



# *Ethics in Social Media and Law Enforcement in Indonesia*

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**Abstract**— The Electronic Information and Transaction Act is a means for the government to protect freedom of expression for its citizens. On the other hand, this law is considered to cause social unrest because it can hinder freedom of expression. Legal issues arise when the diction in a law contains few limitations. Article 27, paragraph (3) of the Electronic Information and Transaction Act, which the Criminal Code later repealed, proves that this article cannot protect people's freedom of opinion. This article aims to show safe limits in using social media and expressing opinions based on the ethics that Indonesian people should have. The research was conducted using socio-legal research methods. Legislative and conceptual approaches are used to see the suitability of legal rules with the social conditions that exist in society. The theory of moral ethics put forward by Immanuel Kant is the basis for standards of action that are considered correct and do not violate other people's human rights. The research results show that the government should ensure freedom of opinion and protect the rights of every citizen. For this reason, the government needs to set strict limits in determining content deemed to violate ethical values and insult someone.

**Keywords**— *Ethics; Freedom of Expression; Technology*

## I. INTRODUCTION

More than 54% of internet users in Indonesia use Facebook, 15% use Instagram, and another 11% use YouTube as a forum for expression via the internet.[1] The existence of social media can be used as the most appropriate place to express our expressions in cyberspace. The existence of Facebook as the world's largest social networking site allows its users to express anything they want, from expressing their hearts, religious lectures, poetry, advising friends with words of wisdom, commenting to each other, chatting, and so on. An example of a violation of freedom of expression on social networks is the case of insults via Facebook, which made Nur Arafah a suspect in the Felly Fandini defamation case on May 30, 2009, according to the Head of Criminal Investigation Unit of the Bogor Police, Adjunct Police Commissioner Irwansyah, who said that Arafah was charged under Article 310 of the Criminal Code regarding criminal acts. Unpleasant with the threat of a sentence of nine months in prison.[2] Another example was felt by the owner of the real name Asa Firda Inaya, who is "Warisan" on his Facebook account @Afi Nihaya Faradisa on Monday, May 15, 2017. His writing went viral. The status of his writing received 138 thousand responses from netizens, including around 120 thousand likes and more than 16 thousand hearts (love). It was recorded that 76,179 accounts shared it. In that article, he said that religion and race are inherited from parents when someone is born into the world. Afi also received praise for his writings, uploaded on FB, but behind the peaceful message, there was also a lot of terror and threats. He was even threatened with death and had his Facebook account suspended for 24 hours.[3]

From the cases described, many similar cases are often encountered on social media today; this happens because, today, we are faced with many expressions of freedom that exceed the limits of human freedom. This

condition is fundamentally caused by a misunderstanding in interpreting the meaning of freedom. The freedom given tends to be excessive and does not consider other rights and obligations. On the other hand, if it curbs freedom of expression, it has hurt democracy, which has been upheld and recognized for its existence in Indonesia.

Protection of the right to free expression has received recognition from the Constitution. The provisions regarding the right to expression are at least contained in Article 28 F, which states that all Indonesian citizens have the right to communicate and access information that can be used to develop themselves. These provisions align with the Universal Declaration of Human Rights mandate, which the Indonesian government ratified. The government issued a law regulating human rights as a form of seriousness in maintaining this commitment. In this law, the right to access information is also an aspect that the government protects. Recognition of human rights is an essential part of the history of protection in social processes in the world. This protection is also known as a form of respect for religious and cultural teachings that have existed for centuries.[4] Rasulullah SAW introduced *adab* as part of Islamic law even though computer and internet technology had yet to be invented like today. Therefore, no single verse explicitly mentions the existence of freedom of expression on social media as it exists today.

MUI Fatwa Number 24 of 2017 is one of the guidelines for Muslims to use social media in Indonesia.[5] In the fatwa, it is said that social media can establish friendships and disseminate information, *da'wah*, education, recreation, and positive activities in religion, politics, economics, and social and cultural fields[6] Based on the explanation above, Islamic law and human rights have positively responded to freedom of expression, especially regarding freedom of expression. Everyone has the right to express themselves anywhere, anytime, and whatever they want, but they must follow the rules that guide them. So that everyone can continue to express themselves without having harmful effects on themselves, they must know the limits of freedom of expression so that it does not conflict with Islamic law and human rights. Of course, Islamic law and human rights differ in providing these limitations.

This description shows that the freedom to use social media must be within certain limits. For this reason, this research uses the ethical theory expressed by Immanuel Kant as a basis for ethical standards that must be considered when using social media. In his theory, Kant emphasizes the importance of the categorical imperative as a basis for ethical and responsible action. In this case, these moral ethics can indicate safe limits in using social media, which are contained in the ITE Law and the Criminal Code.

## II. LITERATURE REVIEW

The legal system in Indonesia has been built within the framework of an institutional concept that recognizes the separation of powers. In this case, each state institution has its duties, including state institutions whose task is to be part of the law enforcement apparatus.[7] Even though the government has guided in taking action against law violations, law enforcement officers still often carry out repressive actions.[8] Differences in perception in enforcing the law can also be seen in how law enforcement officials view the implementation of the right to freedom of expression, from a right guaranteed and protected by the Constitution to an action dangerous to state order and security.

As freedom of opinion is protected by the Constitution, the enforcement process for violations of freedom of opinion should be carried out following applicable provisions and not violate the human rights of the perpetrators.[9] Another problem that often occurs in law enforcement is related to freedom of expression, namely the professionalism of investigators in handling reports or complaints related to freedom of opinion, which leads to hate speech or insults, and discrimination often occurs,[10] for example if the reported person is an ordinary citizen then the investigation process is swift. It is different if the reported person is a state official or the official's family member; the investigation process is prolonged. In other words, there appears to be discrimination in the investigation process, including in terms of detention. If the suspect is an ordinary citizen, investigators immediately detain him. However, no arrest will be made if the suspect is a state official.

Misapplication of the law in handling freedom of expression cases also often occurs. Investigators are sometimes still unable to differentiate between criticism and hate speech. However, not all criticism contains hate speech. If a solution accompanies criticism, it certainly cannot be categorized as hate speech. Unless the critical narrative conveyed contains sentences that attack a person's personality, ethnicity, race, class, or body shape, this can lead to hate speech and insults. In certain conditions, investigators need a language expert to obtain professional expert information to explain the meaning and intent of words or sentences suspected to contain hate speech and insults.

Law as a means of regulating human actions has become a guideline for actions considered right and wrong. For this reason, it is hoped that the government can form universal legal rules that meet the criteria as a form of general truth. Immanuel Kant was one of the philosophers who developed moral and ethical standards as a life guide for society. With the existence of moral rules, it is hoped that society can understand the things that must

be fulfilled and the methods that must be avoided. In this way, Kant intends to indicate something considered a 'good action.'

For Kant, ethics requires responsibility. With responsibility, the action can be considered ethical, as with the concept of freedom. Kant imagined that humans who were given freedom would have responsibility for their actions. If a person does not want to be held accountable for his actions, he is not worthy of freedom. It is necessary to have universal truth guidelines used in assessing an action to see the standards of truth of someone's actions.

Guidelines for assessing these actions can be carried out by referring to the categorical imperative (CI). Understanding CI standards requires rationality from the person acting. Ethical actions according to these standards must meet at least two criteria. First, good actions must meet general standards of rightness. Everyone is asked to reflect on whether when everyone carries out this action, it will bring goodness. If the action can bring goodness, then the action can be categorized as having ethical value.

Second, an action can be ethical when the action can be beneficial. In this case, the benefits and goals must be based on correct actions. CI does not justify when someone uses other people to achieve the goals they want to achieve. For this reason, these two criteria must guide the standard of moral value and correctness of an action. In the context of this study, true freedom of expression must be subject to statutory regulations, which are the basis of general truth. Apart from that, this freedom must be exercised responsibly and not violate the provisions of these laws and regulations.

### III. METHOD

This writing uses socio-legal research methods to support doctrinal legal research methods. This method was chosen as a reference in reviewing legal regulations appropriate to social conditions in society. A statutory and conceptual approach was chosen as a means to analyze legal gaps that arise in the process of enforcing freedom of expression on social media. In collecting the data in this research, the author uses library research by referring to books, journals, or articles. In collecting this data, the author referred more to data from books and journals.

### IV. DISCUSSIONS AND RESULTS

Article 28I paragraph (4) of the Constitution proves that the Indonesian government is serious about safeguarding the human rights of every citizen.[11] Even though it is part of human rights that must be protected, the value brought by freedom of expression is not absolute. Even in the United States, which has one of the most robust constitutional protections for freedom of opinion or speech of any country in the world, limitations still apply.

In order to provide legal certainty for everyone, the government must be able to provide definite limits to freedom of expression in Indonesia. This effort can be done by designing regulations that accommodate the moral ethics required for responsible freedom of expression. The party imposing the restriction must be able to demonstrate its need and must be able to act proportionately. The restriction must be supported by safeguards to stop abuse of the restriction and include appropriate legal processes.

Problems in enforcing freedom of expression laws in Indonesia still include several conditions that could be better. Problems arise when there are inconsistencies between legal regulations, such as those in the Freedom to Express Opinions in Public Law. The Law only regulates notification and/or delivery to the Police to carry out demonstrations, marches, general meetings, and free pulpits to express opinions in public. These provisions are not the only rules governing the process of conveying opinions. This condition then allows the Police to use the PP on Procedures for Licensing and Supervision of Public Crowd Activities, Other Community Activities, and Notification of Political Activities with the view that public gatherings (including forms of expressing opinions in public) require permission and may be refused. Even though "notification" and or "submission" have a different meaning from "permit." [12] This provision means that the regulation of the two a quo legal norms is contradictory, so it conflicts with the theory of the hierarchy of laws and the principle of *lex superior derogat legi inferiori* as adopted in the Law on the Establishment of Legislative Regulations.

Furthermore, problems regarding legal substance also occur in the Electronic Information and Transaction Act.[13] Data from the Southeast Asia Freedom of Expression Network (SAFEnet) notes that nine articles in a quo law have multiple interpretations, one of which is article 27, paragraph (3), which is considered to erode the right to freedom of expression. Even though the government has issued a Joint Decree (SKB) regarding Guidelines for Criteria for Implementing the ITE Law, the a quo SKB is not a solution to resolving the problem of the right to freedom of expression. The main problem lies in the Electronic Information and Transaction Act material, which has multiple interpretations. This provision is then used to criminalize citizens for expressing opinions. The existence of the a quo SKB indirectly acknowledges that the material contained in the ITE Law is indeed problematic, so it needs to be revised. Therefore, the SKB should not be used as a substitute for revising the ITE Law.

Likewise, the legal culture in Indonesia has its problems. One of the problems in legal culture is differences in perceptions between groups of society regarding legislation regarding the right to freedom of expression, which has implications for differences in implementation. So far, there has been a dualism in society's understanding of the right to freedom of opinion,[14] namely: 1) the right to freedom of opinion is absolute, and 2) the right to freedom of expression is limited. This difference in understanding sometimes has negative implications because people tend to act according to individual and collective perceptions, thereby violating statutory regulations. The negative impacts in this case include destroying public facilities, violating other people's rights, and other anarchic acts.

Technological developments and digitalization have also greatly influenced the legal culture of Indonesian society. We can analyze this from how people respond to receiving the information they get on social media. Many people immediately believe all the information they receive without paying attention to the source of the information. The spread of fake news (hoaxes) often triggers commotion in society. This is where everyone's ability to analyze information lies.[15] For example, in the case of Ratna Sarumpaet, she used freedom of opinion, but it turned out that the opinion expressed was a lie carried out with a specific purpose. In this case, we can conclude that conveying fake news is a right, but if fake news has caused a commotion and harmed many people, then the law is present to overcome this commotion.

The legal culture of Indonesian society, which still largely ignores the public interest, must receive special attention from legislators so that the legal products created are responsive regulations and a solution to creating order, security, and peace in society. Of course, the involvement of all parties is highly expected so that the fulfillment of freedom of opinion for every citizen can be channeled humanely without creating noise or damaging public facilities.

If we look at history, the existence of human rights gave birth to a movement that changed habits and moved toward a much more civilized direction. This has led to the formation of a state model known as the rule of law or rule of law.[16] Implementing freedom of opinion is crucial to ensure protection so that the public does not feel worried and threatened when expressing opinions or criticizing government policies. Freedom of expression benefits all citizens and the government itself. Every citizen has the right to convey his opinions and expressions through criticism and suggestions to monitor the government's performance as long as the criticism is constructive and the argumentative narrative is based on data and facts.

It is different if the criticism aims to provoke other people into committing hatred based on SARA (Ethnicity, Religion, Race, and Inter-Group) or other people's sexual orientation.[17] Of course, criticism not based on subjective data and facts can lead to acts of hate speech and or insults.

The concept of fulfilling and protecting the right to freedom of expression must be accommodated through systematic and comprehensive regulations in statutory regulations because ideal arrangements will create an orderly and peaceful state ecosystem. This needs to be done considering that public acceptance of the theory of legal validity and legal rules in law enforcement theory greatly influences law enforcement and human rights. Therefore, law enforcement and human rights in Indonesia must be accommodated with a systematic and comprehensive legal framework within Pancasila values and the 1945 Constitution of the Republic of Indonesia.

People know more and are more familiar with other cultures, so that they can be open-minded. Things that are rarely discussed in Indonesia are now topics that are widely known by our society. For example, topics regarding freedom of choice of gender (LGBT), freedom of one's own body (free sex and nightlife), freedom to have no religion (atheism), freedom to choose political viewpoints (communism), and various others.

Others argue that not commenting on other people's personal lives, even if they are deviant, is an act of apathy. One respondent argued that commenting on other people's principles of life that deviate from the norm must be done because "as a nation that upholds unity and integrity, Indonesian people must have a caring attitude towards others by providing factual truths to straighten out wrong things." Data from 2 respondents shows that most young Indonesians have open and broad minds towards foreign cultures, which may be different or "deviate" from local culture. Most believe that it is better not to comment on other people's life principles that may be "deviant" as long as these principles do not harm themselves or others.

Social media allows everyone to freely give their responses or opinions about something without being limited by whether the response is taboo or not in Indonesia. However, this freedom of expression can be a bad thing and harm other people if it is not limited. Freedom of opinion must not offend, impose opinions, regulate, or start a riot or conflict.

### ***1. Causing chaos***

Apart from hurting individuals, expressing opinions freely on the topics above can also cause chaos among individuals or society. For example, there is someone who freely spreads the teachings of atheism. Of course, some agree that atheism is okay because it is each person's life choice and does not harm other people. However, some disagree because this belief violates the first principle of Pancasila as the nation's guide to life. Differences like this can become heated debates, leading to chaos and division. A commotion on social media tends to be more severe and immoral than a commotion regarding the same topic in the real world because, in the digital world, a person's identity can be hidden. That person can freely say anything without fear of the consequences.

This causes behavior on social media to tend to be more rude, impudent, and disrespectful. This has resulted in changes in the norms of politeness in Indonesian society for the worse.

### **2. Decreased Privacy**

In social media, privacy is rare because once someone uploads their information on the internet, that information becomes public consumption, whether they like it or not. Netizens can express their opinions by commenting on existing content, even though their comments are often irrelevant. Examples of irrelevant comments, according to respondents, are comments that offend, impose opinions, advise even if not asked, organize, and start riots. Usually, these comments intrude on other people's privacy, so one respondent argued that "not interfering in other people's lives is a form of respect and respect for privacy."

### **3. Acceptance of foreign cultures that deviate from culture in Indonesia**

Looking at the survey results, most respondents thought that "It should no longer be taboo; Indonesia must face change." From this, it can be interpreted that Indonesian people, especially students, have begun to accept foreign cultures that have entered Indonesia. However, if there is a discussion about topics that offend foreign cultures, some respondents commented that Indonesian netizens still impose opinions, offend, advise, and regulate others when discussing topics that deviate from Indonesian culture, such as the LGBTQ+ community, atheism, hedonistic and materialistic lifestyles, a free life influenced by Western culture, liberalism, and communism. This shows that people can accept a foreign culture that has entered Indonesia but cannot accept it well.

This poor cultural acceptance causes various things to happen, especially on social media, such as frequent cyberbullying, which can have an impact on those who express opinions on these topics on social media. According to the respondents, Indonesian people should think about things that are appropriate in the eyes of the law and with words that can build and pay attention to social norms. Indonesia is a country where people have freedom of opinion. However, please note that freedom of opinion also has limits. In the Civil Rights Covenant ratified by the government, it is written that freedom of opinion and expression has limits to maintaining national security and respecting the personal rights of others.

### **4. How to Respond to Deviant Foreign Culture in Indonesia**

oreign cultures that deviate from Indonesian culture can now be avoided due to globalization and social media's rapid dissemination of information. For this reason, what the Indonesian people can do to respond to this culture is to prevent this culture from being adopted by the Indonesian people but still be tolerant towards this culture. Apart from that, education about these cultures is also needed so that Indonesian people only immediately reject these cultures after knowing about these cultures and what aspects of these cultures deviate from the understanding and culture that exists in Indonesia.

Freedom of expression is first interpreted as the inherent right of humans to have and express their opinions. This includes various ways of seeking, receiving, and conveying information and opinions. Humans own freedom of expression in their position as individuals and when they are part of a group in their society. In his position as an individual, freedom of expression helps convey the person's views and opinions to others inside and outside the group. Individuals can also use freedom of expression as group members together for the same purpose in order to express their views and opinions. Internally to other group members and externally to other groups or the wider community.[18]

The United States is also one of the countries that regulates the right to freedom of expression through the Constitution. As a standard for developing the law enforcement process, judges can make decisions that become part of jurisprudence, which is how courts determine whether the right to free expression is protected or not protected in the United States. Steven L Emanuel, in his book *Constitutional Law*, determines that the right to freedom of expression is protected between content and neutral categories.

Content-based categories are differentiated between protected and unprotected. The right to freedom of expression that is not protected includes, among other things, slander, defamation, unpleasant acts, encouraging unlawful acts, and utterances called fighting words. Outside expression that is not protected is classified as protected. Government actions to limit protected content will be considered unconstitutional unless the government can show that the restrictions are necessary as a compulsion to achieve specific targets (compelling governmental objectives) and as a necessity that cannot be avoided (necessary). Regarding the neutral-based category, restrictions on freedom of expression must, among other things, demonstrate a significant governmental interest.

## **V. CONCLUSION**

From the explanation above, the Indonesian government has provided various legal umbrellas that form the basis of regulations for limiting freedom of expression in public, including on social media. As a regulation used to regulate people's actions in cyberspace, the government has implemented standards of moral and ethical values that can apply generally. These standards are used as a guideline so that freedom to express opinions on social media can be carried out responsibly and meet general standards of truth. However, the cultural

differences in Indonesian society have made a difference in ethical standards. This condition then requires special attention from the government so that restrictions on freedom of expression, intended to maintain ethics in society, do not backfire and silence public aspirations. For this reason, the government needs to formulate standard standards for ethical freedom of opinion following the cultural diversity that exists in Indonesian society. The elimination of rubber articles in the ITE Law, carried out by promulgating the Criminal Code, cannot entirely create ethical standards. It makes it difficult for the public to know precisely what ethics are required when expressing opinions on social media.

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