



The Threats to Freedom of Expression in the Law State of Indonesia in the Post-Truth Era: A Review The Act Number 19 of 2016 regarding Information and Electronic Transactions

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Abstract. The euphoria of freedom of speech in Indonesia arose after the end of the New Order government, after the era in which authorities threatened dissent with subversion. At present, this freedom of opinion is also threatened by the Act Number 19 of 2016 regarding Information and Electronic Transactions (the Act of *IET*). Some of the articles in the Act of IET are considered rubber articles that can threaten anyone who dares to express a different opinion or a constructive criticism. In fact this is a manifestation of the principle of democracy (constitutional democracy) which is commonly practiced in rule of law countries, including Indonesia. Freedom of opinion is one of the human rights that is guaranteed and is one of the characteristics of a democratic rule of law. In the Indonesian context, this is interesting to study and to analyze, especially when it is related to the post-truth phenomenon (a continuous lie can become a truth) which is rife today. So it is necessary to analyze how freedom of opinion should actually look like so that it will not be threatened by the Act of IET. Apart from that, it is also important to analyze the correlation between freedom of opinion and the post-thruth phenomenon. The author analyzes this problem using doctrinal methods. This problem is in line with the objective of writing, namely to explain and to analyze the forms of freedom of opinion so that they cannot be threatened by the Act of IET. In addition to that, it is also intended to explain and to analyze the correlation between freedom of opinion and the post-thruth phenomenon. In this way, it is expected that there will be some recommendations and conclusions that can answer these problems.

Keywords: Freedom of Opinion, Law, Post Truth.

1. Introduction

The toping of the New Order government in 1998 seemed to present a euphoria for freedom of opinion in Indonesia. During the New Order government in the period from 1966 to 1998, freedom of opinion was largely restricted by the authorities of that period for the sake of socio-political stability and security. Normalization of campus life in the late 1970s which limited students' activities outside the academic field, the existence of the Petition 50 group which criticized President Soeharto's speech in 1980, the suspension of *Tempo Magazine, Editor* , and *Tabloid Detik* in the 1990s, the

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banning of demonstrations, and the kidnapping of activists were examples of how severely restricted freedom of expression was during the New Order government. At that time, the threat of being called subversive or dissident could easily be imposed on parties who dared to differ in opinion and to criticize the government.

In addition to that condition, during the New Order era, the right to express opinions or thoughts through the mass media as well as the right to obtain correct and complete information from various media also had to face political violence which violated human rights.[1] Freedom of the press in a proportional sense could be said to be non-existent, because at that time the small press did not have the opportunity to be free to publish news involving violations by civil or security forces, government officials, and even the families of officials. With the packaging of "responsible freedom", the press was asked not to report actual facts or events if the news could cause unrest among the public. In fact, the aspirations or opinions of the community can be captured and expressed through opinions represented by the press.[2]

The tap of freedom of expression was opened as wide as possible during the reform government by President B.J. Habibie in the period from 1998 to 1999. Starting with the issuance of an act on political parties which gave freedom to community groups or political elites to establish new political parties outside the Golongan Karya (which did not want to be called political parties but became election participants during the New Order government), the United Development Party (PPP), and the Indonesian Democratic Party (PDI). Apart from that, the community was also free to establish community organizations (ormas). The officers who were proven to have kidnapped the activists were tried in a military court. Not only that, mass media in the form of magazines, newspapers and tabloids during the administration of President B.J. Habibie also increased in number. Apart from that, peaceful demonstrations to express opinions and criticize the government were also permitted on condition that they were reported to the authorities. Actually, submission of opinions and criticism of government policies has been regulated in Article 28 of the 1945 Constitution of the Republic of Indonesia which states that freedom to associate and assemble, express thoughts orally and in writing and so on is stipulated by law.

In essence, the right to freedom of expression in conveying opinions and criticism is not an independent right. The right to demonstrate, the right to receive information, including the right to remain silent are rights that arise as derivatives of the right to freedom of expression. Therefore, as a democratic country, the country, in this case the government, must uphold freedom of expression and opinion. This is because in a democratic country of rule of law, in accordance with Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia that Indonesia is a rule of law state, it is natural to accept and allow criticism from elements of society to create a government that is responsible, transparent, efficient and effective. This freedom not to limit the right to speak is also in accordance with what is stated in the constitutions of the United States of America and many other countries in the world. [3]

Freedom of opinion is one of the human rights that every human being has and the constitution has guaranteed it. Recognition of human rights is one of the

characteristics of a democratic country. Indonesia as a democratic legal state has the authority to regulate and protect human rights. This is in the fourth amendment to the 1945 Constitution of the Republic of Indonesia in Article 28E paragraph (3) which states that "everyone has the right to freedom of association, assembly and expression of opinion." The implementation of freedom of expression can also take the form of writing, books, discussions, or in activities carried out by the media. In other words, everyone, especially citizens, can legally express what is on their minds, whether in the form of public policies made by the government or other state institutions. Opinions or criticism given on any public policy is a control or checks and balances on the running of a government. If a country that adheres to a democratic system does not provide freedom of expression to express opinions and convey criticism, then in fact the country is in the process of moving towards authoritarianism.

2. Problem

How freedom of opinion should actually look like so that it will not be threatened by the Act of IET and which is the correlation between freedom of opinion and the post-truth phenomenon.

3. Method

The author analyzes this problem using doctrinal methods.

4. Discussion

Toby Mendel explained that there are several reasons why freedom of expression is important, namely:[4] 1) Because this is the basis of democracy; 2) Freedom of expression plays a role in eradicating corruption; 3) Freedom of expression promotes accountability; and 4) Freedom of expression in society is believed to be the best thing for finding the truth. However, the freedom of expression and expression of opinion, including criticism, does not mean freedom as freely as possible without any restrictions, as stated in Article 19 paragraph (2) of the Declaration of Human Rights that in exercising their rights and freedoms, everyone must be subject to the restrictions imposed that has been determined by law, solely aimed at respecting the rights and freedoms of other people, for the sake of creating justice, public order and prosperity in a democratic society.

Nowadays, the problem of freedom of expression is becoming more complex due to the rapid development of the digital world. Media for expression is no longer limited to print and electronics only as it was before. The internet has developed tremendously in this millennium, becoming very accessible to everyone. Through the internet, people can access social media such as Facebook, Twitter, Instagram, Path, WhatsApp, TikTok, email, blogs, and so on. Through social media now many people

express themselves, including expressing their opinions. As a result of the reaction to the development of information technology, social media is one of its products. The existence of social media cannot be simply ignored because the media is a place for everyone to express expression, so the guarantee of freedom of expression in social media is a crucial point that also needs to get attention.[5]

The implementation of democracy in the digital era has indeed touched all aspects of national and state life. This is based on the urgency and need for the community to take part in government. Especially with the increase in information technology in the form of the internet and communication which makes it easier for people to voice their opinions through information communication media, especially social media.[6]

In the digital era, it cannot be denied that the internet has made significant contributions for many people to enjoy the right to all forms of information, freedom of expression in conveying opinions and expressions, including the right to search, send, store and exchange information. The number of internet users in Indonesia is one of the largest, therefore the government then passed the Act of IET to maintain the smoothness and orderliness of society in interacting on the internet, as well as to anticipate actions such as piracy and hate speech which are increasingly widespread, especially ahead of the Presidential and Vice Presidential elections (*Pilpres*) and the election of legislative members to the People's Representative Council, Regional Representative Council and Regional People's Representative Council (*Pileg*).

The existence of the Act of IET is essentially aimed at providing regulations for the development of technology in the information sector, maximizing the internet use, and expanding electronic transactions which are increasingly common in the digital era. However, in its implementation in Indonesia this act actually poses a new threat to civil freedom in expressing and self-actualizing one's opinions, because it contains several controversial articles and can impose criminal sanctions for individuals who violate it.[6] In other words, this law is considered to be able to hinder and silence people's freedom of opinion and expression via the internet.

Several formulations of the provisions of the articles in the Act of IET tend to have multiple interpretations that have great potential for misuse and executed arbitrary. This formulation often violates the principle of *lex certa* in criminal law because of the unclear elements of the offense contained in the normative formulation,[5] because legal norm it has to be really true formulated clearly and real, not vague, and no multiple interpretations.

Internet freedom, including freedom of expression, is one of the rights that must be guaranteed by democratic countries, because in the current era of digital industry, the internet, especially with social media platforms, is the most massive and widely used tool for realizing various forms of human rights, fighting injustice, and accelerating development and progress of people in many countries. Internet freedom, including freedom of opinion and expression, is often intervened by the state.

One of the controversial articles that threaten people's internet freedom example is Article 27 paragraph (3) of the Act of IET. Article 27 paragraph (3) of the Act of IET which states that every person who intentionally and without rights

distributes and/or transmits and/or makes accessible electronic information and/or electronic documents containing insults and/or defamation can be punished with criminal penalties. Theoretically, the existence of Article 27 paragraph (3) of the Act of IET is intended to ensnare cyber criminals, but in practice it is often used to criminalize people who use the internet and social media to convey complaints, opinions, thoughts, polemics, and criticism to leaders or authorities. which is actually a form of freedom of speech. This was experienced by Prita in 2008 who criticized the Omni International Hospital, so that she was considered to have defamed the name of the hospital.[5] Starting from complaint Prita on the mailing list about service the hospital when she medical check up health. The act considered by the Omni International Hospital as form defamation, and by the judge Prita indicted with Article 27 paragraph (3) of the Act of IET. Apart from Prita, there are also Baiq Nuril which is honorary teacher Public Senior High School 7 Mataram who was sentenced by the judge has done criminal act as stated in Article 27 paragraph (3) of the Act of IET, because have recorded conversation headmaster initials M who told the story with Nuril that M have done immoral act with a woman which too known as Nuril. Recording of the conversation widely circulated in society.

It is known that Article 27 of the Act of IET has claimed many victims.[7] Communities can report one another because of the articles in the Act of IET. So actually the provisions of Article 27 paragraph (3) actually need to be revised, namely by adding sentences and clarifying the meaning of the terms in the act.[8] Article 27 paragraph 3 of the Act of IET can be considered a "rubber article" and when implemented can ensnare parties who do not understand about the internet or cyberspace. Apart from that, this article can also be easily used to ensnare people in order to silence criticism.[9]

Internet freedom is one of the most crucial rights to be guaranteed in the current digital era. Various forms of threats to criminal practices contained in the Act of IET against internet activities, especially in the use of the right to opinion and expression, will actually close opportunities for holding critical discussions by the public which is actually really needed by the state to mature internet users or netizens in Indonesia. The use of the internet must be maximized to produce, access, and disseminate positive content, not hoaxes, and which do not violate social norms and ethics. People must be smart and wise to use the internet so that the right to internet freedom is not misused to commit acts that are against the law. This means that the right to freedom of access to the internet must be used within the correct legal framework and does not violate the provisions of the applicable laws and regulations.

It cannot be denied that the use of social media as a vehicle for democracy and the current post-truth condition makes the meaning of freedom of opinion and expressing criticism in a democratic country is often wrongly interpreted. According to the Oxford Dictionary, the term post truth can be defined as a condition in which facts are less influential in shaping public opinion than personal emotions and beliefs. [10] Now that various information is very easily accessed through social media, it is not surprising that various information and news that are scattered on social media can no longer be distinguished between credible, genuine and reliable information and

fake information. Thus, carefulness and selective attitude are really needed by social media users to sort and choose which news is factual and which is hoax or fake.

Lack of literacy causes the public to be uncritical and less selective about information spread on social media. The Indonesian people, as one of the largest social media users in the world, have become an opportunity and an easy target by irresponsible individuals to make their own profit by spreading fake content that is of no use and involving them in cybercrime cases. Low literacy in interpreting the meaning of democracy makes the misuse of social media such as Facebook, Instagram, Twitter and WhatsApp become very massive. These various social media platforms are only used as a venue for spreading hate speech, mutual blasphemy, criticism of a policy which is irrational and not credible, public debate, up to fraudulent acts and even transnational crimes, as a result national unity is threatened. This is exacerbated by the condition of the Indonesian people, where some people still easily accept news without double-checking the truth, without sorting, verifying and evaluating any available information and news due to a lack of literacy and a critical attitude towards information that spreads massively.

Many people tend not to seek the truth but something that is in accordance with their beliefs and feelings even though it is wrong. This condition is currently plaguing Indonesian society where it is not ratios and reasoning that are used in dealing with an issue or information, but rather emotions are prioritized. This is an opportunity for individuals to take advantage of this condition as a way to gain public votes, especially in elections, as well as to reap profits from the business of syndicates producing fake news or hoaxes and hate speech.

Mass media as a democratic public space can also be a vehicle for citizens to communicate, discuss, argue and express attitudes towards political problems, so it should be able to bridge the spirit of democracy in Indonesia. The condition of freedom of opinion in society means that everyone can become a source of information which is marked by the large number of citizen journalism activities.

The post-truth condition is a condition that occurs when false information is used to ignite emotions and public sentiment and usually uses ethnic, racial, religious and inter-group sentiments or is popularly known as an abbreviated term of *SARA*, and nowadays it can also be ideological sentiment or ideological political views. Usually this post-truth phenomenon is used by political opponents to gain votes to win elections.[11] Democracy, which should give freedom to the public to determine their voice or choice according to their conscience and rationality, instead leads their opinion to use emotions in very sacred processes, for example during general elections and regional head elections. The ownership of print or electronic media by some political party figures today has also shown symptoms of the absence of media neutrality in providing information or reporting news. In fact, a free and neutral press is one of the pillars of a democratic country.

There is a connection between freedom of expression, including criticism and the post-truth conditions that have hit many democratic countries, including Indonesia. This means that we can convey opinions or criticism of anyone, including the government, if it is based on facts and data that are correct and can be accounted

for. This also means that if the criticism contains elements of a hoax, is fake, and the truth of the data cannot be confirmed, then it is an element of slander and can be punished according to Article (27 paragraph 3) of the Act of IET if the victim feels that their good name has been defamed. For this reason, Article 27 (paragraph 3) of the Act of IET should be revised and made clear, so that there are no multiple interpretations.

5. Conclusion

There are various ways of conveying the freedom of opinion. It can be conveyed in the form of a direct criticism, an argument, a debate, a demonstration, or an open discussion. In today's digital era, social media platforms are the thriving place for conveying expressions of freedom of opinion. It can be said that currently social media is a means of conveying expression and freedom of opinion that is most widely used by various parties. There really is a correlation between the freedom of expression to express opinions, including criticism and the post-truth condition that has hit many democratic countries, including Indonesia. It means that it is possible to convey opinions or criticism towards anyone, including the government if it is based on facts and data that are correct and can be accounted for. If the criticism contains elements of hoaxes, fakes, and the truth of the data cannot be accounted for, then it includes elements of slander. So actually it's easy to understand what freedom of expression is in the form of conveying opinions and criticism. Expressing opinions and criticism is indeed a natural thing in a democratic country.

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