



## **The Urgency of the Second Amendment to ITE Law from the Standpoint of the Positive Law and Human Rights**

A. Dardiri Hasyim

University of Nahdlatul Ulama Surakarta

Darsinah

University of Muhammadiyah Surakarta

Email: adardirihasyim@gmail.com

**Abstract:** The ITE Law experienced modifications in 2016 with the enactment of Law No. 19 of 2016, which amends Law No. 11 of 2008 regarding ITE. In 2023, the ITE Law will see a reemergence of changes. This article seeks to delve deeper into the pressing nature of these changes through the lens of human rights. This research uses normative legal methods with a legislative approach with a human rights perspective. Data collection through literature reviews relevant to the research focus, including literature reviews, theoretical frameworks, and government regulatory documents. This article concludes that the existing findings show that the proposed amendments are already regulated in existing laws and regulations, thus indicating that there is no urgent need to revise the ITE Law. Out of the seven proposed changes, five have been addressed in other laws and regulations. If the changes persist, there will be overlapping regulations that could undermine the positive legal framework in Indonesia. At the same time, two proposed changes regarding the consequences of criminal threats and sanctions have been incorporated into the Criminal Code, which was ratified and enacted at the end of 2022 and is set to take effect in 2026. The ITE Law, when viewed alongside regulations from other countries, has strayed from its initial purpose as a protector of electronic activities and has instead become a means of legitimizing criminalization. This clearly indicates that the ITE Law is inconsistent with human rights.

**Keywords:** Electronic transaction, legal protection, human rights

**Abstrak:** Undang-Undang Informasi Transaksi Elektronik (UU ITE) mengalami perubahan pada tahun 2016 dengan disahkannya UU Nomor 19 Tahun 2016 yang mengubah UU Nomor 11 Tahun 2008 tentang ITE. Pada tahun 2023 UU ITE akan kembali mengalami perubahan. Artikel ini berupaya menggali lebih dalam sifat mendesak dari perubahan-perubahan ini melalui kaca mata hak asasi manusia. Penelitian ini menggunakan metode hukum normatif dengan pendekatan perundang-undangan yang berperspektif hak asasi manusia. Pengumpulan data melalui tinjauan literatur yang relevan dengan fokus penelitian, termasuk tinjauan literatur, kerangka teori, dan dokumen peraturan pemerintah. Artikel ini menyimpulkan bahwa temuan-temuan yang ada menunjukkan bahwa usulan amandemen tersebut sudah diatur dalam peraturan perundang-undangan yang ada, sehingga menunjukkan bahwa tidak ada kebutuhan mendesak untuk merevisi UU ITE. Dari tujuh usulan perubahan, lima di antaranya sudah diatur dalam peraturan perundang-undangan lainnya. Jika perubahan terus terjadi, maka akan terjadi tumpang tindih peraturan yang dapat melemahkan kerangka hukum positif di Indonesia. Sementara itu, ada dua usulan perubahan mengenai akibat ancaman dan sanksi pidana yang dimasukkan ke dalam KUHP yang disahkan dan diundangkan pada akhir tahun 2022 dan direncanakan mulai berlaku pada tahun 2026. UU ITE jika dilihat berdampingan peraturan dari negara lain, telah menyimpang dari tujuan awalnya sebagai pelindung aktivitas elektronik dan malah menjadi sarana untuk melegitimasi kriminalisasi. Hal ini jelas menunjukkan bahwa aturan hukum tersebut tidak sejalan dengan hak asasi manusia.

**Kata Kunci:** Transaksi Elektronik, Perlindungan Hukum, Hak Asasi Manusia

## Introduction

The role of information and communication technology in the era of globalization has positioned it strategically, as it creates a world devoid of boundaries, distance, space, and time, significantly influencing productivity and efficiency growth. The influence of globalization on the utilization of information and communication technology devices has transformed people's lifestyles, fostered new ways of living, and prompted changes in social, economic, cultural, defense, and security aspects. The role of information and communication technology in the era of globalization has positioned it strategically, as it creates a world devoid of boundaries, distance, space, and time, significantly influencing productivity and efficiency growth. The influence of globalization on the utilization of information and communication technology devices has transformed people's lifestyles, fostered new ways of living, and prompted changes in social, economic, cultural, defense, and security aspects.<sup>1</sup> This

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<sup>1</sup> Anis Rifai, "The Settlement of Electronic Commerce Transactions Through Online Dispute Resolution Mediation (ODR) In Indonesia," *Activa Yuris* 2, No. 1 (2022), p. 1–10. Abd.

illustrates the presence of a world in flux, evolving from a technological standpoint.

Information and communication technology is now integrated into people's social lives and has influenced numerous aspects of life, including the public sector, business sector, banking, education, health care, and personal life<sup>2</sup>. Alongside its beneficial effects, the dominance of information and communication technology also creates avenues for the perpetration of new crimes (cybercrime) alongside emerging security requirements. Consequently, it can be asserted that information and communication technology serves as a double-edged sword, contributing positively to the welfare, progress, and civilization of society, while also acting as a potential tool for illegal activities.<sup>3</sup> Technology in this instance serves as a double-edged sword, inflicting pain on one side while remaining harmless on the other.

The Law of the Republic of Indonesia Number 19 of 2016 regarding Information and Electronic Transactions demonstrates the state's commitment to safeguarding all activities that utilize information and communication technology within the country, ensuring they are adequately protected against criminal acts and potential misuse of technology. In accordance with ITE Law No. 11 of 2008, it is highlighted that the national development undertaken by the Indonesian government from the New Order to the present is an ongoing process that must consistently adapt to the varying dynamics of society. The interplay of individuals' lives, influenced by the effects of information globalization, has created a necessity for the effective and fair use and distribution of information technology across all societal levels to enhance the quality of life for individuals.

The swift advancement of computer science significantly influences changes in people's daily activities across various sectors, directly affecting the establishment of new regulations.<sup>4</sup> The advancement and implementation of information technology should be enhanced to safeguard, uphold, and reinforce national unity in accordance with legal frameworks that serve the national interest. Furthermore, the utilization of information technology significantly contributes to the advancement of national business and the economy, ultimately enhancing

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Hafid, et.al., "The Application of Khiyar Principles to E-Commerce Transaction: The Islamic Economy Perspective," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 8, No. 1 (2024).

<sup>2</sup> Shamrao Barbhui and Shraddha Bhushan Sable, "A Comprehensive Study of Barriers In Electronic Transactions For Customers and Banks," *Journal of Positive School Psychology* 6, No. 4 (2022), p. 2332–39.

<sup>3</sup> Juliansyah Roy et.al., "Digital and Electronic Transactions Against Velocity of Money," *Corporate Governance and Organizational Behavior Review* 5, No. 2 (2021), p. 145–55.

<sup>4</sup> Abdul Gaffar Khan, "Electronic Commerce: A Study On Benefits and Challenges in An Emerging Economy," *Global Journal of Management and Business Research* 16, No. 1 (2016).

the well-being of individuals.<sup>5</sup> The government is anticipated to deliver welfare guarantees by optimizing technology through a range of regulations.

Article 1, Chapter 1 of Law Number 19 of 2016 regarding ITE outlines that electronic information encompasses one or more forms of electronic data. This includes, but is not limited to, written content, audio, images, maps, designs, electronic data interchange (EDI), photographs, emails, telegrams, telexes, photocopies, and similar items such as letters, signs, numbers, access codes, symbols, or perforations that have been processed and hold meaning or can be comprehended by those who understand them. Electronics involves the use of computers, computer networks, and/or other electronic devices as described in Article 1 Paragraph (2). Information technology, as outlined in Article 1 Paragraph (3), refers to the technology used for the collection, preparation, storage, processing, reporting, analysis, and dissemination of information.<sup>6</sup> In this instance, electronic information should effectively fulfill its role in addressing a problem, fostering creativity, and enhancing the effectiveness and efficiency of human endeavors.

In recent years, technology has undergone rapid transformations, with new innovations being utilized for a range of social networking requirements. Indeed, communication plays a crucial role in fostering a vibrant life that leads to a more advanced civilization.<sup>7</sup> The acceleration of media, information, and communication technology is increasingly aimed at addressing the challenges of more effective communication. The influence of technology on communication significantly shapes individuals' knowledge, mindset, and behavior. The rapid arrival of information simplifies and streamlines human thinking techniques.<sup>8</sup> The straightforwardness and convenience may also be viewed as the emergence of immediate thought, which, from a legal standpoint, can influence legal outcomes.

Studies on the ITE Law have been carried out by several researchers from various perspectives. For example, Utami, studied the KHUP and the ITE Law regarding the crime of disseminating immoral content. According to him, for these crimes, there are differences in scope, sanctions and legal procedures which can affect the effectiveness of legal protection for victims. The implications of these regulatory differences indicate that legal protection for victims of threats to

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<sup>5</sup> Mariska Zena Wilona, et.al., "Privacy Policy On Smart Contracts In E-Commerce Transactions," *Law Reform* 17, No. 1 (2021), p. 47–60.

<sup>6</sup> Dewan Perwakilan Rakyat Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik," 2016.

<sup>7</sup> Salvatore Mancuso, "Consumer Protection in E-Commerce Transactions: A First Comparison Between European Law and Islamic Law," *Journal of International Commercial Law and Technology* 2, No. 1 (2007), p. 1–8.

<sup>8</sup> T Rohmawati and Zulkipli, "E-Transaction In Digital Era," *Journal Of Business And Behavioural Entrepreneurship* 5, No. 2 (2021), p. 51–56.

disseminate immoral content under the ITE Law is more specific and focuses more on the digital context, while the Criminal Code is more general and does not explicitly regulate crimes involving electronic media.<sup>9</sup>

Santoso discussed the role of the ITE Law in overcoming uncertainty in legal interpretation and prioritizing a restorative justice approach. In law enforcement, law enforcement officers screen complaints based on the impact on victims and prioritize mediation. Therefore, careful assessment is needed in law enforcement of the ITE Law by considering aspects of justice, expediency and legal certainty.<sup>10</sup>

Ilham and Akbar emphasized that in the context of the ITE Law, legal responsibility for perpetrators of distributing personal data stored on barcodes is strictly regulated and must be complied with. The ITE Law establishes clear rules regarding the protection of personal data and sanctions imposed for violations. Law enforcement officials play an important role in proving crimes related to the distribution of personal data stored in barcodes. Through careful investigations and the use of sophisticated forensic techniques, they play a role in enforcing laws to protect the privacy and security of personal data in the context of barcode technology.<sup>11</sup>

Apart from that, the ITE Law is inseparably linked to human rights. Sumarahati and Irawan concluded that Indonesia already has several laws and regulations that regulate activities in cyberspace, including electronic law enforcement. However, existing regulations are still not comprehensive enough and do not fully accommodate the latest technological developments. The ITE Law is the main legal umbrella, but it still has weaknesses and needs to be improved because it is related to human rights issues, namely the protection of personal data. Therefore, electronic law enforcement in Indonesia still has several challenges that must be faced and solutions are needed to overcome matters related to the problems that arise. Regulations need to be refined to increase legal protection and security.<sup>12</sup>

Ramadhani et.al., concluded that the implementation of the ITE Law in Indonesia is still not fully in accordance with human rights principles and

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<sup>9</sup> Isnaini Galih Utami, "Analisis Komparatif Tindak Pidana Pengancaman Penyebarluasan Konten Asusila dalam KUHP dan UU ITE sebagai Upaya Restitusi bagi Korban," *Recidive: Jurnal Hukum Pidana dan Penanggulangan Kejahatan* 13, No. 3 (2024).

<sup>10</sup> Irfan Santoso, et.al., "Kebijakan Hukum Pidana Terhadap Perbuatan Melawan Hukum Dalam UU ITE Pasca Berlakunya Pedoman Implementasi Pasal-Pasal Tertentu UU ITE," *Locus: Journal of Academic Literature Review* 3, No. 4 (2024), p. 329-335.

<sup>11</sup> Muhammad Ilham and Muhammad Akbar, "Pertanggungjawaban Hukum Bagi Pelaku Penyebaran Data Pribadi Yang Tersimpan Pada Barcode Ditinjau Dari Undang-Undang Informasi Transaksi Elektronik (UU ITE)," *Indonesia Journal of Business Law* 3, No. 1 (2024), p. 43-52.

<sup>12</sup> Aris Sinta Sumarahati and Andrie Irawan, "Analisis Yuridis Tentang Perlindungan Hak Asasi Manusia Dalam Upaya Penegakan Hukum Elektronik (E-Law Enforcement), *Implementation and Dynamics of Islamic Law and Civil Law in Indonesia* 2 No. 2 (2024).

democratic values. Because there are still articles that have multiple interpretations, and the ITE Law also has a negative impact, namely creating fear for the public to criticize the government, so that one of the rights contained in human rights, in this case the right to freedom of opinion, is threatened and has not been fulfilled.<sup>13</sup>

Ramadhan researched the harmonization of digital content regulations in the ITE Law from a human rights legal perspective. Because these regulations often give rise to legal ambiguities and antinomies, especially related to freedom of expression and protection against misuse of digital content. Therefore, it is necessary to harmonize digital content regulations with a human rights perspective in several provisions of the ITE Law, so that the resulting regulations are not only comprehensive but also fair and proportional.<sup>14</sup>

In this context, it can be emphasized that the study regarding the urgency of changing the ITE Law in relation to positive law and human rights has not been studied in depth. Therefore, this article will focus on this area, so that we get a clear picture of the need for changes to these legal regulations. These changes to the law also reflect that legal rule can continue to be updated in accordance with developments and social changes that occur in society.

This research uses normative legal methods with a legislative approach from a human rights perspective. Data collection through literature reviews relevant to the research focus, including literature reviews, theoretical frameworks, and government regulatory documents. This study mainly refers to a series of literature that directly discusses the ITE Law and Human Rights. Analysis is carried out by first collecting data through a literature review that is relevant to the research topic. Next, the data is reduced by categorizing or identifying it first to determine the focus of discussion, especially the ITE Law and Human Rights. After that, the data is periodically presented in written or oral form, presenting research results in accordance with the problem formulation, finally, conclusions are drawn.

### **Legal Protection of Electronic Information and Transactions in Indonesia**

Historically, Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) serves as the inaugural legislation in the realm of information technology and electronic commerce, establishing a legal

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<sup>13</sup> Alya Ramadhani, et.al., *Regulasi Digital Dan Implikasinya Terhadap Kebebasan Berpendapat (Studi Kasus: UU ITE Pada Platform Media Sosial di Indonesia)*,” *Journal of Social Contemplativa* 2, No. 1 (2024), p. 1-18.

<sup>14</sup> Muhamad Januar Ramadhan, “Menjembatani Ambiguitas Antinomi Hukum: Harmonisasi Pengaturan Konten Digital dengan Perspektif Hukum Hak Asasi Manusia dalam UU ITE 2024,” *Jurnal Keadilan* 2, No. 2 (2024), p. 26-36.

framework that lays the groundwork for regulation in these fields<sup>15</sup>. Nonetheless, the actual execution of the ITE Law encounters challenges. In 2016, the government enacted Law No. 19 of 2016, which amended Law No. 11 of 2008 concerning Information and Electronic Transactions. This new law was introduced to rectify the deficiencies found in the provisions of Law No. 11 of 2008, pertaining to data and digital transactions

First, Law No. 11 of 2008 faced challenges that were addressed by the Constitutional Court through Decision No. 50/PUU-VI/2008, No. 2/PUU-VII/2009, No. 5/PUU-VIII/2010, and No. 5/PUU-VIII/2010. This law was repeatedly brought before the Constitutional Court in relation to criminal cases No. 20/PUU-XIV/2008 and No. 2/PUU-VIII/2009, highlighting that criminal acts of defamation within electronic information and electronic commerce are classified not only as general crimes but also as criminal complaints. In addressing telephone crimes, it is essential to uphold the principles of legal security and social justice.<sup>16</sup> Criminal complaints in the field of technology must also take into account elements of social justice.

According to the Constitutional Court Decision No. 5/PUUVIII/2010, the Constitutional Court views wiretapping and its authority as a highly sensitive matter, as it simultaneously restricts human rights while also possessing a legal dimension. Consequently, the understanding that wiretapping is permissible constitutes a breach of human rights as outlined in Article 28J Paragraph 2 of the 1945 Constitution of the Republic of Indonesia. This deviation takes the shape of a law rather than a government regulation. Furthermore, the Constitutional Court, referencing Constitutional Court Decision Number 20/PUU-XVI/2016, believes that to prevent varying interpretations of Article 5 Paragraph (1) and for legal clarity, it has included the term "specifically" before "electronic information and/or electronic documents" in its ruling. To prevent the understanding that the decision limits the interpretation of Article 5 Paragraphs (1) and (2) of the ITE Law, and to ensure legal certainty, electronic data and/or electronic documents are necessary as evidence in the Explanation of Article 5 of the ITE Law.<sup>17</sup> The technology in this area encompasses aspects of human rights that need to be upheld.

Secondly, the stipulations regarding search, seizure, arrest, and detention under the ITE Law present challenges for investigators, as the rapid pace of information technology and electronic transactions allows perpetrators to easily

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<sup>15</sup> Dewan Perwakilan Rakyat Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik," 2008.

<sup>16</sup> Fairus Augustina Rachmawati and Januari Nasya, "Implikasi Pasal Multitafsir Uu Ite Terhadap Unsur Penghinaan Dan Pencemaran Nama Baik," *Seminar Nasional Hukum Universitas Negeri Semarang* 7, No. 2 (2021).

<sup>17</sup> Atikah Mardhiya Rohmy, et.al., "UU ITE Dalam Perspektif Perkembangan Teknologi Informasi Dan Komunikasi," *Dakwah Dan Komunikasi Islam* 7, No. 2 (2021).

conceal their actions or any evidence of wrongdoing.<sup>18</sup> Third, the nature of cyberspace facilitates the dissemination of illegal content, including electronic information and documents with questionable material, gambling, insults or defamation, blackmail and threats, as well as false and misleading messages, leading to consumer losses related to electronics and more. Ethnicity, animosity or aggression rooted in religion, race, or class, along with personal actions that imply violence or intimidation, can be accessed, shared, transmitted, copied, and stored for future retransmission at any time and place. To safeguard the public interest from disruptions stemming from the misuse of electronic information and transactions, it is essential to enhance the government's role in curbing the dissemination of illegal content by taking measures to limit access to electronic information or documents that contravene the law. Investigators in Indonesia must seek information from electronic system organizers to support law enforcement efforts related to IT crimes and electronic transactions.<sup>19</sup>

Fourth, the use of information that includes an individual's personal data in mass media or electronic systems necessitates obtaining the consent of the individual involved. Personal data protection serves as a means of fulfilling community rights, manifested through mandatory products such as regulations and integrated monitoring systems, which the government is obligated to ensure for the community. Consequently, it is essential to guarantee the implementation of personal protection by requiring every electronic network provider to remove minor electronic data and/or electronic documents under their control upon the request of the data subject, as determined by a court ruling. Indonesia has established regulations under Law 27 of 2022 regarding Personal Data Protection.

A vibrant legal framework necessitates the state's active involvement in fostering social welfare. The regulation of state action and the implementation of human rights and obligations is outlined in this manner.<sup>20</sup> On one hand, the state safeguards human rights, while on the other, it regulates the public interest. The welfare of the community represents the public interest. The state's function as a mechanism for the welfare of its citizens is commendable; however, it is essential to safeguard human rights. The safeguarding of human rights is explicitly outlined in Law No. 39 of 1999 regarding Human Rights.

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<sup>18</sup> Aldo Ernandi Putra and Tantimin, "Kajian Hukum Pasal 27 Ayat 3 UU ITE Tentang Kebebasan Berpendapat Masyarakat," *Justitia* 9, No. 5 (2022), p. 2366–74.

<sup>19</sup> Muhammad Junaidi, et.al., "Pemahaman Tindak Pidana Transaksi Elektronik Dalam Undang-Undang No 19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik," *Budimas* 02, No. 02 (2020), p. 109–18.

<sup>20</sup> Haleema Ashfaq and Shahzadi Pakeeza, "Right of Progeny and Cairo Declaration of Human Rights In Islam," *Journal of Islamic And Religious Studies* 2, No. 1 (2017), p. 19–30.

Human rights violations occur when individuals, governments, or other institutions infringe upon the rights of others without a valid or justifiable cause.<sup>21</sup> Human rights violations are categorized as criminal acts, specifically breaches of human rights provisions outlined in national or international criminal law. Human rights regulations, both at the national and international levels, essentially establish a framework for the protection and enforcement of human rights laws.<sup>22</sup> The state then adapts this protection framework to establish regulations that align with the dimensions of human rights recognized both nationally and internationally.

The government has put forward seven proposed amendments to the content of the Second Revision of Law Number 11 of 2008 regarding Electronic Information and Transactions (UU ITE). The Minister of Communication and Information announced that in the Draft of the Second Amendment to the ITE Law, the Government has focused on enhancing the organization and regulation of electronic information and transactions. There are a minimum of seven proposed changes. This study aims to delve deeper into the significance of the second amendment to the ITE Law, examining it through the lenses of positive law and Human Rights (HAM) in Indonesia. This paper addresses the issue of the placement of the second amendment to the ITE Law within the context of human rights.

The formulation of the ITE Law in 2008, which was then updated in 2016, apparently gave rise to a new polemic because it was not in accordance with the initial objectives. The presence of the ITE Law can curb people's freedom of opinion and of course this is very contrary to the principles of justice. This is because during its development there were articles in the ITE Law which were deemed to violate human rights and restrict people from expressing their opinions in the digital space. People's freedom to express opinions in Indonesia has been regulated in law for a long time, but after the presence of the ITE Law, people have become very careful about expressing their opinions or criticism, especially on digital media.<sup>23</sup>

From the arguments above, it can be concluded that the government has attempted to provide legal protection for the public in the context of electronic transactions. However, the public must also be more careful in choosing

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<sup>21</sup> Elham Manea, "Application of Islamic Law In The UK and Universal Human Rights," *Revista De Estudios Internacionales Mediterraneos* 29, No. 29 (2020), p. 72–87. Dedisyah Putra and Nuriza Acela, "Human Rights Protection in the Islamic Family Law: A Case Study Concerning Domestic Violences," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 1 (2023).

<sup>22</sup> Zaheer Cheema, "CDHRI and International Human Rights Framework," *Pakistan Social Sciences Review* 4, No. II (2020), p. 895–905.

<sup>23</sup> Ananda Syifa Salsabila, et.al., "Pembatasan Kebebasan Berpendapat Masyarakat Dengan Hadirnya UU ITE Dalam Perspektif Keadilan," *Journal of law and Government* 2, No. 1 (2024). p. 26.

electronic transactions, for example in the online buying and selling process, in matters of personal data, because the ITE Law is still not optimal in providing legal protection for injured parties.<sup>24</sup>

### **The Urgency of Changes to the ITE Law from a Legal and Human rights Perspective**

The growth of social media and its significance in people's lives today is accelerating swiftly, along with advancements in information and communication technology. The dynamics of life also influence changes in family values. Information and communication technology has transformed society and influenced people's behavior globally. Moreover, the advancement of information technology has rendered the world boundless, leading to significant social changes that unfold rapidly.<sup>25</sup> This highlights the strong connection among technology, social change, and law.

Information technology serves as a dual force, fostering the advancement and flourishing of human civilization while simultaneously providing a powerful tool for illicit activities.<sup>26</sup> Media exposure appears to be a significant avenue for public complaints, suggesting that the media has a crucial role in shaping pertinent issues and impacting the development of public opinion. The reason is that both print and electronic media have the ability to reach a broad, quick, thorough, and transient audience. Mass media serves as a strategic and effective tool for managing and communicating information, while also playing a crucial role in educating and influencing the dynamics of people's lives.<sup>27</sup> In practice, the media is intertwined with existing interests, leading to a frequent neglect of other roles such as providing information, serving as educational tools, and maintaining social control.

Media viewed from this angle can infringe upon human rights due to political, economic, and various other influences. The swift exchange of information in today's globalized world carries significant implications. The erosion of the boundaries of values and traditions is one of the issues at hand. The dimensions of taboo and the sacred have faded away. Jean Baudrillard, a postmodern philosopher, asserted that globalization influences the transformation

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<sup>24</sup>Rahmadany Jiyan Puspitasari and Al-Qodar Purwo Sulisty, "Perlindungan Hukum bagi Korban Penipuan Online Shop dengan Merujuk pada Undang-Undang Nomor 19 Tahun 2016," *Jurnal Eksaminasi* 3, No. 2 (2024), p. 53-60.

<sup>25</sup>Fenny Bintarawati, "Juridical Analysis of Consumer Protection Against Fraud In The Marketplace," *Walrev* 4, No. 1 (2022).

<sup>26</sup>Tasya Safiranita Ramli, et.al., "The Role of E-Commerce In Escalation of Digital Economy In The New Normal Era Based on Law Number 27 of 2022 Concerning Personal Data Protection Abstract," *De Jure* 22, No. 4 (2023), p. 437-50.

<sup>27</sup>Andrew Betlehn, "Harmonization of Laws on Electronic Contracts Based on Model Laws For The Asean Economic Community," *Global Legal Review* 1, No. 1 (2021), p. 1-16.

of values. This period is characterized by the merging of normative boundaries, leading to the gradual disappearance of what is deemed "taboo" or "sacred." All subjects and details are openly addressed and frequently utilized.<sup>28</sup> Topics once deemed taboo and sacred from a socio-religious viewpoint have now vanished entirely. For instance, regarding sexuality. Currently, there is a lack of shame or hesitation in addressing matters that ought to remain private.<sup>29</sup> This is all carried out under the principle of freedom of expression.

Human rights are entitlements that individuals possess, acquire, and practice by virtue of their birth or involvement in civic life. Human rights represent an individual's liberty to make choices based on their conscience regarding fundamental aspects that facilitate a dignified life.<sup>30</sup> The responsibilities that individuals must meet to secure their rights are referred to as fundamental obligations or duties that must be fulfilled following the acknowledgment of human rights. To safeguard human rights, the state must be founded on the principle of the rule of law, enabling the monitoring and prosecution of human rights violations, while ensuring that the populace has oversight over national affairs. The political system that will be established is a democratic one, encompassing the right to vote, the right to run for office, and the right to voice opinions.<sup>31</sup> A nation founded on unwavering legal authority can create beneficial laws that are applicable within a region while upholding human rights principles.

The government has put forward seven proposed amendments to the content of the Second Revision of Law Number 11 of 2008 regarding Electronic Information and Transactions (UU ITE). The Minister of Communication and Information announced that in the Draft Second Amendment to the ITE Law, the Government has focused on enhancing the organization and regulation of electronic information and transactions. There are at least seven proposed changes, specifically:

First, modifications to the provisions of paragraph (1), paragraph (3), and paragraph (4) of Article 27 regarding morality, insults and/or defamation, and extortion and/or threats by referencing the provisions of the Criminal Code. Upon further examination of this article, it can be clarified that Article 27 Paragraph (1) is addressed in Article 281 of the Criminal Code; Article 27 Paragraph (3) is

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<sup>28</sup> Sidi Ahyar Wiraguna, et.al., "Legal Harmonization Of E-Commerce Transactions In Order To Support Indonesia'S Economic Development," *Journal Of Social Research* 2, No. 6 (2020), p. 1929–1936.

<sup>29</sup> Nurkholim, "The Impact of The Information And Electronic Transaction Law ( UU ITE) On Legal And Social Changes In Society," *Birci-Journal* 4, No. 3 (2021), p. 5558–5565.

<sup>30</sup> Muchammad Ichsan, "Death Penalty: A Response To Arguments By Indonesian Muslim Opposers," *Jurnal Hukum Novelty* 11, No. 1 (2020), p. 14.

<sup>31</sup> Muhammed Muhammed, "Human Rights And Religion: Islam In Perspective," *Lectio Socialis* 5, No. 1 (2020), p. 25–34.

referenced in Article 310 Paragraphs (1) and (2); as well as Articles 311, 315, 317, 318, 320, and 321 of the Criminal Code. In the meantime, Article 27 Paragraph (4) has been addressed in Articles 368 to 371; Article 479 Paragraphs (2-4); Article 482 Paragraph (1); and Article 483 Paragraph (1) of the Criminal Code.

Second, amendment to Article 28 now focuses solely on regulating provisions related to false news or misleading information that results in material losses for consumers. Upon further examination of this article, it can be clarified that Article 28 Paragraph (1) has been addressed in Article 5 Paragraph (1), Article 21 Paragraph (1), Article 27, and Article 33 of Law No. 8 of 1999 regarding Consumer Protection. In the meantime, Article 28 Paragraph (2) has been addressed in Law No. 40 of 2008 regarding the Elimination of Racial and Ethnic Discrimination. Third, the inclusion of the provisions of Article 28A between Article 28 and Article 29 pertains to content related to ethnicity, religion, race, and inter-group (SARA) dynamics, as well as misinformation that may lead to societal unrest. This article, upon further examination, has identified additional regulations that govern it, specifically: Law No. 40 of 2008 regarding the Elimination of Racial and Ethnic Discrimination; and Articles 368-369 of the Criminal Code.

Fourth, modifications to the explanatory provisions of Article 29 regarding bullying (cyber bullying). This article is governed by Article 80 paragraph (1) in conjunction with Article 76C of Law No. 35 of 2014 regarding Child Protection, as well as Article 345 of the Criminal Code. Fifth, modifications to the stipulations of Article 36 regarding heightened penalties for inflicting harm on others. This article is governed by Article 1365 of the Civil Code.

Sixth, modifications to the stipulations of Article 45 concerning the risk of imprisonment and fines, along with the introduction of regulations pertaining to exceptions for the application of criminal provisions related to moral violations in Article 27 paragraph (1). This modification in the Article corresponds with the recent amendments to the Criminal Code that were approved at the close of 2022. Seventh, modifications to the stipulations of Article 45A concerning criminal penalties for false information and misleading content that incites unrest within society.

This modification in the Article corresponds with the recent amendments to the Criminal Code that were approved at the close of 2022. Among the seven proposed changes, three articles pertain to cybercrime in Indonesia: Article 27, which addresses immorality, gambling, insults, and extortion; Article 28, which deals with fake and misleading news, as well as hate and hostile news; and Article 29, which concerns threats of violence and intimidation. This stands apart from other nations that emphasize cybercrime within the realm of electronic transactions. When comparing the electronic transaction laws of various countries, it becomes evident that Indonesia places a stronger regulatory emphasis

on certain areas, including: internet pornography; online transactions; and the ethics of internet users. This stands in stark contrast to the ITE Law in other countries, which tends to concentrate on specific aspects.

The Uniform Electronic Transaction Act (UETA) established in the United States is primarily concerned with the legitimacy of electronic contracts. Singapore, via the Electronic Transactions Act (ETA) 1998, emphasizes electronic commerce transactions and the safeguarding of personal data. Singapore has engaged in discussions regarding the establishment of Online Dispute Resolution (ODR), which aims to address disputes via the internet, similar to the approach taken by the Philippines through its Multi Door Courthouse institution. Indonesia currently lacks regulations or institutions for ODR. Malaysia has progressed through various regulations, each with its specific emphasis. The Digital Signature Act 1997 addresses electronic signatures, the Telemedicine Act 1997 pertains to medical services and remote consultations, and the Computer Crime Act 1997 targets crimes and violations associated with the internet, including unauthorized access to computer materials. Furthermore, Malaysia has initiated the establishment of the International Cybercourt of Justice.<sup>32</sup>

It can be concluded that amending the second ITE Law is not a priority. This is based on three considerations: first, the current regulations in place; second, the existence of a new Criminal Code; and third, the issue of human rights violations, particularly in relation to Article 4 of Law No. 39 of 1999 concerning Human Rights. The ITE Law, in both its content and the context of its implementation, holds the potential to serve as a mechanism for legitimizing the criminalization of individuals with differing attitudes, opinions, and thoughts regarding human rights violations. This directly opposes Article 4 of Law No. 39 of 1999, which asserts that everyone is entitled to freedom of thought and conscience. From the viewpoint of a civilized and religious individual, the assurance of thought and conscience is subject to the standards of religious and social norms.

Article 2 of Law No. 39 of 1999 states that the Government has an obligation to recognize and defend human rights and fundamental freedoms. The Declaration of Law No. 39 of 1999 underscores the Government's legal, political, economic, social, and moral duty to safeguard and promote human rights and fundamental freedoms, as well as to implement tangible measures for their defense. Article 28G Paragraph 1 of the 1945 Constitution ensures that every individual is entitled to the protection of themselves, their families, honor, dignity, and property under their control, as well as the right to feel safe and secure from threats of fear or violations of human rights. In today's digital age, safeguarding

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<sup>32</sup> Barbhai and Sable, "A Comprehensive Study of Barriers In Electronic Transactions For Customers And Banks."

personal information is intricately linked to the protection of personal data. If the second amendment to the ITE Law pertains to personal protection, it is unnecessary given the existence of Law No. 27 of 2022 regarding Personal Data Protection.<sup>33</sup> If each law does not concentrate on a single issue, there will be conflicts between regulations.

The ASEAN Framework on Digital Data Governance (AFDG) is an agreement that was ratified during the 18th ASEAN-TELMIN meeting held in December 2018. AFDG outlines its priorities, principles, and strategic initiatives aimed at supporting ASEAN member states in formulating policies and regulations concerning digital information management within the digital economy. This regulation highlights the goals of laws and regulations, specifically the harmonization of legal frameworks among ASEAN countries, which includes the safeguarding of personal data. This emphasizes that the ITE Law is not a shift in priority, but rather an assessment of the Personal Protection Law that necessitates alignment with the regulations of ASEAN countries.<sup>34</sup> This synchronization has not been implemented by Indonesia, as the emphasis of the ITE Law differs from that of other countries, which concentrate on a singular issue. Indonesia continues to employ the "thematic" concept, integrating various elements into a single regulation.

One of the advocates for human rights is the matter of human rights violations and human rights litigation. Acts that infringe upon human rights are violations of humanity, perpetrated by individuals, state institutions, or other entities against the rights of others, lacking justifiable or legitimate causes and acceptable reasons.<sup>35</sup> The United Nations defines human rights impact assessment as a process designed to identify, understand, and reach consensus on the negative effects of a project or operation that influence the enjoyment of human rights, particularly concerning employees and citizens, which must be evaluated and addressed. The UN Guiding Principles outline that corporate responsibility to respect human rights is the anticipated standard of conduct. This encompasses the expectation that businesses will effectively identify, prevent, mitigate, and resolve, with due diligence, human rights impacts that influence the business, including electronic transactions involved in it.<sup>36</sup> This highlights the necessity for

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<sup>33</sup> Dewan Perwakilan Rakyat Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia," 1999.

<sup>34</sup> Enni Soerjati Priowirjanto, "Electronic Transactions In Indonesia Related To Use The Theory of 'Lex Informatica' and The Concept of 'Self Regulation,'" *Transnational Business Law Journal* 1, No. 2 (2020).

<sup>35</sup> Titus Corlatean, "The Incompatibility of The Sharia Law and The Cairo Declaration on Human Rights In Islam With The European Convention on Human Rights," *Ssrn Electronic Journal* April 3-4 (2019), p. 123-92.

<sup>36</sup> Abdul Rahim, "Overview of Consumer Protection Laws Against Electronic Transactions On The Marketplace," *International Journal of Artificial Intelligence Research* 0, No. 01 (2022).

the ITE Law to revert to its foundational idea as the leader in overseeing electronic economic activities.

Therefore, improvements to the legal framework include clear supervision, clarification of ambiguous ITE provisions, and changes to accept technological advances. Society must be more aware of the rights to privacy and freedom of expression in the digital era.<sup>37</sup> In a philosophical context, legal changes related to legal justice and human rights are something that needs to be done, so that the rule of law will be better in the future.

## Conclusion

No law is stagnant, it will continue to change following social changes, and so does the ITE Law. changes and improvements to the legal framework include clear supervision, clarification of ambiguous ITE provisions, and changes to accept technological advances. In a philosophical context, legal changes related to legal justice and human rights are something that needs to be done, so that the rule of law in the future will be better. The ITE Law, both in content and implementation, has significantly violated personal and public privacy. This has the potential to implement the ITE Law from various perspectives and thoughts. This article illustrates that the ITE Law has deviated far from its initial objectives, which initially focused only on electronic transactions, as has happened in other countries. The ITE Law has deviated from its original purpose as a protector of electronic activity and has instead become a means of legitimizing criminalization. This is in direct conflict with Article 2 and Article 4 of Law Number 39 of 1999 which states that everyone has the right to guarantee freedom of thought and conscience, and the Government is obliged to guarantee this right.

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<sup>37</sup>Imelda Martinelli, et.al., "Perlindungan Hak Privasi Dalam Era Digital: Harmonisasi Undang Undang Informasi Transaksi Elektronik Dengan Prinsip-Prinsip Filosofi Hukum Roscoe Pound Dalam Hukum Perikatan," *MOTEKAR: Jurnal Multidisiplin Teknologi dan Arsitektur* 1, No. 2 (2023), p. 412-421.

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