

Constitutionality of Restrictions on the Right to Freedom of Speech in the Digital Era from a Constitutional Law Perspective

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Abstract

This study aims to analyze the constitutionality of restrictions on the right to freedom of expression in the digital era from the perspective of constitutional law. Freedom of expression is a fundamental human right guaranteed by the Indonesian Constitution, as stated in Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia. However, the exercise of this right is not absolute and may be limited as stipulated in Article 28J of the 1945 Constitution. In the context of the digital era, various regulations have emerged, such as the Electronic Information and Transactions Law (UU ITE), which often serves as an instrument to restrict digital expression. This research uses a normative juridical method with statutory, conceptual, and case approaches. The results of the study show that freedom of expression in the digital era is a constitutional right essential to democratic life, but its implementation in Indonesia still faces challenges. Although guaranteed by the 1945 Constitution and various legal instruments such as the Human Rights Law and the ITE Law, its implementation often sparks controversy due to multiple interpretations and the potential misuse of certain articles to limit expression, especially in digital spaces. From the perspective of constitutional law, restrictions on freedom of expression are permissible but must fulfill the principles of legality, proportionality, and urgent necessity, and should not be used to silence criticism. Therefore, a fairer and clearer regulatory revision is needed, along with cooperation between the government, civil society, and stakeholders to create a safe, inclusive, and democratic digital space

A. INTRODUCTION

The fundamental principle of statehood embraced by Indonesia, as stipulated in Article 1 paragraph (3) of the 1945 Constitution as amended in the third amendment, affirms that Indonesia is a state based on law (*rechtsstaat*), not a state based on power (*machtstaat*). This means that all forms of state power—whether exercised by the executive, legislative, judiciary, or other institutions such as the military and law enforcement—must be subject to the supremacy of law (Busthami, 2017). The concept of a legal state demands that every action taken by state

administrators must not only be formally valid (based on written rules), but also substantively legitimate, reflecting the values of justice, legal certainty, and utility. Thus, the law becomes the main instrument in regulating the relationship between the state and its citizens, and as a limit to prevent the abuse of power (Manurung et al., 2024).

Furthermore, in the implementation of state power, the law not only serves as a normative reference but also becomes the benchmark for the legitimacy of state actions, both procedurally and from social, political, and ethical perspectives. In other words, not all actions that are legally valid are automatically deemed legitimate if they contradict the public sense of justice or fundamental human rights (Prasetyo & Tanya, 2011). Within this framework, the state has a constitutional obligation to respect, protect, and fulfill the fundamental rights of every citizen. This obligation applies not only to civil and political rights but also to economic, social, and cultural rights, as well as other constitutional rights clearly stipulated in the 1945 Constitution (Rantung et al., 2023). Therefore, the state must continuously ensure that policies, regulations, and governmental actions do not violate the principles of the rule of law and that they continue to guarantee and strengthen the protection of human rights in all fields, including in the digital era that brings new challenges (Farida, 2022).

One of the fundamental human rights in Indonesia's constitutional system is explicitly stated in Article 28E paragraph (3) of the 1945 Constitution, which guarantees every citizen the freedom to express opinions, to associate, and to assemble. This constitutional guarantee reflects the state's commitment to democratic values, where public participation in politics and policy-making must be protected and facilitated by the state (Munthe & Sagala, 2021). Within the legal state framework, the right to criticize government policies—whether through mass media (both print and electronic) or through peaceful demonstrations—is a concrete form of legitimate and guaranteed freedom of expression (Muni, 2020).

In a democratic rule of law, the state is not only obliged to refrain from interfering (non-interference) with the exercise of the right to freedom of opinion and assembly but is also actively responsible for creating a safe, free, and inclusive space for citizens to express their aspirations (Ningsih et al., 2021). Any restrictions on these rights must be strictly based on the principles of legality, proportionality, and necessity in a democratic society. These principles are not only emphasized in national constitutional norms but are also in line with international standards such as those regulated in the International Covenant on Civil and Political Rights (ICCPR), to substantively ensure the protection of human rights within a democratic legal system (Wahyuni & Desiandri, 2024).

The development of information and communication technology (ICT) in the digital era has significantly transformed the dynamics of freedom of expression in the public sphere. The advent of the internet, social media, and other digital platforms has expanded public access to information and provided new avenues for expressing opinions, criticism, and aspirations in a faster, broader, and more interactive manner (Pratama et al., 2022). The digital space enables every individual to be both a producer and consumer of information (prosumer), thereby creating a more participatory and democratic communication ecosystem. Freedom of expression, which was previously limited to conventional media, has now expanded in terms of form, medium, and audience reach. In the context of a democratic state, this strengthens the public's deliberative function, enables social control over power, and encourages transparency in governance (Nasution, 2020).

However, freedom of expression in digital spaces also faces new and complex challenges. On one hand, information openness can strengthen democracy; on the other hand, there is a risk of misuse of such freedom through the spread of disinformation, hate speech, hoaxes, and violations of individual privacy (Bahram, 2023). This raises a constitutional dilemma between guaranteeing freedom of expression and maintaining public order and national security. Therefore, the state must step in through proportional, fair, and non-repressive regulations to ensure that freedom of expression remains within legal and ethical boundaries. In the context of constitutional law, digital space regulation must reflect a balance between protecting citizens' constitutional rights and the state's obligation to safeguard broader public interests (Andriansyah & Kusnadi, 2024).

Although the Constitution normatively guarantees the right to freedom of expression, in practice there are various forms of state intervention against citizens' expression on social media and other online platforms. These restrictions are often enforced through repressive regulations, such as the use of vague provisions in the Electronic Information and Transactions Law (UU ITE), internet access blockages, and legal actions against criticism using criminal law instruments (Muhammad, 2024). Frequently, such actions are taken without transparent and accountable legal processes, raising concerns about the erosion of rule of law and democratic principles. This phenomenon reflects a tension between the state's efforts to maintain socio-political stability and the need to guarantee citizens' constitutional rights. In the context of constitutional law, this situation demands a critical evaluation of the mechanisms restricting freedom of expression to ensure alignment with the principles of legality, proportionality, and human rights protection in a democratic society (Warong, 2020).

The aim of this study is to analyze the restrictions on the right to freedom of expression in the digital era, by highlighting the extent to which such freedom aligns with constitutional principles and the framework of a democratic rule of law. This research also aims to identify the legally legitimate boundaries of freedom of expression and examine the implications of digital regulations on the constitutional rights of citizens. The benefit of this study is to contribute academically to the development of constitutional law studies that are responsive to information technology developments, and to serve as a reference for policymakers in formulating regulations that balance the protection of freedom of expression and public interest in the digital sphere.

B. METHODS

The research method used in this study is the juridical-normative method, which is an approach that examines law as norms or rules that exist within the national legal system, particularly in the context of the constitutionality of restrictions on freedom of expression in the digital era (Soekanto, 2007). This study focuses on analyzing applicable laws and regulations, especially the 1945 Constitution of the Republic of Indonesia, Law Number 39 of 1999 on Human Rights, Law Number 9 of 1998 on the Freedom to Express Opinions in Public, and the Electronic Information and Transactions Law (UU ITE), including its various derivative regulations. To support the juridical-normative approach, this research also employs conceptual and comparative approaches. The conceptual approach is used to examine fundamental concepts such as the rule of law, freedom of expression, and the limitation of human rights within the theoretical framework of constitutional law. Meanwhile, the comparative approach is conducted by reviewing practices of restricting freedom of expression in several other democratic countries, in order to obtain an ideal illustration of how the state regulates and limits digital expression without violating constitutional rights. The data sources used in this study include primary legal materials (laws and regulations), secondary legal materials (legal literature, scholarly journals, and expert opinions), and tertiary legal materials (legal dictionaries and encyclopedias), which are then analyzed qualitatively using a descriptive-analytical method (Diantha, 2016).

C. RESULTS AND DISCUSSION

Freedom of Expression in the Digital Era

Freedom of expression and opinion is a fundamental human right that is inherent and inalienable. It serves as a cornerstone in democratic systems. This right reflects an individual's ability to freely express thoughts, views, and information—

whether orally, in writing, visually, or through digital media. According to Wiratraman (2016), freedom of expression functions not only as a means of communication between individuals or groups, but also as a form of public participation in social, national, and governmental life. In this context, freedom of expression plays a vital role in supporting public discourse, exercising social control over power, and building an inclusive and participatory society.

In the Indonesian legal system, the concept of freedom of opinion and expression is constitutionally guaranteed, as stated in Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which affirms that "everyone shall have the right to the freedom of association, assembly, and expression." This guarantee is reinforced by Article 28F, which grants every person the right to communicate and obtain information through any available means. These articles reflect a harmony between the rule of law and human rights protection, where the state is not only obligated to refrain from hindering these rights, but also to create legal and social conditions that support healthy and responsible freedom of expression.

In a democratic system that upholds the rule of law, citizens have constitutional legitimacy to express criticism, suggestions, and views regarding public policies formulated by the government or state institutions. Such criticism is not only a part of freedom of expression, but also reflects the active role of the public in the mechanism of checks and balances (Selian & Melina, 2018). When a policy is perceived as misaligned with public goals or interests, the public has the right to correct or even reject the policy through democratic means, including mass media, social media, public forums, and policy advocacy channels. This demonstrates that the public is not merely the object of policies, but also active participants in the formulation, implementation, and evaluation of public policy.

In the digital era, freedom of expression is experiencing complex dynamics, particularly due to advances in communication technology that allow for the instant and massive dissemination of information through social media platforms. The digital space has become a new arena for public discourse, where individuals can openly express their views and opinions (Stella & Syailendra, 2023). However, this freedom is often accompanied by serious challenges, such as the blending of facts and opinions, valid information with disinformation, and critical narratives with hate propaganda. These phenomena blur the lines between expressions that are legally and morally acceptable and those that damage social order and human dignity.

One of the main threats to freedom of expression in the digital space comes from groups or individuals who deliberately exploit this freedom to spread hoaxes, hate speech, and manipulative content. Under the guise of freedom of expression,

they damage the information ecosystem and create sharp social polarization (Simarmata et al., 2019). Such practices not only harm democratic values but can also disrupt public order and endanger vulnerable groups in society. Ironically, actions like these often trigger backlash that leads to broader suppression of free expression. A second challenge arises from parties who, under the pretense of combating disinformation and hate speech, impose excessive restrictions on free speech. The state, through various regulations such as the Electronic Information and Transactions Law (UU ITE) and its derivatives, sometimes implements policies that are vague and repressive toward public expression, including criticism of government policies. In many cases, legitimate and constructive criticism of public officials is criminalized under accusations of hate speech or defamation. This situation creates a chilling effect, silencing critical voices and threatening democratic principles and human rights (Salsabila et al., 2024).

Therefore, a wise balance must be struck between protecting freedom of expression and preventing its abuse. The state has a responsibility to ensure that regulations concerning digital expression comply with strict legal principles, including legality, proportionality, and necessity in a democratic society. At the same time, civil society must be involved in monitoring policy restrictions on expression and be encouraged to develop digital literacy to distinguish between constructive criticism and hate speech. In this way, freedom of opinion can be preserved as a substantial constitutional right without sacrificing the integrity of the digital public sphere.

The Indonesian government has adopted a number of regulations to address the challenges of freedom of expression in the digital era, particularly concerning the spread of hoaxes and hate speech. These efforts are reflected in various legal instruments derived not only from national legislation but also from international legal instruments that have been ratified. One key regulation frequently used in this context is Law Number 19 of 2016 on Electronic Information and Transactions (a revision of Law Number 11 of 2008). This law contains criminal provisions for the dissemination of electronic information containing defamation, hate incitement, and hoaxes (Raskasih, 2020). Although intended to maintain a healthy digital environment, the ITE Law has sparked debate for being overly broad and prone to misuse as a tool to silence public criticism.

In addition to the ITE Law, the Criminal Code (KUHP) also regulates various offenses against public order, including the spread of false news and insults to authorities. Although the KUHP is a colonial legacy, some of its articles are still used to handle hate speech cases, even though its implementation is often criticized for not always aligning with democratic principles and human rights. The reformulation of

the new Criminal Code recently passed by the government has also raised concerns about the shrinking space for free expression, as several articles are still seen as potentially criminalizing freedom of speech.

As a commitment to international norms, Indonesia has ratified the International Covenant on Civil and Political Rights (ICCPR) through Law Number 12 of 2005. This covenant acknowledges that everyone has the right to freedom of opinion and expression, but also allows for lawful limitations to respect the rights and reputations of others, and to protect national security, public order, or public health and morals. This ratification affirms that national regulations should align with international human rights standards. Therefore, restrictions on digital expression must not be arbitrary but must meet the requirements of legality, urgent necessity, and proportionality in accordance with international legal principles.

In the end, to safeguard freedom of expression in the digital era from being limited, the following aspects need to be maintained:

- Ensuring equitable access to digital space

To protect freedom of expression in the digital age from arbitrary restrictions, one fundamental prerequisite is to ensure equitable and inclusive access to the digital space for all citizens. Fair access includes the affordability of information technology infrastructure, sufficient digital literacy, and inclusive policies that guarantee participation from all societal groups without discrimination. In the framework of a democratic rule of law, the state has a responsibility to create a digital ecosystem that allows every individual to access information and express opinions freely and equally, including vulnerable groups such as women, minorities, and people in remote areas. Inequitable access leads to structural injustice in voicing aspirations, deepens the digital divide, and weakens the quality of public deliberation within the democratic digital sphere. Therefore, equitable access to digital space is not merely a technical issue, but an integral part of protecting constitutional rights to freedom of expression.

- Protecting digital rights, such as user data privacy

In efforts to protect freedom of expression in the digital age, safeguarding digital rights—particularly the right to personal data privacy—is a highly crucial aspect. Digital rights are an extension of human rights in the context of information and communication technology, where the protection of personal data is not only about individual privacy but also closely related to the freedom to express opinions without fear of surveillance, hacking, or misuse of information. The state, through legal instruments and public policies, is obliged to ensure that every individual's personal data is managed transparently, accountably, and in accordance with strong legal protection principles. The absence of data protection risks creating a repressive

digital environment, where people feel intimidated and choose self-censorship rather than openly expressing their views. Thus, ensuring data privacy is a strategic step in strengthening digital democracy and protecting freedom of expression as a fundamental constitutional right.

- Encouraging public participation in decision-making

Encouraging public participation in decision-making is a fundamental pillar in safeguarding and strengthening freedom of expression in the digital era. In democratic countries that uphold the principle of popular sovereignty, active public involvement in the policymaking process is a civil and political right that must be guaranteed. The digital age provides vast opportunities to expand participatory spaces through various online platforms, such as public consultation forums, digital petitions, social media, and e-governance. However, to achieve meaningful participation, the state must create transparent, inclusive, and responsive mechanisms for citizens' voices. Active and well-facilitated public participation not only prevents repressive policies against freedom of expression but also strengthens governmental legitimacy and encourages more accountable and public-oriented policies. Hence, encouraging public participation is a concrete form of protecting and promoting freedom of expression in a democratic and constitution-based governance system.

- Limiting harmful online content

Limiting content that can be published online must be carried out carefully and proportionally to maintain a balance between protecting freedom of expression and preventing the spread of information that could harm public interests. In constitutional law, restrictions on freedom of expression are permitted as long as they are based on law, serve a legitimate constitutional purpose—such as maintaining public order, national security, or the rights and reputation of others—and are implemented according to the principles of proportionality and necessity in a democratic society. In the digital era, content such as hate speech, disinformation, extremist propaganda, or material inciting violence can negatively impact socio-political stability and national unity. Therefore, regulations on digital content must be designed with clear legal norms, avoid discrimination, and prevent abuse by the state to silence dissent or opposition. The goal of content restriction is not to suppress freedom, but to ensure that the digital space remains healthy, productive, and safe for all users within a civilized democratic framework.

- Enforcing the law against unlawful acts such as insults, harassment, or threats

Enforcing the law against actions that violate the law—such as insults, harassment, or threats—is an important step in ensuring that freedom of expression remains within the bounds of law and prevailing ethical standards. In a state

governed by law, freedom of expression is not absolute but is limited by the rights of others, public order, and human dignity. Therefore, the state has an obligation to firmly address all forms of abuse of freedom of speech that lead to criminal acts or human rights violations, including through digital platforms. Fair, transparent, and non-discriminatory law enforcement is key to creating a safe digital space, upholding human dignity, and encouraging healthy public discourse. Nevertheless, such law enforcement must uphold the principles of due process of law and must not be used as a tool to suppress legitimate political expression or criticism of the government. By enforcing the law proportionally and accountably, the state not only maintains order and individual protection but also strengthens the legitimacy of freedom of expression as an integral part of democratic life.

- Building an inclusive, transparent, and sustainable digital ecosystem

Building an inclusive, transparent, and sustainable digital ecosystem is a crucial element in ensuring the exercise of the right to freedom of expression in the digital age. Inclusivity requires that all segments of society—regardless of social, economic, gender, or geographic background—have access and the ability to participate in the digital space fairly and equally. Transparency involves clarity in the rules of digital platforms, algorithms used, and content moderation mechanisms, to prevent misuse of authority or unilateral censorship that could limit citizens' expressions. Meanwhile, sustainability demands the continuous development of digital infrastructure and literacy so that society is not only a consumer of information but also a critical and constructive producer of ideas. The state, together with the private sector and civil society, must collaborate in designing policies and technological systems that place human rights—including freedom of expression—as a foundational principle. By building such a digital ecosystem, online public spaces can become healthy arenas for discussion, debate, and active and responsible participation in democratic life.

Constitutional Restrictions on Freedom of Expression in the Digital Era

Freedom of expression in Indonesia, although guaranteed by the constitution, remains subject to limitations stipulated in legislation such as Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law) and Law Number 19 of 2016 as an amendment to Law Number 11 of 2008, as well as the Indonesian Criminal Code (KUHP). These restrictions aim to maintain public order, national security, and protect individual rights and reputations from potential misuse of freedom of expression, such as the spread of hate speech, defamation, or false information (hoaxes). Within the framework of a rule of law, such regulations represent a balance between individual freedom and social responsibility, ensuring

that freedom of speech is not abused to undermine democratic values, public ethics, or social harmony in the life of the nation.

The provisions in the Criminal Code (KUHP) explicitly indicate that freedom of expression conveyed through various media remains under legal limitations. The KUHP serves as a general legal instrument to restrict public expressions considered disruptive to public order and interests (Guntara & Herry, 2022). However, Indonesia's constitutional legal dynamics have significantly evolved, particularly with Constitutional Court decisions that annulled five articles known as *haatzaai artikelen*—Articles 134, 136 bis, 137, 154, and 155 of the KUHP. This repeal reflects the Court's commitment to protect freedom of expression from articles that tend to suppress criticism against the government. Meanwhile, Article 160 of the KUHP, which addresses incitement, remains in effect but is now interpreted as a material offense rather than a formal one. In other words, a person can only be punished under this article if there is concrete evidence of real consequences resulting from the statement made, not merely based on the content of the statement. This approach reflects an effort to balance the protection of freedom of expression and the need to maintain public order and security in a democratic society.

Articles 207 and 208 of the KUHP, along with provisions in Chapter XVI on Insult—covering Articles 310 to 321—contain criminal law norms related to offenses against personal dignity or reputation, such as defamation, insult, slander, and incitement. These articles act as general legal instruments that define the boundaries of freedom of expression in public spaces. However, it is important to note that these provisions were formulated in the context of conventional communication and do not explicitly address developments in digital technology and electronic media. In other words, although the substance of these articles can be applied in digital communication contexts, the regulations do not yet fully respond to the complexities and specific characteristics of online expression, such as the speed of information dissemination, content virality, and vulnerability to misuse of data or digital identities.

Restrictions on freedom of expression in Indonesia are inseparable from the principles set forth in various laws and regulations. One important regulation that forms the basis for such restrictions is Law Number 39 of 1999 on Human Rights (Human Rights Law), particularly Articles 70 and 73. Article 70 states that in exercising their rights and freedoms, every individual is subject to restrictions established by law solely to ensure the recognition and respect of the rights and freedoms of others, as well as to meet fair demands based on moral considerations, religious values, security, and public order in a democratic society. This provision affirms that freedom is not absolute, and the state has the authority to impose

restrictions as long as they meet legally valid criteria (Hasb, 2021).

Article 73 of the Human Rights Law further reinforces this principle by stating that the exercise of human rights must respect the human rights of others in an orderly life within society, the nation, and the state. This article emphasizes the importance of balancing individual freedoms with collective interests, so in the context of freedom of expression, the state may establish certain boundaries to prevent conflict, social unrest, or violations of other people's rights. Therefore, such restrictions must be proportional, non-discriminatory, and implemented through legal mechanisms that can be constitutionally tested.

In addition, Law Number 9 of 1998 on the Freedom to Express Opinions in Public regulates the legal mechanisms for expressing views in public spaces, including demonstrations, rallies, marches, open forums, and other forms. This law affirms that the freedom to express opinions is a right of every citizen guaranteed by the constitution, but its implementation must adhere to the principles of non-violence, must not disturb public order, and must be reported in advance to the police (Bakhtiar et al., 2020). This aims to ensure that expressions of opinion occur in an orderly and safe manner without causing social unrest. The law also imposes sanctions for procedural violations while still upholding the principle of human rights protection as the foundation of a democratic legal state.

More specifically, restrictions on freedom of expression in the digital era in Indonesia are regulated through legal instruments focused on communication activities and information technology, namely Law Number 11 of 2008 on Electronic Information and Transactions (ITE) and Law Number 19 of 2016 as its amendment. These laws were designed to provide a legal framework for the use of information technology but have also significantly impacted the digital space for public expression. In the context of freedom of expression, several provisions in the ITE Law have drawn public attention due to their potential for multiple interpretations and disproportionate restrictions on expression (Karo, 2022).

One article that frequently draws criticism is Article 27 paragraph (3) of the ITE Law, which prohibits individuals from intentionally and without right distributing or transmitting information containing defamation or insult. While this article aims to protect individual reputations in cyberspace, its implementation often causes controversy due to its subjective and vague nature. Many legal cases have used this article to target activists, journalists, or ordinary citizens who criticize public policies or express opinions on social media. As a result, the article is often perceived as a threat to freedom of expression and a tool to silence critical voices.

Moreover, Article 28 paragraph (2) of the ITE Law also raises concerns because it prohibits the dissemination of information intended to incite hatred or hostility

based on ethnicity, religion, race, and inter-group affiliations (SARA). On one hand, this provision is important to prevent the spread of hate speech that could trigger social conflict. On the other hand, its enforcement in practice remains inconsistent and often applied selectively, creating the impression that the law is used to suppress certain groups perceived to oppose those in power. This raises concerns about unfair law enforcement practices and inconsistency in protecting the right to free expression.

Controversy over these provisions has sparked criticism from civil society, academics, and human rights organizations, both nationally and internationally. Organizations such as SAFEnet and Amnesty International have highlighted the tendency to criminalize citizens who express opinions in digital spaces, particularly when criticisms are directed at the government or public figures. Consequently, there have been growing calls to revise the ITE Law to provide greater legal certainty, prevent ambiguous interpretations, and ensure a balanced protection of individual rights and freedom of expression as mandated by the constitution and international human rights instruments.

Revisions to the ITE Law should aim to strengthen the principle of due process of law and position freedom of expression as a central pillar in a democratic society. In this regard, a more proportional, transparent, and accountable approach to enforcing expression-related provisions is urgently needed. The government should also provide fair and effective digital dispute resolution mechanisms, rather than resorting to criminalizing public opinion. Only through such measures can freedom of expression in the digital era flourish within a legal ecosystem that upholds justice and democracy.

Legal Limits on Freedom of Expression from the Perspective of Constitutional Law

Freedom of opinion and expression is a fundamental right guaranteed in various democratic instruments. In democratic societies, every freedom is accompanied by responsibility, meaning that expression must not violate the rights of others or endanger public interests. Therefore, the government has the legitimacy to impose restrictions on freedom of expression, provided that these are conducted in accordance with the principles of legality, proportionality, and necessity in a democratic society (Damaitu & Wada, 2017). One legally justified form of restriction includes hate speech and incitement to violence or discrimination. The state holds the responsibility to prevent the spread of hateful ideologies that threaten social cohesion and endanger vulnerable groups.

Restrictions may also be applied to protect certain public interests such as national security, public order, and the rights and reputations of others. However, the government must exercise caution to ensure that such restrictions are not misused to

silence criticism or suppress legitimate expression. For that reason, oversight and evaluation mechanisms regarding such policies must be carried out transparently and with public participation to ensure democratic principles are upheld—particularly in managing the digital public space. Restrictions on freedom of opinion and expression must comply with three fundamental principles in human rights law: legality, necessity, and proportionality. The principle of legality requires that any restriction be clearly and formally established by legitimate legislation, allowing citizens to fully understand the boundaries of their rights. The necessity principle mandates that restrictions only occur when truly needed to protect legitimate interests in a democratic society, such as national security, public order, public health or morals, and the rights and freedoms of others. Lastly, the proportionality principle insists that any imposed restriction must not be excessive and should be balanced with its intended objective, thereby avoiding discrimination or repression.

The protection of human rights is at the heart of the rule of law (*rechtstaat*), in which state power is bound by law to ensure citizens' basic rights and freedoms. In this framework, the state is not merely tasked with enforcing laws formally, but must also ensure that all policies and actions respect and protect human rights. Thus, every restriction on freedom of expression must be carefully implemented in line with the universal principles of legality, necessity, and proportionality. Arbitrary enforcement of such restrictions could lead to human rights violations and undermine democracy. On the contrary, the state must guarantee that every individual has a safe and equal space to express their views as part of active participation in public life. Hence, protecting human rights is not only a moral obligation but also a legal foundation inseparable from a just and democratic government.

In Indonesian constitutional law, restrictions on freedom of expression must be legal and constitutional. While freedom of expression is recognized as a fundamental human right, it is not absolute, as stipulated in Article 28J of the 1945 Constitution. The state is obligated to regulate boundaries in exercising this right to maintain a balance between individual freedoms and collective societal interests. Therefore, valid restrictions on freedom of expression must meet several constitutional law principles: First, restrictions must respect the rights of others. One's right to express an opinion must not infringe on others' rights, including their reputation, privacy, and safety. No individual's freedom should negate another's. This is essential in maintaining social harmony in a pluralistic society. For instance, hate speech targeting certain ethnic or religious groups is unacceptable as it violates their right to protection from discrimination and hostility.

Second, freedom of expression must not be used to spread propaganda that endangers public order or national integrity. Provocative, separatist, or radical

propaganda can erode national unity. Therefore, constitutional law emphasizes that public expression should steer clear of incitement, agitation, or attempts to divide society, ensuring that freedom of speech stays within a healthy democratic framework. Third, opinions expressed should be informative and constructive, contributing to the exchange of ideas, raising public awareness, and encouraging civic participation in a democratic society. Opinions in the form of hoaxes or disinformation contradict this spirit because they mislead the public and damage the decision-making process in society.

Fourth, any restriction on expression must be based on rule of law, not arbitrary power. This means it must be explicitly regulated in legislation, be unambiguous, and be subject to judicial review. The legality principle is vital to ensure citizens clearly understand the applicable legal boundaries and to prevent abuse of authority by state apparatus. Fifth, restrictions must meet justice criteria and aim to protect the public interest. The law must not be selectively enforced—harsh on the weak and lenient on the powerful. All restriction measures must be proportionate and balanced between individual rights and public interests like national security, public order, or public morality. In practice, this requires institutional oversight, such as the role of the Constitutional Court in reviewing the validity of such restrictions. Therefore, constitutional restrictions on freedom of expression are not meant to silence the people, but rather to ensure that this freedom operates within a harmonious, just, and constitutional framework. These principles form the foundation of an inclusive and responsible democracy in Indonesia.

The Constitutional Court—established after the 1998 constitutional reform—plays a crucial role in upholding the Constitution in Indonesia. One of its primary mandates is to act as the guardian of the Constitution, ensuring that all legislation and actions by state officials comply with the 1945 Constitution. In safeguarding human rights—especially freedom of expression—the Constitutional Court serves as the last resort for constitutional justice. Through its authority to review laws, the Court can annul legal provisions deemed contrary to constitutional principles, including freedom of expression as outlined in Articles 28E and 28F of the 1945 Constitution. A notable example is the Court’s decision to annul certain articles in the Indonesian Penal Code (KUHP), such as Articles 134, 136 bis, 137, 154, and 155, which were deemed undemocratic and susceptible to being used to suppress criticism of the government.

Beyond reviewing legislation, the Court is also authorized to resolve disputes between state institutions, dissolve political parties, and settle electoral disputes. In doing so, it indirectly shapes the climate of freedom of expression and democracy in Indonesia. For instance, by resolving election disputes, the Court helps uphold the

political rights of citizens to vote, run for office, and express political opinions free from fraud or manipulation. Additionally, the Constitutional Court contributes to fostering a constitutional culture in society. Through progressive and educational decisions, the Court emphasizes that freedom of expression is not only a right protected by the state but also a shared responsibility to uphold order, tolerance, and a healthy democratic life. This role is supported by the dissemination of decisions, public constitutional education, and legal discussion forums regularly initiated by the Court.

D. CONCLUSION

Freedom of expression in the digital era is a fundamental right not only guaranteed by the constitution and international law, but also a crucial requirement for the creation of a healthy and participatory democratic society. The advancement of information technology has opened up vast opportunities for public expression, yet it also presents serious challenges such as the spread of hoaxes, hate speech, and the misuse of regulations by the state. A balance is needed between the protection of the right to freedom of expression and the protection of public interests. The government, civil society, and all stakeholders must work together to create a digital space that is inclusive, safe, and fair, while upholding the principles of law and human rights. In Indonesia, although freedom of expression is guaranteed by the constitution, it is still limited by various laws and regulations such as the Criminal Code (KUHP), the Human Rights Law, Law No. 9 of 1998, and the Electronic Information and Transactions Law (ITE Law) and its amendments. These restrictions aim to maintain public order, national security, and protect individual rights and reputations. However, in practice, they often lead to controversy due to multiple interpretations and inconsistent enforcement. Several articles in the ITE Law, such as Article 27 paragraph (3) and Article 28 paragraph (2), are often used repressively and are seen as silencing freedom of expression, especially against critical voices in digital spaces. A revision of the existing regulations is necessary so that they are more proportional, provide legal certainty, and align with democratic principles and human rights, thereby ensuring that freedom of expression is protected without ignoring social responsibility. From the perspective of Constitutional Law, freedom of expression is a human right guaranteed by the constitution, but it is not absolute and may be lawfully limited to protect public interests, order, and the rights of others. Such limitations must meet the principles of legality, necessity, and proportionality, and must be regulated in clear laws to prevent misuse for silencing dissent. Constitutional law emphasizes that restrictions must be implemented to maintain social harmony, prevent hate speech, hoaxes, and harmful propaganda. The

Constitutional Court plays a vital role as the guardian of the constitution by ensuring that such limitations comply with the 1945 Constitution through the mechanism of judicial review and by fostering a constitutional culture that respects rights and responsibilities in expression. Thus, restrictions on freedom of expression must serve as instruments for protecting democracy, not hindering it.

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