

# Comparison Of The Provisions On Freedom Of Expression On Social Media From A Human Rights Perspective And Law Number 19 Of 2016 Concerning Information And Electronic Transactions In Indonesia

Nurul Listiyani<sup>1\*</sup>, Yholanda Christiyana<sup>2</sup>

<sup>1,2</sup> Law Faculty, Islamic University Of Kalimantan MAB Banjarmasin, South Kalimantan, Indonesia.

\*Corresponding Author:

Email: [nurullistiyani5@gmail.com](mailto:nurullistiyani5@gmail.com)

---

## Abstract.

*Freedom of expression is a human right guaranteed by the constitution and various national and international legal instruments. In the era of technological advancement and the rapid use of social media, digital space has become the primary means for people to express opinions and communicate. However, in practice in Indonesia, freedom of expression on social media often experiences conflicts between human rights protections and positive law, particularly Law Number 19 of 2016 concerning Electronic Information and Transactions. Method: Using a normative juridical method with a comparative legal approach and qualitative analysis of primary, secondary, and tertiary legal materials. Materials were collected through a literature review, as well as a literature search related to the regulation of freedom presented both from a human rights perspective and the provisions of the Electronic Information and Transactions Law. Conclusion: While Human Rights provide broad protection for freedom of expression, the Electronic Information and Transactions Law sets limits on the dissemination of information, which has the potential to trigger legal conflicts when restricting expression in the digital space. Harmonization is needed between the protections that state freedom and the regulations of the Electronic Information and Transactions Law to ensure that human rights and public security are maintained on social media.*

**Keywords:** *Freedom of Speech; Social Media; Human Rights; Electronic Information and Transactions Law.*

---

## I. INTRODUCTION

Humans are living creatures created with reason. With their reason, humans can think and act. Freedom of thought is complete when accompanied by freedom of expression. Freedom of expression is a fundamental human right and plays a vital role in a democratic society.<sup>i</sup> According to Frans Magnis Suseno in the journal<sup>ii</sup> Human Rights are defined as fundamental or absolute rights that are a gift from the Almighty, given to humans from the moment they are born. This is regulated in the 1945 Constitution of the Republic of Indonesia and is also enshrined in Law No. 39 of 1999 concerning Human Rights. This is further reinforced by Law No. 9 of 1988 concerning Freedom of Expression in Public, thus ensuring that individual freedom of expression is a legally protected right.<sup>iii</sup> Everyone can freely express their opinions, either directly or through social media. The development of information and communication technology is becoming increasingly advanced and rapid, and has proven to be beneficial for its users.<sup>iv</sup> However, in practice, several violations were found by social media users.<sup>v</sup>

As regulated in Law Number 19 of 2016, an amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions, this law essentially serves as a guideline for social interactions via the internet. The Information and Electronic Transactions Law was originally designed to protect the public, but in practice it is often considered to limit individual freedom of expression.<sup>vi</sup> These two rights can be contradictory and difficult to reconcile. The boundaries were drawn after such tensions arose.<sup>vii</sup> In this case, it creates the most fundamental contradiction of the concept of Human Rights guaranteeing freedom of expression as a right that cannot be reduced, while in practice the provisions of the Electronic Information and Transactions Law actually limit and criminalize this freedom through articles that are multi-interpretable and repressive, thus creating a conflict between the protection of Human Rights and law enforcement in the digital realm.

## II. METHODS

This research is a type of normative legal research that examines law conceptualized as norms or rules that apply in society and become a reference for behavior.<sup>viii</sup> According to Abdulkadir Muhammad and Soerjono Soekanto in normative legal research is research that examines legal issues from a legal perspective in depth, focusing on established legal norms, which are referred to as dogmatic.<sup>ix</sup> This normative research also uses conceptual, statutory, and comparative approaches to compare different legal provisions.

### 2.1. Sources of Legal Materials

The legal materials required in this research are divided into three, namely primary legal materials, secondary legal materials and tertiary legal materials.

#### a. Primary Legal Materials

Primary legal materials in the form of statutory regulations used in this research include:

- 1) The 1945 Constitution of the Republic of Indonesia
- 2) Law Number 39 of 1999 concerning Human Rights
- 3) Law Number 19 of 2016 concerning Electronic Information and Transactions
- 4) Government Regulation of the Republic of Indonesia Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions
- 5) Constitutional Court Decision Number 105/PUU-XXII/2024 Concerning Amendments to Several Articles in the Electronic Information and Transactions Law

b. Secondary legal materials are detailed regulatory sources that further elaborate on the original regulations, provide interpretations, and support and refine existing primary legal foundations. Legal interpretations include publications and data from review materials, literary books, journal articles, dissertations, and literature reviews within dissertations.

c. Tertiary Legal Materials are legal materials that explain primary and secondary legal material, such as the Indonesian dictionary, which basically acts as a supplementary regulation that provides direction or additional details regarding the main regulatory literature.

### 2.2. Legal Material Collection and Processing Techniques

In normative legal research, the method of collecting legal materials, or secondary materials, is carried out through literature studies of various legal sources, including primary, secondary, tertiary, and non-legal sources. This legal material can be obtained through reading, observing, listening, and searching for information on the internet and websites.

### 2.3. Legal Material Analysis

Classified legal materials are analyzed using conceptual approaches, legislation, and other approaches to understand or resolve problems. Qualitative analysis methods are used to interpret legal materials in depth.

## III. RESULT AND DISCUSSION

### 3.1. Comparison of the Provisions on Freedom of Expression on Social Media from a Human Rights Perspective and Law Number 19 of 2016 Concerning Information and Electronic Transactions in Indonesia

#### 3.1.1. Freedom of Expression on Social Media from a Human Rights Perspective

Various human rights instruments, such as Article 12 of the Universal Declaration of Human Rights (UDHR) 1948, protect this freedom. According to Article 4 of Law Number 39 of 1999 concerning Human Rights, the right to freedom of thought, conscience, and conscience cannot be reduced under any circumstances.<sup>x</sup> If someone is prohibited or silenced from expressing their opinion, this action is considered a violation of their human rights. The concept of human rights regarding freedom is often considered contrary to the principle of the rule of law. However, as a state based on the rule of law, Indonesia has adopted various international regulations that protect freedom of expression. Furthermore, the Indonesian constitution also guarantees this right, so criticizing the government is not considered a violation of the law.<sup>xi</sup> The guarantee of rights is also stated in Law Number 39 of 1999 concerning Human Rights, Article 14 paragraphs (1) and (2). The principle of non-intervention emphasizes that the government may not illegally interfere with this right,

and freedom of expression must be granted equally without discrimination.<sup>xiii</sup> According to Bahder Johan Nasution in<sup>xiii</sup> from a human rights perspective, government power can be limited by fundamental rights. While limitations may be imposed in certain situations, they must be reasonable, in accordance with statutory regulations, and necessary to protect the rights and reputations of others, state security, public reporting, public health, or public morals.<sup>xiv</sup>

### **3.1.2. Freedom of Expression on Social Media in the Perspective of Law Number 19 of 2016 concerning Information and Electronic Transactions in Indonesia**

The Electronic Information and Transactions Law was designed to anticipate negative impacts and support current technological advancements. It also defines the types of acts that constitute criminal offenses in the field of information technology and electronic transactions, as well as defining the elements of wrongdoing and the types of attacks that constitute these crimes.<sup>xv</sup> However, the impact of the Electronic Information and Transactions Law on freedom of expression on social media has become a widely discussed issue, generating both pros and cons. Freedom of expression emerged with the aim of eliminating anything that is conveyed in conveying certain opinions or views that can have a negative impact on social welfare and justice.<sup>xvi</sup> The implementation of the Electronic Information and Transactions Law has often been criticized for restricting freedom of expression, particularly when its articles are used to prosecute those who express opinions online, including criticism of the government and public policy. This has led to a decline in the level of freedom of expression in Indonesia due to concerns that the opinions expressed could result in legal sanctions.<sup>xvii</sup> Regulations regarding the distribution of electronic information containing content that violates morality are regulated in Article 27 paragraph 1 of Law Number 19 of 2016 concerning Electronic Information and Transactions, with the following provisions:

"Any person who intentionally and without the right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain content that violates morality."<sup>xviii</sup> Regarding the implementation of the provisions in Law Number 19 of 2016 relating to the explanation of the term "distributing, transmitting and/or making accessible Information and Electronics", confirmation of the offense of complaints, and referring to criminal provisions in the Criminal Code, as further regulated in Government Regulation of the Republic of Indonesia Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions. The Implementation of Electronic Systems and Transactions aims to regulate several provisions contained in the Electronic Information and Transactions Law to ensure that the rights and freedoms of others are recognized and respected, and that justice is carried out in a democratic society based on security assessments and general warnings.<sup>xix</sup> The Implementation of Electronic Systems and Transactions also states that criminal provisions related to electronic information, particularly those related to defamation and slander, are complaint-based offenses. This means that action against such violations can only be taken if there is an official complaint from the aggrieved party, and it is not a general offense that can be investigated without a report. Restrictions on freedom of expression in the Criminal Code:<sup>xx</sup>

Articles 207, 208, and 209 regulate the prohibition of insulting the authorities or state-owned business assets verbally or in writing.

1) Articles 310, 311, 315, and 316 regulate acts of attacking or defaming someone's good name through writing.

2) Article 317 regulates slander, false notices or false complaints that can harm other parties, which are forms of violation of the law.

3) Defamation of a deceased person, which is also included in the crime of violation and is regulated in certain articles of the Criminal Code.

In Decision Number 105/PUU-XXII/2024, the Constitutional Court granted part of the petition for material review against Article 27A in conjunction with Article 45 paragraph (4) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions against the 1945 Constitution of the Republic of Indonesia. The Constitutional Court emphasized that Article 27A of the Electronic Information and Transactions Law can only be applied to cases of defamation directed at individuals or individuals, not to government institutions, corporations,

professions, positions, or certain groups with specific identities. In Decision Number 105/PUU-XXII/2024, the Constitutional Court emphasized that the article regulating defamation only applies to individuals or individuals.<sup>xxi</sup>

### Comparison of Terms

DIFFERENCE		
Aspect	Human Rights Perspective	ITE Law Perspective
Legal basis	<ul style="list-style-type: none"> <li>1945 Constitution</li> <li>Law Number 39 of 1999 concerning Human Rights</li> </ul>	<ul style="list-style-type: none"> <li>Law Number 19 of 2016 amending Law Number 11 of 2008 concerning Electronic Information and Transactions</li> </ul>
Right to Freedom of Speech	Fundamental rights, freedom to express criticism	There is freedom, but it is limited to prevent pollution and hatred.
Limits of Freedom	The limitations are only to protect the security, peace and rights of others so that they are not violated, with the principle of not reducing human rights.	Strict, including prohibitions on insults and defamation on social media
Implications for government criticism	Criticism of the government is part of democratic rights and is guaranteed by Human Rights.	Criticism of the government ultimately resulted in the enforcement of the Electronic Information and Transactions Law, which has the potential to silence critics due to the articles on defamation and violations.
Legal Protection	The state is responsible for protecting freedom of expression as part of human rights.	The Electronic Information and Transactions Law cracks down on harmful content, but is often seen as restricting freedom of expression.
Controversy and criticism	Supporting freedom of expression	Often considered restrictive and prone to abuse
EQUALITY		
Aspect	Human Rights Perspective	ITE Law Perspective
Recognition of Rights	Recognizing the right to freedom is interpreted as the right	Recognizing the right to freedom of expression in the digital world
There are Limitations	Still recognizing the existence of certain limitations	Implementing boundaries to protect others
Protection by the State	The state is responsible for protection	The country responsible for implementing the rules
Focus on public order	Maintain comfort and do not violate the rights of others	Maintaining comfort in digital space
Purpose of Restriction	To prevent violations of the rights and freedoms of others	To prevent defamation, hatred, and protect society

*Source:processed from various sources by the author.*

The comparison between the provisions of the Human Rights Act and the Electronic Information and Transactions Law regarding freedom of expression on social media lies in their emphasis and limitations. Human Rights Act emphasizes the protection and guarantee of freedom of expression as a basic right that can only be limited, while the Electronic Information and Transactions Law tends to provide broader and more concrete limitations, especially in the context of the dissemination of information on digital media, which in practice often gives rise to potential violations of Human Rights principles.<sup>xxii</sup> However, both the Human Rights perspective and the Electronic Information and Transactions Law have similarities in that they both acknowledge that freedom of expression is an important right that is recognized and guaranteed by the state, both in physical space and in digital space, recognizing the existence of the right to freedom which is interpreted as a basic right or constitutional right.<sup>xxiii</sup>

### 3.2. Potential Conflict Between the Provisions on Freedom of Expression on Social Media from a Human Rights Perspective and Law Number 19 of 2016 Concerning Electronic Information and Transactions

#### 3.2.1.1. Sources and Analysis of Potential Conflicts

The analysis focuses on the sources and potential conflicts between the two previously compared concepts. The approach remains based on comparative law, but places greater emphasis on identifying and analyzing normative conflicts and their implementation in the field. The conflict between the concept of

freedom as outlined in human rights and the provisions of the Indonesian Law on Information and Electronic Transactions is a complex and frequent issue. Because the rule of law does not yet encompass freedom of opinion and expression, these freedoms cannot develop properly.<sup>xxiv</sup> Several articles are considered to be able to convert differently, so that the government can take actions that have the potential to threaten the speech of citizens, namely Article 27 paragraph (3) states that "Any person who intentionally and without the right distributes and/or transmits and/or makes accessible Electronic Information that contains insults and/or defamation." The main problem is that it is considered that the article has multiple interpretations that do not have a clear boundary between legitimate criticism and insults, as well as the criminalization of criticism, namely many cases show that criticism of public officials or institutions is often considered defamation.<sup>xxv</sup> The tension between human rights protections for freedom of expression and state efforts to maintain public protocols and prevent violations of social media protocols is a major source of potential conflict. Social media allows for issues such as hate speech, the spread of hoaxes, disinformation, cyberbullying, and privacy violations, but it also provides a space for people to voice their opinions.<sup>xxvi</sup>

### 3.2.2. Conflict Resolution Efforts

Restrictions are basically intended as a concept that aims to regulate and control conflicts that arise due to the implementation of various rights.<sup>xxvii</sup> Law enforcement efforts to prevent the spread of hatred on social media, the Republic of Indonesia National Police (Polri), as a law enforcement agency, has the ability to take preventive measures.<sup>xxviii</sup> Legal experts and human rights activists have proposed changes to the Electronic Information and Transactions Law to avoid legal challenges and provide legal certainty.<sup>xxix</sup> Many internet users are unaware of the new legal restrictions, putting them at risk of legal trouble due to their ignorance. This underscores the need for the government to be more proactive in disseminating information about the revised Electronic Information and Transactions Law. This is to ensure the revisions have an optimal impact on protecting freedom of expression.

## IV. CONCLUSION

Human rights guarantee broad and fundamental freedom of expression, including expression on social media. However, the Electronic Information and Transactions Law imposes a number of restrictions on this freedom to maintain public confidentiality and prevent ecosystem disruption, resulting in a greater potential for theft of rights within the realm of Indonesian positive law than under universal human rights principles. Potential conflicts between the principle of freedom of expression from a human rights perspective and the provisions of the Electronic Information and Transactions Law frequently arise, particularly when articles in the Electronic Information and Transactions Law are used to restrict or suppress the expression of opinions on social media, which are actually protected by human rights. This demonstrates the need for harmonization of regulations between the protection of freedom of expression and the interests of maintaining peace and security in the digital space to prevent human rights violations.

## REFERENCES

- [1] Andriansyah, Muhammad Wahyu, dan Sekaring Ayumeida Kusnasi. 2022. "Hak Kebebasan Berpendapat di Era Digital Perspektif Hak Asasi Manusia." *Gorontalo Law Review* 2.
- [2] Raskasih, Fadilah. 2020. "Batasan Kebebasan Berpendapat Melalui Media Elektronik Dalam Perspektif HAM Dikaitkan Dengan Tindak Pidana Menurut UU ITE." *Journal Equitable* 3.
- [3] Puspitasari, Dwi Nikmah. 2016. *Kebebasan Berpendapat Dalam Media Sosial*. 19 July. <https://buletin.k-pin.org/index.php/daftar-artikel/16-arsip-artikel/110-kebebasan-berpendapat-dalam-media-sosial>.
- [4] Rahmawati, Nur, Muslichatun Muslichatun, dan M Marizal. 2021. "Kebebasan Berpendapat Terhadap Pemerintah Melalui Media Sosial Dalam Perspektif UU ITE." *Jurnal Kajian dan Penelitian Hukum Widya Pranata Hukum* 62.
- [5] Nasution, Latipah. 2020. "Hak Kebebasan Berpendapat dan Berekspresi Dalam Ruang Publik di Era Digital." *Jurnal UIN Syarif Hidayatullah Jakarta* 39.
- [6] Rahmadani, Alya, Monika Lisa Paramita, Shafa Haura, dan Firman Firman. 2024. "Regulasi Digital Dan Implikasinya Terhadap Kebebasan Berpendapat Pada Undang-Undang ITE Pada Platform Media Sosial di Indonesia." *Journal of Social Contemplativa* 4.



- [7] Kusumo, Vonny Kristanti, Ie Lien Risey Junia, Yuwono Prianto, dan Tatang Ruchimat. 2021. "Pengaruh UU ITE Terhadap Kebebasan Bereksprei Di Media Sosial." *Seminar Nasional Hasil Penelitian dan Pengabdian Kepada Masyarakat 2021 Universitas Tarumanegara* 1071.
- [8] Muhaemin. 2020. *Metode Penelitian Hukum*. Mataram-NTB: Mataram University Press.
- [9] Djulaeka, dan Devi Rahayu. 2020. *Buku Ajar Metode Penelitian Hukum*. Surabaya: Scopindo Media Pustaka.
- [10] Dewi, Vebrika Dwi Purnama. 2024. "Kebebasan Berpendapat dan Pelanggaran Hak Asasi Manusia di Media Sosial." *Legal Studies Journal* 87.
- [11] Kusuma, Ersas, Septya Wahyu, Tutik Yuniani, Firza Zaenatin, Putra Gilang, dan Aris Prio Agus. 2023. "Kebebasan Berpendapat dan Kaitannya Dengan Hak Asasi Manusia (HAM)." *Sanskara Hukum dan HAM* 98.
- [12] Julianja, Sufiana. 2018. "Pembatasan Kebebasan Bereksprei dalam Bermedia Sosial: Evaluasi Undang-Undang Informasi dan Transaksi Elektronik dalam Perspektif Hak Asasi Manusia." *Jurnal Fakultas Hukum Universitas Padjajaran* 19.
- [13] Wahyu, Rizky, dan Yati Sharfina Desiandri. 2024. "Hak Asasi Manusia (HAM) Pada Kebebasan Berpendapat/Bereksprei dalam Negara Demokrasi di Indonesia." *Jurnal Sains dan Teknologi* 964.
- [14] Tazmi, Nizam. 2025. "Perlindungan Hak Asasi Manusia Dalam Kebebasan Berpendapat dan Bereksprei di Media Sosial." *Justices: Journal of Law* 40.
- [15] Hidayat, BR, Ufran, dan Rodliyah. 2023. "Kebijakan Legislasi "Cyber Sex" Pada Forum Anonymous Chatbot Telegram Menurut Undang-Undang ITE." *Indonesia Berdaya: Journal of Community Engagement* 478.
- [16] Remanu, Alifah Jasmine Kallista, Calista Sahlah Purwanto, Nadhira Nurul Fajri, dan Firman Lukman. 2024. "Analisis Implikasi UU ITE Terhadap Kebebasan Bereksprei di Ruang Digital: Studi Kasus Greenpeace Indonesia." *Jurnal ISO: Jurnal Ilmu Sosial, Politik dan Humaniora* 2.
- [17] Rahmawati, Nur, Muslichatun Muslichatun, dan M Marizal. 2021. "Kebebasan Berpendapat Terhadap Pemerintah Melalui Media Sosial Dalam Perspektif UU ITE." *Jurnal Kajian dan Penelitian Hukum Widya Pranata Hukum* 31.
- [18] Hidayat, BR, Ufran, dan Rodliyah. 2023. "Kebijakan Legislasi "Cyber Sex" Pada Forum Anonymous Chatbot Telegram Menurut Undang-Undang ITE." *Indonesia Berdaya: Journal of Community Engagement* 478.
- [19] Sahib, Nathania Salsabila Marikar, Soesi Idayanti, dan Kanti Rahayu. 2023. "Problematika Penyelenggara Aturan Sistem Elektronik (PSE) di Indonesia." *Pancasakti Law Journal* 66.
- [20] Mayolaika, Shelma, Valerie Victoria Effendy, Christian Delvin, dan Mohammad Aqila Hanif. 2021. "Pengaruh Kebebasan Berpendapat di Sosial Media Terhadap Perubahan Etika dan Norma Remaja Indonesia." *Jurnal Kewarganegaraan* 828.
- [21] Rachman, Taufik M, dan Bahri Yamin. 2025. "Implikasi Yuridis Putusan Mahkamah Konstitusi Nomor 105/PUU-XXII/2024 Terhadap Penegakan Hukum Tentang Informasi dan Transaksi Elektronik." *Unizar Law Review* 71.
- [22] Raskasih, Fadilah. 2020. "Batasan Kebebasan Berpendapat Melalui Media Elektronik Dalam Perspektif HAM Dikaitkan Dengan Tindak Pidana Menurut UU ITE." *Journal Equitable* 3.
- [23] Guntara, Bima, dan Ayni Suwarni Herry. 2022. "Hak Kebebasan Berpendapat di Media Sosial Dalam Perspektif Hak Asasi Manusia." *Jurnal Pendidikan Dan Konseling (JPDK)* 6947.
- [24] Farida, Elfia. 2021. "Kewajiban Negara Indonesia Terhadap Pemenuhan Hak Kebebasan Berpendapat dan Bereksprei." *Jurnal Ilmiah Ilmu Hukum QISTIE* 45.
- [25] Caniago, Deosa Putra, M Rachmat Sulthony, Mhd Adi Setiawan Aritonang, dan Joni Eka Candra. 2025. *Komputer dan Masyarakat: Teknologi, Etika, dan Informasi Sosial*. Sumatera Barat: Yayasan Tri Edukasi Ilmiah.
- [26] Bambang, Jam'ul Ihsan, Nadhratun Najwa, Muhammad Risky Rahmadani, Haya Salsabila, Arie Sulistyoko, Mufti wardani, dan Ahmad Muhajir. 2025. "Kebebasan Berbicara di Media Sosial: Antara Regulasi dan Ekspresi." *Student Research Journal* 91.
- [27] Pranoto, Iskandar. 2012. *Hukum HAM Internasional Sebuah Pengantar Kontekstual*. Cianjur: IMR Press.
- [28] Gunawan, Heri. 2020. "Tinjauan Yuridis Terhadap Ujaran Kebencian (Hate Speech) di Media Sosial Dikaitkan Dengan Kebebasan Berpendapat dan Undang-Undang Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik." *Res Nullius Law Journal* 85.
- [29] Wibowo, Dedi Prasetyo, dan Sudarto. 2025. "Akibat Hukum Bagi Pelaku Penyebaran Informasi Palsu (Hoax) Berdasarkan UU ITE." *Jurnal Kajian Hukum dan Keadilan Lex Leguens* 51.