

CCPR 140th Session - Indonesia Rebuttal Notes

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1. Committee questions regarding EIT laws' constitutionality

GoI response: “The criminalization provisions of EIT laws are being replaced by the recent amendment in 2023 to align with the criminal code provisions which have been amended in 2022.”

Follow up:

Alignment with the new criminal code cannot be the basis for acceptability of EIT law because the new criminal code provisions violate international human rights standard and EIT law simply tracks after them.

According to the International Commission of Jurists (ICJ), the revised [EIT] Law:

- (1) has the overbroad and vague provisions criminalizing “contents that violate propriety” (**article 27(1)**); defames another person (**article 27A**); and “content that incites, persuades or influences” others or that “causes feelings of hatred or hostility” based on protected characteristics (**article 28(2)**).
- (2) has harsh imprisonment and criminal fines if convicted (**articles 45 and 45A**).¹
- (3) incorporates a new provision that imposes criminal liability for intentionally disseminating content that a person “knew contained false statements that cause public unrest” (**article 28(3)**), which may result in imprisonment if convicted (**article 45A(3)**).

Examples of the continued rights-infringing application of EIT law:

- (1) January 2024: environmental activist Daniel Tangkilisan was detained under the EIT law for allegedly spreading hate speech on social media.²
- (2) December 2023: journalist Aiman Witjaksono summoned by the Jakarta Metropolitan Police for alleged defamation related to a statement that alleged partiality and lack of neutrality among certain members of the Indonesian National Police ahead of the 2024 general elections.³

¹ <https://www.icj.org/indonesia-newly-revised-ite-law-threatens-freedom-of-expression-and-must-be-amended/>

² <https://mediaindonesia.com/humaniora/646989/setop-kriminalisasi-aktivis-lingkungan-daniel-frits-maurits>

³ <https://bnnbreaking.com/politics/indonesian-journalist-fails-to-attend-police-summons-over-alleged-defamation/>

- (3) 27th January 2024: he was called in for questioning again⁴, this time being investigated under Articles 14 (“false news”) and 15 (“public unrest”) of Law No. 1 of 1946. His mobile phone was also confiscated by the police.⁵
- (4) 30th January 2024: the Institute for Criminal Justice Reform (ICJR) called on the authorities to halt the investigation as there was no legal basis to undertake such an action.⁶
- (5) 21 July 2023: Indonesia blocked access to the Distributed Denial of Secrets website.⁷
- (6) Around the end of December 2023, Indonesia blocked access to Hypixel, a popular Minecraft server.⁸

2. Committee questions regarding appeals process for blocked content

GoI response: “We created a new framework under MR5/2020 under which civilians can file complaints. ESOs must propose for government to open website again and can appeal to state courts”

Follow up: MR 5/2020, Art. 20(1): provides a process for “normalization” for ESOs that have their access blocked; does not provide a mechanism for individuals’ whose content is blocked.⁹ GoI does have a civilian complaint mechanism for reporting “unlawful” content, not for appealing content takedowns.¹⁰ Also, the fact that ESOs can always sue in court to reopen the website does not absolve the due process defect of not having judicial review before the blocking.

3. Committee questions regarding transparency of content takedown process

GoI response: “When a website is blocked there is a template saying why MR 5/2020 provides explanation for content takedown, and requires the government institutions to pinpoint the prohibited content”

Follow up: When users attempt to access blocked sites, the MOCI redirects to a “template”¹¹ (screenshot included below) that allows you to search the URL you are attempting to access.

⁴<https://www.cnnindonesia.com/nasional/20240109140900-12-1047176/polisi-tak-terapkan-uu-ite-dalam-kasus-aim-an-soal-aparat-tak-netral>

⁵<https://megapolitan.kompas.com/read/2024/02/13/15415601/polisi-masih-periksa-saksi-terkait-kasus-pernyataan-ai-man-soal-dugaan>

⁶ <https://icjr.or.id/penyidik-tak-paham-aturan-proses-hukum-aiman-witjaksono-tidak-bisa-lanjut/>

⁷ <https://theintercept.com/2023/09/12/ddosecrets-censorship-reddit-twitter/>

⁸ <https://hypixel.net/threads/hypixel-ip-blocked-by-indonesian-govt.5553904/>

⁹ <https://freedomhouse.org/country/indonesia/freedom-net/2023>

¹⁰ <https://aduankonten.id/>

¹¹ <https://trustpositif.kominfo.go.id/>



Fill in the Domain/URL/Keyword you want to search for in the column below, just 1 part of the word, for example: 'Domain'. Then click 'SEARCH DATA' to carry out a search. You do not need to include 'http://' at the beginning of the search word or the trailing slash '/' at the end of the search word.

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GoI does publish daily press releases of blocked content.¹² The GoI’s daily press releases do not provide any strong evidence explaining why the content falls into the category of “negative” content they are placing it under.

The MOCI website also provides a statistics for all posts that were blocked in a given time period,¹³ but there is no way to further investigate the blocked content in a given category or retrieve nuanced information on the reasons for blocking.

Lack of transparency is exacerbated by the vagueness of the underlying provisions authorizing takedowns. For example, MR 5/2020, Art. 14(3)(c): One of the “urgent” content which ESOs have only four hours to remove¹⁴ is “content causing an unsettling situation for the public and disturbing public order.” No amount of information will provide sufficient transparency on why certain posting is taken down for such a reason. For another example, MR5/2020, Art. 9(3), (4) defines “prohibited content” to be taken down as follows (highlight added):

¹² <https://trustpositif.kominfo.go.id/pdfhoaks>

¹³ <https://trustpositif.kominfo.go.id/Statistik>

¹⁴ *Id.*

(3) Private Electronic System Operator shall be obligated to ensure:

- a. The Electronic System does not contain any prohibited Electronic information and/or Electronic document; and
- b. The Electronic System does not facilitate the dissemination of prohibited Electronic information and/or Electronic documents.

(4) Prohibited Electronic information and/or Electronic document as referred to in paragraph (3) is classified into:

- Violation of the provisions of the law and regulation
- Community anxiety and disturbance in public order; and
- Inform ways or provide access on prohibited Electronic information and/or Electronic documents.