
The Urgency of Protecting Netizen in Freedom of Speech on Social Media

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Abstract

Freedom of speech is a part of fundamental rights to every people. Nowadays, freedom of speech could not felt widely to all people. Freedom of speech developed until Universal Declaration of Human Rights and International Covenant on Civil and Political Rights assure and restrict freedom of speech. In Indonesia, since the rise of The Law of Information and Electronic Transaction, the restriction of freedom of speech become biased, many words in social media are presumably attack others. Netizen feels security to speak up is limited, such Ruslan Buton who critics and record about President Jokowi deemed as a hoax and hate speech. Even though some articles in 1945 Constitution have already protect and guarantee all people to bear the right to speak. The limitations of Freedom of speech in The Law of Information and Electronic Transaction emerge multi interpretation which the right to speak have not been correspond with the values in 1945 Constitution. To harmonize freedom of speech in Indonesia, it needs cooperation among government and people to eradicate ambiguity and fear in which already happen. By using juridical-normative method, the research aims to understand the condition of freedom of speech in Indonesia, and to understand the protection of netizen in using social media.

Keyword: freedom of speech, netizen, the law of information and electronic transaction

1. Introduction

In 2019, there were several persons who were reported to the police due to comments against General Wiranto in social media. The persons who report have used The Law of Information and Electronic Transaction (ITE Law) as a tool to attack everyone who is comment about General Wiranto into social media. The individuals who were reported over police are Jerinx SID as personnel of Superman is Dead, Hanum Rais, Jonru Ginting, Bhagavad Samabhada, Gilang Kazuya Shimura, Colonel HZ, Sergeant Z, and First Lieutenant Assistant YNS.¹ Some of them were imposed with Article 28 paragraph 2 of The Law Number 11 Year 2008 about The Law of Information and Electronic Transaction (ITE), this article contains a prohibition of someone who is dealing with hate speech over the ethnic, race, religion, and inter group (SARA). This case give additional worries towards Indonesian people to demonstrate a critical thought that they would pour it into social media as a freedom of speech.

¹ Mela Arnani, "Mereka yang Dilaporkan atas Dugaan Langgar UU ITE Karena Cuitan Soal Wiranto" <https://www.kompas.com/tren/read/2019/10/12/160000765/mereka-yang-dilaporkan-atas-dugaan-langgar-uu-ite-karena-cuitan-soal?page=all>, accessed on 14th October 2019 at 07.45 pm

Obviously, the regulations concerning freedom of speech revealed in 1945 Constitution such as in Article 28E paragraph (3), Article 28F, and Article 28I. In addition, freedom of speech also regulated in Article 14, Article 19, Article 20 and Article 21 of People Consultative Assembly Decree of Republic of Indonesia No. XVII/MPR/1998. Moreover, regulated in The Law Number 39 of 1999 about human rights and these articles are Article 14, Article 23 paragraph (2), and Article 25.² Those articles have similar meaning to guarantee each human to demonstrate their thought, likewise Article 28F of 1945 Constitution as stated below: “Everyone has the right to communicate and obtain information to develop their personal and social environment, and has the right to seek, obtain, own, store, cultivate, and deliver information using the whole kinds of available channels”. This article specifically provides the right to communicate their thoughts and as a guarantee to everyone to reveal whichever what they want to say, obviously through any tools. Based on hierarchy, 1945 Constitution is the highest regulation in which there is no law could against the values in 1945 Constitution, if any regulation that against its 1945 Constitution, its law shall be reviewed.

The law is a forceful regulation that is held to protect the interests of people in society.³ To fulfill its interest, especially speak against anything which contradict in their perspective, everyone has the right to communicate it through any tools. Nowadays, the world has been in globalization era which means everything can be accessed through internet. Everyone has their own interest to access and surf the internet. According to Article 4 of The Law Number 11 of 2008 about Information and Electronic Transaction has some purposes, namely: to enlighten the lives of nation; giving a chance widely for everyone to advance thinking and ability in the field of use and utilization of Information and Technology as optimal as possible, and responsible; and the last is give a sense of security, justice, and legal certainty over the users and Information and Technology organizer. For those purposes, obviously the government and society have already understand what the purpose of the ITE’s Law. Nevertheless, ITE’s Law sometimes is used to trap the others with hate speech reason. The case above is one of other examples of case which use its law to become a reason for someone who is presumed violates ITE’s Law.

As the case that is mentioned above, with discussing the rights and restrictions which already stipulated in regulation, there is the ultimate goal which protect the users of internet, the netizen who has the rights to reveal their opinion in social media, the rights to access information, and the rights over security. The rights of netizen must be fulfilled. The last but not least, as explained on above, the author emphasis on

² Aji Medan, 2015, “Negara Harus Menjamin Kebebasan Berekspresi Sebagai Hak Konstitusional”, The Alliance of Independent Journalist, <https://medan.aji.or.id/negara-harus-menjamin-kebebasan-berekspresi-sebagai-hak-konstitusional/>, Accessed on 1st November 2019 at 04.30 pm

³ Van Kan and J.H. Beekhuis, 1972, *Pengantar Ilmu Hukum*. Jakarta, Indonesia, Pembangunan, p.13.

understanding and analyzing the protection of netizen within freedom of speech on social media in Indonesia.

2. Method

This research uses normative legal research method⁴ which utilize statutory approach in analyze the protection of netizen within freedom of speech on social media in Indonesia. Normative legal research is often referred to in the books as legal studies. The research uses legal approach and case studies. The legal approach is carried out by stressing those regulations relating to the issue while the case approach is carried out by evaluating the case related to regulations.⁵

In this research, the author seeks the materials from the library, concentrate on a reading and analyzing of the primary and secondary materials (such as journal articles, legal dictionaries textbooks, act, case digests, and legal encyclopedia).⁶ The main data which is used in this research is secondary data method. The method of collecting data is fulfilled by library research such analyzing, reading, and deriving conclusion from related documents (law books, legal journals, internets and other which related to the main problem of this research).

The method of data analysis is fulfilled by analyzing systematically through juridical qualitative. Systematically implies the research would be analyzed national laws and other norms which related to the issue of freedom of speech on social media. Juridical qualitative implies it will relate to the principle of law, and other regulations. Therefore, it can be systematic, comprehensive and qualitative in illustrating the facts which valid and engage with prevailing law.

3. Analysis and Result

3.1. Freedom of Speech in Indonesia

John G. Palfrey, Jr divides 4 phase of the process of cyberspace regulation. (1), Phase 1, Open Internet (The 1960-2000), periods of countries either ignoring the internet or regulating the internet only as needed.(2) Phase 2, Access Denied (2000-2005), the period when countries began to think that activity and thinking on the internet needed to be blocked at all costs. (3) Phase 3, Access Controlled (2005-2010), period when the country started to use a regulatory approach to not only filter / block, but as control of the internet. (4) Phase 4, Access Contested (2010-now), the period is there and there will be more rejection to internet control.⁷

⁴ Soerjono Soekanto & Sri Mamudji, 2007, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Jakarta, Indonesia, Rajawali, p.12.

⁵ Peter Mahmud Marzuki, 2011, *Penelitian Hukum*, Jakarta, Indonesia, Kencana Prenada Media Group, p.24.

⁶ Mike McConville & Wing Hong Chui, 2012, *Research Methods for Law*, Edinburgh, United Kingdom, Edinburgh University Press, p.47.

⁷ John Palfrey, 2010, *Four Phases of Internet Regulation*, Massachusetts, United States of America, Harvard University, p.1.

In the period of Susilo Bambang Yudhoyono as the 6th president of Republic of Indonesia, The Law Number 11 of 2008 about Information and Electronic Transaction was legalized. Since Susilo Bambang Yudhoyono (SBY) governed Indonesia, he didn't ever imposed someone who attacked or commented about him with its law.⁸ However, the case raised, one thing that the people of Indonesia have known since the birth of Law No. 11 of 2008 on ITE (Information and Electronic Transactions) is a housewife called Prita Mulyasari. Prita Mulyasari is one of the "victims" of the promulgation of the infamous ITE Act. The situation she had witnessed was also controversial. On 13 May 2009 (exactly 1 year and 1 month), Prita Mulyasari was detained in the Tangerang Women's Penitentiary on suspicion of criminal defamation under Section 27(3) of the ITE Act against the Omni International Hospital Alam Sutera Tangerang. Her prosecution continued on before the Supreme Court. The Supreme Court approved the request for re-examination (PK) submitted by Prita Mulyasari by decision PK. For this PK request granted, Prita Mulyasari is free of charge to her. This PK decision also released Prita from a 6-month prison term of 1 year probation, as stipulated in the judgment of the Supreme Court of Cassation in 2011.⁹

The Ministry of Communication and Information noted that from August 2018 to April 2019 there were 1,731 hoaxes which spread through various online platforms. One of the most is related to political issues.¹⁰

In 2018, data of Indonesia Internet Service Provider Association (APJII) mentioned 171, 17 million persons from 267, 7 million population have felt the technology, which means, there are 96 million people in Indonesia who have not been accessed the Internet.¹¹ However, the amount of internet user have been lifted dramatically, the users are not merely the adults, the children have their own mobile phone too, in which they can access the internet.

Freedom of speech is the basic of rights to everyone to communicate each other, to give the information, and many matters. Freedom of speech as the symbol of country by which the country uphold and tribute the basic rights of every citizen. SAFENet (Southeast Asia Freedom of Expression Network) in their 2018 report, based on Supreme Court Site, there are 292 cases related to ITE's Law in 2018, the number has

⁸ Nanda, 2019, "Mahfud MD Sebut UU ITE DIundangkan di Era Pemerintahan SBY: Kalau Sudah Tak Perlu, Bisa Dicabut", <https://kaltim.tribunnews.com/2019/02/27/mahfud-md-sebut-uu-ite-diundangkan-di-era-pemerintahan-sby-kalau-sudah-tak-perlu-bisa-dicabut>, accessed on 14th July 2020, at 13.15 pm.

⁹ Institute for Criminal Justice Reform, 2012, "Putusan PK Prita Mulyasari: Catatan Bersejarah Kehidupan Kebebasan Berespresi di Indonesia", <https://icjr.or.id/putusan-pk-prita-mulyasari-catatan-bersejarah-kehidupan-kebebasan-berespresi-di-indonesia/>, accessed on 12th July 2020 at 8.15 pm

¹⁰ Felix Nathaniel, 2019 "Hoaks Kian Marak, tapi Kebebasan Berpendapat Lemah di Indonesia", <https://tirto.id/hoaks-kian-marak-tapi-kebebasan-berpendapat-lemah-di-indonesia-elQd>, accessed on 11th May 2020 at 03.45 pm

¹¹ Bulletin of Indonesia Internet Service Provider Association (APJII) 68th Edition, 2018, "Ikhtiar Percepatan Pemerataan Akses Internet di Tanah Air" <https://apjii.or.id/content/read/104/487/BULETIN-APJII-EDISI-68---Agustus-2020>, accessed on 7th May 2020, at 09.00 am.

more than doubled compared to the previous year, as many as 140 cases. Cases throughout 2018 even exceeded the total cases from 2011-2017, namely 216 cases. The most popular cases are criminal related with insult and libel or defamation using Article 27 Paragraph 3 of ITE Law and/ Juncto with Article 45 Paragraph 3 of Law Number 19/2016. In the second position is the case of hate speech with using Article 28 Paragraph 2 of ITE Law and/ Juncto Article 45 Paragraph 2.¹² In this discussion, the problems are not only government against hoax and misinformation which affect block some particular site and criminalization, but also hacking, bullying, sexual harassment and surveillance.¹³ Those are not merely freedom of speech which become question, yet the loss of rights over access the internet and rights over its security.

a) Hoax and Misinformation

Based on Oxford Dictionary, Hoax is defined as an action to make somebody believe which based on fact that is not true, or something unpleasant.¹⁴ Hoaxes has been around since the Old Testament and Homer's epic The Odyssey (Silverberg, 1965). Nowadays, hoaxes have been distributed by newspapers, radio, television, and the Internet, all aided by word-of - mouth. Hoaxes are committed for a number of purposes, including satire, publicity, fashion, entertainment, advocacy, education and Fraud.¹⁵

Picture 1. Hoax maker caught by police



Source: <https://news.detik.com/berita/d-4940599/pembuat-video-hoax-rombongan-tka-china-corona-masuk-kendari-diamankan>

¹²SAFEnet Annual Report 2018, "Jalan Terjal Memperjuangkan Hak-Hak Digital", <https://safenet.or.id/wp-content/uploads/2019/06/Laporan-Tahunan-SAFEnet-2018.pdf> Denpasar, Bali, p. 6.

¹³ *Ibid*, p 2

¹⁴ Patrick Philips and friends, 2015, *Oxford Advanced Learner's Dictionary 8th Edition*, Oxford, United Kingdom, Oxford University Press, p.455.

¹⁵Sheila Kasperek & Bethani Messersmith, 2015, "The Library That Cried Wolf: Outcomes of a Banned Book Hoax on Facebook", *Pennsylvania Libraries: Research & Practice*, Vol. 3 No. 1, p.55.

Misinformation can be disseminated in a variety of forms, sometimes in the absence of any attempt to deceive.¹⁶ Misinformation refers to information that may contain a certain amount of fact, but has been distorted or exaggerated.¹⁷ In Indonesian phenomenon, hoax and misinformation can be known as genuine hoax deed, and a hoax which culminate as hate speech. Therefore, in this chapter, the writer wants to show two sides the case can be categorized as a hoax or partially be a hoax.

The video contains the narrative of a group of Foreign Workers (TKA) from China arriving at Haluoleo Airport, Kendari, South east Sulawesi, in the midst of the Corona or Covid-19 virus outbreak. Hoax video maker, 39-year-old Hardiono in South Konawe Regency (Konsel) was arrested. Because when investigated by the police, dozens of foreign workers were not from China, but extended their visas in Jakarta, and the 40 foreign workers had proof that they were free from the corona virus.¹⁸

Picture 2. A hoax case was charged



Source: <https://tirto.id/sidang-dakwa-kasus-hoaks-ruslan-buton-digelar-di-pn-jaksel-fXA5>

Then, the other side of hoax case which was categorized as hate speech, like the case of Ruslan Buton. The District Court of South Jakarta, held an inaugural hearing with the agenda of reading the indictment by the public prosecutor (JPU) for the case of spreading hoax information and hate speech by the defendant Ruslan Buton. Ruslan was

¹⁶ Lewandowsky, S., Ecker, U., Seifert, C., Schwarz, N., & Cook, J., 2012, Misinformation and Its Correction: Continued Influence and Successful Debiasing. *Psychological Science in the Public Interest*, Vol. 13, No. 3, p.108.

¹⁷ Ibnu Nadzir, Sari Seftiani, and Yogi Setya Permana, 2019, "Hoax and Misinformation in Indonesia: Insights from a Nationwide Survey", *ISEAS Yusof Ishak Institute, Perspective*, Vol. 1, No. 92, p.2.

¹⁸ Siti Harlina, 2020, "Video Hoax Rombongan TKA China Corona Masuk Kendari Diamankan", <https://news.detik.com/berita/d-4940599/pembuat-video-hoax-rombongan-tka-china-corona-masuk-kendari-diamankan>. Accessed on 3rd September 2020, at 10.00 am.

charged with Article 14 paragraph (1) and (2) and or Article 15 of Law Number 1 of 1946 concerning Criminal Law Regulations overlaid with Article 28 paragraph (2) of Law Number 19 of 2016 concerning Electronic Information and Transactions (ITE) with threats six years imprisonment and / or Article 207 of the Criminal Code, can be punished with imprisonment of two years. Ruslan was arrested after making the latest statement to President Joko Widodo in the form of a voice recording on May 18, 2020 and then the voice recording went viral on social media. Ruslan Buton has twice proposed a pretrial at the South Jakarta District Court regarding his arrest and the determination of a suspect. However, the panel of judges rejected the pretrial until finally the case went to court for proof.¹⁹

With those cases of hoax, it might see the differences between both. The 1st case can be implied as a hoax, the actual of fact can be proved by the police, and the action of hoax obviously can be categorized as the makers of hoax against the law. Therefore, the person is legally imposed the punishment of hoax. Thus, the 2nd case arises some questions, why did he determined as a suspect before he is caught by the police and is there any public chaos in society which is caused by his voice record.²⁰

b) Blocked Internet

Picture 3. Internet Block in Papua

Blokir internet di Papua dan Papua Barat, 'merugikan perekonomian daerah' dan 'memicu masalah'

7 September 2019



Source: <https://www.bbc.com/indonesia/indonesia-49618624>

SAFEnet, which has members in the eastern part of Indonesia, especially in Papua, emphasized that in Papua, Internet users have received twice as many infringements of the rights of access to the Internet: the difficulty of the internet signal and the often-occurring block the Internet. Besides from blocking the internet, access to

¹⁹ Laily Rahmawati, 2020, "Sidang Dakwaan Kasus Hoaks Ruslan Buton Digelar di PN Jaksel", <https://tirto.id/sidang-dakwaan-kasus-hoaks-ruslan-buton-digelar-di-pn-jaksel-fXA5>. Accessed on 3rd September 2020, at 10.30 am

²⁰ Imam Hamdi, 2020, "Fakta Kasus Ruslan Buton, Wakil Ketua MPR Kritik Polisi", https://metro.tempo.co/read/1354830/fakta-kasus-ruslan-buton-wakil-ketua-mpr-kritik-polisi?page_num=2, accessed on 3rd September at 10.32 am

websites or particular uploads is also blocked, especially on content that is considered to be Pro-Papua Merdeka, such as the website of the West Papua National Committee (KNPB)-knpbnews.com could not be accessed. This also happens in social media, where uploads of information on human rights violations in Papua have been suspended or even deleted by service providers such as facebook.²¹

The government has periodically blocked the mobile Internet, which has been going on since 21 August 2019, followed by protests in many regions such as Jayapura, Manokwari, Sorong and Fakfak. Block the internet is still running for up to 2 weeks. As reported by the Chair of Household, the effect of the blockade on the Internet was felt by the people who run the trading operation on the Internet, which is the economy was disrupted by government action. The reasons behind the blockade of the Internet were to avoid hoax, hate speech, incitement and provocation in Papua.²²

c) Hacking

Picture 4. Pandu Riono is hacked anonymously

Amnesty: Peretasan Situs Tempo dan Pandu Riono Serangan terhadap Kebebasan Berekspresi

Kompas.com - 21/08/2020, 17:08 WIB

BAGIKAN:  

Komentar

Iklan ditutup oleh G



Source: <https://nasional.kompas.com/image/2020/08/21/17081861/amnesty-peretasan-situs-tempo-dan-pandu-riono-serangan-terhadap-kebebasan?page=1>

On 19th August 2020, the twitter account of Pandu Riono is hacked anonymously. Pandu is an epidemiologist at the Faculty of Public Health, University of Indonesia. He often criticizes the government's policies and regulations related to the handling of the Coronavirus Outbreak, such as the promotion of tourism in the midst of a pandemic, the implementation of New Normal, the loosening of the PSBB (large-scale social restrictions) and the planning to open schools in the green and yellow areas of Indonesia in particular. Based on the information from *Kawal Covid-19*, like Pandu Riono active

²¹ Op Cit, SAFEnet.

²² Zabur Karoro, 2019, "Blokir Internet Di Papua dan Papua Barat 'Merugikan Perekonomian Daerah' dan 'Memicu Masalah'", <https://www.bbc.com/indonesia/indonesia-49618624>, accessed on 3rd September 2020, at 11.pm.

to contribute in it, he and his colleague got message bombardment about his personal information in their Whatsapp Platform, before the appearance uploading personal photo in his account. In other case, in 21st August, 2020, Tempo.co media portal presumed of having hacked by the twitter Account named @xdigeembok. However, the media portal is currently recovering.²³

Hacking case was not mere that, the other case also occurred, this type of case generated anxiousness among society especially netizen, the rights over security become question in social media. The case came from the activist, Rasio Patra. On 22 April, Rasio Patra's WhatsApp was hacked by an unknown person. Rasio Patra is a public policy activist and researcher who is notoriously critical of responding to government on social media. Not only being hacked, Rasio Patra was arrested by a group of people who claimed to be from the police. The irregularities were seen when they did not provide an arrest warrant and identity. When he arrived at Polda Metro Jaya, Rasio Patra was interrogated without being allowed to be accompanied by a lawyer. Rasio Patra is presumed of broadcasting disturbing news and / or inciting violence and hate speech.²⁴

3.2. Protection for Netizen in Freedom of Speech on Social Media

Although the internet has been in existence since 1960s, Frank La Rue, a former special rapporteur of United Nations on Freedom of Expression and Access to Information 2008-2014 wrote in his report on May 16, 2011²⁵ that the internet is becoming the most powerful instrument in the 21st century to increase transparency in overseeing government, providing access to information, and also facilitate citizens to participate in building a democratic society. The internet not only enables a person to exercise the right to express opinions freely, but also to voice human rights and promote the progress of society for the better. The internet also plays a role in fulfilling the right over the truth.²⁶

Those cases are specified as hoax, misinformation, hate speech, hacking and blocked internet. Frequently, the punishment is not merely imposed by one Article in particular regulation, nonetheless the different regulation also pinned towards person who has presumed undertakes criminal.

²³ Amnesty International Indonesia, 2020, Peretasan Tempo dan Pandu Riono Serangan Terhadap Kebebasan Berekspresi, <https://www.amnesty.id/peretasan-tempo-dan-pandu-riono-serangan-terhadap-kebebasan-berekspresi/>, accessed on 4th September 2020, at 9.00 am.

²⁴ Aulia Adam, 2020, *Kegonjilan Dalam Pembobolan Whatsapp dan Penangkapan Rasio Patra*, <https://tirto.id/kegonjilan-dalam-pembobolan-whatsapp-dan-penangkapan-rasio-patra-flkF>, accessed on 6th September 2020, at 10.00 am

²⁵ Frank La Rue, 2011, Report of the Special Rapporteur on the Promotion and Protection of the right to freedom of opinion and expression, General Assembly, United Nations, https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf, accessed on 25th August 2020, at 11.00 am, p.4.

²⁶ Safenet voice, 2018, Pengekangan Kebebasan Ekspresi Online di Asia Tenggara, <https://id.safenet.or.id/2018/06/pengekangan-kebebasan-ekspresi-online-di-asia-tenggara/>, accessed on 25th August 2020, at 10.55 am.

Based on fact, the person who undertakes hoax would be punished with using Article 14 (1) & (2) and Article 15 of The Law Number 1 of 1946 about Criminal Law Regulations, Article 28 (2) of The Law Number 11 of 2008 about The Law of Information and Electronic Transaction (ITE Law), Article 207 of Criminal Code. The last two Articles in two regulations are used to fasten that the person also undertakes a hate speech, or presume a hoax contains a hate speech and that person can be imposed with Article 27 (3) of the Law Number 11 of 2008 about Information and Electronic Transaction. Those detail regulations are as follows:

The Law Number 1 of 1946 about Criminal Law Regulations:

Article 14 (1): Whoever, by broadcasting false news or announcements, with deliberately publishing disturbances among the people, punishable by punishment the maximum prison was ten years.

Article 14 (2): Whoever broadcasts news or issues a notification, that is can issue disturbances among the people, while it should be suspecting that the news or notification is a lie, shall be punished with maximum imprisonment of three years.

Article 15 : Whoever who broadcasts news that is uncertain or news that is excessive or which is incomplete, whereas he understands at least one can reasonably guess, that such news will or easily can cause confusion among people, are punished with a maximum two years imprisonment.

The Law Number 11 of 2008 about Information and Electronic Transaction:

Article 27 (3) : Everyone knowingly and without right to distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Documents that contain insult and/or defamation.

Article 28 (2) : Everyone knowingly and without right distributes the information intended to create a sense of hatred or hostility for individuals and/or groups certain communities based on ethnicity, religion, race, and intergroup (SARA).

Article 207 of Criminal Code : Anyone who deliberately goes public with verbal or written insults a ruler or general body in Indonesia, was threatened with a maximum imprisonment of one year and six months or a maximum fine as much as four thousand five hundred rupiah.

While, the rights of citizen in using social media have assured in some articles in 1945 Constitution. Those articles are as follows:

Articles of Freedom of Expression on 1945 Constitution:

Article 28: The Freedom to associate and to assemble, to express written and oral opinions, etc., shall be regulated by law.

Article 28C (1): Every person shall have the right to develop him/herself through the fulfilment of his/her basic needs, the right to get education and to benefit from

science and technology, arts and culture, for the purpose of improving the quality of his/her life and for the welfare of the human race.

Article 28E (2): Every person shall have the right to the freedom to believe his/her faith, and to express his/her views and thoughts, in accordance with his/her conscience.

Article 28E (3): Every person shall have the right to the freedom to associate, to assemble and to express opinions.

Article 28F: Every person shall have the right to communicate and to obtain information for the purpose of the development of his/her self and social environment, and shall have the right to seek, obtain, possess, store, process and convey information by employing all available types of channels.

Article 28G (1): Every person shall have the right to protection of his/herself, family, honor, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not to do something that is a human right.

Article 28I (1): The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right no to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances.

Article 31 (5): The government shall advance science and technology with the highest respect for religious values and national unity for the advancement of civilization and prosperity of humankind.

The equality is one of the basic principle of United Nations. The preamble of United Nations Charter was regulated in refirming fundamental human rights. Human Rights is rights that exist and are inherent in human self or dignity, because he or she is human.²⁷ Internationally, since the formation of UN, Indonesia has been bound by the UDHR as a member of the UN. In fact, Indonesia only accedes to a limited number of international human rights instruments.²⁸ Until 2005, Indonesia had agreed to ratify the ICCPR and the ICESCR under the SBY period.²⁹ Universal Declaration of Human Rights regulates about the guarantee to express opinion, the article is as follow:

²⁷ Martinus Sardi, 2014, *Menuju Masyarakat Berwawasan Hak Asasi Manusia*, Yogyakarta, Center for Religion and Peace Studies, p.1.

²⁸ Philip Eldridge, 2002, "Human Rights in Post-Soeharto Indonesia", *The Brown Journal of World Affairs*, Vol. 9, No. 1, p.127.

²⁹ Tareq Muhammad Aziz Elven, 2019, "Protection of Academic Freedom for Scholars in Indonesia under the Universal Declaration of Human Rights", Fakultas Hukum, Universitas Muhammadiyah Yogyakarta, Yogyakarta, Indonesia, p.118.

Article 19: Everyone has the right to freedom of opinion and expression: this right includes freedom to hold opinion without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.³⁰

International Covenant on Civil and Political Rights (ICCPR) also guarantees the rights to every person to freedom of opinion, expression, and information in Article 19. Paragraph 1 affirms the absolute right to hold opinions “without interference”. Paragraph 2 affirms the positive content of freedom of expression, namely: the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. Paragraph 2, dissimilar with Paragraph 1, might be subjected to restrictions as set forth in Paragraph 3. Related to Article 19, the Human Rights Committee emphasized the three requirements which already stipulated in Paragraph 3 concerning to restriction that must comply:

“When a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself. Paragraph 3 lays down conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be ‘provided by law’; they may only be imposed for one of the purposes set out in sub-paragraphs (a) and (b) of paragraph 3; and they must be justified as ‘necessary’ for that State party for one of those purposes.”³¹

Lastly, from the points mentioned above, in *das sollen* framework, the government have regulated the related legal provisions on the protection of its netizen in term of freedom of speech especially on social media, in contrast, the public point of view, it is far from public’s justice satisfaction, due to misinterpretation on the related issues. Furthermore, government shall conduct the campaigns to educate people in running communication in virtual world to abolish the hesitancy and fear to speak up in public life especially in social media. Therefore, the protection of the internet user can have well-regulation as the government and people expectation.

4. Conclusion

In Indonesia, obviously the guarantee for freedom of speech was clearly stipulated in 1945 Constitution. Even though, the International Covenant on Civil and Political Rights (ICCPR) mentioned the limitation of freedom of speech which should regulated in national law. The limitations of freedom of speech emphasized in Criminal Code and The Law Number 11 of 2008 about Information and Electronic Transaction (ITE Law). In ITE Law, the elements have been emerge the ambiguity for determining the specific

³⁰ Universal Declaration of Human Rights, https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf, accessed on 18th August 2020, at 11.00 am.

³¹ Margaretha Wewerinke-Singh, 2019 "Remedies for Human Rights Violations Caused by Climate Change", *Climate Law Journal*, Vol. 9, No. 3.

definition in regard to the offence of freedom of speech. Therefore, the ITE Law is easy to use to attack others, people can report anyone who is considered as interfere their name in public life especially in social media, without convince the elements of the offence and intentions of person who is deemed violates ITE Law.

The protection from government to people freely speak in public life has been not balance since the birth of ITE Law. The limitations of freedom of speech became multi interpretation. Even one of the purpose of ITE Law is to protect Indonesian People in running communication in social media, this regulation shall be in line with the value of 1945 Constitution.

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