



Protection of citizens' constitutional rights to freedom of expression in the digital era

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Abstract

Freedom of expression is one of the constitutional rights of citizens guaranteed by the 1945 Constitution of the Republic of Indonesia. The development of information technology has brought significant changes that have penetrated various aspects of people's lives. The presence of digital platforms has made it easier for people to express opinions through social media. This has a positive impact because it can strengthen public participation in the democratic process. However, on the other hand, freedom of expression in the digital space also faces various challenges. However, the rapid development of digital technology presents new challenges in protecting this right, particularly in the digital space and social media, which are vulnerable to restrictions and criminalization. This study aims to analyze the legal regulations for freedom of expression in the digital era and the forms of protection of citizens' constitutional rights in practice. The research method used is normative legal research with a statutory and conceptual approach. The results show that the protection of citizens' constitutional rights in the practice of freedom of expression in the digital space is multidimensional. This protection includes normative protection through the constitution, judicial protection through judicial review mechanisms and fair trials, institutional protection through the role of independent institutions and civil society advocacy, and non-judicial protection through platform policies and strengthening digital literacy.

Keywords: Protection, constitutional rights, freedom of expression, digital era

Introduction

Freedom of expression is a universally recognized constitutional right of citizens guaranteed by the 1945 Constitution of the Republic of Indonesia. Article 28E paragraph (2) of the 1945 Constitution affirms that everyone has the right to freedom of expression and expression of opinion according to their conscience, while Article 28F states that everyone has the right to communicate and obtain information for the purpose of personal and social development. Therefore, freedom of expression is an essential part of the principles of a state based on the rule of law and democracy, which places the people as sovereign.

The development of information technology has brought significant changes to the practice of freedom of expression. The presence of social media, digital forums, and various online communication platforms makes it easier for people to express opinions, ideas, and critique the government and public policies. This has a positive impact because it strengthens public participation in the democratic process. However, on the other hand, freedom of expression in the digital space also faces various challenges. The misuse of social media to spread hate speech, fake news (hoaxes), and content that disturbs the public is often used by the state as a justification for restricting freedom of expression.

In Indonesia, one of the legal instruments widely used to restrict freedom of expression in the digital era is Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE) and its amendments. Although the ITE Law aims to regulate the healthy and responsible use of information technology, in practice, several of its provisions have sparked controversy due to their perceived openness to interpretation and potential restrictions on freedom of expression. Several cases have demonstrated the criminalization of citizens who express opinions or criticism through social media, raising concerns about the protection of this constitutional right^[1].

This situation raises fundamental questions about the extent to which the state can restrict freedom of expression in the digital era without violating citizens' constitutional rights. In the context of a state governed by the rule of law, restrictions on human rights are indeed permitted, as stipulated in Article 28J of the 1945 Constitution, as long as they are carried out to guarantee respect for the rights and freedoms of others and to meet the demands of justice, morality, security, and public order. However, these restrictions must be applied proportionally and must not diminish the essence of the right to freedom of expression itself. Based on this background, this research is important to analyze the legal regulations regarding freedom of expression in the digital era and the forms of protection of citizens' constitutional rights in practice. This research is expected to contribute to strengthening constitutional democracy and the protection of human rights in Indonesia, especially amidst the increasingly rapid pace of digitalization.

Method

The type of research used in this study is normative legal research with a statutory and conceptual approach. The legal materials in this study were analyzed using legal analysis techniques in the form of legal interpretation and legal argumentation to support the discussion of the issues studied by the author. The legal material sources in this study consist of two types: primary legal materials and secondary legal materials. Primary legal materials include relevant laws and regulations, while secondary legal materials provide explanations to the primary legal materials, including legal scholarly works, legal journals, and other sources supporting this research.

The legal material collection technique was carried out through literature study, namely by reading and reviewing laws and regulations using problem-based recording and

analysis techniques, as well as reviewing literature related to the research issues, such as books, scientific articles, and legal journals^[2].

Results and Discussion

Legal Regulations on Citizens' Freedom of Expression in the Digital Era According to Indonesian Positive Law

Freedom of expression is a fundamental right of every individual. Freedom of expression and opinion is a fundamental right of every citizen and is a constitutional right guaranteed by the state. Indonesia, as a country based on law and democracy, has the authority to regulate and protect the implementation of human rights. The functioning of democracy in a country is characterized by respect, protection, and fulfillment of human rights, which are the obligations and responsibilities of the government. Furthermore, public participation is also essential.

Freedom of expression and opinion depends on policies established by the competent government authorities. This primarily relates to granting individuals the freedom to express themselves, with the state guaranteeing freedom of expression without interference^[3]. Democracy provides space or opportunity for everyone to enjoy their freedom proportionally, as this freedom is limited by the freedom of others. Freedom of expression is a crucial element in realizing democracy and public participation in public policymaking and the general election process. If people's freedoms are violated, it can be said that the government is authoritarian.

Freedom of expression is a fundamental right that must be fulfilled, protected, and respected by the state because a democratic society recognizes human rights. Freedom of expression in a democratic state is a prerequisite for the realization of the principles of transparency and accountability, which are crucial for the advancement of human rights protection. Toby Mendel explains that there are several reasons why freedom of expression is important: it is the foundation of democracy, plays a role in eradicating corruption, promotes accountability, and is believed to be the best way to discover the truth in society^[4]. Freedom of expression is not an absolute right. The Universal Declaration of Human Rights (UDHR) states that freedom of expression does not mean unlimited freedom, but rather has limitations. Article 19 of the Declaration of Human Rights states that:

- a) Everyone has duties to society, because only in society can the free and full development of the individual's personality be realized.
- b) In exercising his or her rights and freedoms, everyone is subject to such limitations as are determined by law solely for the purpose of guaranteeing recognition and respect for the rights and freedoms of others and of meeting the demands of justice, morality, public order, and the welfare of a democratic society.

Digital media, particularly social media, can be used as an effective and innovative means to mobilize people to express themselves. Therefore, the development of information technology through digital media has driven dynamics in the presentation of information through various electronic devices such as smartphones, notebooks, tablets, and so on. Digital media has given rise to a new character: audience-generated media, which allows people to distribute their own content. The practice of producing and consuming content is defined as the simultaneous production and

consumption of content. Within this practice, the tendency to express oneself on social media has begun to be tinged with negativity. The emergence of the cultural lag phenomenon has made the existence of social media inversely proportional to literacy skills, resulting in digital media as a public space tending to become rife with negative content.

The desire to express oneself arises as a logical consequence of human nature as *zoon politicon* (social creatures) whose communication with others is inseparable from forms of personal expression. According to Abraham Maslow, humans have a hierarchy of needs, with the highest need being the need for self-actualization, or, in other words, the need to express oneself in the public sphere^[5].

The Industrial Era 4.0 is a term that has become ingrained in people's lives. Throughout the world, including Indonesia, the development and growth of technology and information is occurring at a rapid pace. It is undeniable that this growth is pushing and forcing society to move towards a fully digital world. Digital technology is closely linked to media, as the development of media, from legacy to new, increasingly facilitates human access to various fields related to digital technology. Digital media is media whose content is a combination of data, text, sound, and various types of images stored in digital format and disseminated via broadband optical cable networks, satellites, and microwave systems^[6].

In Indonesia, freedom of expression, as a benchmark of democracy, has been prominent since the issuance of Decree of the People's Consultative Assembly of the Republic of Indonesia (MPR RI) Number XVII/MPR/1998 concerning Human Rights by the People's Consultative Assembly of the Republic of Indonesia (MPR RI). This decree marked a shift in perspective regarding power over communication and information, from previously strictly regulated by the state, to a citizen's right that must be protected by the state. Freedom of expression is also included in the post-amendment constitution, namely in Article 28E paragraph (2) and paragraph (3) and Article 28F of the 1945 Constitution of the Republic of Indonesia. Article 28E paragraph (2) states that "everyone has the right to freedom of belief, to express thoughts and attitudes in accordance with their conscience" and Article 28E paragraph (3) states that "everyone has the right to freedom of association, assembly, and expression of opinion." Meanwhile, Article 28F states that "everyone has the right to communicate and obtain information to develop their personality and social environment, and has the right to seek, obtain, possess, store, process, and convey information using all available channels."

A fundamental characteristic of Indonesia as a democratic nation is citizen involvement in every political decision-making process, both directly and through their representatives. This provision illustrates that everyone has the right to discuss every state policy made on behalf of the people. Citizen involvement in every state political decision-making process is a manifestation of democracy, where every citizen has a sense of responsibility for government policy^[7].

This provision aligns with Article 14 paragraphs (1) and (2) of Law Number 39 of 1999 concerning Human Rights, which also regulates the right to communicate and obtain necessary information, as well as the right to seek, obtain, possess, store, manage, and convey information using all

available means. Recognition of the right to obtain and convey information is in line with the provisions of Article 19 paragraph (2) of the International Covenant on Civil and Political Rights (ICCPR), which has been ratified by Indonesia through Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights.

The interpretation of this provision is accommodated through Law Number 9 of 1998 concerning Freedom of Expression in Public, specifically Article 1 paragraph (1), which states that "freedom of expression is the right of every citizen to express thoughts orally, in writing, and so on freely and responsibly in accordance with the provisions of applicable laws and regulations." In national legal instruments, restrictions on the right to freedom of expression are regulated in Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that "in exercising their rights and freedoms, every person is obliged to submit to restrictions established by law for the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to meet just demands in accordance with considerations of morality, religious values, security, and public order in a democratic society." This provision has a similar context of restrictions to the provisions regarding the right to freedom of expression and opinion in international legal instruments^[8].

Freedom of expression is also explained in Law Number 39 of 1999 concerning Human Rights, specifically Article 23 paragraph (2), which states that "every person is free to hold, express, and disseminate opinions in accordance with their conscience, both verbally and/or in writing through print and electronic media, while taking into account religious values, morality, order, the public interest, and the integrity of the nation." Freedom of expression, in its implementation, cannot be separated from digital media as a form of development in information and communication technology, which is a communication tool that cannot be ignored.

Digital media, particularly social media, as a public space for realizing freedom of expression and opinion, encourages the realization of participatory democracy. Therefore, in expressing their opinions, every individual is obliged to comply with the restrictions established by law necessary to guarantee the rights and freedoms of others. Article 28J of the 1945 Constitution of the Republic of Indonesia, Article 1 paragraph (1) of Law Number 9 of 1998 concerning Freedom of Expression in Public, and Article 23 paragraph (2) of Law Number 39 of 1999 concerning Human Rights stipulate restrictions regulated by law to guarantee recognition and respect for the rights and freedoms of others and to meet the demands of justice in accordance with moral considerations, religious values, security, and public order in a democratic society^[9].

Forms of Protection of Citizens' Constitutional Rights in the Practice of Freedom of Expression in the Digital Space

Freedom of expression is a constitutional right guaranteed by the 1945 Constitution of the Republic of Indonesia, specifically Article 28E paragraph (3), which states that everyone has the right to freedom of association, assembly, and expression of opinion. In the digital context, this guarantee becomes increasingly relevant as developments in information technology expand the public space for citizens

to express their opinions. However, these developments also pose new challenges, particularly those related to the regulation of digital content, protection from hate speech, and legal restrictions through the Electronic Information and Transactions Law (UU ITE). These challenges have sparked both academic and practical debate regarding the extent to which these constitutional rights are truly protected in practice. Protection of these rights is realized through several instruments.

The first form of protection stems from basic constitutional norms that place freedom of expression as a fundamental human right. The Constitution provides normative guarantees that should serve as the basis for all laws and regulations, including regulations in the digital sector^[10]. There is tension between constitutional protection of freedom of expression and the Electronic Information and Transactions (ITE) Law, which, on the one hand, is intended to maintain order, but on the other hand, has the potential to threaten citizens' rights if used repressively against criticism or political expression. This demonstrates the importance of consistency between constitutional norms and sectoral regulations.

The second form of protection is provided through judicial mechanisms, particularly through the role of the Constitutional Court (MK) as the guardian of constitutional rights. The MK has the authority to review laws against the 1945 Constitution of the Republic of Indonesia if they are deemed unconstitutional. The MK's role in protecting freedom of expression is crucial, given that the ITE Law is often viewed as an instrument that opens up opportunities for criminalization of expression in the digital space. One significant development was the MK's 2025 ruling restricting the government and private legal entities from filing defamation lawsuits, which was seen as a significant step in strengthening citizen protection from legal abuse^[11].

A further form of protection is provided through the application of the principle of due process of law. Citizens facing legal proceedings due to their activities in the digital space have the right to a fair and transparent trial, as well as the opportunity to defend themselves. According to Fernando, provisions in the ITE Law, particularly those related to defamation, are often applied without considering the principle of proportionality and international standards regarding restrictions on freedom of expression. However, effective procedural protection is crucial to ensure constitutional rights are not diminished in judicial practice^[12].

In addition to judicial mechanisms, protection is also provided through independent institutions and civil society organizations. The National Human Rights Commission, for example, plays a role in monitoring and providing recommendations regarding violations of the right to freedom of expression^[13]. Strategic legal advocacy carried out by civil society organizations, including through strategic litigation, can be an important means of strengthening the protection of citizens' constitutional rights. Thus, protection depends not only on judicial institutions but also on the role of non-state actors in championing digital freedom.

The digital space is regulated not only by the state but also by the internal policies of platforms such as Facebook, Twitter/X, or YouTube. Transparent content moderation policies and fair objection mechanisms can provide additional protection for users^[14]. However, in practice,

content moderation policies are often applied inconsistently and lack accountability, potentially suppressing freedom of expression, particularly in the form of humor and social criticism. Therefore, regulations are needed to ensure that digital platforms act transparently and in accordance with human rights principles.

Guidelines for implementing action against violations of freedom of expression through digital media that conflict with applicable laws and regulations can serve as a limiting factor for people expressing themselves through digital media, particularly social media. The public must have a clear understanding of the limits of speech and action on social media. This way, they can be more discerning in their use of social media. The application of the law to freedom of expression through digital media that violates the provisions referred to in these articles may be subject to sanctions under Article 45, Article 45A, Article 45B, and Article 51 paragraph (2). Freedom of expression is a fundamental right of every citizen and a constitutional right guaranteed by the state. Therefore, freedom of expression can be exercised by everyone, regardless of profession, through digital media and various social media platforms. However, there are restrictions on expression through digital media, particularly social media. These restrictions are regulated in the ITE Law, namely Articles 27 to 29 and Article 36. Meanwhile, the application of the law to freedom of expression through digital media that violates these provisions can be subject to sanctions under Articles 45, 45A, 45B, and Article 51 paragraph (2) of the ITE Law^[15]. Based on this description, it can be concluded that the protection of citizens' constitutional rights in the practice of freedom of expression in the digital space is multidimensional. This protection includes normative protection through the constitution, judicial protection through judicial review mechanisms and fair trials, institutional protection through the role of independent institutions and civil society advocacy, and non-judicial protection through platform policies and strengthening digital literacy. Although various forms of protection are available, their effectiveness still depends heavily on the consistency of legal implementation, the independence of institutions, and the state's commitment to prioritizing citizens' constitutional rights in all digital policies.

Conclusion

The expansion of the National Police's authority as stipulated in the National Police Draft, Article 14 paragraph (1) letter O and Article 16 paragraph (1) letter Q, has the potential to cause constitutional injury through the Police's wiretapping authority, which lacks a clear and strict mechanism, and efforts to limit online criticism and public opinion, particularly if criticism is deemed to pose a threat to domestic security. This problem leads to a legal vacuum and uncertainty regarding the Police's wiretapping and cyberspace surveillance. This expansion of authority also has the potential to lead to abuse of the Police's authority and cause massive harm to the public.

In line with this, based on the results of a utilitarian perspective analysis using the hedonistic calculus, the enactment of the draft only provides excessive pleasure to the government and the National Police and excessive pain to the public. The draft is unable to provide benefits for the public's legal interests, but instead becomes a weapon for the government and the National Police to suppress public

criticism and opinion and perpetuate the hegemony of those in power and their affiliates.

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