

FREEDOM OF EXPRESSION IN THE DIGITAL ERA

An Examination of Human Rights and Legal Regulations

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Abstract

Freedom of expression is one of the fundamental human rights guaranteed by both the constitution and international law. In the digital era, this right has taken a new form through social media as a primary platform for expressing public opinion. However, technological advancements also bring new challenges, such as the misuse of free speech through the spread of hoaxes, hate speech, and defamation. This study aims to analyze how the concept of freedom of expression is guaranteed in national law, the challenges of law enforcement related to violations of free speech on social media, and the efforts made by the government and society to create responsible freedom of expression. The research method used is a normative juridical approach by examining relevant legislation and legal literature. The findings indicate that although freedom of expression is protected by the 1945 Constitution and Law Number 39 of 1999 on Human Rights, its implementation in social media remains hindered by the application of the Electronic Information and Transactions Law (UU ITE), which often leads to multiple interpretations. Therefore, synergy among the government, law enforcement authorities, and society is essential to strengthen digital literacy and reform existing regulations so that freedom of expression can be realized fairly and responsibly in the digital space.

Keywords: *freedom of expression, social media, law, human rights*

1. INTRODUCTION

Freedom of expression is one of the most fundamental human rights guaranteed by both national constitutions and international legal instruments. Article 19 of the *Universal Declaration of Human Rights (UDHR)* states that everyone has the right to freedom of opinion and expression, including the right to seek, receive, and impart information through any media without interference. A similar guarantee is found in the *Constitution of the Republic of Indonesia of 1945*, particularly Article 28E paragraph (3), which affirms every person's right to express their opinions. Freedom

of expression serves as a cornerstone of democracy, enabling public participation in decision-making processes and providing oversight of government actions.

In the digital era, the meaning and scope of freedom of expression have undergone significant transformation. The development of information and communication technology has given rise to social media as a new public sphere where individuals can express ideas, share information, and interact without geographical boundaries. Platforms such as X (Twitter), Facebook, Instagram, and TikTok have become the primary channels for people to voice opinions and shape public discourse. The emergence of social media expands access to freedom of expression and strengthens the democratization of information, as noted by Sabubun and Ruslak Hammar (2023) in their study on the protection of freedom of expression in digital spaces (*Eduvest Journal*).

However, the advancement of digital technology also brings various new challenges. The wide-open space for expression is often misused to spread false information (hoaxes), hate speech, and defamation, which can lead to social conflict and threaten public order. Wisanjaya and Widodo (2023) point out that in Indonesia, the misuse of freedom of expression on social media often conflicts with regulations such as *Law No. 19 of 2016 on Electronic Information and Transactions (UU ITE)*, which in practice is often viewed as restricting the right to free expression. This situation reflects a dilemma between protecting freedom of expression and safeguarding other rights such as dignity, reputation, and public security.

Therefore, freedom of expression in the digital era is not only about the right to speak but also about the responsibility to exercise that freedom ethically and constructively. Balanced regulation and social awareness are needed to ensure that social media remains a healthy democratic space without infringing on human rights. Further research is essential to understand how national and international law can adapt to the dynamics of digital communication while upholding the principle of responsible freedom of expression.

Based on the above background, the research problems can be formulated as follows:

1. How do national legal regulations guarantee freedom of expression in the digital era, particularly through social media?
2. What are the challenges in law enforcement related to violations of freedom of speech on social media?

3. How do the government and society promote responsible freedom of expression in cyberspace?

2. METHODOLOGY

This study employs a normative legal research method, which focuses on the analysis of positive legal norms in the Indonesian legal system. This approach is used to understand how the principle of freedom of expression is normatively guaranteed in national legislation and how it is implemented in the digital space, particularly on social media. The study uses a normative legal approach, which examines written legal materials (*law in books*) to identify principles, doctrines, and legal norms regulating freedom of expression. According to Soerjono Soekanto and Sri Mamudji (2015), normative legal research is conducted on secondary sources or library materials, consisting of primary, secondary, and tertiary legal materials. This approach is appropriate because the research focuses on analyzing legal norms rather than empirical practice.

The research utilizes three types of legal materials: Primary legal materials, which are statutes and regulations serving as the legal foundation for freedom of expression, including: The 1945 Constitution of the Republic of Indonesia (especially Articles 28E(3) and 28F); Law No. 39 of 1999 on Human Rights; Law No. 11 of 2008 on Electronic Information and Transactions, as amended by Law No. 19 of 2016. Secondary legal materials, which include literature supporting the analysis of primary legal sources, such as books, scholarly journals, and prior research. Tertiary legal materials, which provide explanations or guidance regarding primary and secondary sources, such as legal dictionaries, encyclopedias, and official government websites.

Legal materials were collected through library research, as suggested by Peter Mahmud Marzuki (2017), which is a primary method in normative legal research aimed at gathering relevant legal materials. The data were obtained by reviewing legal documents, books, scientific journals, and government reports related to freedom of expression and digital media regulations. The collected legal materials were analyzed using qualitative descriptive analysis, interpreting and comparing the norms in legislation to evaluate their consistency with human rights principles. This analysis identifies gaps between the written law (*law in books*) and its application in practice on social media (*law in action*). As noted by Johnny Ibrahim (2018) in *Theory and Methodology of Normative Legal Research*, qualitative analysis aims to uncover the

legal meaning embedded in regulations and assess their alignment with justice and legal certainty.

Through this methodology, the study aims to: Systematically examine how freedom of expression is guaranteed in national law and international law ratified by Indonesia; Identify challenges in law enforcement regarding the misuse of freedom of expression on social media and Provide normative recommendations for regulatory improvement and digital literacy enhancement so that freedom of expression can be realized in a fair, proportional, and responsible manner.

3. RESULTS AND DISCUSSION

3.1 National Regulations Guaranteeing Freedom of Expression in the Digital Era

In Indonesia, the guarantee of freedom of expression has a strong foundation in the 1945 Constitution of the Republic of Indonesia (UUD 1945), which serves as the highest legal authority. Article 28E paragraph (3) explicitly states that *“every person shall have the right to the freedom of association, assembly, and expression of opinion.”* This constitutional provision affirms that citizens are free to express their ideas and opinions, both in traditional public spaces and in digital environments, as part of democratic participation. In addition, Article 28F of the 1945 Constitution strengthens the right to communicate and to obtain information, thereby establishing the legal basis for freedom of information in the digital age. This constitutional guarantee is further reinforced by Law No. 39 of 1999 on Human Rights, particularly Article 23 paragraph (2), which emphasizes that everyone has the right to freely express their opinions in public.

In the context of digital communication, the Law No. 11 of 2008 on Electronic Information and Transactions (the ITE Law)—as amended by Law No. 19 of 2016—plays a crucial role in regulating the use of digital media. The ITE Law aims to provide legal certainty in cyberspace and to protect users from harmful content. However, in practice, it often intersects with the issue of freedom of expression. Certain provisions, such as Articles 27–28, prohibit the dissemination of content containing defamation, false information, or hate speech. Although these provisions are intended to

maintain public order and protect individual dignity, their application has been criticized for being overly broad and potentially restrictive of free expression (Wisanjaya & Widodo, 2023). Recognizing this concern, the government has taken corrective measures through revisions of the ITE Law and the issuance of a Joint Decree by the Minister of Communication and Information Technology, the Chief of Police, and the Attorney General in 2021, which provides guidelines to ensure that law enforcement is not misused to suppress legitimate expression.

Furthermore, Indonesia's commitment to freedom of expression is also reflected in its ratification of the International Covenant on Civil and Political Rights (ICCPR) through Law No. 12 of 2005. Article 19 of the ICCPR affirms the right of every individual to hold opinions without interference and to seek, receive, and impart information and ideas through any media. By ratifying this treaty, Indonesia is legally bound to align its national legislation with international human rights standards, ensuring that any restriction on freedom of expression is lawful, necessary, and proportionate.

In conclusion, Indonesia's national regulations provide constitutional and legal protection for freedom of expression, including in digital spaces. However, their implementation must continue to be refined to achieve a balanced approach between protecting individual rights and maintaining public order amid the rapid development of digital technology.

3.2 Challenges in Law Enforcement Related to Violations of Freedom of Expression on Social Media

Law enforcement concerning violations of freedom of expression on social media in Indonesia faces complex and multidimensional challenges. One of the main challenges is the imbalance between protecting freedom of expression and maintaining public order as well as the rights of others. In practice, several provisions within *Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law)*, as amended by *Law No. 19 of 2016*, are often used to prosecute individuals who express their opinions online. For instance, Article 27 paragraph (3) concerning defamation and Article 28 paragraph (2) concerning hate speech are frequently interpreted broadly and subjectively, leading to potential criminalization of expressions that should fall under the legitimate exercise of free speech (Wisanjaya & Widodo, 2023).

Another major challenge lies in the capacity of law enforcement officers to understand the context of digital communication. Limited digital literacy and insufficient understanding of human rights principles among law enforcement authorities often result in disproportionate handling of cases. In many instances, reports concerning social media posts are processed without careful assessment of their motives, context, or social impact. This situation has led to a public perception that the law is being used as a tool to suppress criticism, particularly against those opposing political or governmental interests. According to *Setiawan and Prakoso (2022)*, this condition has fostered a phenomenon known as “self-censorship,” where individuals refrain from expressing opinions due to fear of legal repercussions.

Furthermore, technical and juridical challenges also complicate law enforcement in the digital sphere. Identifying offenders online can be difficult due to anonymous accounts, data encryption, and cross-border information dissemination. The evidentiary process in court requires specialized digital forensic expertise and inter-agency coordination. *Putra (2023)* notes that weak digital tracking systems and a lack of human resources in the cyber sector often hinder fair and transparent resolution of cases related to freedom of expression.

Another challenge involves the regulatory imbalance and government policy practices in managing digital spaces. On one hand, the government aims to safeguard cybersecurity and curb the spread of disinformation; on the other hand, measures such as website blocking, content takedowns, and internet restrictions are sometimes perceived as excessive and contrary to the constitutional guarantee of freedom of expression. *Human Rights Watch (2023)* highlights that such policies risk undermining the digital democratic space by instilling fear and limiting public participation in socio-political discourse.

Law enforcement related to violations of freedom of expression on social media requires not only firmness in legal implementation but also a deep understanding of democratic values and human rights principles. A more precise and proportional legal framework, improved capacity building for law enforcement personnel, and strong public oversight are necessary to ensure that freedom of expression remains protected while promoting social responsibility within digital spaces.

3.3 Government and Community Efforts in Promoting Responsible Freedom of Speech in Cyberspace

In the digital era, characterized by the rapid flow of information and the expansion of expressive freedom, responsibility in exercising the right to free speech has become increasingly crucial. In Indonesia, the government and the public have made continuous efforts to promote responsible freedom of speech in cyberspace through regulatory, educational, and collaborative approaches among various stakeholders.

From the government's perspective, the main effort has been the establishment and refinement of the legal framework that both guarantees and guides the ethical exercise of free expression. The government regulates online freedom of speech through *Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law)*, as amended by *Law No. 19 of 2016*, as well as the *Joint Decree of the Minister of Communication and Informatics, the Chief of the National Police, and the Attorney General (2021)*, which provides enforcement guidelines to prevent misuse of the law against legitimate expression. According to *Listiyani and Christiyana (2023)*, the amendment of the ITE Law represents an important step toward balancing the protection of freedom of expression with the safeguarding of honor, public order, and national security.

Beyond legislation, the government has also implemented digital literacy initiatives to foster public awareness of online communication ethics. The *National Digital Literacy Movement*, launched by the Ministry of Communication and Informatics (Kominfo) in 2021, aims to build a healthy digital culture based on four key pillars: *digital ethics*, *digital safety*, *digital skills*, and *digital culture*. This program serves as a strategic effort to educate citizens on using their freedom of expression responsibly, avoiding the spread of hoaxes, hate speech, and defamatory content. As *Sabubun and Hammar (2023)* emphasize, digital literacy is a vital instrument for protecting freedom of expression in social media while maintaining ethical and legal boundaries.

From the community's perspective, responsibility in exercising free speech is reflected through active participation in creating a democratic and respectful digital environment. Citizens play a crucial role in verifying information before dissemination and upholding ethical communication based on facts and respect for differing opinions. *Wisanjaya and Widodo (2023)*

note that fostering a culture of critical dialogue and tolerance is a prerequisite for achieving productive and meaningful freedom of expression. Civil society organizations, academics, and digital communities also contribute through advocacy, research, and public campaigns that promote responsible and rights-based online expression.

These efforts align with the principles enshrined in *Article 19 of the Universal Declaration of Human Rights (United Nations, 1948)*, which guarantees every individual the right to seek, receive, and impart information and ideas through any media without interference. However, such freedom must be exercised with due regard for the rights and reputations of others, public morality, and national security. Therefore, collaboration between the government, digital platforms, media organizations, and civil society is essential to maintaining a balance between freedom and responsibility in cyberspace.

Responsible freedom of speech in the digital realm is not solely an individual obligation but the result of synergy between the government, the community, and social institutions. Legal reform, enhanced digital literacy, and the cultivation of respectful communication culture are the fundamental pillars for sustaining a democratic, open, and ethical digital public sphere.

4. CONCLUSION

Freedom of expression remains a vital pillar of democracy and human rights in Indonesia, both constitutionally and within the framework of international law. In the digital era, the exercise of this right has expanded through online platforms, allowing for broader participation in public discourse. However, the misuse of digital spaces such as the spread of misinformation, hate speech, and defamation poses significant challenges to maintaining a balance between freedom and responsibility. Although Indonesia's legal system provides a solid foundation for protecting freedom of expression through the 1945 Constitution and Law No. 39 of 1999 on Human Rights, the implementation of the Electronic Information and Transactions Law (UU ITE) often creates ambiguity and raises concerns about overcriminalization. To ensure that this fundamental right is upheld, it is necessary to pursue regulatory reform, enhance digital literacy, and promote collaborative efforts among the government, law enforcement, and the public. In conclusion, achieving responsible freedom of

expression in the digital era requires not only strong legal protection but also a cultural and educational commitment to use digital platforms ethically and constructively. Such synergy will help create a digital ecosystem that respects both individual rights and collective harmony.

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