



# The Rights and Restrictions of Freedom of Speech in Social Media and the Digital Era

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**Abstract.** Human rights are things in the form of rights that are owned and obtained by everyone as a human being that cannot be contested or confiscated by anyone because doing so is a violation of rights and a major insult to justice, such as freedom of speech, freedom of organization, and guarantees for the existence of human rights. This study aims to determine the policies of the government of the Republic of Indonesia and the legal arrangements regarding the right to freedom of speech. The research method uses normative legal research, meaning that research is carried out by analyzing written law from legal reference materials, such as primary legal materials and tertiary legal materials. The results of this study indicate that Article 28J Paragraph (2) of the 1945 Constitution affirms that freedom of speech has limitations stipulated by law.

**Keywords:** digital era · freedom of speech · human rights · social media

## 1 Introduction

### 1.1 Background

Cranston's opinion states that according to his understanding, human rights are universal moral rights that are always owned by all humans everywhere who are entitled to these things so there is a prohibition against someone from depriving them of these rights along with a serious insult to justice for something that is owed to him, everyone for the simple reason that everyone is human. Further understanding that human rights are something that must be done by the parties concerned, which means the whole individual because each has human rights. In addition, there are two dimensions to the concept of human rights, namely that rights cannot be revoked or separated and the formation of law comes from the community, both nationally and internationally. Opinions are important things that are put forward by freedom as a guarantee of protection with the aim that people do not have to worry about each opinion being expressed. This means that all human beings have freedom, namely the right to express opinions. The rights concerned, include freedom of action regarding information and perspectives without any restrictions in any form according to choose. Freedom of speech is communication without interference from other parties. This means that freedom means expressing a point of view in the public sphere. However, legal sanctions can affect the opinion in question in the digital

era if it does not meet the terms and conditions that apply in society in general, such as in one of the cases of tweets on social media which were decided as hate speech for the dissemination of related information. Although the internet has been in existence since the 1960s, Frank La Rue, a former special rapporteur of the United Nations on Freedom of Expression and Access to Information 2008–2014 wrote in his report on May 16, 2011, that the internet is becoming the most powerful instrument in the 21st century to increase transparency in overseeing government, providing access to information, and also facilitate citizens to participate in building a democratic society. The internet not only enables a person to exercise the right to express opinions freely but also to voice human rights and promote the progress of society for the better. The internet also plays a role in fulfilling the right over the truth.

Social media, especially the internet in the digital era, is closely related to democratic nature and effect on free-flow communication that the information that is even disseminated on the internet is intentionally exaggerated. In addition, the internet itself is a major place in the reception and dissemination of information. However, back again to modern technology in the digital era which easily permits the spread of ideas as a facility for freedom of speech electronically. The threat to freedom in social media is in line with the practice of freedom of speech and the right to receive and disseminate communication. Social media has two sides, namely in giving individuals the authority to receive and receive information with the freedom to access information. This relates to requiring regulations that are available on the rules of content that have access. In general, the average limit on the internet in the digital age dictates the protection of freedom of speech in the constitutions of many countries, particularly the foundations of national security and public order. Indonesia itself has several laws and regulations on the right of freedom of speech in the form of Law Number 9 of 1998 concerning the Freedom to Express Opinions in Public. In addition, Law Number 11 of 2008 concerning Information and Electronic Transactions, or what is hereafter referred to as the ITE Law raises questions about the right of freedom that are related to most cases, namely cases of slander. There are also regulations regarding slander within the scope of Indonesian civil law regarding wrongful acts against civil society. The most effective medium for receiving and spreading fake news also hateful information due to free control over what is spread is social media. The main reason for the spread of fake news is the influence on the perception or attitude of individuals toward other individuals. Nevertheless, the development of information technology, media, and communication in the digital era provides positive changes in both the behavior of people internally and human civilization globally.

## 1.2 Research Problem

Based on the research background, there are problems in formulation, as follows:

1. What are The Government of The Republic of Indonesia's policies regarding to the right of freedom of speech on social media?
2. How are the legal arrangements regarding the right of freedom of speech in the digital era?

### 1.3 Research Method

The research method used is the legal research method explained by Soerjono Soekanto, in legal research the normative approach method, meaning that the approach is based on written legal analysis of legal reference materials with library data sources according to Sanapiah Faisal, such as primary legal materials, secondary legal materials, as well as tertiary legal materials.

## 2 Discussion

### 2.1 Policies of the Government of the Republic of Indonesia Regarding the Right of Freedom of Speech on Social Media

The initial means of developing the understanding of democracy is the protection of human rights which is prioritized by the rule of law for its citizens. The teaching of the rule of law is explicitly stated in the 1945 Constitution of the Republic of Indonesia. Therefore, three absolute requirements must be met, namely government based on the rule of law, separation in the field of power over each country, and guarantees in the protection of human rights for all citizens. In addition to guaranteeing political rights, a democratic state with people's sovereignty also provides opportunities for people's participation in government, rights, and freedom of speech, especially after the amendment to the 1945 Constitution. The birth of state infrastructure is manifested in freedom of speech as a supervisor of state government. Freedom of speech is regulated in Indonesian laws and regulations, namely Article 28 of the 1945 Constitution. In these regulations, the law acts as a matter of determining independence and others. The fact is that the most basic human right is freedom of speech. Even so, there were previous limitations but with technological developments, especially in the digital era, the space for thinking is increasingly wide open.

The regulations concerning freedom of speech were revealed in the 1945 Constitution such as in Article 28E paragraph (3), Article 28F, and Article 28I. In addition, freedom of speech is also regulated in Article 14, Article 19, Article 20, and Article 21 of the People Consultative Assembly Decree of the Republic of Indonesia No. XVII/MPR/1998. Moreover, regulated in Act Number 39 of 1999 about human rights these articles are Article 14, Article 23 paragraph (2), and Article 25. Those articles have a similar meaning to guarantee each human to demonstrate their thought, likewise, Article 28F of the 1945 Constitution as stated below: "Everyone has the right to communicate and obtain information to develop their personal and social environment, and has the right to seek, obtain, own, store, cultivate, and deliver information using the whole kinds of available channels". This article specifically provides the right to communicate their thoughts and as a guarantee to everyone to reveal whichever they want to say, obviously through any tools. Based on the hierarchy, the 1945 Constitution is the highest regulation in which there is no law could against the values of the 1945 Constitution, if any regulation that against the 1945 Constitution, its law shall be reviewed.

The determination of state policies is a benchmark for individual freedom in the expression of speech as the holder of the authority determined by the state. The great influence of social media in the lives of individuals makes it a part of everyday life in the

digital era. The supporting fact is that Indonesia is one of the countries in the world with the largest number of social media users. In addition, some constitutions stipulate the basic rights of ownership of all Indonesian citizens, namely Article 28E Paragraph (3) of the 1945 Constitution of the Republic of Indonesia concerning Freedom of Speech and Association, Act Number 9 of 1998 Article 1 Paragraph (1) concerning Freedom of Expressing Opinions in Public, Article 28F of the 1945 Constitution concerning Freedom of Information, Article 23 Paragraph (2) of Act Number 39 of 1999 concerning Human Rights and/or Human Rights Law, Article 28J Paragraph (2) of the Law 1945 Constitution concerning Human Rights, as well as Act Number 27 of 1999 concerning Amendments to the Criminal Code.

## **2.2 The Legal Arrangements Regarding the Right of Freedom of Speech in the Digital Era**

According to Buente and Robbin, there are four dimensions of interest in the use of the internet, including social media, especially in the digital era, namely information, pleasure, communication, and transactions. Turning back to the freedom of speech that the spread of fake news when it comes to ethics on the internet is an abuse of freedom of speech. This also often happens in the creation of fake news to create a sensation on social media or make profits on internet users who visit the social media of the party concerned. However, each individual is responsible for receiving his/her information. In addition, there is a limit on freedom of speech according to Bagir Manan, namely obscene speech, threats, incitement, rudeness, and other matters related to hate speech.

There is a clear boundary in national law in the digital era as regulation regarding the limit of the right of freedom of speech, namely Article 28J Paragraph (2) of the 1945 Constitution of the Republic of Indonesia concerning Human Rights. Further study of the regulation states that it is mandatory to be subject to restrictions in the application of legislation to the act of expressing opinions in guarantees of respect for other individual rights and freedoms that are still valid until the digital era, as it is today. In addition, legal instruments regarding similar matters contain sanctions that are threatened if there is a violation as a form of secondary legal norms in limiting the stipulation of legislation. Furthermore, there is also a response from the police regarding the provisions on restrictions on freedom of speech in the Circular of the Chief of Police on Hate Speech which is the overall guideline for internal rules in handling hate speech cases in the digital era. The aspect of sanctions against laws and regulations makes the spread of fake news very different from the right of freedom of speech. Therefore, fake news is not part of the right of freedom of speech and vice versa.

## **3 Conclusion**

The policies of The Government of The Republic of Indonesia regarding the right of freedom of speech on social media are contained in the Indonesian laws and regulations in the 1945 Constitution of the Republic of Indonesia (Article 28E concerning the right of freedom of speech on social media and Article 28J concerning the limitation of the right of freedom of speech) and the Act (Article 1 Paragraph (1) Number 9 of 1998 concerning

Freedom to Express Opinions in Public and Article 23 Paragraph (2) Number 39 of 1999 concerning Human Rights). The national law has similarities in substance regarding the right of freedom of speech in social media but there are also differences in terms of validity, restrictions, and regulation of delivery media in the relevant law. Meanwhile, the legal arrangements regarding the right of freedom of speech in the digital era are contained in Indonesian laws and regulations in the 1945 Constitution of the Republic of Indonesia (Article 28J Paragraph (2) concerning Human Rights). In the digital era, there are cases of hate speech for fake news that are widely spread on the internet with the imposition of sanctions which also has a difference between the two cases that are rife from the aspect of legal instruments in setting restrictions on the use of freedom of speech according to the related case. Nevertheless, the limits and sanctions related to this matter should be set immediately to make it clearer and more effective so that internet users in the digital era are more aware of the legal restrictions that have been applied, especially the use of social media as well as in the interest of avoiding arbitrary restrictions, authority by the state regarding the right of freedom of speech on the internet in the digital era, especially on social media.

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