

Legal Review of Restrictions on Freedom of Expression on Social Media in the Context of State Security

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Abstract: *The development of digital technology has brought significant changes in the way individuals express their opinions, particularly through social media. Freedom of expression is a fundamental right guaranteed by various national and international legal instruments. However, in practice, freedom of expression is not absolute and can be restricted for various reasons, one of which is state security. These restrictions often give rise to debates about the legitimate limits of regulation, particularly in the context of social media, which has a wide reach and rapid dissemination of information. This article aims to examine the legal aspects related to restrictions on freedom of expression on social media to maintain state security using normative juridical research methods. The normative juridical method in this research focuses on the analysis of laws and regulations, international legal instruments, and legal doctrines related to freedom of expression and state security. This study discusses the freedom of expression from a human rights perspective, and the legal principles underlying its restrictions, including the principle of proportionality, which emphasizes the balance between individual freedom and the public interest. The study analyzes national regulations governing freedom of expression on social media, such as the 1945 Constitution, the Electronic Information and Transactions Law (UU ITE), and various other regulations. These regulations are then compared with international legal standards, such as the International Covenant on Civil and Political Rights (ICCPR). The results are expected to provide a deeper understanding of how the*

law regulates restrictions on freedom of expression on social media, while evaluating the extent to which regulations in force in Indonesia align with human rights principles. This study recommends ensuring that restrictions on freedom of expression are implemented proportionately without compromising individuals' fundamental rights.

Keywords: *Freedom of expression; social media; law; state security.*

Introduction

The development of information and communication technology has brought significant changes in the way individuals express their opinions, particularly through social media (Siahaan 2024). Social media has become a public space for expression, enabling people to communicate, discuss, and express opinions widely and instantly. Unlike conventional media, which impose restrictions on the dissemination of information, social media allows anyone to upload and disseminate ideas without undergoing a rigorous filtering process (Noorikhshan et al., 2023). It makes social media an effective tool for freedom

of expression and the democratization of information. However, on the other hand, this unlimited freedom also presents new challenges, particularly related to the spread of hoaxes, hate speech, and provocations that can disrupt social stability and national security (Septanto 2018).

Freedom of expression is a fundamental right guaranteed by various national and international legal instruments. In general, freedom of expression can be defined as the right of every individual to express ideas, opinions, or views without pressure or threats from other parties, including the government (Pratama et al., 2022). Under international law, this right is recognized in Article 19 of the Universal Declaration of Human Rights (UDHR) 1948 and Article 19 of the International Covenant on Civil and Political Rights (ICCPR) 1966, which affirm that everyone has the right to freedom to seek, receive, and impart information and ideas in any form (Darajati & Syaifei, 2020). Meanwhile, in the context of national law, the right to freedom of expression is guaranteed in Article 28E paragraph (3) of the 1945 Constitution, which states that everyone has the right to freedom of association, assembly, and expression. This right is also regulated in Law Number 39 of 1999 concerning Human Rights, which recognizes freedom of expression as a fundamental right that must be protected (Guntara & Herry, 2022).

Although freedom of expression is a fundamental right, this right is not absolute and can be restricted for certain reasons, one of which is national security. National security encompasses various aspects, such as political stability, public order, and protection of national interests from threats that could disrupt the integrity of the state. In the context of international law, restrictions on freedom of expression are regulated by Article 19 paragraph (3) of the ICCPR, which states that freedom of expression may be restricted to protect public order, national security, and the rights and reputations of others (Farida 2022). Meanwhile, under national law, Article 28J of the 1945 Constitution affirms that in exercising their rights and freedoms, everyone is obliged to respect the human rights of others and to submit to restrictions established by law for the sake of public order and national security (Murthada & Sulubara, 2022). These restrictions are also reflected in various regulations, such as the Electronic Information and Transactions Law (UU ITE), which prohibits the dissemination of information that could threaten national stability.

The implications of freedom of expression for national security are a crucial issue in the current digital era. The uncontrolled dissemination of information can be used to spread propaganda, provocation, and even calls that have the potential to disrupt public order and threaten national stability. Various cases demonstrate that social media is often exploited to spread radical ideologies, fake news, and speech that can incite horizontal conflict (Marwa & Fadhlán, 2021). In this context, the state has an obligation to maintain a balance between protecting the right to freedom of expression and the obligation to maintain national security. Therefore, restrictions on freedom of expression on social media are often imposed by the government to prevent threats to state order and security (Andriansyah & Kusnadi, 2024).

In implementing restrictions on freedom of expression, the principle of proportionality is a key principle that must be observed to ensure that such restrictions are not arbitrary. The principle of proportionality emphasizes that any restrictions on human rights must meet three main elements: (1) a legitimate aim, (2) necessity, and (3) proportionality (a

balance between the benefits and impacts of the restriction). In other words, restrictions can only be imposed if they are necessary to protect the public interest, are implemented in a manner that least interferes with individual rights, and remain balanced with the desired objectives. In the context of freedom of expression on social media, this principle is particularly relevant because disproportionate restrictions can lead to human rights violations and abuse of authority by the government (Yamin & Oktapani, 2024). Therefore, the implementation of legal policies related to restrictions on freedom of expression must consider the principle of proportionality to ensure that people's fundamental rights are maintained without compromising national security.

Therefore, it is important to review the extent to which applicable regulations regulate restrictions on freedom of expression on social media proportionally, so as not to lead to abuse of authority that could potentially impede individual fundamental rights. In-depth legal review is necessary to ensure that policies restricting freedom of expression remain in line with human rights principles and national and international legal standards, thus striking a balance between freedom of expression and national security.

Method

This research method utilizes a normative juridical method, an approach that focuses on legal analysis by examining relevant laws and regulations, legal doctrine, and international legal instruments. It tries to understand and examine how freedom of expression on social media is regulated under national law and how its restrictions can be implemented within the context of national security. The approach used in this research includes a statute approach, which aims to examine national legal regulations such as the 1945 Constitution, the Electronic Information and Transactions Law (UU ITE), and various other related regulations. Furthermore, this study employs a conceptual approach by examining legal theories regarding freedom of expression, human rights, and the principle of proportionality, which serve as the basis for determining legitimate limitations on these rights. Furthermore, this study compares national regulations with international legal standards, such as the International Covenant on Civil and Political Rights (ICCPR) and recommendations from the United Nations (UN) regarding freedom of expression. By comparing domestic regulations and international standards, this study aims to assess the conformity of national laws with globally recognized human rights principles. The analysis is conducted by examining primary legal sources, such as legislation and international conventions, as well as secondary sources such as academic literature and legal journals. The study focuses on the normative aspects of applicable legal regulations. Thus, this study is expected to provide a theoretical contribution to the understanding of restrictions on freedom of expression on social media in the context of state security and provide recommendations for legal policies that are more proportional and in accordance with human rights standards.

Result and Discussion

Legal Regulations on Freedom of Expression and State Security

Freedom of expression is a fundamental right recognized in various international legal instruments. One key instrument is the 1948 Universal Declaration of Human Rights

(UDHR), which, in Article 19, states that everyone has the right to freedom of opinion and expression, including the freedom to seek, receive, and impart information and ideas through any media and regardless of frontiers. This declaration serves as the basis for various other legal instruments governing freedom of expression at the international level.

Furthermore, the 1966 International Covenant on Civil and Political Rights (ICCPR), ratified by Indonesia through Law Number 12 of 2005, also guarantees freedom of expression. Article 19, paragraphs (1) and (2) of the ICCPR, states that every individual has the right to hold opinions without interference and to express them in any manner. However, Article 19 paragraph (3) also emphasizes that this right may be restricted if necessary to respect the rights and reputations of others, protect national security, public order, or public health and morals.

The UN has also issued various resolutions and recommendations regarding freedom of expression and national security. One relevant one is UN General Assembly Resolution 12/16 of 2008, which provides guidelines on restrictions on freedom of expression to prevent it from being misused to spread hate speech or threaten national security. Furthermore, the UN Human Rights Committee, in its General Comment No. 34 of 2011, stated that restrictions on freedom of expression must be based on clear legal grounds, must not be arbitrary, and must adhere to the principle of proportionality.

At the national level, freedom of expression is guaranteed in the 1945 Constitution, particularly in Article 28E paragraph (3), which states that everyone has the right to freedom of association, assembly, and expression. However, this right is not absolute, as stipulated in Article 28J paragraph (2), which states that in exercising their rights and freedoms, every person is obliged to respect the human rights of others and is subject to restrictions established by law with the aim of guaranteeing recognition and respect for the rights and freedoms of others and to meet just demands in accordance with considerations of morality, religious values, security, and public order in a democratic society.

In addition to the constitution, restrictions on freedom of expression are also regulated in Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law), which was amended by Law Number 19 of 2016, and then amended again by Law Number 1 of 2024. Article 27, paragraph (3) of the ITE Law states that every person is prohibited from intentionally and without the right to distribute, transmit, or make accessible electronic information that contains insulting or defamatory content. Meanwhile, Article 28, paragraph (2) of the ITE Law prohibits the dissemination of information intended to incite hatred or hostility based on ethnicity, religion, race, and intergroup relations (SARA). These articles are often used as the legal basis for restricting freedom of expression on social media, although their implementation remains controversial, particularly regarding the potential for abuse by authorities.

In the context of national security, other regulations related to restrictions on freedom of expression can be found in the Criminal Code (KUHP). For example, Article 207 of the KUHP prohibits insulting public authority or state bodies, while Articles 310 and 311 of the KUHP regulate defamation (Pratama, 2025). Furthermore, the government also has various additional regulations governing content on social media, such as Minister of

Communication and Information Regulation Number 5 of 2020 concerning Private Electronic System Providers, which requires digital platforms to remove content deemed unlawful within a certain time after receiving a government request.

In addition to the ITE Law and the Criminal Code, there are also other regulations that regulate restrictions on freedom of expression for reasons of state security, such as Law Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism, which authorizes law enforcement officials to handle content containing elements of radicalism or terrorism on social media (Matildha 2022). This regulation aims to prevent the spread of extremist ideologies that could threaten national stability. Overall, although freedom of expression is guaranteed by the constitution and international legal instruments, restrictions on this right are also strictly regulated in various laws and regulations. The primary challenge in implementing these regulations is ensuring that the restrictions are truly proportionate and not abused to excessively suppress freedom of expression. Therefore, evaluating the regulations and their implementation practices is crucial to maintaining a balance between human rights protection and state security interests.

3.2 Legal Analysis of Restrictions on Freedom of Expression on Social Media

In both national and international legal systems, freedom of expression is a widely recognized fundamental right, but it can still be restricted for certain reasons, including state security (Warong et al., 2020). Article 19 of the 1948 Universal Declaration of Human Rights (UDHR) and Article 19 paragraph (3) of the 1966 International Covenant on Civil and Political Rights (ICCPR) recognize the right to freedom of expression, but also provide room for states to restrict this right as long as such restrictions are based on law, have a legitimate purpose, and are proportionate (Julianja 2018). At the national level, freedom of expression is regulated by Article 28E paragraph (3) of the 1945 Constitution, but can be restricted as affirmed in Article 28J paragraph (2) of the 1945 Constitution, which states that a person's freedom may not interfere with the rights and freedoms of others and must be subject to restrictions established by law for the sake of public order and state security. These restrictions are then further regulated in various regulations, such as the ITE Law, the Criminal Code, and various other derivative regulations.

Compared with international legal standards, national regulations have the advantage of providing clear legal instruments to regulate freedom of expression on social media. However, there are a number of shortcomings that require attention, one of which is the formulation of norms that tend to be broad and open to multiple interpretations, which can open up opportunities for abuse of authority. For example, Article 27, paragraph (3) of the ITE Law, which regulates defamation, is often criticized for not providing a clear definition, allowing it to be used to restrict criticism of the government or public officials. Similarly, Article 28 paragraph (2) of the ITE Law, which prohibits the dissemination of information inciting hatred based on ethnicity, religion, race, and intergroup relations (SARA), is often used to suppress freedom of expression without clearly defining what constitutes hate speech (Dunan & Mudjiyanto, 2022).

The principle of proportionality is a crucial element in assessing whether restrictions on freedom of expression are implemented fairly and not excessively. This principle refers

to three main elements: (1) legitimate aim, (2) necessity, and (3) proportionality (balance between the benefits and impacts of restrictions) (Ziar 2022). In the context of national regulations, although restrictions on freedom of expression aim to maintain national security, their implementation still faces challenges in terms of proportionality.

In some cases, national regulations have the potential to lead to the overcriminalization of expression on social media. For example, many individuals have been charged under Article 27 paragraph (3) and Article 28 paragraph (2) of the ITE Law for posting opinions or criticism deemed detrimental to others or disturbing public order. These cases demonstrate that national regulations still lack the application of the principle of proportionality, particularly in distinguishing between legitimate criticism and speech that could actually threaten national security (Darmika et al., 2022).

Furthermore, the use of Article 207 of the Criminal Code concerning insulting authorities and Articles 310-311 of the Criminal Code regarding defamation has come under scrutiny, as these provisions are frequently used to ensnare individuals who criticize public officials. However, under international legal standards, public officials should have a higher tolerance for criticism than ordinary individuals. Therefore, there is a need to align national regulations with the principle of proportionality to avoid excessively restricting freedom of expression.

Restrictions on freedom of expression on social media have various legal implications, both for the individuals affected by the restrictions and for the legal system as a whole. For individuals, these restrictions can result in the criminalization of expression that should be protected by law. Many cases have seen individuals subject to criminal or civil sanctions for uploading content deemed unlawful, even if the content constitutes legitimate criticism or opinion. In some cases, the threat of criminal penalties stipulated in Article 27 paragraph (3) and Article 28 paragraph (2) of the ITE Law has created a chilling effect, where people are reluctant to express their opinions for fear of criminalization (Bahram 2023).

On the other hand, from a legal perspective, disproportionate restrictions on freedom of expression can give rise to legal challenges to regulations deemed contrary to democratic principles and human rights (Putra et al., 2024). Several parties have filed judicial reviews of provisions in the ITE Law with the Constitutional Court, arguing that certain articles are too broad and potentially subject to abuse. Furthermore, in practice, law enforcement regarding freedom of expression on social media is often inconsistent, with certain cases receiving more attention than others, creating legal uncertainty.

To address this issue, clearer legal reforms are needed, aligning them with international standards. One step that can be taken is to clarify the definition of freedom of expression in articles to avoid multiple interpretations. Furthermore, the application of the principle of due process of law in handling freedom of expression cases must be strengthened to ensure that the legal process is fair and transparent (Ali 2011). Thus, regulations restricting freedom of expression on social media can continue to protect state interests without compromising the fundamental rights of the public.

Conclusion

Restrictions on freedom of expression on social media in the context of national security are a complex issue, where national regulations have established certain limits to maintain order and stability. However, comparisons with international legal standards indicate that several national regulations, such as Article 27 paragraph (3) and Article 28 paragraph (2) of the ITE Law, as well as articles in the Criminal Code, still lack clarity and have the potential for abuse. The principle of proportionality, as the primary standard for restricting human rights, has not been consistently implemented, risking overcriminalization and hampering the freedom of expression that should be protected.

To address this issue, legal policy reform is needed to align it more closely with international human rights standards, including clarifying the definitions of articles that are open to multiple interpretations. Oversight mechanisms for the implementation of regulations must also be strengthened to prevent abuse of the law in suppressing freedom of expression. Furthermore, harmonization of freedom of expression and national security needs to be achieved through a fairer and more transparent legal approach, so that regulations function not only as a tool of state control but also as an instrument for protecting citizens' rights in the digital space.

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