THE INDONESIAN INSTITUTE
CENTER FOR PUBLIC POLICY RESEARCH

POLICY PAPER

Promoting and Protecting Citizen's Freedom of Expression Towards the Government in Digital Space in Indonesia

2021

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Policy Paper on Promoting and Protecting Citizens' Freedom of Expression Towards the Government in Digital Space in Indonesia

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Foreword

Freedom of expression is one of the challenging issues in the reflection of 23 years of the Reform in Indonesia. Several cases that criminalized and targeted democracy activists along with their personal data, gadgets and social media have been increasing. Criminalization of individuals who are critical to the government including in digital spaces has become a regular news. In this case, existing legal foundations, including the 1945 Constitution, the Criminal Code, the Law Number 19 Year 2016 on the Law Number 11 Year 2008 regarding the Electronic Information and Transactions (ITE Law) to name a few, although they have been seen as the commitment of the government to protect human rights, apparently in practice, these regulations are also prone to be used as tools to discourage, if not to criminalize, those who are critical towards the government, particularly through electronic tools.

The Southeast Asia Freedom of Expression Network (SAFEnet) monitored that since the ITE Law was passed in 2008, 324 cases were recorded at least until October 2020. In addition, among the victims of ITE Law, the Press Legal Aid Institute (LBH Pers) also noted that at least 10 journalists in 2020 were convicted by ITE Law, apart from the fact that the press is protected by Law Number 40 Year 1999 regarding the Press. Although the revision of the Law took place in 2016, it did not stop the problematic implementation of the Law which has increased the human rights violation cases, particularly regarding freedom of expression in Indonesia from time to time. SAFEnet recorde that since 2017, there were 15.056 cases reported to the Directorate of Cyber Crime (Ditippidsiber) in Indonesian National Police (Polri). Public order, insult, and defamation have been well known as reasons to criminalize those who are critical towards the government in the digital platforms.

Sharpening political divisions in society which resulted from previous elections in 2014, 2017, and 2019 also put additional barriers and threats to freedom of expression including in digital spaces between those who are pros and cons towards the current government. Furthermore, the worrying condition of freedom of expression can be seen from several findings. Survey conducted by the Human Rights National Commission and Kompas Research and Development Center showed that 36% of respondents felt that they are not free to exercise their rights to express themselves in digital spaces. These records also

explain Indonesia's Partly Free status regarding the Global Freedom Status by the Freedom House reports from 2019 to 2021. The 23 years of the Reform and the reflection of democracy and governance in Indonesia should become momentum to promote and to protect freedom of expression in Indonesia, including regarding critics towards the government in digital spaces.

Therefore, as a public policy research organization, The Indonesian Institute, Center for Public Policy Research (TII), writes a policy paper with a qualitative approach (January to mid-May 2021) that focuses on this topic particularly in relation to the ITE Law. The study tries to understand the policy content and context regarding freedom of expression, particularly citizens' criticisms towards the government in digital spaces. Our analysis also looks at concepts such as digital spaces, democracy and governance; legal-political approach, as well as policy implementation. Hereby, we would also like to thank Atlas Network for the support in undertaking this research and the research participants for their insights in enriching the findings and analysis of this study.

We expect that the paper can provide actionable and relevant policy recommendations with human rights and freedom perspectives and involve various stakeholders in order to promote freedom of expression and digital protection in Indonesia, particularly for the citizens' participation in the policy processes, including in voicing criticisms and feedback to the government in digital spaces.

Jakarta, 21 May 2021

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A. Background

Democracy requires open, equal, and fair governance. Hence, the pillars that carry the governance, namely the government, bureaucracy, civil society, and economic society, must be equitably interconnected in addressing issues and needs from society (Partnership, 2013 in Sunaryanto, 2014). Such a condition also requires that every role played by the democratic actors is well protected by a set of regulations within the country. However, the current situation in Indonesia is showing a contrasting state.

The reports from Freedom House (2019; 2020; 2021) show the stagnancy of Indonesia which is categorized as Partly Free regarding the Global Freedom Status. For three consecutive years, the average score for political rights and civil liberties in Indonesia were 30 out of 40 and 31 out of 61, respectively. The overall score of freedom status in Indonesia also shows a gradual contraction. From a total of 62 out of 100 in 2019, the score decreased to 61 in 2020, and 59 in 2021.

Among some cases that might be the cause for the decline of freedom status in Indonesia, the precedence of criminalization through some articles in Law Number 11 Year 2008 regarding the Electronic Information and Transactions (ITE Law) was one of the biggest obstacles in imposing the protection towards critics delivered by citizens through electronic tools. Hundreds of cases related to the ITE

Law recorded by numerous civil society organizations. The Southeast Asia Freedom of Expression Network (SAFEnet) monitored that since ITE Law stipulated in 2008, there were 324 cases manifested at least until October 2020. On the other hand, among the victims of ITE Law, the Press Legal Aid Institute (LBH Pers) also noted that there were at least 10 journalists in 2020 who were also convicted by ITE Law (bbc.com, 17/02/2021). From the last example, it can be seen that ITE Law is a problematic regulation since every work done by Indonesian journalists is protected by Law Number 40 Year 1999 regarding the Press. Hence, it cannot be penalized directly.

A revision towards ITE Law was done in 2016. To some extent, the revision implicitly illustrated that stakeholders are already aware of the obnoxious implementation of this regulation. However, the record from SAFEnet represents that the revision has not resolved the problem. Since 2017, there were 15.056 cases reported to the Directorate of Cyber Crime (Ditippidsiber) in the Indonesian National Police (Polri). From the total number of cases, 32 percent (5.064 cases) of it was related to the insult and defamation act (Juniarto, 2021). Although the Constitution of Indonesia (UUD 1945) has provided protection for citizens to express their thoughts (in Article 28 and Article 28E paragraph (3)), the law enforcement related to the articles in ITE Law is still detaining citizens who voiced criticisms, especially to the government.

Those examples have highlighted concerning alerts of challenges of citizens' freedom of expression (FoE) towards the government in Indonesia. Apart from existing stipulations in the Constitution that protect FoE in Indonesia, in practice, there are other policies and regulations, including ITE Law, which threaten citizens' FoE, particularly in sharing their critics and concerns towards the government in Indonesia. Therefore, in order to promote FoE, particularly in digital platforms and in relation to public criticism towards the government, The Indonesian Institute, Center for Public Policy Research (TII), writes a policy paper that focuses on the ITE Law. The paper is made based on TII qualitative research through desk study and in-depth interviews with related informants from January to mid-May 2021.

From a relational perspective, this study will first draw regulations that intertwine with the FoE and digital protection for Indonesian internet users. The paper will elaborate on the implementation of ITE Law and its impacts on FoE in Indonesia throughout the years after the policy mapping section as the focus of our research. For that, we are using conceptual frameworks related to FoE; digital space; digital democracy and governance; as well as policy implementation and legal-political. The analysis of the findings in the paper will also be contextualized in relation to various regulations and cases related to ITE Law and FoE in Indonesia. And at the end of this paper, it will provide recommendations to ensure the FoE and digital protection for Indonesian internet users.

B. Objectives

B.1. General Objective

This research aims to promote FoE and its protection in Indonesia, particularly freedom to voice criticism and feedback to the government through digital platforms.

B.2. Specific Objectives

1. This research is expected to provide recommendations for the parliament and the government to revise policies that oppress freedom of expression, particularly on ITE Law. The results will be shared with policymakers in order to improve their governing processes in providing a safe ecosystem for Indonesian internet users. Therefore, the citizens will be able to criticize the government without having to be afraid of being executed by illiberal policies.

2. This research aims to raise critical awareness of perceiving freedom of expression as part of human rights. It also will stress that the policymakers are obliged to facilitate and protect human rights, hence the public are free and confident to voice their thoughts.

C. Research Questions

Below are the questions of this research. We address the questions by looking at the normative aspect regarding related policies, the implementation of the policies as well as the law enforcement apparatus.

Main Question: How to ensure and promote freedom of expression in digital platforms, particularly in voicing criticism and feedback to the government in Indonesia?

In order to answer the main question, this paper will address the following sub-questions, especially in relation to ITE Law:

1. What conditions hampered the implementation of Freedom of Expression, particularly in criticizing the government in digital platforms in Indonesia?

2. What are actionable recommendations to deal with the challenges of freedom of expression in digital platforms in Indonesia, particularly in criticizing the government in order to create an enabling and encouraging ecosystem for public participation in policy processes?

D. Methodology

D.1. Research Design

This study is based on the qualitative method to approach the topics by undertaking desk research and in-depth semi-structured interviews with relevant informants. Qualitative research is applied due to its ability to provide more insight to strengthen the findings (Denzin and Lincoln, 1994 in Wahyuni, 2015). In general, the qualitative approach emphasizes the inductive thought process which refers to specific patterns leading to general patterns. Qualitative research can be defined as a type of research used to interpret the data obtained in-depth by giving meaning to the data and processing it so that it can be understood (Neuman, 2014). In this study, we apply the approach to obtain in-depth data to address the research questions and to achieve the objectives of this research.

D.1.1. Desk Research

Desk study is collecting and reviewing data from the literature in the form of books, journals, theses, and other sources, which are relevant to the problem or research objective (Babbie, 2013). A desk study will be conducted to collect physical evidence such as laws and regulations, key reference documents such as from research, news, and other related publications, and examples of data related to ITE Law and challenges of FoE in digital platforms, particularly public criticism of the government in Indonesia.

Document review is crucial in finding and analyzing the gaps between policy and practice on this topic. Lindsay Prior (2004) argues that documents show relationships in society. Therefore, the documents will be analyzed by taking into account human interactions which lie beneath the texts (Prior, 2004). For example, we will investigate what is stated in the related documents and cross-check the findings with other references, and validate them through in-depth semi-structured interviews to contextualize the research and the research findings.

D.1.2. Semi-structured in-depth interviews

According to Alston and Bowles (2003), in-depth interviews aim to see the world from the perspectives of the informants, investigate their thoughts and feelings, and carefully understand their point of view. The researchers have already defined some questions and topics but they also have a flexible checklist that is meaningful to the research participants and relevant to the research (Brinkmann, 2012; Mikkelsen, 1995). In this research, we conducted semi-structured interviews to get comprehensive information and understanding from the research participants about the topic and questions of the research.

Interviews were conducted online due to the COVID-19 pandemic, whether through emails, online calls, meetings, and messages. We selected a list of experts and practitioners from the government, the parliament, and the CSOs who have specific experience and knowledge regarding the topics of this research. We interviewed 10 informants for this research. The selection of the informants is considering their affiliations and relevance to the topics of the research.

E. Conceptual Framework

In assessing the phenomenon of ITE Law implementation, several concepts are used in this study to approach the research questions in relation to the Indonesian context. The focus of this study will revolve around the FoE at risk in the Indonesian digital space, which is filled by the digital activities from Indonesian internet users that are bound by ITE Law. At the same time, this study will also assess the phenomenon by using the policy implementation approach and the legal-political approach.

The paper also provides analysis of the topic in the context of digital democracy and governance in Indonesia in order to be able to understand the issue better and to further provide actionable recommendations to promote and protect FoE particularly in digital space as part of public participation in the policy processes. This section will provide elaboration about the concepts that this paper is referring to in analyzing the topic of the research.

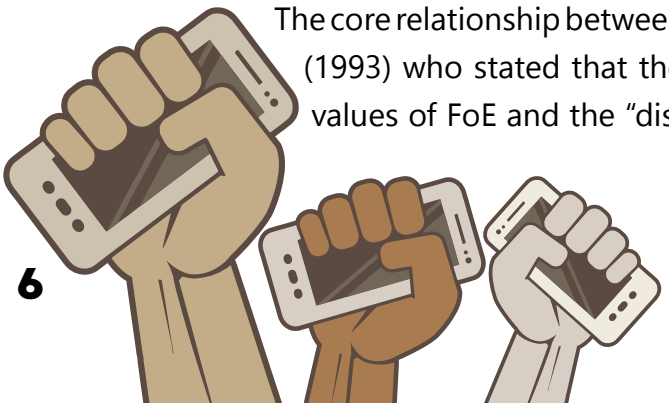
E.1. Freedom of Expression

A very fundamental concept to be delivered in this study is the FoE. Because the central activities observed in this study revolve around expressing ideas from one's thoughts, defining the FoE then becomes an essential part of gaining a comprehensive understanding of the topic. It will also help us to answer the research question better.

The discussion about expressing thoughts has been occurring for a long time and is tightly related to law enforcement. Wolff (in Wellington, 1979) positioned himself towards the FoE as follows:

> *[I]t is not to assist the advance of knowledge that free debate is needed. Rather, it is in order to guarantee that every legitimate interest shall make itself known and felt in the political process. Every party to the decisions of the government which is to say, every citizen must have the opportunity to argue his case and bring his pressure to bear. A voice silenced is a grievance unredressed or an interest denied a measure of satisfaction. Justice, not truth, is the ideal served by the liberty of speech.*

The core relationship between FoE and justice was also stressed by Cohen (1993) who stated that there is a common association between the values of FoE and the "discovery of truth, individual self-expression,



a well-functioning democracy, and a balance of social stability and social change". Therefore, we must agree with Carlsson and Weibull (2018) that FoE is not only "a matter of law, but also a question of ethics and morality." They also argue that FoE "concerns the intrinsic equality of human rights, as set out in the UN Universal Declaration of Human Rights" (Carlsson & Weibull, 2018).

Nowadays, FoE is also affected by the development of the internet. A historian from Columbia University, Richard R. John (2019) draws challenges upon the FoE in the new digital age. He stated that the efforts to make the FoE maintained as an essential part of rights and a defender of liberty are devising the norms "to reinstate the spatial boundaries and temporal limits that the current regulatory regime has emboldened social platform providers to overstep." Although the intervention by providers is often caused by the pressure they get from the state, we must admit that all activities regarding the FoE are not determined by the medium used by the people (Momen, 2020) including the social media provided by providers. The condition then makes the correlation between expressing thoughts and digital space greatly knitted.

E.2. Digital Space

In discussing FoE in the digital age, this study also applies the definition of the digital or online space as a locus in assessing the rights to express. Trevor G. Smith (2017), a lecturer in the School of Journalism and Communication in Carleton University, Canada, defines an online space as a new experience of interaction that marks it as different from traditional forms of offline space. The new space then opens up a new method to engage in an interaction. The interaction, referring to Smith, can also call into existence new ways of being political which can trigger debates related to the political realm.

Any obstacles related to the limitation of physical space and time, that once hampered the talk about the political realm in the traditional forms, were then eliminated. Hence, online space can challenge arguments that seek to limit access to the political realm for allegedly practical reasons. Because it is much easier to create, shape, and grow (Smith, 2017). In this paper, digital space is used as a scope limitation. Therefore, the analysis will not be detached from online space and the expression

that emerged within. It would also help us to draw the trends that occurred regarding the rights to express in the Indonesian digital space. Other than that, digital space could also help this study to identify factors that hamper the implementation of the FoE principle in Indonesia.

E.3. Digital Governance and Democracy

Discussion on FoE in digital space should also be contextualized in relation to digital governance and democracy. The contextualization becomes important because the right to express is a manifestation of a working system of governance and democracy. Along with the digital space as a scope, the implementation of governance and democracy principles can be illustrated by elaborating digital activities conducted by many actors who are also internet users within one country. An inevitable transition towards the implementation of democracy departs from the acknowledgment that democracy has its own normative problems regarding unequal participation, as it translates into unequal political influence for the groups which participate the most (Gallego, 2007; Lijphart, 1997 in Bright et al., 2019).

As Bright et al. (2019) clearly state that:

> *One well-established characteristic of participatory websites, including those focused on e-democracy, is that contribution levels typically exhibit a highly skewed distribution, whereby the majority of people who make use of the service contribute only a little, whilst a small minority (called as power users in the paper, ed.) contribute a lot (Nielsen, 2006 in Bright et al., 2019).*

Another notable argument from the paper by Bright is that online activities conducted in the online sphere are relatively cost-free in terms of time compared to offline mobilization (Margetts et al., 2015a in Bright et al., 2019). However, the new way of doing activities for citizens is also followed by the new way of governing by the state. As mentioned by Lyon (2002), the surveillance acts by the government have also transformed into the digital sphere. Therefore, Lyon stated that digital surveillance becomes an everyday experience faced by the citizens in digital space, aims to influence and manage population and persons.

Therefore, in contemporary digital democracy and governance, there are two activities facing each other in digital space. The first activity is the one played by the citizens, including the manifestation of FoE

such as giving critics and suggestions to the government. On the other hand, the government not only becomes a passive entity. It also played its role, one of which is by conducting digital surveillance towards the citizens. The relationship between citizens and the government then creates unequal interactions. If the government is controlling the citizens in digital space, then the government has the higher position and potential to put the principles of governance and democracy at risk. Therefore, we then can assume that the digital governance and democracy in this paper are stressing more on how the government organizes its authorities towards the citizens in utilizing the digital technology in expressing their FoE, including in criticizing the government.

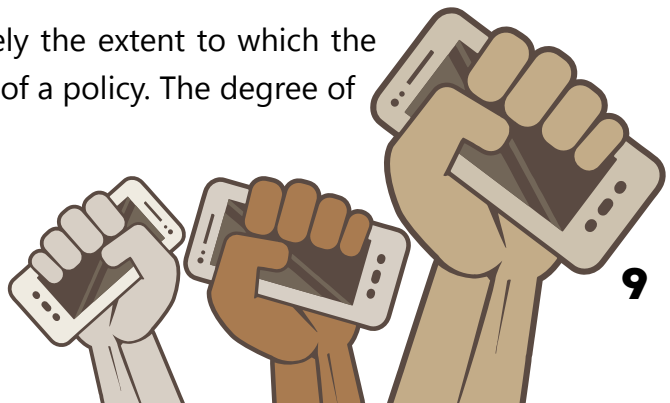
E.4. Policy Implementation

Prior to analyzing the topic of this study, it is also important to understand the concept of policy implementation, particularly in relation to FoE in digital space and in the context of digital democracy and governance. According to Merilee S. Grindle (in Subarsono, 2006), successful implementation is influenced by two major variables, namely the content of the policy and the context of implementation. The content variables of this policy include the following:

1) The interests of the target group. The interest that is influenced by the policy concerns the extent to which the interests of the target group or target groups are contained in the content of the policy. These interests relate to various interests that have an influence on policy implementation. This indicator argues that the implementation of a policy must involve many interests and the extent to which these interests influence implementation.

2) Types of benefits, namely the types of benefits received by the target group. In policy content, policy benefits attempt to show and explain that in a policy there must be several types of benefits that contain and produce a positive impact by the implementation of the policy to be implemented.

3) The degree of change desired, namely the extent to which the desired change is from the existence of a policy. The degree of



change to be achieved shows how much change that is to be or wants to be achieved through the existence of policy implementation must have a clear scale.

4) Location of decision-making. Whether the location of a program is correct or not. Making a decision in a policy plays an important role in the implementation of a policy, therefore in this section, it must be explained where the decision making of a policy to be implemented is located. The more dispersed the position of decision-makers in the implementation of public policies, both geographically and organizationally, the more difficult it will be to implement the program. Because more and more decision-making units are involved in it.

5) Program implementation. This means whether a policy has mentioned its implementer in detail. In implementing a policy or program, it must be supported by a policy implementer who is competent and capable of the success of a policy.

6) The resources involved, whether a program is supported by adequate resources. The implementation of a policy must also be supported by adequate resources so that its implementation can run well.

While the policy environment variables include:

1) How much power, interests, and strategies are owned by the actors involved in policy implementation. In a policy, it is necessary to take into account the strengths or powers, interests, and strategies used by the actors involved in smoothing the implementation of a policy.

2) Characteristics of institutions and rulers, how are the institutions and regimes in power. The environment in which a policy is implemented also has an influence on its success, so this section describes how the characteristics of an institution will influence a policy.

3) The level of compliance and responsiveness of the target group. Compliance and response from the implementers are also considered to be an important aspect in the process of implementing a policy, so what will be explained at this point is the extent of compliance and response from the implementers in responding to a policy.

The Grindle model lies in its comprehensive understanding of the policy context, especially with regard to implementers, implementation recipients, and the arena of conflict that may occur between implementation actors, as well as the conditions of implementation resources required.

E. 4.1. Policy Implementation Mapping

As mentioned previously, in approaching the research questions, we also look at and analyze policy implementations related to the topic of this research in order to understand the dynamics of citizens' FoE in digital platforms in Indonesia. In this case, policy implementation also relates to existing policymakers and stakeholders related to FoE in digital platforms in Indonesia. Therefore, a policy implementation mapping is included in the analysis of this study.

In relation to actors who are involved in the policy processes, William N. Dunn (2003 in Luthfan, 2019) explains that there are actors who influence a policy. According to Winarno (2012 in Taufik & Vermonte, 2015) public policy actors can be divided into two groups, namely the official actors and the informal actors. Included in the official role are government agents (bureaucracy), president (executive), legislative, and judiciary. Meanwhile, those included in the informal actors are interest groups, political parties, and individual citizens.

Whereas, on the policy processes, Howlett and Ramesh (1995 in Luthfan, 2019) state that the dominant factors in the policy process are policy actors and institutions related to these actors. In this case, it can be seen that individuals, institutions, groups, or organizations that are stakeholders in a policy have their own interests and become a very influential factor in producing a policy. In relation to stakeholders, Freeman (1984 in Taufik and Vermonte, 2015) defines stakeholders as parties affected by policies and parties who can influence policies ("... who is affected by the decisions and actions they take, and who has the power to influence their outcome, i.e. stakeholders "). From Freeman's definition, it can also be said that stakeholders are those who affect or are affected by a decision or action of related policies.

In this study, we are using policy implementation mapping to have a topic of this research, particularly in identifying related stakeholders, their interests, and positions on citizens' FoE in digital platforms in Indonesia. We also use this mapping to analyse the dynamics of existing policies and their legal politics, the implementation as well as relations between various stakeholders, particularly in the context of FoE and digital space.

E.5. Legal-Political

Understanding the interplay of implementation of ITE Law and related actors in relation to FoE in digital space in Indonesia should also be approached by a legal-political approach towards the ITE Law. This approach is important in order to understand the rationales both legal and political behind particular policies and regulations. Through a political-law approach, will enable us to understand the current positive law (*ius constitutum*), but also the background or reasons for the formation of certain laws and regulations. This can be tracked by reading the Academic Paper which contains scientific studies of the legal rules needed in the future (*ius constituendum*).

Furthermore, in order to comprehensively understand the increasing number of criminal cases in cyberspace related to the ITE Law, what must be considered is the purpose of forming *a quo* law contained in the Academic Paper. Because in the file there is a legal-politics direction from the formation of the ITE Law before the contents of the law are discussed. In addition, legal politics also functions to examine the legal needs of society for a problem.

LJ. van Appeldoorn (1981) explained that legal politics is a way to establish objectives and content in the formulation of laws and regulations. The definition of law is limited to written law only. The same thing was also conveyed by Mahfud MD (2009) who stated that legal politics is a legal policy regarding the law that will be enforced either with the new law or the replacement of the old law, in order to achieve the goals of the country. Therefore, in simple terms, legal politics is a method used by policymakers while still paying attention to the needs and development of society, and making the resulting legal products remain relevant to developments that occur in society.

It can be concluded that what is meant by law politics is a series of concepts, principles, basic policies, and statements of the will of state authorities which contain politics of law formation, politics of determining law and politics of law enforcement, regarding the function of institutions and fostering law enforcers to determine direction. The form and content of the law to be formed, the law applicable in its territory, and the direction of the law development is to achieve the goals of the state. In every law formation process, the influence of political power will never be separated.

According to Daniel S. Lev (1990), what is most decisive in the process of law formation is the conception and political power, namely that law is more or less always a political tool, and that the place of law in a state depends on the political balance, definition of power, evolution of political ideology, economic, social, and so on.

The entry of political power in the process of forming a legal regulation cannot be separated from the role of the House of Representatives, which has a law-forming function. The branch of legislative power-filled by politicians makes the legal products they make inseparable from political content. So that the role of government as a branch of executive power that carries out statutory regulations must be able to be a counterweight (*checks and balances*) so that the objectives and benefits of the law do not harm the rights of the principal of society.

Based on the conceptual framework above, this paper will approach the topic of this research by initially looking at related policy mapping on FoE in digital space, particularly in relation to public criticism of the government and ITE Law and in the context of digital democracy and governance. We will relate the analysis with the implementation of the policies, especially ITE Law, and how it challenges FoE in Indonesia, particularly related to critics towards the government. The discussion will be followed by an analysis of countering challenges of FoE in digital space and protection of public participation in policy processes.

F. Policy Mapping Regarding the Freedom of Expression in Indonesia

FoE as in expressing opinions in public is one of the constitutional rights protected by the 1945 Constitution. Article 28 of the 1945 Constitution guarantees everyone to express their thoughts orally, in writing, and in other forms, which are then stipulated by law. This spirit was then poured into Law Number 39 of 1999 concerning Human Rights. Indonesia's commitment to human rights, including FoE, was further strengthened when it ratified the International Covenant on Civil and Political Rights into Law Number 12 of 2005.

However, technological developments do not coincide with and bring their own challenges to protection towards FoE in the digital space. One of the regulations commonly used to suppress public votes is ITE Law. If we examine the objectives and legal politics of its formation in the Academic Paper of the ITE Law, there will be errors in the formulation of the material up to the implementation stage. For example, one of the initial objectives of the ITE Law in the Academic Paper was awareness that the personal data of electronic media users must be legally protected. However, at the implementation stage, people's electronic data protection tends to be neglected. Because the majority of violations of the ITE Law are no longer related to protecting the community in the cyber world, but rather conventional crimes in the Criminal Code that occur in the cyber world. One of them is Article 27 paragraph (3) of the ITE Law related to defamation.

In the background section of the ITE Law Academic Paper, it is explained that the development of the digital world creates new civil problems, namely the emergence of e-commerce transactions that have become part of national and international commerce. In the explanation section of the ITE Law, it is also emphasized that activities carried out through electronic media systems, although virtual in nature, can still be categorized as real legal actions or actions. Alongside to protect virtual economic transactions, the ITE Law also seeks to protect user data and information.

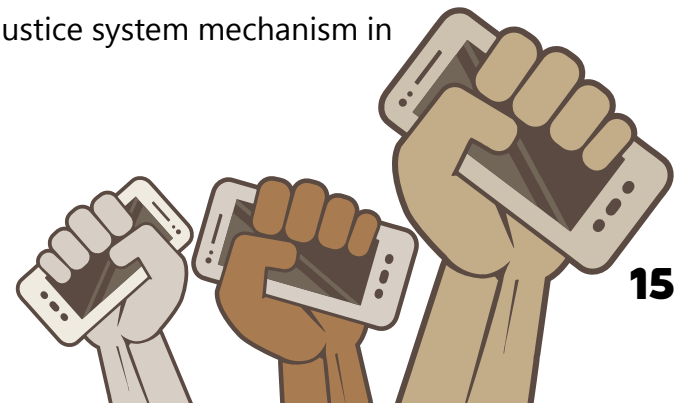
This is similar to what was explained by Johan Budi, a Member of Parliament of Commission III at the Indonesian House of Representatives (*Dewan Perwakilan Rakyat Republik Indonesia*/DPR-

RI). He explained that initially, the ITE Law was made to ensure legal certainty for information and electronic transactions as well as to protect against criminal acts related to the internet (*cyberlaw*). This initial objective within the ITE Law actually needs to be emphasized to a wider public (Interview on 11 May 2021).

Nevertheless, developments in the implementation of the ITE Law have instead shifted to types of criminal acts that are not related to the protection of information and electronic transactions. This happens because there are errors in classifying criminal law. In addition to the general criminal provisions stipulated in the Criminal Code and special criminal offenses outside the Criminal Code, there are also provisions known as Administrative Penal Laws. This arises because of the emergence of an Administrative Law tendency that includes criminal sanctions to strengthen administrative sanctions. The aim is that the use of criminal sanctions can only be carried out if administrative sanctions are unable to create a deterrent effect.

When we are more careful in examining the position of the ITE Law in regulating law in Indonesia, the law is actually included in the category of administrative penal law. It can be seen from several articles that regulate criminal sanctions, such as Article 27 paragraph (3) of the ITE Law on insulting and defamation which is punishable by imprisonment and fines. It becomes a special arrangement because the provisions of the article have been regulated in the Criminal Code.

Referring to Andi Hamzah's opinion, the ITE Law is administrative law and not criminal law. If you still want to contain criminal provisions, you can only be threatened with six months imprisonment or administrative fines (idntimes.com, 4/11/2020). The ITE Law should only regulate administrative provisions for electronic transactions and the protection of digital information. Violations of the ITE Law also only have to be rewarded through administrative sanctions such as revocation of licenses. Meanwhile, conventional crime is simply returned to the Criminal Code by providing an expansion of loci in cyberspace. This will reduce the space for the police to take advantage of the specificities of the ITE Law (*lex specialist*) as it is today because they will be limited by the justice system mechanism in the Criminal Procedure Code.



At the implementation stage, the ITE Law is often used to silence critical voices from various community groups, such as activists, laborers, and farmers. This argument is also confirmed by Damar Juniarto, the Executive Director of SAFEnet. He explained that initially, the original intent of ITE Law came from the urgency to create protection and legal certainty for individuals in the digital space. But, ironically, the recent implementation of ITE Law tends to control the content that emerges in the digital space. This kind of usage of ITE Law then added a list of regulations that are often used to accuse someone of expressing opinions in digital media (Interview on 29 March 2021). Those regulations are presented in the following table.

Table 1. Legal Regulations that Restrict Freedom of Expression

No.	Law	Problematic Articles
1	The Criminal Code	Article 156, Article 157 paragraph (1), Article 310, Article 311, and Article 315.
2	Law Number 19 of 2016 concerning Law Number 11 of 2008 concerning Information Technology and Electronic Transactions	Article 26 paragraph (3), Article 27 paragraph (1), Article 27 paragraph (3), Article 28 paragraph (2), Article 29, Article 36, Article 40 paragraph (2a), Article 40 paragraph (2b), and Article 45 paragraph (3).
3	Law Number 1/PNPS/1965 concerning the Prevention and/or Blasphemy of Religion	Article 1, Article 2 paragraph (1) and (2), Article 3, and Article 4.

Source: Various sources and compiled by The Indonesian Institute, 2021.

The legal substance in the ITE Law specifically regulates transactions and actions that occur in the digital space. However, in regulating criminalization, the ITE Law is used as a special law (*lex specialist*) on the Criminal Code and Law Number 1/PNPS/1965 concerning the Prevention and/or Blasphemy of Religion. As a result, when someone is charged with multi-interpretive articles in the ITE Law, it will be more difficult for them to escape because there is the reinforcement of other general criminal provisions.

Referring to the application of several provisions contained in the ITE Law, this regulation tends to be a tool to limit FoE. History records that in the past, the Indonesian Government had implemented policies that restricted FoE. So, the ITE Law is not the first statutory regulation to limit FoE and opinion.

During the *Orde Lama* (the Old Order) era, Soekarno had conducted surveillance of several newspapers, namely *Pedoman, Abadi*, and *Indonesia Raja*. Soekarno, at that time, argued that the media was counter-revolutionary. Indonesia at that time was indeed carrying out a socialist revolution. It does not stop in that era, history also records that when the *Orde Baru* (the New Order under Soeharto) came to power, the state silenced critical voices. Lots of 'vocal' activists ended up imprisoned or exiled, even 'disappeared' until now with the Anti-Subversion Law which stipulated in Presidential Regulation (*Peraturan Presiden*/Perpres) Number 11 of 1963. Hence, it made everyone afraid to express themselves and have an opinion (Asumsi.co, 2021).

The same thing is currently happening, no longer in a conventional form, but has developed following technological advances by limiting FoE in the digital space using the ITE Law. One of the provisions that are often used to convict critics of the government is Article 27 paragraph (3) of the ITE Law which regulates defamation. Because the article received public criticism, in 2016, the ITE Law was revised, and the defamation article was added to the explanation section. However, adding an explanation did not solve the conviction that occurred due to the problematic part of the article is not only at the level of implementation but also at the formulation of the phrases in the article. Therefore, the most appropriate choice is to delete the article, not only to provide an interpretation that does not solve the problem at all (Febrinandez, 2021).

One of the contents of the ITE Law which has been reviewed several times by the Constitutional Court is Article 27 paragraph (3). This article generally regulates the prohibition of any person from distributing, transmitting, and making accessible Electronic Information and/or Electronic Documents that contain defamation and/or insult. However, this article is often interpreted freely and ended up with a repression act towards the legal expression of citizens, activists, and journalists/media. Free interpretation of the article, then, cannot be separated from the ambiguity of the formulation in the regulation.

According to Burkhadt Krems (1979), a Professor of Legislation from Germany, a statutory regulation must be oriented to the search for clarity of meaning and be cognitive. The lack of a legal formula

will result in material losses and abuse of power of state administrators. In addition, the clarity of the formulation in the law is also one of the principles of formation contained in Article 5 letter f of Law Number 12 Year 2011 concerning the Formation of Legislation. Hence, if a legal norm is unable to accommodate an act, and is still forced to be formulated in an incomplete phrase, it will result in legal uncertainty for the community. Therefore, in order to interpret a norm that is considered contrary to the constitution, a judicial review channel is opened whose authority is owned by the Constitutional Court.

When a judicial review was conducted on Article 27 (3) of the ITE Law, the Constitutional Court stated that the provision was constitutional and did not contradict the 1945 Indonesian Constitution. The final and binding nature of the Constitutional Court's decision is a stepping stone for legislators not to make changes to rubber articles in various forms of statutory regulations. Not only the ITE Law, there are several other legal regulations that threaten FoE and have been subject to judicial review, but are still considered constitutional by the Constitutional Court decision (see Table 2). Looking at historical tracks of illiberal laws in Indonesia, this situation is seriously challenging the promotion and protection of FoE, particularly in criticizing the government due to rubber articles in policies and regulations that curtail it.

The position of the Constitutional Court decisions, which strengthen the existence of multiple interpretive articles in several laws, must be able to be responded wisely by the DPR and the Indonesia Government in order to promote and protect citizens' FoE in Indonesia, including in criticizing the government. Particularly, on the articles which could easily lead to a person being convicted directly or injure the right to express an opinion.

Looking at the existing policies above and using the legal-political approach, it can be said that the existence of multi-interpretive articles in the ITE Law has gone out of its original purpose, which is to provide protection to the public when transacting in cyberspace. The Constitutional Court decision also cannot be used as a justification for the legislators to maintain articles that violate people's FoE. The Constitutional Court only normatively tested the provisions contained in the law against the Constitution. Meanwhile, DPR and the government have the authority to evaluate

the norms in the ITE Law and review the problems that arise as a result of the implementation of multi-interpretive articles that lead to restrictions on FoE and imprisonment.

Table 2. Constitutional Court Decisions Regarding Articles that Limit Freedom of Expression

Law	Constitutional Court Decisions	Article Under Judicial Review	Notes
The Criminal Code	1/PUU-IX/2011	Article 310 paragraph (1) and paragraph (2)	Reviewed about the provisions concerning defamation contained in the Criminal Code. The applicants deemed this provision contradicting Article 28 of the 1945 Constitution. In its decision, the Constitutional Court rejected the applicant's request in its entirety.
	76/PUU-XVI/2018	Article 156 and 157 paragraph (1)	The applicants asked that the phrase along the "groups" in the article being tested was interpreted by the Constitutional Court not including "group based on religion". However, the Constitutional Court in its decision rejected the applicants entirely.
Law Number 19 of 2016 concerning Law Number 11 of 2008 concerning Information Technology and Electronic Transactions	50/PUU-IV/2008	Article 27 paragraph (3) and Article 45 paragraph (1)	The applicant who is a journalist considers that the enactment of the provisions concerning the contents of insult and/or defamation in Article 27 paragraph (3) ITE Law has violated his constitutional rights. The Constitutional Court in its decision completely rejected the applicant's request.
	2/PUU-VII/2009	Article 27 paragraph (3)	The applicants consider that the enactment of the provisions regarding the contents of insulting and/or defamation in Article 27 paragraph (3) of the ITE Law violates their constitutional rights. The Constitutional Court in its decision stated the applicant's request in its entirety.
	52/PUU-XI/2013	Article 28 paragraph (2)	The applicant which requests a judicial review considers that the application of the article requested can hinder the applicant's freedom to express his thoughts and attitudes, according to his conscience and convey information using all available channels as guaranteed in Article 28E paragraph (2) and 28F of the 1945 Constitution.

Law	Constitutional Court Decisions	Article Under Judicial Review	Notes
	76/PUU-XV/2017	Article 28 paragraph (2) and Article 45A paragraph (2)	The applicants asked the Constitutional Court to state that the provisions of the phrase "and between groups" in Article 28 paragraph (2) of the ITE Law have no legal force. However, in its decision, the Constitutional Court rejected the request of judicial review in its entirety.
	78/PUU-XVII/2019	Article 32 paragraph (1)	The applicants consider that the prohibition of changing, transmitting, transferring electronic information and/or electronic documents belonging to other people or public property as stipulated in article 32 paragraph (1) of the ITE Law has the potential to prevent Subscription Broadcasting Institutions from carrying out their obligations under the provisions of the Broadcasting Law. The Constitutional Court in its decision rejected the applicants' request for the judicial review in its entirety.
Law Number 1/PNPS/1965 concerning the Prevention and/or Blasphemy of Religion	140/PUU-VII/2009	Article 1, Article 2 paragraph (1) and paragraph (2), Article 3, and Article 4	The applicants said the Article 1 of Law Number 1/PNPS/1965 Contradicts Article 28E paragraph (1) and (2), Article 28I paragraph (1), and Article 29 paragraph (2) of the 1945 Indonesian Constitution concerning the Right to Religion, Believe in Belief, Express Thought and Attitude, according to his conscience. The Constitutional Court in its decision completely rejected the Applicants' request.
	76/PUU-XVI/2018	Article 4	The existence of the article being reviewed has violated the essence of the fundamentals of religion itself, in which every religion must be considered true depending on who its religion is and the teachings of each religion must be different, and because of this difference, it is impossible for the teachings of one religion not to defame another religion. The Constitutional Court in its decision rejected the request of the judicial review entirely.

Source: Directory of Constitutional Court Decisions, 2021.

On the public policy aspect and referring to Grindle's model of policy implementation, In the aspect of public policy and referring to the Grindle policy implementation model, the changes to be achieved through implementation are contrary to the objectives of the policy. The articles that have multiple interpretations make law enforcement officers as policy implementers fail in implementing the objectives of the policy. Therefore, policymakers and law enforcers must be able to learn from precedents related to FoE in the digital space. However, it will be difficult if law enforcement officials still do not have a human rights perspective, including an understanding of FoE.

The efforts to transform perspectives of policymakers and law enforcers towards the FoE issue should also reach beyond the content of the law and how to interpret it. There is also another essential factor that needs to be addressed: the acknowledgment of digital development which has direct implications on society. The new space that we called digital space in this study is not only a passive room that has unlimited resources, the space also has transcendence impacts which can massively change our established behavior in the traditional space (van Doorn, 2011 in Boddy & Dominelli, 2017). This space even has several prefixes that have been used interchangeably. The subtle trend, therefore, differentiates the term cyberspace from other forms of prefixes such as e- and digital- (Kurbalija, 2015). The consequence of this differentiation is the existence of heterogeneous digital activities that could emerge in the digital space. Therefore, the comprehension of this concept should also be attributed to every policymaker and law enforcement who has an obligation to create harmonious digital activities among internet users.

Unfortunately, the current condition reflects that the government through the state apparatus such as Polri, has used its authority to tackle online criticism. M. Busyrol Fuad, our interviewee from The Institute for Policy Research and Advocacy (*Lembaga Studi dan Advokasi Masyarakat*/ELSAM), gave one solid precedent about the practices taken by the Government. It occurred when the Government and the DPR were formulating the Job Creation Law (*UU Cipta Kerja*). According to Fuad, the President gave an instruction to intels and police to harrow every group that critically discusses the Job Creation Law, primarily in digital space. The instruction from the President also manifested as the National

Police Chief produced several lettergrams, which obliged police officers to take action in harrowing any notions that emerged regarding the Job Creation Law (Interview on 6 April 2021).

From the response illustrated, as argued by one of our interviewees, Johan Budi, Member of Parliament of Commission III at the Indonesian House of Representative (*Dewan Perwakilan Rakyat Republik Indonesia*/DPR RI), knowledge improvement towards digitalization is very important. The expanding comprehension, through socialization and cultural approaches to the community regarding the digital space (especially social media), needs to be done by the government, community leaders, and also NGO groups. He also said that leveling up the knowledge of law enforcers regarding the implementation of the ITE Law and the FoE principles is an important task that needs to be done (Interview on 11 May 2021).

Sukamta (Interview on 29 March 2021), another Member of the Parliament of Commission I at DPR RI also gave a similar notion. He said that socialization, education, and coaching in regards to the ITE Law by the government are important to be addressed. Therefore, digital activities regarding the implementation of governance and democracy principles can be materialized better. Because, the citizens already acknowledge the digital space and how to operate within, on the one hand, and the state actors also understand how to carry out their duties without violating the rights attributed to every citizen, on the other hand. Further, as stated by Sukamta on the same occasion, the existence of freedom of expression is parallel with the efforts to materialize a democratic life.

G. Polemics of Policy Implementation: Grindle's Model of Content and Context of Policy Analysis on Current Freedom of Expression Conditions in Indonesia

Referring to Grindle's theory in policy implementation, there are two aspects assessed which are the policy content and policy context. The content aspect is related to several variables such as the interest of the target group, the types of benefits, the desired changes, the location of the decision making, the implementation program, and the resources

deployed. Meanwhile, the context aspect will observe external factors such as the power, interest, and strategy attributed to the related actors. Other than that, it also assesses the features of the parties who hold power and authority which will impact the environment when a policy is implemented. The last variable on the context aspect comes from the compliances and responses that emerged from the targeted group. All of these variables are contextualized with the contemporary conditions of FoE, particularly in digital spaces towards the government in Indonesia.

G.1. Content Aspect

Interests of the target groups

Regarding this variable, in general, the government stated the commitment to protect the FoE of all Indonesian citizens, including in the digital spaces. According to Henri Subiakto, an Expert Staff to the Minister for Communication and Mass Media at the Ministry of Communication and Informatics (Kementerian Komunikasi dan Informatika / Kominfo), the protection of citizens' freedom of opinion and expression in digital space is protected by the 1945 Constitution (UUD 1945). Article 28 E (2) states that everyone has the right to believe, express thoughts, and also attitudes according to their conscience. Furthermore, Article 28 E (3) states that everyone has the right to engage in an association, to assemble, and to express (Interview on 7 April 2021).

Therefore, the guarantee of FoE stipulated in the Constitution is referred to as the constitutional right of Indonesian citizens. Furthermore, this was later revealed in the form of ITE Law. Therefore, according to Henri, freedom of opinion and expression in Indonesia does not have a problem because freedom is a basic right that is protected by the Constitution and laws or also known as constitutional rights. In fact, this is also stated in the ruling of the Constitutional Court (MK) regarding the judicial review of the ITE Law in 2013 which stated:

> *Article 28 paragraph (2) of the ITE Law petitioned by the Petitioners is in accordance with protection, including protection of the honor of all Indonesian people, parallel to the principle of participating in implementing world order based on independence, eternal peace, and social justice; in line with the Almighty Godhead, because there is no religion that justifies the spread of hatred.*

Therefore, looking at the Constitutional Court's decision, it should be understood if the existence of ITE Law is to protect, including freedom of opinion and expression (Interview with Henri Subiakto, Expert Staff to the Minister for Communication and Mass Media at the Kominfo, on 7 April 2021).

On the protection of human rights regarding FoE in Indonesia, Edward Omar Sharif Hiariej, Deputy Minister at the Ministry of Law and Human Rights (Kementerian Hukum dan Hak Asasi Manusia / Kemenkumham) said that protection can be seen from two sides, namely: in abstracto and in concreto. In abstracto, which is normative in the form of rules such as laws. When it comes to FoE, in Indonesia this is regulated in the 1945 Constitution, the ITE Law, and other regulations. In concreto or in practice, the protection of freedom is also limited. These restrictions are contained in Article 28J of the 1945 Constitution which states that: (1) Everyone is obliged to respect the human rights of others in an orderly life in society, as a nation, and as a state. (2) In exercising his/her rights and freedoms, every person is obliged to comply with the restrictions stipulated by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with moral considerations, the values of religion, security, and public order in a democratic society. This restriction is carried out for the realization of public order (Interview on 13 April 2021).

With existing regulations and the government commitment to protect human rights, including the FoE of the citizens, as highlighted above, resource persons from the government argue that it is not correct to say that the current government is authoritarian. Erwin Muslim Singajuru, Special Staff for Politics and Law, Coordinating Ministry for Political, Legal and Human Rights (Kementerian Koordinator Bidang Politik, Hukum, dan Keamanan Republik Indonesia / Kemenkopolhukam), argued that this is not the case because criticism is still allowed, even if we look at social media, it is very crowded with insults. There are even political elites who are always vulgar and cynical about the government, but they are not arrested and still free to argue. So it can be said that the government is not anti-criticism. However, if someone violates human rights, it needs to be limited as in Article 28 J above (Interview on 6 April 2021).

However, this study also found that the above statements from the government officials contradict data from the National Human Rights Commission's (Komisi Nasional Hak Asasi Manusia / Komnas HAM). Beka Ulung Hapsara, a Commissioner at Komnas HAM, said the condition of FoE can be seen from several findings of Komnas HAM, for example, the 22 complaints to Komnas HAM throughout 2020 regarding the existence of digital attacks. Furthermore, Komnas HAM collaborated with Litbang Kompas (Kompas Research and Development Center) to conduct a survey related to FoE. The survey results stated that 36% of respondents felt that they are not free, especially when they used their rights to express themselves on the internet. The report from the Freedom House (2020) about internet freedom also magnifies the argumentation from Beka. This research shows that Indonesia is categorized as a partially free country. This category was obtained by Indonesia after getting a score of 49 out of 100 for internet freedom. This score has decreased from the previous year, which was 51 out of 100 (Interview on 13 April 2021).

Based on the statement mentioned above it can be said that the protection of FoE is a basic right of all Indonesian citizens. The rights of FoE of all Indonesian citizens are protected in the state constitution, namely in the 1945 Constitution and in the ITE Law. However, in practice, citizens claim that the protection of FoE is still facing several obstacles due to the arguments of public order in society as a national and as a state, although as displayed in the cases of FoE in digital spaces, it can be seen that FoE is critical particularly on the cases where citizens are being vocal to the government. This is also reflected in the findings from the Komnas HAM and Litbang Kompas survey above.

Types of Benefits for Target Groups and Degree of Change Desired

Furthermore, referring to the variables of benefits of the ITE Law, this is stated in the principles and objectives of the ITE Law. Article 3 states that the use of information technology and electronic transactions is carried out based on the principles of legal certainty, benefits, caution, good faith, and freedom to choose technology or technology neutrality. Meanwhile, the desired change objectives are set forth in Article 4, namely:

A. Educating the nation's life as part of the world information society;

B. Developing trade and the national economy in order to improve the welfare of the community;

C. Increasing the effectiveness and efficiency of public services;

D. Opening the widest possible opportunity for everyone to advance their thoughts and abilities in using the Information Technology optimally and responsibly; and

E. Providing a sense of security, justice, and legal certainty for users and operators of Information Technology.

Based on the principles and objectives of the ITE Law, the benefits and changes desired in the Law are aimed at the aspects of economic development, public services, and human resource development. In addition, the Law also states that in its implementation, the ITE Law is carried out to provide a sense of security, justice, and legal certainty for users and administrators of Information Technology. This regulation is intended to provide security for information technology users, especially when carrying out electronic transactions from criminal practices.

However, in practice, which includes the variables of program implementation, decision-makers, and the resources involved, as stated by Edward Omar Sharif Hiariej from Kemenkumham, there are articles in the ITE Law that have multiple interpretations so that in criminal law this should not meet legality. The problems in the policy implementation occur due to the multiple interpretations of articles in the ITE Law cannot immediately blame law enforcement officials. This is because the complaint offense used is subjective, except for the spread of hatred against ethnicity, religion, race, and intergroup (suku, ras, agama, antar-golongan/ SARA), the authorities can immediately take action against this (Interview on 13 April 2021).

Unfortunately, the ITE Law and other related regulations, as well as the criminalization of FoE cases, including the ones regarding citizens' critics towards the government in the digital platforms on the basis of public security and order as argued by the government and the legal apparatus and as reported by the public themselves towards the critical voices on the government, have been discouraging the people to express their

opinion freely on the digital platforms as they are already afraid to do so due to those circumstances.

Location of Decision Making

This variable relates to parties who have important positions for making important decisions in the implementation of the ITE Law, which in this case are the Kominfo and also the police agency. The position of the Ministry of Communication and Information is regulated in Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions as a derivative of the ITE Law. In the regulation, it is stated that the party implementing this law is the ministry that carries out government affairs in the field of communication and information technology. In addition, in this regulation, the Ministry of Communication and Information is also in a position to terminate access to electronic information and/or electronic documents as stated in Article 95 letter a.

Furthermore, apart from what has been mentioned above, if we refer back to the ITE Law, Kominfo is also authorized to be an investigator. This is stated in Article 43 which states that apart from Investigating Officials of the State Police of the Republic of Indonesia, certain Civil Servant Officials within the Government whose scope of duties and responsibilities is in the field of Information Technology and Electronic Transactions are given special authority as investigators as referred to in the Law on Law. Criminal procedures for investigating criminal acts in the field of Information Technology and Electronic Transactions. Certain civil servant phrases in the field of Information Technology and Electronic Transactions here refer to the role of Kominfo. Therefore, the position of Kominfo can be an investigator in the ITE Law.

Apart from Kominfo, the Police have a position in carrying out investigations based on Article 42 which states that investigation of criminal acts as referred to in this law is carried out based on the provisions of the criminal procedure law and the provisions of this law. The ITE Law is not only a legal umbrella in carrying out its position. In practice, the National Police cannot be separated from the provisions of the Criminal Code and the Criminal Procedure Code. This is because several articles in the ITE Law still pay attention to the provisions in the Criminal Procedure Code because there are

things that are not regulated in the ITE Law but are regulated in the Criminal Code and Criminal Procedure Code.

Program Implementers

Program implementers, namely the ability of the parties implementing the program will affect the successful implementation of the program. However, in the implementation of the ITE Law, the implementing party has not yet succeeded in carrying out the objectives of the policy. In fact, it is the opposite that causes threats to FoE. In response to this, Edward Omar Sharif Hiariej, Deputy Minister at the Ministry of Law and Human Rights (Ministry of Law and Human Rights / Kemenkumham) said that the implementation of the ITE Law is influenced by the subjectivity of law enforcement officials (Interview on 13 April 2021).

Edward gave an example of the Criminal Code. Even though the substance of Criminal Law is universal because it is the same throughout the world. However, there are articles in other countries which are different. The differences are political offenses, moral crimes, and issues of humiliation. The issue of humiliation depends on or is influenced by politics and culture. For example, in a political context such as Law Number 11 of 1963 concerning Subversion, the implementation of which was different between the Old Order and the New Order.

Similar to Edward, Henri Subiakto (Interview 7 April 2021) said that the problem with the ITE Law is the existence of multiple interpretive articles which have implications for the different understanding and implementation of law enforcement by law enforcement officials. In addition, there was a regulatory vacuum in which in the end the authorities used the ITE Law to ensnare someone.

Furthermore, on the issue of multiple interpretations, the regulatory issues have multiple interpretations as in Articles 27, 28 and 29. The problem is the boundary between freedom and humiliation or defamation. Therefore, it is very important to carefully see the boundaries between FoE and insulting and desecrating ethnicity, religion, race, and intergroup.

The issue of the existence of articles that have multiple interpretations has become a problem for the implementing party of the ITE Law, especially those that regulate investigations. As mentioned above, Kominfo and the Police are the investigators in the ITE Law. This is also regulated in the Criminal Procedure Code. The issue of multiple interpretations of the articles of the ITE Law makes the implementation of the ITE Law influenced by the subjectivity of investigators. Investigators can easily arrest and detain parties who are reported on the charges as stipulated in Articles 27, 28, and 29. This has made the ITE Law a tool to curb FoE in Indonesia.

The granting of authority to the police and Civil Servant Officers (Pejabat Pegawai Negeri Sipil / PPNS) whose scope of duties and responsibilities is in the field of Information Technology and Electronic Transactions is a special provision (lex specialis) of the procedural law in the Criminal Procedure Code (lex generalis). This is needed because the Criminal Procedure Code specifically does not regulate the mechanism of investigation of criminal acts in cyberspace. Therefore, a mechanism outside the Criminal Procedure Code is regulated to enforce the law (pro Justitia), with clear boundaries.

The special article that regulates the mechanism of proceedings in the ITE Law is often misinterpreted by investigators, both from the police and from the Ministry of Communication and Information. As previously explained, investigators often use their subjectivity in implementing the ITE Law. Several times, investigators from the police served outside their authority by carrying out arrests and detention without following the procedures in the Criminal Procedure Code, and the limitations regulated by the ITE Law.

This weak interpretation has resulted in many problematic cases being handled by the police. On the other hand, many of these cases also occurred because of political pressure or pressure from the masses, so the police used the ITE Law to prosecute the law. Looking at the cases that have occurred in the implementation of the ITE Law, there are two perspectives. First, cases that occur between citizens and the state. Second, cases that occur between citizens. If we look at the cases that occur most often because of problems between citizens and local governments and also cases between citizens, for example with business actors.

The trend of state-citizens cases which use several multi-interpretative articles in the ITE Law demonstrates that the principles of digital governance and democracy are not fully applied. The existence of digital space, and the new variety of activities that subsequently emerged, is not followed by the improvement of knowledge regarding the development of information and technology. The new method of online activism, which can make citizens criticize the government directly through social media, then being responded by the government with penalization. An annual report from SAFEnet (2021) which gathered every case between the state and the citizens from 2017 also confirms this trend. It shows that 37,5 percent of the reported parties came from critical community groups. Meanwhile, 73,92 percent of the reporters came from privileged community groups that have advantages or power. The fact then verifies the notion that the digital governance and democracy application in Indonesia are yet to be called as well implemented.

Resources Involved

The polemics of the National Police involvement emerge as we start to analyze the resources involved point of view. Beka of Komnas HAM (Interview on 13 April 2021) said that the police officers have a positivist view, they do not want to use alternative solutions. Beka also said that the police often forgot the initial purpose of creating the ITE Law. So, it causes the implementation of the ITE Law to be different from the principles and objectives as described above. Especially for the police, the problems of the police apparatus in implementing the ITE Law are, first, they are not creative in making solutions to problems. Second, the lack of knowledge and understanding of human rights, even though there is a Regulation of the Head of the Indonesian National Police Number 8 of 2009 concerning the Implementation of Human Rights Principles and Standards in the Implementation of the Duties of the Indonesian National Police. Then the third, the authorities are often faced with mass pressure.

Regarding mass pressure, Henri Subiakto of Kominfo (Interview on 7 April 2021) said that law enforcement officers are often faced with mass pressure from political actors in the regions, for example from regional heads who have supporting masses. Because if we look at the cases, the problems

in the ITE Law mostly occur between the common people and the local governments.

Therefore, the existence of the multi interpretative articles of ITE Law has resulted in the fragile criminalization of critical society. Every digital activism conducted to oversee the implementation of governance then has to face the threats of sanction, penalization, and criminalization. In this case, both content and context aspects of ITE Law, have also influenced interpretations and actions of law enforcement apparatus such as Polri.

G.2. Context Aspect

In addition to the issue of policy content, the implementation of the ITE Law is also seen in terms of the surrounding conditions the policy is carried out. Grindle's model outlines three variables related to the context aspect. They are related to power, interests, and strategies involved; characteristics of institutions and rulers; and level of compliance and responsiveness. This section will elaborate by interconnecting the three variables based on the policy context in Indonesia.

Power, Interests, and Strategies Involved

As confirmed in the findings of our study, the application of the ITE Law is influenced by political dynamics in Indonesia. Political systems can determine the FoE conditions within one country. As authoritarian states are likely to be more repressive than democratic ones. However, based on the findings of this study, the democratic system applied in Indonesia still presented similar characteristics with the authoritarian state regarding the protection of citizens' criticism. Fuad from ELSAM even considers the Indonesia Government as a neo-authoritarian (Interview on 6 April 2021).

Furthermore, the problem that occurs in Indonesia's current political system is the thick interest of a group or a handful of political elites who are fighting for their interests. The battle of interests using identity politics that has occurred since the 2014 Election and getting stronger in the 2017 Pilkada, has further caused polarization in society. This can be seen in digital space, for example, with the emergence of the term "cebong" and

"kadrun" which means netizens who are pro-Joko Widodo's government and the netizens who are opposing the running government.

Muhtadi (2021), said the polarization that occurred on social media caused residents to split based on the partisan attitude of each group. This partisan attitude ultimately leads every voter to ignore objective truths and to make emotions and personal beliefs more important than data and facts. This is what populist leaders then exploit to carry out illiberal agendas because of the partisan attitude of their supporters, allowing the agenda of the populist figure to be smoothly implemented.

Regarding the strong polarization, it could also be seen from the phenomenon of back and forth reporting which uses several articles from ITE Law. This then raises concerns about the sustainability of FoE in Indonesia. The public is afraid to convey their expressions, especially regarding criticism directed towards the government. Criticism is no longer seen as a constructive input to the government, but criticism is seen as an insult in the eyes of Jokowi's fanatical supporters. This also applies to the opposite of fanatical supporters who are opposed to the government.

Other than that, it could also be said that the freedom of expression in Indonesia, particularly regarding the citizens' criticisms toward the government in the digital spaces, is quite fragile due to power relations reasons. This gap mainly comes from the involvement of the National Police towards the digital activism conducted by Indonesian internet users. The police often reside on the other side of the issues addressed by Indonesian internet users.

The scheme then put Indonesian internet users at risk, because several problems occurred. The first problem comes from the power imbalance between common internet users and the police who also do their work in the digital space. Secondly, the inequality is also getting stronger since the National Police has stable funding for any digital activities conducted. As recorded by Indonesia Corruption Watch (2020), the National Police's digital activity procurement package in 2020 has reached 937 billion IDR (approximately 65 million USD). The situation worsened when the National Police was utilized as the state's instrument to smooth out the government's agendas. Those notes on Indonesia's current state

on freedom of expression then makes the implementation of the state's policy regarding the freedom to express not imposed ideally.

Characteristics of Institutions and Rulers

Based on the findings of this study, it is clear that Indonesia has sufficient legal foundations to protect human rights, including FoE in Indonesia. However, in practice, it should be noted that there are also problems particularly regarding the weak human rights perspectives of the institutions and the rulers, especially the legal apparatus in enforcing the law to ensure the protection and promotion of FoE in Indonesia. The tendency to use public security and order as the main reason to apply the penalty code, which also threatens and violates the FoE including in the digital platforms; the lack of understanding of the institutions and rulers, including the legal apparatus, of the FoE digital democracy, governance, and activism in the digital spaces; the law enforcement which is based on policies which are multi-interpretative also add to the challenges in promoting and protecting of the FoE in the digital platforms.

On the one hand, there are articles that have multiple interpretations. On the other hand, law enforcement officials, in this case, the police, always interpret the law from a positivist perspective and negate alternative case solutions. These two things then make the implementation of policies contrary to the objectives of the policy itself and even become a tool of the authorities in curbing freedom of expression. This was admitted by the Chief of the Indonesian National Police (Kapolri) General Listyo Sigit Prabowo who said that the multi-interpretation articles in the ITE Law were often used by the police to criminalize (tempo.co, 16/2/2021). Criminalization targets citizens or groups deemed to be in conflict with the current authorities, both at the central and regional levels.

Level of Compliance and Responsiveness

The dynamics of the power, interests, and strategies as well as the conditions of the institutions and the rulers' characteristics, have also affected the level of compliance and responsiveness related to policies on FoE. In this case, we analyze this variable from the normative side of the ITE Law and

the policy implementers and implementation aspects, as well as from the public side, especially the digital users and the digital literacy aspects.

Particularly from the legal-political approach, it can be seen that the implementation of the ITE Law has deviated from the purpose of its formation. Several articles of multiple interpretations contained in these laws are often used to criminalize people who criticize or have different views from the government. The problematic article in the ITE Law is a factor that can threaten freedom of expression in Indonesia, especially in cyberspace. Apart from problems related to legal substance, the enforcement of the ITE Law also became the reason for the many convictions related to freedom of expression in cyberspace. Law enforcement officers, ultimately by the Police, tend to investigate cases related to conventional criminal acts, such as insult and defamation that occur in cyberspace. Therefore, the initial goal of the formation of the ITE Law to provide protection for the community in cyberspace has never been realized. In fact, what is rife is the conviction and imprisonment of a person.

One of our interviewees, Maidina Rahmawati, Researcher at Institute for Criminal Justice Reform (ICJR) also emphasized that, ideally, the ITE Law should focus on preventing and taking action against new legal actions resulting from the development of cyberspace. An example is when a hack occurs, the state can be there to solve the problem and provide justice to the community. This includes creating a mechanism that can be implemented effectively by law enforcement officials (Interview on 29 March 2021).

Apart from the level of compliance and responsiveness of policy implementers, our study also found the level of compliance and responsiveness of digital users in Indonesia. The imbalance of technological infrastructure development could be one of many reasons why the digital literacy rate in Indonesia is low. As recorded on the IMD Digital Competitiveness Ranking (2020), which assessed 63 countries all over the world, Indonesia was placed in the bottom ten alongside other countries with low scores of competitiveness. At 56th place, Indonesia got the lowest rank (65th) on the first factor which is Knowledge. Meanwhile, for the other two factors called Technology and Future Readiness, Indonesia got the 54th and 48th ranks respectively. These alarming facts must be addressed immediately because the

current annual number of Indonesian internet users is growing in a rapid motion. Referring to the report from Hootsuite and We Are Social (2021), the total growth of Indonesian internet users is reaching 202.6 million in January 2021. The number has increased by 27 million internet users from the previous year.

The Indonesian Government, through its Kominfo, has been conducting a series of capacity building for Indonesian internet users. The program called The National Movement for Digital Literacy (Gerakan Nasional Literasi Digital/GNLD) Siberkreasi was initiated to improve the knowledge and skills of citizens who use the internet for any purpose. Recently, the GNLD Siberkreasi launch a new program titled Indonesia Makin Cakap Digital (Indonesia Becomes More Capable of Digital) which equipped with four modules of digital literacy that cover the culture, safety, ethic, and skills for users in the digital sector. The new program was launched simultaneously on 34 provinces and 514 regencies/municipalities on May 20th, 2021 (indonesia.go.id, 20/5/2021). Therefore, it could be assumed that the digital literacy rate of internet users in Indonesia will be impacted by the program conducted by the GNLD Siberkrasi.

However, the low digital literacy of internet users in Indonesia cannot be denied as it can be seen in the survey entitled Microsoft's Digital Civility Index (DCI). This survey measures the level of politeness of internet users throughout 2020, specifically between April and May 2020. The results put Indonesia in 29th place out of 32 surveyed countries. With these results, Indonesia has become the country with the lowest level of politeness in Southeast Asia. It shows that the digital literacy of the Indonesian people is still weak. The weakness of digital literacy is partly because the programs carried out by the government are still very weak. Digital literacy programs have not had an impact on society. Coupled with the problem of rampant disinformation emerging in digital space.

From the issues addressed in this section, we can clearly draw the latest condition of Indonesian internet users. Although some efforts have been taken by the government, the lack of capability among Indonesian internet users is inevitable. Other than lacking the capability to access the internet, they are also problematic in regards to the manners they

present while doing their digital activities. Often, the last factor is referred to by the State and its apparatuses to justify their acts in detaining the critical individuals or institutions, mainly those who give strong criticism to the government. But the fact that a lot of internet users are uneducated regarding digital knowledge must become a determinant factor for the government in prioritizing the digital literacy agendas of its citizens. On the other hand, the government should also exterminate its current hard-power approach which criminalizes and penalizes critical Indonesian internet users. Therefore, the implementation of governance can be fully manifested, because citizens are protected while overseeing the government through available tools such as social media in the digital space.

Based on the findings and analysis regarding existing policies and policy implementation above, the following section will provide findings and analysis on how the interconnections of the policies and the implementation both in content and context as outlined by Grindle's model reflect in various cases on the threats towards the FoE in Indonesia. As mentioned above, this paper focuses on the FoE regarding citizens' criticisms toward the government in digital space.

H. ITE Law and Various Cases on the Threats towards the Freedom of Expression in Indonesia

At the implementation stage of the legal provisions contained in the ITE Law, there are several errors that conflicted with the original purpose of the law's formation. There are threats of punishment that are more often directed at articles of multiple interpretations, and not in terms of protecting FoE, information, and electronic transactions.

As of October 2020, SAFEnet recorded 324 criminal cases related to the ITE Law. A total of 209 people were charged with Article 27 paragraph (3) regarding defamation (Kontan.co.id, 2020). Based on this data, the following describes several cases that are included in the challenges on FoE in the digital space, particularly with regard to critics toward the Government.

H.1. The Ravio Patra Case

Ravio Patra, a democracy activist, was arrested by the police on Wednesday, April 22, 2020. He was accused of incitement to commit acts of violence and spreading hatred through WhatsApp messenger. Ravio was arrested on the grounds that he had violated Article 27 paragraph (3) of the ITE Law and Articles 310-311 of the Criminal Code.

During the development of the case, it was discovered that Ravio's WhatsApp account had been hacked at that time and it was not him who sent the provocative messages. However, the police moved faster and arrested him. In fact, in this case, the victim who should be protected by the ITE Law is Ravio. Article 30 paragraph (1) - (3) provides criminal threats to any person accessing computers and/or computer systems. The WhatsApp hacking case belonging to Ravio, which was the beginning of the sending of provocative messages, was not followed up by the police. This case only came to a call from the message-sharing service provider platform by the police for clarification (detik.com, 20/6/2020). In fact, when the police really wanted to reveal this problem, they should have investigated and found Ravio's WhatsApp hacker.

Apart from not having legal certainty regarding the hacking he experienced, several irregularities emerged in the investigation process for Ravio Patra. Apart from the arrest process which was carried out without being preceded by a summons and his status as a witness only, another oddity was the search which was carried out without following the provisions contained in the Criminal Procedure Code.

Based on information from one of Ravio's attorneys, namely Alghiffari Aqsa, some of Ravio's personal things were not related to the alleged criminal act. Some of the items that were searched and taken by the police were books, friends' cellphones, and office laptops. Investigators also accessed data on Ravio's work contract and personal financial management records,

which actually had nothing to do with the alleged criminal act. Investigators deliberately changed the email password without consent (tirto.id, 24/4/2020).

What police investigators do is an example of law enforcers' misunderstanding of personal data and the prohibition of accessing it without permission. The poor understanding of law enforcers will have implications for the ineffective application of the provisions contained in the ITE Law. In fact, the ITE Law should have existed to protect someone's digital data from being accessed without permission or done illegally, however, in the case of Ravio Patra it was seen that the law was actually used to forcibly capture and reveal someone's personal data.

H.2. The Faisol Abod Batis Case

Faisal Abod Batis, an owner, and manager of the Instagram account @ reaksirakyat1, was arrested by police at his home in Malang Regency, East Java on July 10, 2019. The arrest took place a day after Faisal posted the content that the police assessed as "inciting the public to hate government agencies and *Korps Bhayangkara*" (tirto.id, 17/7/2019). By the police, Faisal was arrested and suspected by Article 28 (2) of the Information and Electronic Transactions Law (UU ITE).

One of the contents on that Instagram account is data about agrarian conflicts that occurred from 2015-2018. Regarding the research data used by Faisal, Secretary-General of the Consortium for Agrarian Reform (*Konsorsium Pembaruan Agraria*/KPA), Dewi Kartika, admitted that the data was the result of her institution's research. The data was released by KPA in the 2018 KPA year-end notes (tirto.id, 18/7/2019). Therefore, the statement made by Faisol was only in the form of data presentation followed by criticism of government policies.

Brig. Gen. Dedi Prasetyo said Faisal, as the suspect, had uploaded content several times in the form of hate speech on the Instagram account @ Reaksirakyat1. The perpetrators, according to Dedi, deliberately posted such content that provoked the public to hate the government and the National Police. So the arrest of Faisal was immediately carried out by the police.

Then, on Monday, December 2, 2019, the Malang District Court was proven legally and convincingly guilty of committing a criminal act for deliberately and without the right to disseminate information aimed at creating individual hatred or enmity, based on SARA. This means that the court based on legal considerations stated that Faisal Abod Batis had violated the provisions contained in Article 28 paragraph (2) of the ITE Law. For criticism of the government, he must receive a sentence in the form of imprisonment for ten months and a fine of ten million rupiahs.

The case experienced by Faisal Abod Batis is an example of not implementing the presumption of innocence, which should be the police's way of seeing a criminal case. A person can only be considered guilty if there has been a court decision. However, in this case, the police will not be able to act objectively because it was the agency that reported Faisol using the ITE Law. The foE in the digital space is worrying because law enforcement agencies that should be objective and protect the rights of the people are the reporters who criminalize the public (SAFEnet, 2020).

H.3. The Coalition for the Action to Save Indonesia (Koalisi Aksi Menyelamatkan Indonesia/ KAMI) Case

A number of activists from the Coalition for the Action to Save Indonesia (*Koalisi Aksi Menyelamatkan Indonesia*/KAMI) were arrested on Tuesday, October 13, 2020, on charges of sedition. They include Jumhur Hidayat, Syahganda Nainggolan, Khairi Amri, and Anton Permana. They are suspected of spreading fake news related to the omnibus law on the Job Creation Law which sparked riots during demonstrations in Jakarta. For this reason, the four suspects were subject to Article 28 Paragraph 2 in conjunction with Article 45A Paragraph 2 of Law Number 19 of 2016 concerning Amendments to the ITE Law and Article 160 of the Criminal Code with the threat of a sentence of six years in prison. This case is still ongoing in court (idntimes.com, 2020).

The arrest of KAMI activists proves that there are threats to FoE and opinion in Indonesia. Actions that limit the constitutional right of society to criticize government policies are a mistake. Then, the government and the police, which are supposed to protect people's rights, have turned

out to be spreaders of fear among those who criticize the passage of the Job Creation Law.

The National Police explained the role of the nine suspects in relation to the rejection of the omnibus law on the Job Creation Law; they were charged with the ITE Law. Nine suspects are members of KAMI. One of the suspects is Khairi Amri, chairman of KAMI in Medan. He is suspected of violating the ITE Law (cnnindonesia.com, 2020).

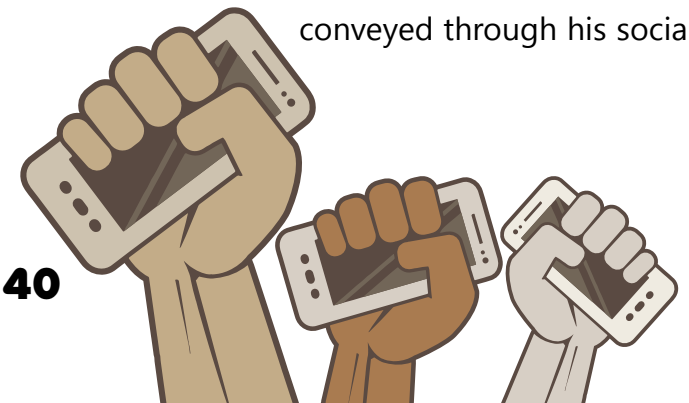
Article 28 paragraph (2) of the ITE Law is used to punish people who criticize the government. This can happen because the article is rubberized, so it can easily ensnare people to express their disagreement with the policies made by the government.

During its development, the Chairman of KAMI Medan, Khairi Amri, underwent a virtual trial at the Medan District Court, North Sumatra. Khairi was charged with making hate speech related to ethnicity, religion, race, and intergroup in connection with the mass protest against the Job Creation Law. In his indictment, the prosecutor explained that Khairi Amri spread information aimed at creating a sense of hatred or enmity based on SARA. The hate speech, said the prosecutor, was disseminated on Thursday, October 8, 2020 (detik.com, 2021).

H.4. The Mohammad Hisbun Payu Case

Central Java Regional Police officers arrested student activist Mohammad Hisbun Payu, also known as Iss, on Friday, March 13, 2020. Iss assistant from LBH Semarang, Naufal Sebastian said, Iss was arrested for allegedly violating Article 45A Paragraph (2) Jo Article 28 Paragraph (2) of the ITE Law. According to him, Iss was accused of making a hate speech to President Joko Widodo for criticizing through social media regarding President Jokowi's policies which are more concerned with investment than the condition of his people (tirto.id, 17/3/2020).

What Iss did was actually a form of criticism of the President's statement which described the direction of government policy. Through criticism conveyed through his social media is a form of FoE carried out by Iss



in digital media. However, what he received for the expression he put out was an arrest by the police.

According to Naufal, there were a number of irregularities in the arrest. When arrested in Solo, Iss was taken to the Central Java Regional Police and examined at around 17.00-23.00 WIB and immediately detained. This means that Iss was arrested before being declared a suspect, even though the arrest made against the ISS was not a hand-catching operation (tirto.id, 17/3/2020).

The arrest actually contradicts Article 17 of the Criminal Procedure Code because Iss was never previously summoned as a witness by the police and never tried to escape. In addition, Iss writing on social media is a form of criticism included in the FoE guaranteed by the constitution in Indonesia in Article 28E paragraph 3 of the 1945 Constitution and Article 23 paragraph 2 of Law 39/1999 on Human Rights.

Then, after being detained by the Central Java Regional Police, Iss was expelled based on the detention suspension proposed by the legal team and the family. The suspension of detention of Iss was granted because the suspect had apologized and regretted his actions. Apart from apologizing and claiming to be sorry, Iss accompanied by his attorney also promised to always be cooperative in investigating this hate speech case (cnnindonesia.com, 21/3/2020).

H.5. Anti-Corruption Activist Hacking

A number of researchers from Indonesia Corruption Watch (ICW) experienced terror and hacking of social media accounts by unknown people. This happened in a webinar entitled "Investigating the Weakness of the Corruption Eradication Commission through the Dismissal of 75 Employees" (Koran Tempo, 18/5/2021). There have been several forms of cyber attacks that have occurred throughout the discussion.

First, the appearance of Zoom Meeting's main layer changed to a porn video clip when the former KPK Deputy Chairman, M Jasin as the speaker, was giving his presentation. Second, turn off the microphone and video of the speakers. Third, ICW speakers and researchers received repeated

calls from various contact numbers during the discussion (robocall). and Fourth, taking over the WhatsApp accounts of eight ICW researchers (Koran Tempo, 18/5/2021).

It did not stop there, after the discussion the hacking continued and targeted several other anti-corruption activists. Some of them were KPK investigators, namely Novel Baswedan and Sujanarko. In addition, former KPK spokespersons such as Febri Diansyah also experienced hacking on their social media accounts. The series of cases that attacked anti-corruption activists occurred as a result of them protesting against the results of the National Insight Test which harmed 75 KPK employees. The test was conducted by the KPK and several other related institutions such as The National Civil Service Agency (*Badan Kepegawaian Negara* / BKN) and Ministry of Administrative and Bureaucratic Reform (*Kementerian Pendayagunaan Aparatur Negara dan Reformasi Birokrasi*).

The series of events is a form of violation of FoE and the failure of the ITE Law to provide protection to the public in cyberspace. In fact, Article 30 of the ITE Law regulates the prohibition of hacking and threatens a minimum of six years imprisonment. However, the police have been slow to act in cases like this hack. It is different when compared to other cases of the ITE Law such as insult and defamation.

Reflection of the Cases

Era Purnama Sari, the Deputy Chairperson for the Advocacy Division of the Indonesian Legal Aid Foundation (*Yayasan Lembaga Bantuan Hukum Indonesia*/YLBHI) explained the continued emergence of punishment related to the implementation of the ITE Law is inseparable from the character of law enforcement officials in Indonesia. Namely the attitude of the executive or signaling in seeing and overcoming a problem. In fact, the criminal charges imposed on the person charged by the ITE Law have not been able to stop cases related to the ITE Law. For example in the case of Baiq Nuril, apparently, the punishment does not really stop a similar case. Lots of people have been convicted until now using Article 27 paragraph (1) of the ITE Law, because personal messages between individuals are very easy to use to criminalize someone (Interview on 27 March 2021).

The approaches used by the state apparatus clearly show how the emergence of digital technology, as a tool to express criticism from citizens, is yet to be managed fairly. The government, as the entity that has authority over the good governance implementation, is yet to succeed in adopting digital activities as a supporting element for its day-to-day services. The government has not seen the usage of digital tools, such as social media, as a medium to establish healthy governance, where every policy formulated is criticized and watched by the public.

Hence, the current condition in Indonesia not only illustrates that the FoE is at risk but also presents that the governance implementation that has shifted towards digital utilization has not been fully imposed. For the government, and its state apparatuses, digital space is still perceived as an area that needs to be secured, directed, and controlled.

Therefore, the digital space and the concepts of governance and democracy that are absorbed into it cannot be executed properly. Digital activism, as a major breakthrough in overseeing the implementation of governance and democracy in Indonesia, has to be encountered with the forces that came from the state along with the criminal punishment in the name of public order of the society. The forces, such as police, then overshadowed citizens with penalization and criminalization for their critical activities toward the Indonesian government.

A policy is made based on the consideration of the background that drives it. However, looking at the cases that have occurred, based on the Grindle model, the implementation of the ITE Law is contrary to the benefits and changes desired in the Law. It also takes sides more to those who are in power or who have the advantage in the power relations context. The challenges also come from the interplay of various power, interests, implementation strategies, resources, implementers, and stakeholders involved in the implementation of the ITE Law, whose content and context have affected the dynamics of FoE in Indonesia in various cases as highlighted in the findings of this study.

As mentioned above, the law is initially aimed at the aspects of economic development, public services, and human resource development. On the other hand, the Law also states that in its implementation the ITE

Law is implemented to provide a sense of security, justice, and legal certainty for users and administrators of Information Technology. This regulation is intended to provide security for information technology users, especially in conducting electronic transactions from criminal practices. However, in practice, with the problems of multi interpretation of the articles of the Law, many cases were charged under the ITE Law.

The cases above show that the challenges of FoE in digital space are not only limited to cases between the people and the government regarding public criticisms towards public policies. The challenges also prevail in cases between the community whether in the context of workplace or defamation cases. Nevertheless, those cases have highlighted that ITE Law has often been used and justified to criminalize FoE particularly in digital space, in different cases, and involving various parties. In short, ITE Law is also considered to be one of the challenges in a policy context that heavily and seriously threatens FoE in digital space and public participation in policy processes in the context of digital democracy and governance in Indonesia.

The challenges also exacerbate FoE in digital space in Indonesia as the legal-political aspect and lack of human rights perspective of law apparatus in enforcing the law have resulted in a tendency to penalize FoE in digital space, including public criticism towards the government. This situation is enabled due to illiberal policies and regulations that display the superiority of powerful actors to suppress those who have dissenting opinions and vocal critics towards the powerful, including the government.

Based on the elaboration of the threats towards FoE in Indonesia above, the following section will reflect the findings and analyses from the elaboration of policy mapping and policy implementation regarding the FoE in Indonesia. It will emphasize on the protection of public participation in policy processes, including when the people criticize the government through a medium like social media in digital space.

I. Countering Challenges of Freedom of Expression in Digital Space and Protecting Public Participation in Policy Processes

This section will build up arguments and recommendations for countering challenges of FoE in digital space and protection of public participation in policy processes, including when the people criticize the government in digital space as part of their activism thus participation in digital democracy and governance. Thus, it will build up arguments and recommendations which revolve around what efforts can be taken to improve the good implementation of digital democracy and governance.

Referring to the findings of the study, this paper reinstates that in principle, the revision of the ITE Law is necessary in order to enable the Law to protect the basic rights of all citizens and respect for human rights. The revision is mainly aimed at articles that are multi-interpretative and have the potential to violate human rights. So that these rules can be used by law enforcement officials and do not have multiple interpretations. Apart from the revision of several articles, another important step to do is to formulate guidelines, especially regarding the formulation of Standards, Norms, and Regulations so that the apparatus can carry out this by relying on respect for human rights.

The various problems that arise due to the multiple interpretations of the legal substance contained in the ITE Law, several tactical steps are needed to evaluate this law. Not only reviewing the contents of the ITE Law but also the rules to implement. So that law enforcers can no longer misinterpret. For example, by requesting an interpretation guideline to be followed up with the formation of a study team.

Through the Decree of the Coordinating Legal, Political, and Security Minister (*Menteri Koordinator Politik, Hukum, dam HAM* / Menkopolhukam) Number 22/2021, two sub-teams were formed with different main tasks and functions. First, the Team for Formulating the Criteria for the Implementation of the ITE Law. They are assigned to formulate implementation criteria for the multi-interpretation articles in the ITE Law. When carrying out their duties, this team will ask for input from parties who have been reporters and reported on the ITE Law.

Second, the Team to Review the Substance of the ITE Law. Its task is to examine several articles that are considered multiple interpretations in the ITE Law to determine whether or not a revision of the law is necessary. Recommendations from this team will really help the government to be able to see objectively and holistically related to the problems contained in the ITE Law.

The government's choice to form two sub-teams to study the ITE Law opens up several opportunities related to the substance of the law to the implementation of this law, and changes to the ITE Law are not the main choice. The formation of two special study sub-teams is also intended to dissect and straighten out the articles that have been used to convict someone. The order to involve academics, practitioners, experts, activists and victims of the ITE Law can be an entry point to show the objective situation caused by the rubber articles in this law. However, problems arose when efforts to formulate interpretation guidelines were not preceded by changing the provisions contained in the ITE Law.

Furthermore, the revisions are also needed regarding sanctions where there should be no criminal rules. Based on an interview with Erwin Muslim Singajuru, Special Staff for Politics and Law, Coordinating Ministry for Political, Legal and Human Rights (*Kementerian Koordinator Bidang Politik, Hukum, dan Keamanan Republik Indonesia* / Kemenkopolhukam), there are several discourses of change such as; complaint offenses between residents can be reconciled; cases involving citizens with the state can be civil or social sanctions, so there are no criminal sanctions. The hope is that this revision can give birth to a law that provides a sense of justice in society (Interview on 6 April 2021).

Furthermore, in relation to the effort to promote and to protect citizens' FoE in digital space, including towards the government, in this paper, we also want to highlight the importance of overseeing the formulation of the Personal Data Protection Regulation (PDP Draft Bill). Since December 2016, the only rule in Indonesia that regulates personal data protection is the Regulation of the Minister of Communication and Information Technology Number 20 of 2016 on Protection of Personal Data in Electronic Systems (Permenkominfo 20/2016). Hence, the urgency to enact the PDP Draft Bill into a new law has been awaited by Indonesian internet users

because the PDP Draft Bill will provide protection to every personal data of Indonesian internet users. The protection, hence, could ensure every digital activity conducted by Indonesian internet users. These digital activities include giving criticism through social media in the digital space towards the Indonesian government. The cases highlighted in the previous section have also provided a serious warning on the need to protect personal information due to the rampant misconduct by the authorities in responding to public criticisms towards the government.

Based on the analysis of the findings of this study, the following section will provide recommendations to promote and protect FoE in Indonesia, particularly regarding critics towards the government. The recommendations will refer to policy content and context in Indonesia with regards to FoE in digital space and public participation in the context of digital democracy and governance not to mention legal-politics in Indonesia.

Therefore, the recommendations are expected to be relevant, contextual, and applicable to be follow-up by policymakers and related stakeholders as it should be noted that promotion and protection of FoE itself, in general, do require commitment and collaboration of all parties. In short, the analysis will be based on the conceptual framework that we are applying in this paper.

J. Policy Recommendations for Freedom of Expression in Digital Space in Indonesia

Based on the analysis above, this paper suggests several recommendations. We divided the recommendations into three interconnected aspects. First, legal aspects. Second, improvement of law enforcement and legal apparatus, and third, digital literacy.

J.1. Legal Aspect

- Limiting FoE by prohibiting certain expressions in the form of criminal acts must be carefully formulated. The President and DPR as legislators and the police as law enforcers must be able to distinguish between the expressions that are justified by the civil suit or administrative sanction and one that constitutes a criminal offense. The

process of forming laws also needs to clearly identify expressions that constitute acts of intolerance, civility, or disrespect for the rights of others.

- Government and the DPR need to discuss the possibility of eradicating the multi-interpretation articles in the ITE Law through the revision. This effort must be taken into account by involving various groups and stakeholders such as academics, civil society groups, NGOs, The National Human Rights Commission, as well as relevant ministries such as the Ministry of Communication and Information and the Ministry of Law and Human Rights. This is needed because the previous revision towards ITE Law was unable to break the multiple interpretations article which ensnares more victims.

- The political direction of the ITE Law must be returned to its original purpose. This law should be able to provide protection for the public in accessing and transacting on the internet. Instead of being a tool to repress the public's FoE.

- The DPR with the president can revise the ITE Law by returning several criminal sanctions contained in the ITE Law that must be returned to the Criminal Code, such as Article 27 paragraph (3) of the ITE Law. Including provisions on special procedural law as in Article 43 of the ITE Law, it is sufficient to stipulate in the Criminal Procedure Code by providing space for the police to carry out investigations in cyberspace. This is so that the police are limited by the provisions contained in the Criminal Procedure Code.

J.2. Improving law enforcement and Better Human Rights Perspectives of the Law Apparatus

- Settling the complaint offense between citizens must be based on mainstreaming of human rights perspectives. The police should undertake an intensive program such as through its education institution (*Perguruan Tinggi Ilmu Kepolisian* / PTIK) and its officers to improve their human rights perspectives both in theory and practice. It should also be prioritized through peaceful ways and with a better understanding of the importance of civil liberties and public

participation, including FoE in digital space, and not always relying on criminal law and punishment.

- Providing education and a human rights perspective related to the implementation of the ITE Law to the police can be done after the DPR together with the president revises the multi-interpretive articles in that law. Thus, the education on human rights perspectives given to police officers has been based on a legal product that does not have multiple interpretations and reduces criminal sanctions.

- In resolving cases related to the ITE Law, the police must open a space for the search for a solution between the perpetrator and the victim without taking the cases into the court (restorative justice). Then, the police must be objective by not applying discrimination in resolving problems related to the ITE Law through restorative justice.

- The DPR together with the President can affirm the provisions regarding restorative justice by including these provisions in the revision to the ITE Law. This is needed to minimize the conviction of each case related to the ITE Law which can actually be resolved without having to impose a prison sentence on the defendant.

- There should be a clear application of duties and functions among the state institutions, such as the Ministry of Communication and Information equipped with content in cyberspace and the Police as law enforcers. Various phenomena of FoE in Indonesia clearly show that there are overlapping functions, such as the Police, which often acts as an institution that determines that content in cyberspace is against the provisions of the ITE Law, without being preceded by a process in the integrated criminal justice system. The police's authority is limited to receiving reports, to conducting investigations and investigations. Meanwhile, judges in court only have those who decide an act violates the criminal provisions in the ITE Law.

J.3. Improving Digital Literacy

- A breakthrough is needed in the digital literacy program by involving all elements of society. Kominfo should strengthen its collaborative agendas in order to enhance the outcome of its ongoing *SiBerkreasi* program. The effort in enhancing the outcome can be done by also involving the police as the other party who also engages in the matters of digital activities. Then the digital literacy rate is not only improved within the common internet users, including those who often criticize the government but also within the government institutions and the legal apparatus, including the officers at the National Police.

- Meanwhile, the digital literacy programs conducted by Kominfo should not only encourage citizens to engage with digital tools such as social media. It should also strengthen the comprehension of internet users towards digital protection and digital rights. Therefore, internet users not only master the operationalization of digital tools but also know their attributed rights. In this case, Kominfo should also collaborate with the Ministry of Education, Culture, Research and Technology (Kemendikburistek/ *Kementerian Pendidikan, Kebudayaan, Riset dan Teknologi*) and civil society organizations concerning digital literacy and FoE issues.

- The digital literacy programs should also be conducted by private sectors (social media platforms) as part of their Corporate Social Responsibility (CSR), in addition to their own policy towards their users, particularly in raising public awareness, especially their users, in using social media wisely. In addition, Kominfo should also collaborate with the social media platforms in undertaking the digital literacy programs in order to approach wider range of digital users.

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Damar Juniarto. Executive Director of The Southeast Asia Freedom of Expression Network (SAFEnet), on 29 March 2021.

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Henri Subiakto. Expert Staff to the Minister for Communication and Mass Media at the Ministry of Communication and Information (*Kementerian Komunikasi dan Informatika* / Kominfo), on 7 April 2021.

Johan Budi. Member of Parliament of Commission III at the Indonesian House of Representative (*Dewan Perwakilan Rakyat Republik Indonesia* / DPR RI), on 11 May 2021.

Maidina Rahmawati. Researcher at Institute for Criminal Justice Reform (ICJR), on 29 March 2021.

Muhammad Busyrol Fuad. The Institute for Policy Research and Advocacy (*Lembaga Studi dan Advokasi Masyarakat* / ELSAM), on 6 April 2021.

Sukamta. Member of Parliament of Commission I at the Indonesian House of Representative (*Dewan Perwakilan Rakyat Republik Indonesia* / DPR RI), on 29 March 2021.

THE INDONESIAN INSTITUTE
CENTER FOR PUBLIC POLICY RESEARCH

The Indonesian Institute (TII) is a Center for Public Policy Research that was established on 21 October 2004 by a group of young, dynamic activists and intellectuals. **TII** is an independent, non- partisan, non-profit institution, whose main funding stems from grants and contributions from foundations, companies, and individuals.

TII has the aim of becoming the main research center in Indonesia for public policy matters and has committed to giving contribution to the debates over public policies and to improving the quality of the planning and results of public policy by promoting good governance principles and public participation in the policy processes in Indonesia.

TII's visions are public policies in Indonesia which highly uphold human rights and rule of law, as well as involve participation of various stakeholders and practice democratic good governance principles. **TII's** missions are to conduct reliable research that is independent and non-partisan and to channel the research to the policy-makers, the private sector, and academia in order to improve the quality of Indonesian policy-makers.

TII also assumes the role of disseminating ideas to the society so that they are well informed about the policies that will have a good impact on the people's lives. In other words, TII has a position to support the democratization process and the public policy reform, as it will be involved in the process.

The scope of the research and review on public policies undertaken by **TII** includes economic, social, political, and legal affairs. The main activities which have been conducted by TII in order to achieve our vision and mission, are: research, surveys, facilitation and advocacy through training and working groups, public discussions, public education, weekly editorial articles ("Wacana" or Discourses), monthly analysis ("Update Indonesia" in Indonesian and "The Indonesian Update" in English), mid-year policy analysis ("Policy Assessment"), annual policy analysis ("Indonesian Report"), and monthly discussion forum on policy issues ("The Indonesian Forum").

Research Programs

RESEARCH ON ECONOMIC AFFAIRS

The economy tends to be used as an indicator of the success of the government as a policy-maker. The economy plays an important role as one of the fundamentals of national development. Limited resources have often caused the government to face obstacles in implementing economic policies that will optimally benefit the people. The increase in the quality of people's critical thinking has forced the government to conduct comprehensive studies in every decision-making process. In fact, the studies will not be stopped when the policy is already in place. Studies will be continued until the policy evaluation process.

TII focuses on economic issues, such as monetary policy and fiscal policy, as well as issues on sustainable development by using analysis which refers to economic freedom principles. Monetary issues will focus on the Indonesian Central Bank to maintain economic stability, both regarding inflation and exchange rate. Meanwhile, fiscal policy will focus on the discussions over the National Budget and infrastructure development both in the regions and in the cities. In relation to sustainable development, TII research is focusing on productivity, competitiveness, infrastructure development, and development gap. In addition, TII also upholds economic freedom principles in highlighting the importance of individual freedom and involvement of private sectors in increasing development and improving welfare in Indonesia.

The TII Economic Research Division is present for those who are interested in the conditions of the economy. The results of the research are intended to assist policy-makers, regulators, and donor agencies in making decisions. The research that TII offers: **(1) Economic Policy Analysis; (2) Regional and Sectoral Prospects; and (3) Program Evaluation.**

RESEARCH ON LEGAL AFFAIRS

According to stipulations in Law No. 12 Year 2011 on the Formulation of Laws and Regulations, every bill which will be discussed by the legislative and the executive must be complemented with an academic paper. This stipulation is also confirmed in Law No. 15 Year 2019 on the Amendment of Law No. 12 Year 2011 regarding the Formulation of Laws and Regulations.

Therefore, comprehensive research is very important and needed in making a qualified academic paper. With qualified academic papers, the bills will have a strong academic foundation both from academic and content aspects. Furthermore, academic papers also function as an

early tracking over possibilities of overlapping laws and regulations, so that revocation of local regulations or other related issues which can be caused by legal, economic, or political aspects in the future can be minimized as soon as possible.

TII offers normative and legal research related to harmonization and synchronization of laws and regulations, especially in making academic papers, legal opinions on harmonization and synchronization of laws and regulations, and legislative drafting for the formulation of local regulations, bill drafts or other laws and regulations. In addition, TII also offers research on other legal issues related to Constitutional Law and Public Administration, Human Rights, and Political Corruption.

RESEARCH ON THE POLITICAL AFFAIRS

The enactment of Law No. 23 Year 2014 on the latest regulation on the Local Government, has created different relations between the Central Government and the Local Government. Entering the era of Bureaucracy Reform, the specification of the division of affairs of the Central Government and the Local Government has increasingly demanded the implementation of good governance principles. The government is demanded to be adaptive and responsive towards public aspiration and services. Therefore, public policy research becomes more important for both the Central Government and the Local Government to analyze context and current issues in the regions. The government must also consider various actors whether political actors or bureaucrats, as well as the public's aspirations and other non-state actors in policy processes.

In order to respond to those needs, TII research in political affairs offers policy assessment on various policies which have already been applied or will be implemented. TII will look at the socio- cultural, economic, legal, and political aspects in assessing public policies. Our research will be useful to assist the government in formulating policies which are in line with context, priorities, and people's aspirations. TII also offers various breakthroughs of transformative policies according to existing contexts in particular and Open Government principles' implementation in general, in order to increase public participation in policy processes, particularly in the era of the openness of public information.

The Political Research Division of TII provides analysis and policy recommendations in order to generate strategic policy in the strengthening of democracy and the establishment of good governance both at the national and local levels. Political research forms are offered by TII **(1) Public Policy Analysis, (2) Media Monitoring, (3) Mapping & Positioning Research, (4) Need Assessment Research, (5) Survey Indicator.**

RESEARCH ON THE SOCIAL AFFAIRS

Social development needs policy foundations that come from independent and accurate research. Social analysis is a need for the government, the businesspeople, academia, professionals, NGOs, and civil society to improve social development. Social analysis is important to identify strategic issues which are developing and to make the right stakeholders' mapping to promote significant change in the context of development, public policy, and democracy in Indonesia.

The Social Research Division is present to offer strong and valid recommendations to produce strategic, relevant, efficient and effective, and impactful policies, in addressing existing various issues. For example, issues related to education, health, population, environment, women, children, and elderly. Social research that TII offers: **(1) Social Policy Analysis; (2) Explorative Research; (3) Mapping & Positioning Research; (4) Need Assessment Research; (5) Program Evaluation Research; and (5) Indicator Survey.**

Political Survey

PRE-ELECTION AND REGIONAL HEAD ELECTION

One of the activities carried out and offered by TII is a pre-election survey as well as a pre-election and regional head election. The reasons underlying the implementation of pre-election and regional head election surveys, namely: (1) A good election is a democratic process that can be arranged, calculated, and predicted in the resulting process; (2) Survey is one of the important and common discussions to measure, calculate, and predict how the process and results of the General Election and the Regional Head Election will take place, in accordance with the expectations of the candidates; (3) It is very important to win in the General Election and the Regional Head Election based on empirical, scientific, measurable and supportable data.

As one of the important aspects of a strategic candidate's election, the survey is useful for monitoring political power. In this case, the success team needs to conduct a survey for (1) mapping the candidate's position in public perception; (2) mapping voters' desires; (3) publishing the most effective political machinery used as voters; and (4) Looking for the most effective medium for the campaign.

Evaluation

EVALUATION OF PROJECT OR PROGRAM

One of the activities that have been performed and experienced offered by TII is a qualitative evaluation of the projects and programs of non-governmental organizations and government. Evaluation activities are offered in TII stages of the mid-term evaluation of the project/program (mid- term evaluation) and also the final evaluation at the end of the project/ program (final evaluation).

As we know, evaluation is an important step in the implementation of a project or program. Mid- Term Evaluation of the project or program is intended to look at and analyze the challenges, the overall learning that takes place during the project or program and make recommendations for the continuity of the project or program. Meanwhile, the final evaluation allows us to view and analyze the outcomes and the lessons learned to ensure the achievement of all the objectives of the project or program at the end of the project or program.

Public Discussion

THE INDONESIAN FORUM

The Indonesian Forum is a monthly discussion activity on actual issues in the political, economic, social, legal, cultural, defense, and environmental fields. TII organizes these forums as media for competent resource persons, stakeholders, policymakers, civil society activists, academicians, and the media to meet and have discussion.

Themes that have been raised were the ones that have caught public attention, such as migrant workers, social conflicts, domestic politics, and local direct elections. The main consideration in picking a theme is a sociological and political reality and the context of the relevant public policy at the time that The Indonesian Forum is delivered. It is expected that the public can get the big picture of a particular event as The Indonesian Forum also presents relevant resource persons.

Since its inception, The Indonesian Institute is very aware of the passion of the public to get discussions that are not only rich in substance but also well-formatted, which support balanced ideas-exchanges and the equal involvement of the different elements of the society.

The discussions, which are designed to only invite a limited number of participants, do not only feature idea exchanges but also regularly offer policy briefs (policy recommendations) to relevant policymakers and also summaries to the participants, especially the media people and the resource persons at the end of each discussion. Therefore, the discussions will not end without solutions.

Training & Working Group Facilitation

LOCAL COUNCIL TRAINING

The roles and functions of local councils in monitoring local governments are very important. They need to ensure that participative and democratic policies will be espoused. Members of provincial and regent local councils are required to have a strong capacity to understand democratization matters, regional autonomy, legislative techniques, budgeting, local Politics, and political marketing. Thus, it is important to empower members of local councils.

In order for local councils to be able to respond to every problem that will come out as a result of any policy implemented by the central government or local governments, The Indonesian Institute invites the leaders and members of local councils to undergo training to improve their capacity.

WORKING GROUP

The Indonesian Institute believes that a good public policy process can be held with some engagement and empowerment of the stakeholders. The Indonesian Institute takes a role as one of the mediator agencies to facilitate some forums in which the Government, Council Members, Private Sectors, NGOs, and Academicians can meet in interactive forums. The Indonesian Institute provides facilitation on working groups and public advocacy.

The Indonesian Institute takes the role of mediator and facilitator in order to encourage the synergy of public policy work between the stakeholders and policymakers and also to have a synergy with funding agencies (donors).

Research Team Profile

Adinda Tenriangke Muchtar

Adinda Tenriangke Muchtar is the Executive Director of TII starting in 2018. She is also Analyst of Political and Public Policy Affairs, concerning issues on democracy, good governance and good governance). She completed a PhD in Development Studies at Victoria University of Wellington with the New Zealand Scholarship Program in 2017. Adinda studied International Relations Department at the University of Indonesia in 1996 and received a Bachelor of Social Science in 2001. Adinda was the First Indonesian Sumitro Fellow (2007), when she did research on "The Roles of the U.S. NGOs in Promoting Democratization and Governance Reform in Indonesia". Adinda earned a Master of International Studies from the University of Sydney (2003) with the scholarship from AusAID. Adinda's focus of interests are development, international aid, women's empowerment, and good governance.

Arfianto Purbolaksono

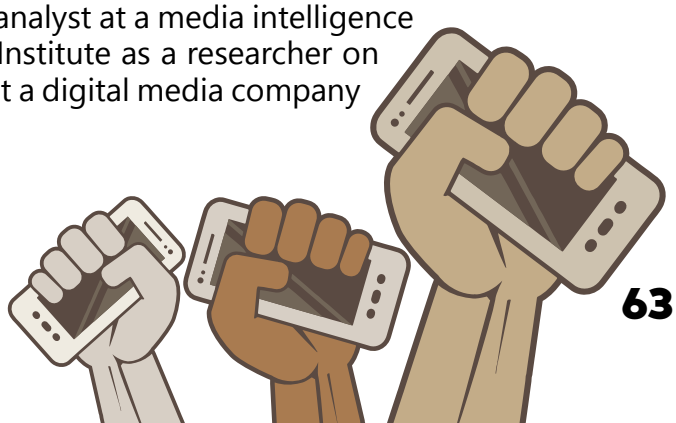
Arfianto Purbolaksono (Anto) is the Research and Program Manager of TII starting officially in July 2019. He graduated from the Department of Political Science, Faculty of Social and Political Sciences, University of Jenderal Soedirman. He earned a Master in Political Science at the University of Indonesia in February 2020. Anto has various issues of interest, such as on the study of democracy, defense, human rights, and digital politics.

Hemi Lavour Febrinandez

Hemi Lavour Febrinandez (Hemi), is a Legal Researcher at The Indonesian Institute (TII), Center for Public Policy Research. Obtained a Bachelor of Laws degree at the Faculty of Law, Andalas University in 2018. Hemi is active in writing and conducting legal research. Hemi has also been one of the participants in the call paper at the 6th Constitutional Law Conference in 2019 with the title "Constitutional Design of Central Government Relations with Local Governments in the Cancellation of Regional Regulations after the Constitutional Court Decision Number 137 / PUU-XIII / 2015 ". The focus of the studies he is currently working on is related to democracy and elections, structuring regulations and laws and regulations, protecting human rights, and political corruption.

Rifqi Rachman

Rifqi Rachman (Rifqi) is an alumnus of the Politics and Government Department, University of Gadjah Mada (UGM), Yogyakarta. He graduated in 2017. Rifqi started his career as a media analyst at a media intelligence company. Prior to joining The Indonesian Institute as a researcher on political affairs, he worked as a researcher at a digital media company in Indonesia.



Rifqi is interested in election, digital politics, political parties, and politics of borders. Towards the end of his study, Rifqi wrote a paper on border politics titled "Beyond Territoriality: Meaning Complexity of Cross-Border Activities in Napan Village, Nusa Tenggara Timur". He presented his paper during *Research Day* at the Faculty of Political and Social Sciences of UGM (2016).

Freedom of expression is one of the challenging issues in the reflection of 23 years of the Reform in Indonesia. Several cases that criminalized and targeted democracy activists along with their personal data, gadgets and social media have been increasing. Criminalization of individuals who are critical to the government including in digital spaces has become a regular news. In this case, existing legal foundations, including the 1945 Constitution, the Criminal Code, the Law Number 19 Year 2016 on the Law Number 11 Year 2008 regarding the Electronic Information and Transactions (ITE Law) to name a few, although they have been seen as the commitment of the government to protect human rights, apparently in practice, these regulations are also prone to be used as tools to discourage, if not to criminalize, those who are critical towards the government, particularly through electronic tools. Sharpening political divisions in society which resulted from previous elections in 2014, 2017, and 2019 also put additional barriers and threats to freedom of expression including in digital spaces between those who are pros and cons towards the current government.

The Indonesian Institute, Center for Public Policy Research (TII), wrote this policy paper to understand the policy content and context regarding freedom of expression, particularly citizens' criticisms towards the government in digital spaces. This paper is expected to provide actionable and relevant policy recommendations with human rights and freedom perspectives and involve various stakeholders in order to promote freedom of expression and digital protection in Indonesia, particularly for the citizens' participation in the policy processes, including in voicing criticisms and feedback to the government in digital spaces.

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