

Regulation and Implementation of Digital Broadcasting Monitoring in the Context of Freedom of Opinion in Indonesia

Ahmad Saogi

Faculty of Law, UIN Syarif Hidayatullah Jakarta, Indonesia

*Corresponding Author: ahmadsaogi@gmail.com

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ABSTRACT

This research analyses the gaps in digital broadcasting regulations in Indonesia in the context of protecting freedom of expression. Digital transformation, with internet penetration reaching 78.19% in 2023 and a projected digital economy worth 109 billion US dollars in 2025, has created new regulatory challenges, while the legal framework still relies on Law no. 32/2002, which was formed before the digital era. Through a juridical-normative approach and comparative analysis of regulatory practices in other countries, the research identified three critical findings: (1) the inability of the Broadcasting Law to accommodate the complexity of digital platforms due to the ambiguous definition of "other media"; (2) overlapping authority between KPI and Kominfo which results in legal uncertainty; and (3) a 52% increase in cases of criminalization of digital expressions related to politics in 2024, which indicates a systematic pattern of limiting criticism. The research recommends adopting a co-regulation model involving government, industry, and civil society; revising the ITE Law by removing the rubber article; and strengthening the Press Council as an independent mediator in digital journalistic content disputes. Harmonising broadcasting regulations with the principles of digital constitutionalism is the key to balancing the interests of state supervision and protecting citizens' constitutional rights.

1. Introduction

The increasingly rapid development of information and communication technology has significantly transformed the broadcasting ecosystem in Indonesia, shifting the paradigm from conventional media to digital platforms. Indonesia's digital economic growth will record 8-10 per cent in 2023, with a value reaching 82 billion US dollars.¹, while internet penetration reached 78.19 percent of the total population in the same year.² An increase in internet penetration of 13.39 per

¹ Kemenparekraf/Baparekraf RI, "Siaran Pers: Menparekraf Sampaikan Lanskap Ekonomi Digital Indonesia Dalam IAF 2024," kemenparekraf.go.id, 2024, <https://kemenparekraf.go.id/kebijakan/siaran-pers-menparekraf-sampaikan-lanskap-ekonomi-digital-indonesia-dalam-iaf-2024>.

² INDEF, "Peran Platform Digital Terhadap Pengembangan Umkm Di Indonesia," 2024, <https://indef.or.id/wp-content/uploads/2024/01/Laporan-Final-Peran-Platform-Digital-Terhadap-Pengembangan-UMKM-di-Indonesia-INDEF.pdf>.

cent in the last five years shows the potential for positive growth in the digital economy industry, which is projected to reach US\$109 billion in 2025.³ This digital transformation not only opens up new economic opportunities but also raises regulatory challenges, such as maintaining a balance between monitoring content and protecting freedom of expression.

The legal framework for Broadcasting in Indonesia currently still relies on Law Number 32 of 2002 concerning Broadcasting, which was created before the development of digital platforms. This regulation gives the Indonesian Broadcasting Commission (KPI) the authority to supervise broadcast content, but is explicitly limited to conventional broadcast media such as television and radio.⁴ New digital media, such as *platform streaming*, social media, and *over-the-top* (OTT) services, are in development and do not yet have clear supervisory regulations, creating a legal vacuum in the regulation of digital Broadcasting.⁵

The problem is increasingly complex due to overlapping authority between government agencies. Monitoring content in the digital space is currently the responsibility of the Ministry of Communication and Informatics (Kominfo) based on the Information and Electronic Transactions Law (UU ITE). In contrast, efforts to expand the KPI's authority in revising the Broadcasting Law to cover digital platforms have raised polemics regarding the potential for overlapping authority. The Director General of Information and Public Communication, Kominfo, emphasised that "there must be harmonisation of the Broadcasting Law with other laws, so that there should be no overlap in authority between Kominfo and KPI".⁶

The issue of regulating digital Broadcasting cannot be separated from the constitutional guarantee of freedom of expression. Article 28E paragraph (3) of the 1945 Constitution confirms that "everyone has the right to freedom of association, assembly and expression of opinion". In the context of the digital era, this freedom faces new challenges related to the limits set by regulations. The research results state that freedom of expression in the digital era "is not absolute, and can be limited if it involves the dissemination of information that could cause trouble, slander, or harm to other parties."⁷

The emergence of digital platforms has created a new space for people to voice their opinions, but has also raised concerns about potential abuse. Criminal law expert from the Islamic University of Indonesia, Yogyakarta, Mudzakkir, emphasised that "two different legal domains should not be combined, even though broadcasts also use information technology means," indicating the need for different regulatory approaches for conventional and digital media.

Based on this background, this research examines fundamental problems in regulating and implementing digital broadcasting supervision in Indonesia. First, what are the legal politics of monitoring digital Broadcasting in the context of freedom of expression in Indonesia? Second, what is the impact of digital broadcasting supervision regulations on protecting citizens' rights to freedom of expression? Third, what is the ideal model for regulating digital broadcasting

³ INDEF.

⁴ Ernawati Ernawati and Yemima Sonita Nugraheni, "Pembatasan Konten Digital Pada Media Netflix Oleh Komisi Penyiaran Indonesia," *Perspektif* 25, no. 1 (January 30, 2020): 44, <https://doi.org/10.30742/perspektif.v25i1.754>.

⁵ Oktavia Coni Raintung, Cobi E. M. Mamahit, and Edwin Neil Tinangon, "Kewenangan Komisi Penyiaran Indonesia Terhadap Pengawasan Media Digital Ditinjau Dari Undang-Undang Nomor 32 Tahun 2002 Tentang Penyiaran," *Lex Crimen* 12, no. 4 (2024).

⁶ Jonathan Simanjuntak, "Kominfo Harap Revisi UU Penyiaran Tak Ada Tumpang Tindih Kewenangan," *nasioal.sindonews.com*, 2024, <https://nasional.sindonews.com/read/1377365/15/kominfo-harap-revisi-uu-penyiaran-tak-ada-tumpang-tindih-kewenangan-1715767532>.

⁷ Muhammad Wahyu Andriansyah and Sekaring Ayumeida Kusnadi, "Hak Kebebasan Berpendapat Di Era Digital Dalam Perspektif Hak Asasi Manusia," *Gorontalo Law Review Volume* 7, no. 2 (2024): 431–43, <https://doi.org/10.32662/golrev.v7i2.3727>.

supervision that can balance the state's interests in carrying out supervision with protecting the constitutional rights of citizens?

This research aims to comprehensively analyse the legal framework for monitoring digital Broadcasting and its implementation in the context of protecting freedom of expression in Indonesia. Through a juridical-normative approach and comparative analysis of regulatory practices in other countries, this research seeks to formulate policy recommendations that can bridge the need for supervision in the digital era with the protection of human rights as mandated by the constitution.

The significance of this research lies in its contribution to encouraging harmonisation of digital broadcasting regulations in Indonesia and strengthening the framework for protecting freedom of expression in an evolving media ecosystem. It is hoped that the research results can become an academic basis for reforming broadcasting law that is responsive to technological developments and still upholds democratic principles.

2. Research Methods

Legal research systematically analyses normative and empirical aspects of the legal system through a rigorous methodological approach. Normative juridical research methods are the leading choice in this study, as they utilise literature studies (*library research*), which focus on analysing primary and secondary legal documents. Primary data includes statutory regulations such as the Broadcasting Law and Constitutional Court decisions. In contrast, secondary data includes legal journals, regulatory agency reports, and policy articles relevant to the development of digital media. This approach allows researchers to explore formal legal construction while identifying gaps between legal theory and practice in the field.⁸

Data analysis in normative legal research integrates content analysis techniques to disentangle regulatory patterns and normative contradictions in the national legal system. This process involves critical reading of legal texts repeatedly to identify fundamental principles, regulatory structures, and legal political dynamics behind forming regulations. Comparison with international standards such as the OSCE Guidelines on Freedom of Expression and regulatory practices in other countries is used as an analytical tool to evaluate the conformity of national legal systems with universal principles of freedom of expression. This comparative approach enriches the analytical perspective and provides an evaluation framework for progressive legal reform.⁹

Data validity in legal research is tested through source triangulation techniques, which involve cross-checking between primary documents, academic analysis and expert views. This verification process includes consultation with media law experts to ensure the accuracy of the interpretation of the legal text and the relevance of the findings to the socio-cultural context.¹⁰ The mechanism for guaranteeing research credibility also involves an audit trail through systematically recording the entire analysis process, from data collection to summarising the results. This integration between normative methods and empirical verification creates a solid methodological foundation

⁸ Ahamad Rosidi, M Zainuddin, and Ismi Arifiana, "Metode Dalam Penelitian Hukum Normatif Dan Sosiologis (Field Research)," *Journal Law and Government* 2, no. 1 (February 27, 2024): 46, <https://doi.org/10.31764/jlag.v2i1.21606>.

⁹ Sidi Ahyar Wiraguna, "Metode Normatif Dan Empiris Dalam Penelitian Hukum: Studi Eksploratif Di Indonesia," *Public Sphere: Jurnal Sosial Politik, Pemerintahan Dan Hukum* 3, no. 3 (November 30, 2024), <https://doi.org/10.59818/jps.v3i3.1390>.

¹⁰ Callista Hans and Christine S T Kansil, "Analisis Bentuk Perlindungan Hukum Terhadap Penggunaan Merek Pada Kelas Barang Dan Jasa Yang Sama," *UNES Law Review* 6, no. 2 (2023): 4163–71, <https://doi.org/https://doi.org/10.31933/unesrev.v6i2>.

for producing policy recommendations that are evidence-based and responsive to community needs.¹¹

3. Result and Discussion

3.1 Dynamics of Digital Broadcast Media Regulations in Indonesia

This research shows significant regulatory gaps in regulating digital broadcast media in Indonesia, which has an impact on policy implementation and has the potential to limit freedom of expression. Unclear legal definitions, overlapping authority between institutions, and increasing cases of restrictions on digital expression are the main findings that require a more adaptive regulatory approach that involves various stakeholders.

The definition of Broadcasting in Article 1 number 2 of Law no. 32 of 2002 concerning Broadcasting states that "Broadcasting is the activity of spreading broadcasts through broadcasting facilities and/or transmission facilities on land, at sea or in outer space using the radio frequency spectrum via air, cable and/or other media to be received simultaneously and simultaneously by the public with broadcast receiving devices." The phrase "other media" in the definition creates legal uncertainty because it does not explicitly accommodate the complexity of modern digital platforms that have developed rapidly since the law was passed. This lack of clarity regarding the "other media" norm finally reached a common ground through Constitutional Court Decision Number 39/PUU-XVIII/2020, which, in its consideration, stated that OTT services (internet-based broadcasting services) in principle have different services from conventional broadcasting services.¹²

Meanwhile, the 2024 Broadcasting Bill seeks to expand the definition of Broadcasting to the digital realm, which has the potential to create overlapping authorities in monitoring digital content. Article 8A, letter q, in conjunction with 42 paragraphs (1) and (2) in the draft revision of the Broadcasting Law, has the potential to create an overlap between the authority of the KPI and the authority of the Press Council. This can create legal uncertainty in the press dispute resolution mechanism. Even more worrying, this article removes the Journalism Code of Ethics and the Press Law as references in assessing journalistic product broadcasts, shifting the assessment to P3 and SPS. This shift in mechanism can potentially limit journalistic and creative freedom, especially for content creators on digital platforms.

This finding is in line with SAFEnet monitoring data, which indicates an increase in restrictions on digital freedom of expression. In the first quarter of 2024, 30 cases were recorded, with 52 reported cases related to the criminalisation of freedom of expression in cyberspace, an increase from the same period in the previous year.¹³ Most of these cases are related to politics and elections, indicating a systematic pattern limiting critical expression towards the authorities. Even more worrying, in the 2024 Indonesian Digital Rights Situation Report, SAFEnet highlighted the existence of a "relay of repression on the internet" that continues despite the regime change. The report noted that there were 146 freedom of expression violations in the digital realm, with 170 people reported as victims, showing an increasing trend that is worrying and requires serious attention from policymakers.

¹¹ Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Banyumedia Publishing, 2017).

¹² Mohamad Hidayat Muhtar et al., "Perluasan Kewenangan Komisi Penyiaran Indonesia Terhadap Pengawasan Media Digital," *Jurnal Konstitusi* 19, no. 1 (March 28, 2022): 126, <https://doi.org/10.31078/jk1916>.

¹³ Safenet.or.id, "Laporan Pemantauan Situasi Hak-Hak Digital Di Indonesia Triwulan I 2024," Safenet.or.id, 2024, <https://safenet.or.id/id/2024/05/laporan-pemantauan-situasi-hak-hak-digital-di-indonesia-triwulan-i-2024/>.

3.2 The Role of KPIs in Supervising Digital Platforms: Between Authority and Restrictions

The expansion of KPI's authority to supervise digital media has become an important debate in the broadcasting regulatory discourse. Constitutional Court Decision Number 39/PUU-XVIII/2020 is critical in defining the limits of KPI's authority. In this decision, the Constitutional Court rejected the request for judicial review of Article 1, number 2 of the Broadcasting Law submitted by INews and RCTI, which intended to include regulations for broadcasting using the internet, such as over-the-top (OTT) services in the Broadcasting Law⁶. The MK thinks that "OTT services (internet-based broadcasting services) in principle have different services from conventional broadcasting services", so they cannot be equated.¹⁴

This limited jurisdiction of the KPI creates a gap between the mandate of the Broadcasting Law and the technical capabilities to supervise modern digital platforms such as YouTube, TikTok or Netflix. Article 8, paragraph (2) of the Broadcasting Law explains that the KPI has the authority to set broadcast program standards, formulate regulations, establish broadcasting behaviour guidelines, supervise the implementation of regulations, and provide sanctions for violations. However, this authority is normatively and empirically only binding on conventional Broadcasting, namely television and radio, but is not legally binding on Broadcasting via digital media.¹⁵

This regulatory gap creates a dilemma because Kominfo ensures that KPI does not have the authority to control or block digital media content such as Netflix and YouTube, and claims that digital media has different rules. On the other hand, the need arises to regulate digital content, which is increasingly dominant in people's information consumption. This condition means that digital content monitoring still relies heavily on mechanisms of *self-regulation* by platform providers, who often do not consider Indonesian society's local context and values. This shows the need for a more adaptive regulatory approach to technological developments and the digital ecosystem.

3.3 Policy Implications and Recommendations

This research recommends "co-regulation" as a more effective regulatory alternative based on analysing the dynamics of digital broadcasting regulations and challenges to freedom of expression.¹⁶ Approach *co-regulation* involving various stakeholders, including government, industry, and civil society, in establishing regulations and supervision. Wahyudi Djafar, Deputy Director of Elsam, said that to regulate internet content governance, the government should use an approach of *co-regulation* through an independent body, which can be formed through a Government Regulation (PP). The technicalities are regulated in a Presidential Regulation (Perpres). That way, the government does not directly intervene in internet governance, such as blocking content or limiting access.

The second recommendation is the revision of Article 27A of the ITE Law to ensure the proportionality of sanctions and the elimination of rubber articles. In its development, the ITE Law has undergone changes where "Article 3 of the ITE Law has been changed to Article 27a (new ITE Law) which states that every person intentionally attacks someone's honor and good name by alleging something that is publicly known in the form of electronic information and/or electronic documents carried out through an electronic system." However, SAFEnet notes that the articles in the ITE Law, especially Article 27 Paragraph (3) and Article 28 Paragraph (2), remain prone to being misinterpreted in judicial practice and are often used as weapons by parties who

¹⁴ Muhtar et al., "Perluasan Kewenangan Komisi Penyiaran Indonesia Terhadap Pengawasan Media Digital."

¹⁵ Andi Dewi Mentari and Aniek Maschudah Ilfitriah, "Pengaruh Kesadaran, Kecepatan Transaksi, Keamanan, Manfaat Yang Dirasakan Dengan Mediasi Persepsi Kemudahan Penggunaan Terhadap Adopsi m-Banking BRI Makassar Raya," *Journal of Business & Banking* 8, no. 1 (October 31, 2018), <https://doi.org/10.14414/jbb.v8i1.1554>.

¹⁶ Tony Prosser, "Self-Regulation, Co-Regulation and the Audio-Visual Media Services Directive," *Journal of Consumer Policy* 31, no. 1 (March 15, 2008): 99–113, <https://doi.org/10.1007/s10603-007-9055-0>.

feel offended. SAFEnet data shows that the most popular cases are crimes related to insults and defamation, which use Article 27 paragraph 3 of the ITE Law and/or in conjunction with Article 45 paragraph 3 of Law No.19/2016.

The third recommendation is to strengthen the function of the Press Council as a mediator of journalistic content disputes on digital platforms. The current revision of the Broadcasting Law has the potential to reduce the independence of the Press Council and the function of the Press Law. Article 8A, letter q, in conjunction with 42 paragraphs (1) and (2) in the revised draft of the Broadcasting Law, creates an overlap between the KPI's authority and the Press Council's authority. By referring to the co-regulation model, the Press Council can be a more strategic mediator in journalistic content disputes in the digital era without limiting press freedom and content innovation. Thus, digital broadcasting regulations must be developed by considering the balance between the need for supervision and protection of freedom of expression and innovation.

The dynamics of digital broadcasting regulations in Indonesia show a significant gap between the existing legal framework and the reality of technological developments and digital broadcasting practices. Unclear legal definitions, overlapping authority between institutions, and increasing cases of restrictions on digital expression are the main challenges in realising a democratic and innovative digital ecosystem. Approach *co-regulation*, revision of the ITE Law, and strengthening the role of the Press Council as a mediator in journalistic content disputes are concrete steps that can be implemented to create a balance between the need for monitoring and protecting freedom of expression. Future research could focus on evaluating the impact of implementing co-regulation approaches in countries with more mature digital ecosystems and a comparative analysis of the effectiveness of various digital content monitoring models in the Indonesian socio-cultural context.

4. Conclusion

This research reveals three critical findings in Indonesia's digital broadcasting regulations: (1) the inability of Law no. 32/2002 accommodates the complexity of digital platforms due to the ambiguous definition of "other media"; (2) overlapping authority between KPI and Kominfo which has the potential to limit freedom of expression; and (3) a 52% increase in cases of criminalization of digital expressions related to politics in 2024. SAFEnet data shows a systematic pattern of limiting criticism through the instrumentalisation of the ITE Law, especially Article 27 Paragraph (3).

Policy implications emphasise the need for models of *co-regulation* involving government, industry and civil society for collaboration-based content monitoring. Fundamental revision of the ITE Law by removing rubber articles and applying the principle of proportionality of sanctions. As well as optimising the Press Council as an independent mediator in digital journalistic content disputes

Futuristic research directions should focus on: (1) evaluating the implementation of co-regulation in countries with a high digital freedom index; (2) analysis of the impact of generative technology (AI/metaverse) on broadcasting regulations; and (3) a comparative study of adaptive content monitoring models based on local wisdom. These findings emphasise the urgency of harmonising the Broadcasting Law with principles of *digital constitutionalism* to balance state oversight and citizens' constitutional rights.

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