

## Digital Content Surveillance and Freedom of Expression on Over The Top Platforms in Indonesia

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**Abstract:** The development of information technology has led to the emergence of Over The Top (OTT) platforms as new spaces for public expression. In Indonesia, the government has implemented digital content monitoring mechanisms to prevent misuse of digital media, including the spread of hoaxes, hate speech, and radicalism. However, such surveillance raises concerns regarding potential violations of the right to freedom of expression as guaranteed by the constitution and international human rights instruments. This study aims to analyze digital content surveillance in Indonesia from the perspective of State Administrative Law and to examine the balance between the state's role as a regulator and its obligation to protect human rights, particularly freedom of expression. This research employs a normative legal approach with qualitative methods, examining legislation, legal doctrines, court decisions, and administrative practices related to digital content monitoring through statutory, conceptual, case, and comparative approaches. Data are collected through a literature study of primary, secondary, and tertiary legal sources and analyzed systematically based on principles of state administrative law and international human rights standards. The findings indicate that current monitoring policies tend to be one-sided, lack public participation, and do not provide transparent and accountable mechanisms for administrative objections. Moreover, reliance on ministerial regulations as the legal basis is considered inadequate within the hierarchy of legal norms. Therefore, digital content surveillance policies should be reformed based on legality, proportionality, transparency, accountability, and respect for democratic rule of law and citizens' digital rights.

**Keywords:** Freedom of Expression; Digital Content Surveillance; Over The Top; State Administrative Law; Human Rights.

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### 1. Introduction

Digital transformation has brought fundamental changes to the structure of public communication in Indonesia. People are now not only consumers of information, but also producers of content through various digital platforms, including Over The Top (OTT) platforms such as YouTube, TikTok, and Netflix (Asosiasi Penyelenggara Jasa Internet Indonesia, 2024). These platforms serve not only as a medium for entertainment and information, but also as an arena for contesting ideas, political expression, and the articulation of social interests. In other words, OTT has become the primary means for the public to exercise their constitutional rights, especially the right to freedom of expression. (Amnesty International, 2022).

However, freedom of expression in the digital space is not free from state supervision. The Indonesian government, through the Ministry of Communication and Information Technology, exercises its function of monitoring digital content based on various administrative regulations. One of the main instruments is Minister of Communication and Information Technology Regulation No. 5 of 2020 concerning Private Electronic System Operators, which requires digital platforms to comply with content filtering and removal

requirements at the request of the government (*Kementerian Komunikasi dan Informatika*, 2020). Through this regulation, the government can remove or block content that is deemed to violate legal provisions, such as pornography, hoaxes, hate speech, or radicalism.

Such administrative actions place the state as the dominant actor in regulating digital expression. From the perspective of State Administrative Law, this raises serious questions about the legitimacy, legality, and accountability of every action taken by state officials in the digital realm (Asmara et. al., 2025). This is because every action taken by the authorities (*bestuursdaad*) must be based on clear legal grounds, carried out in accordance with the principle of proportionality, not exceeding their authority (*detournement de pouvoir*), and providing legal protection for the affected parties. The state has a responsibility to respect, protect, and realize human rights, particularly the right to freedom of expression, amid the increasing use of the internet in Indonesia. Therefore, regulations are needed to ensure the fair and safe use of technology and information, as well as to provide legal certainty for the public and digital service provider (Komnas HAM, 2022).

Administrative oversight of digital content by the state has the potential to violate human rights, particularly the right to freedom of expression guaranteed in Article 28E paragraph (3) and Article 28F of the 1945 Constitution of the Republic of Indonesia, as well as in the International Covenant on Civil and Political Rights (ICCPR), which was ratified through Law No. 12 of 2005 (Awaludin, 2005). These rights may be restricted, but such restrictions must comply with the principles established by law, namely that they must be determined by law, necessary for a legitimate purpose, and proportional to the interests protected.

An increasingly complex issue arises when digital content monitoring is not carried out through judicial mechanisms or transparent legal processes, but rather through unilateral administrative actions by executive agencies. This opens up the possibility of abuse of administrative authority, unaccountable decision-making, and even violations of the basic principles of good governance (Suzor, 2019; Keller, 2021). Furthermore, there are still limitations to adequate judicial and administrative control mechanisms over government decisions to block or remove digital content. Citizens or platform operators who feel that their rights have been violated often do not have effective access to legal remedies to obtain administrative justice (Douek, 2020; Kaye, 2019).

In this context, a study of digital content monitoring from the perspective of State Administrative Law is important and urgent. This study is necessary to identify whether these oversight actions have been carried out in accordance with the basic principles of State Administrative Law, and whether there is room for improvement in the legal and institutional framework so that the governance of digital space is more accountable, transparent, and respectful of citizens' rights (Brown & Korff, 2020; Suzor, 2019).

The similarities and differences with previous studies include: a) Supriandi, et al. (Supriandi et. al., 2023) entitled "Human Rights in the Digital Realm: Analysis of Cyber Law and Online Freedom." This study reviews the relevance of digital rights, surveillance, and cyber security, as well as the balance between online freedom and governance with a cyber law and human rights approach. The results show that comprehensive policies and considerations are needed between human rights in the digital realm. This study does not discuss aspects of state administrative law in depth, particularly those related to the principles of government action and administrative appeal mechanisms; b) Muhammad Hidayat Muhtar, et al (Muhtar et. al., 2022) Entitled "Expansion of the Indonesian Broadcasting Commission's Authority Over Digital Media Supervision," this study focuses on aspects of digital media supervision by the *Komisi Penyiaran Indonesia* and its practices in other countries. The results show *Komisi Penyiaran Indonesia* authority in supervising

digital media is still very limited due to inadequate regulations. Institutional strengthening designs must be integrated with each other by the Ministry of Communication and Information Technology, the National Police, and the *Komisi Penyiaran Indonesia* itself. This study does not discuss freedom of expression in online media based on human rights principles. c) Finally, the SAFENet and ELSAM (2021–2023) report “Trends in Digital Rights Violations in Indonesia” This civil society organization released an annual report showing an increase in content takedowns, account blocking, and restrictions on expression in the digital space by the state without a fair recovery mechanism.

Based on the above previous studies, this study aims to fill the gap in research on: a) Government surveillance of digital content within the framework of State Administrative Law; b) Normative assessment of the principles of State Administrative Law, such as legality, proportionality, and legal protection of freedom of expression; c) Actual case studies related to administrative actions against OTTs that have not been widely studied in the context of State Administrative Law; d) The development of an ideal model for digital content monitoring that is accountable and in line with the principles of the rule of law.

Building upon these concerns, this study aims to critically examine how digital content surveillance on OTT platforms in Indonesia is regulated and implemented within the framework of State Administrative Law. It further seeks to assess the extent to which existing administrative practices align with human rights principles, particularly the protection of freedom of expression. In addition, this study endeavors to formulate a more balanced model of digital content governance grounded in administrative law principles and the normative values of Pancasila, with the objective of advancing a digital governance framework that is democratic, accountable, and equitable.

## 2. Method

This research is normative legal research that focuses on the study of positive legal norms, legal principles, doctrines, and relevant court decisions. This research aims to examine government oversight of digital content on OTT platforms in relation to the protection of the right to freedom of expression, reviewed from the principles of State Administrative Law. This type of research can also be categorized as doctrinal legal research with a conceptual and comparative legal approach, supported by a normative-critical legal analysis of government administrative practices in the digital space.

This research uses several approaches, namely: Statutory Approach Used to examine relevant legislation, such as the 1945 Constitution of the Republic of Indonesia, Law No. 39 of 1999 on Human Rights, Law No. 12 of 2005 on the Ratification of the ICCPR, the ITE Law, and *Permenkominfo* No. 5 of 2020. Conceptual Approach (Marzuki, 2017), used to understand the basic concepts of State Administrative Law, freedom of expression, and digital content monitoring from the perspective of legal theory and the principles of the rule of law. Case Approach (Ibrahim, 2005), used to analyze several specific cases related to government administrative actions in monitoring OTT content, such as blocking Netflix, YouTube, KomikSi, and the takedown of certain content. Comparative Approach Used to compare digital content monitoring practices in Indonesia with those in several other democratic countries (e.g., Germany, Canada, and the European Union) in order to obtain an overview of best practices that are in line with the principles of State Administrasi Law and human rights protection.

The legal materials used in this study consist of primary legal materials including legislation, such as: the 1945 Constitution of the Republic of Indonesia, Law No. 39 of 1999 on Human Rights, Law No. 12 of 2005 on the Ratification of the ICCPR, Law No.

19 of 2016 on Electronic Information and Transactions (ITE), Minister of Communication and Information Technology Regulation No. 5 of 2020, and relevant decisions of the Constitutional Court and the State Administrative Court. Secondary legal materials include legal literature, textbooks, scientific journals, articles, research results, and opinions of experts in administrative law and human rights. Tertiary legal materials include legal dictionaries, legal encyclopedias, and other supporting information sources, including mass media containing news about OTT cases.

To strengthen the analytical rigor, this study employs an evaluative analytical framework grounded in the core principles of State Administrative Law and human rights, namely legality, proportionality, transparency, accountability, and due process of law. These principles serve as normative benchmarks to assess the legitimacy, scope of authority, and overall quality of governmental administrative actions in the regulation and supervision of digital content (Beketov & Surgutskov, 2024; Coglianesi, 2021).

The analytical process is conducted through three stages. First, the identification of relevant legal norms and regulatory frameworks governing digital content oversight. Second, the examination of administrative practices through selected case studies, particularly those related to content blocking and takedown measures. Third, a normative evaluation of these practices is undertaken using the principles of State Administrative Law and human rights standards as analytical criteria (Doyoharjo & Laksito, 2025; Sihombing et. al., 2021).

The scope of this study is limited to the regulation and practice of digital content supervision on OTT platforms in Indonesia within the period of 2020–2025. It specifically focuses on content blocking policies, takedown practices, and platform regulation under the authority of the Ministry of Communication and Information Technology. This delimitation is intended to ensure analytical depth and maintain the study's relevance to contemporary developments in digital content governance (Gumati, 2024; Nabilah, 2020).

### 3. Results and Discussion

#### 3.1 Constitutional and Legal Foundations of Freedom of Expression in the Digital Space

This study finds a significant gap between the constitutional guarantees of freedom of expression and the implementation of digital content surveillance by the government in Indonesia. Although both national and international legal frameworks provide robust protection for freedom of expression, in practice, administrative actions in the digital sphere do not fully reflect these legal principles, particularly with regard to transparency, accountability, and due process of law.

Indonesia has a legal framework that is adequate in guaranteeing freedom of expression, both in its constitution and international agreements. However, in the practice of digital content monitoring, the basic principles of State Administrative Law have not been fully implemented, particularly in the context of administrative discretion, disproportionate restrictions, and the unavailability of administrative appeal forums (Winarta, 2020). This shows the need for regulatory reform and content oversight governance that is more transparent, accountable, and oriented towards the protection of human rights and the supremacy of administrative law (Komnas HAM RI, 2021).

Normatively, freedom of expression is guaranteed under the 1945 Constitution of the Republic of Indonesia (UD NRI 1945). Article 28E paragraph (3) states that “Every person shall have the right to freedom of association, assembly, and expression,” while Article 28F affirms that “Every person shall have the right to communicate and obtain information” (Majelis Permusyawaratan Rakyat Republik Indonesia, 2020).

These two provisions form the constitutional basis that freedom of expression, including in the digital space, is a guaranteed right. However, this freedom is not an absolute right. Article 28J paragraph (2) states that in exercising their rights and freedoms, every person shall be subject to restrictions established by law to ensure recognition and respect for the rights of others, as well as to meet the demands of justice and public order (Majelis Permusyawaratan Rakyat Republik Indonesia, 2020).

However, in practice, content monitoring by the Ministry of Communication and Information Technology often raises serious questions regarding the lack of public participation, minimal transparency, and the absence of an effective administrative appeal mechanism. (ELSAM, 2022). This raises the potential for abuse of power and violations of the principle of due process of law, as criticized in various annual reports by NGOs such as ELSAM and SAFEnet (SAFEnet, 2023).

The digital space presents new challenges in balancing human rights protection and public interest. Countries are required not only to ensure digital security and combat negative content, but also to refrain from violating freedom of expression, which is the foundation of democracy. (Diamond, 1999). OTT platforms such as YouTube, Netflix, TikTok, and others have now become the main space for public expression. When the state intervenes and regulates digital content without transparent legal mechanisms, the position of administrative law becomes crucial in assessing the limits of authority, the quality of regulation, and the accountability of government actions (Peter Drahos, 2003).

Thus, the state has the authority to restrict freedom of expression, as long as it is done in accordance with the law, is proportional, and within the framework of a democratic state governed by the rule of law. This forms the basis for the legitimacy of government administrative actions in monitoring digital content, including Over The Top (OTT) platforms (Asshiddiqie, 2010). Indonesia has ratified the International Covenant on Civil and Political Rights (ICCPR) through Law No. 12 of 2005, which in Article 19 paragraph (2) affirms the right of everyone to express their opinions and to receive and disseminate information and ideas through any media, without regard to frontiers (Hamid Awaludin, 2005) The ICCPR also allows for restrictions in paragraph (3), provided that such restrictions: a) Are prescribed by law; b) Are necessary to respect the rights or reputation of others, or to protect national security, public order, public health, or public morals (*International Covenant on Civil and Political Rights (ICCPR)*, t.t.).

Restrictions imposed by the state, including through digital regulations such as *Permenkominfo* No. 5 of 2020, must be evaluated for their compliance with these international provisions and tested from the perspective of the principles of non-discrimination, transparency, and administrative accountability.

From the perspective of State Administrative Law, the state's authority to restrict expression in the digital space constitutes a form of government action (*bestuursdaad*) that must comply with the general principles of good governance (*algemene beginselen van behoorlijk bestuur-AUPB*). In this context, several key principles are particularly relevant. In this case, several relevant principles of State Administrative Law include (Asimah & Erliyana, 2025): a) Principle of Legality: Every restriction must be based on law, not merely on ad hoc administrative decisions (Hadjon, 2012). b) Procedural Principles: Administrative actions (such as blocking websites or removing content) must be carried out through fair and verifiable procedures (Rahardjo, 2010). c) Principle of Proportionality: Restrictions must be proportional to the threat faced and must not be excessive (Soekanto & Mamudji, 2008). d) Principle of Protection of Citizens' Subjective

Rights: Citizens must have access to mechanisms for appealing administrative actions taken against them (Safa'at, 2014).

Accordingly, the primary issue in digital content governance in Indonesia does not lie in the absence of a legal framework, but rather in the weak implementation and insufficient oversight of administrative actions. Existing regulations formally provide a basis for state intervention; however, their application often lacks transparency, accountability, and effective control mechanisms. This condition reflects broader challenges in the governance of digital platforms, where state authority and platform regulation intersect without adequate safeguards for due process and fundamental rights (Coglianese, 2021; Keller, 2021).

This finding underscores the urgent need for reform in digital content governance to ensure closer alignment with the principles of State Administrative Law and established human rights standards. Strengthening procedural guarantees, enhancing accountability mechanisms, and ensuring access to effective remedies are essential to prevent arbitrary restrictions on freedom of expression in the digital sphere (Brown & Korff, 2020; Douek, 2020).

### **3.2 OTT Platforms as New Public Expression Spaces**

The development of information and communication technology has brought about a fundamental transformation in the way people access, produce, and distribute information. One of the most significant changes is the emergence of Over The Top (OTT) platforms, which are internet-based digital services capable of delivering content without relying on conventional network infrastructure providers such as cable television or radio (Hesmondhalgh, 2019). Platforms such as YouTube, Netflix, TikTok, and Instagram now serve not only as entertainment media, but have evolved into means of public communication and broad spaces for social dialogue.

OTT has disrupted traditional media systems, creating a virtual public space where every individual has the opportunity to openly express their views, criticisms, and artistic expressions. In this context, OTT plays a role as a catalyst for the democratization of information and expression, as every citizen has the potential to become an autonomous actor in public communication (Jenkins, 2006). This is in line with Jürgen Habermas' idea of the "public sphere," which in the digital context has expanded through network technology (Habermas, 1991).

However, the openness and speed of information dissemination on OTT also pose new dilemmas for the state, particularly in maintaining public order and social integrity amid an unstoppable wave of information. The government, through legal instruments and administrative policies, seeks to regulate this digital space by establishing regulations, including content monitoring mechanisms that often spark debate, especially in relation to the right to freedom of expression.

OTT not only provides a platform for the public to channel their creativity, but also strengthens the deliberative space and social control in the context of a democratic country. Digital content such as videos criticizing public policies, political discussions, and citizen journalism coverage of events are forms of expression that strengthen the transparency and accountability of power (Zuckerman, 2013).

However, the exercise of this freedom also entails significant risks. The proliferation of hate speech, disinformation, and other forms of harmful digital content has prompted many states to intervene through content monitoring and moderation mechanisms. In Indonesia, such regulatory measures are reflected in various legal instruments, including the Regulation of the Minister of Communication and Informatics No. 5 of 2020

concerning Private Electronic System Operators. This regulation obliges both domestic and foreign over-the-top (OTT) service providers to register with the government and comply with Indonesian legal requirements, including requests to restrict or remove access to content deemed unlawful (Kementerian Komunikasi dan Informatika, 2020).

Unfortunately, the implementation of these regulations is often considered to lack accountability and transparency. An example of this is the sudden blocking of several digital platforms such as PayPal, Steam, and Epic Games in 2022, without adequate notification procedures to the public or administrative appeal mechanisms accessible to affected parties (ELSAM, 2022b). This situation creates tension between the state's need to maintain digital security and its constitutional responsibility to protect its citizens' freedom of expression.

From the perspective of State Administrative Law, the state's authority to regulate the digital space must be exercised based on the principles of good governance, which include the principles of legality, transparency, accountability, proportionality, and public participation. (Hadjon, 2011). The state cannot restrict rights based solely on power (*macht*), but must do so based on legitimate legal authority (*bevoegdheid*) and in accordance with fair administrative procedures.

Criticism of the state's approach to OTT supervision lies in its tendency toward a top-down approach that lacks dialogue with the public. In fact, according to Law No. 30 of 2014 on Government Administration, every decision or action taken by state administrative officials must take into account the principles of prudence, legal certainty, and protection of citizens' rights (Symsudin, 2014). Unilateral blocking of access to information without a participatory process and without an administrative appeal mechanism clearly contradicts the spirit of modern administrative law, which places citizens as equal subjects of the law.

Given the complexity of OTT dynamics as a new public space, the approach to digital content supervision must be directed towards a collaborative model that balances the protection of human rights and cyber security interests. Strengthening the principle of due process in administrative decision-making related to content removal or access blocking is an urgent need. This can be done through the establishment of an independent appeals body, the obligation to notify affected users, and public transparency procedures for all administrative decisions in the digital space (SAFE-net, 2023). Furthermore, state administrative law should not only be an instrument of control, but also serve as a means of protecting the digital rights of the public. Therefore, the reformulation of OTT regulations and governance needs to take into account the principles of public participation and respect for freedom of expression as a constitutional right of citizens.

In a democratic and law-based system of government, every administrative action taken by state organs must be subject to the principle of accountability. This principle requires public officials to be accountable for every decision or action to the public and supervisory institutions in accordance with applicable laws (Bovens, 2007). In the context of digital content oversight, accountability is crucial because state actions such as website blocking, content removal, or access restrictions have the potential to directly limit the fundamental rights of citizens, particularly freedom of expression.

Within the framework of State Administrative Law, accountability is not only understood as a moral responsibility, but also has legal and procedural dimensions. This requires that every administrative action be based on the principle of legality, be subject to review through appeal or objection mechanisms, and remain open to oversight by both the public and independent institutions (Hadjon, 2011).

However, in practice, the regulatory framework governing digital content oversight in Indonesia—particularly the Regulation of the Minister of Communication and Informatics No. 5 of 2020—remains problematic in terms of public accountability. Significant gaps persist regarding the authority responsible for determining whether content is deemed unlawful, the procedures through which such determinations are made, and the mechanisms available for users to challenge or appeal decisions when their content is removed or access is restricted (SAFEnet, 2021).

One of the most fundamental weaknesses in Indonesia's digital content oversight policy is the absence of a structured administrative appeal mechanism that is accessible to affected users. Law No. 30 of 2014 on Government Administration stipulates that every administrative decision that infringes on an individual's rights must provide an administrative appeal (*administratief beroep*) or objection (*bezwaar*) mechanism as part of administrative legal protection (Amir Syamsudin, 2014). However, regulations in the digital sector have yet to fully adopt this principle. For example, in cases where websites are blocked by the Ministry of Communication and Information Technology, users or service providers often do not receive official notification in advance, and there are no administrative legal channels available to file objections other than through the State Administrative Court, which tends to be time-consuming and costly (Komnas HAM RI, 2023).

The ELSAM report (2022) notes that around 78% of actions to block access to websites or applications were carried out without public notification, and more than 90% did not have clear administrative appeal procedures (ELSAM, 2022b). In fact, this objection mechanism is the essence of the principle of due process in modern administration. To guarantee the protection of citizens' rights in the digital space, it is very important for the state to establish an independent and transparent objection mechanism, such as a content oversight board or a digital ethics council. This model has been implemented in several countries. For example, Facebook has established an Oversight Board that functions independently in reviewing content removal decisions and providing policy recommendations that are public and binding internally.

Indonesia could adopt a similar model by establishing a specialized body or committee under an independent institution such as the National Commission on Human Rights (Komnas HAM) or the Ombudsman, tasked with reviewing administrative decisions related to digital content oversight. Such a mechanism should incorporate several key features. First, it should provide an accessible procedure for affected individuals or corporations to submit objections. Second, it should ensure that the review process is conducted openly and based on verifiable evidence. Third, its decisions should be published transparently and serve as precedents to guide future policy and administrative practices.

From the perspective of State Administrative Law, digital content monitoring should not only be understood as an instrument of control, but also as part of quality public service. Therefore, the state has an obligation to formulate participatory monitoring policies, provide easily accessible, fast, and affordable administrative appeal mechanisms, and develop a public evaluation system for content blocking and removal policies. In addition, the involvement of independent institutions is necessary to ensure objectivity and fairness in every administrative decision-making process in the digital realm (Winarta, 2020).

The implementation of these principles will not only strengthen the legal legitimacy of state administrative actions, but will also serve as an important foundation for the development of a democratic, fair, and human rights-respecting digital ecosystem.

### 3.3 Review of State Administrative Law on Digital Content Supervision

In the context of Indonesia's system of government, which adheres to the principle of the rule of law (*rechtsstaat*), the authority of state administrative officials must be exercised in accordance with the law (*wetmatigheid van bestuur*). The provision in Article 1 paragraph (3) of the 1945 Constitution, which states that “Indonesia is a state based on the rule of law,” provides a legal basis for every government organ to act within a strict legal framework (Majelis Permusyawaratan Rakyat Republik Indonesia, 2020).

In the domain of digital content supervision, the state exercises its administrative authority through the Ministry of Communication and Information Technology with reference to a number of regulations, including: a) Law No. 11 of 2008 concerning Electronic Information and Transactions (ITE Law); b) Government Regulation No. 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (PP PSTE); c) Minister of Communication and Information Technology Regulation No. 5 of 2020 concerning Private Electronic System Operators (*Permenkominfo* PSE).

Through this regulation, *Kominfo* is given administrative authority to examine, assess, and even block access to digital content that is deemed to be in violation of laws and regulations or to disturb public order. However, in practice, this authority is often exercised without adequate legal accountability mechanisms, thereby triggering criticism of alleged violations of the principles of justice and freedom of expression (Banimal et al., 2025).

In State Administrative Law, every government action must be based on the principle of legality as a guarantee of legal protection for citizens. This principle emphasizes that every action must be based on legitimate authority, carried out in accordance with established procedures, and must not deviate from the purpose of the law or be used excessively to the point of exceeding the limits of authority (*detournement de pouvoir*).

As explained by Philipus M. Hadjon, this principle of legality must be aligned with the General Principles of Good Governance (AUPB), such as: a) the principle of accuracy; b) the principle of openness; c) the principle of impartiality; d) the principle of proportionality; e) the principle of protection of human rights (Hadjon, 2011). State oversight of digital content, if carried out without transparency, notification to content providers, or appeal mechanisms, violates the principles of openness and proportionality. For example, in the case of the blocking of Reddit and Vimeo in 2021, administrative actions were taken without any dialogue with users or service owners, and the public was not given access to the legal considerations used by the government (Komnas HAM RI, 2023).

Digital content supervision frequently involves the exercise of administrative discretion, defined as the authority granted to government officials to make decisions in particular circumstances beyond rigid legal norms. Within the Indonesian legal framework, such discretion is formally recognized under Law No. 30 of 2014 on Government Administration; however, its use is subject to important limitations. Specifically, discretionary actions must be oriented toward the public interest, must not conflict with prevailing laws and regulations, and must uphold the principles of justice and rationality (Syamsudin, 2014).

In practice, this discretion risks being abused if it is not accompanied by strong oversight mechanisms and public participation. In the case of blocking websites “belonging to indigenous peoples” that voice land conflicts, discretionary actions by state officials are considered to have failed to take into account human rights and freedom of expression, but rather to have sided with the interests of investors.

The blocking of digital content by the Ministry of Communication and Informatics (Kominfo) constitutes a form of administrative decision (*beschikking*), which is concrete, individual, and final in nature. According to Ridwan HR, such decisions may be legally challenged through administrative objection mechanisms or by filing a lawsuit before the State Administrative Court (*Pengadilan Tata Usaha Negara*—PTUN) when they are deemed to infringe upon the rights of citizens (Ridwan, 2014). However, in practice, no internal administrative appeal mechanism currently exists to enable internet users to request a review of content-blocking decisions. Consequently, the PTUN remains the sole formal avenue for dispute resolution, which is often ineffective in practice due to the costs, complexity, and time required to pursue litigation. This institutional gap reflects a failure to uphold the principle of due process of law, a fundamental element of the rule of law and a key safeguard against arbitrary administrative action (Coglianese, 2021; Keller, 2021). In this regard, the state bears an obligation to provide accessible, efficient, and inclusive administrative remedies for individuals adversely affected by government decisions, particularly within the rapidly evolving context of digital governance (Douek, 2020).

From the perspective of State Administrative Law, digital content supervision must therefore be reformulated to better ensure legal certainty for both electronic system operators and the broader user community. Any decision to block digital content should be preceded by clear written notification, accompanied by a reasoned explanation and supported by transparent procedures. Moreover, the establishment of an independent oversight body to review policies with the potential to restrict civil liberties is essential to prevent the abuse of administrative discretion and to strengthen institutional accountability (Brown & Korff, 2020; Suzor, 2019).

In addition, it is crucial to develop an electronic-based administrative appeal mechanism that is accessible, affordable, and capable of delivering timely decisions as an effective remedy for affected parties. Strengthening participatory governance is equally important; the state should enhance public involvement in the formulation and evaluation of digital regulations, in line with multi-stakeholder governance models adopted in jurisdictions such as the European Union and Canada, which emphasize transparency, accountability, and the protection of fundamental rights in platform regulation (Flew, 2021; Global Partners Digital, 2021).

### **3.4 Balancing Content Regulation and Human Rights Protection**

Advances in digital technology have logically led to the emergence of a wide variety of content that is rapidly disseminated in the virtual public sphere. The state, through its administrative institutions, has a responsibility to maintain public order and prevent the misuse of digital space, such as the spread of hoaxes, hate speech, pornography, radicalism, and other violations of social ethics (*Kementerian Komunikasi dan Informatika*, 2022). However, state efforts to monitor content must not be carried out in ways that violate human rights principles, particularly the right to freedom of expression and the right to information, which are guaranteed in Articles 28E and 28F of the 1945 Constitution of the Republic of Indonesia and various international human rights instruments that Indonesia has ratified, such as the International Covenant on Civil and Political Rights (ICCPR) through Law No. 12 of 2005 (Hamid Awaludin, 2005).

This paradox poses a dilemma: how can the state fulfill its obligation to maintain digital security and order without sacrificing the fundamental rights of its citizens? The answer lies in the concept of balance between the regulatory function of the state and

the guarantee of human rights protection, as stipulated in the principles of modern administrative law.

Restrictions on freedom of expression are permissible as long as they comply with applicable laws. According to international human rights law doctrine, such restrictions are only valid if they are established by law, have a legitimate aim, and are considered necessary and proportionate in the context of a democratic society (UN Human Rights Committee, 2011).

The principle of proportionality requires that any restriction of rights not be excessive, and that it strike a balance between the public interest to be protected and the rights of the individuals affected (Harris et. al., 2018). Therefore, actions such as blocking websites, deleting accounts, or removing content must be accompanied by clear legal arguments, notification mechanisms, and access to fair and open administrative appeal procedures. In the Indonesian context, the practice of blocking access to digital content still shows weaknesses in the application of the principle of proportionality. For example, the total blocking of platforms such as PayPal and Steam in 2022 was carried out without sufficient notification and ignored the economic and social impact on users who had not committed any violations (ELSAM, 2022a).

Within the framework of administrative law, the state functions not only as a regulator but also as a guardian and protector of the fundamental rights of its citizens. This dual role must be exercised in a balanced manner by adhering to the principles of good governance, including transparency in decision-making, accountability, and meaningful public participation in the process of digital content supervision (Hadjon, 2011).

In line with this perspective, the National Human Rights Commission (*Komnas HAM*) has emphasized in its annual report that the state must establish digital surveillance mechanisms that are transparent, accountable, and respectful of citizens' constitutional rights (Komnas HAM RI, 2023). Such mechanisms should include procedural safeguards, such as providing individuals with the opportunity to respond prior to content removal, as well as ensuring the availability of legal remedies to restore rights in cases of erroneous administrative decisions.

Comparatively, several democratic jurisdictions have implemented more participatory and accountable models of content governance that may serve as references for policy reform in Indonesia. In Germany, the Network Enforcement Act (*NetzDG*) requires digital platforms to remove unlawful content within a specified timeframe while also ensuring that users have access to appeal mechanisms. In Canada, a consultative approach has been adopted through institutional arrangements that facilitate engagement between the state, platform providers, and the public in the formulation of digital regulation. Meanwhile, the European Union, through the Digital Services Act (DSA), emphasizes the importance of algorithmic transparency, content auditing, and the protection of user rights through structured and accessible appeal systems (European Commission, 2022).

These models demonstrate that digital content regulation does not necessarily entail repressive restrictions on freedom of expression; rather, it can be implemented through a human rights-based regulatory approach grounded in democratic governance. Contemporary scholarship emphasizes the importance of balancing state intervention with procedural safeguards, transparency, and accountability in platform governance (Suzor, 2019; Flew, 2021).

To achieve a balance between content monitoring and the protection of human rights, several strategic measures can be proposed. First, regulatory reform should

prioritize the elevation of content governance frameworks into statutory law, rather than relying solely on ministerial regulations, in order to enhance legal certainty and democratic legitimacy (Coglianese, 2021). Second, it is essential to establish an independent oversight body responsible for monitoring digital content, involving representatives from civil society, legal experts, and technology industry stakeholders, thereby ensuring pluralistic and accountable governance (Brown & Korff, 2020).

Furthermore, the development of an accessible, online-based administrative appeal mechanism is crucial to provide users with timely, affordable, and effective remedies against content moderation decisions (Douek, 2020). At the same time, strengthening public legal and digital literacy constitutes an integral component in promoting awareness and empowering citizens to exercise and defend their digital rights in an increasingly complex information environment (Flew, 2021). Ultimately, this approach is expected to foster the development of a healthy and democratic digital ecosystem that upholds human dignity, while reinforcing the role of State Administrative Law as a cornerstone of justice in the exercise of executive power in the digital era.

### **3.5 Freedom of Expression in the Perspective of Pancasila in Digital Media**

This study finds that Pancasila has not been optimally operationalized as an interpretative framework in governing freedom of expression in the digital sphere. Instead, it tends to be positioned merely as a normative justification without direct implications for administrative practices in digital content surveillance. This condition creates a gap between the foundational values of Pancasila and the empirical realities of digital governance identified in the previous sub-sections, particularly concerning the lack of transparency, limited public participation, and the absence of structured administrative remedies.

In this context, Pancasila should not be understood merely as a philosophical foundation, but rather as an interpretative governance framework for evaluating and guiding digital content regulation. Each of its principles can be operationalized as a normative parameter for assessing administrative practices (Kaelan, 2016; Permana & Prasetyo, 2025).

First, the principle of Belief in the One and Only God reflects the importance of public morality in digital expression. However, content regulation based on moral considerations must be applied proportionally and with clearly defined standards. In practice, vague definitions of “immoral” or “inappropriate” content risk enabling arbitrary interpretation and potential abuse of regulatory authority (Shihab). Second, the principle of Just and Civilized Humanity emphasizes the protection of human dignity in the digital sphere. Nevertheless, as reflected in the absence of effective appeal mechanisms, users’ rights to legal protection and *effective remedies* are not adequately guaranteed. This condition reflects a deficit in procedural justice that is inconsistent with the values of civilized humanity (Dewi, 2024; Ansar & Poerba, 2024).

Third, the principle of the Unity of Indonesia requires that digital spaces contribute to social cohesion. However, overly restrictive and non-transparent content control measures may instead erode public trust in state institutions, potentially leading to fragmentation rather than unity (Nasoha et. al., 2025; Hardiman, 2009). Fourth, the principle of Democracy Guided by the Inner Wisdom of Deliberation underscores the necessity of participatory and deliberative policymaking. Yet, as previously identified, digital content governance in Indonesia remains largely top-down, with limited avenues for public engagement. The absence of structured administrative appeal mechanisms

further indicates that participatory principles have not been substantively implemented (Mudrikah et. al., 2024).

Fifth, the principle of Social Justice for All Indonesians demands equitable access to digital spaces and legal protections. In practice, disparities in access to remedies and the lack of inclusive regulatory mechanisms demonstrate that current policies have not fully embodied the principle of social justice in the digital domain (Nasoha et. al., 2025).

Taken together, these findings suggest that the core issue lies not in the absence of normative values, but in the failure to translate Pancasila into concrete governance practices. Therefore, Pancasila must be reinterpreted as an operational and evaluative framework in digital governance, emphasizing participation, transparency, accountability, and the protection of fundamental rights.

As a governance framework, Pancasila holds significant potential to reconcile the tension between digital content regulation and the protection of freedom of expression. However, this potential can only be realized if its principles are not confined to symbolic references, but are systematically integrated into regulatory design, administrative procedures, and legal protection mechanisms (Daffana, 2024). In this way, a Pancasila based digital governance model can strengthen both state legitimacy and the protection of freedom of expression within a democratic rule-of-law framework.

#### 4. Conclusion

Digital content monitoring on Over The Top (OTT) platforms in Indonesia requires a fundamental recalibration toward a democratic rule-of-law framework and stronger human rights protection. Centralized administrative approaches that lack transparency and effective appeal mechanisms risk undermining freedom of expression and due process guarantees. Therefore, comprehensive policy reform is urgently needed through the strengthening of statutory legal foundations, clear limitations on administrative discretion, and the consistent application of proportionality, transparency, and public participation principles. Anchored in Pancasila as Indonesia's normative foundation, freedom of expression must be protected as a constitutional right exercised responsibly to ensure a fair and sustainable balance between content regulation and the protection of digital rights. Further research is recommended to adopt a sociological-legal or empirical approach by integrating qualitative and quantitative methods such as interviews, case studies, and policy impact assessments to provide a more comprehensive understanding of digital content governance.

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