



## The Regulation of Digital Platforms and Freedom of Expression in Indonesia's Constitutional System

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### Abstract

*This study examines the constitutional relationship between digital platform regulation and freedom of expression within Indonesia's legal system by analyzing the normative imbalance between state moderation authority and constitutional protections of communicative liberty. The research employs a non empirical juridical methodology grounded in constitutional, doctrinal, conceptual, and comparative legal analysis through the examination of the Constitution of Indonesia 1945, the Electronic Information and Transactions Law, Ministerial Regulation Number 5 Year 2020, Constitutional Court decisions, and scholarly discussions concerning digital constitutionalism and democratic governance. The findings demonstrate that Indonesian digital regulation continues to prioritize administrative control, platform compliance obligations, and public order rationales without developing sufficiently coherent proportionality standards capable of protecting constitutional freedom of expression. Constitutional adjudication has recognized the significance of online participation within democratic society, yet judicial interpretation remains inconsistent in defining legality, necessity, procedural fairness, and restrictive limits applicable to digital expression regulation. The study argues that reconstruction of Indonesian digital governance requires rights based constitutional proportionality, transparent moderation mechanisms, independent oversight institutions, and stronger safeguards against disproportionate state intervention in digital communicative spaces.*

**Keywords :** Digital Constitutionalism, Freedom Of Expression, Platform Governance, Constitutional Proportionality, Democratic Regulation.



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## INTRODUCTION

The rapid expansion of digital platforms as primary arenas of political communication, civic participation, and public deliberation has fundamentally transformed the constitutional architecture of freedom of expression across democratic and transitional legal systems, particularly in jurisdictions struggling to reconcile technological governance with human rights protection. Contemporary debates no longer focus merely on the classical relationship between citizens and the state, but increasingly interrogate the growing authority of digital intermediaries and regulatory institutions in determining the boundaries of lawful expression, permissible dissent, and acceptable political discourse within algorithmically mediated environments. Comparative constitutional scholarship demonstrates that states worldwide have adopted divergent regulatory strategies ranging from rights oriented co regulation frameworks in the European context to security centered digital sovereignty models in several Asian jurisdictions, reflecting deeper ideological contestations regarding the balance between public order and communicative liberty.

Within Indonesia, this transformation has generated substantial constitutional tension because the regulatory structure governing digital communication continues to emphasize state supervisory authority through expansive interpretations of public morality, defamation, misinformation, and hate speech, while the constitutional guarantee of freedom of expression enshrined in the Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 remains doctrinally underdeveloped in its application to platform governance and digital moderation practices. Existing legal developments reveal an increasingly interventionist orientation in state regulatory policy, particularly through the implementation of digital surveillance mechanisms, content restrictions, and intermediary obligations

that affect the autonomy of online discourse and democratic participation (Muslim & Solapari, 2024; Najib et al., 2024; Rahmadani et al., 2024).

Recent legal scholarship examining freedom of expression within Indonesia's digital ecosystem has produced significant insights concerning the relationship between regulatory expansion and constitutional protection, although these studies frequently approach the issue through fragmented analytical frameworks that privilege either criminal law enforcement, digital ethics, or administrative supervision without integrating broader constitutional theory concerning platform governance. Muslim and Solapari (2024) argue that hate speech regulation in Indonesia has gradually shifted from a narrowly tailored public order instrument into a broader mechanism capable of restricting legitimate political expression due to the absence of proportionality standards and precise definitional boundaries. Najib et al. (2024) comparatively demonstrate that Indonesian regulation remains substantially more vulnerable to discretionary enforcement than the Malaysian framework because Indonesian digital governance lacks coherent constitutional safeguards capable of limiting state intervention within online communicative spaces.

Rahmadani et al. (2024) similarly identify how the implementation of the Electronic Information and Transactions Law has expanded the criminalization of expression through vague normative formulations that blur the distinction between harmful digital conduct and constitutionally protected criticism. Parallel concerns are articulated by Sayuti et al. (2023), who critically observe that the promotion of unrestricted speech narratives in Indonesia often occurs without adequate institutional direction regarding democratic responsibility, thereby producing contradictory policy responses oscillating between permissive digital openness and excessive state restriction. Pradityo et al. (2025) extend this critique by emphasizing that legal restrictions imposed within Indonesia's digital environment frequently fail to satisfy internationally recognized human rights standards concerning necessity, legality, and proportionality, particularly when state authorities rely on broad interpretive discretion in enforcing platform related content regulation.

Despite the growing sophistication of this literature, substantial conceptual and methodological limitations remain unresolved because most existing studies continue to frame freedom of expression primarily as a binary conflict between individual liberty and governmental restriction without adequately examining the constitutional implications of delegated moderation authority exercised by digital platforms themselves. Current scholarship often assumes that state regulation constitutes the sole threat to expressive freedom, while insufficiently analyzing how platform governance structures, algorithmic visibility controls, content takedown mechanisms, and intermediary compliance obligations collectively reshape constitutional rights in practice. Saogi (2025) highlights the increasing institutionalization of digital broadcasting monitoring systems in Indonesia, yet the analysis remains confined to administrative implementation rather than addressing the broader constitutional consequences of quasi privatized speech regulation.

Yandy et al. (2026) discuss the implications of Constitutional Court Decision Number 36/PUU XX/2022 for citizens' constitutional rights, but the discussion primarily concentrates on doctrinal judicial interpretation instead of evaluating how constitutional adjudication interacts with evolving platform moderation regimes and state regulatory partnerships. Existing research also demonstrates inconsistency regarding the normative standard applicable to digital expression restrictions because some scholars justify broad regulatory intervention under the rhetoric of social stability, whereas others prioritize civil liberties without offering workable constitutional criteria for balancing competing interests within digital governance structures (Sayuti et al., 2023; Pradityo et al., 2025). This fragmentation has generated a persistent legal gap concerning the absence of balanced constitutional standards capable of limiting both state overreach and unaccountable platform authority in Indonesia's digital public sphere.

The unresolved nature of this legal gap carries substantial scientific and practical urgency because the absence of constitutionally grounded proportionality standards risks normalizing arbitrary restrictions on public participation, political dissent, journalistic expression, and civic engagement within increasingly centralized digital communication infrastructures. Indonesia's current regulatory trajectory demonstrates how expansive state authority combined with platform compliance obligations may gradually institutionalize a governance model in which content moderation functions as an extension of administrative control rather than a rights sensitive mechanism designed to preserve democratic pluralism. Such developments possess serious implications for constitutional democracy

because digital platforms have effectively become quasi public arenas where citizens exercise political participation, construct social movements, and negotiate collective identities.

When legal frameworks fail to distinguish clearly between legitimate regulatory objectives and disproportionate restrictions, enforcement practices become vulnerable to selective interpretation and political instrumentalization, particularly in contexts involving criticism of governmental institutions or contentious public debate (Muslim & Solapari, 2024; Rahmadani et al., 2024). The urgency of this issue also extends beyond domestic constitutional concerns because Indonesia's evolving digital governance regime increasingly interacts with transnational debates concerning intermediary liability, digital sovereignty, human rights compliance, and the accountability of global technology corporations. The absence of a coherent constitutional framework governing platform moderation therefore not only weakens legal certainty at the national level, but also limits Indonesia's capacity to position itself within emerging global standards concerning democratic digital governance and rights based platform regulation (Najib et al., 2024; Pradityo et al., 2025).

This research positions itself within the intersection of constitutional law, digital governance theory, and freedom of expression scholarship by advancing a more integrated analytical framework capable of addressing the dual concentration of regulatory authority exercised simultaneously by the state and digital platforms. Unlike prior studies that predominantly analyze individual statutes or isolated judicial decisions, this study conceptualizes digital platform regulation as a constitutional governance problem involving the redistribution of normative authority over public discourse from traditional state institutions toward hybrid regulatory structures combining governmental supervision and private moderation practices. The study critically interrogates how Indonesian constitutionalism responds to this transformation by examining whether existing regulatory frameworks adequately incorporate principles of legality, necessity, proportionality, accountability, and procedural fairness in limiting expressive rights within digital environments. This approach enables the research to move beyond conventional doctrinal analysis centered exclusively on the legality of speech restrictions and instead evaluate the broader constitutional consequences arising from the convergence of platform governance and administrative regulation. The study also contributes to comparative constitutional discourse by situating Indonesia within wider international debates concerning democratic backsliding, digital authoritarianism, and the constitutionalization of platform power, thereby providing a more theoretically grounded understanding of how emerging digital governance models affect the future of constitutional freedoms in transitional democracies.

This study aims to analyze the constitutional relationship between digital platform regulation and freedom of expression in Indonesia by identifying the normative deficiencies within existing legal frameworks governing online moderation authority, intermediary obligations, and state intervention in digital communication spaces. The research seeks to formulate a constitutional standard capable of balancing legitimate regulatory objectives with the protection of expressive freedom through a proportionality based approach grounded in democratic constitutionalism and human rights principles. Theoretically, the study contributes to the development of constitutional scholarship concerning the transformation of public discourse governance in the digital era by integrating constitutional rights analysis with platform governance theory. Methodologically, the research offers an interdisciplinary legal analytical framework that combines constitutional interpretation, regulatory analysis, and digital governance perspectives in order to produce a more comprehensive understanding of how legal systems should regulate platform authority without undermining democratic freedoms within contemporary digital societies.

## **RESEARCH METHODS**

This study employs a non empirical juridical research design grounded in normative constitutional analysis and doctrinal legal methodology in order to examine the constitutional relationship between digital platform regulation and freedom of expression within Indonesia's legal system. The research applies statutory, conceptual, and comparative approaches through the examination of primary legal materials consisting of the Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Undang Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik, and Peraturan Menteri Komunikasi dan Informatika Nomor 5 Tahun 2020 tentang Penyelenggara Sistem Elektronik Lingkup Privat, alongside constitutional doctrines concerning civil liberties, proportionality, and democratic governance. Secondary legal materials include scholarly

monographs, constitutional law literature, journal articles, judicial interpretations, and international academic discussions concerning platform governance and digital constitutionalism, particularly the constitutional theory advanced by Jimly Asshiddiqie regarding the development of constitutional democracy and state authority within Indonesia's legal order. The comparative dimension of the study is utilized to situate Indonesia's regulatory framework within broader global debates concerning intermediary liability, digital moderation authority, and the protection of expressive freedom in democratic constitutional systems.

The analytical framework of this study is constructed through constitutional interpretation and critical legal analysis emphasizing the principles of legality, necessity, proportionality, accountability, and protection of fundamental rights within digital governance structures. Legal materials are interpreted systematically and teleologically in order to evaluate whether existing Indonesian regulatory mechanisms governing digital platforms remain consistent with constitutional guarantees of freedom of expression and democratic participation. The study further applies doctrinal analysis to identify normative inconsistencies between statutory regulation, administrative authority, and constitutional protections, while conceptual analysis is employed to examine the redistribution of regulatory power between the state and digital platforms within contemporary digital communication systems. The validity of the analysis is strengthened through qualitative triangulation among constitutional provisions, statutory instruments, legal doctrines, and scholarly interpretations in order to produce a coherent and theoretically grounded evaluation of the constitutional limits of digital platform regulation in Indonesia.

## **RESULTS AND DISCUSSION**

### **Constitutional Construction of Freedom of Expression within Indonesia's Digital Regulatory Framework**

The constitutional architecture governing freedom of expression in Indonesia reflects a persistent normative tension between democratic guarantees embedded within the Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 and the expansion of administrative control over digital communication spaces through statutory and ministerial regulations. Article 28E paragraph 3 of the Constitution explicitly guarantees the right of every person to express opinions and association, while Article 28F recognizes the right to communicate and obtain information through all available channels of communication. Constitutional interpretation developed by Jimly Asshiddiqie conceptualizes these provisions as substantive guarantees intended to preserve democratic participation within evolving public spheres rather than merely symbolic declarations detached from practical enforcement mechanisms (ASSHIDDIQIE, 2006). The enactment of Undang Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik transformed this constitutional landscape by introducing regulatory instruments capable of criminalizing digital expression through broad formulations concerning decency, defamation, misinformation, and hate speech. Constitutional scholarship increasingly argues that these regulatory developments have generated asymmetrical relations between state authority and communicative liberty because statutory limitations operate without sufficiently precise proportionality standards capable of restricting discretionary enforcement powers (JUNIUS FERNANDO ET AL., 2022).

The juridical structure of the Electronic Information and Transactions Law demonstrates how statutory interpretation may shift constitutional guarantees toward securitization oriented governance models that prioritize state stability over democratic openness. Article 27 paragraph 3 concerning electronic defamation and Article 28 paragraph 2 concerning hate speech continue to generate constitutional controversy because their normative formulations lack clear distinctions between legitimate public criticism and punishable expression. Al Asyari (2023) argues that the absence of precise legislative definitions within Indonesia's cyberspace regulation permits elastic interpretations by law enforcement authorities, thereby expanding the possibility of criminal sanctions against constitutionally protected expression. Ghofur (2024) similarly observes that digital governance in Indonesia increasingly reflects preventive state rationality in which communicative freedom is treated as a potential source of instability requiring continuous surveillance and regulatory intervention. Constitutional analysis grounded in teleological interpretation indicates that the legislative objective of maintaining public order cannot legitimately justify disproportionate restrictions that undermine the democratic function of digital participation protected under Articles 28E and 28F of the Constitution.

The implementation of Peraturan Menteri Komunikasi dan Informatika Nomor 5 Tahun 2020 tentang Penyelenggara Sistem Elektronik Lingkup Privat further intensifies constitutional concerns because the regulation imposes extensive obligations upon digital platform operators to ensure compliance with governmental requests concerning content moderation and access limitation. Article 9 and Article 14 of the ministerial regulation authorize administrative intervention against electronic system operators failing to remove prohibited content within prescribed periods determined by governmental authorities. Constitutional difficulties emerge because the regulatory framework delegates substantial moderation responsibilities to private platforms while simultaneously subjecting them to coercive administrative oversight capable of encouraging excessive content removal practices. Lubis (2026) characterizes this governance arrangement as a structurally imbalanced intermediary liability model in which platforms prioritize regulatory compliance over constitutional protection due to the threat of sanctions and operational restrictions. Faqih et al. (2026) further contend that digital surveillance practices embedded within platform governance frameworks have gradually normalized anticipatory censorship mechanisms inconsistent with democratic constitutionalism and human rights proportionality principles.

Constitutional Court jurisprudence demonstrates evolving judicial recognition of the dangers posed by overbroad digital restrictions, although doctrinal inconsistencies continue to weaken coherent constitutional protection. Constitutional Court Decision Number 36/PUU XX/2022 recognized that freedom of expression constitutes an inseparable component of democratic citizenship and constitutional participation within contemporary Indonesia. Yandy et al. (2026) interpret this judicial reasoning as an important reaffirmation that constitutional rights remain applicable within digital communication environments despite the expansion of administrative governance structures. Constitutional Court Decision Number 105/PUU XXII/2024 further addressed interpretative ambiguities surrounding online defamation and restrictions imposed under the Electronic Information and Transactions Law. Chariansyah (2025) argues that the decision partially corrected excessive criminalization trends by emphasizing contextual interpretation and constitutional proportionality, although Hanafi (2025) observes that judicial clarification remains insufficient because the statutory framework itself still preserves expansive state discretion capable of producing inconsistent enforcement patterns across digital platforms.

Comparative constitutional analysis reveals that Indonesia's regulatory orientation differs significantly from jurisdictions adopting rights based intermediary governance models emphasizing procedural safeguards and transparent proportionality review. Najib et al. (2024) identify that comparative developments in Southeast Asian digital regulation illustrate divergent approaches concerning the relationship between state authority and expressive freedom, with Indonesia displaying stronger tendencies toward centralized administrative supervision. Aisahrani et al. (2025) further demonstrate through comparative constitutional analysis involving Indonesia, Iran, and the United States that constitutional protection of expressive liberty becomes vulnerable when legal systems prioritize moral or political stability without establishing narrowly tailored limitations grounded in judicial accountability. Comparative constitutionalism indicates that democratic legal systems increasingly require independent oversight mechanisms, transparent takedown procedures, and effective remedies against arbitrary moderation decisions affecting public discourse. Indonesian digital governance frameworks continue to rely predominantly upon executive authority and administrative interpretation rather than constitutionally embedded safeguards capable of balancing competing interests through judicially reviewable standards. The comparative absence of institutionalized proportionality review within Indonesia's digital regulatory system therefore weakens the constitutional legitimacy of restrictions imposed upon digital expression and political participation.

**Table 1. Normative Mapping of Indonesian Digital Expression Regulations and Constitutional Standards**

Legal Instrument	Relevant Provision	Regulatory Orientation	Constitutional Implication
Constitution of Indonesia 1945	Article 28E paragraph 3	Protection of expression and association	Recognition of democratic communicative liberty

Constitution of Indonesia 1945	Article 28F	Right to communicate and obtain information	Constitutional guarantee of digital participation
Law Number 11 Year 2008	Article 27 paragraph 3	Criminalization of electronic defamation	Potential restriction on criticism and dissent
Law Number 11 Year 2008	Article 28 paragraph 2	Restriction of hate speech and misinformation	Broad interpretative discretion for law enforcement
Ministerial Regulation Number 5 Year 2020	Article 9	Mandatory platform compliance obligations	Expansion of administrative moderation authority
Ministerial Regulation Number 5 Year 2020	Article 14	Government ordered content removal	Risk of disproportionate digital censorship

Source: Processed and interpreted from Indonesia (1945), Indonesia (2008), Indonesia (2020), Asshiddiqie (2006), Hanafi (2025), and Lubis (2026).

The normative structure presented in Table 1 demonstrates that constitutional guarantees protecting communicative freedom coexist with statutory mechanisms that significantly broaden administrative and punitive intervention within digital spaces. Systematic interpretation of Articles 28E and 28F indicates that constitutional freedoms should function as interpretative limitations upon subordinate regulations rather than merely rhetorical principles subordinate to executive policy objectives. Handayani et al. (2025) argue that criminal penalties imposed within cyberspace increasingly reveal authoritarian tendencies when legal norms are interpreted expansively without rigorous constitutional scrutiny concerning necessity and proportionality. Rahmadani et al. (2024) similarly emphasize that vague legal standards embedded within digital regulation produce uncertainty capable of chilling political participation and discouraging public criticism directed toward governmental institutions. Constitutional doctrine concerning the rule of law requires that limitations upon fundamental freedoms satisfy strict standards of legal certainty, predictability, and legitimate purpose, principles that remain insufficiently operationalized within Indonesia's contemporary digital governance framework.

The doctrinal conflict between constitutional freedom and regulatory expansion also reflects broader transformations in the structure of democratic governance within technologically mediated societies. Christia et al. (2024) observe that the rapid development of digital technologies has fundamentally altered constitutional relations between state institutions, private actors, and citizens because online platforms increasingly perform quasi public functions traditionally associated with democratic participation. Aringga and Meuraksa (2025) argue that contemporary regulatory discourse frequently invokes disinformation threats and post truth anxieties to justify exceptional limitations upon civil liberties, despite the absence of convincing evidence demonstrating that broad restrictions effectively strengthen democratic resilience. Constitutional interpretation grounded in democratic theory requires recognition that exposure to controversial, critical, or oppositional expression constitutes an inherent feature of constitutional pluralism rather than a pathological condition requiring pervasive administrative correction. The Indonesian regulatory framework nevertheless continues to prioritize state centered control mechanisms emphasizing preventive intervention and monitoring over participatory constitutional safeguards protecting public deliberation. Such tendencies indicate a gradual transformation from constitutional democracy toward managerial digital governance characterized by expansive administrative authority and weakened judicial balancing mechanisms.

The expansion of digital platform obligations within Indonesia's regulatory system further complicates constitutional accountability because moderation decisions increasingly emerge through hybrid interactions between governmental directives and private corporate governance structures. Saogi (2025) demonstrates that digital broadcasting monitoring practices have expanded beyond traditional media supervision toward continuous oversight of online communicative environments involving both domestic and transnational platform operators. Constitutional concerns intensify because platform operators frequently adopt precautionary moderation strategies designed to avoid administrative sanctions rather than protect substantive expressive rights guaranteed under constitutional law.

Bimoribowo and Azis (2025) argue that legal safeguards protecting criticism against governmental authorities remain normatively weak because existing statutory interpretations continue to permit criminal prosecution based upon subjective assessments of reputational harm and public disturbance. Teleological interpretation of constitutional rights suggests that criticism directed toward public institutions should receive heightened protection within democratic societies because such expression constitutes a central mechanism for accountability and political participation. Indonesia's current regulatory model instead constructs criticism as a potentially destabilizing communicative practice subject to broad administrative and penal intervention.

The constitutional legitimacy of digital platform regulation ultimately depends upon the establishment of balanced legal standards capable of harmonizing democratic freedoms with legitimate public interests through transparent and reviewable proportionality analysis. Muslim and Solapari (2024) emphasize that restrictions concerning hate speech and harmful expression require precise legal boundaries because overinclusive regulation risks transforming protective legislation into instruments suppressing legitimate dissent. Indriasari and Karman (2023) similarly contend that regulatory pressure imposed through the Electronic Information and Transactions Law has produced a climate of uncertainty in which individuals frequently engage in self censorship to avoid potential legal consequences arising from ambiguous digital expression standards. Pradityo et al. (2025) argue that constitutional review of digital restrictions must prioritize necessity and proportionality rather than administrative expediency because democratic legitimacy depends upon maintaining robust protections for communicative participation. Constitutional jurisprudence and comparative legal doctrine therefore indicate the necessity of reconstructing Indonesia's digital regulatory framework through rights based standards emphasizing legality, judicial oversight, procedural transparency, and institutional accountability. The absence of such standards perpetuates the constitutional imbalance between platform moderation authority and freedom of expression that continues to define Indonesia's contemporary digital governance system.

### **Judicial Proportionality and Constitutional Limits on Digital Platform Moderation in Indonesia**

The constitutional adjudication of digital expression disputes in Indonesia demonstrates an unresolved doctrinal struggle concerning the relationship between freedom of expression and state authority within technologically mediated communication systems. Article 28E paragraph 3 and Article 28F of the Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 formally recognize expressive liberty and communicative participation as constitutional guarantees inseparable from democratic citizenship. Constitutional interpretation developed through Indonesian judicial practice nevertheless continues to position Article 28J as a justificatory mechanism for broad limitations based upon morality, religious values, security, and public order without consistently applying measurable proportionality standards capable of preventing excessive interference with constitutional freedoms. Asshiddiqie (2006) conceptualizes constitutional democracy as a legal order requiring equilibrium between governmental authority and individual liberty, although subsequent judicial developments concerning digital regulation reveal persistent asymmetry favoring administrative discretion over rights centered constitutional balancing. Junius Fernando et al. (2022) argue that constitutional guarantees of expression in Indonesia frequently encounter restrictive statutory interpretation because judicial institutions tend to prioritize collective stability narratives above substantive protection of dissent and political criticism.

The doctrinal ambiguity surrounding Article 28J has become increasingly significant within judicial review proceedings concerning the implementation of Undang Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik, particularly Article 27 paragraph 3 governing electronic defamation and Article 28 paragraph 2 concerning hate speech regulation. Constitutional Court interpretation repeatedly affirms that constitutional rights are not absolute, yet the Court has not consistently articulated rigorous criteria concerning legality, necessity, and proportionality when evaluating limitations imposed upon online expression. Hanafi (2025) contends that the absence of a coherent proportionality doctrine within Constitutional Court reasoning permits state institutions to preserve extensive regulatory authority through vague normative concepts associated with public morality and social harmony. Pradityo et al. (2025) similarly observe that judicial analysis concerning digital restrictions often emphasizes abstract state interests without sufficiently examining whether less restrictive alternatives remain available for achieving legitimate governmental objectives. Teleological

interpretation of constitutional rights indicates that restrictions imposed upon digital expression should remain exceptional and narrowly tailored because communicative participation constitutes a foundational component of democratic legitimacy and constitutional accountability.

Constitutional Court Decision Number 36/PUU XX/2022 represents an important judicial attempt to reaffirm constitutional protection for digital expression within Indonesia's evolving communication environment. The Court acknowledged that online communicative activity forms part of contemporary constitutional participation protected under Articles 28E and 28F, thereby rejecting interpretative approaches treating digital platforms as legally detached from constitutional guarantees applicable within physical public spaces. Yandy et al. (2026) interpret this decision as a doctrinal recognition that constitutional citizenship extends into digital environments where political discourse, criticism, and public deliberation increasingly occur. Judicial reasoning within the decision nevertheless refrained from constructing a comprehensive proportionality framework capable of limiting discretionary enforcement under Article 27 paragraph 3 and Article 28 paragraph 2 of the Electronic Information and Transactions Law. Muslim and Solapari (2024) argue that the Court's reluctance to formulate explicit balancing standards perpetuates legal uncertainty because law enforcement institutions retain broad authority to interpret allegedly harmful expression without constitutionally measurable limitations.

The interpretative tensions surrounding digital defamation became more visible through Constitutional Court Decision Number 105/PUU XXII/2024, particularly regarding the distinction between constitutionally protected criticism and punishable reputational harm within digital communication spaces. The Court introduced contextual interpretation principles emphasizing the necessity of distinguishing malicious defamation from legitimate criticism directed toward governmental institutions and public officials. Chariansyah (2025) characterizes the decision as a partial doctrinal correction intended to reduce arbitrary criminalization under Article 27 paragraph 3 of the Electronic Information and Transactions Law. Majid and Angraeni (2025) nevertheless argue that the decision stopped short of invalidating problematic statutory formulations, thereby preserving interpretative elasticity capable of enabling inconsistent application across judicial and administrative institutions. Bimoribowo and Azis (2025) further contend that criticism expressed through social media platforms continues to face substantial legal vulnerability because constitutional adjudication has not yet established precise operational standards distinguishing protected democratic participation from unlawful defamatory conduct.

The judicial treatment of Article 40 of the Electronic Information and Transactions Law and Article 9 alongside Article 14 of Peraturan Menteri Komunikasi dan Informatika Nomor 5 Tahun 2020 tentang Penyelenggara Sistem Elektronik Lingkup Privat illustrates the continuing dominance of administrative rationality within Indonesia's constitutional approach toward digital governance. Article 40 authorizes governmental intervention in electronic systems and digital content management under the justification of protecting public order and preventing unlawful information dissemination. Judicial interpretation concerning these provisions has generally accepted broad executive discretion without requiring detailed constitutional examination regarding procedural safeguards, transparency obligations, or independent review mechanisms. Rahmadani et al. (2024) observe that the absence of strict judicial scrutiny concerning administrative takedown authority permits preventive censorship practices inconsistent with democratic constitutional principles protecting public participation and open discourse. Al Asyari (2023) similarly argues that Indonesian cyberspace regulation increasingly reflects securitization oriented legal reasoning in which constitutional freedoms become subordinated to expansive conceptions of digital stability and governmental control.

**Table 2. Constitutional Court Interpretation of Digital Expression Restrictions and Proportionality Standards**

<b>Constitutional Provision or Court Decision</b>	<b>Core Legal Issue</b>	<b>Judicial Interpretation</b>	<b>Constitutional Consequence</b>
Article 28E Constitution	Freedom of expression	Democratic participation guarantee	Protection of political criticism

Article 28J Constitution	Limitation of rights	Restriction based on morality and order	Potential expansion of state authority
Constitutional Court Decision 36/PUU XX/2022	Digital constitutional rights	Recognition of online expression protection	Reinforcement of constitutional citizenship
Constitutional Court Decision 105/PUU XXII/2024	Online defamation regulation	Contextual interpretation approach	Partial limitation on criminalization
Article 27 paragraph 3 ITE Law	Electronic defamation	Broad interpretative application	Risk of legal uncertainty

Source: Processed and interpreted from Constitutional Court Decisions, Indonesia (1945), Indonesia (2008), Chariansyah (2025), Hanafi (2025), and Majid and Angraeni (2025).

The doctrinal mapping presented in Table 2 demonstrates that Indonesian constitutional adjudication recognizes freedom of expression as a protected democratic value while simultaneously preserving broad normative pathways for state intervention through proportionality standards lacking precise operational definition. Systematic interpretation of Constitutional Court reasoning reveals a judicial tendency to accept limitations based upon public order and morality without consistently requiring empirical demonstration that restrictive measures remain necessary and minimally impairing. Hanafi (2025) argues that constitutional review concerning digital regulation frequently adopts deferential approaches toward legislative and executive authority, thereby weakening the Court's function as guardian of constitutional liberties within technologically mediated governance systems. Chariansyah (2025) similarly observes that contextual interpretation developed in Constitutional Court Decision Number 105/PUU XXII/2024 improved doctrinal sensitivity toward democratic criticism yet failed to eliminate statutory ambiguity embedded within Article 27 paragraph 3 of the Electronic Information and Transactions Law. Constitutional proportionality doctrine consequently remains underdeveloped because judicial balancing continues to rely predominantly upon abstract references to social harmony rather than measurable standards concerning necessity, suitability, and restrictive impact upon expressive freedom.

The absence of coherent proportionality methodology within Indonesian constitutional adjudication creates significant implications for legal certainty and democratic accountability in digital governance. Constitutional democracies generally require that limitations imposed upon fundamental rights satisfy cumulative standards involving legitimate purpose, rational connection, necessity, and proportionality in the strict sense, principles developed extensively within comparative constitutional jurisprudence. Indonesian judicial reasoning concerning digital expression frequently invokes these principles rhetorically without integrating them into structured constitutional tests capable of constraining administrative discretion and legislative overreach. Ghofur (2024) contends that legal uncertainty surrounding online criticism and public dissent produces chilling effects discouraging citizens from engaging in democratic participation through digital platforms. Indriasari and Karman (2023) similarly emphasize that vague interpretative boundaries within the Electronic Information and Transactions Law encourage anticipatory self censorship because individuals cannot reliably predict whether critical expression may later be categorized as unlawful content under expansive state interpretation.

Constitutional balancing concerning hate speech regulation under Article 28 paragraph 2 of the Electronic Information and Transactions Law further illustrates doctrinal inconsistency within Indonesian judicial approaches toward digital expression restrictions. The Constitutional Court recognizes that hate speech regulation may constitute a legitimate mechanism for protecting public order and minority rights, yet judicial interpretation rarely distinguishes clearly between incitement producing tangible harm and controversial political expression protected within democratic societies. Muslim and Solapari (2024) argue that Indonesia's hate speech regulation framework risks excessive restriction because statutory language permits broad interpretation detached from internationally recognized thresholds concerning imminent harm and intentional incitement. Aringga and Meuraksa (2025) similarly observe that contemporary post truth anxieties and disinformation concerns frequently encourage constitutional institutions to prioritize stability oriented governance approaches rather than democratic resilience grounded in open deliberation and pluralistic discourse. Constitutional

interpretation guided by democratic participation theory requires stricter judicial scrutiny toward restrictions affecting political communication because state institutions possess inherent incentives to characterize oppositional discourse as socially disruptive or destabilizing.

Judicial proportionality analysis concerning digital platform moderation also remains insufficiently responsive toward the redistribution of regulatory power occurring between governmental institutions and private platform operators within contemporary communication systems. Although Constitutional Court decisions increasingly acknowledge the constitutional relevance of digital spaces, judicial reasoning continues to focus primarily upon vertical relations between citizens and the state rather than hybrid governance arrangements involving administrative directives and platform compliance obligations. Christia et al. (2024) argue that constitutional law in technologically mediated societies must adapt toward recognizing the quasi public nature of digital platforms because online communication environments increasingly determine access to democratic participation and public discourse. Alvina et al. (2022) similarly identify that digital freedom in Indonesia remains vulnerable not only because of formal legal sanctions but also because of opaque moderation practices encouraged through regulatory pressure and institutional surveillance expectations. Constitutional adjudication in Indonesia has not yet developed sufficiently sophisticated doctrinal frameworks capable of addressing how governmental influence over platform moderation indirectly shapes constitutional freedoms outside traditional criminal enforcement structures.

The evolution of Indonesian constitutional jurisprudence concerning digital expression consequently reveals a partially developed yet structurally inconsistent proportionality framework incapable of fully reconciling democratic freedoms with legitimate regulatory interests. Judicial interpretation has gradually acknowledged the constitutional significance of online communication and political criticism, particularly through Constitutional Court Decision Number 36/PUU XX/2022 and Constitutional Court Decision Number 105/PUU XXII/2024. Existing adjudicative reasoning nevertheless continues to preserve broad administrative discretion because constitutional balancing remains dominated by generalized references to morality, order, and social stability rather than rigorously defined proportionality analysis. Sayuti et al. (2023) argue that Indonesian freedom of speech discourse frequently lacks normative direction because constitutional institutions oscillate between democratic openness and restrictive paternalism without establishing coherent principles capable of guiding future governance. The absence of precise judicial standards concerning legality, necessity, procedural fairness, and restrictive impact therefore sustains the constitutional imbalance between digital platform moderation authority and freedom of expression within Indonesia's contemporary constitutional system.

### **Reconstructing Democratic Digital Governance through Rights Based Platform Regulation in Indonesia**

The reconstruction of digital governance within Indonesia's constitutional system requires a fundamental reorientation from security centered regulation toward rights based constitutionalism capable of balancing platform moderation authority with democratic freedom of expression. Existing regulatory structures established through the Constitution of Indonesia 1945, the Electronic Information and Transactions Law, and Ministerial Regulation Number 5 Year 2020 continue to reflect administrative dominance rather than constitutional equilibrium between state authority and individual liberty. Asshiddiqie (2006) conceptualizes constitutional democracy as a legal order requiring governmental power to remain constrained through constitutional accountability mechanisms protecting civil liberties against excessive intervention. Contemporary digital governance in Indonesia nevertheless demonstrates that constitutional protection of expression remains vulnerable because administrative institutions possess extensive authority to influence digital communication through content moderation obligations, surveillance practices, and takedown directives. Najib et al. (2024) argue that digital expression regulation in Indonesia increasingly reflects preventive governance approaches emphasizing social stability and public order while insufficiently institutionalizing procedural guarantees necessary for democratic participation within digital public spheres.

A rights based reconstruction model requires constitutional interpretation capable of repositioning digital platforms not merely as private technological intermediaries but as quasi public communicative infrastructures whose governance directly affects constitutional citizenship and democratic deliberation. Lubis (2026) explains that intermediary liability regulation under the

Electronic Information and Transactions Law currently places disproportionate compliance burdens upon platform operators, encouraging excessive moderation practices designed primarily to avoid state sanctions rather than protect constitutional freedoms. The implementation of Article 9 and Article 14 of Ministerial Regulation Number 5 Year 2020 demonstrates how administrative pressure may indirectly transform private moderation systems into instruments of state aligned censorship lacking transparent constitutional oversight. Alvina et al. (2022) observe that digital freedom within Indonesia remains structurally constrained because opaque moderation practices frequently emerge through regulatory coercion rather than autonomous platform governance guided by human rights standards. Constitutional reconstruction therefore requires teleological interpretation emphasizing that digital governance mechanisms must function consistently with democratic participation principles embedded within constitutional guarantees of communicative freedom and public accountability.

The doctrine of proportionality should become the central constitutional framework governing future relations between state institutions, private platforms, and citizens within Indonesia's digital legal order. Existing constitutional adjudication recognizes proportionality rhetorically yet fails to institutionalize operational standards concerning necessity, suitability, restrictive impact, and procedural fairness capable of constraining governmental overreach. A reconstructed constitutional model should require that every restriction affecting digital expression satisfy cumulative constitutional tests involving legitimate objective assessment, minimal impairment analysis, and demonstrable necessity supported through transparent evidentiary justification. Aisahrani et al. (2025) argue that constitutional protection of expressive freedom within democratic societies depends upon the judiciary's willingness to prioritize rights centered balancing instead of abstract moral paternalism detached from measurable constitutional standards. Handayani et al. (2025) similarly contend that criminal regulation within cyberspace risks producing authoritarian legal tendencies whenever proportionality review remains weak and administrative discretion expands without independent constitutional supervision.

The reconstruction of Indonesian digital governance also necessitates stronger procedural safeguards ensuring that platform moderation practices remain transparent, reviewable, and legally accountable within constitutional frameworks protecting democratic participation. Existing regulatory instruments governing content removal and platform compliance obligations provide limited procedural guarantees regarding notice mechanisms, appeal rights, evidentiary disclosure, and independent oversight institutions. Faqih et al. (2026) explain that digital content surveillance practices implemented through over the top platform regulation increasingly blur the distinction between legitimate public protection and excessive informational control because procedural accountability mechanisms remain institutionally underdeveloped. Ghofur (2024) similarly argues that democratic governance within digital societies requires legal systems capable of preserving openness, transparency, and constitutional contestation rather than concentrating interpretative authority exclusively within executive institutions. Constitutional reconstruction should consequently require statutory amendments establishing mandatory procedural fairness standards before content restriction or account suspension measures may lawfully affect constitutionally protected digital expression.

The future architecture of Indonesian digital constitutionalism must further recognize that freedom of expression within contemporary communication systems cannot be protected effectively through purely state centered constitutional analysis. Digital platforms increasingly function as dominant infrastructures determining visibility, participation, and accessibility within democratic discourse, thereby redistributing regulatory authority beyond traditional constitutional frameworks focused exclusively upon vertical state citizen relations. Christia et al. (2024) argue that constitutional law faces transformative challenges because digital technologies restructure institutional authority and public participation through transnational communication systems operating beyond conventional territorial governance boundaries. Aringga and Meuraksa (2025) observe that democratic resilience within post truth environments depends not upon excessive informational control but upon constitutional mechanisms encouraging pluralistic deliberation, institutional transparency, and accountable governance. Reconstruction of digital governance must therefore incorporate constitutional doctrines capable of addressing both governmental coercion and platform based restrictions affecting democratic communicative participation.

**Table 3. Reconstruction Model for Rights Based Digital Platform Governance in Indonesia**

<b>Existing Regulatory Problem</b>	<b>Constitutional Weakness</b>	<b>Proposed Rights Based Standard</b>	<b>Expected Democratic Impact</b>
Broad content moderation authority	Weak proportionality control	Judicial proportionality review	Greater constitutional accountability
Administrative takedown mechanism	Limited procedural fairness	Transparent notice and appeal procedures	Protection against arbitrary censorship
Criminalization of criticism	Chilling effect on expression	Narrow interpretation of defamation	Stronger democratic participation
Platform compliance obligations	Excessive state influence	Independent oversight institution	Balanced platform governance
Ambiguous hate speech regulation	Legal uncertainty	Precise statutory definitions	Improved legal certainty

Source: Constructed and interpreted from Indonesia (1945), Indonesia (2008), Indonesia (2020), Asshiddiqie (2006), Lubis (2026), and comparative constitutional scholarship.

The reconstruction framework illustrated in Table 3 demonstrates that Indonesian digital governance requires institutional transformation emphasizing accountability, legality, and constitutional proportionality rather than expansive administrative discretion lacking effective judicial limitation. Systematic interpretation of the Constitution of Indonesia 1945 indicates that constitutional guarantees concerning communicative participation and democratic citizenship cannot remain substantively meaningful unless procedural safeguards exist against arbitrary digital censorship and disproportionate platform regulation. Lubis (2026) argues that intermediary liability standards should be reconstructed through balanced responsibility models preventing platforms from becoming instruments of excessive state surveillance while still preserving obligations to address genuinely unlawful content. Alvina et al. (2022) similarly emphasize that legal certainty within digital governance depends upon transparent moderation standards enabling users to understand clearly the constitutional boundaries separating protected expression from prohibited conduct. Reconstruction grounded in proportionality doctrine consequently requires statutory precision, judicial oversight, and institutional accountability capable of preserving democratic legitimacy within technologically mediated public discourse.

The constitutional reconstruction of digital governance also requires narrowing the scope of criminal sanctions affecting online criticism and political dissent under the Electronic Information and Transactions Law. Article 27 paragraph 3 concerning electronic defamation continues to generate constitutional controversy because vague statutory formulations permit expansive interpretation capable of discouraging democratic criticism directed toward governmental institutions and public officials. Bimoribowo and Azis (2025) explain that legal safeguards for criticism expressed through social media remain inadequate because judicial interpretation still permits broad prosecutorial discretion detached from strict constitutional necessity analysis. Pradityo et al. (2025) further argue that criminalization within digital communication environments should remain exceptional and proportionate because excessive penal intervention undermines democratic participation and constitutional freedom of expression. Constitutional reconstruction should therefore prioritize restorative and civil remedies over punitive criminal sanctions whenever disputed expression concerns matters of public interest, political accountability, or governmental criticism.

A reconstructed constitutional model should also establish independent supervisory institutions capable of reviewing administrative takedown decisions and platform moderation disputes through transparent adjudicative procedures grounded in human rights principles. Existing governance arrangements concentrate substantial interpretative authority within executive institutions responsible simultaneously for regulation, enforcement, and evaluation of digital content restrictions. Saogi (2025) argues that monitoring mechanisms within Indonesian digital broadcasting governance currently operate through hierarchical administrative structures lacking sufficient institutional independence necessary for impartial constitutional review. Rahmadani et al. (2024) similarly emphasize that unchecked governmental authority over digital moderation risks normalizing preventive censorship practices inconsistent with democratic constitutional values protecting open public discourse.

Constitutional reconstruction should consequently institutionalize independent review bodies possessing authority to examine proportionality, procedural fairness, evidentiary sufficiency, and constitutional compatibility before restrictive digital governance measures acquire binding legal effect.

Comparative constitutional reasoning further demonstrates that democratic legal systems increasingly recognize digital constitutionalism as an essential framework for regulating technologically mediated communication while preserving civil liberties and democratic accountability. Constitutional democracies confronting similar tensions between public protection and expressive freedom have progressively adopted rights centered governance models emphasizing transparency obligations, procedural fairness guarantees, judicial review, and narrow interpretation of content restriction authority. Aisahrani et al. (2025) explain that comparative constitutional analysis reveals how democratic societies maintaining robust expressive protection generally employ stricter proportionality standards and stronger institutional safeguards against arbitrary censorship. Sayuti et al. (2023) similarly contend that constitutional discourse concerning freedom of speech in Indonesia requires clearer normative direction capable of preventing inconsistent governance approaches oscillating between democratic openness and restrictive paternalism. Indonesian constitutional reconstruction should therefore integrate comparative digital constitutionalism principles while preserving domestic constitutional identity grounded in democratic participation, accountability, and protection of fundamental rights.

The future legitimacy of Indonesian digital governance ultimately depends upon whether constitutional law can successfully transform existing regulatory structures into a balanced legal framework capable of reconciling democratic freedom with legitimate public protection objectives. Existing legal instruments continue to privilege administrative efficiency and state centered security rationales despite the growing constitutional significance of digital participation within democratic societies. Constitutional reconstruction grounded in proportionality doctrine, procedural accountability, judicial oversight, and rights based governance offers a more coherent framework for regulating digital platforms without undermining constitutional freedom of expression. Hanafi (2025) argues that constitutional democracy within digital societies requires legal systems capable of constraining governmental authority through principled constitutional balancing rather than discretionary intervention justified through abstract stability narratives. The reconstruction of Indonesian digital governance toward rights based constitutionalism consequently represents not merely regulatory reform but a broader constitutional transformation determining the future relationship between democratic citizenship, technological authority, and state power within Indonesia's evolving constitutional order.

## **CONCLUSION**

The constitutional regulation of digital platforms in Indonesia demonstrates a persistent imbalance between state centered moderation authority and the constitutional protection of freedom of expression within democratic governance structures. Normative analysis of the Constitution of Indonesia 1945, the Electronic Information and Transactions Law, and Ministerial Regulation Number 5 Year 2020 reveals that existing legal frameworks continue to prioritize administrative control, public order narratives, and regulatory compliance mechanisms without establishing sufficiently precise proportionality standards capable of preventing excessive interference with constitutional rights. Constitutional Court jurisprudence has gradually recognized the constitutional significance of digital participation and online criticism, particularly through the contextual interpretation of expressive freedom within contemporary communication systems, yet judicial reasoning remains inconsistent in formulating measurable standards concerning legality, necessity, procedural fairness, and restrictive impact. The study further demonstrates that Indonesian digital governance has not adequately addressed the redistribution of regulatory power between state institutions and private platforms, thereby enabling opaque moderation practices and indirect forms of constitutional restriction lacking transparent accountability mechanisms. Reconstruction of Indonesia's constitutional approach toward digital governance consequently requires the institutionalization of rights based proportionality review, transparent moderation procedures, independent oversight mechanisms, and narrower statutory interpretation concerning digital expression restrictions in order to strengthen democratic constitutionalism and preserve the substantive protection of communicative liberty within Indonesia's evolving digital legal order.

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