

Freedom of Expression Regulation in the Digital Era from a Human Rights Perspective

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ABSTRACT

Freedom of expression is a fundamental human right that plays an important role in ensuring public participation in democratic life. The development of information technology has expanded the exercise of freedom of expression through various digital platforms, while simultaneously creating new challenges that require adequate legal regulation. This study aims to analyze the effectiveness of freedom of expression regulation in the digital era under Law Number 11 of 2008, to examine the urgency of developing regulations governing this right. The research employs a normative juridical method using statutory and conceptual approaches. The legal materials consist of legislation, scholarly literature, and relevant academic publications. The findings indicate that both national and international legal instruments have supported the protection of freedom of expression. However, the effectiveness of existing regulations remains influenced by the clarity of legal norms, consistency in law enforcement, and conformity with human rights principles. Furthermore, the rapid advancement of digital technology highlights the necessity of continuously reviewing and developing legal regulations to maintain a balance between the protection of individual rights, legal certainty, and public interests. Therefore, strengthening adaptive and human rights-oriented regulations is essential to ensure sustainable protection of freedom of expression in the digital era.

Keywords: *Digital Era, Freedom of Expression, Human Rights, Legal Protection, Regulation.*

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1. | INTRODUCTION

Freedom of expression is one of the human rights that has a fundamental position in the life of a democratic society. This right allows every individual to express ideas, opinions, information, and criticism through various means of communication without any unauthorized pressure or restrictions. In the development of modern society, freedom of expression is no longer only carried out through physical space, but also expands into digital spaces that provide wider opportunities for people to participate in the public communication process. The development of information and communication technology has changed the pattern of social interaction so that the expression of opinions can be carried out quickly, widely, and across regional borders. This condition makes freedom of expression one of the increasingly important rights to obtain adequate legal protection (Nasution, 2020).

Normatively, the protection of freedom of expression has gained a strong legal foundation in the Indonesian legal system. Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia provides a guarantee that everyone has the right to freedom of association, assembly, and expression. This guarantee is strengthened through Law Number 39 of 1999 concerning Human Rights which places freedom of expression as part of a basic right that must be respected, protected, and fulfilled by the state. In addition, the ratification of the International Covenant on Civil and Political Rights through Law Number 12 of 2005 further affirms the state's commitment to guaranteeing freedom of expression as part of universally recognized civil and political rights (Moeckli et al., 2022).

However, the development of the digital space also presents various new challenges in the implementation of freedom of expression. Easy access to information technology allows the dissemination of information to take place quickly, but at the same time it has the potential to cause various forms of abuse such as the dissemination of false information, hate speech, and other forms of communication that can interfere with individual rights and public interests. Therefore, the state seeks to form a legal instrument that can regulate people's activities in the digital space, one of which is through Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016. The presence of these regulations basically aims to create a balance between the protection of freedom of expression and the protection of other legal interests (Sugeng, 2020).

In practice, the relationship between the protection of freedom of expression and the regulation of digital space is often an academic as well as a juridical debate. On the one hand, regulations are needed to ensure the creation of order and legal certainty in the use of information technology. However, on the other hand, regulations that are too broad or have a multi-interpretation norm formulation have the potential to raise concerns about the reduction of public freedom in expressing opinions. This phenomenon shows that the existence of regulations not only needs to be assessed in

terms of their formal enforcement, but also needs to be analyzed from the aspect of their effectiveness in protecting human rights substantially (Nasution & Aqil, 2021).

The study of freedom of expression in the digital era is becoming increasingly important considering that digital transformation has affected almost all aspects of people's lives. The digital space not only functions as a communication medium, but also as a means of education, social participation, economic activities, and the formation of public opinion. Therefore, the protection of freedom of expression must be placed in a framework that is able to accommodate technological developments without neglecting human rights principles. According to Kolarević (2022), the protection of freedom of expression in the digital era requires a balanced legal approach between the interests of protecting individual rights and the interests of maintaining social order in the digital society.

In addition, several studies show that the effectiveness of protecting freedom of expression is not only determined by the existence of legal norms, but also influenced by the clarity of regulation, consistency of law enforcement, and the conformity of regulations with human rights principles that develop internationally (Rosidi, 2018). In this context, evaluation of regulations governing freedom of expression is important to ensure that the goal of human rights protection can be optimally achieved. This study is also relevant because the development of information technology continues to produce new dynamics that demand legal adjustments in order to remain able to provide effective protection for the community (Jahriyah et al., 2021).

Based on this description, this study aims to analyze the relationship between the protection of freedom of expression and the rule of law in the digital era from a human rights perspective. This study is expected to provide an understanding of the effectiveness of applicable regulations and the urgency of strengthening legal protection for freedom of expression in the digital society. Therefore, this research is formulated into two research questions, namely: RQ1: How effective is the regulation of freedom of expression in the digital age viewed from the perspective of human rights law? and RQ2: Why do regulations on freedom of expression in the digital era have an urgency to continue to be studied and developed in the legal system?

2. | RESEARCH METHOD

This research uses a normative juridical legal research method that focuses on the study of legal norms that regulate freedom of expression in the perspective of human rights in the digital era. Normative juridical research was chosen because the main object of research lies in laws and regulations, legal doctrines, legal principles, as well as various scientific literature related to the protection of freedom of expression and its regulation in the digital space. This approach is used to gain a comprehensive understanding of the compatibility between applicable regulations and nationally and internationally recognized human rights principles.

The research was conducted using several legal approaches. First, the statute approach, namely by examining various legal provisions that are the basis for regulating freedom of expression, including the Constitution of the Republic of Indonesia in 1945, Law Number 39 of 1999 concerning Human Rights, Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights (ICCPR), and Law Number 11 of 2008 concerning Information and Electronic Transactions as defined has been amended by Law Number 19 of 2016. This approach aims to identify forms of legal protection as well as the limitations imposed on the exercise of freedom of expression in the applicable legal system.

Second, this research uses a conceptual approach carried out through the study of various theories and concepts that develop in the legal literature, especially those related to human rights, freedom of expression, the rule of law, legal protection, and restrictions on rights in a democratic society. A conceptual approach is needed to understand the philosophical and theoretical foundations that are the basis for the formation of regulations regarding freedom of expression so that an analysis of the effectiveness and urgency of the existence of these regulations can be carried out.

The legal materials used in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include laws and regulations relevant to the object of research. Secondary legal materials consist of books, scientific journal articles, previous research results, and academic publications published in the 2018–2022 period and related to freedom of expression, human rights, and digital regulation. Meanwhile, tertiary legal materials are obtained from legal dictionaries, legal encyclopedias, and other supporting sources that help explain the legal concepts used in research.

The technique of collecting legal materials is carried out through library research, which is by inventorying, studying, and classifying various legal sources that are relevant to the focus of the research. Furthermore, all legal materials were analyzed using a qualitative analysis method with a descriptive-analytical approach. The analysis is carried out through the process of legal interpretation, interpretation of normative provisions, and the study of the relationship between legal norms and human rights principles to produce systematic legal arguments regarding the effectiveness and urgency of regulating freedom of expression in the digital era.

3. | RESULTS

The Effectiveness of Regulating Freedom of Expression in the Digital Age Reviewed from the Perspective of Human Rights Law

Freedom of expression is one of the human rights that has been recognized and protected both in national and international legal instruments. In the context of national law, the guarantee of freedom of expression can be found in Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that everyone has the right to freedom of association, assembly, and expression. This provision is

strengthened through Law Number 39 of 1999 concerning Human Rights which places freedom of opinion as part of the basic rights that must be respected and protected by the state. In addition, through Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights (ICCPR), the state also has an obligation to guarantee freedom of expression as part of universally recognized civil and political rights (Moeckli et al., 2022).

The development of information technology has changed the way people exercise their right to freedom of expression. The digital space allows the delivery of information to be done quickly, widely, and without geographical boundaries. This condition provides greater opportunities for the public to participate in public discourse, convey criticism, and obtain and disseminate information. According to Nasution (2020), digital transformation has expanded the space for public participation in social and political life so that freedom of expression is no longer limited to conventional media, but develops through various available digital platforms.

The increasing activity of the community in the digital space encourages the state to form regulations that are able to accommodate technological developments while maintaining legal order. In this context, Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 is the main legal instrument that regulates people's electronic activities. The existence of this regulation basically shows the state's efforts to provide legal certainty for various activities carried out through digital media, including activities related to the delivery of information and public expression (Sugeng, 2020).

When viewed from the perspective of legal effectiveness, the existence of regulations can be judged from their ability to achieve the goals to be realized. In the context of freedom of expression, the primary goal of regulation is to create a balance between the protection of the right of individuals to express their opinions and the protection of the public interest. Normatively, the arrangements contained in the legal system have shown the recognition of the right to freedom of expression while providing the necessary restrictions to prevent the abuse of rights. This concept is in line with the provisions of Article 19 paragraph (3) of the ICCPR which allows restrictions on freedom of expression as long as it is carried out in accordance with the law and aims to protect the rights of others, security, order, and the public interest (Kolarević, 2022).

However, the effectiveness of regulations is not only determined by the existence of legal norms, but also by the level of clarity of those norms. Several studies show that regulations that have too broad a normative formulation have the potential to cause various interpretations in the implementation process. These conditions can affect legal certainty and cause differences in interpretation in determining the boundary between freedom of expression and acts that are considered unlawful. Therefore, the effectiveness of a regulation is highly dependent on the ability of legal norms to provide clear guidelines for the public and law enforcement officials (Nasution & Aqil, 2021).

In addition to the clarity of norms, the effectiveness of regulating freedom of expression is also influenced by the consistency of law enforcement. From the perspective of the state of law, the implementation of regulations must be carried out based on the principles of legality, proportionality, and non-discrimination. Good regulation is not only able to provide protection for the public interest, but must also ensure that restrictions on freedom of expression are carried out proportionately and do not eliminate the essence of the right itself. According to Rosidi (2018), the protection of freedom of expression in the digital space requires a balance between legal certainty and respect for human rights so that the goal of establishing regulations can be achieved optimally.

Another aspect that helps determine the effectiveness of the arrangement is its conformity with internationally developed human rights principles. As a country that has ratified the ICCPR, the national legal system is required to ensure that any restrictions on freedom of expression meet the principles of necessity and proportionality. The principle of necessity requires that restrictions are only made when they are absolutely necessary to protect legitimate interests, while the principle of proportionality requires that there be a balance between the objectives to be achieved and the restrictions imposed. These two principles are important indicators in assessing whether a regulation has been effectively implemented from a human rights perspective (Mutiarra & Maulana, 2020).

In subsequent developments, the effectiveness of regulations can also be measured through their ability to create a sense of security for people to exercise their right to freedom of expression. Effective regulation should be able to provide protection for individuals who express opinions responsibly, while preventing the misuse of digital media that can harm other parties. According to Gunawan (2020), the success of a regulation is not only determined by the number of rules formed, but also by its ability to create a balance between the protection of rights and the enforcement of obligations in the digital society.

Based on this description, it can be understood that the regulation of freedom of expression in the digital era normatively has a sufficient legal basis through the 1945 Constitution, the Human Rights Law, the ICCPR, and the ITE Law. However, the effectiveness of regulations does not only depend on the existence of these legal instruments, but also on the clarity of norms, consistency of law enforcement, the application of the principle of proportionality, and its conformity with human rights standards. Therefore, the effectiveness of regulating freedom of expression must ultimately be understood as a regulatory ability to ensure the protection of individual rights while maintaining a balanced public interest in an ever-evolving digital environment (Permatasari & Wijaya, 2019).

The Urgency of Studying and Developing Freedom of Expression Regulations in the Digital Era in the Legal System

Freedom of expression is one of the fundamental rights that continues to develop along with social, political, and technological changes. In the digital era, the development of information technology has created a new communication space that allows each individual to actively participate in the process of information exchange and the formation of public opinion. These changes cause freedom of expression to no longer be understood only as the right to express opinions directly, but also includes various forms of digital communication carried out through electronic networks. This condition shows that regulations governing freedom of expression need to be continuously studied to remain relevant to the dynamics of a society that continues to evolve (Jahriyah et al., 2021).

The urgency of studying the regulation of freedom of expression departs from the fact that the development of digital technology is taking place much faster than the development of the law. Information technology is constantly presenting new forms of communication that were previously unknown in the conventional legal system. As a result, regulations that were initially considered adequate can face new challenges when applied to an increasingly complex digital environment. According to Sugeng (2020), the development of information technology has given birth to various forms of electronic activities that require legal adjustments so that the principles of rights protection and legal certainty can continue to run in a balanced manner.

In addition to technological development factors, the urgency of regulatory studies is also related to the position of freedom of expression as part of human rights which has an important role in democratic life. Freedom of expression allows people to express ideas, exchange information, and conduct social supervision of various policies that affect public life. Therefore, the protection of freedom of expression is not only related to individual interests, but also to the quality of democratic life as a whole. Moeckli et al. (2022) explain that freedom of expression is one of the main prerequisites for effective public participation in a society that respects human rights.

On the other hand, the development of the digital space also presents various risks that can affect the implementation of freedom of expression. The ease of disseminating information allows the dissemination of content that has the potential to harm the rights of others, disrupt public order, or cause social conflicts. This situation shows that the state still has an obligation to make arrangements to maintain a balance between the protection of freedom of expression and the protection of other legal interests. However, such arrangements must always be evaluated so that they do not develop into excessive restrictions on citizens' rights (Kolarević, 2022).

The review of regulations is also important as human rights principles continue to evolve through various international instruments and practices. As a country that has ratified the International Covenant on Civil and Political Rights through Law Number

12 of 2005, Indonesia has an obligation to ensure that its legal system is in line with international principles governing freedom of expression. The principles of necessity, legality, and proportionality are standards that must be considered in every restriction of rights. Therefore, an evaluation of the applicable regulations is needed to ensure that existing legal provisions remain in line with developments in international human rights standards (Mutiarra & Maulana, 2020).

Another urgency lies in the need to create legal certainty for the community. In the state of law, legal certainty is one of the important elements that ensures the protection of citizens' rights. Regulations that are unable to provide clarity on the limits of freedom of expression can create uncertainty in practice. This uncertainty has the potential to hinder people in exercising their rights due to concerns about possible legal consequences that may arise. Therefore, regulatory development is needed to ensure that legal norms have an adequate level of clarity so that they can be understood and applied consistently (Nasution & Aqil, 2021).

Furthermore, the urgency of regulatory review is also related to the need to increase the effectiveness of legal protection for the community. The presence of regulations not only aims to regulate people's behavior, but also serves as an instrument for protecting rights. In the context of freedom of expression, legal protection must be able to guarantee that every individual can express his opinion responsibly without being subjected to unauthorised restrictions. According to Rosidi (2018), strengthening regulations needs to be directed at efforts to create a balance between the protection of human rights and the need to maintain order in the digital space.

In addition, the increasing use of digital technology in various aspects of life shows that the digital space has become an integral part of the activities of modern society. Educational, economic, social, cultural, and public communication activities are increasingly dependent on information technology. As a result, every change that occurs in the digital space will have a direct impact on the implementation of citizens' rights. Nasution (2020) stated that the digital space has developed into a new public space that requires adaptive legal protection so that people's rights can remain guaranteed in the midst of rapid technological changes.

The development of regulations is also important to ensure that the legal system is able to respond to future challenges. Continuous technological changes will continue to present new legal issues that require more comprehensive regulation. Therefore, the process of evaluating and reviewing regulations cannot be seen as a temporary activity, but as part of an ongoing effort to maintain the relevance of the law to the development of society. Gunawan (2020) emphasized that regulations that are responsive to technological developments are one of the important factors in realizing effective human rights protection in the digital era.

Based on this description, it can be understood that the urgency of studying and developing regulations on freedom of expression in the digital era is not only based on the need to keep up with technological developments, but also related to efforts to

maintain a balance between the protection of human rights, legal certainty, and the public interest. Thus, evaluation and development of regulations are necessary steps so that the legal system remains able to provide effective protection for freedom of expression while responding to various challenges that arise in the ever-evolving digital environment (Nasution & Aqil, 2021).

4. | CONCLUSION

Freedom of expression is one of the human rights that has a fundamental position in the legal system and the life of a democratic society. The development of information technology has expanded the space for the implementation of these rights through various digital media that allow the public to express their opinions, obtain information, and participate in various public activities more widely and quickly. In the context of national law, the protection of freedom of expression has gained a strong foundation through the Constitution of the Republic of Indonesia in 1945, Law Number 39 of 1999 concerning Human Rights, Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights, and Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016.

Based on the results of the study, the effectiveness of regulating freedom of expression in the digital era has basically been supported by the existence of legal instruments that recognize and protect these rights. However, the effectiveness of regulations is not only determined by the existence of legal norms, but also influenced by the clarity of regulation, consistency of law enforcement, application of the principle of proportionality, and its conformity with human rights principles. Therefore, the protection of freedom of expression requires a balance between respect for individual rights and protection of the public interest so that legal goals can be optimally achieved.

Furthermore, the study and development of regulations regarding freedom of expression has high urgency because the development of digital technology continues to bring various changes in public communication patterns. These dynamics demand regulations that are adaptive, responsive, and still oriented towards the protection of human rights. Evaluation of applicable regulations is needed to ensure that the legal system is able to provide legal certainty, maintain a balance between rights and obligations, and respond to new challenges that arise in the digital environment. Thus, strengthening regulations that are in line with technological developments and human rights principles is an important step in realizing effective and sustainable protection of freedom of expression.

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Data Disclosure Statement

The data that support the findings of this study are available from the corresponding author upon reasonable request.

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