

Online Platform Intermediary Liability under the Electronic Information and Transactions (ITE) Law, Freedom of Expression (FoE) Safeguards in Indonesia

Arief Fahmi Lubis
Sekolah Tinggi Hukum Militer

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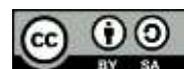
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ABSTRACT

The increasing reliance on online platforms as primary spaces for public communication has intensified legal debates on intermediary liability and freedom of expression in Indonesia. This study examines the legal construction of online platform intermediary liability under the Electronic Information and Transactions (ITE) Law and its implications for freedom of expression safeguards using a normative juridical approach. Through analysis of statutory provisions, implementing regulations, constitutional principles, and relevant legal doctrines, the study finds that the ITE Law adopts a conditional intermediary liability model that remains broadly formulated and lacks clear standards of responsibility. Such ambiguity encourages risk-averse compliance by online platforms and increases the likelihood of overblocking and chilling effects on lawful expression. The results further indicate that the delegation of content control to private platforms, combined with limited procedural safeguards and judicial oversight, poses challenges to the effective protection of freedom of expression. This article argues that clearer liability standards, explicit safe harbor mechanisms, and strengthened due process protections are necessary to ensure proportional regulation of online content while maintaining alignment with constitutional guarantees and international human rights norms.

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Corresponding Author:

Name: Arief Fahmi Lubis
Institution: Sekolah Tinggi Hukum Militer
Email: arieffahmilubis0@gmail.com

1. INTRODUCTION

The rapid development of information and communication technology has fundamentally transformed how individuals communicate, express opinions, and participate in public discourse, with online platforms—such as social media, content-sharing services, and digital communication applications—becoming central arenas for the exercise of freedom of expression in contemporary society. In

Indonesia, this digital transformation has expanded democratic participation and access to information while also creating legal challenges related to harmful content, misinformation, hate speech, defamation, and cybercrime, prompting the state to strengthen regulatory frameworks through the Electronic Information and Transactions Law (ITE Law). The ITE Law and related regulations impose conditional liability on digital platforms, requiring the removal of illegal content following government notification, although

platforms may still face liability for negligence, raising concerns about unclear definitions of prohibited content and cross-border enforcement issues [1]. The Constitutional Court Decision No. 105/PUU-XXII/2024 has sought to address these problems by limiting defamation offenses to individuals, thereby improving legal certainty and reinforcing protections for freedom of expression [2], [3].

At the same time, the broad application of the ITE Law has resulted in selective prosecution that sometimes targets political dissent and criticism, posing risks to democratic rights and opening the possibility of political misuse [4], even though the digital era continues to provide important opportunities for civic engagement, public criticism, and government transparency [5]. Scholars therefore emphasize the need for clearer legal definitions, independent oversight, and stronger transparency mechanisms to balance content regulation with constitutional rights [1], alongside improved digital literacy and standardized law-enforcement procedures to prevent abuse and safeguard freedom of expression [3]. One of the most contested aspects remains intermediary liability—the legal responsibility imposed on online platforms for user-generated content—which reflects the state’s effort to ensure accountability in digital spaces but simultaneously raises complex legal and normative questions when platform obligations intersect with constitutionally protected freedoms, particularly freedom of expression.

Freedom of expression is a fundamental human right guaranteed by the Indonesian Constitution and strengthened through Indonesia’s international human rights commitments, gaining increased relevance in the digital era where online platforms function as modern public spheres for political debate, cultural expression, and civic engagement. Although this right may be restricted for legitimate purposes such as protecting public order, national security, or the rights of others, the main challenge lies in ensuring that intermediary regulations provide clear, proportionate, and legally

certain standards rather than enabling excessive control. The ITE Law, particularly after its amendments, seeks to regulate online expression but is often criticized for being overly broad and subjective, which may lead to misuse and suppression of free speech (Fernando et al., 2022). The Constitutional Court’s effort to refine the scope of defamation under the ITE Law represents an attempt to enhance legal certainty and strengthen the protection of individual rights (Ramsi, 2025), while the rapid expansion of digital platforms continues to reshape public discourse and create regulatory ambiguities that affect freedom of expression (Putri & Priyana, 2023).

In practice, intermediary liability provisions under the ITE Law and its implementing regulations have generated significant debate due to vague definitions of prohibited content and broad obligations placed on platforms to monitor and remove unlawful information, which may encourage precautionary takedowns and over-enforcement [6]. Faced with potential legal sanctions, platforms often prioritize compliance over safeguarding users’ expressive rights, creating risks of overblocking and chilling effects that particularly impact journalists, academics, activists, and ordinary citizens. Media institutions also play a crucial role in shaping public understanding of democracy and freedom of expression through agenda-setting and framing, which can both emphasize privacy protection and portray internet regulations as restrictive, ultimately influencing public perception of digital governance [7].

The increasing reliance on private platforms to enforce public law norms raises concerns about the privatization of censorship, as content moderation decisions—often driven by automated systems or internal policies—may lack transparency, accountability, and effective remedies for users. In Indonesia, questions remain regarding whether due process, legal clarity, and proportionality are adequately embedded within the intermediary liability regime under the ITE Law. Against this

backdrop, this article examines intermediary liability and its implications for freedom of expression using a normative juridical approach, analyzing statutory provisions, constitutional principles, and legal doctrines to evaluate whether the current framework sufficiently balances digital content regulation with fundamental expressive freedoms or requires further reform to ensure legal certainty and alignment with human rights standards.

2. LITERATURE REVIEW

2.1 *Online Platforms and Intermediary Liability*

The concept of intermediary liability has evolved alongside the growing dominance of digital platforms, shifting from the early view of platforms as neutral conduits protected by safe harbor provisions toward a “duty of care” approach that encourages proactive content moderation while maintaining a balance between innovation and accountability. This transformation is reflected in the rise of conditional liability models—widely adopted in Europe and North America—which require platforms to act upon notice of illegal content while attempting to prevent over-censorship [8], [9]. Advances in technology have enabled platforms to monitor user behavior more actively, supported by policy tools such as monitoring obligations and self-regulation that move beyond traditional negligence-based liability [10]. Nevertheless, the expansion of platform responsibility raises significant concerns for freedom of expression, as excessive moderation and reliance on algorithmic systems may lead to censorship risks, undermine due process, and fail to capture contextual nuances in online speech [8]–[10].

2.2 *Freedom of Expression in the Digital Environment*

Freedom of expression remains a cornerstone of democratic society, yet its application in the digital era presents complex challenges as online platforms function as modern public forums that

amplify diverse voices while reshaping power relations between users, platforms, and governments. Legal scholarship emphasizes that restrictions on expression must follow principles of legality, legitimacy, necessity, and proportionality, highlighting the need for transparent, accountable, and fair platform governance. Procedural fairness—such as due process, transparency, and the right to challenge content decisions—is increasingly important as platforms often act as proxies for state authority, with regulatory frameworks like the European Union’s Digital Services Act and Germany’s NetzDG illustrating attempts to strengthen user protections [11]. At the same time, platforms must balance freedom of expression with efforts to combat harmful content, yet reliance on automated moderation and internal policies may shape public discourse without sufficient oversight, raising risks of censorship and bias [12]–[14]. As private platforms play a growing role in defining acceptable speech—sometimes under government pressure—scholars argue that traditional human rights concepts must be adapted to “platform law” to address the regulatory influence of private intermediaries on digital expression [15].

2.3 *Intermediary Liability and Freedom of Expression: Normative Tensions*

The tension between intermediary liability and freedom of expression reflects the challenge of holding platforms accountable for harmful content while protecting free speech, particularly as platforms have evolved from neutral intermediaries into actors with significant control over online discourse [9]. Legal scholarship shows that different regulatory models attempt to balance these interests, such as the immunity-based approach of Section 230 in the United States, which encourages moderation but raises concerns about concentrated platform power [16], and the European regulatory framework—

through NetzDG and the draft Digital Services Act—which imposes removal obligations while seeking to uphold procedural fairness [11]. The shift of regulatory functions from courts to private platforms raises due process concerns, emphasizing the need for procedural safeguards, transparency, and user rights to challenge moderation decisions [11]. Consequently, scholars advocate proportional and tailored liability frameworks that consider platform size, role, and level of control to achieve accountability without imposing excessive restrictions that could indirectly censor lawful expression or undermine democratic discourse [17].

2.4 Indonesian Legal Scholarship on the ITE Law

Indonesian legal scholarship on the ITE Law reflects global debates on intermediary liability and freedom of expression while highlighting local concerns about the law's broad and ambiguous provisions, particularly those related to defamation, hate speech, and prohibited content, which may undermine legal certainty and enable selective enforcement against critics. Vague formulations such as “contents against propriety” or actions “inflicting hatred or dissension” allow subjective interpretation and expose individuals to unfair prosecution, creating fear among journalists, the public, and government critics [18], [19]. Scholars note that Indonesia adopts a conditional intermediary liability model requiring platforms to remove illegal content upon government notification, yet this approach may impose excessive responsibility on private actors and generate chilling effects due to potential sanctions [1]. While acknowledging the state's legitimate role in combating cybercrime and protecting vulnerable groups, the literature consistently calls for balanced reforms—such as clearer legal definitions, stronger judicial oversight, transparent notice-and-takedown mechanisms, and proportional

enforcement—to align platform regulation with constitutional guarantees and international human rights standards while preventing political misuse of hate speech laws [1], [4].

2.5 Research Gap and Analytical Framework

Despite the growing scholarship on intermediary liability and freedom of expression, there remains a need for a focused normative juridical analysis that specifically examines how the Indonesian ITE Law structures intermediary liability and whether it sufficiently incorporates safeguards for freedom of expression, as existing studies often address these issues separately or through comparative perspectives without systematically analyzing their interaction within Indonesia's legal framework. This study aims to fill that gap by synthesizing intermediary liability theories, constitutional principles of free expression, and Indonesian positive law, thereby providing a comprehensive analytical foundation to assess whether the current regime achieves an appropriate balance between digital regulation and the protection of fundamental rights.

3. RESEARCH METHODS

3.1 Type and Approach of Research

This study employs a normative juridical (doctrinal) legal research approach that examines law as a system of norms, principles, and rules rather than focusing on empirical behavior or platform practices, aiming to analyze the legal construction of intermediary liability under the Electronic Information and Transactions (ITE) Law and its implications for freedom of expression safeguards in Indonesia. The research emphasizes legal interpretation, coherence of norms, and alignment with higher legal principles, particularly constitutional guarantees and human rights standards, using a combination of statutory and conceptual approaches supported by constitutional and comparative perspectives to assess

relevant legislation, legal doctrines, and the compatibility of intermediary liability provisions with fundamental rights protections.

3.2 Sources of Legal Materials

This research relies on secondary data in the form of legal materials categorized into three types: primary legal materials, which include the Constitution of the Republic of Indonesia, particularly provisions on human rights and freedom of expression, Law Number 11 of 2008 on Electronic Information and Transactions as amended by Law Number 19 of 2016 and related implementing regulations, as well as relevant judicial decisions interpreting intermediary responsibility; secondary legal materials, consisting of scholarly works such as textbooks, monographs, peer-reviewed journal articles, legal commentaries, policy papers, and reports discussing intermediary liability, digital governance, and freedom of expression in Indonesia and comparative contexts; and tertiary legal materials, including legal dictionaries, encyclopedias, indexes, and reference sources used to clarify legal terminology and concepts related to information technology law and human rights law.

3.3 Data Collection Technique

The technique of collecting legal materials in this study is conducted through library research (desk study). Legal materials are systematically gathered by reviewing legislation, official government documents, court decisions, and academic publications relevant to the research topic. The collection process is guided by thematic relevance to intermediary liability and freedom of expression safeguards, ensuring that only materials directly related to the research objectives are included.

3.4 Method of Legal Analysis

The analysis in this research uses qualitative normative legal analysis by examining collected legal materials through several stages, beginning with identifying and classifying legal norms

governing intermediary liability under the ITE Law, followed by interpreting these norms through grammatical, systematic, and teleological methods to understand their literal meaning, coherence within the legal system, and underlying purposes. The study further conducts a normative evaluation to assess whether intermediary liability provisions align with constitutional principles of freedom of expression and international human rights standards, with particular attention to legality, legal certainty, proportionality, and due process, while limited comparative references are used to contextualize Indonesia's regulatory approach within broader global developments without engaging in extensive empirical comparison.

4. RESULTS AND DISCUSSION

4.1 Legal Construction of Intermediary Liability under the ITE Law

The analysis of the Electronic Information and Transactions (ITE) Law and its implementing regulations shows that Indonesia adopts a conditional intermediary liability framework, although the boundaries of such liability remain unclear. Online platforms are legally positioned as Electronic System Operators (ESOs) with obligations related to operating, controlling, and managing electronic systems, including ensuring system reliability, preventing the dissemination of prohibited content, and complying with government orders to remove unlawful information. Platforms are required to remove illegal content upon notification but may still be held liable for negligence, while the absence of clear definitions of prohibited content creates enforcement challenges and potential risks to freedom of expression [1].

Normatively, the ITE Law does not clearly distinguish between content creators and intermediaries, which exposes platforms to liability for user-generated content without the protection of explicit safe harbor provisions

commonly found in other jurisdictions. This legal ambiguity generates uncertainty regarding standards of knowledge, response timeframes, and expected diligence, while positioning platforms as private regulators responsible for monitoring and controlling digital content, potentially leading to inconsistent enforcement and regulatory overreach [1]. The broad scope of responsibility also raises concerns about the balance between regulatory goals and constitutional protections for online expression.

Furthermore, the legal construction of intermediary liability places platforms in a preventive and supervisory role that extends beyond passive facilitation, reflecting the state's effort to maintain order and protect public interests in the digital sphere. However, vague provisions—particularly those related to defamation—may suppress freedom of expression and negatively affect digital and creative economies, highlighting the need for reforms that provide clearer legal standards while supporting innovation and safeguarding constitutional rights [1], [20].

4.2 *Obligations of Online Platforms and Regulatory Enforcement*

The results of the normative analysis indicate that the obligations imposed on online platforms under the ITE Law are broad and potentially expansive, requiring platforms to cooperate with government authorities, implement content control mechanisms, and comply with takedown or blocking orders, with administrative, civil, or even criminal sanctions for noncompliance [1]. This enforcement model places significant responsibility on platforms to remove illegal content upon notification, reflecting a regulatory approach that emphasizes rapid intervention but also expands the scope of intermediary liability. While intended to address harmful online content, the broad nature of these obligations raises questions about proportionality and legal certainty within

Indonesia's digital governance framework.

From a regulatory perspective, enforcement relies heavily on administrative discretion, as government agencies are empowered to determine the existence of prohibited content and instruct platforms to take corrective action [21]. Although this approach enables swift responses, it also creates concerns regarding transparency, accountability, and the lack of robust procedural safeguards, particularly because decisions affecting online expression may occur without prior judicial oversight [1]. The combination of vague content definitions and administrative authority can lead to inconsistent enforcement practices and increase the risk of excessive limitations on freedom of expression.

This enforcement structure encourages platforms to adopt a risk-averse approach, prioritizing compliance over careful evaluation of content legality or social value, which may result in over-enforcement and the removal of lawful expression, especially in cases involving ambiguous or context-dependent speech [1], [21]. Comparative perspectives highlight the need for reforms such as clearer regulatory guidelines, independent oversight mechanisms, and stronger transparency obligations to balance content regulation with constitutional rights and digital innovation, as the current framework's reliance on administrative discretion and severe penalties may not fully align with principles of administrative penal law [1], [22].

4.3 *Implications for Freedom of Expression Safeguards*

The interaction between intermediary liability and freedom of expression under the ITE Law reveals significant normative tensions, as the law seeks to protect society from harmful digital content while its broad intermediary obligations and vague categories—particularly concerning

defamation and misinformation—risk undermining constitutionally protected freedoms. Legal uncertainty and the threat of sanctions may encourage self-censorship among users, especially when provisions lack clear criteria and enforcement standards, highlighting the delicate balance between digital regulation and democratic expression [22], [23]. The absence of precise procedural guidance in intermediary liability frameworks may also lead platforms to over-comply with takedown requests, amplifying chilling effects on lawful speech [24].

One of the study's key findings is the heightened vulnerability of expressive freedoms due to limited due process protections within platform-based enforcement mechanisms. When users are not properly notified of content removals or provided with effective remedies, they face significant barriers to challenging moderation decisions, reinforcing fear and uncertainty in online participation (Dara, 2011). Although recent legal developments, such as Constitutional Court Decision No. 105/PUU-XXII/2024, attempt to provide clearer legal standards by limiting defamation offenses to individuals, ongoing concerns remain regarding the proportionality and fairness of enforcement practices [2].

Moreover, delegating content moderation responsibilities to private platforms raises concerns about the privatization of censorship, as internal policies and automated systems may not fully align with constitutional principles or international human rights norms. Without adequate legal oversight, private decision-making can inadvertently suppress lawful expression and disproportionately affect marginalized voices and critical discourse, illustrating the risks of relying on corporate governance mechanisms to regulate public speech [24], [25].

4.4 Constitutional and Human Rights Assessment

From a constitutional perspective, freedom of expression in Indonesia is protected as a fundamental right that may only be limited by clear legal provisions pursuing legitimate aims. Normative analysis indicates that although the ITE Law provides a legal basis for regulating online expression, its intermediary liability framework does not consistently satisfy the principles of legal certainty and proportionality. Ambiguous definitions of prohibited content and unclear standards of intermediary responsibility reduce predictability, while broad platform obligations without graduated liability or contextual assessment raise concerns about whether restrictions are suitable, necessary, and balanced in achieving regulatory objectives.

In light of Indonesia's international human rights commitments, particularly regarding freedom of expression, the current intermediary liability regime appears to require further refinement. International norms emphasize judicial oversight, transparency, and accessible remedies as essential safeguards when limiting expression, yet the findings suggest that these protections are not fully embedded within the ITE Law's framework, indicating the need for clearer legal standards and stronger procedural guarantees to ensure alignment with constitutional and human rights principles.

4.5 Toward a Balanced Intermediary Liability Framework

The discussion underscores the need for a more balanced and rights-sensitive approach to intermediary liability in Indonesia by establishing clearer distinctions between content creators and intermediaries to enhance legal certainty and reduce undue platform burdens, while introducing explicit safe harbor provisions based on good-faith compliance to better align the ITE Law with constitutional and human rights principles. Strengthening

procedural safeguards—such as transparent notice-and-takedown mechanisms, accessible avenues for users to challenge content removal, and greater judicial involvement in decisions affecting expressive rights—would help recalibrate the regulatory framework, enabling Indonesia to balance effective digital governance with the protection of freedom of expression in the online environment.

5. CONCLUSION

This study shows that intermediary liability under Indonesia's Electronic Information and Transactions Law significantly shapes the regulation of online expression, reflecting a legitimate state effort to address harmful digital content while also creating legal uncertainty and risks to freedom of expression due to broadly framed

obligations, the absence of clear distinctions between content creators and intermediaries, and administrative enforcement that may encourage over-compliance and suppress lawful speech. From a constitutional and human rights perspective, the current framework does not consistently meet principles of legal certainty, proportionality, and due process, particularly as reliance on private platforms to enforce public law norms raises concerns about transparency, accountability, and effective remedies for users. Therefore, refining intermediary liability through clearer statutory definitions, conditional safe harbor protections, and stronger procedural safeguards—including greater judicial oversight—is essential to achieve a more balanced digital governance system that addresses online harms while safeguarding freedom of expression as a fundamental democratic value in Indonesia.

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