

Strengthening The Right To Freedom Of Opinion On The Fundamental And Constitutional Rights Of Social Media Users Based On Collaboration Of The 1945 Constitution And The Uu Ite In Indonesia

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Abstract

Freedom of thought and expression is regulated in the fourth amendment to the 1945 Constitution Article 28 E paragraph (3) Everyone has the right to freedom of association, assembly, and expression. Freedom of expression, including freedom of opinion, is one of the most basic rights in the life of the state. At this time there has been a new law known as cyber law as the equivalent of cyber law, namely a law relating to the use of information technology called Cyber Law and Mayantara Law which is summarized in a statutory regulation, namely Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE). The problem of this research is the extent to which the clarity of the regulation of opinion contained in the legislation and then how the legal protection is applied to social media users in terms of expressing their opinions. This research approach is a descriptive normative juridical law research. This study uses materials that are in accordance with the research conducted which is the result of library research, from library research secondary data is collected which includes primary legal materials, secondary legal materials, and tertiary legal materials. The analytical tool used is SWOT. This study aims to examine the right to freedom of expression for social media users in relation to the laws and regulations, namely the 1945 Constitution, the UU ITE, and several cases of violations of the laws and regulations that have occurred and are currently occurring in the community.

Keywords: Right to Freedom of Expression, Social Media Users, UUD 45 and UU ITE..

I. INTRODUCTION

Freedom of thought and expression is regulated in the fourth amendment to the 1945 Constitution Article 28 E paragraph (3) Everyone has the right to freedom of association, assembly, and expression. Freedom of expression, including freedom of opinion, is one of the most basic rights in the life of the state. Law No. 9 of 1998 concerning Freedom to Express Opinions in public Article 1 paragraph (1) freedom of expression is the right of every citizen to express thoughts orally, in writing, and so on freely and responsibly in accordance with the provisions of the applicable laws and regulations. At this time there has been a new law known as cyber law as the equivalent of cyber law (Mardanis, 2013) which is a law relating to the use of information technology or called Cyber Law and Mayantara Law which is summarized in a statutory regulation namely Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE). With the existence of cyber law, there are many problems or problematic problems of proof and law enforcement, because law enforcers will assume it is invisible, pseudo, or virtual. Cyber activities are now no longer simple, with activities that cannot be limited by country territory, access can be done easily from any country. Losses can occur to both internet actors and other people who have never had contact at all (Marwandianto dan Helmi, 2020). According to Article 28 of the 1945 Constitution (UUD 1945), the right to freedom of expression is a human right. Along with the development of technology and information, one can exercise the right to freedom of expression in online media.

One of the online media facilities that are widely used by the community today is social media. The application of the UU ITE, particularly Article 27 paragraph (3) and Article 28 paragraph (2), creates many problems in society because the Article in question is considered to have silenced the rights of freedom of expression of social media users via the internet. On that basis, it is necessary to have a legal protection effort to guarantee the right of freedom of expression for social media users. The problem being discussed is the extent to which the clarity of opinion regulation is contained in the legislation and then how the legal protection is applied to social media users in terms of expressing their opinions. Today there are several

examples of cases of violations of the UU ITE, but this is not necessarily accepted by the public for granted. Some people think that expressing opinions and freedom of opinion which can now of course be done by anyone and at any time and with any social media is the right of everyone. But the impression is that the UU ITE according to the community can be used as a tool to silence opinions.

II. LITERATURE REVIEW

2.1. Freedom of Expression in Fundamental and Constitutional Rights

Freedom of opinion or freedom of opinion is one of the human rights, namely the right to opinion or expression (Sekretariat Jenderal MPR RI, 2018). A right that is found in the first generation in the history and development of human rights, namely rights belonging to civil and political rights. It is said to be fundamental because long before the people gave birth to a state organization, the people had been given these most basic rights and freedoms. The state is an integration of political power, the state is the main organization of political power (Marwandianto and Helmi, 2020). According to the concept of a welfare state, the nature of people's relations is positive-active, in which the state actively organizes the welfare or prosperity of the people while the people actively participate in government. Like most other rights, the right to an opinion in the sense of human rights always contains two aspects, namely entitlement, and freedom. In the context of a democratic country such as Indonesia, this right of opinion is guaranteed in a constitutional clause. The guarantee is regulated in Article 28 of the 1945 Constitution (UUD 1945) (Kaelan and Achmad, 2010) which affirms the freedom of association and assembly, expressing thoughts orally and in writing.

2.2. Freedom of Expression in Human Rights (HAM)

Freedom of Human Rights in the concept of the rule of law in democracy in Indonesia is the most basic thing (Sekretariat Jenderal MPR RI, 2018). Human rights are rights that humans have simply because they are human. Humanity has it not because it was given to it by society or based on positive law but solely based on its dignity as a human being. Everyone, whether born with different skin color, gender, language, culture, and nationality, still has these rights. This is the universal nature of these rights. Besides being universal, these rights are also inalienable (Lubis, 2002). This means that no matter how bad the treatment that has been experienced by a person or no matter how cruel a person's treatment is, he will not stop being human and therefore still have these rights.

2.3. Justice

From the etymological aspect of language, the word "fair" comes from the Arabic "adala" which means "middle" or "middle". From this meaning, the word "adala" is then synonymous with wasith which derives from the word wasith which means "intermediary" or the person who stands in the middle which implies a fair attitude (Ramadona dan Dewi, 2020). Distributive justice regulates the distribution of goods and awards to each person according to his position in society and requires equal treatment for those who are equal according to the law. Collective justice is primarily a measure of the technical principles that govern administration rather than law enforcement. In regulating legal relations, it is necessary to have the consequences of actions, regardless of who the person is and the intent can be according to the size of an objective value (Rahmawati et al, 2021).

III. METHODS

This research approach is normative juridical law research (LBH Pers, 2021) which is descriptive (Dhini, 2022) which is a solving procedure that is investigated by describing and compiling a systematic approach to solving problems contained in the Right to Freedom of Expression Through Social Media and leading to research. This study uses materials that are in accordance with the research conducted which is the result of library research, from library research secondary data is collected which includes primary legal materials, secondary legal materials, and tertiary legal materials. With details including: the 1945 Constitution, Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, Law Number 9 of 1998 concerning Freedom to Express Opinions in Public, and Law Number 39 of 1999 concerning Human Rights, the Book of the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP).

IV. ANALYZE AND RESULT

Normatively, the right to freedom of opinion on fundamental and constitutional rights can be studied from various perspectives of the laws and regulations in Indonesia. Referring to the level of international rules, the guarantee of the right to freedom of opinion and expression is contained in several international legal instruments, first, the universal declaration of human rights or the 1948 declaration of human rights in Article 19 states: "Everyone has the right to freedom of opinion and expression, in the right This includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". The guarantee to speak and express opinions is universally enshrined in the Universal Declaration of Human Rights (Mardanis, 2013). However, even if freedom of opinion is granted, the provisions of the universal declaration of human rights regarding freedom of opinion and expression above are limited by the provisions of Article 29 paragraph (2) of the general declaration of human rights which states that: "In exercising his rights and freedoms, everyone shall be subject only to such limitations as are prescribed by law for the sole purpose of ensuring proper recognition and respect for the rights and freedoms of others, and to fulfill just requirements in terms of morality, order and the general welfare in a democratic society." Article 29 paragraph (2) of this Universal Declaration of Human Rights. provide restrictions on guaranteed freedoms, with conditions that must be accommodated, and limitations on freedoms established by law for the sole purpose of ensuring proper recognition and respect for the rights and freedoms of others (Marwandianto dan Helmi, 2020).

The State of Indonesia as a state of the law has ratified various international rules in upholding the right to freedom of expression and opinion, the constitution has guaranteed this, therefore criticism of the government is not a violation of law, freedom of opinion is guaranteed in the Indonesian constitution. The restrictions on freedom of expression and opinion are aimed at creating security and welfare among fellow citizens. The Indonesian people are of the view that human rights must pay attention to the characteristics of Indonesia and human rights must be balanced with obligations so that it is hoped that mutual respect and respect for the human rights of each party will be created. The formulation of human rights included in the 1945 Constitution of the Republic of Indonesia can be divided into several aspects, namely: first, human rights related to life and life, second, human rights related to family, third, human rights related to education, science, and technology, fourth, human rights related to work, fifth, human rights related to freedom of religion and belief, freedom of attitude, opinion, association, sixth, human rights related to information and communication, seventh, human rights related to a sense of security and protection from degrading treatment and dignity human rights, eighth, human rights are related to social welfare, ninth, human rights are related to equality and justice, tenth, human rights are obliged to respect the rights of people and other parties (Sekretariat Jenderal MPR RI, 2018).

Freedom of expression orally or in writing is a right inherent in every human being since birth that cannot be contested by anyone because it has become private property and is guaranteed by the state to protect every citizen. Expressing opinions in public is a human right, which is protected and guaranteed by the constitution attached to every citizen as regulated in the basic rules of the Constitution. Freedom of opinion and expression is considered important because of four things, namely: (1) freedom of expression is important as a way to ensure one's self-fulfillment and also to achieve one's maximum potential (2) for the search for truth and the advancement of knowledge or in other words someone who seeks knowledge and truth. must listen to all sides of the question, consider all alternatives, test their judgment by confronting them with opposing views, and make optimal use of different ideas. (3) freedom of expression so that people can participate in the decision-making process decisions, especially in the political arena, and (4) freedom of expression enables society and the state to achieve stability and adaptation (Marwandianto dan Helmi, 2020). The preamble to the 1945 Constitution which is the normative source for Indonesia's positive law in paragraph I states that "independence is the right of all nations", this statement contains a juridical recognition of human rights (Kaelan dan Achmad, 2010). The norms of the right to freedom of expression and opinion in Indonesia are regulated in the 1945 Constitution of the Republic of Indonesia in Article 28, Article 28 E, Article 28F.

1. Article 28, "The freedom of association and assembly, expressing thoughts verbally and in writing and so on is stipulated by law".
2. Article 28E paragraph (2), "Everyone has the right to freedom to believe in beliefs, to express thoughts and attitudes, according to his conscience".
3. Article 28E paragraph (3) "Everyone has the right to freedom of association, assembly, and expression".
4. Article 28F, "Everyone has the right to communicate and obtain information to develop his personal and social environment, as well as the right to seek, obtain, possess, store, process and convey information by using all types of available channels" (Lubis, 2002).

The form of further regulation on human rights as mandated by the Constitution is as follows (Hsb, 2021):

1. In accordance with the provisions of Article 28 concerning freedom of association and assembly, expressing thoughts verbally and in writing and so on, Law Number 9 of 1998 concerning the freedom to express opinions in public and Law Number 39 of 1999 concerning human rights have been stipulated. in articles 14, 23, 24, and 25, which state the protection of freedom of expression and expression as well as conveying information.
2. In accordance with the regulation of equality in law and government, Law number 40 of 2008 has been enacted on the elimination of racial and ethnic discrimination.
3. In accordance with the provisions of Article 28I paragraph (5) concerning the enforcement and protection of human rights, Law No. 25 of 2009 has been stipulated concerning public services.

The level of industrial revolution 4.0 has an impact on the development of law, government, and social justice. The era of globalization 4.0 causes changes in almost all sectors of human life, especially the economic and technological sectors (Rohmy et al, 2021). Along with the development of technology and information, the means to express opinions are increasingly widespread and free with the existence of social media on the internet. With the existence of social media on the internet today, the space to express opinions is increasingly wide open, everyone is now free to express their opinions in the form of oral, written, argument or opinions and others. The UU ITE was enacted in 2008, then amended to a limited extent in 2016, with the scope of this law is "one for all" which regulates all matters relating to the use of Information and Communication Technology, a number of its materials have not been able to respond to various issues. the challenges of using internet technology today. As a result of such regulatory formats and models, the regulatory formulations provided by each article are not detailed and in-depth, which has an impact on flexibility in interpretation and implementation. The legal instrument that regulates information technology is Law Number 11 of 2008 concerning Information and Electronic Transactions in conjunction with Law Number 19 of 2016 (UU ITE) which became the first cyber law in Indonesia. The Electronic Information and Transaction Law is a law that regulates Electronic Information and Electronic Transactions. The material from the UU ITE is generally divided into two types: First, regulations regarding information and electronic transactions. Second, regulations regarding any actions that are prohibited by law (Ramadona dan Dewi, 2020).

In terms of freedom of expression through electronic media, the Indonesian government has presented Law no. 19 of 2016 amendments to Law no. 11 of 2008 concerning Information and Electronic Transactions which raises pros and cons in society regarding the regulation. Because some people think that the existence of this law will limit the freedom of expression. The current problem is the right to an opinion in the form of criticism and suggestions for a policy and the phenomena that occur, can be considered a form of the right to spread false news (hoax). Defamation is related to information in the form of an opinion which is then reported by one party about the other party which tends to contain badness from the other party, but the impact caused by that opinion is very broad and then felt also by electronic media users consisting of various groups of people, so that readers are influenced by either those who agree with the opinion or those who oppose it. That's why there can be a shift in meaning due to the perspective of each subject, whether writing a statement of opinion or getting information, often has differences (Raskasih, 2020). The UU ITE regulates ethics in conducting criticism in online media and also regarding law enforcement in violations of

the use of information technology, one of which is for individuals who use social media in conveying their criticisms to the government, these provisions are regulated in the UU ITE Number 19 In 2016 in Article 27 paragraph (3), Article 28 paragraph (2), Article 45A paragraph (2), Article 45 paragraph (3) (Rahmawati, 2021). The rubber and problematic articles as well as multiple interpretations in the UU ITE have claimed many victims. However, making a guideline for the interpretation of the UU ITE is not the right step to overcome these problems (LBH Pers, 2021).

According to a report from the Southeast Asia Freedom of Expression Network (SAFEnet), throughout 2021, 38 people became victims of the criminalization of the Electronic Information and Transaction Law (UU ITE). This figure is much reduced compared to 2020 when the number of victims reached 84 people and became the highest in the last five years. Although the number of victims has decreased, SAFEnet believes that freedom of expression in Indonesia has not improved immediately. SAFEnet found that the people charged with the UU ITE in 2021 were mostly activists who voiced human rights issues, reaching 10 people or 26.3% of the total victims. This is the first time that activists have become victims of the most criminalization since the UU ITE was signed in 2008. Usually, the majority of victims come from the community. In 2021 there will be 8 people (21.1%) victims of violence and their companions who are prosecuted under the UU ITE, as well as 7 people (18.4%) from the citizens. Meanwhile, other victims came from journalists, academics, students, workers, politicians, and community organizations. According to SAFEnet's records, Article 27 paragraph 3 of the UU ITE regarding defamation is the most widely used "rubber article" to limit freedom of expression in the digital realm. Throughout 2021, there were 17 victims who were charged with this article (Dhini, 2022). If we look at article 27 paragraph 3 of the UU ITE which is controversial, this article is related to the article on insults and defamation, which this article reads: "Every Person intentionally and without rights distribute and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation.

"That the acts that are classified as insults and defamation as referred to in the article are not contained in detail and clearly so that many applications of the article are considered inappropriate and have the impression "at will". The presence of the UU ITE seeks to provide solutions to problems in cyberspace, but on the other hand, there is the legitimacy for the silence of freedom of expression (Notanubun, 2014). The government plans to make revisions or by using interpretation guidelines. That is, there are legal problems related to the formulation of offenses in the UU ITE that were born from conventional criminal acts. The formulation of offenses in conventional criminal acts contained in the Criminal Code (these acts are contained in Articles 310, 311, and 316 of the Criminal Code, 207 and 208 of the Criminal Code to Articles 154-156 of the Criminal Code and Articles 160-161 of the Criminal Code), can be said to be good. - fine, and no problem. The offense in the Criminal Code is the same, only the media is different in the real world and the virtual world.

V. CONCLUSION

The results of this study indicate several things that can be concluded from the existence of freedom of opinion and expression in collaboration between the 1945 Constitution and the UU ITE. Conclusions can be drawn based on the discussion in this study. Freedom of expression in the 1945 Constitution is part of Human Rights (HAM) which is regulated in Chapter XA Articles 28 E and 28 F. Human rights are included in the contents and second amendments of the 1945 Constitution. Then emphasized in Law Number 9 of 1998 concerning independence. express opinions in public. Freedom of expression in the 1945 Constitution and Law No. 9 of 1998 confirms that freedom of opinion is a fundamental right in life that is guaranteed and protected by the state, in addition to Law No. 39 of 1999 on human rights, in articles 14, 23, 24, and 25, which states the protection of freedom of expression and expression of opinion as well as conveying information. Based on the rules above, it is illustrated that the State of Indonesia has given the freedom to the public to express their opinions.

In the Revolution 4.0 era, social media is increasingly developing as a means of communication in the development of today's communication technology. Social media is a public space to realize the freedom of expression and give opinions. It became a concern for the public at the time of the enactment of Law

Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE). The UU ITE is considered not to provide guarantees for people's freedom of expression, there are rubber articles and they are problematic and have multiple interpretations, and have claimed many victims. Regulations based on the 1945 Constitution and the laws and regulations are not balanced with the freedom of speech, especially for social media users, especially those currently regulated in the UU ITE. So that the legal protection of the right of opinion for the community has not been fulfilled. The community asks the government to revise the UU ITE. The goal is that the community will get guaranteed protection and be free from criminal sanctions when providing input and criticism to the government so that it can create a democratic country.

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