

Limits On Freedom Of The Press In A Democratic State: Between The Press Law And The Eit Law

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Abstract

Freedom of the press constitutes one of the essential pillars of a democratic state governed by the rule of law, as it plays a crucial role in social oversight, information dissemination, the formation of public opinion, and political education of citizens. A free and responsible press is therefore a fundamental prerequisite for the realization of transparent and accountable governance. Nevertheless, press freedom cannot be interpreted as an absolute or unlimited right. Within constitutional practice, such freedom remains subject to legal restrictions intended to safeguard the public interest, maintain social order, and ensure respect for the rights and reputations of individuals. In Indonesia, guarantees of press freedom are specifically regulated under Law Number 40 of 1999 on the Press, which affirms the principles of press independence, media autonomy, and dispute resolution mechanisms through the right of reply and the role of the Press Council. However, rapid developments in information and communication technology have expanded journalistic activities into the digital sphere, causing press products to intersect with Law Number 11 of 2008 on Electronic Information and Transactions, as amended. This situation has given rise to a dual regulatory framework that frequently generates legal debate, particularly when journalistic works are alleged to violate criminal provisions under the EIT Law. The application of the EIT Law to press activities potentially creates normative conflicts and raises concerns regarding the criminalization of journalism, which may undermine freedom of expression. Accordingly, this article aims to examine the limits of press freedom within the framework of a democratic rule-of-law state and to analyze the relationship, distinctions, and potential normative conflicts between the Press Law and the EIT Law. This analysis is expected to offer an academic contribution toward formulating a model of press freedom regulation that is proportional, equitable, and consistent with democratic principles and the protection of human rights.

Keywords: *Freedom Of The Press, Democratic Rule Of Law, Press Law, Eit Law, Legal Protection.*

INTRODUCTION

Press freedom is widely regarded as one of the most significant indicators for assessing the quality of democracy and the implementation of the rule of law within a state. In contemporary democratic systems, the press does not merely function as a channel for disseminating information to the public, but also serves as an instrument of social control capable of scrutinizing governmental conduct and the exercise of state power. The existence of a free, independent, and responsible press constitutes a fundamental prerequisite for the realization of transparent, accountable, and participatory governance. In the absence of press freedom, society is deprived of access to objective and balanced information, which may ultimately distort democratic processes (Repansah, 2024).

From the perspective of a democratic rule-of-law state, press freedom is inseparable from the recognition and protection of human rights. The rights to seek, receive, and disseminate information form an integral part of freedom of expression, which is constitutionally guaranteed. The press acts as an extension of the public voice, articulating collective interests and fostering healthy public discourse on government policies and actions. For this reason, the press is often referred to as the “fourth pillar of democracy,” standing alongside the executive, legislative, and judicial branches (Collins, 2021).

In Indonesia, the legal protection of press freedom gained strong institutional footing following the Reformasi era. The transition from an authoritarian political system to a democratic

order opened broader space for freedom of expression and media independence. Law Number 40 of 1999 on the Press marked a pivotal milestone in the history of Indonesian journalism, as it explicitly affirms press freedom and rejects censorship, banning, and state intervention in journalistic activities. This law emerged as a response to prior practices of press suppression that were considered incompatible with democratic principles and human rights standards (Fuqoha et al., 2019).

Beyond guaranteeing press freedom, the Press Law also establishes a framework for professional and ethical accountability. It emphasizes the obligation of the press to deliver accurate, balanced, and good-faith information. To ensure such accountability, the law introduces dispute resolution mechanisms through the right of reply, the right of correction, and the role of the Press Council as an independent body tasked with safeguarding press freedom and enhancing journalistic professionalism. This regulatory approach reflects a preference for ethical and administrative remedies rather than repressive criminal sanctions (Ramadhan, 2025).

Nevertheless, rapid advances in information and communication technology have fundamentally transformed journalistic practices and the media industry. Media digitalization has increasingly blurred the distinction between conventional press and digital platforms. Online news portals and internet-based media have become primary channels for public information. While this development broadens information access and encourages public participation, it simultaneously generates new legal challenges that were not fully anticipated by traditional press regulations (Mas'ud et al., 2025)

Within this context, Law Number 11 of 2008 on Electronic Information and Transactions, along with its amendments, was enacted to regulate activities in the digital sphere. The EIT Law aims to provide legal certainty for the use of information technology, including electronic transactions and digital content governance. However, in practice, several of its provisions particularly those concerning defamation, hate speech, and the dissemination of electronic information have frequently been applied to journalistic activities and online press products (Situmeang et al., 2022).

The application of the EIT Law to journalistic works gives rise to complex legal issues. Journalistic products that should fall under the protection of the Press Law may instead be subjected to criminal provisions under the EIT Law, resulting in overlapping regulatory regimes. This situation raises fundamental questions regarding the limits of press freedom and legal certainty for journalists in carrying out their professional duties. The ambiguity surrounding these boundaries creates the risk of press criminalization, especially when journalistic reporting involves politically or economically powerful actors (Alhakim, 2022).

The phenomenon of press criminalization through the EIT Law has sparked concerns about the emergence of a chilling effect on journalists and media institutions. Such an effect may encourage self-censorship, where journalists refrain from reporting on sensitive or critical issues for fear of facing criminal prosecution. Over time, this condition threatens to erode the watchdog role of the press and undermine the overall quality of democracy (Asrun, 2016).

From the standpoint of rule-of-law theory, limitations on press freedom are permissible but must be imposed in a strict and proportional manner. Human rights limitation principles require that any restriction be prescribed by law, pursue a legitimate aim, and be proportionate, without negating the essential substance of the right itself. Accordingly, the enforcement of the EIT Law against press activities must be critically examined to determine whether it aligns with these principles or exceeds the boundaries justified in a democratic rule-of-law system (Haqqullah & Safira, 2025)

In addressing regulatory conflicts between the Press Law and the EIT Law, the principle of *lex specialis derogat legi generali* becomes particularly relevant. In theory, the Press Law constitutes a special statute that specifically governs journalistic activities and press institutions. Consequently, disputes related to journalistic products should, in principle, be resolved through

the mechanisms established under the Press Law rather than by directly invoking the more general provisions of the EIT Law. However, in law enforcement practice, this principle has not been applied consistently. (Djulhijjah & Kencono, 2024)

Such inconsistency has resulted in legal uncertainty for members of the press. On the one hand, journalists are expected to fulfill their role as agents of social control and information providers for the public. On the other hand, they face the threat of criminal liability that may jeopardize their professional freedom and personal security. This condition highlights a gap between the normative guarantees of press freedom enshrined in legislation and the realities of legal enforcement on the ground. (Risman et al., 2022)

Furthermore, the rise of social media and citizen journalism has further complicated the distinction between press products and non-journalistic content. Not all information disseminated through digital platforms qualifies as journalistic work that meets professional standards (Ramajayadi et al., 2025). This condition is supported by studies showing that digital platforms blur the boundaries between professional journalism and user-generated content, creating challenges in accountability and verification processes (Lim, 2013)

In the Indonesian context, the rapid expansion of digital media has encouraged public participation in information production, but at the same time increases the spread of misinformation and unverified content that does not comply with journalistic ethics (Nugroho et al., 2013)

Therefore, a clear understanding of the criteria for journalistic products is essential to prevent the misuse of Press Law protections, while simultaneously ensuring adequate legal safeguards for professional journalists. Without such clarity, press freedom may be invoked improperly, potentially undermining both legal certainty and media credibility.

Against this backdrop, the study of press freedom limitations within a democratic rule-of-law framework becomes increasingly relevant and urgent. An analysis of the relationship between the Press Law and the EIT Law is necessary to identify a balance between protecting press freedom and enforcing law in the digital environment. Previous studies indicate that press freedom in democratic societies must be accompanied by legal responsibility, particularly in protecting reputation and maintaining public order (Oktafia & Ariyani, 2020)

Regulatory harmonization is therefore crucial to ensure that press freedom is preserved without neglecting other legitimate legal interests. In the context of digital regulation, legal overlap between conventional press law and electronic information law requires integrative approaches to avoid normative conflicts and inconsistent law enforcement

Accordingly, this research focuses on examining the boundaries of press freedom in a democratic rule-of-law state by critically analyzing the relationship and potential normative conflicts between the Press Law and the EIT Law. This study is expected to contribute academically to the discourse on press law in Indonesia and to serve as a reference for policymakers and law enforcement authorities in formulating a more just, proportional, and democratic regulatory and enforcement model.

RESEARCH METHODS

This study employs a normative juridical method, a legal research approach that conceptualizes law as a set of binding norms and rules within the statutory legal system. This method is considered appropriate because the primary objective of the research is to examine and analyze the limits of press freedom within a democratic rule-of-law framework through a normative assessment of the regulatory provisions contained in Law Number 40 of 1999 on the Press and Law Number 11 of 2008 on Electronic Information and Transactions, including its amendments. Accordingly, the research does not emphasize empirical data or the behavior of

legal subjects, but rather focuses on the coherence, harmony, and implications of legal norms governing press freedom in Indonesia.

The approaches adopted in this research consist of the statutory approach and the conceptual approach. The statutory approach is applied by systematically examining the substance, principles, and structural arrangements of press freedom as regulated under the Press Law and the EIT Law, including the identification of potential overlaps and normative conflicts between the two statutes. Meanwhile, the conceptual approach is used to explore fundamental concepts such as the democratic rule of law, press freedom as a human right, permissible limitations on rights, and the application of the principle of *lex specialis derogat legi generali* in press law. This approach enables a deeper understanding of the objectives and meanings of legal regulation, not only from a textual standpoint but also from philosophical and theoretical perspectives.

Research materials are obtained through library-based research by reviewing various relevant legal sources. Primary legal materials include statutory regulations directly related to the object of the study. Secondary legal materials consist of national legal journals, legal textbooks, and scholarly articles discussing press freedom, media law, and the application of the EIT Law. In addition, tertiary legal materials are utilized to clarify legal terminology and concepts employed in this research. The use of diverse sources is intended to provide a comprehensive and in-depth understanding of the issues under examination.

Data analysis is conducted qualitatively by interpreting and systematically constructing legal norms, principles, and doctrines through logical legal reasoning. The stages of analysis include the classification of legal materials, interpretation of relevant provisions, and the formulation of conclusions based on coherent legal arguments. Through this analytical process, the study seeks to identify the ideal boundaries of press freedom within a democratic rule-of-law state and to determine the respective positions of the Press Law and the EIT Law in ensuring a fair and proportionate framework for the protection of press freedom (Rahayu & Sulaiman, 2020).

RESULTS AND DISCUSSION

RESULT

Press Freedom in a Democratic Rule-of-Law State

Press freedom within a democratic rule-of-law state constitutes a fundamental element that is inseparable from the principles of popular sovereignty and legal supremacy. It functions not only as a medium for disseminating information but also as a mechanism of public participation in democratic governance. The press plays a significant role in monitoring state power, ensuring transparency, and promoting accountability (Bukamo, 2021).

Furthermore, the press serves as a public sphere that enables the exchange of ideas and opinions in a free yet responsible manner. Through this function, the press contributes to the formation of rational public opinion and strengthens democratic legitimacy. Its position as a counterbalancing force prevents the concentration and abuse of power.

However, press freedom is not absolute. Limitations exist to protect other legal interests, including personal reputation, national security, and public order. Such limitations must comply with legality and proportionality principles to ensure they do not undermine democratic values (Hadi, 2022).

Comparison between the Press Law and the EIT Law in Regulating Journalistic Activities

The analysis reveals fundamental differences between Law No. 40 of 1999 on the Press and Law No. 11 of 2008 on Electronic Information and Transactions (EIT Law) in terms of scope, objectives, and legal approach.

The Press Law is specifically designed to regulate journalistic activities and emphasizes press freedom, independence, and ethical accountability. It prioritizes non-criminal dispute resolution mechanisms such as the right of reply, right of correction, and the role of the Press Council.

In contrast, the EIT Law regulates broader digital activities and electronic information. It adopts a more coercive approach, relying on criminal sanctions and fines as primary enforcement tools.

Table 1. Comparison of Regulatory Frameworks under the Press Law and the EIT Law

No	Aspect	Press Law No. 40 of 1999	EIT Law No. 11 of 2008
1	Scope	Journalistic activities and press institutions	Electronic information and transactions
2	Core principle	Press freedom and independence	Regulation of digital content
3	Dispute resolution	Right of reply, right of correction, Press Council	Criminal and civil proceedings
4	Sanctions	Administrative and ethical	Criminal penalties and fines
5	Legal approach	<i>Lex specialis</i> for the press	<i>Lex generalis</i> in the digital sphere

Normative Conflicts and Their Impact on Press Freedom

The coexistence of the Press Law and the EIT Law creates normative conflicts, particularly in cases involving journalistic products. The Press Law, as a *lex specialis*, should prevail over the EIT Law (*lex generalis*) when disputes relate to journalistic activities (Tambunan et al., 2025). However, in practice, law enforcement often applies the EIT Law directly without considering whether the content constitutes journalistic work.

This inconsistency results in legal uncertainty for journalists and media institutions. The findings indicate that such conditions create a chilling effect, leading to self-censorship and reduced critical reporting. This weakens the press's role in democracy and reduces the quality of public information (Dzhnii et al., 2025)

An Ideal Model for Limiting Press Freedom

An ideal framework for limiting press freedom must balance freedom of expression with the protection of other legal interests. The study identifies four key principles:

Table 2. Ideal Model for Limiting Press Freedom

No	Principle	Implementation
1	Legality	Restrictions must be clearly regulated by statute
2	Proportionality	Sanctions must be balanced and non-excessive
3	<i>Lex specialis</i>	Press disputes resolved under the Press Law
4	Journalist protection	Avoidance of criminalization of journalistic work

Discussion

Press Freedom in a Democratic Rule-of-Law State

Within a democratic state governed by the rule of law, press freedom constitutes a fundamental element that is inseparable from the principles of popular sovereignty and legal supremacy. Press freedom should not be understood merely as the right to convey and disseminate information to the public, but also as a vital means of public participation in democratic processes, particularly in monitoring the exercise of state power. Through its informative function and role as a mechanism of social oversight, the press plays a crucial role in ensuring public access to government policies, exposing abuses of authority, and promoting transparent and accountable governance (Bukamo, 2021; Lim, 2013)

In addition, the press in a democratic rule-of-law system serves as a public sphere in which ideas and opinions can be exchanged freely yet responsibly. An independent press enables society to obtain balanced and objective information, thereby fostering the formation of rational

public opinion. This condition strengthens democratic legitimacy, as political decisions and public policies are subject to open scrutiny and criticism through mass media (Nugroho et al., 2013)

Despite its strategic importance, press freedom is not absolute. Within the framework of the rule of law, every freedom is accompanied by legal and social responsibilities. Limitations on press freedom are intended to protect other legally recognized interests, such as the right to personal honor and reputation, national security, and the preservation of public order and morality. Nevertheless, such limitations must adhere to the principles of legality and proportionality to prevent misuse (Hadi, 2022).

Comparison between the Press Law and the EIT Law in Regulating Journalistic Activities

A comparison between Law Number 40 of 1999 on the Press and Law Number 11 of 2008 on Electronic Information and Transactions reveals fundamental differences in terms of regulatory objectives, scope, and legal approaches to the dissemination of information to the public. The Press Law is specifically designed to govern journalistic activities and the operation of press institutions as integral components of a democratic system. It places press freedom and media independence at the core of its regulatory framework, with a strong emphasis on protecting the public's right to obtain truthful, accurate, and balanced information.

In contrast, the EIT Law was enacted in response to the rapid development of information technology and electronic transactions. Its primary focus is not journalism, but the broader regulation of electronic systems and digital activities, including the control of online content that may cause harm to individuals, society, or the state. As a result, the EIT Law adopts a more coercive regulatory model, relying heavily on criminal sanctions and monetary penalties as the main instruments of enforcement. These differing orientations indicate that the two statutes are grounded in distinct philosophical foundations and pursue regulatory goals that are not entirely aligned.

By contrast, the EIT Law employs criminal law as the primary tool for regulating conduct in the digital environment. Provisions concerning defamation, hate speech, and the dissemination of electronic information are frequently invoked as legal grounds for initiating proceedings against journalists or online media outlets. When journalistic products are subjected to the EIT Law without due consideration of the distinctive nature of press activities, there is a paradigm shift from safeguarding freedom of expression toward a repressive regulatory approach that may unduly restrict press freedom (Aisyah et al., 2025).

This shift carries significant implications for legal certainty within the press sector. Journalists and media organizations may face criminal liability even when their work complies with professional standards and journalistic ethics. Such circumstances underscore the tension between the Press Law as a *lex specialis* that affords specific protection to journalistic activities and the EIT Law as a *lex generalis* with general applicability in the digital realm. The inconsistent application of the principle of *lex specialis derogat legi generali* risks creating legal uncertainty and weakening the role of the press as a cornerstone of democracy.

Accordingly, the comparative analysis of the Press Law and the EIT Law highlights the urgent need for regulatory harmonization to ensure responsible yet protected press freedom. Affirming the Press Law as the primary legal reference for resolving disputes involving journalistic products is a crucial step in preventing the criminalization of the press and in safeguarding the quality of democracy in the digital era.

Normative Conflicts and Their Impact on Press Freedom

The application of the Electronic Information and Transactions Law to journalists and mass media frequently generates normative conflicts with Law Number 40 of 1999 on the Press. These conflicts arise from fundamental differences in regulatory objectives, scope, and legal approaches adopted by the two statutes. Conceptually, the Press Law constitutes a special legal framework specifically designed to regulate journalistic activities by prioritizing press freedom

and ethical-based accountability mechanisms. In legal theory, the principle of *lex specialis derogat legi generali* therefore applies, meaning that the specific provisions of the Press Law should prevail over the more general provisions of the EIT Law when a legal dispute directly concerns journalistic products (Tambunan et al., 2025).

In practice, however, the application of this *lex specialis* principle has been inconsistent. Law enforcement authorities often rely on the EIT Law as the primary legal basis in cases involving journalists or media organizations without first assessing whether the disputed content constitutes journalistic work subject to the Press Law regime. The absence of the Press Council at the initial stages of handling press-related cases further reflects a limited understanding of the distinctive nature of journalistic activities and the normative dispute resolution mechanisms specifically established for the press.

This situation creates significant legal uncertainty for members of the press. On the one hand, journalists are expected to perform their watchdog function by uncovering facts of public interest. On the other hand, they face the constant risk of criminal prosecution under the EIT Law. Such uncertainty directly affects the willingness of the press to report on sensitive issues, particularly those involving abuse of power, corruption, or human rights violations committed by politically or economically influential actors.

A further consequence of this normative conflict is the emergence of a chilling effect that encourages self-censorship among journalists and editorial teams. Concerns over potential criminal liability lead media institutions to adopt an overly cautious stance or to avoid critical reporting that may trigger legal disputes. Over time, this environment weakens the role of the press as a pillar of democracy and diminishes the quality and diversity of information available to the public (Dzhnii et al., 2025).

Moreover, the normative tension between the Press Law and the EIT Law risks undermining public trust in the legal system. When regulations intended to safeguard press freedom are applied in an overlapping and inconsistent manner, the principles of legal certainty and substantive justice are compromised. Accordingly, it is necessary to reaffirm the status of the Press Law as a *lex specialis* and to strengthen coordination between law enforcement authorities and the Press Council. Such measures are essential to minimizing normative conflicts and ensuring that press freedom remains effectively protected within the framework of a democratic rule-of-law state.

An Ideal Model for Limiting Press Freedom

In a democratic state governed by the rule of law, certain limitations on press freedom are unavoidable. Nevertheless, such restrictions must not be imposed arbitrarily or excessively, as doing so would undermine the very essence of press freedom as a fundamental right. An ideal model for regulating press freedom is therefore required one that is capable of striking a fair balance between safeguarding freedom of expression and protecting other legitimate legal interests, including individual rights, public order, and national security.

An ideal framework for limiting press freedom must be grounded in the principle of legality, which requires that any restriction be clearly and explicitly prescribed by statutory law. This principle is essential to ensuring legal certainty and preventing abuses of power by law enforcement authorities. In the context of press freedom, limitations that lack a clear legal basis risk becoming instruments of suppression against journalists and media institutions.

In addition to legality, the principle of proportionality constitutes a core element in shaping appropriate limitations on press freedom. Sanctions imposed on the press must be measured, reasonable, and carefully calibrated in light of their potential impact on freedom of expression. Criminal sanctions, in particular, should be treated as a last resort (*ultimum remedium*), especially where disputes can still be resolved through ethical or administrative mechanisms as provided under the Press Law.

The principle of *lex specialis* plays a strategic role in this ideal regulatory model. Disputes arising from journalistic products should be addressed through the mechanisms established under the Press Law, with the involvement of the Press Council as an independent institution. This approach not only enhances legal certainty but also safeguards media independence from undue interference by state authorities. Accordingly, the EIT Law should not be applied directly to journalistic works without first exhausting the specialized procedures provided under the Press Law.

Furthermore, an ideal model for restricting press freedom must place the protection of journalists at the center of the legal system. The criminalization of journalistic work poses a serious threat to the press's role as a watchdog over power and creates a chilling effect that is detrimental to democratic life. The state therefore has a duty to foster a legal environment in which journalists can work professionally, critically, and responsibly without fear of criminal prosecution.

By implementing a press freedom limitation model based on these principles, press freedom can be preserved while still accommodating other legitimate legal interests. Such a model reflects the commitment of a democratic rule-of-law state to uphold human rights and to maintain a balanced relationship between freedom and responsibility.

Press freedom is a fundamental component of a democratic rule-of-law system, as it plays a vital role in promoting transparency, accountability, and public participation in governance. However, this freedom is not absolute and may be restricted, provided that such limitations are lawful, proportionate, and do not negate the core substance of the right itself. In Indonesia, press freedom is expressly guaranteed and specifically regulated under Law Number 40 of 1999 on the Press, which emphasizes the protection of media independence alongside ethical and professional accountability mechanisms.

Conversely, Law Number 11 of 2008 on Electronic Information and Transactions governs information dissemination in the digital sphere through a predominantly criminal law approach. The coexistence of the Press Law and the EIT Law has given rise to potential normative conflicts, particularly when journalistic works are subjected to criminal provisions of the EIT Law without due consideration of the distinctive nature of press activities. Such practices risk weakening press freedom, creating legal uncertainty, and encouraging the criminalization of journalists.

Accordingly, reaffirming the application of the principle of *lex specialis derogat legi generali* is of paramount importance by positioning the Press Law as the primary legal reference for resolving disputes involving journalistic products. In addition, regulatory harmonization and improved understanding among law enforcement authorities regarding press law and press dispute resolution mechanisms are essential. These measures constitute key steps toward preserving responsible press freedom while simultaneously protecting other legal interests within the framework of a democratic rule-of-law state.

CONCLUSION

Press freedom constitutes a fundamental component of a democratic state governed by the rule of law, as it serves as a primary means of information dissemination, the formation of public opinion, and oversight of the exercise of state power. The existence of a free and independent press is therefore a key prerequisite for transparent, accountable, and participatory governance. Nevertheless, press freedom is not absolute and may be subject to limitations, provided that such restrictions are grounded in law, pursue the protection of public interests and the rights of others, and are applied proportionately without undermining the core substance of the freedom itself.

In the Indonesian context, press freedom is specifically regulated under Law Number 40 of 1999 on the Press, which emphasizes the protection of media independence and establishes accountability mechanisms based on ethical standards and professional responsibility. However, rapid developments in information technology have resulted in journalistic activities increasingly intersecting with Law Number 11 of 2008 on Electronic Information and Transactions, a statute that relies predominantly on criminal law approaches to regulate digital content. This coexistence of regulatory frameworks has created the potential for normative conflicts, particularly when journalistic works are subjected to the criminal provisions of the EIT Law without due regard to the distinctive characteristics of press activities.

Accordingly, it is essential to reaffirm the application of the principle of *lex specialis derogat legi generali* by positioning the Press Law as the primary reference for resolving disputes involving journalistic products. In addition, regulatory harmonization and enhanced understanding among law enforcement authorities regarding press law are crucial steps in preventing the criminalization of the press and ensuring legal certainty. Through these measures, press freedom can be effectively safeguarded while still accommodating other legitimate legal interests within the framework of a democratic rule-of-law state.

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