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## The Abuse of Freedom of Speech in the Digital Era: Social Media in the Perspective of Constitutional Law

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**Abstract:** Freedom of expression in digital spaces confronts increasingly complex constitutional challenges as social media becomes the dominant arena of contemporary public discourse. This study examines the abuse of expressive freedom on social media through a constitutional law framework, integrating normative-doctrinal analysis with multistakeholder empirical inquiry. The primary theoretical contribution lies in the construction of a constitutionally grounded analytical framework that evaluates digital speech regulation against the principles of *lex certa*, proportionality, and legal certainty as mandated by the 1945 Indonesian Constitution. The study engaged 25 purposively selected respondents across four strategic groups social media users, law enforcement officials, legal practitioners, and constitutional law academics to ensure normative depth alongside implementation insight. Findings reveal a constitutionally significant gap between the expressive freedom guarantees under Article 28E and the operational realities of ITE Law enforcement. The statute demonstrably produces structural chilling effects that suppress constitutionally protected expression, violates the proportionality standard embedded in Article 28J, and fails the *lex certa* threshold due to its high degree of normative ambiguity. This study argues that meaningful digital regulatory reform demands not merely technical revision but a paradigmatic reorientation that repositions freedom of expression as a primary constitutional value rather than a residual concession. A hybrid governance model integrating regulatory oversight with community-based moderation mechanisms, anchored within a coherent constitutional framework, is proposed as a principled and sustainable solution.

**Keyword:** Digital, Government, Law, Freedom, Constitutional

### INTRODUCTION

Constitutional democracy fundamentally depends on the protection of freedom of expression as a cornerstone right that enables citizens to participate meaningfully in public deliberation and political life. Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia explicitly guarantees every citizen the right to freedom of association, assembly, and expression, while Article 19 of the International Covenant on Civil and Political Rights (ICCPR) affirms this freedom at the international normative level. However, the constitutional architecture governing freedom of expression was constructed in an era when

public discourse occurred within identifiable, geographically bounded spaces subject to established legal jurisdictions. The emergence of digital platforms as the dominant medium of contemporary public communication has fundamentally disrupted this constitutional framework, creating a normative vacuum in which constitutional guarantees of free expression collide uneasily with the structural realities of algorithmically governed, privately owned digital spaces. This normative tension between constitutionally protected freedoms and the practical dynamics of digital communication forms the central problematic that this study seeks to address.

The transformation of social media into a primary public sphere has generated profound constitutional consequences that existing legal frameworks have struggled to accommodate. Oldenbourg (2024) demonstrates that digital platforms have fundamentally altered the power dynamics of public communication, concentrating unprecedented editorial and algorithmic control in the hands of private corporations whose decision-making processes operate largely beyond constitutional accountability mechanisms. This corporate dominance over digital public discourse creates a structural paradox: the very platforms that have expanded the practical reach of free expression simultaneously possess the capacity to suppress it through content moderation policies, algorithmic filtering, and account suspension all without the procedural safeguards that constitutional law imposes on state actors. The constitutional significance of this paradox cannot be overstated, as it reveals a critical gap between formal constitutional guarantees and their substantive realization in the digital environment.

The proliferation of hate speech and harmful content on social media platforms has intensified pressure on states to regulate digital communication, yet regulatory responses have frequently been constitutionally problematic. Rojszczak (2022) identifies that automated content filtering mechanisms in EU law operate within a fragmented legal framework that raises serious concerns about compliance with fundamental rights standards, particularly with respect to the proportionality and necessity requirements embedded in constitutional and human rights law. The implementation of such systems risks producing what might be characterized as structural digital censorship systematic suppression of lawful expression through over-broad technical mechanisms that lack adequate constitutional safeguards. Castaño-Pulgarín et al. (2021) further establish that online hate speech, understood as the systematic deployment of abusive and offensive language targeting groups defined by religion, race, gender, or political affiliation through internet-mediated networks, has expanded exponentially alongside social media growth yet the legal standards for defining, identifying, and adjudicating such speech remain constitutionally contested across jurisdictions.

Indonesia's experience with the Electronic Information and Transactions Law (UU ITE) illustrates with particular clarity the constitutional tensions inherent in digital speech regulation. The broad and ambiguous drafting of defamation and hate speech provisions in the ITE Law has produced an enforcement pattern characterized by selective application, prosecutorial discretion that invites political instrumentalization, and a documented chilling effect on legitimate public discourse. These outcomes represent not merely technical legal problems but fundamental constitutional failures: when criminal law is deployed in ways that systematically deter citizens from exercising constitutionally guaranteed expression rights, the normative integrity of the constitutional order itself is compromised. The constitutional imperative of legal certainty that citizens must be able to understand with reasonable precision which expressions are legally permissible is systematically undermined when statutory provisions are sufficiently vague to encompass both criminal hate speech and legitimate political criticism within their operative scope.

Prior scholarly inquiry has examined important dimensions of the relationship between digital communication and free expression, yet significant normative gaps remain unaddressed. Ellison et al. (2022) advance a sociotechnical framework for evaluating the welfare

implications of social media use that integrates technological and human dimensions, providing valuable analytical tools for understanding digital communication dynamics. Huang (2024) analyzes decentralized social network architectures such as Mastodon and BlueSky as alternative models for facilitating online expression through value-based platform design, revealing both the potential and limitations of technical solutions to governance challenges. However, these contributions, while intellectually significant, share a common limitation: they do not engage substantively with constitutional law doctrine as an analytical framework for evaluating the normative adequacy of digital speech governance. The absence of rigorous constitutional analysis leaves unresolved the foundational question of how freedom of expression guarantees with their specific constitutional architecture of rights, limitations, and proportionality requirements should be operationalized in the digital environment.

This normative gap is particularly acute in the Indonesian constitutional context, where the intersection of constitutional rights doctrine, the ITE Law regulatory framework, and the practical dynamics of social media governance has not been subjected to comprehensive scholarly analysis. Celeste (2021) demonstrates that national courts in various jurisdictions are increasingly performing a constitutionalizing function in relation to social media exclusion, developing constitutional standards for platform governance through judicial interpretation yet Indonesian constitutional jurisprudence on digital speech rights remains relatively underdeveloped compared to the sophistication of the regulatory challenges it must address. Similarly, Custers (2022) argues persuasively for the recognition of new digital rights as additional fundamental rights specifically designed for the digital era, acknowledging that traditional constitutional rights frameworks developed before the internet existed may be structurally inadequate to address contemporary digital governance challenges. These arguments underscore the urgency of developing a specifically constitutional analytical framework for Indonesian digital speech regulation.

The international comparative dimension of digital speech governance further complicates the normative landscape. Kohl (2022) reveals a fundamental transatlantic tension in the regulatory approach to hate speech platforms, contrasting the European tradition of restricting harmful speech to protect vulnerable groups with the American constitutional tradition of prioritizing protection against government interference in content markets. This regulatory divergence reflects deeper constitutional philosophy differences regarding the relationship between freedom, equality, and state power that cannot be resolved through technical harmonization alone, but require explicit constitutional reasoning about foundational values. For Indonesia, navigating this international regulatory landscape requires a clear constitutional framework that can both engage with international standards and remain grounded in the specific constitutional commitments and socio-cultural context of Indonesian democracy.

The particular vulnerabilities of Indonesia's multicultural democratic system intensify the constitutional stakes of digital speech governance. The country's extraordinary ethnic, religious, and cultural diversity creates conditions in which digital hate speech can rapidly translate into horizontal social conflict with potentially serious consequences for democratic stability and social cohesion. Anansaringkarn & Neo (2021) demonstrate, in the analogous Thai context, that state digital speech regulations designed ostensibly to combat harmful content can be instrumentalized to suppress legitimate political opposition and civil society advocacy a pattern with clear resonance in the Indonesian regulatory experience. The constitutional challenge is therefore not simply to regulate harmful speech effectively, but to do so through mechanisms that are themselves constitutionally legitimate: grounded in clear normative standards, subject to independent judicial oversight, and designed to minimize collateral suppression of protected expression. Oz & Yanik (2024) further establish that surveillance perceptions significantly reduce citizens' willingness to express political opinions on social

media confirming that constitutionally problematic regulation produces measurable democratic deficits in political participation.

The normative deficiency at the center of existing research is therefore not merely empirical but constitutional: prior studies have documented the practical problems of digital speech governance without providing the doctrinal constitutional analysis necessary to evaluate the legitimacy of existing regulatory frameworks or to design constitutionally adequate alternatives. Teixeira da Silva (2021) identifies the specific constitutional risks of social media pressure on academic expression, demonstrating how platform dynamics can create *de facto* "cancel culture" mechanisms that operate outside formal legal constraints yet produce constitutionally significant restrictions on the freedom of thought and academic inquiry. Gorenc (2022) frames the fundamental ethical and constitutional dilemma between hate speech prevention and free expression protection, demonstrating that this tension cannot be resolved through simple utilitarian balancing but requires principled constitutional reasoning about the foundational values at stake. These contributions illuminate the constitutional dimensions of the problem while stopping short of the systematic normative analysis that the situation demands.

This study therefore aims to fill this constitutional normative gap by analyzing the abuse of freedom of expression on social media through a rigorous constitutional law framework that moves beyond empirical description to engage directly with questions of constitutional doctrine, normative adequacy, and institutional design. The research integrates multistakeholder empirical analysis with constitutional normative analysis to produce findings that are simultaneously grounded in Indonesian social realities and analytically rigorous from a constitutional law perspective. The scientific contribution of this study lies in the development of a constitutionally grounded analytical framework for evaluating digital speech regulation in Indonesia one that can assess existing regulatory arrangements against constitutional standards, identify specific normative deficiencies, and provide principled foundations for reform. By connecting empirical evidence of regulatory impacts with constitutional doctrine concerning freedom of expression, legal certainty, proportionality, and democratic participation, this research seeks to advance the development of a digital governance framework that is not merely technically effective but constitutionally legitimate and democratically sustainable.

## **METHOD**

This study employs a mixed normative-empirical approach, combining a quantitative descriptive survey with constitutional law doctrinal analysis. The integration of these two methodological streams is deliberate and theoretically justified: while constitutional law scholarship is inherently normative concerned with the interpretation of legal texts, doctrines, and principles its practical application to contemporary digital governance challenges requires empirical grounding to avoid abstract theorizing disconnected from social reality. A purely doctrinal approach would fail to capture how constitutional guarantees are experienced, perceived, and contested by the stakeholders most directly affected by digital speech regulation. Conversely, a purely quantitative approach would reduce complex constitutional questions to statistical aggregates incapable of generating normative insights. The synthesis of both approaches enables this study to move from empirical observation to constitutional argument a methodological trajectory that reflects the evidence-based policymaking paradigm increasingly adopted in constitutional scholarship.

The quantitative component adopts a descriptive survey design aimed at providing a systematic empirical portrait of how various stakeholder groups perceive the dynamics of freedom of expression in the digital era and the adequacy of the existing regulatory framework. Descriptive survey methodology was selected because it allows for the structured comparison

of perceptions across distinct professional and social categories, thereby generating data that can illuminate normative gaps between constitutional ideals and implementation realities (Ellison et al., 2022). Crucially, the quantitative findings in this study are not treated as ends in themselves; rather, they function as empirical anchors that substantiate and contextualize the constitutional law arguments developed in the analysis. Each statistical finding is systematically interpreted through the lens of constitutional doctrine particularly the proportionality framework under Article 28J of the 1945 Constitution so that percentages of perception become evidence of constitutional compliance or deficiency, not merely sociological data points.

The research population is defined as individuals who occupy structurally significant positions in the Indonesian digital speech ecosystem those who either produce, regulate, enforce, or theorize about digital expression and its constitutional boundaries. Four strategic stakeholder groups were identified: (1) active social media users representing the general public as the primary rights-holders of constitutionally protected expressive freedom; (2) law enforcement officials from the police and prosecutor's office as frontline implementers of the ITE Law; (3) legal practitioners working as advocates with documented experience handling ITE-related cases; and (4) constitutional law academics from accredited Indonesian universities. Sampling employed a purposive strategy, wherein respondents were selected based on specific eligibility criteria designed to ensure informational depth and credibility rather than statistical representativeness in the conventional sense. For law enforcement officials, eligibility required direct involvement in the investigation or prosecution of ITE cases. For legal practitioners, eligibility required a minimum of two documented cases involving digital speech disputes. For academics, eligibility required a specialization in constitutional law or digital law. For social media users, eligibility required active engagement across at least two major platforms with awareness of the ITE Law's existence.

The total sample consisted of 25 respondents distributed as follows: 10 social media users, 5 law enforcement officials, 5 legal practitioners, and 5 constitutional law academics. It must be acknowledged transparently that this sample size does not permit statistical generalization to the broader Indonesian population. However, in mixed normative-empirical research particularly in legal scholarship that draws on stakeholder perception to construct constitutional arguments small purposive samples of expert and directly affected informants are methodologically appropriate and widely accepted, provided findings are interpreted with appropriate epistemic caution (Anansaringkarn & Neo, 2021). The value of this sample lies not in its statistical power but in the qualitative depth and professional diversity of the perspectives it captures, each of which carries distinct constitutional significance. The data collection instrument consisted of a structured questionnaire developed specifically for this study, grounded in the theoretical framework of constitutional freedom of expression and calibrated to the Indonesian digital regulatory context. The questionnaire was organized around two primary perception dimensions: positive perceptions concerning the constitutional importance and value of free expression on digital platforms, and negative perceptions concerning the risks, abuses, and regulatory failures associated with the current ITE Law framework. These dimensions correspond directly to the constitutional tension between Article 28E (guarantee of expressive freedom) and Article 28J (legitimate limitations), making the questionnaire not merely a sociological instrument but a constitutional diagnostic tool.

In addition to closed-ended items measured on a structured response scale, the instrument incorporated open-ended questions designed to elicit respondents' qualitative assessments of specific regulatory provisions, implementation challenges, and reform priorities. This qualitative dimension is essential for a constitutionally oriented study because it allows respondents to articulate normative judgments about fairness, proportionality, and constitutional compliance that cannot be captured by numerical scales alone (Oz & Yanik, 2024). The combination of quantitative items and qualitative probes enables a richer, more

constitutionally meaningful interpretation of the data. Data collection was conducted through a combination of online questionnaire distribution and structured direct interviews, the latter employed particularly for law enforcement officials and legal practitioners whose professional schedules and institutional contexts required a more adaptive approach. All data were collected within a defined period to ensure temporal consistency of responses relative to the current state of the ITE Law.

Quantitative data were analyzed using descriptive statistical methods, generating frequency distributions and percentage comparisons across stakeholder groups. However, consistent with the mixed normative-empirical design of this study, statistical outputs are never presented as self-sufficient findings. Each quantitative result is subjected to a two-stage interpretive process: first, a comparative inter-group analysis identifying patterns of convergence and divergence in stakeholder perceptions; and second, a constitutional law interpretation that situates each empirical pattern within the normative framework of Indonesian constitutional doctrine, relevant provisions of the ITE Law, and applicable international human rights standards. Qualitative data derived from open-ended responses were analyzed thematically, with themes organized around three constitutional categories: (i) the scope and content of the constitutional right to freedom of expression in digital contexts; (ii) the constitutional adequacy of the ITE Law's limitation provisions as measured against the proportionality standard; and (iii) stakeholder preferences for institutional and regulatory reform aligned with constitutional principles. Direct quotations from respondents are employed selectively throughout the analysis to provide evidentiary texture and to prevent the reduction of constitutional arguments to abstract claims detached from lived implementation experience (Celeste, 2021).

This study acknowledges several important methodological limitations that must be considered in interpreting its findings. First, the sample size of 25 respondents, while purposively selected for depth and professional relevance, does not support broad statistical inference. Findings should be read as exploratory and hypothesis-generating rather than definitive or nationally representative. Second, the use of self-reported perception data introduces the possibility of social desirability bias, particularly among law enforcement officials and legal practitioners whose professional identities may influence their public assessments of the ITE Law's legitimacy. Third, the descriptive survey design captures a cross-sectional snapshot of stakeholder perceptions at a specific moment in time; it cannot account for the dynamic evolution of perceptions in response to legislative amendments or judicial decisions (Tontodimamma et al., 2021). Notwithstanding these limitations, the study's mixed normative-empirical design positions it to make a distinctive contribution: it generates constitutionally informed empirical insights that neither pure doctrinal analysis nor conventional survey research could produce independently. The methodological boundaries of the quantitative component are explicitly compensated by the depth of the constitutional law analysis that frames, contextualizes, and critically interrogates the empirical data throughout the study. This approach reflects the growing recognition in constitutional scholarship that evidence-based constitutional reasoning grounded in stakeholder realities rather than abstract doctrine alone produces more socially responsive and practically implementable normative frameworks (Chekol et al., 2023; Custers, 2022).

## **RESULTS AND DISCUSSION**

### **Characteristics of Stakeholder Perceptions of Freedom of Opinion on Social Media**

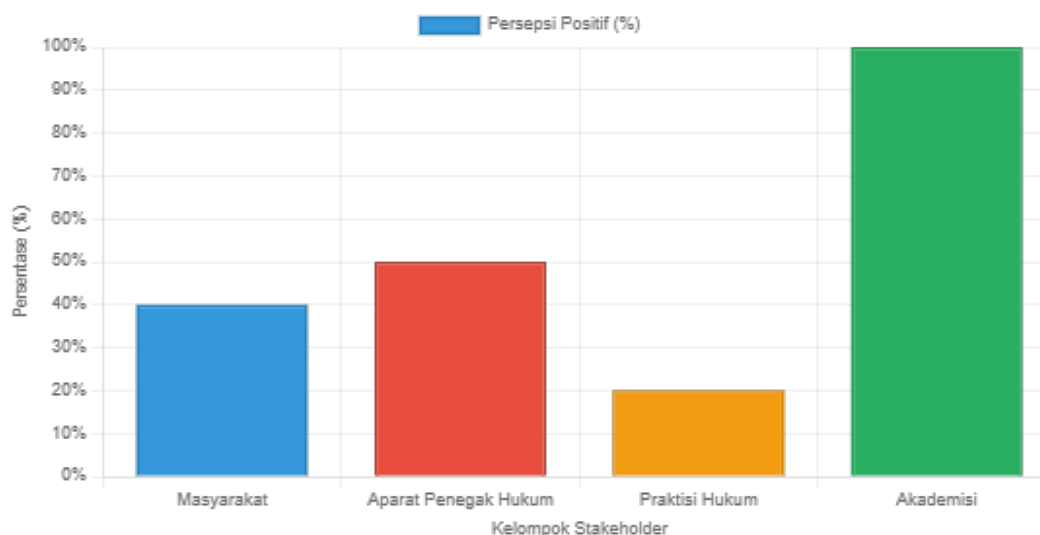
This research reveals the complexity of the perception of various stakeholder groups towards the phenomenon of freedom of opinion in the digital era. Data analysis shows a significant polarization between recognition of the importance of freedom of expression and concerns about its potential misuse in cyberspace. These findings are in line with Gorenc's study which emphasizes that freedom of expression as the foundation of democracy faces

serious challenges when it comes into contact with the phenomenon of hate speech on digital platforms (Gorenc, 2022).

**Table 1. Distribution of Stakeholder Perceptions of Freedom of Opinion**

Respondent Group	Sum	Positive Perception (%)	Negative Perception (%)	Top recommendations
Community	10	40	70	Clearer rules
Law Enforcement Officer	5	50	80	Criteria of criticism vs insult emphasized
Legal Practitioner	5	20	100	Revision of the ITE Law
Academics	5	100	80	Digital literacy and alternative mechanisms

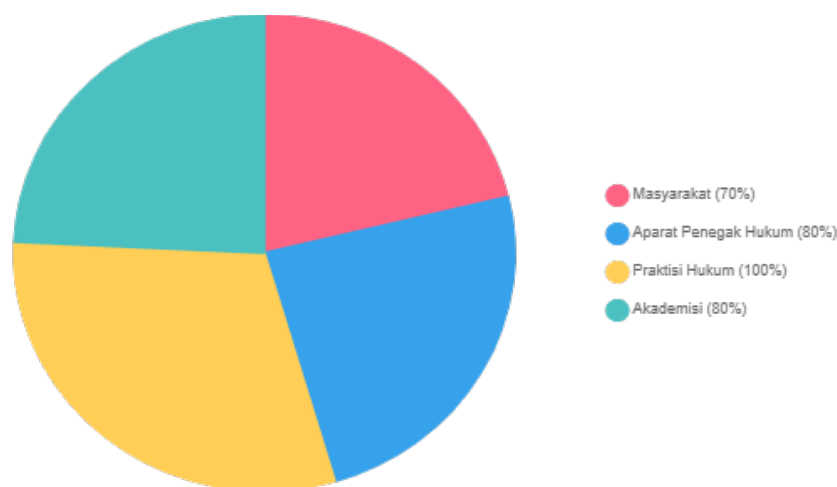
The data in Table 1 reveals a constitutionally significant pattern: legal practitioners, who interact most directly with the ITE Law enforcement system, record the lowest positive recognition of freedom of expression (20%). From a constitutional law perspective, this finding is deeply concerning. It suggests that the legal system as operationally experienced by practitioners is functionally skewed toward restriction rather than the protection of constitutional rights. Article 28I paragraph (4) of the 1945 Constitution places an affirmative obligation on the state to protect, advance, enforce, and fulfill human rights yet a regulatory framework that produces near-universal practitioner skepticism toward free expression as a right suggests a structural divergence between constitutional mandate and implementation reality.



**Figure 1. A diagram of positive perceptions about the importance of freedom of opinion**

The bar chart illustrates the recognition gap across stakeholder groups. Beyond its descriptive value, this visualization carries normative constitutional weight. The inverse relationship between practitioners' field exposure and their recognition of free expression as a fundamental right indicates that the operational implementation of the ITE Law is producing outcomes constitutionally inconsistent with its stated purpose. A legal instrument designed to regulate digital communication must per the constitutional proportionality doctrine remain the minimum necessary restriction to achieve a legitimate purpose. When those who implement

the law systematically undervalue the right being restricted, proportionality analysis becomes structurally compromised. This resonates with Celeste (2021) finding that constitutionalizing mechanisms are essential precisely when practical enforcement diverges from fundamental rights standards.



**Diagram 2. Negative Perceptions of Potential Abuse of Freedom of Opinion**

The universally high concern across all groups regarding potential abuse legal practitioners at 100%, law enforcement and academics at 80%, and the public at 70% reflects a constitutionally complex dynamic. High concern about abuse does not automatically justify broad restriction. Article 28J paragraph (2) of the 1945 Constitution establishes that limitations on fundamental rights must be set by law, exclusively for the purposes of guaranteeing recognition and respect for others' rights and freedoms, and to satisfy just demands based on moral considerations, religious values, security, and public order in a democratic society. The data therefore demands not simply stronger enforcement, but constitutionally calibrated regulation that can distinguish legitimate expression from genuine abuse a distinction the current ITE Law framework demonstrably struggles to operationalize..

The findings of this study also reveal a correlation pattern between the level of digital literacy and the perception of the urgency of protecting freedom of expression in cyberspace. A group of academics who have a deep theoretical understanding of constitutional principles demonstrate a strong commitment to the protection of fundamental rights, but still recognize the need for restrictions based on the public interest. This phenomenon resonates with Palmer's study that analyzes how global press freedom organizations construct narratives about threats to freedom of expression in the context of a pandemic, demonstrating the complexity of defining legitimate limits on freedom. Differences in perceptions among stakeholders also reflect communication gaps between academics, legal practitioners, and policy implementers that can hinder the effectiveness of digital regulations. This analysis shows the need to develop a dialogue platform that can facilitate the exchange of perspectives and experiences between stakeholder groups. The integration of the empirical experience of legal practitioners with the theoretical framework of academics can result in a more comprehensive synthesis in the development of regulatory frameworks. These findings also demonstrate the importance of training and socialization programs that can enhance a shared understanding of the complexities of digital regulation. Harmonization of stakeholder perspectives is an important prerequisite to ensure effective and acceptable regulatory implementation by all relevant parties.

### The Dynamics of Digital Regulation Implementation in the Context of Constitutional Law

An in-depth analysis of the perspective of law enforcement officials reveals the complexity of implementing digital regulations. 80% of respondents from this group admitted to receiving reports of hate speech and defamation on a regular basis, but 60% considered that most of these reports were emotional and personal crimes rather than substantial crimes. This phenomenon reflects the challenges identified by Anansaringkarn & Neo regarding the difficulty of distinguishing between legitimate criticism and forms of speech that can be categorized as illegal (Anansaringkarn & Neo, 2021). A representative quote from law enforcement respondents stated: "We are often confused about distinguishing between criticism of officials and personal insults, especially on social media where the boundaries are very thin." This statement points to significant normative ambiguity in the implementation of the ITE Act, which is in line with Griffin's findings regarding the complexity of the governance of social media platforms that require stronger democratic accountability mechanisms (Griffin et al., 2024).

**Table 2. Analysis of Regulatory Implementation Concerns and Challenges**

Implementation Aspects	Community (%)	Equipment (%)	Practitioner (%)	Academics (%)
Fear of the ITE Law	50	-	-	-
Difficulty distinguishing criticism vs insults	30	40	80	60
The need for regulatory revision	30	60	80	60
Low digital literacy	-	-	-	80

The data in Table 2 carries direct normative implications for the constitutional validity of the ITE Law's core provisions. The fact that 80% of legal practitioners report difficulty distinguishing between criticism and insult directly implicates the constitutional principle of *lex certa* the requirement that criminal prohibitions be formulated with sufficient clarity that citizens can understand what conduct is prohibited. Pasal 27 ayat (3) UU ITE, which criminalizes content perceived as defamatory, and Pasal 28 ayat (2), which prohibits content spreading hatred based on SARA (ethnicity, religion, race, and inter-group relations), have both been widely criticized for their breadth and interpretive ambiguity. When 80% of practitioners those charged with applying these provisions themselves cannot consistently distinguish criminal from protected speech, these provisions fail the *lex certa* standard and therefore raise serious questions of constitutional validity under Article 28D paragraph (1) of the 1945 Constitution, which guarantees the right to equal recognition, guarantee, protection, and legal certainty.

The 50% public fear of the ITE Law constitutes empirical evidence of a chilling effect a constitutionally recognized harm in which the mere existence or threatened application of a legal provision deters the exercise of protected rights. From a constitutional standpoint, a regulatory instrument that produces documented chilling effects operates as a *de facto* restriction on rights beyond its formal scope, violating the proportionality requirement embedded in Article 28J paragraph (2). This finding is consistent with Oz & Yanik (2024) empirical demonstration that surveillance perceptions significantly reduce willingness to express political opinions on social media confirming that constitutionally problematic regulation produces measurable democratic deficits.

**Table 3. Behavior Patterns of Community Adjustment to Digital Regulations**

Behavior Categories	Percentage of respondents (%)	Key Characteristics	Risk Level	Communication Strategy
Avoidance	30	Avoid sensitive topics entirely	Very Low	General, non-controversial communication
Self-Censor	35	Filter content before uploading	Low	Careful word selection, repetitive editing
Language Switcher	20	Using subtle and symbolic language	Keep	Metaphors, innuendos, indirect references
Risk-takers	10	Stay expressive without significant filtering	Tall	Direct, confrontational communication
Strategic Actors	5	Exploiting regulatory loopholes for advocacy	Very High	Organized digital activism

The behavioral taxonomy in Table 3 reveals a constitutionally alarming pattern: 65% of social media users (Avoidance + Self-Censor categories combined) have fundamentally altered their communicative behavior in response to regulatory fear. This is not a minor adjustment it represents a structural contraction of the constitutionally protected public sphere. The constitutional harm here operates at both individual and collective levels. Individually, the right to free expression guaranteed under Article 28E paragraph (3) is being functionally suppressed not by formal prohibition but by regulatory intimidation a form of indirect state interference that constitutional doctrine recognizes as equally impermissible. Collectively, the withdrawal of 65% of users from substantive digital expression undermines the democratic function of public discourse, compromising the constitutional right of citizens to participate in democratic governance under Article 28C paragraph (2). Teixeira da Silva (2021) identifies an analogous suppression dynamic in academic contexts, demonstrating that institutional and platform pressures can create de facto restrictions on constitutionally protected expression without formal legal prohibition.

**The Dynamics of Digital Regulation Implementation in the Constitutional Framework**

The complexity of implementing digital regulations is increasingly evident when analyzing the phenomenon of jurisdictional overlap between conventional criminal law and the unique characteristics of digital communication that are cross-border and real-time. Law enforcement officials face a methodological dilemma in determining the right jurisdiction when digital content is globally accessible but the impact is local and specific. These challenges are magnified by the limitations of the technical capacity to conduct adequate digital forensic investigations, as identified in the Tontodimamma et al. study on the evolution of hate speech research that emphasizes the importance of machine learning approaches for accurate detection and classification (Tontodimamma et al., 2021). The gap between the speed of evolution of communication technology and the adaptation of legal frameworks creates a space of ambiguity that can be exploited for abuse of the legal process. This phenomenon indicates the need for the development of special courts or special courts that have expertise in handling digital cases with high technical complexity. The integration of artificial intelligence technology in the investigation and adjudication process can be a solution to improve the accuracy and efficiency of handling cases of online hate speech. However, the application of

such technology also requires adequate safeguards to ensure that the protection of fundamental rights is not eroded in the automation process. The development of operational standards for procedures specifically for handling digital cases is an urgent need to ensure consistency and predictability in the implementation of the law.

An in-depth analysis of the implementation practices of digital regulations reveals the existence of a phenomenon of selective enforcement that can threaten the principle of equality before the law in the Indonesian justice system. Inconsistencies in the application of legal standards for similar cases create legal uncertainty that can have a devastating impact on democratic participation in the digital space. An Oz & Yanik study on the impact of surveillance perceptions on willingness to express oneself on social media confirms that regulatory uncertainty can significantly reduce public participation in online political discussions (Oz & Yanik, 2024). This problem is compounded by the lack of clear guidelines on investigative and evidentiary procedures in digital cases, which often rely on the subjective interpretation of investigators. The development of digital forensic capacity building is a priority to ensure that the law enforcement process can be carried out with high standards of probity and accountability. The integration of international best practices in digital law enforcement can provide an objective benchmark for improving the quality of domestic regulatory implementation. The establishment of clear procedural guidelines that integrate technical and legal aspects is fundamental to ensure the legal process in handling digital cases. Collaboration between law enforcement agencies and academic institutions as well as civil society organizations can result in a stronger and more responsive implementation framework to the development of contemporary communication technologies.

An analysis of public perception of social media users revealed a significant phenomenon of the "cold effect", where 50% of respondents admitted to being afraid to express their thoughts due to fears of being reported under the ITE Act. These findings resonate with the Oz & Yanik study that showed a negative relationship between surveillance perceptions and an individual's willingness to express opinions on social media. (Oz & Yanik, 2024) As one of the respondents put it: "Honest comments are often considered insulting, even though they are only critical," which shows the existence of legal uncertainty that creates an intimidating effect on democratic participation. This phenomenon reflects the challenges identified by Celeste regarding the fundamental rights implications of social media exclusions, where restrictions on access or fear of participating in digital spaces can reduce an individual's capacity to optimally enjoy his or her constitutional rights (Celeste, 2021). The data shows that 70% of public respondents consider freedom of speech on social media to be often used for bullying, insults, and hate speech, underscoring the paradoxical complexity between the protection of freedom and the prevention of harassment.

The phenomenon of self-censorship experienced by the community of social media users reflects the complexity of the relationship between legal regulation and behavioral adaptation in the context of digital communication. The fear of expressing legitimate opinions creates a spiral of silence that can threaten the vitality of public discourse in a democracy. These findings are in line with Gorenc's analysis of the ethical dilemma between hate speech and freedom of expression, which emphasizes that the shift in perceptions of freedom of expression has evolved from a focus on the ability to criticize the government to the need to protect the target of hate speech (Gorenc, 2022). The phenomenon of legal intimidation through the threat of reporting under the ITE Law creates an asymmetrical power relationship that can be used to silence legitimate criticism of public policy or official behavior. Sociological analysis shows that legal uncertainty can change people's communication patterns from deliberative to defensive and cautious. The psychological impact of this regulatory uncertainty can reduce the quality of democratic participation and hinder the process of forming informed and rational public opinion. The need to develop a legal literacy program that can provide a clear

understanding to the public about the legal limits of expression on social media. Systematic public education initiatives can help reduce uncertainty and increase public confidence to participate in the digital space responsibly.

Further research on public perception reveals a paradox between the desire to be protected from hate speech and concerns about excessive restrictions on freedom of expression. The social media user community shows a preference for transparent and accountable content moderation mechanisms rather than top-down and punitive government regulations. This phenomenon reflects the evolution of public expectations for more participatory and responsive digital governance, as analyzed in Griffin's study on democratic accountability on social media platforms. The public's preference for community-based moderation points to the potential for the development of alternative dispute resolution mechanisms that can reduce reliance on formal legal processes that are often considered excessive for small cases (Griffin et al., 2024). Analysis of behavior patterns shows that societies tend to be more compliant with norms developed through consensus processes rather than regulations imposed unilaterally by authorities. These findings demonstrate the need to develop a hybrid governance model that combines regulatory oversight with self-regulatory mechanisms developed by user communities. The implementation of participatory policy-making processes can increase the legitimacy and effectiveness of digital regulations by ensuring that people's perspectives and needs are adequately accommodated. The development of an organized and structured public consultation platform can be a mechanism to ensure that the evolution of digital regulation is in line with the development of public communication practices and norms.

### **Legal Practitioners' Perspectives and the Urgency of Regulatory Reform**

The most significant finding of this study is the absolute consensus (100%) of legal practitioners regarding the potential misuse of the ITE Law as an instrument of criminalization. As one of the advocate respondents stated: "Many defamation cases start only from a light pole, but are over-processed by the law." This perspective indicates an imbalance in the application of the law that can threaten the constitutional principles of freedom of expression. This analysis is in line with Kohl's argument about the need for a more nuanced approach to the regulation of hate speech, which can bridge the European legal tradition focused on preventing the negative impacts of hate speech with the American tradition of emphasizing protection against government intervention. Kohl (2022) As many as 80% of legal practitioners consider the need for a revision of the multi-interpretation article in the ITE Law, which indicates the urgency of legal reform to accommodate the complexity of contemporary digital communication.

A comprehensive analysis of the experience of legal practitioners in handling digital cases reveals systematic deficiencies in the existing procedural framework, especially in the aspects of evidence collection and the chain of custody for digital evidence. The technical complexities of proving the intent and impact of digital communications often cannot be adequately accommodated by conventional criminal procedure legal procedures designed for offline contexts. This problem is exacerbated by the limited capacity of the judiciary to understand the nuances of digital communication, including cultural and linguistic contexts that can influence the interpretation of the meaning of speech, as identified in Celeste's study on the role of the constitutionalization of the national judiciary in dealing with social media exclusion (Celeste, 2021). Legal practitioners also face challenges in determining the proportionality between the severity of digital speech violations and the sanctions imposed, which often do not reflect the proper gradation. This imbalance creates inequities that can erode public trust in the justice system and encourage cynicism towards the rule of law in a digital context. The need to develop specialized legal education that can provide competence to legal practitioners to handle the complexity of digital cases with adequate expertise. The establishment of a continuing legal education program focused on digital law is essential to

ensure that legal practitioners can adapt to technological evolutions and contemporary communication patterns. The integration of technical experts in the adjudication process can help bridge the gap between legal reasoning and technical reality in complex digital cases.

The perspective of legal practitioners also reveals the phenomenon of forum shopping in digital cases, where the disputing parties take advantage of jurisdictional ambiguity to seek a court that can grant a favorable verdict. This practice creates inconsistencies in the application of the law and can invite regulatory arbitration that is detrimental to the predictability of the legal system as a whole. Kohl's study of the regulation of hate speech platforms in the context of transatlantic compromises suggests that different regulatory approaches can be used to avoid proper accountability. Kohl (2022) This phenomenon demonstrates the need for harmonization of standards and procedures between jurisdictions to ensure the consistent application of legal principles in digital cases. Legal practitioners also identify gaps between legislative intent and judicial interpretation in the implementation of ITE Acts, which often produce results that lawmakers did not anticipate. The lack of clarity in the legislative history and the lack of explanatory notes in the ITE Law make it difficult to have a consistent and predictable judicial interpretation. There is a need for a comprehensive legislative review to clarify ambiguities and fill in existing gaps in the existing regulatory framework. The development of judicial guidelines that can provide direction to judges in interpreting multi-interpretation provisions is an urgent need to ensure uniformity of court decisions handling digital cases.

### **Contribution of Academics in the Development of the Constitutional Framework**

The perspective of constitutional law academics makes an important theoretical contribution in understanding the complexity of freedom of opinion in the digital era. The full (100%) consensus of this group affirms that freedom of speech is a fundamental but not absolute constitutional right, which is in line with constitutional law principles that recognize the need for restrictions based on public interest and morality. A significant finding is the acknowledgement of 80% of academics that low digital literacy is the main cause of the abuse of free speech. As one of the respondents put it: "In constitutional law, freedom of expression is a fundamental right, but it must be limited by the public interest and morality. Digital literacy is key." This perspective shows the need for a holistic approach that integrates digital education with legal reform in addressing the challenges of freedom of opinion in the digital era. Academic recommendations regarding special courts or alternative dispute resolution mechanisms reflect a deep understanding of the technical and legal complexities that require specialized expertise. This approach resonates with Custer's proposal regarding the need for a new conceptualization of digital rights that can accommodate contemporary technological realities without being tied to traditional basic rights frameworks (Custers, 2022).

The contribution of academics in the development of theoretical frameworks demonstrates the importance of integrating constitutional principles with the contemporary realities of digital communication in formulating a balanced approach to regulating freedom of expression. Constitutional law academics identify the need to reconceptualize the traditional idea of public forums in the context of digital platforms that have fundamentally different characteristics from conventional public spaces. An analysis of constitutional interpretation shows that the restriction clause in the constitution's provisions on freedom of expression needs to be reinterpreted to accommodate the complexity of digital communications that have a global reach but have a local impact. The study of Zapata Rozo et al. On New Digital Rights proposes the need to imagine additional fundamental rights specific to the digital age, which are not tied to traditional fundamental rights frameworks that may not be adequate to address contemporary challenges. The Zapata Rozo et al. (2024) academic perspective also emphasizes the importance of the proportionality test in evaluating restrictions on freedom of expression, where each restriction must meet the criteria of legitimate purpose, necessity, and

proportionality *stricto sensu*. The development of a doctrinal framework that can provide guidance to legislators and the judiciary in applying proportionality tests consistently is an important contribution to academic discourse. Academics also advocate for the implementation of rights-based approaches in digital governance that place human dignity and democratic participation as core values that must be protected. The integration of comparative constitutional analysis can provide insight into best practices from other jurisdictions that have developed sophisticated frameworks for the protection of digital rights.

Academic analysis also reveals the need to develop institutional mechanisms that can facilitate adaptive governance in the context of rapidly evolving digital technologies. Academics proposed the establishment of an independent digital rights commission that has the expertise to continuously monitor the impact of digital regulations on the implementation of basic rights. This institutional design approach is in line with recommendations in the Anansaringkarn & Neo study on the need for strong transparency mechanisms for tech companies as a first step before implementing coercive laws that establish the state as the sole arbiter of truth (Anansaringkarn & Neo, 2021). Academics also emphasized the importance of evidence-based policymaking based on empirical research on the actual impact of digital regulation on democratic discourse and public participation. The development of interdisciplinary research programs that integrate legal analysis with social science research can lead to a more nuanced understanding of the complexities of digital governance. The contribution of academics in developing alternative dispute resolution mechanisms shows the potential to reduce reliance on criminal law enforcement to address minor or interpersonal digital speech conflicts. The establishment of mediation and arbitration systems devoted to digital disputes can result in more proportionate and less punitive solutions. Academics also advocate for the need for a constitutional review mechanism that can conduct periodic assessments of the compatibility of digital regulations with constitutional principles and international human rights standards. The integration of constitutional impact assessments in the legislative process can ensure that new regulations do not inadvertently limit fundamental rights disproportionately.

### **Implications of the findings for the development of digital regulatory policies**

The synthesis of the findings of this study reveals the need for a multidimensional approach in developing a digital regulatory framework that can bridge the tension between the protection of constitutional freedoms and the prevention of abuse. Differences in perceptions among stakeholders indicate the complexity of governance that requires more inclusive consultation and participation mechanisms, as stated by Griffin regarding the limitations of the multi-stakeholder approach in governance platforms (Griffin et al., 2024). The findings on the "chilling effect" experienced by the community of social media users confirm the argument of Zapata Rozo et al. regarding the need for sophisticated prevention mechanisms to address the challenge of hate speech without sacrificing democratic participation (Zapata Rozo et al., 2024). The integration of OSINT technology and Natural Language Processing proposed in this study can be a technical solution that complements the necessary legal reforms.

Cross-stakeholder consensus on the need for clarity in regulations shows the urgency of developing more specific and operational guidelines. Legal practitioners' recommendations regarding the revision of the ITE Law, combined with academic proposals on alternative dispute resolution mechanisms, can be the basis for the development of a digital legal system that is more responsive to the complexities of contemporary communication. This approach is in line with the principles of economic democracy advocated by Griffin, which emphasizes the need for a redistribution of control over media and communications infrastructure to ensure substantive democratic accountability (Griffin et al., 2024).

The strategic implications of the research findings show the need for a fundamental restructuring in the digital governance regulatory approach that can harmoniously integrate technological capabilities with constitutional imperatives. The synthesis of findings suggests that the current regulatory framework that is reactive and penalty-oriented needs to be transformed into a proactive and prevention-focused approach that can anticipate the evolution of communication technologies. The findings regarding stakeholder perception gaps imply the need for institutional mechanisms that can facilitate ongoing dialogue and collaboration between various actors in the digital ecosystem. A study by Zapata Rozo et al. on the characterization of hate networks in the context of electoral processes shows that advanced analytical tools such as natural language processing and knowledge graphs can provide valuable insights for developing targeted interventions (Zapata Rozo et al., 2024). The integration of technology solutions with the legal framework can result in a more sophisticated and nuanced approach to addressing digital speech violations without sacrificing fundamental rights. These findings also imply the need for comprehensive capacity building for all stakeholders involved in the digital governance ecosystem. The development of cross-sectoral partnerships between government, civil society, academia, and the technology sector can lead to more holistic solutions to complex digital governance challenges. The establishment of an innovation lab or sandbox environment can facilitate experimentation with new governance models before full-scale implementation.

The findings of this study also imply the need for a paradigm shift from individual-focused regulation to an ecosystem-based approach that recognizes the interconnected nature of digital communication and its impact on the overall social order. The complexity of the challenges identified in this study suggests that effective solutions require coordination between different levels of governance, from local communities to international cooperation. This implication is in line with Griffin's argument about the need for an economic democratic approach that emphasizes democratic control of the market and the redistribution of ownership in media and communications infrastructure (Griffin et al., 2024). The development of a multi-stakeholder governance framework that can accommodate the legitimate interests of various parties while maintaining the primacy of constitutional principles is essential for sustainable digital governance. The findings on the chilling effects and self-censorship imply the need for proactive measures to protect and promote digital civic participation through education, awareness, and empowerment programs. The establishment of a digital citizenship curriculum in the education system can build a strong foundation for responsible digital participation. The long-term implications of these findings suggest the need for constitutional amendments or interpretations that can explicitly recognize and protect digital rights as an integral component of fundamental freedoms in a democratic society. The development of sophisticated jurisprudential doctrines for the digital context can provide predictability and coherence in judicial decision-making that is critical for the rule of law in the digital age.

## CONCLUSION

This study establishes, through the integration of constitutional doctrinal analysis and multistakeholder empirical inquiry, that the existing regulatory framework governing digital expression in Indonesia is fundamentally misaligned with the constitutional imperatives enshrined in the 1945 Constitution. The central research question whether the current implementation of the ITE Law adequately protects the constitutionally guaranteed right to freedom of expression in the digital environment is answered in the negative, on both empirical and normative grounds. The data demonstrate that the ITE Law, as operationally applied, produces systematic constitutional deficiencies rather than the rights-protective outcomes its enactment ostensibly sought to achieve. From a constitutional law perspective, the most consequential finding of this research is the documented chilling effect experienced by 50% of

social media users, compounded by the behavioral contraction evident in 65% of respondents who have fundamentally altered their communicative conduct in response to regulatory fear. These figures are not merely sociological observations; they constitute empirical evidence of a structural violation of Article 28E paragraph (3) of the 1945 Constitution, which guarantees every citizen the right to freedom of expression. When a statutory instrument operates not through formal prohibition but through regulatory intimidation to suppress constitutionally protected expression, it fails the proportionality standard embedded in Article 28J paragraph (2), which requires that any limitation on fundamental rights be strictly necessary, legally grounded, and proportionate to a legitimate constitutional objective.

The finding that 80% of legal practitioners are unable to consistently distinguish between criminal speech and constitutionally protected expression directly implicates the principle of *lex certa*, a foundational rule-of-law requirement derived from Article 28D paragraph (1) of the 1945 Constitution. A criminal statute whose operative provisions cannot be applied with reasonable predictability by trained legal professionals fails the constitutional threshold of normative clarity. This finding, corroborated by the universal consensus among legal practitioners regarding the ITE Law's susceptibility to instrumentalization, confirms that the statute as currently drafted creates conditions conducive to selective and politically motivated enforcement a pattern structurally incompatible with the constitutional guarantee of equal protection and legal certainty. The divergence in stakeholder perceptions particularly the inverse relationship between practitioners' implementation experience and their recognition of expressive freedom as a fundamental right reveals a deeper institutional pathology: the operational culture of digital law enforcement has become constitutionally dissociated from the rights-protective framework that the Constitution mandates. This dissociation is not remediable through minor administrative adjustments; it requires comprehensive legislative reform that reanchors the ITE Law's limitation provisions within an explicit constitutional proportionality framework, establishes clear definitional boundaries between criminal and protected speech, and institutionalizes independent judicial oversight mechanisms capable of enforcing those boundaries consistently.

In conclusion, the normative imperative emerging from this study is unambiguous: the development of constitutionally legitimate digital governance in Indonesia requires a paradigm shift from punitive, ambiguity-prone regulation toward a rights-based framework that treats freedom of expression not as a residual concession but as a primary constitutional value to be affirmatively protected. Legislative reform, judicial capacity development, and the institutional architecture of hybrid governance integrating regulatory oversight with participatory community-based mechanisms must collectively be grounded in constitutional principles of proportionality, legal certainty, and democratic accountability. Only through such a constitutionally anchored transformation can Indonesia's digital governance framework fulfill its fundamental obligation to both protect citizens from genuine communicative harm and preserve the expressive freedoms upon which democratic legitimacy ultimately depends.

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