

Freedom of Expression on Social Media from Human Rights and ITE Law Perspectives

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Abstract

Purpose: This research is intended to examine the freedom to express oneself as one of the fundamental human rights guaranteed by the 1945 Indonesian Constitution and to examine its application in the use of social media from the perspective of the Electronic Information and Transactions Law (ITE Law).

Research Methodology: This study uses a qualitative approach with a literature review method by analyzing relevant academic sources, including journals, books, and statutory regulations.

Results: Findings indicate that social media has expanded the public space for expressing opinions, ideas, and criticism as part of democratic life. However, the implementation of the ITE Law, particularly provisions regarding defamation and hate speech, often gives rise to multiple interpretations, leading to legal issues and potentially hampering freedom of expression on digital platforms.

Conclusions: Freedom of expression on social media requires a balance between protecting individual rights and maintaining public peace. Therefore, clearer legal guidelines are needed to prevent multiple interpretations in the application of the Information and Communication Technology Law (ITE Law).

Limitations: This study is limited to a literature review and does not involve empirical data, so it may not fully reflect real conditions.

Contributions: This study contributes to legal scholarship by providing insights into the relationship between human rights and digital regulation and may serve as a reference for academics, policymakers, and the public.

Keywords: *Freedom of Expression, Hate Speech, Human Rights, Legal Limitations, Social Media*

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1. Pendahuluan

Every citizen has the fundamental right to express opinions in social and political life, which is guaranteed and protected by the state ([Dewi, 2024](#)). Freedom of expression can be carried out through various forms, such as writing, discussions, press activities, demonstrations, and the use of social media. This right is affirmed in Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that every person has the right to freedom of association, assembly, and expression of opinion ([Nikmah, 2023](#)). Therefore, the state provides space for the public to convey aspirations, criticism, and suggestions as part of democratic participation ([Samuel, Kotan, & Hernimus, 2024](#)). The delivery of aspirations can be done through various approaches, starting from persuasive methods such as dialogue, discussion, friendship, and consolidation, to more massive approaches such as demonstrations or rallies in the name of the people's interests ([Irfan Pratama, Rahman, & Bachmid, 2022](#)). However, in reality, the exercise of the right to freedom of expression often faces obstacles. Disharmony exists between those expressing aspirations and those receiving them, resulting in honest

and sincere voices being silenced. However, in practice, freedom of expression often faces various challenges, especially in the digital age. Social media platforms have become a public space that allows people to express opinions widely and quickly. At the same time, Indonesia as a nation based on law regulates the use of social media through the Regulation on Electronic Information and Transactions (ITE Law) ([Rahmawati, Muslichatun, & Marizal, 2021](#)). Social media allows people the freedom to express their opinions indirectly. However, this can also pose risks to users due to provisions in the ITE Law, which are considered to monitor and limit freedom of expression ([Indriasari, 2023](#)). In this context, social media also plays a role as a digital public space that enables the exchange of ideas widely ([Elliot & Holt, 2020](#)).

One of the guaranteed rights stipulated in legislation is the right to hold an opinion, express thoughts, and associate, in accordance with the provisions of the 1945 Constitution of the Republic of Indonesia. Provisions regarding these human rights regulated in Articles 28E and 28F of the 1945 Constitution. Article 28E states that:

1. Every individual has the right to adhere to a religion and practice worship according to their beliefs, determine their education and career, choose their citizenship, settle in various locations within the country, and have the right to return after leaving.
2. Every individual has the right to believe something and express their opinions and attitudes according to their conscience; and.
3. Every individual has the right to associate, assemble, and express opinions. Furthermore, Article 28F guarantees everyone's right to communicate and obtain information.

Despite these constitutional guarantees being expressly stipulated, freedom of expression in practice is still frequently restricted in public space, both through verbal and written criticism. In fact, numerous cases in Indonesia continue to threaten freedom of expression, potentially violating human rights as guaranteed by the 1945 Constitution and other laws and regulations relating to freedom of expression ([Kusuma, 2023](#)). The purpose of this paper is to examine the protection of the right to express opinions as part of human rights stipulated in the 1945 Constitution of the Republic of Indonesia. Furthermore, this paper also aims to analyze regulations regarding freedom of expression in the context of the use of social media platforms, particularly in relation to the implementation of the Electronic Information and Transactions Law. This paper also seeks to understand the legal limitations on the satisfaction of criticism in accordance with existing provisions. In addition, this study aims to examine the relationship between the protection of rights stated as human rights and the limitations imposed on social media under the ITE Law.

2. Literature Review

2.1 Human Rights and Freedom of Expression

Human rights are essential rights inherent to every person from birth and cannot be revoked by anyone ([Indonesia, 1999](#)). These rights are universal, applicable to all individuals regardless of their background, and are assured by the government as a means of safeguarding human rights ([Wahyuni & Desiandri, 2024](#)). A key aspect of human rights is the right to express oneself. This liberty allows each person the entitlement to express thoughts, ideas, and to acquire and share information. The right to freedom of expression is acknowledged in multiple national legal systems, including the 1945 Constitution of the Republic of Indonesia, which ensures that every citizen can express their views, as outlined in Articles 28E and 28F ([A. P. Setiawan & Riwanto, 2020](#)). Nevertheless, during its application, freedom of expression is still restricted to prevent infringing upon the rights of others and to stay compliant with relevant laws ([Ariany & Perdana, 2024](#)).

2.2 Freedom of Expression on Social Media

The development of information technology has changed the way people express their opinions. Social media has become a primary means for individuals to express their opinions quickly, widely, and at any time. The existence of digital platforms enables social interaction without the constraints of space and time, thereby strengthening the practice of freedom of expression in society. The presence of digital platforms makes people no longer merely consumers of information, but also active producers of information, thus strengthening public participation in democratic life ([Nurfitriani, Maulana, &](#)

[Muhaimin, 2024](#)). Furthermore, freedom of expression on social media is part of human rights that must be respected and protected. Social media provides a platform for individuals to express ideas, criticism, and aspirations openly to the public. However, this freedom also presents its own challenges, such as the emergence of hate speech, issues related to ethnicity, religion, race, and intergroup relations, as well as ethical violations in digital communication ([Pratiwi & Pritanova, 2017](#)). The use of social media is not without legal consequences. Activities on social media are considered part of the public sphere, so any statements made can result in legal consequences if they violate applicable provisions. Thus, freedom of expression on social media must be accompanied by responsibility, both morally and legally, so as not to harm other parties and in accordance with applicable norms ([Mardiana Afni, Stince, & Leidy, 2026](#)). This condition is closely related to the implementation of the ITE Law, particularly articles concerning defamation and hate speech on social media platforms.

2.3 The Electronic Information and Transactions Law as a Limiter on Freedom of Expression

The Electronic Information and Transactions Law (ITE Law) is a regulation that governs actions in the digital space, including the right to free expression on social media platforms. The ITE Law aims to create order and security in technology usage and protect the public from the misuse of digital content. The right to express oneself is an essential pillar of a lively democracy. During the era of globalization, the internet has become a crucial venue for individuals to express their views, share information, and interact with each other. Social media, functioning as a vital platform for interaction and conversation, provides an opportunity for individuals to express their ideas and exchange concepts. This is inseparable from the guarantee of freedom of expression enshrined in various legal systems, including that of Indonesia. In Indonesia, the ITE Law (Electronic Information and Transactions Law) serves as the legal structure governing actions in the digital space ([Nugroho et al., 2024](#)). Numerous earlier studies show that the implementation of the ITE Law on social media often triggers debates regarding the limits of free speech and legal violations in online interactions.

Consequently, while freedom of expression is protected as a human right, in reality, legal limitations remain essential to deter misuse that might negatively impact others. Particularly in the digital realm, this liberty frequently clashes with the necessity to safeguard a person's dignity and reputation. Consequently, while freedom of expression is upheld as a human right, in reality, legal limitations remain essential to avert misuse that might harm individuals. Particularly in the digital realm, this liberty frequently clashes with the necessity to safeguard a person's dignity and standing. Consequently, the state, utilizing different legal means, seeks to reconcile freedom of expression with legal safeguards. Nonetheless, in practice, these regulations do not always function optimally and continue to present several issues, especially concerning the clarity of the standards and limits employed.

This leads to discussions about the adequacy of current regulations in addressing the dynamics of social media communication, especially in relation to legal actions against defamation. In the progressively sophisticated digital age, combating defamation on social media is growing more crucial for law enforcement. Yet, when addressing the rules related to this issue, the distinctions in approach between the Electronic Information and Transactions Law (ITE Law) and the Broadcasting Law (Broadcasting Law) become apparent. A significant drawback of the ITE Law is the absence of defined standards or guidelines on which aspects can be classified as criminal defamation on social media. In the meantime, the Broadcasting Law offers more explicit guidance on the nature of defamation. The ITE Law is intentionally crafted as a regulation that oversees all criminal activities associated with information and electronic transactions ([Antonio & Adhari, 2024](#)).

2.4 The Relationship between Human Rights and the ITE Law in Social Media

Human rights essentially exist from birth because they are inherent in human existence. However, human rights issues only receive attention when they are implemented in everyday life. Human rights become a concern when there is a relationship and connection between individuals and society ([Yamin & Oktapani, 2024](#)). The relationship between Human Rights and the ITE Law in the context of social media demonstrates a balance between freedom and restrictions. On the one hand, Human Rights guarantee freedom of expression as a fundamental right. On the other hand, the ITE Law serves as a legal instrument that regulates limits to ensure that this freedom does not harm others. Therefore,

freedom of expression on social media must be understood as a responsible freedom. Every individual has the right to express their opinion, but must still comply with prevailing legal and ethical norms in society. This balance is crucial for creating a safe, orderly, and productive digital space. Implementing violations of the ITE Law can serve as a barrier to public expression on social media. The public must clearly understand the limits of what they say and do on social media. This way, they can become wiser in their use of social media ([Kusumo, Junia, Prianto, & Ruchimat, 2021](#)).

3. Methodology

This study employs a systematic literature review methodology to critically examine and synthesize prior research on freedom of expression, human rights, social media platforms, and the regulatory framework established by Indonesia's ITE Law. Data were meticulously collected from peer-reviewed journals, scholarly articles, and other credible academic sources directly relevant to the research topic.

The analysis involved a multi-stage process of identification, selection, and critical evaluation of relevant literature, followed by the comparative synthesis of findings to uncover patterns, trends, and gaps in the current understanding of freedom of expression within the Indonesian digital landscape. By integrating insights from these sources, the study not only highlights the legal boundaries and practical challenges associated with online expression but also situates these issues within the broader context of human rights protection and the evolving dynamics of social media governance in Indonesia.

4. Results and Discussion

Indonesia as a country based on the rule of law, regulates all actions of its citizens juridically through statutory regulations. The government is responsible for ensuring legal order, compliance with the law, and the achievement of legal objectives. As a democratic country, citizen participation in the political decision-making process is a fundamental characteristic of an open system of governance. However, in practice, there is often resistance to public opinion from certain groups, which can trigger conflicts within the public sphere ([De Angelis, 2021](#)). This situation demonstrates that freedom of expression is not only related to individual rights but also has the potential to lead to social conflict if not properly regulated. Therefore, regulations are needed to control the expression of opinions in public spaces, particularly on electronic media, to prevent negative impacts on society. The Law on Electronic Information and Transactions (ITE) strictly prohibits the spread of hate speech through electronic platforms.

Article 28 number (2) of the ITE Law states that anyone who intentionally and without permission disseminates information aimed at provoking hatred or hostility based on ethnicity, religion, race, and interaction between groups can be subject to punishment. This regulation provides a firm legal basis for taking action against perpetrators of hate speech using information technology. The criminal sanctions outlined in the ITE Law aim to create a deterrent effect and prevent the further dissemination of content that could undermine social harmony ([Hutagaol & Harahap, 2024](#)). There are concerns that Article 28 of the ITE Law could be exploited to stifle critical voices. Several activists, journalists, and members of the public have faced legal threats after expressing their views on public issues, including government policies. Meanwhile, in a democratic system, criticism should be an essential part of the oversight mechanism for power. If individuals are afraid to voice their opinions due to legal threats, the democratic space in Indonesia could be further narrowed. This could negatively impact the development of freedom of expression in a country ([Halimah & Hidayah, 2024](#)).

Furthermore, social media, as a digital public space, has transformed patterns of public participation in the democratic process. Digital platforms enable the rapid and widespread dissemination of information, making them an effective means of conveying aspirations and criticizing government policies. However, without an adequate understanding of legal boundaries, the use of social media platforms can create divisions within society. Therefore, a balance is needed between protecting the right to express opinions and enforcing the law against hate speech. An approach focused on digital education and firm legal regulations could be the answer to reducing the misuse of provisions in the ITE Law ([T. Setiawan & Halim, 2024](#)). The revision of the ITE Law through Law Number 1 of 2024 is an important step in providing legal certainty and reducing the potential for misuse of articles relating to freedom of

expression. The revision is expected to clarify the boundaries between legitimate criticism and hate speech, thus creating a balance between protecting human rights and maintaining social harmony. Therefore, the effectiveness of the ITE Law's implementation is measured not only by the number of cases handled, but also by the extent to which the regulation ensures a healthy and inclusive democratic space.

Freedom of expression is a crucial human right and plays a significant role in Indonesia's legal system. This right is guaranteed by the 1945 Constitution of the Republic of Indonesia, specifically Article 28E paragraph (3), which grants everyone the freedom to express their opinions, both verbally and in writing ([Pradana, Sudirman, & Alvian, 2022](#)). This provision demonstrates that the state normatively protects freedom of expression as part of democratic life ([Pradana et al., 2022](#)). Over time, advances in information technology have brought significant changes to the way people express their opinions. While previously, aspirations were mostly expressed through conventional media, such as discussion forums or demonstrations, social media has now become the most dominant medium.

Social media not only facilitates communication but also opens up a wider space for the public to actively participate in various public issues. This condition makes social media an important instrument in the practice of freedom of expression in the digital era ([Susanto, 2019](#)). The existence of social media also accelerates the flow of information dissemination, so that opinions expressed by individuals can quickly be known to the wider community. This certainly has a positive impact on increasing public participation, particularly in expressing criticism of government policies and other social issues. However, this openness also carries consequences, namely the increased potential for abuse of freedom of expression, such as the spread of false information, hate speech, and other forms of expression that can harm certain parties ([Marwandianto & Nasution, 2020](#)).

Therefore, the right to express opinions on social media cannot be viewed as a completely free right. The government still has the authority to regulate and limit the use of this right to maintain public order and protect the rights of other individuals. In this regard, the Electronic Information and Transactions Law (UU ITE) serves as a legal instrument governing public activity in the digital space. The ITE Law is essentially intended to create a balance between freedom of expression and responsibility in its use ([Farida, 2022](#)). The dynamics Freedom of expression in the digital realm shows that social media platforms not only increase the possibility of community involvement, but also presents new challenges for law enforcement. In practice, there remains a mismatch between the protection of freedom of expression and the application of penalties, particularly regarding the use of certain articles in the Electronic Information and Transactions Law (UU ITE), which are considered open to multiple interpretations ([Mawaza & Khalil, 2020](#)). This situation has raised public anxiety about openly expressing criticism, which could undermine democracy's role as a tool for social oversight of government policies and reduce public participation in the public oversight process. Furthermore, advances in information technology has influenced patterns of social interaction that are increasingly rapid, open, and no longer limited by space and time, making the flow of information more difficult to control ([Hoffmann, Liu, Neumayer, & Trenz, 2024](#)) ([Herawati, 2016](#)).

This situation allows for the easy spread of unverified information, ultimately triggering disinformation, hoaxes, and hate speech in the digital space. Furthermore, social media algorithms also play a role in shaping people's information consumption patterns, which tend to be selective and repetitive, thus reinforcing bias and polarizing opinion within society. Low levels of digital literacy also exacerbate this situation, as not all users are able to critically and responsibly select information ([Febrianasari, 2022](#)). On the other hand, regulations such as the Law on Electronic Information and Transactions (ITE Law) are fundamentally intended to maintain public order and provide legal protection for individuals engaging in activities in the digital space. However, their implementation must be carried out carefully, proportionally, and without discrimination to avoid creating the impression of excessive restrictions on freedom of expression ([Butt & Lindsey, 2023](#)). Inappropriate law enforcement, especially without transparency and accountability, can actually lead to public distrust of law enforcement officials and create an excessive deterrent effect (overcriminalization) on people expressing their opinions.

These conditions reflect current legal and social issues in Indonesia regarding the implementation of the ITE Law. Several articles related to defamation and hate speech are often considered unclear and open to different interpretations, which may potentially lead to the criminalization of criticism on social media. As a result, many people become more cautious and hesitant to express their opinions openly. This situation not only affects freedom of expression, but also influences public participation in democratic processes and social oversight of government policies. Therefore, clearer legal regulations and fair law enforcement are needed to maintain a balance between protecting freedom of expression and preventing the misuse of digital platforms.

Based on this description, there are several strategic steps that need to be taken in order to maintain a finding a middle ground between the right to express oneself and being accountable in the online environment, specifically in the following ways:

1. Improving people's digital literacy so they can understand, filter, and use information wisely.
2. Building synergy between the government, law enforcement officers, and the community in creating a healthy and democratic digital space.
3. Conducting periodic evaluations of existing regulations to ensure they remain relevant to current developments.
4. Realizing transparency in law enforcement to maintain public trust.
5. Providing education about social media ethics as a form of responsibility in freedom of expression.
6. Ensuring that every policy and regulation does not conflict with human rights principles.

It is understandable that freedom of expression in the digital age is a fundamental right that must be protected, but it is not absolute. A balance between freedom and restrictions is key to maintaining social stability, protecting individual rights, and sustaining democracy in Indonesia, thus creating a safe, fair, and responsible digital public space.

5. Conclusions

5.1 Conclusion

The research findings indicate that the freedom to express an opinion is a vital human right and is safeguarded by the 1945 Constitution of the Republic of Indonesia, especially in Articles 28E and 28F. Progress in information technology has turned social media into a digital public arena that enhances civic involvement in sharing opinions and challenging government decisions. The ITE Law, especially Article 28 paragraph (2), is vital for preserving social order and harmony by addressing the dissemination of hate speech related to ethnicity, religion, race, and intergroup relations. In practice, though, this provision may result in various interpretations and worries about restricting legitimate critique, possibly causing self-censorship and reducing democratic space. Consequently, a balance must be struck between safeguarding freedom of expression and upholding the law to foster a healthy and inclusive democratic environment.

5.2 Research Limitations

This research has several limitations. First, it uses literature review and digital content analysis without involving direct empirical data collection, such as interviews or surveys, so it does not fully describe the implementation of the ITE Law in practice. Second, social media observations are limited to specific platforms, so they do not represent the full dynamics regarding the right to express opinions online. Therefore, it is important to find a balance between protecting freedom of expression and enforcing the law by ensuring that legal action is only taken against statements that clearly violate existing rules, such as hate speech, incitement, or defamation, while constructive criticism and public opinion remain protected in a democratic society.

5.3 Recommendations and Directions

Considering the results and constraints identified in this research, multiple suggestions can be made concerning the enforcement of freedom of expression in online environments. Policymakers must ensure the ITE Law is consistent with international human rights standards by developing more precise provisions that avoid ambiguous interpretations, particularly concerning sections on defamation and hate speech. Revisions to regulations must also include explicit implementation guidelines to avoid the criminalization of public discourse and criticism on social media. Additionally, law enforcement

personnel are anticipated to enforce the law justly and proportionately, especially in instances concerning freedom of expression on digital platforms. Implementing a restorative justice approach is crucial to ensure that case resolution focuses not only on punishment but also considers justice and social harmony.

Moreover, social media platforms are anticipated to enhance content moderation frameworks and offer more transparent community guidelines to reduce harmful content while safeguarding users' right to free expression. The public is also urged to enhance digital literacy and legal understanding to utilize social media responsibly and in line with current legal and ethical standards. For future studies, it is suggested that investigators utilize empirical approaches like surveys or interviews with the public, scholars, and law enforcement agents to gain a broader insight into the execution of the ITE Law. Future research might also broaden the analysis to include different social media platforms like Twitter, Facebook, and YouTube to more accurately capture the dynamics of digital communication. Moreover, utilizing qualitative data analysis tools like NVivo or Atlas.ti is suggested to enhance the validity and reliability of research outcomes. Comparative analyses with laws in other nations are also crucial to enhance conversations about the safeguarding of freedom of expression in the digital era.

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DAR served as the primary author, developing the research concept, drafting the initial draft, and processing and analyzing the data. NN contributed to data collection, literature review, and revision and refinement of the manuscript. All authors have read and approved the final version of this manuscript prior to publication.

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