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Who Decides What We Can Watch? Balancing Streaming Services Liberalization and Constitutional Rights in Indonesia

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Abstract

Rapidly growing streaming services have become central to the cross-border circulation of information, cultural, and economic value, which presents complex regulatory challenges for states. This study aims to examine the potential tensions and regulatory interaction between a state's right to regulate, its commitment to trade liberalization, and citizens' constitutional rights to access information on the streaming service sector in the context of Indonesia. It offers normative analysis on international trade law, Indonesian constitutional law, and other related

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disciplines, along with empirical analysis through public surveys to assess public perceptions on protectionist policies. This paper argues that triangular tensions between international laws, states, and citizens occur when a state restricts foreign services. In Indonesia, these tensions are not merely theoretical but are institutionalized through regulations and constitutional court jurisprudence that empower the government to take immediate and repressive measures, including service access restrictions when deemed necessary. In the meantime, empirical research shows that the majority of respondents (83%) demand a high level of freedom to access information, although there is a variety of perceptions and levels of support when government restricts access to foreign streaming services. This means that formulating regulations in this sector requires a careful and comprehensive approach, as the state is obligated to allow streaming services through liberalization and guarantee citizens' rights to access them in line with its policy objectives and measures.

Keywords: Constitutional rights; Streaming services; Trade liberalization

I. INTRODUCTION

1.1. Background

The Internet has shaped digital services nowadays. This development allows an enhanced form of cross-border supply where the mode is possible to be entirely contactless across countries. Among positive impacts of this trend are noticed through the findings of a more efficient method in the business process, like in the case of blockchain in trading,[1] and the ability to improve the regional integration process like European Single Market.[2] With rapid, wide, and direct exchange of data transmission through the internet, information from one to others is possible to be transferred simultaneously. For example, ones can stream -watch or listen to audio-visual content - directly through internet services from foreign service providers.[3] A dedicated study from the perspective of this type of

[1] Xin Tian et al., "Improving Operational Efficiency through Blockchain: Evidence from a Field Experiment in Cross-Border Trade," *Production Planning & Control* 35, no. 9 (2024).

[2] Stefan Dedovic and Vincent Homburg, "Cross-Border Digital Public Services in the European Union: A Systematic Literature Review," *International Journal of Electronic Governance* 16, no. 1 (2024).

[3] Categorizing streaming services could be a relatively difficult task as many online digital platforms may appear as streaming services. Tiktok, for example, is generally considered a non-streaming service because it is designed and utilized mainly as a user and social media platform. In that sense, to some extent, YouTube may also fall into this category. However, YouTube can be regarded as a streaming service due to the availability of its music and movie content. Meanwhile, other popular digital platforms like Netflix, Amazon Prime, Apple TV, Disney Hotstar, Max (HBO), Viu, We TV, and Spotify are categorized as streaming services since the services, video or audio content, are made available by the providers. When the origin of a provider and its services are not from

services is compelling to be examined due to its specific characteristic and impact on state measures. While foreign streaming services such as Netflix, YouTube, and Spotify operate entirely through cross-border supply and are widely consumed directly by users within a state, they also challenge the government's ability to balance the protection of national interests with its international commitments and citizen freedom rights.

Despite its abundant advantages, new model of digital service disrupts the traditional form of service. In turn, it forces stakeholders, especially the government, to modify regulations to adjust to various effects of digital services, including the concern of data privacy and national security. Various government measures, such as geo-content blocking, censorship, local content requirement, and partial to full blocking access of foreign services, have the potential to violate its international obligations, mainly in the General Agreement on Trade in Services (GATS) framework.[4] While the applicability of foreign services entry primarily involves states and their respective service providers within the scope of international trade law, little attention has been paid to the impact of this concern from the lens of citizens' constitutional rights. A question should also emerge as to the extent to which the rights and interests of individuals in a country are relevant in accessing foreign services. For example, when a streaming service like Netflix is made unavailable by a government through blocking, censorship, or other limitations, is the citizen's right to obtain information violated?

In most countries around the world, the right to access and obtain information is guaranteed under the constitution, as it is now perceived as an essential human right that is also strongly supported through the regime of international

a state, they are labeled as foreign entities. In the context of Indonesia, Netflix and Co., as previously described, are viewed as foreign streaming services. In comparison, Indonesia has its own domestic streaming services, which include Vision+, Vidio, Maxstream, and Bioskop Online.

[4] From the perspective of international trade law, questions arise regarding the applicability of the GATS in addressing digital services issues due to a lack of readiness for the current digital age. To address this challenge, initiatives and new regulations have been introduced to mitigate the issue that intersects with the concern of cross-border services, even though the GATS itself remains a universal foundation governing trade in services. For instance, the availability of the General Data Protection Regulation (GDPR) and the Digital Services Act (DSA) in the European Union. In addition to these, many Regional Trade Agreements (RTA) have been proposed to further liberalize service trade, with some of the latest attempts focusing on regulating digital services. This instance includes the ASEAN Framework Agreement on Services (AFAS) that operates for ASEAN countries.

human rights law. In Indonesia, Article 28F of the 1945 Constitution serves as the umbrella for this right.[5] Promoting this type of right in this particular relationship will generate complex considerations. The state's right to regulate as state sovereignty in this case, therefore, will intersect other regulation dimensions such as the international trade law, international human rights law, and constitutional law within the scope of its national law. The last will also have to be carefully examined under administrative law to assess whether the state is rightfully establishing legitimate measures limiting citizens' constitutional rights while exercising its sovereignty.

Early discussions on this newly recognized freedom in Indonesia during the internet era have been introduced by Hill & Sen. They pointed out that the new democratic era of Indonesia has embraced the internet as a public space for political discourse, especially after years of censorship under the New Order (*Orde Baru*) regime.[6] Previous significant studies have also attempted to discuss the notion of the right to access and obtain information in Indonesia. For example, Butt examined the application of this right through the lens of Law No. 14 of 2008 concerning the Disclosure of Public Information,[7] while Satriawan discussed the application of this right in the context of government policies to shut down the internet during critical moments.[8] The promotion of this right has also been examined and tested through constitutional review of relevant laws and articles. These include Article 27(3) of the ITE Law, interpreted in Constitutional Court Decision No. 50/PUU-VI/2008 regarding the right to transmit data electronically,[9] and Article 40(2b), reviewed in Constitutional Court Decision No. 81/PUU-XVIII/2020 concerning the government's authority to block internet services.[10] On the other hand, there are some dedicated GATS

5 *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* [The 1945 Constitution of the Republic of Indonesia].

6 David T. Hill and Krishna Sen, "The Internet in Indonesia's New Democracy," in *Democratization* (London: Frank Cass Publishers, 2000).

7 Simon Butt, "Freedom of Information Law and Its Application in Indonesia: A Preliminary Assessment," *Asian Journal of Comparative Law* (Berlin: Walter de Gruyter GmbH, 2014).

8 Iwan Satriawan et al., "Internet Shutdown in Indonesia: An Appropriate Response or a Threat to Human Rights?" (2023).

9 *Judicial Review of Constitutional Court Law*, No. 50/PUU-VI/2008 (Constitutional Court of the Republic of Indonesia, 2008).

10 *Judicial Review of Constitutional Court Law*, No. 81/PUU-XVIII/2020 (Constitutional Court of the Republic of Indonesia, 2020).

discussions such as by Leroux in the cases development[11] and by Dongchul in the dynamic negotiation issue within streaming services sector.[12] However, no significant studies have been found in discussing the intersection of citizen constitutional rights in relation to the restriction of foreign streaming services. This study intends to fill that gap by exploring the complexity of information right among competing regulations by using Indonesia as a case of study. It is aimed to enrich the debate on how to regulate foreign streaming services by balancing three conceptual regimes: trade liberalization, state regulatory authority, and citizens' constitutional rights.

1.2. Method and Structure

This study employs theoretical and empirical approaches to examine the liberalization of streaming services in Indonesia. By combining legal theory and public perception perspective, this study seeks to provide a more contextual explanation of how international trade commitments and state sovereignty in introducing regulations interact with citizens' constitutional rights to obtain information. The following sections of this paper will be divided into two major parts.

The first part, the theoretical concept, includes a brief discussion on the available international legal frameworks for foreign streaming services access and human rights protection. This part also introduces relevant constitutional and administrative regulatory frameworks especially those related to the right of information in Indonesia. Finally, the emergence of triangular tensions is shown, which is the central issue of this paper. The second part of this paper describes data and its analysis to measure previous theoretical concepts. Questions were then delivered to respondents through a survey to understand their views on how they perceive government regulation of streaming services, which affects their constitutional right to obtain information. A non-probability purposive sampling technique has been used because the survey was distributed through

[11] Eric H. Leroux, "Twenty Years of GATS Case Law: Does It Taste like a Good Wine?" in *Research Handbook on Trade in Services* (2016).

[12] Dongchul Kwak and Minjung Kim, "Trade Negotiations in the Digital Era: The Case of OTT Video Streaming Services," *Global Policy* 11 (2020).

academic, professional, and social media networks by utilizing online platform. The respondents who participated were Indonesian internet users who had accessed foreign streaming services.

Respondents' selection was executed voluntarily without a random process, so the sample was selected based solely on ease of access and characteristics relevant to the research topic. This technique can also be considered to lead to snowballing sampling because it is possible that the survey was continued from the initial respondents to their acquaintances who had the appropriate criteria. Respondents' answers are structured using multiple-choice questions and Likert scales. Obtained data was then processed in Microsoft Excel to observe frequency and recurring themes. Relevant and essential data are analyzed in light of the theoretical concepts previously provided. Some important instruments in this analysis include the 1945 Constitution (UUD 1945), the Government Administration Law (UUAP) and Law number 11 of 2008 on Electronic Information and Transaction (ITE law). Analysis from international laws was brought from international trade law on services perspective and relevant ICCPR regulation about citizens` rights. Meanwhile, perspectives from other disciplines, such as behavioral law and other legal approaches, were utilized to enrich discussion.

II. DISCUSSION

2.1. Theoretical Concept

Back in 1995, when the Marrakesh agreement culminate the long-term Uruguay round, the majority of states in the world commit to take the international trade to the better level: promoting trade liberalization while also provide spaces for state protectionism policies. In terms of trade in services, the spirit of this liberalization embodies in GATS framework on Article II regarding Most Favoured Nation, Article XVI regarding market access and Article XVII about national treatment.[13] Meanwhile, Article XIV and XIV bis GATS provide essential legal

[13] Despite intense debate during negotiations, the trade in services agreement, GATS, was successfully agreed. For instance, initially, industry representatives of several countries suggested that audio visuals be excluded in the discussion of agreements to protect domestic industries and culture from foreign influences. See WTO Secretariat, *Guide to the GATS: An Overview of Issues for Further Liberalization of Trade in Services* (The Hague: Kluwer Law International, 2000), 141.

standing for a space of state policy. With those provisions, among others, GATS provides a comprehensive regulation on trade in services.[14]

Through an economic integration mechanism, which is allowed by Article V GATS, states have also developed more Preferential Trade Agreements (PTAs) to facilitate trade in services such as in the form of Bilateral and Regional Trade Agreements (RTAs). While they facilitate the expansion and completion of the regulations established by GATS, the presence of these PTAs may generate a certain degree of confusion. There might be a *spaghetti bowl* phenomenon where some overlapping or conflicting regulations exist on different PTAs.[15] In addition, confusion can also be attributed to the difference in scheduling approach. GATS employs a so-called positive list approach, while many new RTAs, such as the Regional Comprehensive Economic Partnership (RCEP) and ASEAN Trade in Services Agreement (ATISA), introduce a negative list approach.

Ones may fail to read and identify the correct applicability of certain services in the schedule of commitment in different regulations. The ability to understand this difference is essential as it serves as a crucial aspect to determine how market access treatment in certain services is applied and assessed within the state`s policies. Meanwhile, market access for trade in services itself is a problematic issue in this digital age. Its provision has a different regulatory scheme compared to the one that governs trade in goods (General Agreement on Trade and Tariffs/ GATT). Market access norms in the GATT are generally inflexible since they are designed to provide certainty and predictability for tariffs. In contrast, the GATS formulates this norm more flexibly by allowing countries to define which services are permissible for trade through a schedule of commitments agreed upon when entering the GATS agreement.

Another essential point related to this market access obligation is the exemptions, as stipulated in Articles XIV and XIV bis of GATS, which allow countries to deviate from their obligations. Countries have invoked these

[14] Article X GATS which governs Emergency and Safeguard Measure (ESM) was initially designed to offer space for emergency public policy. However, the working party of GATS members was unable to establish the dedicated agreement. As a result, ESM cannot be invoked as a ground for GATS liberalization disobedience.

[15] Jagdish Bhagwati, "US Trade Policy: The Infatuation with FTAs" (1995).

exemption rules to block foreign services for various reasons, such as protecting public morals or national security. Since the birth of GATS, several cases have been brought to the WTO Dispute Settlement Body to resolve disputes among states by citing these exemptions. The problem is that the measurement to define which measures are categorized as protective or only trade restrictions in disguise remains somewhat controversial.

Furthermore, it is also fundamental to fathom that, based on Article 27 of Vienna Convention on the Law of Treaties (VCLT), compliance with domestic laws cannot be invoked as an excuse to violate treaty obligations.[16] Various cases have referred to this norm explicitly, such as in investment law disputes like *Metalclad*[17] and human rights law cases like *Loayza-Tamayo*.[18] Nevertheless, it was not mentioned explicitly in major international trade law cases despite Appellate Body having also applied the content of this norm with the view of domestic policy as a matter of 'fact', not only 'regulation', as shown in *US-Gambling* case.[19]

A scenario for domestic compliance justification is possible if the law itself is a subsequent implementation or compulsory mandate of other international laws. An example of this is shown in *the Philip Morris* case, where the application of national tobacco regulation for public health reasons in Uruguay is perceived as a subsequent implementation of the WHO Framework Convention on Tobacco (FCTC) that allows the state to invoke an excuse of the alleged breach of its investment treaty obligation.[20]

Another regime of international law, human rights may also be considered as another factor in foreign streaming services competing rules. Its frameworks, in particular the Bill of Rights, certainly have a direct effect on the inclusion of basic constitutional rights in the constitution when states committed to adopt its rules when they ratified the conventions. Meanwhile, its relationship with international

[16] *Vienna Convention on the Law of Treaties*, May 23, 1969, 1155 U.N.T.S. 331.
[17] *Metalclad Corp. v. Mexico*, ICSID (AF) Case No. ARB(AF)/97/1, Award (Aug. 30, 2000).
[18] *Loayza-Tamayo v. Peru*, Inter-American Court of Human Rights, Order of Nov. 17, 1999, para. 9.
[19] *United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, Appellate Body Report, WT/DS285/AB/R (Apr. 7, 2005), para. 25.
[20] *Philip Morris Brands Sàrl, Philip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, Award (July 8, 2016), para. 420.

trade law is subject to a broad discussion among legal scholars. For instance, one point out that general exceptions clause contains certain human rights protection to guard public moral, human health and environment.[21] Meanwhile, another scholar emphasizes the urgency of interpreting WTO rules, including general exceptions, with broader international law contexts like several human rights treaties.[22] In addition, a different angle should also be considered. When GATS general rules demand the state to avoid restricting foreign services, that could mean an indirect persuasion to grant access to freedom right to services. This will be further discussed in the following sections.

States' measures toward foreign streaming services are noticeable and subject to assessment in this global era. From the perspective of GATS, considering whether a violation has occurred or an exemption is valid depends on how policies are implemented. Article XIV GATS requires the state to demonstrate measures to be taken unarbitrary, non-discriminatory, and in good faith. These requirements touch upon how the policies are administered in a fair, consistent, transparent, and accountable manner. In the national context, similar criteria shall also apply when government policies possibly affect its citizens' fundamental rights. Article 10 of Indonesia Law Number 30 of 2014 on Government Administration (*Undang-Undang Administrasi Pemerintahan*/ UUAP) stipulates the following principles of good governance, among others: (1) legal certainty or consistency, (2) impartiality or non-discriminatory, (3) unarbitrary, and (4) transparency.[23]

Administrative law will also assist us to fathom whether government authority (Article 8) and discretion (Article 22), as granted in the UUAP, can justify its regulatory measures. In addition, constitutional law also provides a crucial corrective tool in the event of government mis-enactment or misapplication of legal norms. For example, article 28 F of Indonesia UUD 1945 constitution has granted the right to information to its citizens. Once a concern of a violation of this right arises because of a law and its implementation, citizens may request an

[21] Hoe Lim, "Trade and Human Rights: What's at Issue?," *Journal of World Trade* 35, no. 2 (2001).
[22] Anna Ventouratou, "Justifying Trade Sanctions: Exceptions and Defences under WTO Law," *Cornell International Law Journal* 57 (2024).
[23] Law No. 30 of 2014 on Government Administration.

examination and review through constitutional court. These two legal regimes, administrative and constitutional law, collectively assist in upholding citizens` constitutional rights.

Restrictions on digital platforms, including streaming services in Indonesia, are primarily regulated in Article 40 of Law No. 11 of 2008 concerning Electronic Information and Transactions (ITE Law).[24] It stipulates government role in electronic transaction from the facilitation to the termination of internet service access. However, initial provisions of this article have some shortages, which require some evolution for greater clarity. In its original version, ITE law did not provide a clear legal basis for content restriction. Article 40 (2) merely stated a plain norm where the government is responsible for protecting the public interest against any misuse of electronic activity that disturbs public order. It has no specific procedural, definitive, or substantive criteria for further determining content blocking. It took eight years to clarify further with an amendment through Law No. 19 of 2016, which then introduced Paragraph (2b).[25] For the first time, the law explicitly authorized a termination of digital access when it is deemed a violation occurs. Nevertheless, the provision remained vague since there is no definition of a legal violation. This gap grants excessive discretion to the executive authority in determining what constitutes a legal violation. Only recently, with the latest revision through Law No. 1 of 2024, Article 40 has been further refined. Lawmakers established Paragraph (2c) to define prohibited content in pornography, gambling, and other forms of unlawful material.[26] In addition, Paragraph (2d) emerged to expand the grounds for restriction by including the threats to human life and health. Both additional clauses incorporate the regulation of Article XIV GATS in providing a general excuse for restriction

[24] Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law) [*Undang-Undang Informasi dan Transaksi Elektronik*]. Although this law is initially perceived to regulate a pure electronic information and transactions, it fills the gap of the unavailability of specific streaming services or e-commerce transaction in Indonesia. Lawmakers, through subsequent amendments of this law, clearly intended the applicability of this law to much more specific related technology transactions. A further regulation then addresses specific issue with detailed provisions like Government Regulation No. 80 of 2019 on Trading Through Electronic Systems that serve as the advanced basis for e-commerce and online service trade.

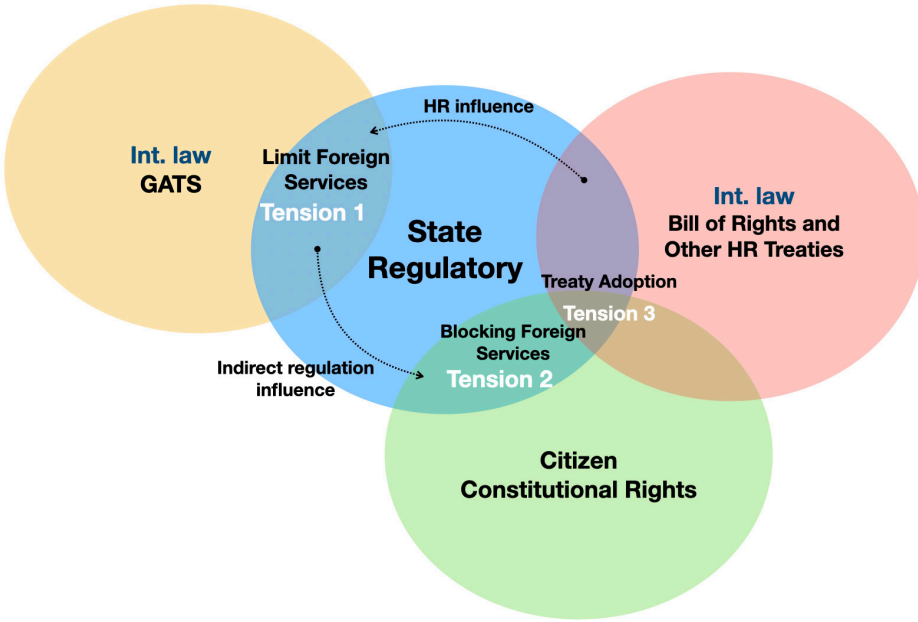
[25] Law No. 19 of 2016 on Amendment to Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law).

[26] Law No. 1 of 2024 on Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law).

policies. In doing so, the wording 'public moral' has been elucidated with specific criteria of "pornography, gambling, and other forms of unlawful material." This improvement of the Article 40 provision shows a positive development despite the fact that it took more than fifteen years for lawmakers to articulate clear legal parameters for digital access restrictions.

With international trade law, international human rights law, state sovereignty, and national laws to uphold citizen constitutional rights involved, government policies that limit or block foreign streaming services generate triangular tensions. Tension 1 involves state regulatory authority and its commitment to trade liberalization in the scope of international trade law. Tension 2 applies when citizens' constitutional rights for freedom and access are disrupted. Meanwhile, the state's commitment to its human rights obligations with other states inflicts the last tension. Figure 1 below illustrates how these tensions are related.

Figure 1. Triangular tensions when a government takes restrictive measures on foreign streaming services



Source: Author's elaboration based on the analysis in this study

From the above illustration, tension 1 between GATS and state regulatory measures occurs directly between them as an effect of state's direct commitment and obligation toward other states through GATS. This tension seems to be independent of other factors. However, tension may occur indirectly due to the adoption and influence of the international human rights treaty. As general exceptions listed in Article XIV GATS and growing states' awareness of human rights protection, a government may adopt policies that result in tension 1. Tension 1 may also relate indirectly with the applicability of Tension 2 if we consider that GATS regulations, which are also influenced by human rights treaties besides pure economic goals, encourage member states to minimize trade restrictions that affect people's freedom rights. Meanwhile, Tensions 2 and 3 are interdependent since the constitutional rights of citizens and international human rights, in nature, are complementary. It means that the implementation of human rights provisions as stipulated by the Bill of Rights and other human rights treaties will only be successful if citizens are able and willing to enforce their rights through several channels available to them, *vice versa*.

Although all these tensions are connected somehow, directly or indirectly, their possible remedies differ. Tensions 1 and 2 are reviewed mainly by specific dispute settlement bodies, which are WTO Dispute Settlement and Constitution Court, respectively. Meanwhile, Tension 3 is also subject to "international shaming and pressure" if designated courts like international human rights courts are unavailable or inapplicable.

2.2. Empirical Study Analysis

1. Survey Control and Validity Measure

The sample size of this study is 204 people from population of around 160 million people that utilize internet and are above 18 years in Indonesia provides. Based on standard calculations using a 95% confidence level, the margin of error is around ±6,8%. This margin is acceptable in exploratory studies, as this survey focuses on identifying general trends or social problems and not claiming national representation.

Initial respondents of this survey were 210, but 8 of them were excluded from the final record because the survey provided several control questions during the initial stage to ensure that only valid respondents participated. One of the first filters was asking whether respondents had ever accessed popular foreign streaming platforms operating in Indonesia, such as YouTube, Netflix, Spotify, and others. If respondents answered that they had never used any of these services, they were ineligible and could not continue the survey. This is necessary because the main objective of this study is to measure public perceptions of foreign streaming service providers, and such perceptions are only relevant from people who have experienced the services directly.

The survey also includes a general check to observe whether respondents showed basic awareness of political issues in Indonesia. The question was simple: "Who is the current President of Indonesia?" At the time of this survey, the correct answer was "Prabowo Subianto." If respondents chose a different name, the authors considered the answers from the filling to be unreliable, and the survey system automatically concludes the survey for that particular respondent. The authors realize that not all respondents may follow political developments and be able to identify who their current president is. However, simple question like this assists the authors decide whether respondents are reliable to provide further answers in the context of this study. Such general political awareness may reflect a person's attention to national issues, including the topic of liberalization in streaming services, which is a major issue in the study that is much more complicated.

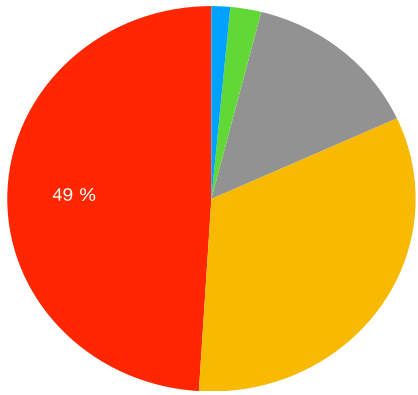
In the subsequent sections of the survey, the authors no longer eliminated potential participants but added some small instructions to test the respondents' focus. For example, in one section, the survey instructed participants to choose "blue" as the normal color of the sky. If the respondent ignored the instruction or chose something else, their answer was still recorded but constitutes as data with a lower level of confidence. This may indicate that the person was not fully focused or just clicked on the answer randomly. Because it is arduous to have full control on respondents` behaviors in an online survey, this type of control

method aids the authors to review which responses are more reliable. Thus, this control is designed to improve data quality and ensure that the results utilized in this study truly represent relevant respondents and are reliable to be analyzed. The results of the control show that more than 95% of respondents answers are believed to be focus and not random.

2. Competing Norms in Restriction

A survey was conducted on 204 Indonesian citizens to determine their preferences for the level of freedom in accessing international streaming services. The survey utilized a Likert scale of 1–5, where scale 5 represents optimal access freedom without restrictions with scale 1 is the minimum level of freedom. The results find that 100 respondents (49.75%) chose scale 5, and 67 respondents (33.33%) chose scale 4. This means that more than 83% of respondents prefer a high level of freedom in accessing foreign streaming services. This data illustrates the solid preference of citizens towards the liberalization of the streaming services sector, especially in audiovisual content services. The illustration below shows a general picture of this data.

Figure 2. Respondent`s preference on freedom level of accessing international services



Source: Author's survey data collected in 2025

Note: Measured using a five-point Likert scale and reported in percentages (n = 204)

In terms of education level, respondents with a bachelor's degree (S1) showed the highest support for this freedom. Of the 90 respondents with a S1 degree, 48 people (53.3%) chose scale 5, and 26 people (28.9%) chose scale 4. This finding shows that almost 82% of bachelor's graduates support maximum digital openness. However, a similar trend was also seen in other education groups which depicts that the demand for digital freedom is cross-level educational. It also indicates that digital citizenship in Indonesia has developed into an inclusive phenomenon that goes beyond formal educational backgrounds. Furthermore, analysis of the income variable shows that support for freedom of access is not exclusively owned by high-income groups. In fact, of the 61 respondents who do not yet have a fixed income (students or unemployed), the majority still chose scale 4 and 5 as answer choices. This pattern is also consistent in the middle and high-income groups. Thus, it can be concluded that the desire to freely access foreign digital services is a universal demand by citizens regardless of their economic status. Meanwhile, when we looked at their age differences, there was also no significant difference between the young and adult age groups. Both the digital-native generation and the older age group tend to show support for freedom of access to global digital services. It means that the preference for digital openness is not generational but has become part of the general values of Indonesian society which is increasingly connected globally.

Above finding is in line with the concept of service liberalization as contained in the General Agreement on Trade in Services (GATS) regime which prioritizes the principles of market access and national treatment. Theoretically, GATS allows member countries to gradually open up the digital services sector while still reserve domestic policy space (regulatory space). Therefore, Indonesia may exercise these rights through the invocation of Article XIV and XIV bis on the ground of general and security exceptions to defend their policies to protect public moral, human health, environment and national security. Alternatively, the state is also possible to utilize Article X on emergency safeguard excuse although no specific agreement to determine this application and no GATS cases have been referred to this provision to this date. In the absence of these excuses and

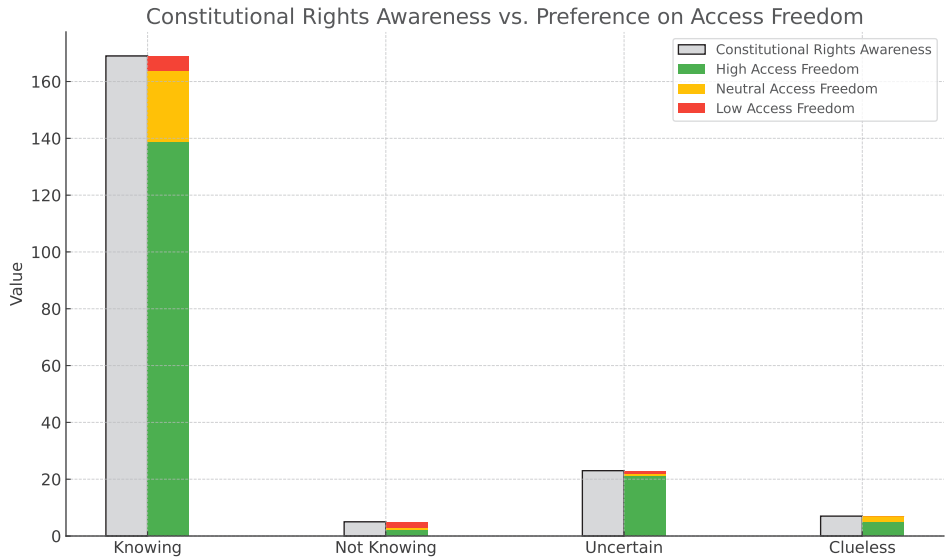
when a discriminatory measure has been taken, a protectionist approach without a legitimate legal reason will violate Indonesia's international commitments specifically the principles of transparency and least trade-restrictive measures in international trade law.

From a constitutional law perspective, the results of this survey also strengthen the argument that Indonesian citizens have expectations regarding the protection of the right to information, freedom of expression, and digital choices, especially since the Reformation Era (1998 onwards). These rights are guaranteed in Article 28F of the 1945 Constitution, which states that everyone has the right to "communicate and obtain information." Therefore, if the state implements a policy of restricting access to foreign digital services without an adequate legal basis and sufficient public participation, this action risks violating citizens' constitutional rights.

Above discussion has significant normative and empirical implications. Normatively, it urges the requisite for regulations on the streaming and digital services sector that are consistent with the principles of the rule of law, due process, and openness of information. Empirically, it shows that there is a demand from society for regulations that are inclusive, accountable, and adaptive to digital realities. In other words, the formulation of national policies requires to adopt a balanced approach between protecting digital sovereignty and guaranteeing citizens' rights in the global digital ecosystem.

We move to the next analysis. It was found that there are 169 out of 204 respondents (84.08%) who admitted that they realized the constitution guarantees freedom of information. Furthermore, 139 people (82.25%) of that number chose scale 4 and 5 in the previous question regarding freedom of access to foreign digital services. Although this data is not showing an absolute correlation between these two indicators, it still may indicate solid evidence that a guarantee in the constitution persuades the majority of respondents in demanding high-level freedom for accessing international services. Figure below shows a complete picture of the correlation.

Figure 3. Level of respondents' awareness on information freedom rights in constitution and their freedom level preferences for accessing international services



Source: Authors' analysis of survey data collected in 2025

Note: Measured using a five-point Likert scale where 'High' represents scales 4 and 5, 'Neutral' is 3, and 'Low' shows scales 1 and 3. Data is reported in percentages (n = 204)

This data is extremely relevant in the context of a research question that examines the tension between digital service liberalization policies, state protectionism, and citizens' constitutional rights. It can provide an early signal that awareness of constitutional law (grey colored bar) contributes to public attitudes that tend to be more supportive of openness to foreign digital services (green colored bar). This awareness is a vital element in assessing the legitimacy of state intervention—namely whether a restriction on digital access can be justified if it is not based on a clear legal mechanism and proportionality.

Article 28F of the 1945 Constitution explicitly states that, "Every person is entitled to ... to seek, to obtain, to own, to store, to process, and to convey information by means of *all kinds of available channels*." [emphasis added].

This norm shows that freedom of information is not only a formal right, but is also guaranteed with a broad scope, including the right to access cross-border digital services. From an international legal perspective, a similar guarantee is also emphasized in Article 19 of the International Covenant on Civil and Political Rights (ICCPR)[27] which has been ratified by Indonesia through Law Number 12 of 2005,[28] which states that "Everyone has the right to ... seek, receive and impart information and ideas of all kinds, *regardless of frontiers*, ... or through *any other media of his choice*" [emphasis added]. Thus, this concept emphasizes the importance of constitutional principles and international legal instruments as a normative foundation in determining the limits of state intervention in the foreign digital services sector. Although the state has the authority to protect national interests, protectionist interventions must still be subject to a 'proportionality test' and must not violate the constitutional guarantees of citizens.[29] In this context, a 'precautionary approach' that balances the right to freedom of information and protection against digital risks is essential but must not compromise the principle of fundamental rights.[30]

Access to guaranteed information as a constitutional right is an important pillar in a modern democratic system. In this case, freedom to obtain information is an integral part of freedom of expression, which involves not only the right to speak, but also the right to receive and access information. On the other hand, the existence of government regulations in this digital age must also be viewed as a fundamental tool to preserve public order. To this point, it is fair to mention that there will be a concern that government policies or discretion can lead to acts of abusive power. However, the constitutional court in its legal consideration on para. 3.16.4 of decision number 50/PUU-VI/2008 resolved this

[27] *International Covenant on Civil and Political Rights* (ICCPR), Dec. 16, 1966, 999 U.N.T.S. 171.

[28] Law No. 12 of 2025 on Ratification of International Covenant on Civil and Political Rights (ICCPR).

[29] Proportionality test exhausts three steps: legitimacy, suitability, and necessity. It was formally applied at first in Prussian Supreme Administrative Court in 1800s. Since then, it was widely applied in both international and national law cases. See more discussion in Kenneth F Ledford, "Formalizing the Rule of Law in Prussia: The Supreme Administrative Law Court, 1876–1914," *Central European History* 37, no. 2 (2004).

[30] Precautionary principle, or *Vorsorgeprinzip* in origin word, firstly introduced by German Authority in assessing and formulating their environmental policy. This principle then became one of the main principles of international environmental law and also have been applied in public policy measures. See more in Herman Cousy, "The Precautionary Principle: A Status Quaestionis," *Geneva Papers on Risk and Insurance* (1996).

concern by emphasizing that the potential for abuse is literally greater by the parties who utilize cyber space than the government itself.[31] The court grounds its opinion by pointing out that the internet era characteristic - open, nearly limitless, and rapid spread of data dan information- may lead to undesired effects if user activities are not limited. Furthermore, extreme negative impacts are exacerbated when legal, religious, and moral norms are abandoned by cyber users. In another sentence, a high level of human interaction requires a high level of caution due to the absence of filters or barriers that can counteract negative values (self-censorship). Considering this, the government's role is crucial to determine limitations or even censorships.

A constitution court decision number 81/PUU-XVIII/2020, which reviews Article 40 (2b) of ITE Law, has further addressed restrictions on electronic information. The ruling discusses whether such restrictions should ideally be preceded by a lawful written administrative decision, as requested by the petitioner. The majority voice of the court members rejected the petition because requiring an administrative decision before blocking access to information would be impractical.[32] The court emphasizes the importance of government response to act swiftly and accurately in preventing unlawful content distribution. Nevertheless, a compelling counterargument has been presented by the court's dissenting opinion. It articulates how Article 40 paragraph (2b) has significant implications for limiting fundamental rights and, thus, should be regulated with greater legal precision.[33]

3. Internalizing Constitutional Rights

While the constitution may guarantee rights textually, its implementation and effectiveness depend on the institutional context and the level of public legal awareness.[34] Empirical data obtained in this survey show that the constitutional

[31] *Judicial Review of Constitutional Court Law*, No. 50/PUU-VI/2008 (Constitutional Court of the Republic of Indonesia, 2008), 107.

[32] *Judicial Review of Constitutional Court Law*, No. 81/PUU-XVIII/2020 (Constitutional Court of the Republic of Indonesia, 2020), 296–97.

[33] *Judicial Review of Constitutional Court Law*, No. 81/PUU-XVIII/2020 (Constitutional Court of the Republic of Indonesia, 2020), 301–4.

[34] Jay N. Krehbiel, "Public Awareness and the Behavior of Unpopular Courts," *British Journal of Political Science* 51, no. 4 (2021): 1601.

guarantee of the right to obtain information has not fully crystallized in public awareness as an uncompromising principle. Of the 167 respondents who strongly believed that they had the right to information (scale 4 and 5), only 139 of them stated that they were aware that this right was guaranteed by the constitution. Interestingly, of the group that was already constitutionally aware, only 60 people later saw that restrictions on foreign services were a form of violation of their rights. The rest were divided between those who did not see any violations (41 people) and those who were doubtful or did not know (38 people). Empirical data obtained in this survey show that the constitutional guarantee of the right to obtain information has not fully crystallized in public awareness as an uncompromising principle. Of the 167 respondents who strongly believed that they had the right to information (scale 4 and 5), only 139 of them stated that they were aware that this right was guaranteed by the constitution. Interestingly, of the group that was already constitutionally aware, only 60 people later saw that restrictions on foreign services were a form of violation of their rights. The rest were divided between those who did not see any violations (41 people) and those who were doubtful or did not know (38 people).

This finding shows that awareness of rights does not necessarily give rise to an attitude of protection of those rights when faced with state intervention. This can be explained through the legal consciousness approach,[35] where constitutional rights are not always fully understood or internalized by citizens.[36] In another words, the internalization process has not been fully effective, even among people who claim high trust in the constitution. This confirms that constitutionalism does not solely rely on the existence of written norms, but also on how those norms live and are experienced by citizens as well as any other

[35] Legal consciousness is believed to have been developed under the US legal system. Although it is difficult to track precisely the origin of this concept, the era of 1940s when Wagner Act cases emerged is considered as the thought of modern legal consciousness as elaborated by Karl E. Klare, "Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937–1941," *Minnesota Law Review* 62 (1977): 325.

[36] For this understanding, it is useful to fathom the characteristic of legal consciousness as explained by Podgorecki which stated three steps of this concept (1) knowledge of relevant laws, (2) evaluation of mandatory obligations, and (3) preposition of the desired laws. See Adam Podgorecki, "Legal Consciousness as a Research Problem," in *European Yearbook in Law and Sociology 1977* (Berlin: Springer, 1977), 85.

political contexts. In Ran Hirschl's terms, this is the failure of juristocracy in building an empowered popular constitutionalism.[37]

The right to information, although guaranteed, is considered negotiable when faced with the narrative of state legitimacy, such as the issue of data privacy and national security. Thus, a framing effect by the government can play a role in directing citizen`s behaviour e.g by framing foreign content that it may pose a risk for data privacy and security.[38] Alternatively, a nudging may also be applicable to intercept citizens' conduct: that is, when the government favors domestic service providers, e.g. by setting them as a default in various electronics, gadgets and websites.[39] However, applying this concept may generate tension with international trade law where national treatment clause should be respected. Although nudging is a soft tool and no explicit legal barrier exists, it could still violate state obligations if proven to distort market conditions and be discrimination in nature.

A citizen dilemma becomes more complex when the argument for restricting digital services is linked to national security reasons. Of the 60 respondents who previously stated that restrictions were a violation of constitutional rights, only 22 people still rejected restrictions even for security reasons. The rest, 23 people changed their opinions and 15 people stated they were neutral. This shows the flexibility or even ambiguity of the public in assessing the legitimacy of restrictions, depending on the narrative or framing used by the state. If we observe the overall data, out of 204 respondents, 87 (42.65%) supported restrictions on the grounds of national security, 69 (33.82%) were neutral, and 48 (23.53%) rejected them. This indicates that the narrative of national threats has the power to mobilize public opinion but does not necessarily produce a

[37] Ran Hirschl, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism* (Cambridge, MA: Harvard University Press, 2009), 211.

[38] Framing has been used many times by government whether conscious or not in controlling its citizen behavior and as legitimacy for their policies. See Jessica Pykett, Michael Saward, and Anja Schaefer, "Framing the Good Citizen," *British Journal of Politics and International Relations* 12, no. 4 (2010): 523–38.

[39] Many governments in the world have been utilizing nudging in their public policies intentionally or unintentionally, consciously or unconsciously to control their citizens behavior to what they have desired. See David Halpern and Michael Sanders, "Nudging by Government: Progress, Impact, & Lessons Learned," *Behavioral Science & Policy* 2, no. 2 (2016): 53–65.

stable consensus. Here, the state faces a dilemma: between the obligation to guarantee security and the obligation to protect the constitutional rights of its citizens. Within the framework of the Indonesian constitution, Article 28F of the 1945 Constitution guarantees the right to seek, obtain, store, and convey information. However, a reference to Article 28J must also be counted which provides legal basis for restrictions as long as they are regulated by law and are necessary to respect the human rights of others or to meet the demands of justice, order, and public security. This shows that the right to information is relative, so that the room for interpretation by the state is relatively substantial, especially in the context of public policy based on the reason of public interest.

With the recent amendment of Article 40 (2c) ITE Law to define categories of prohibited content, a path to interpret this public interest is clearer. It provides that public interest is something that should not be contested with the harmful content of pornography, gambling, and other materials. With that provision in hand, the government has a legal basis to restrict foreign streaming services if their contents are perceived to violate legal, moral, or religious norms. The key concept for this restriction is the harm that it could cause to society. For instance, pornographic material may lead to an increased risk of sexual violence. In practice, this excuse has been invoked earlier by the government of Indonesia when it partially blocked Netflix access in the initial stage of its expansion to Indonesia although Article 40 (2c) itself did not exist at that time.[40] Meanwhile, gambling platforms may stimulate subsequent criminal behaviors, such as theft or fraud. The government of Indonesia consistently blocks this type of service.[41] A utilization of this excuse has also been shown by the US government when restrict the access of online gambling service despite of its unsuccessful result due to unjustified legitimation.[42]

[40] Leo Kelion, "Netflix Blocked by Indonesia in Censorship Row," *BBC News*, Jan. 28, 2016.

[41] Laila Afifa, "Kominfo Blocks Over 800,000 Online Gambling Content in July–December 2023," *Tempo*, Jan. 2, 2024.

[42] The panel ruled out that the US Government excuse cannot be justified legitimate because it has been applied discriminatorily as domestic gambling service was not banned compared to foreign one. See US Gambling Case, see *United States-Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, Panel Report, WT/DS285/R (Nov. 10, 2004).

Despite Article 40 (2c) already provided legitimate ground for service restrictions, another issue may also arise due to ambiguous provisions in the wording of "muatan lain" or other materials. As it refers to unclear associated regulations, it may present catch-all provisions with unclear boundaries or objective criteria. Eventually, the government will be in a precarious regulatory position where its policy may be in risk to deviate from legitimate to disguised restriction. To tackle this concern, a perspective from administrative law may offer support.

When restrictions of foreign services are introduced by the government, it will fall into the category of *bestuursmedidas* (administrative policy steps) which must be subject to the general principles of good governance *(Asas-Asas Umum Pemerintahan yang Baik*/AUPB) in Law Number 30 of 2014.[43] Some of the fundamental principles are legality and proportionality, which mean that the state may impose restrictions, but there must be a clear legal basis, be non-discriminatory, and be proportional to the goals to be achieved. If restrictions are carried out without a transparent implementation, then the action will lead to administrative overreach and can be viewed as a form of abuse of power. Thus, the policy of restricting foreign streaming services reflects the classic dilemma between the state's right to regulate and the state's responsibility to respect the rights of citizens. From the responsive regulation theory perspective, the state is suggested to employ an adaptive and dialogical approach in regulating public policies as the regulated actors` voices shall be heard.[44] In another word, the formation of policies must consider responses from the affected community.

In addition, Indonesia's commitment to the GATS framework also presents an additional normative layer that must be adhered. Articles XVI and XVII of this regulation require member countries to avoid quantitative or discriminatory restrictions on foreign service providers. There are possible exceptions to this, but they are not a *carte blanche*- that is, unlimited discretion without a rigorous justification. Article XIV (a) and (c) of GATS do allow restrictions on

[43] Law No. 30 of 2014 on Government Administration.

[44] Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (New York: Oxford University Press, 1992).

this ground which are to protect public morals, to maintain public order and to secure compliance with laws or regulations. However, these exceptions must meet the chapeau test of Article XIV GATS. In US – Gambling, the Appellate Body determined that security or public order reasons must meet the necessity test, which are: (1) The existence of a legitimate purpose, (2) The absence of less restrictive policy alternatives to trade, and (3) The absence of disguised discrimination or violation of the principle of good faith.[45] Thus, if Indonesia chooses to restrict foreign services on these security grounds, then the restrictions must be formulated to satisfy those tests to defend its motives. Otherwise, any restrictive policies could be questioned and at the risk of a dispute at the WTO Dispute Settlement Body.

Above combination of constitutional norms, administrative principles, and international commitments generates a complex and challenging position to the Indonesian government in. On the one hand, it must protect national interests that it perceives as essential issue. On the other hand, it must maintain the legitimacy of public policy and individual rights within the framework of national and global law. The findings of this survey reflect that public support for restrictions is contextual and not solid. As a result, the state needs to be careful in implementing restrictive policies, especially if they are carried out unilaterally and without public consultation. One of the crucial elements for this effort is to identify suitable actors involved.

4. Rethinking Involved Actors

The survey findings facilitate observing various demographic characteristics of respondents toward their level of support for government policies restricting access to foreign digital services on national security grounds. Respondents aged 40 and over, for example, showed a greater tendency to support such restrictive policies. Of the total 81 respondents in this age group, 40 people (49.38%) chose a scale of 4 and 5 (showing strong support), while 25 people were neutral and only 16 people disagreed (choosing a scale of 1 and 2). This data indicates that

[45] *United States-Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, Appellate Body Report, WT/DS285/AB/R (Apr. 7, 2005), 101.

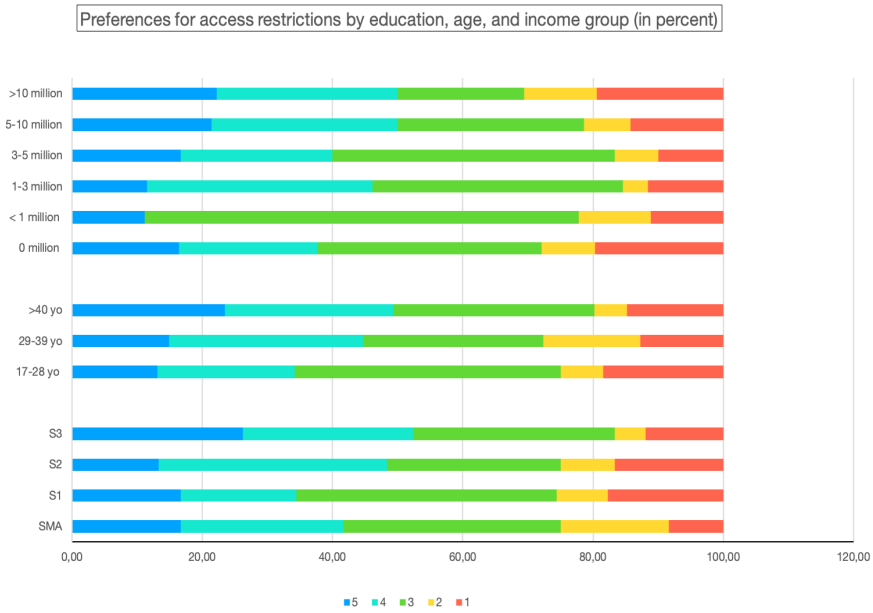
citizens of a more mature age tend to be more receptive to government policies, even when they contain restrictive elements. In contrast, the younger age group (17–29 years old) showed a tendency to be neutral. Of the 76 respondents in this group, 31 people (40.79%) chose a scale of 3, while the rest were spread between supportive and unsupportive choices. The 29–39 age group shows a middle position, with an increasing trend of support for government policies: 21 out of 47 respondents (44.68%) chose a scale of 4 and 5. This trend shows that maturity is directly proportional to the level of support for government policies. The higher the age, the higher the percentage of respondents who are willing to accept the state's protective policies.

A similar trend can also be seen when viewed from the level of education. Respondents with higher levels of education generally showed a greater tendency to support policies restricting access to foreign services. Support for government policies (scales 4 and 5) was shown by 41.7% of respondents with a high school education, 34.4% for the S1 level, 48.3% at the S2 level, and 52.4% for the S3 level, respectively. Although it is seen that higher levels of education are associated with higher support, there are few anomalies in the S1 educated group. The lower support (34.4%) of this group is thought to be closely related to the age composition of the respondents, because the age group of 17–29 years (which in general knowledge is commonly filled by students or early S1 graduates) shows a fairly high neutral tendency (40.79%). Thus, the inconsistency in the level of S1 education can be explained by the influence of the age characteristics of the respondents in the group.

When associated with financial ability factors, support for restrictive policies also shows a fairly clear correlation. Respondents with an income between 5 and 10 million rupiah and those with an income above 10 million rupiah showed a relatively high level of support, namely 50% who chose the 4 and 5 scales, respectively. In this group, neutral and disagree choices occupy a smaller portion. On the other hand, respondents from the group who did not have an income or were not yet employed showed a more dynamic and dispersed pattern. As many as 37.70% of this group supported the policy (scale 4 and 5), while 34.43% were

neutral and 27.87% did not support. This pattern shows that the higher income leads to better support for foreign service restrictions by the state.

Figure 4. Preference for access restrictions



Source: Authors' analysis of survey data collected in 2025

Note: Education is described within High School (SMA), Undergraduate (S1), Master (S2), and Doctoral (S3) degree. Age ranges from 17-28, 29-39 and >40 years old. Income group is represented from 0 to >10 million. Data is reported in percentages (n = 204)

Examining at all the available data, there is a robust tendency that the higher the age, education, and income of the respondents, the higher the level of support for government policies that restrict access to foreign digital services for the sake of national security. However, this trend still leaves important questions about what exactly drives these preferences. Are they supportive because of the increased maturity of thinking with age and life experience, or because of greater concerns about the misuse of personal data? For this purpose, the correlation between these demographic characteristics and the level of concern over personal data will be discussed later.

The State as an entity not only functions as a public service provider, but also as a regulator of risks arising from the process of globalization and liberalization, including in the cross-border digital services sector.[46] In this context, the state gains legitimacy to act not only from the existing legal apparatus, but also from the support of citizens who perceive such actions as a form of protection for their national interests and individual rights. Therefore, the higher the awareness and knowledge of citizens on global and critical issues such as data security and digital sovereignty, the greater the opportunity for countries to gain support for their regulatory actions.

Theory of responsive regulation emphasizes the importance of state responsibility to public trust. Lofty support from a particular group of citizens should not be interpreted as a form of absolute legitimacy, but rather as a social contract that demands accountability. The state is required to not only use formal power, but also to build an inclusive, participatory, and risk-based regulatory system. Therefore, adaptive and flexible regulatory design is important. In this regard, a smart regulation approach may offer a framework that combines legal instruments with collaborative mechanisms, technological oversight, and the principle of prudence in the face of threats to citizens' digital rights. However, as emphasized by Graham, smart regulation, particularly in the health sector, should not incorporate cost-benefit analysis as the major policy determination.[47] In the context of streaming services, nonetheless, cost may play a key role despite the government must also consider the analysis of data privacy and national security to be risked. Thus, the direction of regulation of foreign streaming services must be designed with considerations that are not only technocratic or normative but also based on the preferences and protection of citizens. The public trust shown by the mature, highly educated, and high-income age groups provides initial legitimacy, but it is also a reminder that the state must be able to repay that trust with transparent, proportionate governance, and ensure the protection of citizens' constitutional rights in the digital space.

[46] Risk regulation regime varies depending on perspective. See Christopher Hood et al., "Where Risk Society Meets the Regulatory State: Exploring Variations in Risk Regulation Regimes," *Risk Management* 1, no. 1 (1999): 22.

[47] Janice Graham, "Smart Regulation: Will the Government's Strategy Work?," *CMAJ* 173 (2005).

5. The Role of Personal Data Concern

Concerns about potential misuse of personal data are evenly distributed across demographic groups, although some groups show significantly higher levels of anxiety than others. Among respondents with a S3 education level, 32 out of 44 people (76.19%) stated that they were extremely worried about the misuse of personal data by choosing a scale of 4 and 5. Similar concerns were also expressed by respondents with an income of more than 10 million rupiah per month, with 28 out of 36 respondents (77.78%) stating that their high level of worries. The age group over 40 years old showed even higher numbers, with 67 out of 81 people (82.72%) expressing high concerns about the security of their personal data. Nonetheless, this trend is not only shared by groups that are more mature in age, education, or finances. In general, out of a total of 204 valid respondents, 160 people (78.43%) expressed high concern over the potential misuse of their personal data. Only 28 people (13.73%) chose a neutral attitude and 16 people (7.84%) said they were not so worried (choosing a scale of 1 and 2). These findings indicate that the issue of digital privacy and personal data protection is a broad and cross-group issue, not limited to the elite or educated.

However, when personal data concerns are confronted with government policies to restrict access to foreign digital services on national security grounds, citizens' responses show a variation. Support for the restrictive policy reached 43.28% of all respondents that is awarded as the highest compared to other answers. Despite that, total responds still reflect a diversity of attitudes. For example, in the special group of people with a bachelor's education, the number who supported the restriction amounted to 36%, smaller than the neutral voter of 40%. Interestingly, in the highest age, education and income groups—which also indicate a high concern for personal data—support for restrictions was more prominent than other options. In the specific age group over 40 years old, the percentage of support for the restrictive policy reached 49.38%, followed by neutrality as the second at only 30.86%. Likewise, for specific group of respondents with S3 or better education, support for this policy reached 52.4% while 50% of people in group with an income above 10 million rupiah expressed

support for the restriction. Thus, it can be seen that although concerns about the misuse of personal data are common across groups, not all groups interpret them in the same way.

Youngest age groups, lowest-income groups, or those who are still in early education tend not to immediately convert these concerns into support for government policies. They are more neutral or even reject restrictions, despite having high concerns. In contrast, the more mature age, educational, and financial groups showed a greater tendency to respond to their concerns by supporting state policies. This phenomenon can be analyzed through the risk *governance* and *perceived vulnerability* approaches,[48] where citizens who feel they have a higher level of risk—either due to greater exposure, stronger analytical capacity, or higher legal awareness—tend to support regulation as a form of risk mitigation. Within this framework, state actions that restrict access to foreign entities can be seen as a form of protection for the integrity of citizens' data and national digital sovereignty. The state is present as a protective actor, not only as a regulator that protects citizens' rights in the digital space.

Furthermore, *the theory of privacy pragmatism* can also be used to read this dynamic.[49] Citizens in the age, education, and high-income groups may not only have high levels of anxiety but also have more mature *risk calculations*. They do not reject foreign technology or information outright but recognize that certain restrictions that are selective and based on national interest can be a reasonable instrument to mitigate threats to their personal data. This is a form of compromise between digital freedom and greater risk protection. However, it is important to note that while some groups support restrictive policies, the majority of respondents as a whole still uphold the principle of freedom of access

[48] Risk and vulnerability tools should also be integrated to avoid oversimplification of risk through immature responses. For instance, by utilizing both quantitative and qualitative tools for risk assessment. See Nicolas Rossignol, Pierre Delvenne, and Catrinel Turcanu, "Rethinking Vulnerability Analysis and Governance with Emphasis on a Participatory Approach," in *Risk Analysis* (Oxford: Blackwell Publishing Inc., 2015), 137.

[49] In this conception, citizen is to be perceived as an individual that has control over its level of protection by evaluating available options. See Nora A Draper, "From Privacy Pragmatist to Privacy Resigned: Challenging Narratives of Rational Choice in Digital Privacy Debates," in *Policy and Internet* (Wiley-Blackwell Publishing Ltd, 2017).,234.

to information. As many as 83.08% of all respondents stated that they have the right to freedom of access to information, and 84.08% of that figure admitted to knowing that this right is guaranteed by the constitution of the Republic of Indonesia. This shows that support for restrictions is not a form of *denial of rights*, but rather an expression of a form of protection of rights themselves in the context of global risk. Here, a dialectic emerges between the principle of protection and the principle of freedom (liberalization) which requires the state to be careful in designing regulations that are able to answer public concerns while remaining within the framework of constitutionalism. Therefore, the direction of regulatory policies based on the public's real concern about the misuse of personal data must be prepared by considering the *precautionary principle*, the clarity of regulatory *objectives*, and the guarantee of accountability and public participation. The state is not enough to be present only as a dominant actor, but also as a facilitator of trust between citizens and technology. The combination of a protective approach and a rights approach is important to navigate Indonesia's digital regulatory landscape going forward.

6. Formulating Regulation

An important conclusion can be drawn up so far. There are factual and widespread concerns regarding the misuse of personal data despite the majority of citizens still upholding their constitutional right to information freedom. These concerns are most prominent in the mature age, higher education, and high-income groups—but are not exclusive to these groups. More than 78% of all respondents expressed concerns over the security of their personal data. Meanwhile, only 43.28% supported the policy of restricting foreign access, and the rest were spread out in neutral or disagreed. This is where the state needs to be present to regulate with the right portions and direction to better answer fundamental questions.

The first question is what the government needs to regulate**.** First, reckoning with Article XVI GATS concerning market access, Indonesia does not specify any

streaming services, or 'audio-visual' as a general sector for this type of service,[50] in its GATS schedule of commitment.[51] This, as ground, provides a lofty space to regulate foreign streaming services. There is no obligation to provide access to foreign services as it has to be specified in the schedule since GATS utilizes a positive list approach.[52] However, the worst-case scenario should also be considered. Although Indonesia does not specifically mention specific streaming services or even audio-visual sector within its schedule, there is a potential dispute when other states interpret and consider streaming services fall into categories of different sectors/subsectors for streaming services commitment. For instance, Indonesia listed subsector 'entertainment services' (CPC 75299) under sector 'telecommunication services' as NONE for market access which means no limitation commitment being made.[53] Streaming services might be considered to fall into this category because entertainment services are broad. In addition, even if activities in this sub-sector were not designed for online service as streaming services are, there is still a chance for that claim if the technology neutrality principle is successfully applied in a dispute.[54] If this potential is considered, there will be a domino effect in treating foreign streaming services in Indonesia as required by GATS obligations. Eventually, as a whole, it will force Indonesia to take a careful approach in every policy that deal with those services.

[50] Many authors have referred streaming services activities as an audio visual service sector in GATS schedule, such as Kevin Zhu, "Internet-Based Distribution of Digital Videos," *Electronic Markets* 11, no. 4 (2001): 13. Thorsten Hennig-Thurau et al., "The Last Picture Show?," *Journal of Marketing* 71, no. 4 (2007): 79. Kwak and Kim, "Trade negotiations in the digital era: The case of ott video streaming services.", 17. Shin-yi Peng, "GATS and the over-the-top services: A legal outlook," *Journal of World Trade* 50, no. 1 (2016). 28-29.

[51] In Provisional CPC classification, published in 1991, that available when the WTO agreement concluded in 1995, streaming service might also be related with several sub sectors such as television and radio broadcast transmission services (CPC 75241 & 75242); radio and television cable services (CPC 75300); motion picture and video tape distribution services (CPC 96113); radio services (CPC 96131); television services (CPC 96132); and combined program making and broadcasting services (CPC 96133). See United Nations, *Provisional Central Product Classification* (1991).

[52] In details, it can be described as a hybrid because positive list refers only for the covered service sector and negative list refers to market access and national treatment restriction, see Aaditya Mattoo, Robert M. Stern, and Gianni Zanini, *A Handbook of International Trade in Services* (Oxford: Oxford University Press, 2007), 253.

[53] See Indonesia's schedule of specific commitments in GATS, GATS/SC/43, 15 April 1994.

[54] Technology neutrality principle allows the view that even though a service is not designed as online activity when it was listed, it will fall also into category of online mode since it does not change the nature of service. For example, according to this principle, a service of distributing movies is equal between physical or online delivery mode. This principle has been successfully invoked at US Gambling, see *United States-Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, Panel Report, WT/DS285/R (Nov. 10, 2004). For more discussion on this principle, see also Sherzod Shadikhodjaev, "Technological Neutrality and Regulation of Digital Trade: How Far Can We Go?" *European Journal of International Law* 32, no. 4 (2021).

Furthermore, the findings of this study show that the necessary regulation is not just concerning an arbitrary restriction of foreign access, but a *mechanism for protecting citizens' personal data in the context of cross-border digital interactions and the rights to have information through all channels including from abroad*. Data protection policies cannot only be interpreted as access blocking, but must also cover aspects of data governance, data storage architecture, operational licensing of foreign digital service providers, and transparency standards for data processing. Restrictive policies that intersect citizens constitutional rights must have a clear goal, which is to maintain the security of citizens' data, national security and ensure digital sovereignty. In doing so, the government must not violate the constitutional principle of freedom of information as granted in Article 28 F Indonesia constitution. In addition, when the restriction measures are adopted, the regulatory objective should also be accountable and legitimate to invoke exemption as provided under Article XIV and XIV bis GATS to justify international commitments. With all of these careful considerations, it will not only satisfy the obligation set up by GATS, but also conditions for introducing policies as required by administrative law. In the meantime, the government should also be able to maintain the protection and promotion of its citizen rights as prescribed in the constitution.

The second question is then to understand who should be regulated or the main target of the policy. While government measures apply to all citizens, specific groups may play key roles in accepting or shaping government policies**.** From the demographic data and public perceptions collected, it is clear that the young age group (17–29 years) and the group with a S1 education are the part of the population that tends to be neutral or do not support restrictions on foreign access, although they also express concerns about personal data. This indicates a gap in *understanding or trust deficit* towards state intervention. Therefore, they need to be given a persuasive approach through public education, digital literacy, and intensive policy socialization. Meanwhile, mature and highly educated age groups who are more supportive of government policies can be

used as *strategic partners in building public legitimacy for regulatory policies that are protective*. The integration of concern involving those actors to the whole regulatory framework may determine the successful application of the answer to the first question above.

Finally, the third question explores the best method or design to formulate regulations**.** The most relevant and constitutional path is through *participatory and adaptive regulatory* approaches. In this context, the state should not take the position of being the sole holder of digital security but should instead build a regulatory system that is transparent, publicly accessible, open to citizen participation, and subject to the principle of accountability. This governance model is more in line with the spirit of Article 28F of the 1945 Constitution which guarantees the right of citizens to obtain and convey information, but at the same time allows the state to carry out its functions in protecting basic rights, including the right to security and digital privacy. Derivative regulations from the PDP (Personal Data Protection) Law need to be designed not only to bind digital business actors, but also target *international cooperation, and transparent audits of data management*. Furthermore, the state needs to adopt an approach that is not only '*state-centric*,' but '*rights-based*' and '*risk-informed*.' In another words, policy is not based on abstract national security assumptions, but is based on measurable risk data, the genuine necessity for citizen protection, and respect for constitutional rights. In this context, restrictive efforts can be legitimate, as long as they can be legally accountable, are proportionately limited, and are not discriminatory generalizations against foreign business actors. Those nondiscriminatory measures align with the obligations set by GATS in Article II GATS to not discriminate against foreign services of other states and Article XVII GATS to equally offer treatment with its domestic services.

Reckoning with the exposed data trends and analyses, it is clear that the country is faced with the challenge of navigating two issues at once: on the one hand is the demand for the protection of citizens' rights to privacy and security, while on the other hand is the demand not to ignore the right to freedom of

information in the digital age. Therefore, the answer to this challenge cannot be a dichotomy between protection or liberalization. Instead, what Indonesia needs is a form of regulation that unites the two within a progressive and contextual framework of constitutional protection.

III. CONCLUSION

3.1. Closing

This paper has discussed the tensions and dynamics of Indonesian people's perception of foreign digital service restriction policies, especially in the context of national security and personal data protection. Indonesian laws and jurisprudence afford the government a relatively high level of discretion to restrict internet-based services immediately when deemed necessary to protect public morals and order, even without prior administrative procedures. In the meantime, with mutually reinforcing theoretical and empirical approaches, the findings in this article show that age, education, and income levels have an effect on the tendency to support restrictive policies by the state, although in general, the majority of citizens still hold the right to access information guaranteed by the constitution. On the other hand, concerns over the misuse of personal data are proving to be cross-demographic and are widely felt by the public, including those who do not explicitly support restrictions on foreign access. This condition indicates a regulatory challenge that is multidimensional. The state cannot rely on a single justification in the name of national security to justify intervention against citizens' digital access without transparently explaining the limits, objectives, and mechanisms for protecting citizens' rights that come with it. Such policies risk creating *a conflict of norms* between the principle of protection and the principle of constitutional rights, especially when applied in general and without adequate public oversight.

3.2. Recommendation

The main contribution of this article lies in the effort to map and understand the tension between the need for state obligation in international agreement and

protection of citizens' personal data in the digital age and its obligation to remain respectful of the basic principles of freedom of information. By showing differences in perceptions based on age, education, and income groups, this article provides empirical evidence that state regulatory strategies should be differentiation, not generalistic, and designed based on contextual social understanding. In a broader framework, this article emphasizes the importance of a regulatory approach that is not only state-centric, but also upholds the principles of participation, accountability, and respect for the constitution. For this reason, in the future, it is necessary to strengthen digital data governance that is not only reactive to global challenges, but also able to articulate the protection of citizens' digital rights as part of a progressive constitutional mandate.

This study has limitations in terms of the scope of quantitative-descriptive data without in-depth qualitative exploration of the motivations and value preferences of each respondent group. In addition, the survey was conducted in a certain time frame (cross-sectional), so it was not able to capture the dynamics of changes in public perception longitudinally, especially for digital policies that are very dynamic and contextual. The next research can be directed at exploring the *behavioral intentions* of citizens in responding to digital restriction policies through a combined approach between *legal consciousness*, digital literacy, and trust in state institutions. In addition, the development of an evaluation model on the legitimacy of digital regulation, based on participation and procedural fairness, will make a stronger conceptual contribution in enriching the legal discourse of state administration and constitutional rights in the digital era.

Ethics Statement

The study was conducted in accordance with ethical standards applicable to survey-based social science research. Participation was voluntary, informed consent was obtained, and all responses were collected anonymously. Due to the minimal-risk and non-interventional design, no formal ethics committee approval was required.

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