

PROTECTION OF FREEDOM OF EXPRESSION THROUGH SOCIAL MEDIA FROM THE PERSPECTIVE OF HUMAN RIGHTS

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ABSTRACT

Freedom of expression is one of the fundamental human rights guaranteed in various international legal instruments. The development of information and communication technology, especially social media, has opened up new spaces for people to express their opinions. This research aims to analyze the protection of the right to freedom of opinion through social media from a human rights perspective. This research uses normative legal research methods with a qualitative approach. Research data was obtained through literature studies of various statutory regulations, books, scientific journals and other legal sources. The data that has been collected is then analyzed in three stages, namely data reduction, data presentation and drawing conclusions. The research results show that the protection of freedom of expression on social media is regulated in various policies including the Universal Declaration of Human Rights (UDHR), the International Convention on Civil and Political Rights (ICCPR), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Meanwhile, in Indonesia it is regulated in the 1945 Law, the Human Rights Law, and Law Number 19 of 2016. The right to freedom of opinion through social media is a fundamental human right that needs to be protected. This right is considered a fundamental right that cannot be reduced or limited by anyone or the state, this emphasizes the need for strong fulfillment and protection of this right. However, this right also needs to be balanced with the responsibility to use it wisely and responsibly.

KEYWORDS *Freedom of Opinion, Social Media, Human Rights*



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INTRODUCTION

Indonesia is a democratic country based on the principles of the Pancasila ideology. Its characteristic as a democratic country is supported by Indonesia's commitment to upholding human rights (HR), one of which is the freedom of expression. Freedom of expression is a fundamental human right that grants individuals the freedom to express their opinions, views, or thoughts without fear of repression or hindrance from others or the government.

The development of information and communication technology, especially through social media, has brought about significant changes in how people express their opinions. Social media provides a broad and easily accessible platform for individuals to express their ideas, views, and opinions to a larger audience. This has opened up new, more democratic spaces for people to participate in public discourse, comment on current issues, and share their thoughts on various topics. Thus, with the presence of social media, everyone has the opportunity to become content creators and have a voice in the public sphere, creating a more inclusive and diverse communication dynamic.

However, with technological advancements also come increased cases of crimes using the internet. Therefore, many countries have started issuing regulations to address these crimes and create clear legal frameworks. Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE) serves as the first legal basis in Indonesia regarding Information Technology and Electronic Transactions. As known by the public, the enactment of this law also sparked controversy regarding the protection of public freedom of expression (Marwandianto & Nasution, 2020).

The Law on Electronic Information and Transactions is also considered by some journalists to be a restriction on freedom of expression and freedom of the press, especially with articles regulating defamation. However, the provisions governing the protection of freedom of expression, the parties involved, the rights held, and the limitations on an individual's expression through the internet are often unclear. This is because freedom of expression is part of human rights that require recognition and protection, including by the state. Although regulated in Article 27(3) of the ITE Law, the formulation of this article is rather vague, especially regarding defamation, meaning the phrase is not elaborated in detail on what constitutes defamation (Erviani, 2022).

Previous research by (Pratama et al., 2022) shows that the freedom of people to express their opinions is a right and responsibility granted by democratic states. The use of the ITE Law in the context of the basic rights of every citizen regarding freedom of expression and expression is considered not to be restricted by anyone, including the state. This is because the state has a responsibility to respect and protect human rights, including freedom of expression, through legal regulations. Criticism of the government is not a legal violation because freedom of expression and expression is guaranteed in the Indonesian constitution. However, limitations on freedom of expression and expression are imposed to maintain the security and welfare of society, thus not harming the human rights of others.

Another study by (Guntara & Herry, 2022) found that there is a lack of protection for freedom of expression in Law Number 19 of 2016 concerning

Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE). They found that the ITE Law only has one article directly related to the right to freedom of expression through the internet, especially social media, namely Article 27 paragraph (3). However, this article is included in the section that regulates prohibited acts, which tends to contain obligations for internet users, rather than the rights held by users in freely communicating. This creates ambiguity regarding the rights that internet users can enjoy in utilizing the internet media for communication. The right to freedom of expression in the context of social media, from the perspective of Human Rights, is seen as an integral part of the first-generation human rights that include individual civil and political rights. This right is considered a fundamental right that should not be diminished or restricted by anyone or by the state, emphasizing the need for strong fulfillment and protection of this right.

The novelty of this research lies in examining international law that provides protection for the right to freedom of expression through social media from the perspective of human rights. The findings of this research can serve as a basis for the development of more effective policies in protecting freedom of expression on social media. Better policies can be designed to ensure that human rights are respected and protected in the digital context. This research aims to analyze the protection of the right to freedom of expression through social media from the perspective of human rights.

RESEARCH METHOD

This research utilizes the normative legal research method with a qualitative approach. Normative legal research is a type of legal research conducted by examining literature or secondary data, such as legislation, court decisions, legal theories, and opinions of scholars. Normative legal research aims to find and formulate legal arguments through analysis of the core issues (Efendi et al., 2016). The research data is obtained through literature review of various legislation, books, scholarly journals, and other legal sources. The collected data is then analyzed in three stages: data reduction, data presentation, and conclusion drawing.

RESULT AND DISCUSSION

The 1945 Constitution of the Republic of Indonesia is the fundamental law that serves as a guide for the administration of the government, both in written and unwritten forms. Therefore, various laws in Indonesia refer to the 1945 Constitution. There are numerous legal regulations governing human rights in Indonesia, one of which is Article 1 of Law No. 39 of 1999 concerning Human Rights, which states that human rights are a set of inherent rights of humans as creatures of God Almighty and are His gifts that must be respected, upheld, and protected by the State, law, and human dignity (Pratama et al., 2022). The presence of Human Rights (HR) is not a gift from the state but rather a divine blessing.

Freedom of expression is part of human rights regulated in the 1945 Constitution. This is clearly stated in Article 28 of the 1945 Constitution, which states:

"The freedom to unite and assemble, to express thoughts orally and in writing, and so forth, shall be established by law." This freedom of expression is in line with Article 19 of the Universal Declaration of Human Rights (UDHR) and Law No. 39 of 1999 concerning Human Rights, which states: "Everyone has the right to freedom of opinion and expression, including the freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers." It is implicit in these two laws that the freedom to express opinions publicly without disturbance is a genuine freedom and is granted as extensively as possible (Sari & Widyastuti, 2021).

Freedom of expression is placed as a means to seek, disseminate, and receive information and then discuss whether to support or criticize it as a process to correct misconceptions about facts and values (Julianja, 2018). In Indonesia, all citizens have the right to freedom of expression in public because freedom of expression is considered a form of freedom without fear as it is guaranteed by law, one of which is Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states: "All citizens are equal before the law and government and must uphold the law and government without exception." However, freedom of expression and opinion are threatened by the existence of Law Number 19 of 2016, an amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE), as this law actually limits freedom of expression and opinion (Vicktoria, 2023).

The Electronic Information and Transactions Law or Law Number 19 of 2016 or ITE Law is a law that regulates information and electronic transactions or information technology in general. This law has jurisdiction over anyone who performs legal actions as regulated in this Law, both within the territory of Indonesia and outside the territory of Indonesia, which have legal consequences within the territory of Indonesia and/or outside the territory of Indonesia and harm the interests of Indonesia (Guntara & Herry, 2022).

Law No. 39 of 1999 Concerning Human Rights Articles 13 and 25, so it can be said that freedom of expression, communication, obtaining and delivering information through various media are legitimate things to do and are rights possessed by every human being, especially for Indonesian society (Raskasih, 2020). Interestingly, in Law No. 9 of 1998 concerning freedom of expression in public (Law No. 9 of 1998), it adds responsibility for the rights holder to safeguard the rights in question so as not to violate the rights of others (Zainab & Nainggolan, 2022). Restrictions on the right to freedom of expression are regulated in the 1945 Constitution of the Republic of Indonesia (Harahap & Hidayat, 2023):

- a. Article 28I paragraph (5) states: "To uphold and protect human rights in accordance with the principles of a democratic rule of law state, the implementation of human rights is guaranteed, regulated, and stipulated in legislation."
- b. Article 28J paragraph (1) states: "Every person must respect the human rights of others in the orderly life of society, nation, and state."
- c. Article 28J paragraph (2) states: "In exercising their rights and freedoms, every person must submit to limitations established by law solely for the purpose of securing due recognition and respect for the rights and freedoms

of others and to meet the just demands of morality, religious values, religious, and public order in a society."

At the regional level, there are also various instruments that recognize and guarantee human rights, namely: the ASEAN Human Rights Declaration, which was established on November 18, 2012. Civil and political rights are regulated in Article 23, which states: "Everyone has the right to express opinions and to express them, including the freedom to defend opinions without interference and to seek, receive, and provide information, orally, in writing, or through any other means chosen by the person concerned."

Meanwhile, nationally, in (Syafrizal et al., 2022) it is stated that the 1945 Constitution, UUD 1945, has guaranteed the right to freedom of expression, namely in Article 28E paragraph 2 and further emphasized in paragraph 3: "every person has the right to freedom of association, assembly, and expression." And it is continued in Article 28F. Regarding this freedom, there are Limitations as stated in Article 28J. Then, Law Number 39 of 1999 Concerning Human Rights (HAM), Law No. 39 of 1999 is a derivative law of the 1945 Constitution which specifically regulates human rights. There are several Articles that regulate freedom of expression, namely; Article 14 paragraph (2) "Everyone has the right to seek, obtain, have, store, process, and convey information using all available means." It is followed by Article 23 and Article 25. In addition to guarantees, the right to express opinions is also subject to Restrictions in Article 69 and followed by Article 70.

Internationally, freedom of expression is regulated in the universal UDHR (Universal Declaration of Human Rights) and also the International Covenant on Civil and Political Rights (ICCPR). The Covenant on Civil and Political Rights (ICCPR), these rights are regulated in articles 17-20 while in Law Number 39 of 1999, the protection of the right to personal freedom is regulated in Articles 20-43 which include: the right not to be enslaved, the right to freedom of religion, the right to choose and select, the right to assemble and associate, the right to express opinions, the right to citizenship, and to reside (Fahri et al., 2022).

In the UDHR, about freedom of expression in the right regulated in Article no (19) which contains about the freedom to have and express opinions without any problems and to convey information through any media. Meanwhile, in the ICCPR, the rights regulated therein are clarified into 2, about rights derogable and non-rights derogable. A right that can be reduced or within the limits of a state that favors its fulfillment (Nabilah & Immanuel, 2021). The following are included in this form of right:

1. The right in the form of peaceful freedom
2. The right in the form of freedom of association
3. The right to express opinions or criticisms freely

While non-derogable rights are an absolutely absolute right that must not be reduced by the state, even if the state is in a state of emergency. The following are included in this absolute type:

1. Human right to remain alive.
2. Human right to be free from torture.
3. Human right to be free from slavery.
4. Human right to be free from imprisonment.

5. Human right to be free from criminality.
6. The right to be recognized as a legal person.
7. Rights in freedom of expression, freedom of belief, and freedom of religion.

The concept of Human Rights officially emerged on December 10, 1948, when the UN proclaimed the Universal Declaration of Human Rights, which contains 30 Articles, all of which explain the rights and obligations of humans in general. In the Universal Declaration of Human Rights, there are 5 types of human rights, namely personal rights (rights to guarantee personal needs), legal rights (rights to guarantee legal protection), civil and political rights, subsistence rights (Kosasi, 2020).

The influence of the UDHR on the Indonesian Constitution is not entirely new. Looking back, the RIS (Republic of the United States of Indonesia) Constitution from 1949 to 1950. Articles 7 to 33 "Chapter I Part 5 Human Rights and Freedoms" of the RIS Constitution contain most of the core human rights listed in the Universal Declaration of Human Rights as well as the government's obligation to protect them. This explicit inclusion proves the UDHR's position as a minimum standard and norm in the drafting of human rights protection commitments in Indonesia in 1949-1950 (Sinombor, 2022).

Regarding the enforcement and protection of human rights, the EU has the European Court of Human Rights (ECHR). The European Convention on Human Rights as a regional human rights treaty supporting fundamental civil and political rights has established a supranational European Court of Human Rights. This judicial body is considered an effective court for complaints of human rights violations. The influence of the ECHR as a regime operating in the field of human rights can also be studied through a normative approach that explains how a norm can be adopted by part of the international system. In the context of the ECHR, human rights developments are part of extremely sexy norms to fight for. Because the concept of human rights itself develops with the role of non-state actors or interstate actors who create and present it as a norm, even at the level of The Universal Declaration of Human Rights (DUHAM) (Wahyudi, 2020).

Freedom of expression is a fundamental human right recognized in various international instruments and national constitutions. Including the right to express opinions, ideas, or views without fear of restriction or repression from the government or other parties. In the context of social media, where individuals can easily voice their thoughts and opinions, protecting freedom of expression becomes increasingly relevant and important. The protection of freedom of expression on social media is based on international and national legal frameworks. At the international level, instruments such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) explicitly acknowledge this right. At the regional level, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) also provides similar protection.

At the national level, many countries have laws guaranteeing freedom of expression, including Indonesia. Here, the 1945 Constitution and the Human Rights Law provide a legal basis for protecting freedom of expression. In addition, Law

Number 19 of 2016 concerning Information and Electronic Transactions (ITE) in Indonesia also has provisions regulating freedom of expression in the virtual world or social media.

CONCLUSION

Protection of freedom of expression on social media is regulated through various policies, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). In Indonesia, regulations related to this matter are enshrined in the 1945 Constitution, the Human Rights Law, and Law Number 19 of 2016. The right to freedom of expression through social media is considered a fundamental human right that must be strongly protected. This right is seen as inherent and must not be deprived or restricted by anyone or by the state, emphasizing the need for real efforts in fulfilling and protecting this right. However, in upholding this right, it is also important to emphasize the responsibility of using it wisely and responsibly.

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