



Analysis of the ITE Law on Digital Rights and Democratic Values in Indonesia

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Abstract

This article aims to analyze through online mass media critically and case studies the dual nature of the passage of the Electronic Information and Transaction Law (ITE Law) as an instrument of digital rights protection and a potential threat to freedom of expression and democratic values in Indonesia. This research uses a descriptive-qualitative method to analyze data from 2020 to 2022 with NVivo 12 Plus, referencing Mazmanian and Sabatier's (1983) theory of policy implementation effectiveness. It focuses on the willingness of target groups to comply with policy outputs and the actual impact of those outputs. Third, fundamental improvements to the law. Research shows that community compliance with the ITE Law has increased, evidenced by a decrease in cases from 2020–2022. The indicator of the Real Impact of Policy Outputs shows that the public and activists oppose implementing the ITE Law because freedom of expression is restricted. Then the indicator of fundamental improvement of the law is that the government will revise the articles of the ITE Law, especially articles 27, 28, and 29, which are considered multi-interpretive.

Keywords: ITE law; freedom of expression; democratic implications.

Paper type: Research paper

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INTRODUCTION

Currently, the world has entered the era of "Industrial Revolution 4.0", better known as the "Digital Era," where most of the activities of people's lives have shifted to the digital realm (Ramadhan et al. 2022). The era of the Industrial Revolution 4.0 is a transformation effort by combining the online world with the real world, where the internet is the main support for community activities (Hidayat 2018). Indonesia is one of the countries in the world facing the rapid development of digitalization.

The government's public service system is slowly changing to use information technology to improve the implementation of its business processes and citizen participation and strengthen public trust in a transparent and accountable manner (Yusuf & Sari 2021). On the other hand, the development of information technology is also utilized by the public through social media, which provides broad and fast access to information acquisition and supports the public in having a free opinion about the things they see virtually (Malik et al. 2020).

In 2021, data from the Central Statistics Agency (BPS) shows the results of the Susenas Survey: 62.10 percent of Indonesia's population accessed the internet in 2021. Meanwhile, by 2022, it will increase to around 210 million internet users or 77.02 percent of the Indonesian population. According to the General data of the Indonesian Internet Service Providers Association (APJII) (Riyanto 2022). Over the past two years, Indonesia's significant increase in internet users is a testament to the availability of information and the ease with which the public accepts technical advances.

However, the freedom of expression obtained by the community on social media sometimes exceeds ethical limits, resulting in hate speech and opinion wars that often occur on social media (Oktaviani 2021). Since 2018, Kominfo has handled 3,640 cases of SARA-based hate speech in the digital space (Kompas.com 2021). Even the Southeast Asia Freedom of Expression Network (SAFEnet) noted that in 2020, there were 59 cases of criminality involving netizens, an increase from 24 cases in 2019 due to the spread of hoax news (CNN Indonesia 2020).

The government issued a legal tool to regulate information technology, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, or ITE Law, to control the

negative impacts of the development of digital democracy, such as the rise of information or content that is not suitable for public consumption or fake news (hoax) (Pradana 2018).

People must have a smart attitude and behavior when sorting out various information and choosing the use of words on social media because the quality of a country's democracy is determined by the quality of its citizens' participation (Roza 2020). However, the implementation of these regulations is not as easy as planned, and many controversies have occurred, especially articles 27 to 29 of the second part of the ITE Law, which are often debated in the community because they are considered rubber articles or multiple interpretations, as well as silencing criticism in the era of President Jokowi's administration (CNN Indonesia 2021).

Therefore, this research raises the question of how effective the Electronic Information and Transaction Law (ITE) is in controlling the adverse effects of the development of digital democracy while maintaining the digital rights of the people in Indonesia. This research aims to determine how effective the Law on Electronic Information and Transactions (ITE) is in controlling the negative impacts of the development of democracy in Indonesia and creating a digital-friendly space for the community.

Public policy is generally defined as one of the government's efforts to carry out its duties through regulations and decisions (Pewara 2018). Government agencies and their staff carry out public policies to solve certain problems to be effective and directed, covering various fields and sectors of life to achieve people's welfare (Fatmawati and Suparto 2020). The focus of public policy is public service, which is everything that the state can do to maintain or improve the standard of living of many people, as well as being a milestone of government programs (Hayat 2018).

Effectiveness is the ability to achieve well-planned goals or objectives. This is related to the problem of how to achieve goals and the quality of user satisfaction levels (Hayati et al. 2022). Effectiveness provides an overview of an organization's success in achieving its goals or the level of achievement of objectives from the activities that have been carried out compared to predetermined targets (Luthfi 2019). It is said to be effective if the program's activities or processes achieve the ultimate goals and objectives of the policy. The greater the output produced to

achieve predetermined goals and objectives, the more influential the work process of an organizational unit (Sari et al. 2018).

The novelty of this article lies in analyzing the impact of the ITE Law on freedom of expression, digital participation, and citizen privacy in digital democracy. This research scrutinizes the latest modifications to the ITE Law, which aim to strike a balance between individual protection and freedom of expression despite their perceived limitation of people's digital rights. Using a qualitative approach based on social media data, this article examines the effectiveness of the ITE Law in tackling disinformation without limiting digital democracy, as well as its implications for personal data security. Thus, this research offers a new perspective on the role of the ITE Law in building a healthy digital democracy in Indonesia.

The Electronic Information and Transaction Law, or UU ITE, is a legal regulation that governs electronic information and transactions. The ITE Law was first passed through Law No. 11 of 2008 before being revised with Law No. 19 of 2016. Based on Law No. 19 of 2016, it is explained that electronic Information is one or a set of electronic data, including but not limited to writings, sounds, images, maps, designs, photographs, electronic data interchange (EDI), electronic mail, telegram, telex, telecopy, or the like, letters, signs, numbers, access codes, symbols, or processed perforations that have meaning or can be understood by people who can understand them. Meanwhile, Electronic Transactions are legal actions carried out using computers, computer networks, and other electronic media.

One of the considerations for the formation of the ITE Law is that the government needs to support the development of information technology through legal and regulatory infrastructure so that the use of information technology is carried out safely to prevent its misuse, considering the religious and social aspects of the cultural values of the Indonesian nation (Rizkinaswara 2019). Some of the activities prohibited in the ITE Law include those in Article 27 related to the distribution of electronic documents containing immoral content, gambling, defamation, and threats. Article 28 describes the dissemination of false news (hoaxes) to the public, and Article 29 is about threats of violence or fear with the spread of hoaxes; it is important to adhere to regulations governing the use of technology in accordance with applicable norms (Kompas.com 2022).

However, on the other hand, there are pros and cons to passing regulations concerning the scope of the Internet as a public space (Charalambous 2019; Moorman 2020). The existence of regulations governing the ways of using social media is an important topic to discuss because it can put freedom of speech at stake (Carpenter and Lawler 2019; Sunio et al. 2020). This is one of the reasons for rejecting sensitive regulations in the public sphere (Bergner et al. 2019; ROJAS 2020).

Democracy has advanced, allowing its application offline and online, such as through social media, hence the term "digital democracy" (Rachim et al. 2022). Digital democracy is the use of all forms of online media, interactive broadcasting, and digital telephony to promote democracy or citizens' political engagement in democratic communication (Sardini 2018). The term "digital democracy" refers to a type of political engagement or public support that results in the development of digital tools that can be used as platforms to expand public opportunities to engage in public policy and management processes to streamline many innovations at the government level (Kusumasari et al. 2018).

The internet is one of the most important spheres for the public or users to express opinions related to public issues quickly and easily (Lee 2018; Ley AND Brewer 2018; Sutan et al. 2021). In this internet context, the most possible platform or tool is to use social media (Lim 2018; Ozturkcan et al. 2017). The use of social media provides a way for netizens to express disagreements and protests related to opposing certain regulations or public benefits (Lee et al. 2017; Ouassini 2019). The use of social media, in this case, is one of the representations of the internet in developing narratives and as an effort to develop existing narratives related to certain social problems (Misran 2021; Sutan et al. 2021; Sutan and Purwaningsih 2022).

The Internet can establish two-way communication and instantly transmit various types of information about politics, political socialization, political campaigns, and political protests (Zainal and Megasari 2019). When the public uses the internet as a different medium to communicate ideas without restrictions or control, new political methods emerge, and public presence becomes more complex (Wicaksono 2021).

There are three challenges ahead regarding digital media and politics: the growing understanding of the impact of digital threats, particularly on democracy,

which is not yet significant; the risk of being too pessimistic about the impact of digital democratic development; and the risk of emphasizing the immediate implications of digital threats at the expense of indirect and medium-term effects on norms—collective expectations and behavior (Miller and Uk 2020). Undoubtedly, democracy can foster participatory components that benefit both citizens and governments if implemented correctly and with strong political commitment (Hennen et al. 2020).

METHODS

This article uses a qualitative descriptive research method to outline the effectiveness of the ITE Law in controlling the negative impacts of digital democracy in Indonesia. A qualitative approach was chosen so that researchers could explore the social, political, and legal context of implementing the ITE Law and understand its impact on freedom of expression and digital political participation. This research analysis uses Q-DAS (Qualitative Data Analysis Software) assistance, namely Nvivo 12 Plus software (Dalkin et al. 2021; Jackson and Bazeley 2019) to collect, manage, and analyze qualitative data effectively and efficiently. The data sources for this research include the official website of the Ministry of Communication and Information Technology, online news in 2020–2022, and previous research related to the ITE Law and Digital Democracy. Online news provides real-time data with various perspectives on ITE Law cases, allowing researchers to explore reporting patterns, public perceptions, and dynamics of regulatory implementation. This approach also supports discourse analysis and trends in digital democracy debates in online media.

Table 1.
Website and Online Mass Media Accounts

Website	
KOMINFO RI	https://www.kominfo.go.id/
Online Mass Media	
Kompas.com	https://www.kompas.com/
AntaraNews.com	https://www.antaranews.com/
CNNIndonesia.com	https://www.cnnindonesia.com/
Detik.com	https://www.detik.com/
Kumparan.com	https://kumparan.com/

This study uses three criteria or indicators to see the effectiveness of the ITE Law policy implementation, namely the theory of policy implementation effectiveness according to Mazmanian and Sabatier (1983), which includes: first, the willingness of target groups to comply with policy outputs. Second, the real impact of policy output. Third, Fundamental Legal Improvements (Syafitri 2022).

RESULTS AND DISCUSSION

Willingness of Target Groups to Comply with Policy Outputs

The willingness of target groups to comply with policy outputs, namely compliance behavior carried out by existing policy objectives (Sutmasa 2021) Where the community is the location of this target, this section shows how people are willing to comply with social media regulations to avoid violating the ITE Law. If there is compliance from the community, an order will be made using social media. This is seen not only from the implementation target but also from the policy implementer, namely the government.

Table 2.

Connectivity between Stakeholders

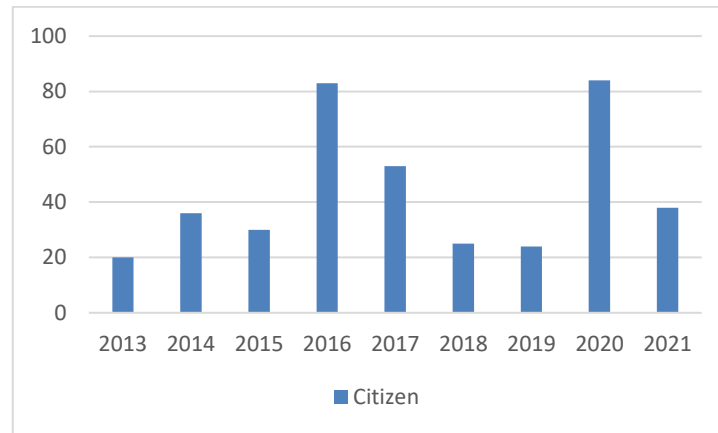
		Pearson correlation coefficient
Government	Citizen	0,824367
Citizen	Activist	0,730568
Government	Activist	0,592884

Source: Nvivo 12 Plus, 2023

This shows that the government's coordination with the community regarding the ITE Law is very strong because the ITE Law was made with the main target of the community in mind, so many parties may be involved in it. Meanwhile, the relationship between the community and activists is quite strong because several activists have been charged with violating the ITE Law for trying to speak out to criticize laws or regulations passed by the government, especially those that are considered detrimental to the community. The weakest relationship is between the government and activists. This is because many activists are involved in violations. Activists are involved in violations.

Figure 1.

Number of Citizens Charged with ITE Law (2013-2021)



Source: Researcher's Processed Data, 2023

However, Law Number 19/2016 on Electronic Information and Technology (ITE) continues to take its toll. This is because many people have gone to jail. In fact, they are charged with articles that are considered rubber under the ITE Law. The number of ITE cases tends to increase every year. In 2020, the number of ITE cases reached 217. Meanwhile, in the first quarter of 2021 alone, ITE cases reached 108E and continue to take victims. This is because many people have gone to jail. In fact, they are charged with articles that are considered rubber under the ITE Law. The number of ITE cases tends to increase every year.

In 2020, the number of ITE cases reached 217. Meanwhile, in the first quarter of 2021 alone, ITE cases reached 108. The Electronic Information and Transaction Law (UU ITE) where throughout 2021, there were at least 30 criminal cases with a total of 38 victims of criminalization, although this number decreased by almost half from the number of victims in 2020 of 84 victims (Annur 2022). Previously, there were 16 ITE cases in 2016, 48 cases in 2017, 170 cases in 2020, and 108 cases in the first quarter of 2021 (Toewoeh 2022).

The most common background of victims of criminalization in 2021 is human rights defenders who come from activists, reaching ten people or 26.3% of the total victims, followed by eight victims of violence and their companions who were charged with the ITE Law, and seven citizens. (18,4%). Others came from journalists, academics, students, workers, politicians, and community organizations. Whereas last year, there were 50 activists, 34 people who were

victims or associates of violence, seven ordinary citizens, four workers, students, politicians, academics, and members of civil society organizations who were charged with the ITE Law (Karnadi 2022).

Some examples of victims caught up in the ITE Law include activists from the Indonesian Community Action Unit (KAMI) in a criminal case involving Twitter tweets related to their criticism of the passage of the 2020 Job Creation Bill (RUU). There is Dandhy Dwi Laksono, a Watchdoc journalist, regarding his uploads in 2019 that were considered SARA related to the conditions of Wamena and Jayapura in Papua, and finally, a public policy researcher who was charged with Article 28 paragraph 2 of the ITE Law on hate speech or hostility towards individuals and community groups based on ethnicity, religion, race, and intergroup (SARA) (Andryanto 2021).

The government's initial goal in enacting the ITE Law was to keep Indonesia's digital space clean, healthy, ethical, and productive, so it needs more selective law enforcement, especially for legal institutions such as the Supreme Court. The Attorney General's Office of the National Police regarding the interpretation of the articles of the ITE Law so that not many people are trapped in the rubber articles of the ITE Law. Social media not only offers millions of pieces of information but also demands maturity and maturity of thinking from its users because, for democratic institutions, the media plays an important role in shaping public opinion in the political, cultural, and economic fields (Sampurno et al. 2020).

The Real Impact of Policy Outputs

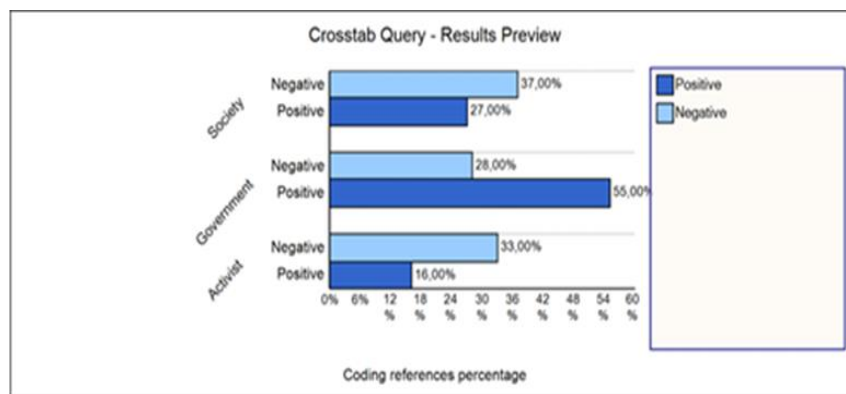
The government's initial goal in enacting the ITE Law was to keep Indonesia's digital space clean, healthy, ethical, and productive. Thus, more selective law enforcement, especially for legal institutions such as the Supreme Court and the Police Prosecutor's Office, is required. The real impact of policy outputs is one of the benchmarks for the effectiveness of existing policy implementation.

The results of this implementation have successfully achieved the desired effect, marked by implementation performance in line with existing policies as well as changes in the behavior of target groups. So, in this section, the expected impact is not only the impact felt by the policy target but also the impact felt by the existing implementers. The effect of the policy output will lead to perceptions arising from the implementation of the ITE Law, both from the perception of the implementer

and from the purpose of implementing the ITE Law itself. This perception is not just a perception; it is a perception that arises because of the success or effectiveness of the implementation of the existing ITE Law. The next analysis is sentiment to see the impact of the ITE Law policy implementation from the perspective of several actors involved.

Figure 2.

Public Response to the ITE Law



Source: Nvivo 12 Plus, 2023

Based on the results of the above analysis from the government's point of view show a pro or positive view of the formation of the ITE Law because the state, in this case the government, has an obligation to protect its citizens from something that is considered threatening according to the Preamble of the 1945 Constitution of the Republic of Indonesia. According to the fourth paragraph of the 1945 Constitution of the Republic of Indonesia and exercising governmental authority as stipulated in Article 40 Paragraph (2b) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law), the government has the authority to prevent the dissemination and use of electronic information whose content is prohibited. On the other hand, most people and activists consider the establishment of the ITE Law to have a negative impact or antagonize public freedom of expression on social media.

This is supported by previous research from Septiyan et al. (2020), who found that the birth of the Electronic Information and Transaction Law (ITE) in Indonesia still raises pros and cons in society because some people support it. However, some also disagree (Septiyan et al., 2020). In addition, research from Lubis (2020) explains that the ITE Law can be one of the strengthening regulations related to

policies to control the movements of perpetrators who spread hoaxes and hate speech. In line with this, Fadilah Raskasih (2021) shows that human rights and applicable laws and regulations related to freedom of expression must be balanced with a detailed explanation of several categories that are considered to violate the human rights of others.

Several articles in the ITE Law have multiple interpretations because these articles are considered to impede freedom of expression. At least two articles have been the subject of debate, namely, article 27, paragraph 3, which states that every person intentionally and without rights distributes, transmits, and makes electronic documents accessible that contain insults and defamation. Then, article 28, paragraph 2 states that everyone intentionally and without rights disseminates information to create hatred or hostility towards individuals or groups based on SARA. So far, the last sentence has been widely interpreted. In response to this, on December 12, President Joko Widodo officially submitted the text of the Draft Law on Amendments to the Law on Electronic Information and Transactions (RUU Revision of the ITE Law) to the House of Representatives (DPR) as a form of the government's commitment to responding to the aspirations of people who want changes to several provisions that have the potential to shackle freedom of expression through the electronic system (KOMINFO RI 2022).

Fundamental Improvements to the Act

Fundamental improvements to the law can be made if implementation has gone well, but important additions or subtractions need to be made. These additions can be recommended based on suggestions and expectations from various perspectives, both from the implementor's side and from the existing policy objectives, so at this point, some expectations are put forward. The next analysis uses the Word Cloud feature to find words that appear frequently and are discussed in the research topic. The word cloud will clearly show the types of words that appear in online media and on the KOMINFO website related to the regulation of the ITE Law. The following are the results of the 50 most dominant comments related to this research topic from several data sources, including:

Figure 3.
The Output Impact of the ITE Law



Source: Nvivo 12 Plus, 2023

The data from the Word Cloud feature analysis above shows that the words that appear frequently are ITE and Democracy. The next words that frequently appear are the application of Freedom, Opinion, Press, Criminal, and Revision, which is the topic of the research. Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number I of 2008 concerning Electronic Information and Transactions states that "Electronic Information" is one or a set of electronic data, including but not limited to writings, sounds, images, maps, designs, photographs, electronic data interchange (EDI), electronic mail, telegram, telex, telecopy, or the like, letters, signs, numbers, access codes, symbols, or perforations that have been processed and have meaning or can be understood by people who can understand them, while democracy according to Aristotle is freedom whose principle of democracy is freedom because only through freedom can citizens share power within their country so that if someone does not have the freedom to choose their way of life, they will not be able to choose their own life (Purnamawati 2020).

Indonesia's Electronic Information and Transaction (ITE) has been a controversial law since its inception in 2008. The law was intended to regulate electronic transactions and protect users from cybercrime, but its vague and easily abused provisions have been used to silence critics and stifle free speech. The ITE Law criminalizes any electronic media communication that could be considered defamatory or slanderous, leading to concerns about its impact on free speech (Nurkholim 2021).

The results of the analysis above can be interpreted as illustrating the dual nature of the ITE Law, akin to two sides of a coin. On one side, the law is designed to serve as a regulatory framework that aims to safeguard individuals and society from the detrimental effects of social media. In an era where misinformation, cyberbullying, and online harassment are pervasive, this protection is crucial. The ITE Law seeks to create a safer digital environment, holding individuals and platforms accountable for their actions online, thereby fostering responsible usage of social media.

Conversely, the other side of the coin reveals a more concerning narrative. While the law intends to protect, it is also perceived as potentially curtailing individuals' freedom of opinion and expression. Many critics of the ITE Law argue that its provisions can lead to overreach, where individuals may face severe consequences for exercising their right to voice their thoughts and opinions. The fear of being prosecuted under this law looms large, potentially stifling open discourse and discouraging individuals from sharing their views. Furthermore, there have been alarming reports of people facing imprisonment for actions deemed violations under the ITE Law, which raises significant questions about the balance between regulation and freedom.

Thus, the implications of the ITE Law are complex and multifaceted. While it aims to protect society from the pitfalls of an increasingly digital world, it also raises critical concerns about personal freedoms and the potential for misuse of power against dissenting voices. This duality calls for a careful and nuanced approach to legislation, ensuring that the necessary protections are in place without infringing upon fundamental rights. As society navigates this intricate landscape, ongoing dialogue and assessment will be essential in shaping a framework that truly serves the best interests of all stakeholders involved. Therefore, revisions related to articles considered to have multiple interpretations need to be carried out, such as discussions on the second indicator if the public and activists judge against the current implementation of the ITE Law. President Joko Widodo, through the coordinating minister for Political, Legal, and Security Affairs, Mahfud MD, approved the revision of the ITE Law (limited in terms of substance), which is considered by society as a form of criminalization. There are four articles to be revised, namely articles 27, 28, 29, and 36; apart from that, there are additions to the revised article, namely article 45 C of the ITE Law, to eliminate multiple

interpretations, rubber articles, and many forms of criminalization that occur in society (Prasetiyo 2021).

Political parties such as PKB, PKS, and PAN, along with the observer director of the Indonesia ICT Institute, agreed to the revision of the ITE Law because, from the community's point of view, this can certainly provide a sense of justice, comfort, and guard for the future of the digital world (Prastiwi 2021). Media literacy programs are needed to provide young people with knowledge, understanding, and skills for accessing the information presented by the mass media. (Azis 2019). Digital literacy training aims to make the community have a critical attitude when responding to any information and interactions regarding the rules and ways of playing used when utilizing social media in everyday life (Silvana & Cecep 2022).

CONCLUSION

The rapid development of technology has greatly influenced people's daily life patterns, including democracy, which is starting to transform into digital democracy. Indonesia's ITE Law has been the subject of controversy since it was enacted in 2008. Although the law is intended to regulate electronic transactions and protect users from cybercrime, its provisions are unclear and easily misused to silence criticism and free speech. The target group willingness indicator is in accordance with the policy output, which shows that people have begun to limit and be careful when using social media. Furthermore, indicators of the real impact of policy output show that the majority of the public and activists gave negative assessments because they were seen as limiting freedom of expression. The third indicator, Fundamental Legal Improvements, shows that the government has attempted to improve the quality of the ITE Law by revising articles that are considered "rubber" to continue to realize the initial objectives of the ITE Law, namely creating a safe and conducive atmosphere in the digital environment. Based on these three indicators, researchers conclude that the ITE Law is quite effective in controlling the negative impacts of the rapid development of democracy. While some argue that a complete overhaul of the law is necessary, others argue that targeted revisions could address the most problematic provisions. Whatever the outcome, the dynamics of ITE will continue to be an important factor in shaping the development of digital democracy in Indonesia

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