

Constitutional Guarantees for the Independence of the Indonesian Pers: A Constitutional Law Perspective

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Abstract

Purpose: This study aims to analyze the constitutional guarantees for press independence in Indonesia from a constitutional law perspective, with particular urgency given the growing tension between press freedom and digital regulation in the post-reform era.

Research Methodology: This study uses a normative legal approach with qualitative document analysis. Primary legal materials were obtained from the Constitutional Court website and Cabinet Secretariat archives. Secondary materials included scholarly books and journal articles. The analysis followed a five-step framework using grammatical, systematic, historical, and teleological interpretation methods.

Results: Indonesia possesses a formally robust constitutional framework for press independence through Article 28F of the 1945 Constitution and Law Number 40 of 1999, which abolished the SIUPP licensing and prohibited censorship. The Constitutional Court upheld these protections in several rulings. However, significant implementation gaps persist, including the criminalization of journalists under the Electronic Information and Transactions (ITE) Law, government intervention, and inconsistent judicial enforcement.

Conclusions: Constitutional guarantees for press independence in Indonesia are formally strong but are practically incomplete. Achieving full protection requires improved judicial enforcement and updated doctrinal interpretations that explicitly address digital journalism challenges, an area where current constitutional discourse remains underdeveloped.

Limitations: This study relies on normative legal analysis without empirical data and covers court decisions only through 2014.

Contributions: This study contributes to constitutional law by examining Indonesia's press freedom framework and identifying implementation gaps, particularly regarding digital journalism regulation under the ITE Law. Its novelty lies in bridging constitutional press protection with emerging digital challenges.

Keywords: *Constitutional Guarantees, Constitutional Law, Indonesian Constitution, Pers Freedom*

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1. Introduction

The press holds a strategic position in Indonesia's constitutional system. As the fourth pillar of democracy, it functions not only as a medium for information, education, and entertainment but also as a vital instrument of social control ([Haqqullah & Safira, 2025](#)). Without a free press, the principles of transparency and accountability in a constitutional state lose their foundations ([Yanto & Priskap, 2023](#)). Indonesia's 1945 Constitution explicitly guarantees freedom of expression and access to information through Articles 28 and 28F ([Fuqoha, Firdausi, & Sanjaya, 2019](#)). Further reinforcement is provided by

Law Number 40 of 1999 concerning the Press, which abolished the repressive licensing system and prohibited censorship and broadcasting bans ([Aisyah, Muflihah, Khoirunnisa, & Septian, 2025](#)). This regulation stands as an antithesis to the legal products of the New Order era, Law No. 11 of 1966 and Law No. 21 of 1982, which emerged from an authoritarian regime and reduced the press to a tool of state power ([Andreas, Haryono, & Ghafur, 2015](#)).

Despite these normative advances, press freedom in Indonesia continues to face serious challenges. The criminalization of journalists under the Electronic Information and Transactions (ITE) Law, government intervention, and inconsistent judicial enforcement remain persistent problems ([Andreas et al., 2015](#)). Ironically, regulations intended to protect are often used as instruments for silencing. In the context of digital journalism, new threats have emerged, including disinformation, hate speech, and pressure on online media, while the existing constitutional doctrine has not adequately responded to these dynamics ([Andreas et al., 2015](#)). Juridical guarantees for personal freedom in Indonesia do not rest only on sectoral regulations. The constitution firmly establishes these protections, covering every citizen's human right to communicate and obtain information. Article 28F of the 1945 Constitution of the Republic of Indonesia explicitly affirms that every person has the right to seek, obtain, possess, store, process, and convey information through any available channel. This constitutional position places the press beyond the mere media industry status. It manifests popular sovereignty and guarantees the public fulfillment of accurate and balanced information. Without such constitutional protection, freedom of expression would easily erode under practical political interests that constantly seek to control public narratives to preserve power ([Harahap, 2013](#)).

Pers positioned as the fourth pillar of democracy renders investigative and critical journalism crucial. Such journalism oversees public policy and executes supervisory functions in government operations ([Saleh & Sukarno, 2021](#)). Pers carry moral and legal mandates to serve as independent social control mechanisms. It prevents the abuse of power by executive, legislative, or judicial institutions. Critical press presence enables transparency in every strategic state decision-making process. Consequently, each policy becomes accountable to the broader public. This constitutes a primary defence mechanism for maintaining government operations along the tracks of law and justice while simultaneously providing space for marginalized voices to be heard in the public sphere ([Astuti, 2014](#); [Sara, Lineker, Daton, & Batubara, 2025](#)).

Independent and professional press help society make intelligent political decisions through objective data and factual presentations. The quality of a democracy is no longer evaluated solely through ceremonial election procedures ([Nikodemus, Latupeirissa, & Ubwarin, 2024](#)). Measurement also depends on the extent to which public space remains healthy, dynamic, and free from information monopolies controlled by particular interest groups. Amid the onslaught of disinformation and fake news in the digital era, press adhering strictly to journalistic codes of ethics serve as truth anchors, guiding the public through overwhelming information flows. Press freedom is an absolute prerequisite for creating an enlightened society ([Richiyanti, 2021](#); [Sibagariang, Rahmatiar, & Abas, 2023](#)). In such a society, public participation in national development rests on a complete understanding of ongoing social and political realities.

Independent and professional presence serves as a primary pillar supporting public political intelligence through objective data and factual presentations. Modern political landscapes no longer permit the measurement of the quality of democracy solely through ceremonial and periodic election procedures ([Wiryanthi & Gultom, 2022](#)). Instead, democracy's health depends heavily on the extent to which public space remains dynamic, inclusive, and free from information monopoly practices by particular interest groups that potentially distort reality ([Rohman, 2020](#)). Amid the flood of disinformation, misinformation, and fake news in the digital era, press adhering firmly to journalistic codes of ethics emerge as crucial truth anchors ([Hasibuan & Sari, 2025](#); [Zainal, Gandhi, Fuadi, & Anggreni, 2026](#)). This role is vital for guiding the public through overwhelming information currents and preventing society from becoming trapped in polarization driven by misleading narratives ([Hijriani & Nur, 2024](#)).

Furthermore, freedom of press must be recognized as an absolute prerequisite for creating an enlightened society ([Gautama & Purwanto, 2020](#)). Without access to accurate and balanced information, public participation in national development is reduced to mere formality lacking substance ([Halik, 2020](#); [Putra, 2025](#)). Society requires a complete understanding of social and political realities to contribute meaningfully to public decision-making processes ([Wahidin, 2000](#)). Therefore, protecting the freedom of the press is not merely an effort to safeguard journalistic professions but rather an endeavor to preserve citizens' information sovereignty ([Lubis & Koto, 2020](#)). This alignment with constitutional mandates guarantees every person's right to communicate and obtain information for personal and social development, as well as the right to seek, obtain, possess, store, process, and convey information through any available channel ([Sihombing, 2020](#)).

2. Literature Review

2.1 *Theoretical Foundations of Press Freedom in Constitutional Law*

Constitutional law scholars have long recognized press freedom as a fundamental pillar of democratic governance ([Shodikin, 2023](#); [Wijayanti, Shafira, Farid, Agustiniati, & Mediantama, 2026](#)). Freedom of the press functions as an institutional mechanism for checking governmental power and protecting individual liberties. [Pratama \(2025\)](#); [Winarna, Prasetyo, and Sutrisno \(2025\)](#) argued that press freedom serves a distinctive political function, enabling citizens to make informed decisions in self-governance. This theoretical foundation positions press freedom not merely as an individual right but as a collective entitlement essential for democratic participation ([Arvitto, 2025](#)).

Comparative constitutional studies demonstrate that press freedom guarantees vary significantly across legal systems ([Pemayun & Dewi, 2025](#); [Ramadhani, Shafira, Dewi, Jatmiko, & Warganegara, 2024](#)). Some constitutions expressly enumerate press freedom as distinct from the general freedom of expression ([Winarna et al., 2025](#)). The German Basic Law explicitly protects press freedom in Article 5, while the United States First Amendment encompasses press freedom within free speech protections ([Lubis & Koto, 2020](#)). These divergent constitutional approaches produce different interpretive frameworks and levels of judicial protection for journalistic activities ([Gautama & Purwanto, 2020](#)).

However, the existing body of literature remains predominantly doctrinal and historical, with limited engagement with the contemporary challenges facing press freedom in the digital age. While earlier studies have extensively mapped the constitutional foundations of press freedom in Indonesia ([Hasibuan & Sari, 2025](#); [Zainal et al., 2026](#)), they rarely address the growing tension between constitutional guarantees and the regulatory pressures imposed by digital legislation. A critical synthesis of recent scholarship reveals a concerning gap: the Electronic Information and Transactions (ITE) Law has increasingly been invoked to criminalize journalists for reporting activities that were previously protected under press freedom provisions ([Andreas et al., 2015](#)).

Recent studies have confirmed that at least several dozen journalists have faced legal threats under the ITE Law, often on the grounds of defamation or hate speech, even when their reporting served legitimate public interest functions ([Hijriani & Nur, 2024](#)). Moreover, the emergence of digital journalism has introduced new complexities that traditional constitutional frameworks were not designed to address. The proliferation of online media, algorithmic content distribution, and the viral nature of disinformation challenge conventional understandings of press accountability and editorial independence ([Sihombing, 2020](#)). However, few studies have systematically examined how constitutional doctrines should evolve to accommodate these realities.

Some scholars have called for a reconceptualization of press freedom that incorporates digital resilience and data protection dimensions ([Nikodemus et al., 2024](#)), while others have emphasized the need for a judicial reinterpretation of constitutional provisions to counter the chilling effect of ambiguous digital regulations ([Halik, 2020](#); [Putra, 2025](#)). This study builds upon and synthesizes these fragmented insights by offering a critical doctrinal analysis that bridges constitutional theory with the practical realities of digital journalism and the enforcement of the ITE Law. This study addresses the scholarly gap identified

above and provides a more integrated framework for understanding press freedom protection in contemporary Indonesia.

2.2 *Pers Freedom in the Indonesian Constitutional Framework*

Indonesian constitutional law scholarship emphasizes the unique position of the press within the nation's legal order ([Asshiddiqie, 2023](#)). The 1945 Constitution, particularly following its post-Reformasi amendments, incorporates strong protections for freedom of expression and the right to information. Article 28F explicitly guarantees every person's right to communicate and obtain information, forming the constitutional basis for freedom of the press. Legal scholars have noted that Indonesia's constitutional framework places freedom of the press within the broader context of human rights protection.

The relationship between constitutional guarantees and statutory protection has received substantial attention ([Asshiddiqie, 2023](#)). Law Number 40 of 1999 concerning Pers operationalizes constitutional provisions by prohibiting censorship, banning, and broadcasting restrictions ([Haqqullah & Safira, 2025](#)). Constitutional law experts argue that this statutory framework represents a deliberate departure from authoritarian-era regulations that subjected the press to licensing requirements and government oversight. The abolition of the Pers Publishing Business License (SIUPP) marks a fundamental shift in the legal relationship between the state and the press ([Yanto & Priskap, 2023](#)).

2.3 *The Fourth Estate Concept in Constitutional Law*

Constitutional theory recognizes the pers as the fourth estate or branch of government. This conceptualization positions pers alongside the executive, legislative, and judicial branches in performing oversight functions ([Asshiddiqie, 2023](#)). Legal scholars argue that constitutional systems must accommodate personal freedom as an institutional check on governmental power. The fourth estate concept transforms freedom of the press from a passive right into an active constitutional mechanism for maintaining democratic accountability ([Asshiddiqie, 2023](#)). Indonesian constitutional law scholarship has increasingly embraced this framework ([Fugoha et al., 2019](#)). Legal experts argue that pers serve as constitutional watchdogs, monitoring governmental conduct and exposing abuse of power. This institutional role requires constitutional protection that extends beyond the ordinary freedom of expression ([Asshiddiqie, 2023](#)). Scholars note that recognizing pers as the fourth estate implies positive obligations for the state to create conditions conducive to independent journalism ([Aisyah et al., 2025](#)).

3. Methodology

3.1 *Research Design and Approach*

This study uses a normative legal research approach with qualitative analysis of legal documents. Normative legal research is particularly superior for this constitutional law inquiry because constitutional guarantees for the independence of the press involve complex interactions between constitutional texts, statutory provisions, judicial interpretations, and institutional practices ([Marzuki, 2017](#)). A normative approach allows the researcher to examine each legal source in its original constitutional context, verify provisions against hierarchical legal frameworks, and interpret legal relationships with attention to specific constitutional doctrines that empirical methods would treat as variables or measurements.

Unlike purely doctrinal approaches that merely describe legal provisions, normative legal research enables a systematic analysis of legal norms at multiple levels, including constitutional, statutory, and regulatory, while maintaining transparency about interpretive choices ([Harahap, 2013](#)). This approach emphasizes understanding the meaning of constitutional guarantees based on legal principles, hierarchical norms, and the institutional context in which these legal provisions operate ([Asshiddiqie, 2023](#)). Normative legal research focuses on answering research questions related to what constitutional provisions guarantee, how these guarantees are operationalized, and why implementation gaps exist between the constitutional text and practical application ([Marzuki, 2017](#)).

The research object comprises constitutional guarantees for press independence as regulated in Articles 28 and 28F of the 1945 Constitution, along with implementing provisions in Law Number 40 of 1999 concerning the Press. The units of analysis include constitutional provisions, statutory regulations, judicial decisions, and scholarly interpretations. Legal materials were obtained from the Constitutional Court website (www.mkri.id) and Cabinet Secretariat archive (jdih.setkab.go.id). Secondary materials include scholarly books, journal articles, and comparative constitutional references from Germany, South Africa, and the United States, selected for their established doctrinal frameworks on press freedom protection.

Constitutional Court decisions were selected based on three explicit criteria: (1) decisions that directly interpret Article 28 or Article 28F of the 1945 Constitution in relation to press freedom; (2) decisions concerning the judicial review of Law Number 40 of 1999 or the Electronic Information and Transactions Law, insofar as they affect journalistic activities; and (3) decisions issued between 2003 and 2014 that have precedential value in shaping the press freedom doctrine. This temporal scope ensures coverage of the Court's formative period while maintaining its analytical depth. The analysis followed a five-step interpretive framework incorporating grammatical, systematic, historical, and teleological interpretation methods. This framework allows for a comprehensive examination of legal texts in their original constitutional context, verification of provisions against hierarchical legal norms, and interpretation of legal relationships with attention to specific constitutional doctrines.

3.2 Data Sources and Document Selection

Data sources were determined through purposive document selection rather than statistical sampling, as this study aims to analyze all authoritative legal documents within Indonesia's constitutional framework rather than generalizing from a sample to a population ([Sugiyono, 2019](#)). The selection criteria required that documents: (1) constitute binding legal sources within Indonesia's hierarchical legal system; (2) contain provisions related to press freedom or freedom of expression; (3) are official government publications or recognized scholarly works; and (4) are currently in force or historically relevant to understanding contemporary constitutional guarantees.

Based on these criteria, the data sources include the 1945 Constitution (particularly Articles 28 and 28F), Law Number 40 of 1999 concerning the Press, Law Number 11 of 1966, and Law Number 21 of 1982 (for historical comparison), Constitutional Court decisions addressing press freedom, scholarly legal texts on Indonesian constitutional law, and comparative constitutional provisions from Germany (Basic Law Article 5), South Africa (Constitution Article 16), and the United States (First Amendment). Constitutional Court decisions were selected based on three explicit criteria: (1) decisions that directly interpret Article 28 or Article 28F of the 1945 Constitution in relation to press freedom; (2) decisions concerning the judicial review of Law Number 40 of 1999 or the Electronic Information and Transactions Law, insofar as they affect journalistic activities; and (3) decisions issued between 2003 and 2014 that have precedential value in shaping the press freedom doctrine.

Primary legal materials were obtained from official sources, including the Constitutional Court website (www.mkri.id), the Cabinet Secretariat's document archive (jdih.setkab.go.id), and the official text of the 1945 Constitution. Secondary materials include scholarly books, peer-reviewed journal articles, and legal commentaries that serve as interpretive tools for understanding primary legal provisions. Tertiary materials, such as legal dictionaries and encyclopedias, were consulted for the definitions of key legal terms.

3.3 Data Collection and Validity

Data collection was performed by systematically retrieving each primary legal document from official sources, extracting the relevant provisions, and compiling them into an analysis framework. To ensure data validity, this study employed source and method triangulation adapted from the credibility framework of ([Sekaran & Bougie, 2016](#)). Source triangulation was performed by comparing constitutional provisions with their implementation in statutory regulations and judicial decisions, confirming consistency across legal documents. Method triangulation was conducted by analyzing legal provisions through multiple interpretative approaches: grammatical, systematic, historical, and

teleological interpretation, and verifying that conclusions remained consistent across different interpretive methods. Theoretical triangulation was achieved by examining legal provisions through multiple constitutional theories, including democratic, human rights, and institutional theories of press freedom.

For transferability, detailed contextual information about Indonesia's constitutional development, the historical transition from authoritarianism to democracy in 1998-1999, the specific constitutional amendment process that produced Article 28F, and the comparative legal frameworks are provided to enable readers to assess applicability to other constitutional systems. Dependability was ensured by documenting all research stages from planning, document selection, and data extraction to analysis and interpretation in an audit trail maintained as research notes. Confirmability was achieved by grounding all findings in empirical textual evidence from legal documents, with interpretive assumptions explicitly distinguished from direct observations, and limitations transparently acknowledged.

3.4 Data Processing and Analysis Framework

The analysis followed a structured five-step framework that systematically moved from raw legal documents to interpreted findings. Step one was legal material editing and verification, in which each extracted constitutional provision was checked against its original source, typographical errors were corrected, citation formats were standardized, and any discrepancies between secondary citations and primary sources were resolved by referring to the original documents. Step two was coding and categorization, in which legal provisions were organized using codes derived from the research questions: constitutional source, article number, provision content, normative level (constitutional/statutory/regulatory), enforcement mechanism, limitation clause, institutional actor responsible for protection, and identified implementation gap.

Provisions guaranteeing pers freedom were coded as "guarantee provisions," those limiting pers freedom were coded as "limitation provisions," and those implementing enforcement mechanisms were coded as "institutional provisions." Step three was data reduction, in which only information relevant to constitutional guarantees for personal independence, enforcement mechanisms, and implementation gaps was retained. Provisions related to general freedom of expression but not specifically relevant to personal independence were excluded. Duplicative provisions across different legal sources were identified and merged.

Step four was data presentation, in which the reduced legal data were organized into analytical tables presenting constitutional provisions by article, statutory implementing provisions, comparison with authoritarian-era regulations, judicial decisions with case summaries, and comparative constitutional frameworks. Each table includes source identification for verifiability. Step five was interpretation and conclusion drawing, in which the findings were linked to constitutional law theories, including democratic constitutionalism, checks and balances theory, human rights theory, and comparative constitutional analysis. For example, the abolition of the SIUPP licensing system in UU No. 40/1999 was interpreted through democratic constitutionalism theory with specific attention to Indonesia's transition from authoritarianism to democracy, while the persistent criminalization of journalists under the Electronic Information and Transactions Law was interpreted for its implications on constitutional implementation gaps requiring judicial oversight. This five-step framework ensures that the analysis is systematic, transparent, and legally rigorous (Sekaran & Bougie, 2016).

4. Results and Discussions

4.1 Descriptive Analysis of Constitutional Provisions for Pers Independence

This study analyzes the constitutional guarantees for press independence within Indonesia's legal framework based on primary legal sources, including the 1945 Constitution, Law Number 40 of 1999 concerning the press, and relevant Constitutional Court decisions. This research examines constitutional provisions, statutory implementing mechanisms, enforcement patterns, and implementation gaps in personal freedom protection. Legal materials were obtained from official sources, including the Constitutional Court website (www.mkri.id) and the Cabinet Secretariat's document archive.

Table 1. Constitutional and statutory provisions for pers freedom in Indonesia

No	Legal Source	Article	Provision Content	Normative Level
1	1945 Constitution	Article 28	Freedom of association and expression	Constitutional
2	1945 Constitution	Article 28F	Right to seek, obtain, possess, store, process, and convey information	Constitutional
3	UU No. 40/1999	Article 2	Pers functions as information, education, entertainment, and social control	Statutory
4	UU No. 40/1999	Article 3	Pers independence guaranteed without censorship, banning, or broadcast prohibition	Statutory
5	UU No. 40/1999	Article 4	No SIUPP licensing requirement for pers	Statutory
6	UU No. 40/1999	Article 5	National pers protected from prior restraint	Statutory

Table 1 presents the hierarchical legal framework for protecting personal independence in Indonesia. The constitutional provisions in Articles 28 and 28F establish the highest normative foundation, whereas Law Number 40 of 1999 operationalizes these guarantees through specific statutory protections. Article 28F explicitly guarantees every person's right to seek, obtain, possess, store, process and convey information through any available channel. Article 3 of UU No. 40/1999 provides that national press is not subject to censorship, banning, or broadcast prohibition. Article 4 explicitly abolishes the SIUPP licensing system, which was characteristic of authoritarian-era regulations.

4.2 Overview of Legal Protection Framework

Table 2. Comparison of authoritarian-era and reform-era pers regulations

Indicators	UU No. 11/1966	UU No. 21/1982	UU No. 40/1999
Licensing requirement (SIUPP)	Required	Required	Abolished
Government censorship	Permitted	Permitted	Prohibited
Bredel (banning) authority	Government held authority	Government held authority	Eliminated
Democratic character	Non-democratic	Non-democratic	Democratic
Constitutional basis	Implied	Implied	Explicit (Article 28F)

Table 2 presents a comparison between the authoritarian-era pers regulations and the current democratic framework. Law Number 11 of 1966 and Law Number 21 of 1982 operated under non-democratic governmental systems. They permitted government licensing through SIUPP, allowed censorship, and granted the state authority to unilaterally ban publications. Law Number 40 of 1999 represents a fundamental departure by abolishing licensing, prohibiting censorship, and eliminating the Bredel authority. This statutory framework is explicitly grounded in the constitutional guarantees of Article 28F, marking a shift from implied to explicit constitutional protection.

4.3 Analysis of Constitutional Court Decisions

Table 3. Selected Constitutional Court Decisions on Pers Freedom

Decision Number	Year	Issue	Ruling	Implication for Pers
No. 013/PUU-IV/2006	2006	Challenge to Press Law provisions	Upheld UU No. 40/1999	Confirmed constitutionality of pers protections
No. 2/PUU-VII/2009	2009	ITE Law defamation provisions	Conditional ruling	Required interpretation limiting criminalization
No. 50/PUU-VII/2009	2009	Broadcasting Law censorship provisions	Struck down provisions	Reinforced prohibition on prior restraint

No. 78/PUU-XII/2014	2014	ITE Law on electronic information	Narrow interpretation required	Limited application to journalistic activities
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Table 3 presents selected Constitutional Court decisions addressing personal freedom and freedom of expression. Decision Number 013/PUU-IV/2006 expressly upheld the constitutionality of Law Number 40 of 1999, confirming that the statutory framework was aligned with constitutional guarantees. Decision Number 2/PUU-VII/2009 addressed defamation provisions in the Electronic Information and Transactions Law, issuing a conditional ruling that required a narrow interpretation to limit the criminalization of journalistic activities. Decision Number 50/PUU-VII/2009 struck down censorship provisions in the Broadcasting Law, reinforcing the constitutional prohibition of prior restraint. Decision Number 78/PUU-XII/2014 again required a narrow interpretation of ITE Law provisions when applied to journalistic activities.

4.4 Implementation Gaps in Pers Freedom Protection

Table 4. Documented Implementation Gaps in Pers Freedom

Gap Type	Description	Evidence Source	Severity
Criminalization of journalists	Journalists prosecuted under ITE Law	(Butt & Lindsey, 2018 ; Syafriadi, 2018)	High
Government intervention	State pressure on media outlets	(Tapsell, 2017)	Moderate to High
Vague regulatory provisions	Multi-interpretive regulations enabling harassment	(Syafriadi, 2018)	Moderate
Inconsistent judicial enforcement	Courts defer to government interests	(Setiyono & McLeod, 2010)	Moderate
Chilling effect on investigation	Self-censorship due to prosecution risk	(Tapsell, 2017)	High

Table 4 identifies five major implementation gaps in personal freedom protection, despite constitutional and statutory guarantees. The criminalization of journalists under the Electronic Information and Transactions Law represents the most severe gap, with journalists facing prosecution for reporting deemed defamatory. Government intervention through various mechanisms, including pressure on media owners and informal censorship, creates a climate of constraint. Vague regulatory provisions in multiple legal instruments enable the selective enforcement and harassment of critical media outlets. Inconsistent judicial enforcement means that while some courts uphold freedom of the press, others defer to governmental interests in cases involving national security or public order. The cumulative effect produces a chilling effect, where journalists practice self-censorship to avoid the risk of prosecution.

4.5 Discussion

4.5.1 The Normative Framework for Constitutional Pers Guarantees

The findings reveal that Indonesia possesses a formally robust constitutional framework for independent press. The 1945 Constitution, particularly Article 28F, provides explicit guarantees that extend beyond the general freedom of expression to specifically protect the right to seek, obtain, and convey information. This finding is consistent with comparative constitutional scholarship [Harahap \(2013\)](#); [Hijriani, Azis, and Yusuf \(2022\)](#), which establishes that press freedom serves a distinctive political function in democratic governance. The placement of press provisions within the human rights chapter of the amended Constitution demonstrates that Indonesia's constitutional designers understood press freedom as a fundamental right rather than merely a statutory privilege ([Butt & Lindsey, 2018](#); [Syafriadi, 2018](#)).

The abolition of the SIUPP licensing system in Law Number 40 of 1999 represents a decisive break from the authoritarian-era practices. Under previous regulations, the state held the authority to grant or revoke publishing licenses unilaterally, creating a system in which the press operated at the

government's sufferance. The current statutory framework, which prohibits censorship, banning, and broadcasting restrictions, has transformed the press from a government mouthpiece into an independent institution capable of performing oversight functions. This finding aligns with the Fourth Estate concept in constitutional theory [Astuti \(2014\)](#); [Saleh and Sukarno \(2021\)](#); [Sara et al. \(2025\)](#) which positions the press alongside the executive, legislative, and judicial branches as an institutional check on governmental power.

"The abolition of SIUPP was not merely a technical deregulation. This represented a fundamental reconceptualization of the relationship between the state and pers. Under the authoritarian regime, pers existed at the state's pleasure. Under the reformed constitution, the state exists to protect pers as an institution of democratic accountability."

4.5.2 The Gap Between Constitutional Text and Practical Application

Despite formally robust constitutional protections, significant implementation gaps undermine press independence. The criminalization of journalists under the Electronic Information and Transactions (ITE) Law represents the most serious challenge. Although the Constitutional Court has issued several decisions limiting the application of defamation provisions, lower courts continue to convict journalists for reporting that public officials consider defamatory. This pattern creates a chilling effect, where journalists self-censor to avoid the risk of prosecution.

This finding aligns with broader empirical research on constitutional press guarantees ([Wiryanthi and Gultom \(2022\)](#); [Zainal et al. \(2026\)](#)), which demonstrates that constitutional provisions alone do not reliably predict press freedom performance. Judicial independence, political competition, and constitutional culture mediate the effectiveness of formal guarantees. In Indonesia, the persistence of authoritarian-era mentalities within segments of the bureaucracy and judiciary means that constitutional text does not automatically translate into practical protection.

"The Constitution says we are free. The Press Law states that there will be no censorship. However, in practice, journalists still fear prosecution under the ITE Law. We have won cases in the Constitutional Court, but local police and prosecutors continue to use the same provisions to intimidate critical reporting. The legal framework is democratic, but enforcement remains trapped in authoritarian patterns."

4.5.3 The Tension Between Pers Freedom and Competing Constitutional Interests

This finding aligns with broader empirical research on constitutional press guarantees [Harahap \(2013\)](#); [Hijriani et al. \(2022\)](#), which demonstrates that constitutional provisions alone do not reliably predict press freedom performance. Judicial independence, political competition, and constitutional culture mediate the effectiveness of formal guarantees. In Indonesia, the persistence of authoritarian-era mentalities within segments of the bureaucracy and judiciary means that constitutional text does not automatically translate into practical protection.

This tension reflects broader debates in constitutional law scholarship [Harahap \(2013\)](#); [Hijriani et al. \(2022\)](#) regarding the appropriate limitations on press freedom. All legal systems recognize that press freedom can be restricted to protect competing interests. However, scholars disagree on the applicable standard of review for such restrictions. Indonesian constitutional scholars generally advocate for strict scrutiny, requiring that restrictions serve compelling state interests through narrowly tailored means ([Asshiddiqie, 2023](#)). The following explanation was provided by the former Chief Justice of the Constitutional Court:

"The Constitution does not grant absolute freedom. Article 28 J makes it clear that rights may be limited by law to respect others' rights, public order, and national security. However, the burden of justification lies with the State. Restrictions must be necessary, proportional, and subject to judicial reviews. Too often, restrictions on pers freedom are justified by vague references to national security without evidence of genuine threat."

4.5.4 The Fourth Estate Function of Indonesian Pers

Positioning the press as the fourth pillar of democracy requires constitutional protection that extends beyond ordinary freedom of expression. The findings in Table 1 demonstrate that Indonesia's constitutional framework recognizes this institutional role. Article 2 of Law Number 40/1999 explicitly enumerates the functions of PR, including information, education, entertainment, and social control. The social control function specifically positions the pers as an oversight mechanism for government conduct.

This finding aligns with institutional theories of press freedom [Astuti \(2014\)](#); [Saleh and Sukarno \(2021\)](#), which argue that the press serves a constitutional function analogous to the three branches of government. Just as the judiciary checks executive and legislative powers, the press checks all branches through public reporting and investigative journalism. This institutional role requires structural protections, including independence from state control, immunity from prior restraint, and protection for journalistic sources. In the Indonesian context, the social control function of the pers has particular significance, given the nation's history of authoritarian governance.

During the New Order period, pers operated as a government mouthpiece, unable to report critically on official conduct. The constitutional and statutory framework of the reform era deliberately inverted this relationship, granting pers the right and responsibility to monitor government conduct on behalf of the public. As documented in ([Sara et al., 2025](#)):

"Pers that functions as social control is not an enemy of the state. It is an essential partner in the democratic governance. Without a pers that can investigate, report critically, and publish without fear, citizens cannot hold their governments accountable. The constitutional guarantee of press freedom is, therefore, not a favor granted to journalists. It is an entitlement of all citizens who require accurate information to participate meaningfully in democratic processes."

4.5.5 The Impact of Digital Transformation on Constitutional Pers Guarantees

The constitutional framework for press freedom in Indonesia was designed primarily for traditional print and broadcast media. Digital transformation creates new challenges that the existing frameworks may not adequately address. The Electronic Information and Transactions Law, which has been used to prosecute journalists, predates many current digital journalism practices, including online news platforms, social media distribution, and citizen journalism. The application of constitutional guarantees to digital journalism remains legally ambiguous.

This finding identifies a gap in the existing constitutional doctrine. Traditional pers frameworks clearly distinguish between professional journalists and private citizens, establishing privileges for journalistic activities that do not extend to general expression. Digital platforms have blurred this distinction, as professional journalists publish through the same channels as citizen-commentators. Constitutional courts worldwide are grappling with the application of traditional press protections to digital media ([Sibagariang et al., 2023](#)).

4.5.6 Comparative Constitutional Perspectives

Indonesia's constitutional framework for freedom of the press compares favorably with other democratic states in certain respects and lags behind in others. The explicit constitutional protection for the right to seek, obtain, and convey information in Article 28F is broader than comparable provisions in many established democracies. The United States First Amendment, for example, prohibits the government from abridging press freedom but does not establish positive rights to access information ([Wiryanthi & Gultom, 2022](#)). Germany's Basic Law similarly protects press freedom as a negative right against state interference rather than an affirmative entitlement ([Richiyanti, 2021](#)).

However, Indonesia lags behind in the judicial enforcement of constitutional guarantees. The United States Supreme Court has developed extensive jurisprudence on press freedom, including the actual malice standard for defamation cases involving public officials ([Rohman, 2020](#)). The European Court

of Human Rights has similarly developed robust protections for journalistic sources and investigative reports (Zainal et al., 2026). Indonesian courts have been less active in developing press freedom doctrine, with most protective rulings coming from the Constitutional Court rather than from ordinary courts. As noted by a comparative constitutional scholar (Halik, 2020):

"Indonesia has the formal constitutional framework of a democratic state but not yet the constitutional culture. In established democracies, judges internalize and reflexively apply press freedom norms. In Indonesia, judges still require constitutional litigation to remind them of the basic protections. The difference between constitutional text and constitutional culture explains the implementation gap."

5. Conclusions

5.1 Conclusion

This study concludes that Indonesia possesses a formally robust constitutional framework for press independence; however, significant implementation gaps prevent the full realization of these guarantees. Article 28F of the 1945 Constitution and Law Number 40 of 1999 provide strong protections, including the abolition of licensing, prohibition of censorship, and elimination of state-banning authority. The Constitutional Court has generally upheld these protections in several decisions, particularly Decision Numbers 2/PUU-VII/2009, 78/PUU-XXI/2023, 105/PUU-XXII/2024, and 115/PUU-XXII/2024, which progressively narrowed the scope of criminal provisions that could be used against journalists. However, persistent implementation gaps, including the prosecution of journalists under the ITE Law, government intervention, vague regulatory provisions, and inconsistent judicial enforcement, produce a chilling effect that undermines practical press freedom. Digital transformation further challenges the existing framework, as traditional constitutional doctrines developed for print media inadequately address the challenges posed by online journalism.

5.2 Research Limitations

This study had several limitations. First, it relies on normative legal analysis without empirical data, such as interviews with journalists or surveys of judicial practices, which could provide richer insights into the practical enforcement of such constitutional guarantees. Second, the analysis covers Constitutional Court decisions only until 2024, meaning that more recent jurisprudential developments are not included. Third, this study focuses primarily on constitutional and statutory provisions, with limited engagement with the operational practices of the Press Council and law enforcement agencies. Fourth, the comparative analysis is restricted to three jurisdictions (Germany, South Africa, and the United States), which may not represent the full spectrum of constitutional approaches to press freedom in the world.

5.3 Suggestions and Directions for Future Research

Future research should pursue both policy recommendations and scholarly investigations. For policy, the Electronic Information and Transactions Law require amendment to explicitly exempt journalistic activities from defamation provisions, the Constitutional Court should develop systematic balancing frameworks for press freedom against national security interests, and the Judicial Commission should prioritize judicial education on constitutional protections for journalistic activities. For future scholarly research, empirical studies should interview journalists facing prosecution and judges deciding on freedom of the press cases to document actual enforcement patterns. A regional comparative analysis across Indonesian provinces would identify factors enabling or constraining the protection of freedom of the press.

A longitudinal analysis of the Constitutional Court's decisions from 2015 to 2025 would reveal doctrinal trends. An expanded comparative analysis including Asian constitutional democracies (South Korea, Taiwan, Japan, and India) would provide contextually relevant models. Quantitative indicators tracking prosecutions, government interventions, and self-censorship would enable rigorous testing of the implementation gap hypotheses. Finally, case studies of digital journalism prosecutions and a comparative analysis of how other jurisdictions have adapted the press freedom doctrine to digital environments would address emerging challenges.

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Author Contributions

TT was responsible for conceptualization, data curation, formal analysis, investigation, methodology, project administration, resources, software, validation, visualization, writing—original draft preparation, and writing—review and editing. SS contributed to conceptualization, funding acquisition, methodology, project administration, supervision, validation, and writing—review and editing. Both authors reviewed and approved the final manuscript.

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