

Criticism of Government Performance Through Freedom of Opinion and Expression Through Social Media

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Abstract

Freedom of speech is protected by the 1945 Constitution. It states that Indonesia is a democratic country. In accordance with democratic principles, freedom of speech is upheld for expressing aspirations for the common good. Therefore, there is a need to protect freedom of speech. The problem arises: Has Law No. 1 of 2024, which amends Law No. 11 of 2008 on Information and Electronic Transactions, granted citizens the freedom of speech and expression regarding government performance on social media? This research uses a normative descriptive method. The research materials are primary, secondary, and tertiary legal materials. The results explain that Law No. 1 of 2024 has not fulfilled freedom of speech and expression. Many people are still reported for expressing opinions or criticisms of the government's performance, verbally or in writing, through social media. Additionally, the Information and Electronic Transactions Law does not guarantee the public's freedom to criticize the government on social media.

Keywords: Freedom of opinion and expression, Government performance, Human rights.

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I. Introduction

Technology and information development has grown rapidly, making it easier for people to access the information they need through electronic media (Muslichatun & Marizal, 2021). Technology has greatly facilitated rapid access to information, and while technology has provided numerous positive benefits and assistance, it also has negative impacts (Taufiqurrohman, Priambudi, & Octavia, 2021).

This movement must be guided by clear legal rules to help society avoid mistakes. Individual freedom is a human right that must be protected. The freedom of opinion and expression is a way to realize human rights, as stated in the 1945 Constitution. These rights are detailed in Article 1, paragraph (3) of Law Number 9 of 1998 on Freedom of Expression in Public: "Demonstration or Demonstration is an activity carried out by one or more people to express their thoughts verbally, in writing, and so on, demonstratively in public."

Freedom of expression encourages society to respect differences of opinion and mutual criticism. This enables dynamic dialogue and advances societal thinking, making the country more democratic. Etymologically, freedom means a state without pressure. In general, it refers to having free ideas or thoughts. To express an opinion means to share ideas. Therefore, freedom of expression is the absence of pressure to express thoughts or ideas—verbally, in writing, or otherwise—freely and responsibly, as outlined in applicable laws and regulations.

The 1945 Constitution protects freedom of opinion, affirming that Indonesia is a democratic country committed to upholding this freedom as a means of expressing aspirations for the common good. However, it is essential to establish important limits within the democratic framework to ensure the rule of law and to provide legal protection for all citizens. In addition to guaranteeing everyone's right to legal protection, it is vital to consider the procedures involved in obtaining such protection (Dewi 2021). While individuals have the freedom to express their opinions, there must be boundaries to prevent the dissemination of information or data that could harm others. Unchecked opinions can lead to hostility or conflict, both individually and within groups.

The implementation of Article 27, paragraph (3) of Law No. 11 of 2008 concerning Information and Electronic Transactions serves as a legal basis for freedom of opinion; however, it has raised significant concerns within the community. Many people worry that this article could restrict their ability to criticize and express opinions about the government. They view it as a potential threat to their freedom of expression. This concern aligns with Article 23, paragraph (2) of Law No. 23, which states that everyone has the right to freely express their opinions, whether orally or in writing (Rachmawati & Taduri, 2021).

Freedom of opinion deserves a significant role in the democratic process. One of the hallmarks of a democratic state is its commitment to safeguarding this right. A country is truly democratic when it actively protects the expression of various opinions through any media platform. Law No. 11 of 2008 was enacted with

the intention of safeguarding individuals' rights to express their thoughts, both orally and in writing. The state also provides legal protections for citizens concerning their freedom of opinion and expression. Additionally, the advancement of information technology brings numerous benefits, serving as a vital means of communication, dissemination of information, and data search, while also supporting educational activities. This technology plays a crucial role in our lives today and will continue to do so in the future (Safitri, 2018).

Since the enactment of Law No. 11 of 2008 regarding Information and Electronic Transactions, there have been approximately 271 reported cases of violations. The presence of provisions that are open to multiple interpretations has created new challenges, leading to numerous violations by the public. Article 27A of Law No. 1 of 2024, which amends Law No. 11 of 2008, addresses issues of insults and defamation as it did previously. However, this article remains flexible, posing a risk of criminalizing dissent and potentially stifling freedom of opinion and expression within society.

The case in question involves Bima Yudho Saputro, an Indonesian student studying in Australia and the owner of the TikTok account @awbimaxreborn, which has garnered a significant following. Bima exercised his right to free expression by creating a video titled "The Reasons Why Lampung is Not Advanced." In this content, he critiques several issues within Lampung Province, including: 1. Limited infrastructure, citing stalled government projects such as a new city and the poor condition of many roads in the area. 2. A weak education system, highlighting concerns about fraud in the student selection process. 3. Weak governance. 4. Issues in the agricultural sector. Bima's criticisms went viral, resulting in a report filed against him with the Lampung Regional Police. He faced allegations under Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law), specifically regarding the use of language deemed to incite hatred or insult based on ethnicity, religion, race, and intergroup (SARA). Additionally, there were claims of intimidation directed at Bima's family by various parties involved in the situation.

Despite a country having regulations that uphold the right to freedom of opinion and expression, the reality often falls short of these ideals. This raises important questions about the definition of freedom of opinion and expression as outlined in Article 23, paragraph (2) of Law No. 39 of 1999. Additionally, we must consider whether Article 27A of Law No. 1 of 2024, which amends Law No. 11 of 2008 concerning information and electronic transactions, effectively safeguards citizens' freedom of opinion and expression on social media in relation to government performance.

II. Research Methods

This study employs normative descriptive methods, which involve analyzing or describing a problem within a legal framework. The primary focus is on the freedom of opinion and expression exercised by individuals and the community when conveying their ideas and opinions regarding government performance. Juridical legal research refers to studies that rely on existing literature and secondary data to gain normative insights into the relationships between different regulations and their application in practice.

This study utilizes primary, secondary, and tertiary legal materials, which are gathered and reviewed based on their binding authority. These materials consist of: (a) Primary Legal Materials: These include all regulatory documents established by the authorities that hold legal binding power, such as laws and regulations. (b) Secondary Legal Materials: This category encompasses all documents that provide information or results from studies related to government responsibilities. Examples include legal seminars, magazines, and scientific papers that discuss government roles in expanding employment as a way to enhance the welfare of the people, in accordance with the mandate of the 1945 Constitution. This category may also include various online sources related to these issues. (c) Tertiary Legal Materials: These are documents that contain concepts supporting primary and secondary legal materials, such as dictionaries, encyclopedias, indexes, articles, manuals, and other reference materials.

III. Results and Discussion

1. Freedom of Opinion and Expression According to Article 23 Paragraph (2) of Law No. 39 of 1999 concerning Human Rights

In the context of human rights, we can distinguish between derogable and non-derogable rights. Human rights are fundamental rights inherent to all individuals from birth. These rights apply universally, regardless of factors such as religion, race, ethnicity, gender, or nationality. Human rights are supranational, meaning they exist independently of any country's laws or Constitution and hold authority that surpasses national legal frameworks. These rights cannot be altered or revoked by any state power that may have the authority to amend its Constitution. The freedom to express opinions is a vital aspect of human rights. It includes the right to seek, receive, and disseminate ideas and information, as outlined in Article 19 of the International Covenant on Civil and Political Rights. This freedom encompasses various forms of expression, whether verbal or written, and can take place through different media such as art, literature (including books), and the internet. Indonesia has ratified this provision, making it the state's responsibility to protect the freedom of opinion and expression (Marzuki, Riyadi, 2008).

Human rights are fundamental rights inherently possessed by all individuals. These rights are universal and enduring, meaning they must be respected, protected, and fulfilled by everyone. They should not be ignored, diminished, or violated by any entity. The responsibility of upholding human rights falls not only on the government but also requires the active participation of the community (Rahmanto, 2016). Freedom of expression is a crucial element of democracy. In fact, during its first session in 1946, prior to the adoption of the Universal Declaration of Human Rights, the United Nations General Assembly, through Resolution Number 59 (i), declared that the right to information is a fundamental human right, alongside all the freedoms recognized by the UN. Freedom of opinion and expression is essential for fostering ongoing democracy and enabling public participation in policymaking. Citizens cannot effectively exercise their rights, such as voting or engaging in public policy discussions, if they are not free to access information and express their opinions openly (Rahmanto, 2016).

A country is considered democratic if it ensures substantial freedom for individuals to voice their opinions publicly, whether through online or print media. Freedom of expression is protected under Article 28 of the 1945 Constitution, which states that the freedom of association, assembly, and expression of thoughts—both verbally and in writing—is guaranteed by law. Additionally, Article 28E, paragraph (3), of the 1945 Constitution affirms that "everyone has the right to freedom of association, assembly, and expression of opinions" (Budiyo, 2019). Moreover, this assurance of freedom to express opinions is also outlined in Article 23, paragraph (2) of Law No. 39 of 1999 concerning Human Rights. It states, "Everyone is free to have, express, and disseminate opinions according to their conscience, verbally and/or in writing through print or electronic media, while respecting religious values, morality, public order, public interest, and the integrity of the nation." Expressing one's opinion is both a democratic right and a responsibility of every citizen in their social, national, and civic lives. While the constitution guarantees every citizen the right to express their opinions publicly, this expression must still adhere to existing regulations. It is essential that opinions are expressed responsibly to avoid violating the rights of others and to ensure that no one is harmed.

The concept of human rights concerning freedom of speech is closely linked to the principle of the rule of law. Indonesia, as a country governed by law, has ratified various international agreements to uphold the right to freedom of expression and opinion, which is also guaranteed by its constitution. As a result, government criticism does not constitute a legal violation; freedom of expression is protected under the Indonesian constitution. Restrictions on freedom of expression and opinion are intended to ensure security and prosperity among citizens. The Indonesian people believe that human rights must consider Indonesia's unique characteristics and that these rights should be balanced with obligations. This balance is hoped to foster mutual respect and recognition of everyone's human rights. The enumeration of human rights as outlined in the 1945 Constitution of the Republic of Indonesia can be categorized into several aspects: 1. Human rights related to life and living. 2. Human rights concerning family. 3. Human rights connected to education, science, and technology. 4. Human rights pertaining to work. 5. Human rights associated with freedom of religion, belief, attitude, opinion, and association. 6. Human rights concerning information and communication. 7. Human rights related to a sense of security and protection from treatment that degrades human dignity and status. 8. Human rights concerning social welfare. 9. Human rights related to equality and justice. 10. Human rights that entail the obligation to respect the rights of others (Mardanis, 2013).

Freedom of public opinion is a fundamental human right. The ability of every citizen to express their opinions publicly is a hallmark of democracy within social, national, and governmental frameworks. Human rights, which are inherent and basic entitlements held by all individuals from birth, can be seen as a gift from God. These rights primarily consist of two core principles: the right to equality and the right to liberty. Freedom of expression is an essential right and responsibility within a democratic state. Democracy, defined as a government of, by, and for the people, requires active participation from the public in governance. Citizens are expected to exercise oversight over their government by voicing their opinions on various policies. In this way, the public indirectly influences governmental direction through the assurance of freedom of expression. When the public is denied the chance to express its opinions to the government, it can be argued that the government operates in an authoritarian manner.

When our opinions contradict each other and interfere with someone's rights and interests, it can be classified as criminal defamation, the dissemination of fake news, and can also lead to hate speech among groups. Additionally, it may result in police reports for criticizing the government. For instance, the Lampung Government faced scrutiny for its response to criticism from a citizen, Bima Yudho Saputro, who expressed his views through his TikTok account @awbimaxreborn. Many perceived the government's actions as an infringement on the citizens' right to freedom of opinion and expression, particularly on social media. This situation sparked concerns that the Lampung Government was limiting the democratic rights of its people and demonstrated an anti-criticism stance. Initially, Bima Yudho was reported to the Lampung Police for allegedly violating the ITE Law. His viral video criticizing the Lampung Government's performance garnered significant public support, as many echoed his sentiments. In the video, he highlighted the poor condition of road infrastructure in Lampung City, which serves as an important fact for the regional government to consider when addressing the needs of its residents.

Everyone has the right to freedom of expression, and Bima's criticism is valid. He shared his opinion on matters he considers inappropriate and asked the government to address his concerns. Bima's video clearly serves a specific purpose, and he hopes to receive a positive response from the Lampung City government. As a citizen of Lampung, Bima should be open to criticism rather than intimidating his fellow citizens. Public criticism should be grounded in facts observed on the ground, and many residents of Lampung have expressed their agreement with Bima's views. This criticism can serve as a valuable evaluation for the Lampung government to enhance its performance and improve the city's infrastructure.

2. Expressing Freedom of Opinion and Expression Through Social Media Regarding Government Performance

The government has officially enacted Law No. 1 of 2024, which amends Law No. 11 of 2008 concerning Electronic Information and Transactions (ITE). Although the new ITE Law introduces changes, it still retains problematic provisions, particularly Articles 27, paragraphs (1) to (4). These articles have often been used to criminalize individuals and threaten the public's access to information, as well as their rights to freedom of opinion and expression in Indonesia.

The articles in the ITE Law primarily address prohibitions against actions that threaten freedom of expression on social media. These actions are deemed harmful to freedom of expression and include the following: (a) violations of morality, (b) gambling, (c) insults and defamation, (d) blackmail and threats, (e) consumer fraud, (f) inciting feelings of hatred or hostility towards individuals or specific community groups based on ethnicity, religion, race, and intergroup (SARA), and (g) threats of violence or intimidation directed at individuals. Each of these prohibited actions represents a limitation on the exercise of freedom of expression on social media; committing any one of these actions constitutes a violation of that freedom.

Article 27, paragraph (3) of the Information and Electronic Transactions Law, before its revision, stated: "Any person who intentionally and without the right distributes, transmits, or makes accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation." This article contains elements of insult and defamation, which has led to it being referred to as a "rubber article." The subjective nature of its elements allows for broad interpretation and potential misuse by law enforcement. The reason Article 27, paragraph (3), is considered a rubber article is that its language is ambiguous, leaving it open to multiple interpretations. The provisions refer to offenses that require a complaint, but the lack of clear definitions for insults and defamation creates numerous challenges. This ambiguity can encroach on the freedoms of opinion and expression that are guaranteed by the constitution and human rights (Aulia, 2024). Before the revision of the ITE Law, offenses outlined in Article 27, paragraph (3) were considered complaint-based, meaning only the victim could file a complaint, and they could not be represented by someone else unless permitted by law. The revision introduced more specific provisions for handling these offenses (Permatasari, 2019), yet many believe that it remains unclear, leading to varied interpretations from different parties. The vague boundaries surrounding complaints about morality, defamation, and insults can result in individuals feeling offended by another's words and subsequently filing complaints against them.

The main issue with the ITE Law, particularly regarding the right to freedom of opinion and expression, lies in Article 27, specifically paragraph (3). This paragraph should be removed due to its vague wording, which allows for multiple interpretations, and because it duplicates existing laws. This problematic article pertains to defamation and has been criticized for potentially suppressing the expressive activities of citizens, activists, and journalists. Furthermore, it is viewed as a restriction on freedom of opinion, a fundamental human right that must be safeguarded. The article addresses insults and defamation in mass media, leading to its frequent use in prosecuting netizens who express criticism online.

On January 4, 2024, President Joko Widodo ratified Law Number 1 of 2024, which amends Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE). The revised ITE Law still includes problematic provisions, such as those addressing defamation, attacks on reputation, hate speech, false information, and access restrictions. These vague articles threaten the public's access to information and the right to freedom of expression in Indonesia. The ITE Law serves as an example of how laws intended to combat cybercrime can be misused to suppress opinions, expression, and press freedom. Since its enactment in 2008 and its first revision in 2016, the ITE Law has criminalized human rights defenders, journalists, survivors of sexual violence, and even citizens expressing criticism. This lack of transparency poses a significant risk, resulting in regulations that may benefit elites rather than protect human rights.

This law still retains several existing issues. The articles that are considered problematic, often referred to as elastic or multi-interpretable, include the following: Article 27, paragraph (1), which addresses immorality; Article 27, paragraph (3), which pertains to hate speech and is frequently used to criminalize civilians; Article 28, paragraph (2), which targets hatred based on ethnicity, religion, race, and inter-group relations, often employed to silence criticism; and the criminal provisions outlined in Articles 45, 45A, and 45B.

The House of Representatives (DPR) and the government have introduced new provisions, including Article 27A, which deals with attacks on an individual's honor or reputation. This provision is somewhat flexible

and could potentially lead to the criminalization of critical members of the public. Another new article, Article 27B, addresses threats of defamation.

The provisions of Article 27 of Law No. 1 of 2024 regarding the second amendment to the Electronic Information and Transactions Law are amended as follows: 1. "Any person who intentionally and without authorization broadcasts, displays, distributes, transmits, or makes accessible Electronic Information and/or Electronic Documents containing content that violates moral standards for public knowledge." 2. "Any person who intentionally and without authorization distributes, transmits, or makes accessible Electronic Information and/or Electronic Documents that contain gambling-related content."

The provisions in Article 27 of Law No. 1 of 2024, which pertains to the second amendment of the Electronic Information and Transactions Law, no longer address insults and defamation as they did previously. Between Article 27 and Article 28, two new articles have been added: Article 27A and Article 27B. Article 27A states: "Any person who intentionally attacks the honor or reputation of another person by making accusations, with the intention of making this information publicly known in the form of Electronic Information and/or Electronic Documents, carried out through an Electronic System, is subject to penalties."

Article 27A addresses insults and defamation, maintaining similar provisions as before. However, this article remains flexible, which raises concerns that it could be used to criminalize critical citizens and limit freedom of opinion and expression, as seen in Article 27 paragraph (3). The objectives of the Electronic Information and Transactions Law are outlined in Article 4, which states: a) To educate the nation as part of the global information society; b) To promote national trade and the economy to improve public welfare; c) To enhance the effectiveness and efficiency of public services; d) To provide ample opportunities for everyone to develop their thinking and skills in the responsible use of information technology; e) To ensure security, justice, and legal certainty for users and providers of information technology.

The primary objective of establishing law is grounded in three principles: justice, utility, and certainty. However, these ideals may not be fully realized due to a culture of silence among the public. The existence of the ITE Law (Information and Electronic Transactions Law) has created a fear of speaking out against injustices and government violations, as individuals worry about being accused of insulting or defaming authorities. During the annual session of the People's Consultative Assembly (MPR RI) and the Joint Session of the House of Representatives (DPR RI) and the Regional Representative Council (DPD RI), held on August 16, 2021, in Jakarta to commemorate the 76th Anniversary of Indonesia's Proclamation of Independence, President Joko Widodo acknowledged the significant public criticism of the government, particularly concerning unresolved issues. He stated, "I also realize that there is so much criticism of the government. Constructive criticism is very important, and we always respond by fulfilling our responsibilities, as the people expect" (Purnamasari & Galih, 2024). However, following this statement, many questioned the sincerity of President Widodo's commitment to allowing public criticism of the government's performance. This skepticism has arisen because of several incidents in which individuals faced legal consequences for expressing their criticisms.

When our opinions are deemed contradictory and disrupt someone's interests and rights, they can be classified as criminal defamation or the spread of false information. This may also lead to hate speech among groups and result in police reports for criticizing the government. The law governing freedom of expression and association must explicitly protect the right to express opinions both verbally and in writing. Within this framework of freedom of expression, everyone has the right to gather the necessary materials to support their opinions. This includes the right to seek, obtain, possess, store, process, and communicate those opinions. Legal provisions should be in place to prohibit anyone, including the government, from reducing, limiting, or eliminating these freedoms. However, such provisions are currently lacking in the Law regulating Electronic Information and Transactions.

The requirement for freedom of expression and association is an essential characteristic of any democratic country, including Indonesia. Therefore, these freedoms must be guaranteed in the nation's laws. This includes Law Number 1 of 2024, which amends Law Number 11 of 2008 concerning Information and Electronic Transactions. This law governs the implementation of freedom of expression through internet media. It is crucial that laws related to freedom of expression and association explicitly affirm the right to express opinions both verbally and in writing. Within the framework of freedom of expression, everyone has the right to gather materials they need; thus, their rights to seek, obtain, hold, store, process, and convey these opinions must also be protected. Additionally, there must be legal provisions that prevent anyone, including the government, from reducing, limiting, or eliminating these freedoms. However, such protective provisions are currently absent from the law governing Information and Electronic Transactions.

The application of the ITE Law cannot diminish or restrict the fundamental rights of every citizen to freedom of opinion and expression, not even by the state. This is because the state has the responsibility to respect and protect these human rights through statutory provisions. While individuals possess rights, they also have the obligation to respect the rights of others. Therefore, the relationship between individual rights and the rights of others, as well as society as a whole, may lead to certain restrictions, but these must still uphold and respect the foundational rights.

IV. Conclusion

Indonesia, as a democratic country, must involve its citizens in decision-making processes by protecting and guaranteeing the right to freedom of opinion and expression. These rights are fundamental components of human rights. Freedom of opinion and expression is specifically addressed in Article 28E, paragraph (3) of the 1945 Constitution, as well as in Article 23, paragraph (2) of Law No. 39 of 1999 concerning Human Rights. This law states, "Everyone is free to have, express, and disseminate opinions according to their conscience, verbally and/or in writing through print or electronic media, while considering religious values, morality, public order, the public interest, and the integrity of the nation." However, in practice, this article has not effectively guaranteed the protection of individuals' rights to freedom of opinion and expression.

Article 27A No. 1 of 2024, concerning the Second Amendment to Law No. 11 of 2008 on Information and Electronic Transactions, states that "Any person who intentionally attacks the honor or good name of another person by making accusations, with the intention of making this matter known to the public in the form of Electronic Information and/or Electronic Documents, carried out through an Electronic System" may be subject to penalties. However, the author argues that this legislation fails to adequately protect freedom of opinion and expression. Many individuals continue to face repercussions for expressing their opinions or criticisms of government performance, whether verbally or in writing, particularly on social media. Furthermore, the ITE Law lacks provisions that guarantee the public's right to critique the government through these platforms. It is essential to recognize that criticism of the government should not be considered a violation of the law.

The author suggests that the government should take a more assertive approach in addressing the Electronic Transaction Information Law (UU ITE) concerning the public's right to freedom of opinion and expression. This includes allowing citizens to convey their opinions or criticisms of the government through social media. The author urges the government to remove any articles within the law that could potentially threaten this freedom. Furthermore, there is a call for legal protections that enable the public to express their opinions or criticisms more freely, without the fear of repercussions. However, it is essential to recognize the limitations that should still apply when expressing opinions on social media.

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