

Anti-Disinformation Regulation and Freedom of Expression in Digital Democracy

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ABSTRACT

The development of information technology has expanded the space for freedom of expression while simultaneously increasing the spread of hoaxes and disinformation that may affect the quality of democracy. This condition creates the need for legal regulation capable of balancing the protection of public interests with respect for human rights. This study aims to analyze the effectiveness of regulations in addressing hoaxes and disinformation and to examine the urgency of such regulations in maintaining the quality of digital democracy. The study employs a normative juridical method using statutory and conceptual approaches. Primary legal materials consist of Law Number 39 of 1999 concerning Human Rights, Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 on Electronic Information and Transactions, and Law Number 1 of 2023 concerning the Criminal Code. The findings indicate that regulatory effectiveness is determined not only by the existence of legal norms but also by the implementation of legality, proportionality, and human rights principles. Furthermore, the regulation of hoaxes and disinformation is essential for preserving the quality of the public sphere, strengthening democratic resilience, and ensuring responsible freedom of expression in the digital era.

Keywords: *Digital Democracy, Disinformation, Freedom of Expression, Hoax, Regulation.*

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1. | INTRODUCTION

The development of information and communication technology has changed the way people obtain, produce, and distribute information in the digital public space. On the one hand, these developments expand access to information and strengthen the implementation of freedom of expression as one of the fundamental elements in a democratic system. Freedom of expression allows individuals to express opinions, participate in public discourse, and contribute to the formation of opinions that are the foundation of democratic life. However, the openness of the digital space is also followed by the increasing spread of hoaxes and disinformation that can disrupt the quality of public information and affect the democratic process more broadly. According to Jungherr and Schroeder (2021), the transformation of digital public spaces has created new challenges to the democratic communication structure because the increasingly rapid flow of information is not always accompanied by adequate verification mechanisms. Meanwhile, Bennett and Livingston (2025) explain that the era of disinformation has changed the pattern of political communication and increased the vulnerability of democracies to information manipulation.

From a legal and human rights perspective, freedom of expression is a fundamental but not absolute right. The protection of these rights gains legitimacy through various international instruments and national regulations. Law Number 39 of 1999 concerning Human Rights provides guarantees for freedom of opinion and obtaining information as part of basic human rights. In addition, Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions regulates various aspects of activities in the digital space, including the responsible use of electronic information. In addition, Law Number 1 of 2023 concerning the Criminal Code provides a general framework regarding legal accountability for various acts that can disrupt public order. In this context, the existence of regulations is an important instrument to maintain a balance between the protection of freedom of expression and the public interest in a democratic society. Helm and Nasu (2021) emphasized that restrictions on expression can only be justified if they are carried out proportionately and have a clear legal basis. A similar view is put forward by Pentney (2022) who states that the legal response to disinformation must still pay attention to human rights principles so as not to lead to excessive restrictions on civil liberties.

On the other hand, hoaxes and disinformation are developing into an increasingly complex phenomenon along with the emergence of various forms of information manipulation.explained that disinformation is not only related to the content of misinformation, but also involves actors, motives, and dissemination techniques designed to influence public perception. Pawelec (2022) added that the development of digital technology has expanded the form of disinformation through the use of synthetic media that can blur the line between facts and manipulation. This condition has the potential to lower the level of public trust, increase social polarization, and disrupt the

quality of democratic deliberation. According to Dan et al. (2021), the spread of misinformation and disinformation through digital media has implications for the formation of public perceptions that are not based on facts. These findings are reinforced by Guess and Lyons (2020), who state that misinformation and digital propaganda have become one of the main threats to the resilience of modern democracies.

These developments show that the relationship between freedom of expression and countering disinformation requires a balanced legal approach. Kuo and Marwick (2021) explain that the study of disinformation cannot be separated from the aspects of power, politics, and information governance in a democratic society. Meanwhile, Tenove (2020) emphasized the importance of formulating legal policies that are not only restriction-oriented, but also pay attention to democratic principles and the protection of civil rights. Therefore, discussions on the effectiveness of regulations against the spread of hoaxes and disinformation and the urgency of strengthening their regulation are important to ensure that the protection of the public interest does not compromise the essence of freedom of expression in a democratic system.

Based on this background, this study asks two research questions. First, how effective is the legal arrangement regarding the prevention of hoaxes and disinformation in maintaining a balance between the public interest and freedom of expression in a democratic system? Second, why is the discussion of the regulation of hoaxes and disinformation important in an effort to maintain the quality of democracy and the protection of human rights in the digital era?

2. | RESEARCH METHOD

This research uses a normative juridical method that focuses on the study of legal norms, principles, and concepts related to the regulation of hoaxes, disinformation, and freedom of expression in a democratic system. This approach was chosen because of the problems studied related to the effectiveness of legal regulation and the urgency of the formation and development of legal policies in maintaining a balance between the protection of human rights and the public interest in the digital era. Normative juridical research places law as a system of norms that is analyzed through various relevant legal sources to obtain systematic and comprehensive legal arguments. In this context, a study was conducted on the legal provisions that regulate the right to freedom of expression and regulations regarding the dissemination of information in the digital space as part of efforts to realize information governance that is in line with democratic principles.

The approaches used in this study include a statutory approach and a conceptual approach. The legislative approach is used to analyze various provisions that are still in force and have a relationship with the object of research, namely Law Number 39 of 1999 concerning Human Rights, Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions, and Law Number 1 of 2023 concerning the Criminal Code. Meanwhile,

a conceptual approach is used to understand various concepts regarding freedom of expression, digital democracy, hoaxes, disinformation, rights restrictions, and the principle of proportionality in the formation and application of legal norms. A conceptual approach is important because the phenomenon of disinformation is developing dynamically and poses new challenges to legal governance in the digital society.

The legal materials used in this study consist of primary legal materials and secondary legal materials. Primary legal materials are in the form of laws and regulations related to human rights, electronic information, and criminal law. The secondary legal material was obtained from various scientific articles and academic publications published in the last five years and at least indexed by Google Scholar which discusses the relationship between disinformation, democracy, freedom of expression, and legal governance. The analysis of legal materials is carried out qualitatively using systematic and argumentative interpretation methods to obtain a complete understanding of the effectiveness of regulations and the urgency of strengthening legal regulations against hoaxes and disinformation in the framework of protecting democracy and human rights. This approach is in line with the view of Tenove (2020) who emphasizes that the legal response to disinformation requires the formulation of policies that still pay attention to democratic principles and the protection of civil rights.

3. | RESULTS

The Effectiveness of Regulation of Hoaxes and Disinformation in a Democratic System

The development of the digital space has expanded the implementation of freedom of expression while increasing the potential for the spread of hoaxes and disinformation that can affect the quality of democracy. In the context of a democratic state of law, freedom of expression is a fundamental right that is legally protected, but at the same time it is not absolute and can be restricted as long as the restrictions are based on the law and are intended to protect the broader interests. Helm and Nasu (2021) explain that regulations against disinformation must be placed within the framework of human rights protection through a proportionate approach so as not to create excessive restrictions on civil liberties. Thus, the effectiveness of a regulation is measured not only by its ability to prevent the spread of misleading information, but also by its ability to maintain a balance between the protection of the public interest and respect for freedom of expression.

Normatively, Law Number 39 of 1999 concerning Human Rights provides a basis for the protection of the right to opinion, convey information, and obtain information as part of human rights. The existence of these norms shows that freedom of expression is an inseparable element from democratic life. Bennett and Livingston (2025) affirm that modern democracy depends on the existence of open public spaces and allows for

the free exchange of ideas. However, the development of information technology has created a communication environment that is increasingly vulnerable to information manipulation. Jungherr and Schroeder (2021) stated that changes in the structure of digital public spaces have presented new challenges for democratic systems because the dissemination of information is no longer fully within conventional surveillance mechanisms. This condition causes the need for legal arrangements that are able to provide certainty while maintaining the sustainability of freedom of expression.

In relation to digital activities, Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions is a legal instrument that functions to regulate the responsible use of electronic information. The regulation basically shows the state's efforts to maintain the order of the digital space and prevent the negative impact of the spread of misleading information. According to Pentney (2022), regulations against disinformation must be carefully designed so as not to cause abuse of authority that has the potential to reduce the space for freedom of expression. Therefore, the effectiveness of regulations is not only determined by the existence of norms, but also by the application of the principles of legality, legal certainty, and proportionality in their implementation.

In addition, Law Number 1 of 2023 concerning the Criminal Code provides a general basis for legal accountability for various acts that can disturb public order. The existence of criminal provisions basically has a preventive as well as a repressive function in maintaining social order. However, Kuo and Marwick (2021) explain that the problem of disinformation is not solely related to aspects of criminal law, but also concerns the political, power, and information governance dimensions. Thus, the effectiveness of regulation cannot depend solely on a penal approach, but must be accompanied by a more comprehensive approach.

explained that disinformation is a phenomenon that involves various actors, goals, and complex dissemination techniques that are difficult to overcome only through formal legal mechanisms. This opinion is strengthened by Dan et al. (2021) who stated that the characteristics of misinformation and disinformation in the digital environment have the ability to influence public perception at large. In fact, Pawelec (2022) shows that the development of digital technology has introduced new forms of information manipulation that are increasingly difficult to distinguish from authentic information. This condition shows that the existence of regulations alone is not enough to ensure the effectiveness of countering disinformation if it is not balanced with strengthening information governance and improving public literacy.

From a democratic perspective, the effectiveness of legal regulation must also be seen from its ability to maintain the quality of public space. Guess and Lyons (2020) emphasized that misinformation and digital propaganda are real threats to the democratic process because they can affect the formation of public opinion. Meanwhile, Freelon and Wells (2020) view disinformation as part of political communication that requires a multidimensional approach. Tenove (2020) then emphasized that the

protection of democracy from the threat of disinformation must be carried out through policies that are balanced between the public interest and the protection of civil rights. Thus, the effectiveness of legal regulation against hoaxes and disinformation is not only determined by the existence of Law Number 39 of 1999, Law Number 1 of 2024, and Law Number 1 of 2023, but also by the ability of these regulations to be applied proportionately, adaptively, and in line with democratic principles and respect for freedom of expression.

The Urgency of Regulation of Hoaxes and Disinformation in Digital Democracy

Digital transformation has expanded the space for public participation in the democratic process through increasingly open access to information and communication. Freedom of expression guaranteed as a human right has become one of the essential foundations of democratic life because it allows people to express opinions, exchange ideas, and participate in the formation of public opinion. However, these developments are also followed by the increasing spread of hoaxes and disinformation that affect the quality of information in the public space. Bennett and Livingston (2025) explain that the era of disinformation has created new challenges for democracy because information manipulation can disrupt the process of forming rational public opinion. In such conditions, discussions on the regulation of hoaxes and disinformation are important to ensure that the development of information technology remains in line with the principles of democracy and the protection of human rights.

The urgency of regulating hoaxes and disinformation cannot be separated from changes in the communication structure in the digital society. Jungherr and Schroeder (2021) state that the transformation of public spaces has resulted in a more open pattern of information distribution, but at the same time increases the risk of the dissemination of inaccurate information. The phenomenon is increasingly complex because disinformation is not only related to misinformation, but also involves certain interests and various manipulation techniques designed to influence public perception. explained that disinformation is a multidimensional phenomenon that involves various actors, motives, and methods of dissemination. Therefore, discussions about regulation are important to create legal mechanisms that are able to adapt to the increasingly complex characteristics of disinformation.

From a human rights perspective, Law Number 39 of 1999 concerning Human Rights provides protection for freedom of opinion and obtaining information as a fundamental right. However, such protection also has the consequence that the exercise of rights must take into account the rights of others and the public interest. Helm and Nasu (2021) emphasized that restrictions on freedom of expression can only be justified if they are carried out based on the principles of legality, necessity, and proportionality. This view shows that the discussion of the regulation of hoaxes and disinformation is not intended to limit freedom of expression excessively, but rather to ensure that the exercise of these rights continues within a framework that respects the rights of society more broadly.

The existence of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions and Law Number 1 of 2023 concerning the Criminal Code shows that the law has a role in maintaining order and legal certainty in the digital space. However, Pentney (2022) reminds that legal policies against disinformation must still pay attention to democratic principles and not be used as instruments that have the potential to reduce civil liberties. In this context, the urgency of discussing regulations does not only lie in the aspect of law enforcement, but also in efforts to build fair and proportionate information governance. Kuo and Marwick (2021) even explain that the study of disinformation cannot be separated from the dimensions of power and politics that affect the distribution of information in society.

In addition, the development of digital technology has presented forms of information manipulation that are increasingly difficult to identify. Pawelec (2022) shows that the use of synthetic technology has expanded the potential for the spread of disinformation and magnifies threats to public trust. Dan et al. (2021) also explain that the characteristics of misinformation and disinformation are capable of forming perceptions that are not always based on verifiable facts. This condition has the potential to reduce the quality of public discourse and increase polarization in society. Guess and Lyons (2020) affirm that digital misinformation and propaganda are threats to the stability of modern democracy. Meanwhile, Badrinathan (2021) shows that efforts to increase public resilience to misinformation require a combination of legal instruments and public education. Tenove (2020) then emphasized that the protection of democracy from the threat of disinformation must be carried out through balanced policies while still ensuring the protection of civil rights. Thus, discussions about the regulation of hoaxes and disinformation are increasingly important because they are not only related to law enforcement, but also related to the protection of human rights, the quality of public space, and the sustainability of democratic systems in the digital era.

4. | CONCLUSION

The development of information technology has presented an increasingly open digital public space and strengthened the implementation of freedom of expression as one of the fundamental elements in the democratic system. However, this openness is also accompanied by an increase in the spread of hoaxes and disinformation that has the potential to affect the quality of information, public trust, and democratic stability. Based on the results of the research, the existence of Law Number 39 of 1999 concerning Human Rights, Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions, and Law Number 1 of 2023 concerning the Criminal Code shows that the legal system has provided a normative basis in regulating the relationship between freedom of expression and the public interest. The effectiveness of these regulations is not only determined by the existence of legal norms, but also by the application of the principles

of legality, proportionality, and human rights protection in its implementation so that restrictions on freedom of expression are not carried out excessively.

In addition, discussions about the regulation of hoaxes and disinformation have greater urgency along with the development of the characteristics of information threats in the digital era. Legal regulation is not solely intended to provide sanctions, but also serves to maintain the quality of public space, strengthen democratic resilience, and ensure the fulfillment of people's rights in obtaining correct and responsible information. Therefore, a balanced, adaptive, and human rights protection-oriented approach to the protection of human rights is an important need in facing the challenges of disinformation while maintaining the sustainability of the democratic system in the midst of increasingly dynamic digital technology developments.

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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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