

# Kebebasan Ekspresi Dalam Tekanan Regulasi: Studi terhadap Undang-Undang Informasi dan Transaksi elektronik (UU ITE) = Freedom of Expression in Regulatory Pressure: Study of the Electronic Information and Transaction Law (EIT Law)

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## Abstrak

Penelitian ini bertujuan untuk menguji tiga proposisi terkait regulasi internet di Indonesia dan implementasi Undang-Undang Informasi dan Transaksi Elektronik (UU ITE). Pertama, UU ITE telah membatasi kebebasan berekspresi di ruang publik digital. Dalam konteks ini, penelitian akan menyelidiki dampak pembatasan tersebut terhadap kebebasan berpendapat dan partisipasi masyarakat dalam sistem politik demokrasi. Kedua, dalam implementasi UU ITE, terdapat ketegangan terus menerus antara pemerintah, dewan perwakilan rakyat dan masyarakat sipil yang diwakili aktivis perjuangan kebebasan berekspresi di internet. Ketiga, terdapat fenomena salah guna UU ITE, di mana regulasi yang semula ditujukan untuk mengatur transaksi digital di ranah internet, belakangan dibelokkan sehingga UU tersebut digunakan untuk terutama membatasi kebebasan berekspresi di ranah internet. Penelitian ini akan menginvestigasi dampak dan implikasi dari perluasan cakupan regulasi tersebut. Adapun pertanyaan yang ingin dijawab dalam penelitian ini adalah: (1) Bagaimana proses lahirnya pasal-pasal dalam UU ITE berpotensi melumpuhkan demokratisasi di Indonesia? (2) Apa implikasi dari penerapan UU ITE terhadap kebebasan berekspresi dan berpendapat warga dan (3) Bagaimana dinamika proses tarik-menarik antara berbagai pemangku kepentingan dalam formulasi dan revisi UU ITE, terutama antar pemerintah, DPR, dan masyarakat sipil. Penelitian ini menghasilkan beberapa kesimpulan sebagai berikut. Pertama, tidak ada bukti yang cukup untuk menjelaskan latar belakang dimasukkannya sejumlah pasal bermasalah ke dalam UU ITE pada 2008. Pemerintah maupun DPR sebenarnya semula menyiapkan RUU ITE untuk menertibkan transaksi bisnis elektronik, dan pornografi yang saat itu semakin marak. Namun di saat terakhir, dimasukkanlah pasal-pasal yang mengandung semangat otoritarian. Kedua, setelah UU tersebut disahkan dan dijalankan, tidak ada juga bukti yang menunjukkan bahwa baik pemerintah (pusat) dan DPR memanfaatkan pasal-pasal tersebut untuk kepentingan mereka, mempertahankan kekuasaan. Dalam banyak kasus, yang menggunakan UU ITE adalah sesama masyarakat, perusahaan, kelompok agama, dan para pemimpin agama. Ketiga, yang secara konsisten terus menolak UU ITE ini adalah masyarakat sipil. Sejak kelahiran UU ITE, berbagai LSM dan akademisi secara aktif mengkritisi kelahiran UU ITE beserta pasal-pasalnya. Masyarakat sipil sejak awal sudah bisa menduga ancaman bahaya pasal-pasal bermasalah dalam UU tersebut. Keempat, Sikap pemerintah secara perlahan berubah. Bila pada 2016, pemerintah menganggap bahwa UU ITE tidak mengandung kelemahan substansial yang melemahkan demokrasi, pada 2021 cara pandang pemerintah berubah. Kelima, yang nampaknya belum berubah adalah DPR. Memang benar, DPR tidaklah berwajah tunggal. Di dalam DPR hadir banyak partai-partai politik yang memiliki sikap berbeda-beda. Namun demikian, tidak terlihat ada tanda-tanda bahwa DPR akan mengikuti langkah pemerintah untuk menulis

.....This research aims to investigate three propositions related to internet regulation in Indonesia and the implementation of the Electronic Information and Transaction Law (ITE Law). First, the ITE Law has restricted freedom of expression in the digital public sphere. In this context, the research will investigate the

impact of such restrictions on freedom of speech and public participation in a democratic political system. Second, in the implementation of the ITE Law, there are continuous tensions between the government, the legislature and civil society represented by activists fighting for freedom of expression on the internet. Third, there is a phenomenon of misuse of the ITE Law, where the regulation that was originally intended to regulate digital transactions on the internet, was later deflected so that the law was used to primarily limit freedom of expression on the internet. This research will investigate the impact and implications of the expansion of the scope of the regulation. The questions to be answered in this research are: (1) How does the process of the articles in the ITE Law potentially cripple democratization in Indonesia? (2) What are the implications of the implementation of the ITE Law on the freedom of expression and opinion of citizens and (3) What are the dynamics of the push-pull process between various stakeholders in the formulation and revision of the ITE Law, especially between the government, the Parliament, and civil society. This research leads to the following conclusions. First, there is insufficient evidence to explain the background to the inclusion of a number of problematic articles in the ITE Law in 2008. The government and the House of Representatives originally prepared the ITE Bill to bring order to electronic business transactions, and pornography, which was becoming more prevalent at the time. However, at the last moment, articles that contained the spirit of authoritarianism were included. Secondly, after the law was passed and implemented, there is no evidence to suggest that either the government (central) or the House of Representatives (DPR) used the articles for their interests, maintaining power. In many cases, it was fellow citizens, companies, religious groups and religious leaders who used the law. Third, civil society has consistently rejected the ITE Law. Since the birth of the ITE Law, various NGOs and academics have actively criticized the birth of the ITE Law and its articles. Civil society has been able to foresee the danger of the problematic articles in the law from the beginning. Fourth, the government's attitude is slowly changing. If in 2016, the government considered that the ITE Law did not contain substantial weaknesses that weakened democracy, in 2021 the government's perspective has changed. Fifth, what does not seem to have changed is the DPR. It is true that the DPR is not single-faced. There are many political parties in the House that have different stances. However, there is no sign that the DPR will follow the government's lead in rewriting