



The Urgency of Freedom of Speech in the Digital Era Against the Information and Electronic Transaction Law

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Abstract. With globalization evolving and global technological improvements today, we are becoming acquainted with a medium called social media. Social media is where individuals can communicate, interact, even publish and express themselves freely. It is no exception as a new vessel for social media users to reason. As it grows, the constitution of the Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions (ITE), has been passed on information and electronic transactions to protect society's social media. But the legislation was controversial for restricting the right to freedom of speech as found in paragraph (3) of Article 28E of the 1945 Constitution of the Republic of Indonesia because there are several "rubber" chapters in it. The purpose of this writing was to learn how freedom of speech existed in the digital age, as well as how the various "rubber" chapters of the ite act were affected. Several "rubber" chapters in the law of Electronic Information and Transactions, that is, article 27 verses (1), chapter 28 verses (2), and chapter 29 constitution of Electronic Information and Transactions.

Keywords: Freedom of Speech · Digital Era · Indonesia

1 Introduction

Indonesia is a democratic legal state. It is contained in Article 1 paragraph (2) of the 1945 Constitution, which reads "the highest sovereignty rests with the people." However, what was meant by democracy before? Democracy comes from the words *Demos* (the people) and *Kratos* (government), which, when put together will mean the government of the people. Democracy is also defined as a form in which a government is formed from the rights that are used directly by citizens in political decisions (elections). Thus, civil rights and freedoms are highly respected in the life of a democratic society.

Then amid the life of a country that adheres to democracy, we know that right now we are in the development of an all-digital globalized. In an all-digital era, it seems that all activities carried out cannot be separated from utilizing existing digital. All activities or work is considered easier if done by utilizing digital things. And in today's digital era, everyone considers the digital era as amazing progress and steps forward because of the various conveniences and positive impacts that arise from it. Globalization certainly

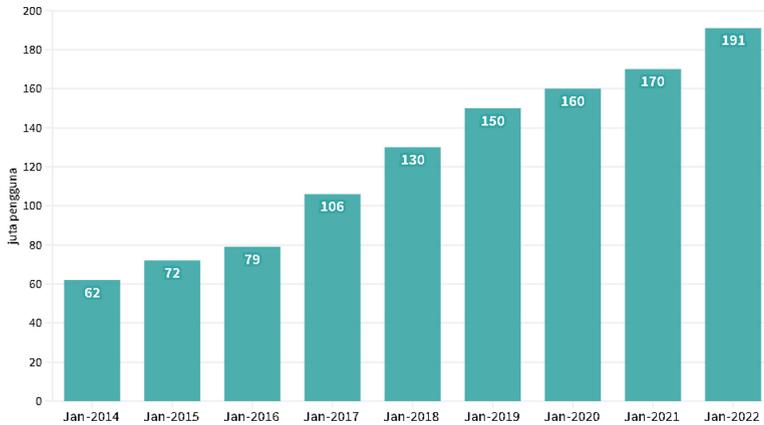


Fig. 1. The number of social media users in Indonesia in 2022.

has a big influence on the development of the media. The hallmark of globalization, namely a world without borders, forces the birth of new technologies to be able to adapt to existing changes. These technological advances then encourage the birth of social media. Nowadays, we know and can use something called social media. According to Nasrullah, social media is a medium on the internet where users are allowed to represent themselves and socially connect with other users to form virtual social links. Also in social media, there are three forms of reference to the meaning of social which consist of communication, recognition, and cooperation. From this understanding, it can be understood that social media apart from being an internet medium that is used as a suggestion to interact or communicate with other people, can also introduce ourselves by publishing ourselves on social media. We can also use social media as a place to express ourselves freely or as a place of entertainment that can be enjoyed in our spare time, so that's what causes the boom in social media users today.

We can see the diagram below an illustration of social media users in Indonesia from 2014–2022 (Fig. 1).

Based on the *We Are Social* report in *data Indonesia.id*, In January 2022, there were 191 million total active users of social media in Indonesia. When compared to the previous year, the number has increased by 12.35%. We can also see that social media user in Indonesia is increasing from year to year.

With a large number of social media users in Indonesia and the influence of the development of the era of globalization, the Indonesian government then issued Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) as a form of support for the development of Information Technology through legal infrastructure and the setting. The law is also made so that the use of information technology can be done safely and can prevent all forms of misuse. This is so that we can use social media well.

However, how does the ITE Law affect freedom of expression in this digital era? Does the ITE Law no longer get the freedom to express ourselves on social media or is it the other way around?

2 Discussion

2.1 Freedom of Speech in the Digital Era

From the development of this era apart from technological advances or the emergence of social media, a forum for us to have opinions has also developed. Through the emergence of social media, we can also voice opinions in the public space in social media. With the right to freedom of opinion contained in Article 28E paragraph (3) which states that “Everyone has the right to freedom of association, assembly, and expression”, we can freely give our opinions wherever we are. But basically, we often forget that there are limitations on the freedom of opinion or expression, especially in the public sphere in social media. We often read or hear harsh and unkind words that contain insults or blasphemy. We often hear or read false information that spreads through social media. Social media is something we need to control, not the other way around. Freedom, which has wide access to the existence of social media, is a form of respect for the human rights of all. Therefore, do not let the freedom we obtain can cause the freedom of opinion of others. Everywhere in the world, governments regulate information on social media to fight fake news. However, there is a risk that uncontrolled dissemination of information may have a greater impact as a result of the influence of false and misleading news. These things indicate that the freedom of opinion or expression in the public sphere of social media has exceeded its limits.

As we know that there are more than hundreds of millions of people using social media in this country. Various ages of social media users in this country, from the young to the old. Even minors now understand what social media is. This is evidenced by the age data of social media users below (Fig. 2).

In the context of this age of social media users, children who are still teenagers are usually individuals who are prioritized in monitoring and directing the freedom to use social media. Because in general the age range of teenagers usually often have high curiosity, it must be prioritized to be given direction so that the sense of curiosity can be well directed and social media does not have a bad impact on them.

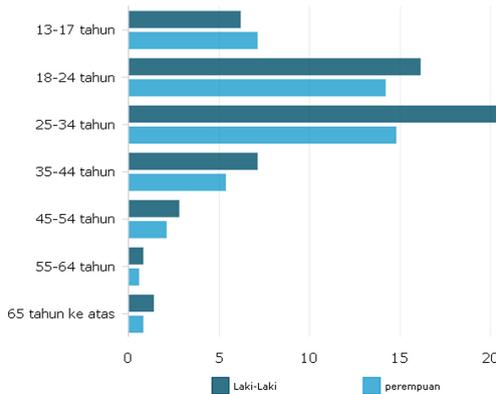


Fig. 2. Data on the age of social media users in Indonesia

Social media as we know it is an unlimited and very free public space because it is done virtually or online, giving its users an uncontrollable sense of freedom. Whereas the Indonesian government has issued Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) as a clear warning and to warn internet users to always use the internet with caution, share, and obtain various personal information or secret. While social media has challenged sensitivity to mistreatment, it can be minimized. Otherwise, it can be eliminated through appropriate oversight and regulation without compromising freedom of expression. The ITE Law also mentions related defamation or violence that is often carried out through social media and that it can be charged with related articles.

The emergence of the ITE Law is regarded as a narrative in expressing oneself on social media, we must realize that this freedom is not completely free without thinking about and paying attention to existing ethics and regulations. In that case, we as internet users or even social media users can understand that the ITE Law is a form of embodiment of understanding and protection for these social media users. Social media users are also individuals who have the right to freely express their opinion wherever they are, including on social media. However, in this opinion, one must still be vigilant and careful.

In article 3 of Law no. 9 of 1998 concerning Freedom to Express Opinions in Public, there are five main principles in expressing opinions, namely:

- a. The principle of balance between rights and obligations;
- b. The principle of deliberation and consensus;
- c. The principle of legal certainty and justice;
- d. The principle of proportionality; and
- e. The principle of beneficence.

But of course, this law only applies to the direct public expression of opinion, not on social media. Meanwhile, in the current era where we can provide opinions through the public sphere on social media, a new law has been issued that balances developments in this digital era, namely the ITE Law. The ITE Law also includes freedom of expression on social media or cyberspace. Freedom of expression of social media is stated in Article 27 paragraph 3 of the ITE Law No. 19 of 2016 which reads, "Everyone intentionally and without rights distributes and or transmits and or makes accessible electronic information and or electronic documents containing insults and or defamation". At the beginning of its appearance, the article reaped a lot of controversies because it was considered a "rubber" article. Many consider that the article limits the people's right to freedom of expression by Article 28 of the 1945 Constitution.

The beginning of the emergence of the ITE Law was not there to limit the people's right to freedom of opinion. However, the ITE Law has a "rubber" article that is widely misused. Although basically the activity of giving these opinions, whether conveyed directly in public or through social media, must pay attention and consider carefully what effects will arise from opinions that will be conveyed to the general public, with the emergence of the ITE Law, it has an impact on other criminalizing parties. There are so many victims of criminalization as a result of the "rubber" article in the ITE Law. Sandrayati Moniaga as Commissioner for the Study and Research of the National Commission of Human Rights also assessed that freedom of opinion and expression

could indeed be limited. However, this limit can only be achieved under certain conditions. These restrictions also must not be carried out arbitrarily, must be regulated by law; necessary in a democratic society; and to protect public order, public health, public morality, public safety, public safety, and the rights and freedoms of others. The emergence of the ITE Law, which initially served as a protector of society in digital media, has increasingly become a barrier to the right to freedom of expression in this digital era. Therefore, many parties oppose some of the “rubber” articles on the ITE Law and expect a revision of the ITE Law.

2.2 The Impact of Several “Rubbers” Articles of the ITE Law on Freedom of Speech in the Digital Era

As explained above, there are several “rubber” articles in the ITE Law. The “rubber” article referred to in this case is the interpretation of the article that is very subjective from law enforcement and other parties, which of these can lead to various or multiple interpretations of all parties. The “rubber” article in the ITE Law, poses a threat to freedom of expression in social media and can be a ‘bullet’ for anyone who wants to abuse it.

Quoted from *cnnindonesia.com*, Amnesty International Indonesia (AII) noted that there were 84 cases of violation of expression along with a total of 98 victims who were charged with the ITE Law in 2021. Usman Hamid as Executive Director of AII also said that usually, these cases occur as a result of efforts to silence freedom of expression against criticism of those in power. There are several cases regarding this, such as the case of Asrul who is a journalist in Palopo, South Sulawesi. He was accused of violating Article 3 of the ITE Law regarding defamation when he wrote about the corruption of a large project in Palopo in May 2019. He was later found guilty and sentenced to three months in prison on November 23, 2021. This case, further proves that the ITE Law needs to be revised with the perspective of protecting people’s rights, especially the right to freedom of opinion.

Then, referring to the many cases in court that use the ITE Law, there are three articles of the ITE Law, which have very flexible interpretations so that they often ensnare many people. The first is Article 27 paragraph (1). Article 27 paragraph (1) of the ITE Law is related to insults and defamation. After changing, the creed in this article is a complaint offense. Whereas at the time before the amendment, there was no firm belief that the article was a complaint offense. Article 27 paragraph (1) is also considered to have multiple interpretations because there are no clear boundaries related to complaints about decency, humiliation, and defamation.

The second is Article 28 paragraph (2) of the ITE Law, which does not state that the belief in SARA in that article is an ordinary offense or a complaint offense. Again, it is considered multiple interpretations because there are no clear boundaries related to creed regarding ethnicity, religion, race, and inter-groups in it. The absence of clarity in the creed regarding ethnicity, religion, race, and inter-groups can be misused by anyone.

Finally, Article 29 of the ITE Law. Article 29 of the ITE Law is related to threats of violence and intimidation. The ITE Law does not provide a clear formula for that, giving rise to various interpretations on the subject of intimidation. This article is also vulnerable to being used because there is no objective clarity.

The negative impacts received from the existence of several articles with multiple interpretations include:

- a. Giving restrictions on the right to freedom of opinion, especially in giving criticism. This is related to the presence of several people who were arrested using the ITE Law so it had an impact on the development of democracy in which people were reluctant to express their opinion.
- b. There is arbitrariness from law enforcement.
- c. Being an instrument of some groups, it is even used as a weapon to trap political opponents.
- d. Uncertain general certainty.
- e. The triggering of unrest and discord among community members.
- f. The emergence of the ineffectiveness of the articles because some articles are duplications of the provisions of the Criminal Code.

Then what is the solution that we can do regarding the impact of the “rubber” article or the multiple interpretations? The main solution that can be done to the multi-interpreted article is to amend or revise the ITE Law. The articles that are considered to have multiple interpretations should probably be removed from the ITE Law, because, like the sixth impact, several articles have also been regulated in the Criminal Code. For example, Article 28 paragraph (2) of the ITE Law, has been regulated in Article 156 of the Criminal Code.

3 Conclusion

Indonesia is a democratic country where civil rights and liberties are highly valued within the scope of a democratic society. It is related to paragraph (3) of Article 28E of the 1945 Constitution of the Republic of Indonesia, which contains the Indonesian people’s rights, including the right to express their opinions. Thanks to this right, we can freely express our opinions wherever we are, including freedom of speech on social media. Through the advancement of today’s digital era, social media as we know it has provided us with a new platform on which to express our opinions. Furthermore, amid all-digital globalization development, a law was made to protect society in cyberspace, especially on social media, known as the Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions (ITE). The emergence of the ITE Law has caused much controversy due to the “rubber” article (*pasal karet*) or multiple interpretations in the article. The ITE Law is less beneficial since the existence of multi-interpreted articles in it, especially regarding the right to freedom of speech. Due to numerous impacts arising from the “rubber” article, it is expected that the ITE Law can be immediately revised through the legislative function of Commission I of DPR RI (House of Representatives of the Republic of Indonesia).

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