, which can harm democracy by suppressing critical opinion or hindering political participation in the digital

⁴² Keith Miller and Mariarosaria Taddeo, *The Ethics of Information Technologies*, The Library of Essays on the Ethics of Emerging Technologies (London New York: Routledge, Taylor & Francis Group, 2017).

⁴³ Jack M. Balkin, "Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society," in *Law and Society Approaches to Cyberspace* (London: Routledge, 2007).

⁴⁴ Raphael Cohen-Almagor, *Speech, Media, and Ethics: The Limits of Free Expression: Critical Studies on Freedom of Expression, Freedom of the Press, and the Public's Right to Know* (Houndmills, Basingstoke, Hampshire; New York: Palgrave, 2001).

⁴⁵ Basthian A Laoebela et al., "Impact of Internet Culture on Indonesian Values and Moral Decision Making," *Journal of Digital Law and Policy* 2, no. 2 (January 31, 2023): 53–62, <https://doi.org/10.58982/jdlp.v2i2.310>.

space.⁴⁶ The citizens need to monitor how the news media frames public policy issues and the extent to which other political players influence this issue-framing process.⁴⁷ Therefore, framing analysis of the provisions of the ITE opens up space for critical reflection on the balance between protecting society from online threats and safeguarding freedom of speech and access to information in a democratic society.

Gatekeeping

Gatekeeping theory suggests that mass media plays a crucial role as gatekeepers controlling the flow of information conveyed to the public⁴⁸. In the context of Article 28 of the 1945 Indonesian Constitution, which emphasizes the right to personal protection, honor, and dignity, mass media can determine the issues that become the focus of coverage related to privacy and personal data protection. It is important to critically examine how the gatekeeping process in mass media can influence society's understanding and awareness of the rights regulated in Article 28 of the 1945 Constitution.⁴⁹ Through the gatekeeping process, mass media provide intensive coverage of privacy violations or data misuse cases, thus influencing society's understanding of the importance of individual rights. It should be noted that mass media also have specific interests and perspectives that can influence the gatekeeping process. The selection of issues that become the focus of coverage can be influenced by factors such as the mass media's political, commercial, or ideological interests.⁵⁰

In analyzing the ITE Law articles from the gatekeeping theory perspective, we can observe how the mass media plays a crucial role in determining the issues that become the focus of coverage and the public's understanding of internet regulations and freedom of expression. The gatekeeping theory asserts that the mass media controls the flow of information delivered to the public, thus influencing the public agenda and perceptions of

⁴⁶ Rose A. Dyson, *Mind Abuse: Media Violence and Its Threat to Democracy*, 2nd edition (Montreal; Chicago; London: Black Rose Books, 2021).

⁴⁷ Karen Callaghan and Frauke Schnell, "Assessing the Democratic Debate: How the News Media Frame Elite Policy Discourse," *Political Communication* 18, no. 2 (April 2001): 183–213, <https://doi.org/10.1080/105846001750322970>.

⁴⁸ Pamela J. Shoemaker and Timothy Vos, *Gatekeeping Theory* (London: Routledge, 2009), <https://doi.org/10.4324/9780203931653>.

⁴⁹ Herlambang Perdana Wiratraman, "Press Freedom, Law and Politics in Indonesia: A Socio-Legal Study" (Leiden University, 2014).

⁵⁰ Josef Trappel, ed., *The Media for Democracy Monitor: A Cross National Study of Leading News Media* (Göteborg: Nordicom, 2011).

specific issues.⁵¹ In the context of the ITE Law, particularly articles related to internet content, cyberbullying, or hate speech in article 45A section (2), the mass media plays a role in determining the issues that receive coverage through the gatekeeping process. By selecting the issues highlighted in news and coverage, the mass media directs public attention to matters governed by the ITE Law. For example, the mass media may cover cyberbullying cases or instances of hate speech that arise in the digital realm, reinforcing public awareness of the importance of internet regulations in maintaining social order.

The perspective of gatekeeping theory within the context of democracy can observe how the role of the mass media in determining the flow of information delivered to the public affects political participation, freedom of expression, and the balance between internet regulations and democratic values.⁵² How the mass media selects and frames these issues can influence the public's understanding of the urgency and relevance of Internet regulations in maintaining social and moral order. The gatekeeping process of the mass media can also affect public political participation in the digital environment.⁵³ If the mass media extensively covers violations or controversies occurring in the digital realm, it can influence public perceptions of safety and comfort in actively participating online. Stringent regulations or misuse of the ITE Law can also inhibit freedom of speech and organization, which are crucial rights in democracy.⁵⁴

However, it is important to remember that the mass media also has specific interests and perspectives that can influence the gatekeeping process. The selection of issues to focus on in coverage can be influenced by factors such as the mass media outlet's political, commercial, or ideological interests. Therefore, it is crucial to consider various perspectives and diverse sources of information in understanding the issues governed by the ITE Law and their impact on democracy. Thus, the analysis of gatekeeping theory applied to the articles of the ITE Law provides insight into how the mass media plays a crucial role in shaping public agendas, societal perceptions, and political participation in the digital environment. Regulations that align with democratic values and balance freedom of expression and societal

⁵¹ Tim P. Vos and François Heinderyckx, eds., *Gatekeeping in Transition*, Journalism Studies (New York London: Routledge, Taylor & Francis Group, 2015).

⁵² Peter Dahlgren, *Media and Political Engagement: Citizens, Communication, and Democracy* (New York: Cambridge University Press, 2009).

⁵³ Peter Bro and Filip Wallberg, "Gatekeeping in a Digital Era: Principles, Practices and Technological Platforms," *Journalism Practice* 9, no. 1 (January 2, 2015): 92–105, <https://doi.org/10.1080/17512786.2014.928468>.

⁵⁴ Thomas Paterson, "Indonesian Cyberspace Expansion: A Double-Edged Sword," *Journal of Cyber Policy* 4, no. 2 (May 4, 2019): 216–34, <https://doi.org/10.1080/23738871.2019.1627476>.

protection are important considerations in implementing the ITE Law. The role of the mass media as the determinant of information flow is key in shaping public views on issues relevant to the ITE and should be carefully considered in understanding and implementing applicable laws.

E. Conclusion

The author concludes that the relationship between law and democracy in the digital era is becoming increasingly complex and demands a comprehensive understanding. The mass media has a significant role in shaping public opinion and policy formation in law and democracy. Therefore, the mass media must carry out its responsibilities as well as possible. The mass media can give intensive coverage to specific issues, such as information access rights, privacy, or internet regulation, affecting public awareness of these issues' importance. The mass media can influence people's interpretation of legal regulations relating to democracy, such as emphasizing the importance of privacy protection or portraying internet regulation as a threat to freedom of expression. Mass media can influence public awareness of the importance of existing regulations and strengthen understanding of the rights stipulated in the law as an important prerequisite in strengthening democracy. Mass media influences the determination of issues that are the focus of coverage, as well as the formation of the public agenda and public perceptions of legal regulations in the context of democracy. This research is far from perfect; there are many things that future researchers can deepen.

F. Conflict of Interest Statement

The authors affirm that no conflicts of interest could taint the impartiality or results of this article's publishing. This article's authoring is the result of independent study and analysis; neither outside nor commercial parties had any input or involvement during the composition or publication of this piece.

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