



# Freedom of Expression and the Press as a Part of Democracy Society in Indonesia

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**Abstract.** This paper discusses freedom of expression and freedom of the press which are part of the life of a democratic society in Indonesia. This freedom is guaranteed in the Indonesian constitution. The focus of this paper is on analyzing the urgency of freedom of expression and freedom of the press and the rule of law. This freedom is important as a form of fulfilling the government's commitment to society. If people do not have the freedom to express their opinions and are unable to express their views freely, then they do not have the right to participate effectively in public policymaking. This writing uses a qualitative approach to find out firsthand how freedom of expression is currently being implemented. This research will be structured using normative juridical research, namely research that is focused on examining the application of rules or norms in positive law. The author uses a literature study (Library Research), by referring to books, journals, or articles in the data collection process. A democratic state with people's sovereignty is also something that opens up opportunities for the people to participate directly or only oversee the running of the government. Democracy provides the opportunity for everyone to enjoy the freedoms they have proportionally because one person's freedom is limited by the freedom of others. Freedom of expression is an important element in the course of democracy and public participation.

**Keywords:** Democratic · Freedom of Expression · Public Participation · Fundamental Right

## 1 Introduction

The right to freedom of expression is part of human rights. The notion of freedom of expression is divided into two perspectives, that is, the constitutional point of view and the point of view of the legislation. A national legal standpoint would equate freedom of opinion as a right. This right to freedom of speech may serve a variety of purposes, one of which is the use of freedom of speech to brighten people's lives. The goal of breaking the nation's lives can be sought with the protection of free speech.

Theoretically, freedom of speech can refer to Frederick Schauer's opinion. He argued: *"...when free speech is accepted, there is a principle according to which speech is less subject to regulation (within a political theory) than other forms of conduct having the same or equivalent effects. Under a free speech principle, any governmental*

*action to achieve a goal, whether that goal is positive or negative, must provide stronger justification when the attainment of that goal...*"

Schauer explained that freedom of opinion relates to the arbitrary opinion of rules, can be used for government action, and has a specific purpose. Considering the state of the union with the state of the union, it is important to look at the state of the union. Such similarities to find out are linked to the purpose of the use of freedom of speech in Indonesia.

The legal arrangement in Indonesia on the right of freedom of speech is found in the constitution of 1945 Article 1 verse (2) has seen to it that the sovereignty of the state is in the hands of the people so that the will of the people conveyed by its expression must be the basis of the government arrangement. Moreover, the constitution of 1945, Article 28 verse (3) also asserts that everyone has the right to freedom of association, unity, and expression. It is due, therefore, that freedom of expression can be had by any Indonesian people without regard for race, religion, and race.

On other hand, the terminology of democracy itself comes from the classical Greek terms of the century 5th B.C.E. in two words, that is *demos*, which means people, and *Kratos/cratein* which the government (rule) or power (strength) means. Democracy, then, can be understood as a government governed by the sovereignty of the people as the pinnacle of supreme power, or we are accustomed to knowing as it the government of the people, by the people, and for the people. Abraham Lincoln in 1867 offered his opinion on the understanding of democracy as the "*government of the people, by the people, and for the people.*"

Freedom of expression and democracy are two institutions that are eminent be desired—especially so in Indonesia—which is connected, synergistic, and necessary for Indonesia's becoming and persisting as the most developed country of democracy, but as a least-developed country could be traced to a clear lack of freedom of expression. Indonesia's political indicators show that the government is increasingly trying to seize citizens whose political views are incompatible with theirs. It surprisingly, the fear of prolonged public opinion has resulted in a terrible additional problem.

The issue of freedom of expression is much highlighted because it has significant implications for the development of democracy. The right to freedom of expression should be given priority for the governance of the country to function properly. In the setting above, the text would like to describe the corridor of freedom of expression about the theory of sovereignty of the people. The discussion was conducted using a normative-law study, a study that examined the document study, that is, the use of secondary data such as legislation regulations, legal theory, and the opinions of scholars.

The type of this research is Normative Legal Research. Normative legal Research is research that uses the law as the foundation of the norm. This means that this research is based on library research focusing on reading and analyzing of the primary and secondary materials. In this research, the author describes the case, seeks, and processes a variety of data from the document study to generate a report of research findings. The methods of collecting data in the research were as done through library research by making literature studies. Using the methods, the researchers collected data from reading, and analyses, and finally tried to make conclusions from related documents namely conventions, law

books, legal journals, and others that related to the main problems as the object of the research.

## 2 Discussion

### 2.1 Democracy Concept

A solid democracy originates from the will of the people and aims to achieve the common good and benefit. Therefore, democracy is always synonymous with the representation of the will of the people. This makes the term democratic often replaced with republican or participatory as a form of emphasizing the role of citizens in the process of making public policies.

Robert Dahl in 1998 stated that democracy is the government's continuous response to the preferences or desires of its citizens. The granting of freedom to citizens to express their aspirations, both orally and in writing, is a characteristic of a democratic country. Thus, it can be concluded that democracy is a state in which the people are sovereign, the government is exercised by the people, and power is exercised by the people.

John Locke expressed through his work entitled "The Second Treaties of Civil Government and Letter Concerning Toleration", that all individuals are endowed with an inherent right to life, the freedom to own, which is their property and cannot be revoked by the state.

Freedom of expression is interpreted as a right inherent in every human being, to own. Freedom of expression is used to express views and opinions, either between individuals or groups.

#### 2.1.1 Characteristics of Democracy

Based on political performance, an expert named Bingham Powel Jr. in 2000 emphasized the following characteristics of a democratic political system:

1. The legitimacy of a government is based on the claim that it represents the will of the people.
2. Arrangements that organize negotiations to gain legitimacy are implemented through competitive elections. In practice, it consists of at least two political parties.
3. Most adults can participate in the electoral process, either as residents of office or as voters.
4. Elections are conducted in secret and without coercion.
5. The existence of basic rights such as freedom of speech, assembly, organization, and freedom of the press is owned by the community and leaders.

#### 2.1.2 Principles of Democracy

There are two approaches to citizen engagement that have been developed, namely:

1. An elitist approach, democracy is a decision-making method that prioritizes efficiency in administration and policy-making, but demands a quality response by the authorities and elites to public opinion.

2. In the Participatory approach, democracy demands a higher level of involvement, because it is very necessary to realize these benefits-we must, uphold direct democracy.

## 2.2 The Concept of Freedom of Expression

Acton says that humans are now becoming free while Rousseau says that humans are now less free. This interpretation of the meaning of “free” becomes a little clearer when this term has to be linked with other words, namely “from or to”. Therefore, the term freedom is usually associated with the absence of obstacles, prohibitions, bonds, coercion, or obligations from certain things or to do something.

On the other hand, Bertens expresses in the book *Ethics* that the term freedom is something that can be felt but is difficult to answer when asked what it meant or what is the definition of freedom. In general, the term freedom is usually associated with the absence of obstacles, prohibitions, bonds, coercion, or obligations from certain things or to do something. However, freedom is a complex reality in human life. Moreover, an expert named Dister expresses that the term freedom is interpreted differently even when we refer to the same event. The results presented by Acton and Rousseau are contrary to Dister because he expresses that the word “free” has only one meaning.

First, freedom of expression is defined as a right inherent in human beings, to have and express their opinions. This includes seeking, receiving, and conveying information and opinions in various ways. Freedom of expression is essentially owned by humans both in their position as individuals and when they become part of a group in society. In his position as an individual, freedom of expression is useful for conveying that person’s views and opinions to others, both inside and outside the group. Freedom of expression can also be used by individuals as members of a group together for a common goal to express their views and opinions. Both internally to other members of the group and externally to other groups or the wider community.

Freedom of expression is a basic right in life that is guaranteed and protected by the state. The implementation of freedom of expression can be in the form of writing, books, discussions, or press activities. Every citizen can legally express what is on his mind. Expressing opinions can be in the form of various issues including state, legal, and political issues, whether in the form of public policies made by the government and other state institutions, opinions or criticisms of every public policy is a control over the course of government.

In Indonesia, freedom of opinion in public has been specifically regulated in The 1945 Constitution Articles 28, 28 E, and 28 F which read:

Article 28

*Freedom of association and assembly, expressing thoughts verbally and in writing, and so on is stipulated by law.*

Article 28 E

- (1) *Everyone has the right to embrace a religion and worship according to his religion, choose education, choose a job, choose a nationality, choose a place to live, in the territory of the country and leave it, and has the right to return.*

- (2) *Everyone has the right to freedom to believe in beliefs, and express thoughts and attitudes, according to his conscience.*
- (3) *Everyone has the right to freedom of association, assembly, and expression.*

#### Article 28 F

*Everyone has the right to communicate and obtain information to develop their personal and social environment as well as to seek, obtain, possess, store, process, and convey information using all available channels.*

The norms of the right to freedom of expression as regulated in the 1945 Constitution article 28, article 28 E, and article 28 F are external laws or written rules that appear and are regulated in the legislation. These rules are general and binding.

Then the interpretation of the article is accommodated through Act Number 9 of 1998 article 1 paragraph (1) concerning the Freedom of Expressing Opinions in Public which reads “freedom to express opinions orally, in writing and so on freely and responsibly by the provisions of the applicable legislation.” Freedom of expression in the 1945 Constitution and Act Number 9 of 1998 emphasizes that freedom of expression is a basic right in life that is guaranteed and protected by the state.

### 2.2.1 The Important Role of Freedom of Expression

As we can see today, freedom of expression is for everyone a great gift, won by great courage at the risk of personal harm, and for political, religious, and social freedom. Arendt argues that freedom of expression is an effort to educate the nation’s life. He categorizes freedom of expression as related to significant human existence to reveal the uniqueness of his identity. We can conclude that the restriction of freedom of expression arbitrarily or the absolute prohibition of freedom of expression, causes humans to be unable to realize their existence. Limitations in the embodiment of human existence, as well as limiting efforts to make humans smarter.

Arendt’s opinion is also recognized in Article 4 letter c of the Law on Freedom to Express Opinions in Public, namely creating a conducive climate for the participation and creativity of every citizen as the embodiment of rights and responsibilities in democratic life. Creativity and participation are part of a democratic climate. The protection of freedom of expression is fundamental. Neglect of the protection of the right to freedom of expression can lead to a decrease in the level of participation and creativity of citizens. How to express opinions is also an aspect that should not be forgotten as an effort to educate the nation’s life. Arendt stated that the space is called the space of appearance (*erscheinungsraum*).

“The apparition space takes place where people interact with one another by acting and talking; that space is the basis for the establishment and form of the state. That space exists potentially in every set of people, indeed only potentially; it is not necessarily actualized in that set nor is it fixed forever or for a certain time...”

In addition, freedom of expression has played an important role in dealing with various state problems, such as:

- a. The country’s national stability will be maintained so that it can have a positive impact and facilitate development.

- b. Indonesia's democratic life will be created in every aspect of people's more positive lives.
- c. People's aspirations can be channeled properly according to their conscience to the elected representatives of the people.

Toby Mendel explains that there are several reasons why freedom of expression is important:

- (1) Because this is the basis of democracy;
- (2) Freedom of expression has a role in eradicating corruption;
- (3) Freedom of expression promotes accountability;
- (4) Freedom of expression in society is believed to be the best way to find the truth.

### **2.3 The Concept of Freedom of the Press**

Freedom of the press is the right of citizens to form and express their opinions both in the context of public issues and aesthetic problems. Freedom of the press cannot stand alone, because it is only one of the other norms on which civil society is based. Freedom of the press is a norm that guarantees one of the dimensions of human rights, namely the right of humans to express their opinions freely. That everyone has the right to freedom of opinion and expression.

Freedom of the press is formulated as a real condition that allows press workers to choose, determine, and carry out their duties as they wish. It means being free to do something without coercion. In Indonesia, media freedom deserves to be considered if it fulfills several indicators.

First, media freedom is seen from the lack of state intervention. This means that the state no longer strictly controls the licensing, content, and distribution of media. Theoretically, the media, which is always controlled by the state through various repressive instruments, will never be able to realize the freedom to carry out journalism activities properly, let alone become a controlling force for state policies.

Second, the mythology of media freedom is measured by the presence or absence of a ban or closure of media institutions. The ban has been a major media problem in our country since 1744 when the *Bataviasche Nouvelles* was banned by the Dutch colonial government. With the enactment of the Basic Press Act Number 40 of 1999 which states that "the national press should not be suppressed, censored, and prohibited from publishing and broadcasting" so that until now there has not been a press ban in the country, although in practice it has not been completely disappeared with many other government regulations that overshadowed the critical movement of media coverage.

Third, media freedom is seen from the quantity or number of media which is more than before. Since 1998 there has been a significant increase in the number of mass media.

Fourth, media freedom is measured by its freedom to write any news that comes from all parties, including freedom from internal media control that hinders journalists' freedom of expression.

Meanwhile, Simorangkir stated several characteristics of press freedom, as follows:

- a) A free and responsible press
- b) A healthy press
- c) The press as an objective disseminator of information
- d) The press exercises social and constructive control
- e) The press is a channel for public aspirations and expands communication and public participation.
- f) There is a positive interaction between the press, government, and society.

### 2.3.1 The Important Role of Freedom of the Press

For a democratic society, the press is even considered the fourth pillar, in addition to the executive, judiciary, and legislative branches. The press in this context functions as a “barking dog”, in addition to its economic, information, entertainment, and educational functions for the community. Strict supervision by the press of the life of the nation and state, especially in the administration of government, places itself as another force outside the government in a broad sense. This is reasonable, from several literature studies that have been carried out by researchers, as previously explained, showing the importance of the role of the press in human and community development.

In a democratic government, the position of the press is as a partner of the government in running the wheels of government. Its existence is as a counterweight and as a forum where the aspirations of citizens can be discussed. The press and government complement each other. The relationship that is built is a symbiotic mutualism.

The press plays a role in the formation of public opinion, in this case influencing, controlling, criticizing, and correcting government policies, as well as being a public space for the public to express their opinions and views. In addition, it functions as a watchdog function to reveal the truth and wrongs committed by government administrators or parties with power.

The function of mass media in general is to convey information, educate or enlighten, provide entertainment, and influence. As Deddy Mulyana said, the mass media influences the thoughts and actions of the audience regarding the impact of mass communication on people’s knowledge, perceptions, attitudes, and behavior”. Mass media is an agent of socialization (spread of values) which plays an important role in the transmission of attitudes (behavior), thoughts (cognitive), and relationships (interaction). The ability of the mass media to influence the audience is a force that is feared by the authorities or the government. The mass media can control, criticize, direct government policies, mobilize mass power, and shape public opinion by continuously following up on issues that are considered important by the public according to the media.

Even the mass media were able to overthrow authoritarian regimes as happened in Indonesia in May 1998, although not directly but the media had a very important role at that time. Call it the broadcast of the running of the demonstrators that occurred in almost all corners of the country. The author considered that at that time the mass media also had an interest, namely to get out of the confines of the Suharto regime which had been considered to curb press freedom. The mass media need to create a democratic system and by itself, the mass media will achieve freedom with a democratic government system.

## 2.4 Balance Between Democracy with Freedom of Expression

A democratic state with people's sovereignty is something that opens up opportunities for the people to participate directly or only oversee the running of the government. The provision of opportunities for the people to participate in government is fulfilled by granting the right to freedom of expression in Indonesia, especially after the amendments to the 1945 Constitution. Freedom of expression manifests the birth of various infrastructures within the state that play a role in overseeing the administration of state government, such as political parties, community organizations, non-governmental organizations, society, and so on.

The State of Indonesia as a state of the law has ratified various international rules in upholding the right to freedom of expression, the constitution has guaranteed this. Law is defined as a unified hierarchy of legal norms culminating in the constitution. While the constitution is a form of social agreement.

Departing from the legal development approach, both in terms of national interests and in terms of the interests of relations between nations, freedom of expression in public must be based on five main principles as stated in Act Number 9 of 1998 Article 3 concerning Freedom of Expression of Opinions. in Public, as follows:

- (1) the principle of balance between rights and obligations;
- (2) the principle of deliberation and consensus;
- (3) the principle of legal certainty and justice;
- (4) the principle of proportionality; and
- (5) benefit principle.

These five principles form the basis for freedom of thought and action to express opinions in public.

The norm of the right to freedom of expression is the most urgent right among the entire series of human rights norms, in terms of political rights. The norm of the right to freedom of expression is considered one of the keys to democracy, the norm of the right to freedom of expression is very much needed in realizing an accountable government. The guarantee of the right to freedom of expression always provides supervision and control by the general public over the running of the government (public control and direction).

The basic characteristic of a country with a democratic system is the involvement of the people in every public decision-making, either directly or through representatives. This explanation provides the view that every citizen has the right to discuss every state policy on behalf of the people. The involvement of the people in making political decisions is a form of democracy so that every citizen has a sense of responsibility for government policies.

Freedom of expression depends on the policies set by the competent government. Especially on the issue of giving freedom to individuals to express themselves and the state which guarantees freedom of expression without intervention.

Democracy provides the opportunity for everyone to enjoy the freedoms they have proportionally because one person's freedom is limited by the freedom of others.



## 2.5 Balance Between Democracy with Freedom of the Press

A country or organization is said to be democratic if it can develop communication that is free from obstacles, both psychological and cultural. The democratic system allows communication to take place freely and provides equal opportunities for the community or members of the organization to express their respective opinions and interests. Mass media and democracy are like two sides of a coin, both have a long history and are interconnected. A free press system is born out of a democratic system and the mass media are the facilitators of democracy.

Democracy as a system has been used as an alternative in various arrangements for social and state activities, including providing space for the mass media to freely carry out their press functions. One of the concepts of a democratic state system, according to Huntington, is the role of free mass media.

Closely related to the public's right to know is the free mass media, namely newspapers, television, radio, and new media that can investigate government operations and report on them without fear of being prosecuted and punished. As a system, democracy has elements that make it enforceable in a country. The elements of a democratic system are as follows:

- a. State law
- b. Civil society
- c. Political infrastructure (political parties)
- d. A free and responsible press.

Freedom and a responsible press are elements that can enforce a democratic system in a country.

## 3 Conclusion

Freedom of expression and the press are essential elements of democracy. In Indonesia, the two values were laid out in the constitution of 1945 Article 28 E and Article 28 F. The urgency of the space for freedom and regulation of the space for freedom is to ensure the realization of a participatory democratic life. Referring to the philosophical, sociological, and juridical foundations of freedom of expression and the press, this freedom is an integral part of a democratic society. The wider space for freedom is a sign of the government's high commitment to realizing a democratic state. With the wide space of democracy, the concept of freedom of expression and a responsible press must also be increased.

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