

## Freedom of Speech for Twitter Users According to the Constitution

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### Abstract

Freedom of speech is the main pillar of a country with democratic principles. Advancements in science and technology have facilitated the utilization of freedom of expression in two-way communication on social media, particularly on Twitter. Twitter was chosen as a means of communication because it is easier to access and manage information and convey aspirations and ideas. This study aims to examine the constitutional provisions regarding freedom of speech for Twitter users and to identify the challenges related to its enforcement in Indonesia. This legal research employed normative legal research, utilizing the method of inventorying library materials and data processing techniques by selecting primary, secondary, tertiary, and non-legal data, which are systematically arranged to find more actual results. The results indicated that the regulation of freedom of opinion on Twitter needs to be studied further since the sanction setting was only found in Law Number 19 of 2016. The problems that arise in freedom of speech on Twitter include conveying hate speech and cyberbullying, and humiliation and harassment using vulgar words or verbal sexual harassment. There is a need to draft a special regulation on freedom of expression on Twitter, which is expected to become a pillar for regulating freedom of speech on electronic media so that there are no problems or restrictions on expressing opinions.

**Keywords:** Constitution; Freedom of speech; Social media; Twitter

### 1. Introduction

The right to publicly express opinions, whether orally or in writing, is inherent to every citizen and constitutes a fundamental principle of a democratic state. Expressing opinions in public is actually part of the pillars of democracy, the protection of which is guaranteed by the Constitution. The advancement of science and technology in Indonesia has facilitated the expression of opinions through social media. Social media works as an intermediary for communication and messages to a two-way system that is external to its users [1]. Social media, as an intermediary for conveying information, a means of communication, and a means of expressing opinions, has had a huge impact on its users, both from the community itself and from the government. Users can freely express their opinions through social media, especially for Twitter users. Twitter is a platform with the largest number of users in the world. Meanwhile, Indonesia itself contributed 18.45 million Twitter users, which is equivalent to 4.23% of Twitter users in the world in 2022 [2]. With that number of users, people can freely express their opinions and aspirations in public.

Freedom of speech in Indonesia has been clearly regulated in Article 28 of the 1945 Constitution, stating that "*Freedom of association and assembly, expressing thoughts verbally and in writing and so on is determined by law.*" In expressing opinions, there is no

intervention or interference from any parties, and they are free to express opinions through any media without any territorial restrictions. Freedom of speech itself is part of human rights, and citizens receive guaranteed protection for each individual. Therefore, it is stated in Article 23 paragraph (2) of Law Number 39 of 1999 concerning Human Rights that *"Everyone is free to have, express, and disseminate opinions according to their conscience verbally or in writing through print or electronic media by paying attention to religious values, morality, order, public interest, and the integrity of the state"* [3]. However, the advancement of science and technology has changed society's paradigm of social media, particularly Twitter. Twitter is often used as a means of conveying criticism and suggestions that are most effective for the current government. How could it not be that every criticism will be spread from one user to another so that it goes viral? Twitter users often misuse freedom of speech as a shield to argue, leading to hate speech, defamation, and threats of bullying. Many criticisms of K-pop music fans have turned into insults, bullying, and the spread of hoaxes that touch on Tribe, Religion, Racial, and Intergroup (in Indonesian called *Suku, Agama, Ras, dan Antargolongan (SARA)*) elements by other Twitter users [4]. This phenomenon occurs because the opinions expressed by K-pop music fans have drawn pros and cons from other Twitter users, resulting in unexpected reactions, harsh criticism, and indecent insults to K-pop music fans.

The constitution has regulated the principle of freedom of speech for citizens to express their ideas, thoughts, and aspirations on social media, especially Twitter. However, the difficulty in distinguishing between freedom of speech and insults and hate speech in the name of conveying criticism sometimes becomes a problem for the principle of freedom of speech because each Twitter user has different perceptions and opinions from each other. There are no special regulations for freedom of speech on Twitter that serve as a benchmark for the expression of opinions and expressions of its users. Many users seem to 'take refuge' in freedom of speech by conveying hate speech and insults in their tweets [5]. Based on the research background, this study intends to investigate the constitutional provisions regulating freedom of speech for Twitter users and to assess the challenges related to the enforcement of these provisions in Indonesia. The study provides a benchmark for freedom of speech on Twitter in Indonesia moving forward.

## 2. Research Methods

This research was normative legal research with data collection techniques using the inventory method of library materials and secondary data sources. Secondary data sources include primary legal materials, secondary legal materials, tertiary legal materials, and non-legal materials. Primary legal materials needed in this study include the 1945 Constitution, Law Number 39 of 1999 concerning Human Rights [3], and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions [6] and other laws and regulations related to freedom of expression for Twitter users according to the constitution, while for secondary legal materials and tertiary legal materials using data that is related to the research topic. The research data processing technique was carried out by selecting primary, secondary, tertiary data, and non-legal data related to freedom of expression

for Twitter users according to the constitution. This research was compiled systematically with good, correct, and logical language so that the results are actual. The research data will be analyzed using the content analysis method on all data that has been collected, and it will be arranged systematically with logical language so that the research results are relevant to the research.

### **3. Results and Discussion**

#### **3.1. Freedom of Speech Regulations on Twitter**

As a nation committed to democratic principles and a political framework characterized by the separation of powers, the governance must be regulated by pertinent state laws [7]. Consequently, the legal guidelines employed must be unequivocally relevant, encompassing all facets of national existence, and ensuring the safeguarding of every citizen's rights, particularly concerning freedom of opinion and expression. It is stated in the Indonesian Constitution that freedom of opinion for Indonesian citizens has been regulated in such a way that every citizen can express their opinion in public. They include:

1. Article 28 of the 1945 Constitution states, "Freedom of association and assembly, of expressing thoughts orally and in writing are determined by law" [8].
2. Article 28E paragraph (3) of the 1945 Constitution states, "Everyone has the right to freedom of association, assembly and expression of opinion" [8].
3. Article 28F of the 1945 Constitution states, "Everyone has the right to communicate and obtain information to develop themselves and their social environment, and has the right to seek, obtain, possess, store, process and convey information using all available channels" [8].

Freedom of speech does have a critical purpose for a country that holds democracy. In addition, with the advancement of science and information technology (in Indonesian called *IPTEK*), which is in line with the development of the times, people can obtain information and express their opinions freely without regard to territorial boundaries. The development of *IPTEK* and the penetration of communication through social media, especially Twitter, has made the direction of community communication more dynamic. Twitter itself allows anyone to express their opinions to anyone without any territorial and time restrictions that regulate [9].

Twitter is a microblogging site with restrictions on the number of characters in each tweet posted by its users. In general, Twitter itself is focused on information and communication, which is a positive force to strengthen the Twitter user community by having focus areas including network safety and education, equality, conservation and environmental sustainability, and freedom of speech and civil society freedom.

In Indonesia, Twitter applies the idea of directing the power of the mass of users, which creates a bridge that influences the development of society [10]. Currently, Twitter has become a means of conveying information, public ideas, and public opinion, whether it is used by certain fan communities or by public officials.

Freedom of opinion, which is part of the foundation of a democratic state, means that every citizen has the right to freedom, which is a means of communication and an

inherent part of democracy. So, a country can be said to be democratic if there is communication without obstacles [11]. Freedom of opinion is also included in the main pillars that indicate that a country upholds the principles of a democratic state, namely as a state that treats its citizens to exercise individual rights as a means of expressing their aspirations freely without any restrictions and with guarantees of protection from the state [12].

Further regulations regarding freedom of opinion are contained in Law Number 39 of 1999 concerning Human Rights. Article 23, paragraph (2) of Law Number 39 of 1999 concerning Human Rights states that every person has the right to express and disseminate their opinions orally and in writing via print or electronic media [3]. In this case, Twitter is included in the media section regulated by Article 23, paragraph (2). Freedom of opinion actually has limitations, namely the freedom of other individuals who are assessed from the aspect of norms that apply in society. So, when someone expresses their opinion, they are prohibited from spreading hatred either directly or through social media [13].

Regulations on social media or electronic media are generally regulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. Article 27, paragraph (3) explains that there is a prohibition for anyone who intentionally distributes electronic information with insulting and defamatory content [6]. This article explains the prohibition for anyone not to distribute someone's data for threats of insults and use to defame others. Article 27, paragraph (3), is still the main guideline for Twitter users in exchanging opinions and ideas on an issue if the ideas conveyed contain diction that is open to multiple interpretations. Article 27, paragraph (3) itself, is included in the group of articles that still need to be detailed, thus giving rise to debate on the concept and principles of freedom of opinion [14]. The provisions in Article 27, paragraph (3), have also received much opposition from various parties because they are considered to deny and paralyze the right to freedom of opinion, which is part of the human rights of every citizen whose protection is guaranteed by the state. Article 27, paragraph (3), is also indicated as an article that has a floating position because several elements have multiple meanings [15].

There is also Article 28, paragraph (2), which states that there are regulations regarding the dissemination of information aimed at a particular individual and group containing elements of SARA that cause hatred or hostility. This article refers to the public's delivery of opinions with inappropriate language. It leads to hate speech towards others, where the increasing number of hate speech containing elements of SARA that are expressed between Twitter users makes the acquisition of information no longer stable. Twitter provides a new understanding and color for the community paradigm, and Twitter has actually provided freedom of opinion without considering national boundaries, which is more effective in making the program of conveying community aspirations on Twitter a success.

Twitter is then adjusted to the aspect of freedom of speech in accordance with the laws that regulate it as a foundation for communicating in a democratic country, such as the state's implementation of freedom of expression through social media, which is the right of every citizen. With a character limit that can be tweeted in one tweet of 280

characters with the inclusion of images or videos as supporting media, of course, this allows users to freely convey their ideas and aspirations in a more aspirational way. As is well known, the advancement of science and technology in this era of globalization has made the issues of democratization, law, human rights, free trade, open market operations, and government transparency the main topic of discussion in international forums in each country if the country concerned does not want to be removed from the world scope [16]. The massive development of Twitter users in Indonesia is also one of the impacts of the development of science and technology itself. Twitter is the most important part of freedom of speech on social media. Someone who has Twitter is proof that someone has made improvements in social media and can be used as a means of bridging the community with the government in communicating.

### **3.2. Problems in Freedom of Speech for Twitter Users**

Along with the development of the era and technological progress, freedom of speech in Indonesia has many problems. With the massive number of Twitter users in Indonesia reaching 18 million users, various problems may arise in expressing opinions.

#### **3.2.1. Hate Speech and Cyberbullying**

The rapid advancement of technology has brought about very significant changes in freedom of speech, especially on Twitter. The wide scope of Twitter's limitations opens up the possibility for its users to express their aspirations in various languages. However, it does not rule out the possibility for users to express their aspirations with inappropriate words that end in arguments. Some 'individuals' use Twitter to attack or insult others without making direct contact.

The most common example is Twitter users who label themselves as music fans, especially K-pop music fans, expressing their opinions or criticizing an issue but ending in negative comments and hatred [4]. In its development, the phenomenon of defamation and hate speech involving SARA elements on any social media has been properly regulated in Article 28 paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions [6]. Other users continuously conveyed hate speech to K-pop fans who 'hid' behind the words freedom of speech, which led to cyberbullying.

Cyberbullying on Twitter can no longer be categorized as something normal that occurs on social media. Cyberbullying that occurs does not only attack K-pop fans but also users who do not label themselves as part of any community with different opinions. Cyberbullying is different from bullying in general [17]. Cyberbullying on Twitter emphasizes indirect interaction by making lots of insults or negative comments to the target, while bullying generally interacts directly. Cyberbullying on Twitter also often spreads to SARA discussions that do not care who the bullying is directed at, as in Figure 1.





**Translation of Twitter content from @KoprofilJati:**

"Bi, please make our guest something to drink"

"Yes, madam"

**Note:** *Bi* is a term for a housemaid in Indonesia

**Figure 1.** Hate Speech Against First Lady Iriana Joko Widodo from User @KoprofilJati on November 17<sup>th</sup>, 2022

A Twitter user, @KoprofilJati, uploaded the photo along with a tweet that made many people furious, and it was inappropriate to convey his comments by bringing SARA elements to other people, especially to the First Lady of Indonesia. After some time, the user @KoprofilJati deleted his tweet and wrote that he apologized for his previous tweet because many people misunderstood that he was belittling the person in the picture. It did not take long for clarification from @KoprofilJati to reach users @kaesangp and @gibran\_tweet, who are the children of Mrs. Iriana Joko Widodo and immediately received a response from the user @kaesangp asking the meaning of the clarification tweet and was continued by the user @gibran\_tweet by asking where the netizens' misunderstanding of the tweet was.



**mati pelan** @KoprofilJati · 45m

Replying to @kaesangp

caption sy merupakan bentuk sarkasme terhadap kaum bumiputera yg merasa inferior sekaligus reaksioner serta fanatik terhadap tokoh politik tertentu. hal ini adalah self-evident.

**Translation of Twitter content from @KoprofilJati:**

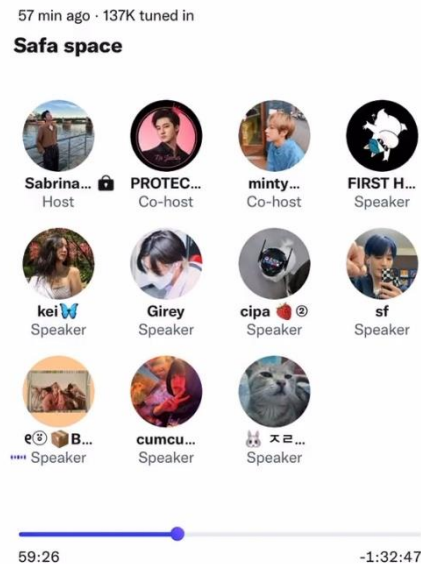
"My caption is a form of sarcasm towards bumiputera who feel inferior as well as reactionary and fanatical towards certain political figures. this is self-evident"

**Figure 2.** Tweet Reply from @KoprofilJati to @kaesangp

The article on freedom of speech in Article 28, paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions clearly explains that there are elements of inviting or influencing that will give rise to hatred towards people who are targeted based on SARA. When examining the problem of the user @KoprofilJati along with the alibi he made, he tried to make jokes in the form of sarcasm by displaying a photo of Kim Keon-Hee as the First Lady of South Korea who was dressed casually like South Korean women in general, side by side with Iriana Joko Widodo as the First Lady of Indonesia who was dressed in such a way but looked like a 'maid.' The defense of the user @KoprofilJati in Figure 2 also received a reply from @kaesangp in the form of an apology because he did not know anything about what was explained and ordered @KoprofilJati to explain to a legal expert.

In addition to containing SARA elements, hate speech on Twitter can be found in fan communities that often express offensive sentences to other fans. K-Pop fans are considered the most correct, such as children, uneducated, or stupid [4]. There are K-

pop fans who broadcast space, which is Twitter's newest feature, in the form of public chats that have drawn much criticism from various parties because the topic of discussion that is carried out alludes to hate speech that is said to the idol, then triggers anger for several other fans, such as Figure 3.



**Figure 3.** Twitter Space by K-Pop Fans on May 18, 2022

In addition to containing SARA elements, hate speech on Twitter can be found in fan communities that often express offensive sentences to other fans. K-Pop fans are considered the most correct, such as children, uneducated, or stupid [4]. There are K-pop fans who broadcast space, which is Twitter's newest feature. These public chats have drawn much criticism from various parties because the topic of discussion that is carried out alludes to hate speech that is said to the idol and then triggers anger from several other fans, such as in Figure 3.

### 3.2.2. Insults and Harassment Using Vulgar Words

Nisriyna [18] via gadgetdiva.id reported that around 43% of Twitter users in Indonesia are dominated by users aged 18 to 24 years and are included in the Generation Z or Gen Z category. With such a large number, as many as 67% of users are individuals who want to receive and provide much information; debates may arise regarding the ideas given by one user to another.

This type of user is open-minded without being equipped with any information and then goes to Twitter with a discovery mindset. The rapid development of science and technology and the presence of Twitter have become places for users to sort information and convey arguments and ideas, which will certainly give rise to pros and cons for other users. The absence of personal control from within each individual is an internal factor that causes arguments on an issue. Pros and cons, negative and hate speech to threats, and the emergence of insults using vulgar sentences are illustrated in Figure 4.



Translation of Twittwe content from  
@gorgeousclvet and @jeffrinichol:

@gorgeousclvet:  
"better to shut up"

@jeffrinichol:  
"these 2 woman are being pitted, while  
the man is hiding like a coward"  
"better you nyepong there".

**Note:** *Nyepong* in the Indonesian Slang  
Dictionary is part of the activity of oral  
sex

**Figure 4.** Tweet by User @jeffrinichol

Figure 4 shows that the user @jeffrinichol commented on the news circulating on November 30, 2022, and received a response from netizens telling them to be quiet and not comment on anything. However, the user @jeffrinichol responded sharply using inappropriate diction. He wrote that it would be better for netizens who commented to suck men's genitals. This choice of indecent and vulgar words immediately became the focus of netizens.

If examined more deeply, according to Article 27 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions or the ITE Law, it is stated that it is not permitted for anyone with and without the right to distribute and transmit information and electronic documents that have content that violates morality. All information in writing and even documents in the form of images that have elements of morality are prohibited from being distributed by the public.

The tweets of user @jeffrinichol can be categorized as the dissemination of information that violates moral norms by including elements of sexuality and the impression of pornography or unlawful acts that are contrary to moral norms or often referred to as verbal sexual harassment. Article 9 of Law Number 44 of 2008 concerning Pornography prohibits making other people models or objects with pornographic content because the perpetrator makes the victim an object for the utterance of words containing elements of sexuality in electronic media [19]. This consideration has been made by looking at Article 1 of the General Provisions of Law Number 44 of 2008, which states that pornography can be written through various communication media. It aims to avoid sentences that are insulting, degrading, and even lead to verbal harassment. In the case of the user @jeffrinichol himself, it was written with a sexual connotation, which was not desired or wanted by the netizen who was the target. With the increasingly massive development of Twitter, tweets that are jokes about themselves can become derogatory and sexually suggestive sentences indirectly through writing [20]. The Constitution and the ITE Law do not recognize the term pornography. However, the ITE Law clearly regulates moral norms, which means that verbal harassment can be categorized as a problem that is contrary to moral norms. If there is a criminal element and the tweet of user @jeffrinichol is held responsible, Article 35 of Law Number 44 of



2008 has regulated criminal sanctions for the perpetrator if it includes elements of the crime of making and the object used contains pornographic content [20].

The absence of restrictions on freedom of speech on Twitter should not be used as a means of spreading hate speech with Tribe, Religion, Racial, and Intergroup (SARA) overtones. The Constitution does not clearly and definitely regulate freedom of speech on social media because, in the field of electronic media, the reference is the Electronic Information and Transactions Law, not the Constitution. After all, it contains provisions on criminal and administrative sanctions and other regulated norms.

#### **4. Conclusions**

Currently, Twitter serves as a platform for expressing aspirations and ideas while acquiring diverse information.. Its users can freely use all the features provided by Twitter man, age information, and conduct two-way communication more effectively by paying attention to freedom of expression. The regulation of freedom of expression on Twitter in Indonesia is specifically regulated in Law Number 19 of 2016 concerning Amendments to Law Number 2008 concerning Information and Electronic Transactions by paying attention to Chapter XA of the 1945 Constitution concerning Human Rights and related articles, especially in Article 28, Article 28E paragraph (3), and Article 28F of the 1945 Constitution and Law Number 39 of 1999 concerning Human Rights. Freedom of expression regulations on Twitter do not rule out the possibility of violations and misuse of Twitter. Problems that often arise are: 1) hate speech and cyberbullying culminate in hate speech that touches on SARA elements and threats to other Twitter users due to the absence of social control; and 2) insults and harassment using vulgar words culminate in verbal harassment that includes sexual elements to other users using writing even though it is a joke for the perpetrator.

The age demographic of Twitter users spans from 18 to 24 years, with many still in their teenage years. This range make the users often lacking a discovery mindset and relevant information on various issues. They can be easily swayed by arguments presenting both pros and cons. Therefore, regulations governing freedom of speech on Twitter must be clearly delineated, as individuals may increasingly choose to exercise their right to free expression on the platform in the future.

In light of the research findings, it concludes that the central government must formulate and implement specialized legal regulations governing freedom of speech on social media, particularly Twitter, accompanied by criminal and administrative measures to ensure legal safeguards and protection for Twitter users, encompassing both offenders and victims of freedom of speech issues. The delivery of information and public opinion on Twitter can be guaranteed legal protection because Law Number 19 of 2016 is not enough to protect Twitter users, and several articles with multiple interpretations are detrimental to Twitter users. The central government can regulate comments and selectively curate ideas and arguments from the community through the implementation of the special regulation on freedom of speech on social media. Freedom of expression and opinion will not be limited to every citizen. In addition, the central government can consider making special regulations so that problems arising from the

impact of freedom of speech on Twitter can decrease along with regulations that strictly regulate but do not limit the rights of individuals to express their opinions.

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