Eduvest – Journal of Universal Studies
Volume 3 Number 5, May, 2023
p- ISSN 2775-3735- e-ISSN 2775-3727

THE GOVERNANCE OF INFORMATION TECHNOLOGY AND DELIBERATIVE DEMOCRACY: STUDY OF THE LAW ON INFORMATION AND ELECTRONIC TRANSACTIONS (ITE)

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ABSTRACT

This study begins from the problems that arise related to the discussion of the ITE Bill in the DPR, as well as the revision and implementation of the ITE Law. Especially issues related to cases that cause polemics and disturb the feeling of justice. This study aims to describe the construction of social reality in the form of thoughts, ideas, and discourses behind the implementation of the ITE Law. This study used mix method qualitative and quantitative research. This study is also intended to determine the involvement of public participation in influencing the processes of legal formation and public policy in state institutions as described by Habermas (1989). So far, the growing assumption is that the ITE Law has limited freedom of expression and there is a state motivation to demand civil society compliance through repressive state apparatus. The question to be answered in this research is to what extent are the principles of deliberative democracy found in the social processes that occur in the discussion of the ITE Bill, revision and implementation of the ITE Law? Our argument is that the process of discussing the revision of the ITE Law and evaluating this law is not based on the principles of deliberative democracy, thereby strengthening the regime of digital authoritarianism.

KEYWORDS *UU ITE; multi-interpretation articles; deliberative democracy; digital authoritarianism*

How to cite: Indriasari, D. T. & Armando, A. (2023). The Governance of Information Technology and Deliberative Democracy: Study of The Law on Information and Electronic Transactions (ITE). *Journal Eduvest. 3* (5): 895-912
E-ISSN: 2775-3727
Published by: https://greenpublisher.id/

INTRODUCTION

Initially, the ITE Law initiative aimed to fill the regulatory vacuum in regulating the information technology in Indonesia in order to create social interactions in cyberspace that are polite, ethical and free from digital crimes. However, in its development, in its formation, this law inserted several articles that multi-interpretation and preventing criticism to the ruling regime under the pretext of defamation and hate speech. Finally, in its implementation, it was found that the law's implementation by state apparatus created much controversy and consumed many innocent civilians. Therefore, at the insistence of some civil society organizations, this law was revised in 2015. However, the results of the revision and its implementation still do not implement this law as expected. Police charge many civilians criticizing public services and state authority with this law.

So far, studies of the ITE Law in Indonesia have primarily used a legal approach. For example, Rajab (2018) focuses on the urgency of ITE Law No. 19 of 2016 as a solution to building ethics for social media users. A similar study with this research conducted by Samudra (2020) explained that after the ITE Law Amendment, a lot of criminal acts of defamation through communication information technology media occurred because of the excessive exercise of public expression of freedom. Destiawati et al. (2020) wrote that the law is not problematic in the third study. However, it is necessary to socialize it so that the police do not use the law to criminalize innocent people. Also, the three studies emphasized polite communication ethics in social media. However, they experienced misguided thoughts because they did not touch on the issue of the substance of the rubber articles and their impact on the field.

Another study conducted by Prahassacitta and Hasibuan (2019) has touched on the issue of civil liberties. They explained that there are disparities in the protection of freedom of expression because the implementation of the ITE Law has deviated from the initial intention to regulate electronic transaction activities and even has the potential to silence freedom of expression. However, these two authors have not seen it from the perspective of deliberative democracy; therefore, this research aims to fill the literature gap in the study of internet governance in Indonesia from the perspective of citizen participation in the public sphere. The questions in this article are: (1) How does the Indonesian public complain about implementing ITE law? (2) What is the impact of implementing the ITE Law in the perspective of deliberative democracy on strengthening democratic practices in Indonesia?

RESEARCH METHOD

Methodological approaches in research we divide into two categories, namely quantitative approaches and qualitative approaches. This research uses a qualitative approach because it refers to Creswell (2017). The emphasis of this study is on describing and explaining cases of the ITE Law concerning

strengthening digital democracy. The qualitative approach focuses its attention on extracting the interpretation of the subject under study. The association between researcher and subject is close where the researcher empathizes with the subject or is an insider to the subject. In this approach, the relationship between concepts and empirical data is exploratory and emergent, which means that theory is only used as a tool to explain and emerge from the data studied. The research strategy carried out by this approach is not structured or flexible because it does not follow too strict procedures as the quantitative approach. This approach views truth claims in research findings as ideograph, namely truth claims that are dynamic and relative because the interpretation of the subject influences them. The conception of social reality is a social construction in that it is an inter-subjective consensus among individuals. The critical constructionist paradigm (Critical Constructionist) bases this research. I selected this paradigm because of the studied problems and other theoretical frameworks. This research focuses its attention on Habermas' perspective on how public space and democracy look at the implementation of the ITE Law. Data collection methods include searching the literature, social media, and online interviewing some informants.

RESULT AND DISCUSSION

Main Problems of the ITE Law

The main problem that is the subject of this research is the implementation of the ITE Law, some of which have multiple interpretations and are often misused to ensnare or criminalize innocent people by parties who have a higher social and political position than those reported. Several civil society organizations have stated that many articles in this law are problematic because of multiple interpretations. Below are analysis results from SAFENET and the civil society coalition ('Policy Paper', April 10 2021), which also represent the main views of civil society organizations. First, Article 26, paragraph (3) relates to censorship of information to electronic system operators. Electronic system administrators are required to remove content deemed irrelevant by the court. Second, Article 27 paragraph (1) regarding immorality has been misused to punish victims of gender-based decency crimes in the online world, as in Baiq Nuril. Many scholars consider this article to have multiple interpretations, and its application creates chaos. Third, Article 27, paragraph (3) concerning defamation or defamation has multiple interpretations. This article is mainly used for repression of the legal expression of citizens, activists, journalists, and media and also used for repression of citizens who criticize the police, government, and president. Fourth, Article 28 paragraph (2) regarding hate speech has multiple interpretations and is used to repress religious minorities and against those who criticize the police, the government and the president. One well-known case was the reporting of Dandhy Laksono and Veronika Koman who were deemed to have spread false news regarding the Papua conflict. Fifth, Article 29 concerning threats of violence is rubbery and is used to punish people who will report to the police. Sixth, Article 36 regarding losses, this article was adopted into the ITE Law to aggravate cases of defamation. Seventh, Article 40 paragraph 2a contains content prohibited as the basis for the government to prevent the spread of multi-

interpretative content. Eighth, Article 40 paragraph 2b concerning the government's authority to terminate internet access in a crisis has multiple interpretations. Ninth, Article 45 paragraph 3 concerning the threat of imprisonment for perpetrators of defamation of a maximum of 4 years, the interpretation of this article is rigid and is not based on the Criminal Code.

Although the ITE Law was revised in 2016, several critical notes are as follows. First, Commission 1 of the DPR and the Government, in reality, did not make changes to Article 27, paragraph 3 of the ITE Law. They only emphasized that this article was a complaint offence. This affirmation does not have much effect because from the beginning, this article was a complaint offence as stated in the Criminal Code. The main issue is whether defamation should lead to a prison sentence. The trend of legal regulation in many countries regulates defamation offences in civil law so that the sanctions are in the form of paying a fine instead of being imprisoned. Second, although Commission 1 of the DPR and the Government amended article 45 to reduce the risk of detention, this revision does not stop the issue of imprisonment. In other words, the revision only reduces the level of repression but does not solve the problems people complain about. Third, not participating in the revision of article 28, paragraph 2 and 29 brought new polemic problems to society because these two articles are still multi-interpreted and prone to misuse.

Thus, the main problem is the insertion of articles 27-29 of the ITE Law into cyber crimes, which are not actually in the academic text. Apart from that article, there are articles 26 regarding deletion of information, article 36 regarding insults with harm, article 40 regarding termination of access, and article 45 regarding criminal threats. According to SAFENET, there are several layers of problems; the main one is legal interpretation because the formulation of the articles above is not clear and precise and creates legal uncertainty or has multiple interpretations. In addition, the application is different among law enforcers due to a lack of understanding in the field. Finally, these articles have undesirable consequences, such as being an arena for revenge, taking each other hostage, shock therapy against opponents, and the effects of fear experienced by the community. In terms of implementation, the number of trials and cases of violations charged with the ITE Law has increased. If in the 2011-2017 period there were 216 trial cases, then in 2017, there were 140 cases. This number increased in 2018 to 292 cases. Of the number of cases in 2018, the most cases were defamation, namely 149, hate speech in 85 cases and decency in 71 cases (SAFEnet, 2019).

UU ITE in Deliberative Democracy Perspective

The data of this study indicate that civil society organizations have less role in formulating, discussing, and drafting the ITE Bill until its stipulation. Discussing this bill was conducted through 30 meetings with the government, private sector, and civil society organizations. More than half of the consultation process or 18 times was carried out with government representatives (15 times), the National Police and the Prosecutor's Office (1 time) and the National Crypt Agency (1 time). The rest, with campus (1 time), civil society institutions four times, but they generally do not work on issues of democracy and human rights,

such as the Indonesian Advocates Association (IKADIN), Indonesian Judges Association (IKAHI), Indonesian Consumers Foundation (YLKI). The remaining nine times, the government consulted with the private sector, such as Telecommunication state companies, banks, the Jakarta Stock Exchange, internet service provider companies and associations (Permadi, 2017, pp. 81-83). The data shows that drafting, formulating, and discussing this bill has not reached a conclusion. through an intensive communication process involving the participation of civil society in the public sphere. Therefore, in the stipulation and revision of the ITE Law, the DPR and the Government did not carry out a discursive process and were far from the deliberative democracy model.

The formulation process, if analyzed from the perspective of deliberative democracy, shows that there is not enough access for public participation in political institutions even though they live in a liberal democratic political system. In other words, the formulation process is far from a deliberative democracy model. Hardiman (2005) said that the deliberative democracy model is nothing but a strategy to activate individuals in society as citizens to communicate so that communication will affect the public decision-making process in a political system. However, the problem is, in the context of the discussion of this bill, there is no good intention to listen to opinions in a public space where civil society interacts. The implementation of the ITE Law and the revision of the ITE Law is flawed if we use deliberative democracy. The parties who play a vital role are representatives from Ministries and Government Agencies and the private sector. This law is thus not enacted through a deliberative process and consequently tends to limit civil liberties.

The process of determining and revising the ITE Law is still far from deliberative democracy. Habermas (1989), offers a model of democracy that allows the people to be involved in the process of making laws and political policies, namely deliberative democracy. This model will ensure that civil society is fully involved in the process of law formation through the discourses in the public sphere. The decisive party in deliberative democracy is the procedure of law formation where discourses influence the law to be formed in the public sphere with the involvement of civil society.

The deliberative democracy model forms communicative power through public communication networks. The communicative power of civil society is played by the media, NGOs, mass organizations and civil institutions that play a role in encircling the political system so that state political institutions hear and accommodate the developing discourses of civil society. Civil society can develop communicative power because deliberative democracy protects freedom of expression. The inherent communicative power of civil society does not directly control the political system but influences decisions taken in the political sphere.

However, in the case of the stipulation and revision of the ITE Law, this communicative power was not found; the dominant power and hegemony of the state over civil society emerged. The public sphere is still open, but it is allowed to speak without being heard and accommodated in political spaces. This phenomenon shows that democracy in Indonesia is still procedural, limited to open and regular elections due to the significant influence of oligarchic groups

constantly trying to hold and control the political space under the business community.

If the state in formulating and establishing political policies is authoritarian and carried out in a closed room, it will threaten civil society. In the authoritarian model, the process of forming public policy is by political party elites, business people, and military figures. Consequently, their legal or policy orientations are elitist and tend to defend their interests and maintain the status quo. On the other hand, the democratic model requires very intensive community involvement because the state recognizes the political pluralism of civil society so that its legal and policy orientations are populist.

Referring to the data presented in the previous section, we can see that enacting and revising the ITE Law uses the first model, where political parties, government, business people and security officials dominate the discussion of this law. As a result, the ITE Law is elitist and does not support the tradition of criticizing power. Safenet data explains that since 2018 the complainants of cases charged with the ITE Law are mostly regional heads, ministers, security forces and other officials (35.9%). At the same time, elements of civil society amounted to 32%. Meanwhile, those whom people report in cases of violations of the ITE Law in 2019 were generally activists, journalists, and academics. In fact, after the 2016 revision, many cases of violations of the ITE Law were punished by using rubber articles, amounting to 86.8% of the 744 cases in the 2016-2020 period (Juniarto, 2021).

Public Space as an Arena for Democracy

The public sphere becomes a concept to analyze the process of drafting the ITE Law and its implementation. It is a tug of war between actors in the public sphere involving the Government, DPR, and the community. The contestation of power in political society also occurs in the public sphere. The government must open communication channels within the rule of law and civil society access to the state. Parliament must listen to people's aspirations; mass media have the right to criticize deviations. Thus, the principles of the rule of law must remain, that is, there must be a distinction between the state and society, but civil society has access to the public policy-making process (Hardiman, 2005).

The deliberative democracy model allows the formation of popular sovereignty, namely the political process, to make people's sovereignty a communication process. The next question is when and how the people are sovereign. According to the theory of deliberative democracy, sovereignty occurs not because people gather physically in one place but because there must be public communication. In this context, representative democracy is necessary from a different point of view; namely, the role of public communication must be more significant. Habermas (1989) sees that the public sphere mediates between civil society and the state related to the public interest. We must make the politicization of the public sphere to achieve a deliberative democracy model.

The findings of this study indicate that anti-critical thinking still controls the discussion of the ITE Law, rooted in the past political culture of feudalism and colonialism. The large number of civil society groups who report other citizens

using the ITE Law proves that democracy which protects rational debate in the public sphere, cannot be understood by civil society. The phenomenon that occurs is the spirit of criminalizing 'political opponents' also grows and develops in civil society, which should be a bulwark for deliberative democracy. The biggest challenge in the national public sphere, especially in discussing the revision of the ITE Law, is the low attitude to listen to and accept criticism among social actors. The public sphere has become the arena of repression and political struggle that does not use a rational argument base. Politicians and political oligarchs have instilled a system of thinking in civil society to make the public space a battlefield not based on ethics and public virtue but to dominate, control, and silence political opponents (Fahmi, 2021).

The virtual world that is overgrowing at this time makes digital public spaces in demand by citizens, who are called netizens. They can express their views on other people or institutions including input and criticism in the language used in everyday life. In addition, many groups on social media exchange opinions among community members on particular issues or maintaining family relations. Political participation includes being on the agenda of several groups on social media when they discuss a particular political issue related to the formulation of specific political policies or the relationship between the state and citizens. This phenomenon encourages the formation of a virtual public space which is a place for netizens to express their political aspirations both openly and implicitly. However, as explained in the previous section, the ITE Law has distorted the digital public space and hindered the development of virtual democracy with a pretext that is not following the culture of the ancestors of the Indonesian nation, which is claimed or socially constructed as 'virtuous and full of manners.'

Contestation of Discourse in the Public Sphere

The conception of public space as an arena for discourse battles develops in the practice of deliberative democracy. The deliberative democracy model assumes communicative action occurring in the public space. Therefore, in this conception, public space is a social space formed by communicative actions. The formation of public opinion through public debate will have the power (communicative power) to influence the decision-making process through a representative mechanism. The ability to influence is through public opinion formed from public discourse. Here, what is called the central discourse or main discourse, then gives birth to counter-discourse or counter-discourse. Public space is a place for the public to express their freedom and autonomy which can be in the form of freedom of the press. Also is freedom of parties, reason, belief, and self-defence. It includes freedom to defend the community, regional autonomy, independence, and justice of the legal system. According to Habermas (1991), public discussion formed the communicative power.

If explored further in the explanation in the previous section, the discourse battle in the public sphere for discussing the revision of the ITE Law is nothing but an attempt to control freedom of expression, which has become a threat to the ruling elite at the central and regional levels. They use the ITE Law to ensnare

critical community groups through the digital world to protect shame and all its consequences in political and economic battles in the real world. Thus the view of the essence of democracy itself is a discourse battle behind the construction of social reality from social actors in the public sphere.

We do not find the essence of democracy in the discourses delivered by representatives of the government and the DPR. This phenomenon is ironic because the democratic general election mechanism selects the representatives. In the digital public space, the DPR, as represented by ES, is not willing to listen to the voices of victims like the association of victims of the ITE Law but instead listens to the voices of pro-government experts. He did not even admit that the ITE Law was problematic and did not agree with the formation of the ITE victims' association. Members of the DPR and government representatives do not support the discourse of democracy by not recognizing that freedom of expression is a human right. They do not give place to the voices of diverse civil society but tend to ignore and limit it by defending this multi-interpreted ITE Law.

Civil society groups stated that the ITE Law could not be an instrument to limit freedom of expression because it did not meet the legal requirements. Although democracy allows restrictions on freedom of expression, it must be based on law and must not be authoritarian. This restriction is possible as long as it does not interfere with the functioning of the democratic political system (ICJR 2021: 27-30). For example, such restrictions must be regulated by clear laws, but such actions can only be carried out under national law. With a note, the law should not be arbitrary without an apparent reason. The law restricting this freedom must be accessible to everyone and unambiguous. States must provide adequate safeguards and remedies against establishing or applying arbitrary restrictions.

Several studies show that Indonesia is experiencing a backward movement from democracy to authoritarianism. Some literature, for example, Power and Waburton (2020) on the decline of democracy in Indonesia; also Hadiz (2017) on democratic regression; and Wiratraman on the power of neo-authoritarianism (2018), reinforces the view that there are severe problems with the democratic political system in Indonesia. Thus, the decline of democracy becomes the political context of implementing the ITE Law, which tends to have become an instrument to disrupt digital democracy.

The Minister of Communication and Information, Rudiantara, stated that along with globalization marked by the increasing use of social media, several articles of the ITE Law have harmed and threatened freedom of expression and opinion. It is due to several articles discussed in the previous section having multiple interpretations and overlaps with the Criminal Code. The minister said as follows ('A thousand faces of the ITE Law, 2016). "Because in its implementation there are dynamics of pros and cons to some of the provisions in it, the Government takes the initiative to make minor changes deemed necessary and relevant." He also said that the revision of the ITE Law aims at protecting the public legally: "On the other hand, the public is expected to be smarter in using the internet, maintain ethics in communicating and disseminating information, and avoid content with elements of SARA, radicalism, and pornography." From the

perspective of civil society activists, thoughts like normative ones open the door for authoritarianism to enter the digital world by implementing the rubber articles in the ITE Law.

The government's discourse creates a framing of digital authoritarianism, in contrast to the discourse of civil society organizations that voice the essence of democracy. This view was conveyed by the Executive Director of the Institute for Criminal Justice Reform (ICJR), Supriyadi W Eddyono, who stated that the direction of government policies in the protection of civil liberty, which is one element of human rights, tends to be dark. This reality is because, through the 2016 revision of the ITE Law, the freedom to express and express opinions guaranteed by law has weaken: "The direction of policy change for me is dark. As for freedom of expression, the policy direction is dark." When compared with the response in 2021, the attitude of the government and the DPR has not changed much but remains reactionary."

Thus, the practice of freedom of opinion and expression as well as access to information in Indonesia since 2008 has led to control by the government through the ITE Law. From blocking the content of a social media account to setting the right to be forgotten, the government controls the public to access information from the digital world; thus, changes in internet management are moving backwards. The author calls it digital authoritarianism, which lives in a democratic political system controlled by authoritarians. If the government commits to support the democratic regime, Article 27 paragraph (3) must be removed because the reduction in punishment is not significant.

The ITE Law, which was revised in 2016, is substantially the same as the 2008 ITE Law, even in the new law, the government has the authority to block content that is very dangerous to civil liberties. In addition, in every discussion of the revision of the ITE Law, the DPR and the Government do it behind closed doors, further strengthening the allegation of a digital authoritarian regime. "So, indeed, this is a setback for freedom of expression and access to information is a setback. Our criticism in terms of the revision process has been closed. Because the closed process has certain interests from the government to deal with the current revision, freedom in cyberspace has the potential to be violated by the ITE Law."

Based on the explanation above, this study has shown some of Habermas' thoughts relevant to analyzing the process of involving community participation in the public sphere, which weakens the movement towards a deliberative democracy model. In addition, the public sphere as a discursive arena does not occur in Indonesia; what appears to be a battle to defeat others' political views without rational argumentation. So that the public space is only an arena for socializing the government's views which are discursively opposed but have no implications for the political realm. Finally, the author discusses the contestation of discourse in the public sphere related to the revision of the ITE Law in 2021 as a battlefield between the regime of digital authoritarian thinking carried out by the government against the regime of democratic thought implemented by several civil society organizations. In general, Habermas's thoughts on deliberative democracy are relevant to analyzing the findings of this study. However,

Habermas's thinking has not shown the other side of the public sphere in Indonesia today, namely as an arena of state and market domination and hegemony over civil society. Therefore, the following section will discuss the ITE Law concerning state domination and hegemony.

In reality, the previous thoughts about democracy as an ideal political system that maintains the balance of justice and peace are not as beautiful as imagined. The experiences of third-world countries that implement democratic political systems, such as India and Indonesia, cannot be separated from the shadows of power conflicts. This is based on the following two arguments. First, civil society in third-world democracies cannot be separated from its historical context as a post-colonial country where civil society is not fully autonomous as in Western countries. Second, the politics of citizenship in these countries, to borrow Delanty (2009) term, is influenced by the view of communitarianism, where the primordial sentiments of the majority groups have an important position and role in the management of social and state life.

ITE Law and Domination of Civil Society

According to Habermas (1991) in a free and autonomous public space, social actors occupy the position of political persons who discuss what is mutually agreed upon as a common interest. Without the freedom to express opinions in the public sphere, the existence of the public sphere becomes meaningless for the public interest. On the other hand, freedom of speech, without an autonomous public space, will not result in citizens having public discourse. The government must remove barriers to free communication to create a civil society. In this context, rationalizing communicative action will free communication from domination, liberate and open communication (Ritzer, 2004). This deliberation model means freedom of communication allows citizens to become stronger and not hegemonized by the dominant power.

According to Althusser (1971) the state is an engine of repression and a means of elite class struggle to perpetuate its interests. According to him, the repressive state apparatus are those who work as a buffer of power and are identical to the state. Some elements of the RSA include the police, courts, bureaucrats, and the military, with repressive powers. In addition, the state seeks to subjugate its citizens through the ideological state apparatus (ISA). The process of state domination over civil society is carried out, apart from being repressive, through the production and reproduction of power in the cultural space. Althusser (1971) says that obedience does not only rely on power and violence because it can be considered authoritarian and even totalitarian. This view is in line with Antonio Gramsci's thinking that people must consent to their subordination because of public consent through recognition and acceptance, not out of fear or coercion (Sugiono, 1995).

The implementation and revision of the ITE Law prove the state's dominance over civil society, which began in 2008. This dominance can result from the ITE Law on protecting human rights and weakening the democratic political system. Based on ICJR's research entitled 'study on the application of the ITE Law in Indonesia Budiman et al. (2021), this study finds that the ITE Law has

failed to achieve justice and has even weakened the protection of citizens' rights as follows.

First, the ITE Law weakens the Protection of Freedom of Opinion and Expression. According to ICJR, the ITE Law and its implementation have had dire consequences or can be said to be bad for the fulfilment of human rights in Indonesia, especially the right to freedom of opinion and expression. Implementing the ITE Law has thus positioned itself as an enemy of digital democracy and an instrument of digital authoritarianism. As explained earlier, the democracy index in Indonesia declined in 2018 and 2019 due to the deteriorating freedom of opinion and expression.

This law has harmed the decline of democracy in Indonesia, marked by the suppression of freedom of expression through cyberspace, which the ITE Law limits. For example, according to Freedom House, Indonesia's internet freedom score in 2019 was 51,206, which means that Indonesia occupies a position that is not so free in regulating activities in cyberspace (partly free). This figure in 2019 decreased to 54. This indicator proves that although the number of internet users is increasing in Indonesia, freedom of expression in the digital world is still not so free due to government regulations restricting social media.

The decrease in the freedom score on the internet is caused by the increasing number of online activities that the ITE Law is suing. As discussed in the previous section, freedom of opinion and expression is a human right that must not take away the nature of freedom itself. Although this freedom is not the absolute rights category, it is one of the fundamental rights. Therefore, restrictions can only require specific conditions and clear limits to create security in the cyber world. In addition, the criminal articles in this law, such as insulting and spreading hatred, are used to revive the rubber articles, which the Constitutional Court declared unconstitutional. Various attempts to apply these articles of association have encouraged the criminalization of civilians and threatened democracy & human rights, especially freedom of expression and opinion.

Second, the ITE Law has been used by the authorities to criminalize the act of expressing legitimate opinions in cyberspace and is prone to be misused by the authorities. In the period after the revision of this law was carried out in 2016, this law became famous for criminalizing legitimate expressions in the digital world that contain content criticizing groups in power or close to power. This reality proves that the ITE Law is loosely interpreted, threatens and silences freedom of expression and weakens democracy. As explained in the previous section, the interpretation of several loose articles and multiple interpretations has caused this law to become an arrow to target those opposed to the authorities. The ICJR study (2021) states that this law will likely criminalize people of various backgrounds in 2019. Meanwhile, in 2018 it is more likely to criminalize SARA-related election campaigns and negative campaigns. However, after 2019, those targeted by this law range from political affiliations to journalists and pro-democracy activists.

The ICJR study shows that cases criminalized by the ITE Law can also be notarized widely and vary from speeches in peaceful demonstrations, criticism of the authorities and state institutions, private talks, and closed group talks to collecting evidence of sexual violence. in the previous section, the criticism

submitted via digital was carried out by a lecturer at Syah Kuala University, Saiful Mahdi, who was sentenced to 3 months and a fine of 10 million rupiahs for criticizing the CPNS lecturer test for the Faculty of Engineering Unsyah in 2018. Another case is a report against Dandhy Laksono, an activist and journalist, with an article on spreading hatred for reporting on the conditions of the Papuan conflict through his Twitter. The entrapment of acts of humiliation and defamation is based on the sociological concept of defamation law which is vulnerable to manipulation by law enforcers considering that the criminal justice system still provides room for abuse of the article. This situation has weakened the protection of freedom of opinion and expression in Indonesia.

Third, the ITE Law has weakened press freedom. The use of criminal provisions in the ITE Law to ensnare journalists has occurred from 2016 to 2020. The ICJR study reports that during 2016-2018 there were 11 cases of prosecution against journalists under this law. In 2019, a palm oil company reported two journalists in Central Kalimantan, Arliande and Yundhi, to the police to report a land dispute between the community and a palm oil company in Banana Tingang. Companies that feel that their names are being defamed. The Press Council and the Police have made a Memorandum of Understanding Number 2/DP/MoU/II/2017 - Number B/15/II/2017 concerning Coordination in the Protection of Press Freedom and Law Enforcement Regarding Misuse of the Journalist Profession. This memorandum of understanding states that in the case of reporting on journalist products, the mechanism is submitted to the Press Council first.

Fourth, the ITE Law has been used to control citizens' expression, causing fear and becoming an instrument of hierarchical repression. The government has used this law against internet users, which often lead to polemics or conflicts based on the right to freedom of expression. This law more often criminalizes cases related to legitimate expression practices and provides benefits for the government to silence various critical expressions of the authorities and state institutions. Budiman et al. (2021) study state that 124 cases show the conviction of citizens who criticize state institutions like the police. This data is corroborated by the CSIS study, which studied the impact of the ITE Law on the effects of fear and hierarchical oppression. This fear or chilling effect arises because of self-censorship carried out by citizens, fearing that they will not be able to bear the consequences that arise either directly or indirectly. This hierarchical oppression occurred because of the criminalization of cases under Article 27 paragraph (3) and Article 28 paragraph (2) by a group having a higher position than those reported.

Fifth, the ITE Law has failed to achieve justice and the objectives of criminal law regulation. Several legal cases presented in the previous section prove that regulating various criminal provisions in the ITE Law, especially morality, humiliation, false news, and SARA-based hatred, has failed to bring justice. The case of Prita Mulyasari became the beginning of public awareness that the conviction of the ITE Law does not present justice in the judicial process. After several months of facing her legal case, Prita was finally free even though she had been detained and given another review. This case awakens the public

that there are problems with this law, and its implementation suppresses public criticism of those in higher positions.

Even though the ITE Law was revised in 2016 and it was considered that the government would address injustice, after 2016, this law claimed more victims. As described in the previous section, the case of Baiq Nuril is an example of how the ITE Law disturbs people's sense of justice. The judicial site in Indonesia succeeded in declaring the victim of sexual harassment, Baiq Nuril, guilty, but this situation created a sense of injustice in the community. Because there is no other legal way when all legal processes have been taken, President Joko Widodo finally granted an amnesty to Baiq Nuril in consideration of a sense of justice.

According to the ICJR study, these two legal cases have proven that the ITE Law has claimed innocent victims since it was enacted this law. This situation raises the question of to what extent the regulation of criminal provisions in the ITE Law concerning morality, insults and defamation, spreading false news and spreading hatred based on SARA has achieved its objectives. Several facts show that the implementation of the ITE Law has failed to achieve criminal law's objectives, either for punishment or as a means of prevention. Sentencing based on the criminal provisions of the ITE Law is often misdirected and creates a sense of injustice. Meanwhile, the number of cases criminalized by the ITE Law in the prevention aspect is increasing, which shows that the prevention aspect has failed.

Based on the previous explanation, referring to the Freedom House Report, internet freedom in Indonesia has experienced a downward trend since 2016. In 2016 Indonesia's score reached 56 but decreased to 49 in 2020, indicating that Indonesia is a partially free democracy. A lecturer in constitutional law at Airlangga University, Herlambang P Wiratraman, stated on October 20, 2020, in a webinar organized by SAFENET that the following problems exacerbated the decline in internet freedom: (1) T*he criminalization of activists from civil society groups using the article on defamation, (2) The authority's incomplete responsibility is to protect the public from digital attacks, (3) Selective law enforcement only defends those close to power or part of power groups and (4) The public sphere is poisoned due to disinformation and propaganda from the ruling political groups and the government.*

"This leads to digital authoritarianism because most civil society liberties are attacked without responsibility for protection from the authorities, and meanwhile, the authorities often abuse their power to attack civil liberties," according to Herlambang. He said that the government's choice to use influencers and buzzers in the public sphere of social media was also feared to disrupt the democratic process in Indonesia. "I disagree with the Palace statement that influencers are the vanguard of democracy, and this is dangerous. For democracy, we must prioritize public participation," according to Herlambang.

Indonesia's representative at the ASEAN Intergovernmental Commission on Human Rights (AICHR), Yuyun Wahyuningrum, said this pattern does not only occur in Indonesia. According to him, the pattern of attacks on activists through information technology is also seen in Southeast Asian countries. He stated that there had been many incidents of digital attacks against critical activists through

attacks in the form of: doxing, account hijacking, to hate speech, media hacking and account hacking. *"In addition to silence, this also creates a climate of fear that makes people afraid to criticizing the authorities*," according to Yuyun (Wisanggeni, 2020).

(Suwana & Wijayanto., 2021) in their article in The Conversation, respond to the views of the political scientist Aim Sinpeng, who says that digital media has emerged as a repertoire of activism to strengthen the pro-democracy movement. However, in reality, political authoritarianism and increased internet control have put pressure on democratic societies. These conflicting digital forces have been at work in Indonesia since the passage of the ITE Law in 2008. On the one hand, the internet has helped the public voice their voices, complaints, and criticisms of the government. However, on the other hand, digital technology has helped the Government and state institutions and influential groups in silence. During the pandemic, the Indonesian government introduced regulations and initiatives to control the flow of information in cyberspace. The government claims these steps are to protect the nation amid advances in digital technology. However, this series of regulations and initiatives have prevented citizens from interacting in the digital realm.

According to (Suwana & Wijayanto., 2021) one of the initiatives is that the police have ordered their personnel to carry out cyber patrols. The patrol aims to monitor the circulation of opinion and news, the spread of hoaxes related to COVID-19, the government's pandemic response, and insults to the president and government officials. However, it is unclear what parameters the patrol uses to label any information about COVID-19 and its response as a hoax. The police also formed a new unit dubbed the "virtual police" or cyber police. His job is to monitor social media and issue warnings for content that violates Information and Electronic Transactions (ITE) laws. The badge awards and virtual police raise the same concern: they fuel citizens' fear of expressing their opinions online. Of course, this is an attack on freedom of expression. In addition, the criminalization of online users using Indonesia's controversial cyber laws has increased during the pandemic. The effect was to silence public criticism of the state's response to the crisis.

Technological innovations have led to more incredible abuse that prevents opposition groups from mobilizing, and this innovation also increases the likelihood that authoritarians will succeed in stifling such opposition. This is because digital advances have provided governments and authoritarian institutions with tools for digital monitoring to suppress freedom of expression and other civil liberties (Dragu & Lupu, 2021).

Cyber policing uses one-way campaigns and limits interactive deliberation in digital public spaces. Indonesian netizens posted many questions about cyber police tweets, but no response. It just creates an online debate among netizens that needs clarification. A recent survey by Kompas found that 34.3% of Indonesians view cyber police as a threat to freedom of expression. In a broader context, the cyber police are adding to the pressure on digital freedom in Indonesia, which is already experiencing repression by the ITE Law and cyber attacks from power supporters. Cyber attacks were already happening before the pandemic and the

arrival of the cyber police. These attacks on pro-democracy activists took many forms, including terror and hacking of phones, as well as Whats App and email.

Despite these attacks, Indonesian civil society continued to struggle. Digital media has supported and facilitated the emergence of civil society opposition to inappropriate government actions and policies. Examples include protests against revising the KPK Law, the new regular policy, the Job Creation Law, and the decision to hold regional head elections during the pandemic. Collaborative research between the Indonesian research institute LP3ES, the University of Amsterdam and KITLV Leiden in the Netherlands, Diponegoro University in Central Java, Indonesia, the Indonesian Islamic University in Yogyakarta and big data consulting firm Drone Emprit identified a wave of civil society resistance in the digital realm. This soon-to-be-published study, among others, compares the number of Indonesian tweet accounts supporting the Job Creation Law and those rejecting it
(Suwana & Wijayanto., 2021).

Indonesian civil society actors continue to struggle against cyber attacks and the invasion of influencers, buzzers, and bots who support authority in the digital realm. Virtual police is another form of intimidation in this public space. This resistance marks the emergence of a new civic awareness about participating politically in the digital environment. At the same time, Indonesian citizens must continue learning about digital rights to understand their fundamental right to express opinions and find reliable information. The government must facilitate freedom of expression in the online space for citizens to voice their rights and interests. At the same time, it must avoid and prevent authoritarian practices that undermine democracy, such as revising the ITE Law and disbanding the cyber police unit (Suwana & Wijayanto., 2021).

CONCLUSION

In the debate on whether or not to revise the ITE Law and the impact of implementing it on democracy, it is apparent how civil society builds meaningful political discourse in the process of law formation and public policy. Despite the support from other parties, it seems pretty weak because of the control over the media that is quite large by a democratic government dominated by an oligarchy. Here, it appears that dialectics in the digital public space, especially during the 2020-2021 pandemic, the deliberative democratic process is still far from being realized.

Habermas (1989) argues that the rule of law cannot be obtained or maintained without using a radical democratic political system. Using the perspective of deliberative democracy, the state no longer determines laws and other political policies in a closed public space. However, the media and civil society organizations significantly influence the process of forming laws and political policies. In revising the ITE Law—referring to the opinion of Habermas (1989)—the public sphere was completely paralyzed and unable to become a space for negotiations to prepare and direct discursive legislative revisions.

The contestation in evaluating the results of the revision and implementation of the ITE Law shows the ongoing contest between the central discourse and the

counter-discourse. The closed government regime inherited from the New Order seems to dominate the digital public space by pushing several provisions that legitimize the practices of limiting and controlling freedom of expression. However, the NGO/Civil Society coalition continues to strengthen the counter-discourse by fighting for a vital substance—the protection of freedom of expression in the digital sphere guaranteed by the 1945 Constitution and the International Covenant of Civil Rights.

Starting from the process of discussing the ITE Bill, revision, evaluation of the implementation of the ITE Law and the determination of the SKB Guidelines for the interpretation of specific articles in the ITE Law, the participation of civil society in the public sphere to influence it is limited, even non-existent. Thus, forming laws and public policies related to the ITE Law can be very far from the principles of deliberative democracy. The deliberation democracy assumes that people's sovereignty manifested through communicative power in the form of creating public discourse to influence the work of political institutions. Once again, the social and political processes related to the ITE Law are not following Habermas (1989) concept of the deliberative democracy model.

Although there is a discourse battle between the central discourse and counter-discourse, the former is the need for a revision of the ITE Law to support digital democracy, and the latter is there is no need for a revision of the ITE Law to maintain cultured, ethical, and polite. However, in the end, the government and the DPR ignored the central discourse in the public sphere. Here, the public sphere is not an arena for debate based on ethical awareness to reach common ground and mutual agreement but rather is seen as a socialization of the interests of the state to be notified. Thus, even though there is a robust public discourse, the digital public space is no longer free with the regulation of the ITE Law so there is no discursive process. There are only statements and clashes of arguments between civil society and state actors without the validity of each of these statements. Once again, the principle of a free public space and discourse struggle to reach an agreement according to Habermas (1989) is not fulfilled at all.

With the irrelevance of some of Berger and Luckman's (1979) and Habermas (1989), the implementation of the ITE Law is more relevant if we approach the concept of state domination over civil society according to Althusser (1971). In this case, the ITE Law can be seen as a repressive instrument to demand compliance and submission of civil society by law enforcement officials such as police, prosecutors, and judges as the Repressive State Apparatus (RSA). The interpretation of the RSA is very decisive in directing the implementation of the ITE Law, which by many civil society leaders, has led to the repression of freedom of expression in the digital realm.

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