

Freedom of Speech in the Context of Constitutional Law: Maintaining the Balance Between Freedom and Public Order

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Abstract

Freedom of speech is a fundamental human right in democratic systems, including in Indonesia, which is guaranteed by the 1945 Constitution of the Republic of Indonesia. However, despite being protected by the constitution, this freedom is not absolute and needs to be limited in certain cases to maintain public order, national security, and the rights of others. This study aims to analyze how freedom of speech is regulated in Indonesia's constitutional law, and how the state maintains the balance between individual freedom and public order. Using a normative research method, this study examines the legislation related to freedom of speech, such as the 1945 Constitution, the Electronic Information and Transactions Law (UU ITE), and relevant Constitutional Court decisions. Limitations on freedom of speech in Indonesia are regulated based on international legal principles that recognize freedom of expression, with the caveat that this right can be limited for the sake of public interest, morality, and national security. The findings of this study indicate that while freedom of speech is a crucial right in democracy, the state has the authority to limit this freedom under certain conditions. These limitations must be applied proportionally and in accordance with the principles of a democratic rule of law. The state plays a vital role in creating a balance between freedom of speech and public order, ensuring that this freedom can be maximized without undermining the social and political stability of the country.

1. Introduction

Freedom of speech is one of the most fundamental human rights and is often regarded as a cornerstone of democratic systems (Dahl, R. A, 1989). This right not only provides individuals with the space to voice their opinions, criticism, or ideas but also serves as a critical indicator of how a country upholds democratic values and human rights. In the context of constitutional law, freedom of speech holds a strategic position because it directly relates to the system of checks and balances in governance, as well as public scrutiny of state policies.

In Indonesia, freedom of speech is guaranteed by the 1945 Constitution of the Republic of Indonesia (UUD 1945), which explicitly affirms the right of every citizen to express their opinions. Article 28E paragraph (3) states that "everyone has the right to freedom of opinion and to express their thoughts orally, in writing, and in any other medium," while Article 28F states that "everyone has the right to obtain information and to express their opinions through available channels." This guarantee provides individuals in Indonesia the freedom to express themselves, whether orally, in writing, or through other media (Dewi, M., & Setiawan, H, 2022)

However, despite the constitutional guarantee of freedom of speech, this freedom cannot be viewed as an absolute right. In practice, freedom of speech may conflict with other interests that are also protected by law, such as public order, national security, and the protection of others' rights (Haris, H, 2022). Therefore, freedom of speech must be managed wisely to prevent it from disrupting social and political balance. In the context of constitutional law, the state plays an important role in establishing limitations on freedom of speech, which may be imposed when the expression of opinions poses a threat to public order, national security, or the rights of others (Gunawan, R, 2023). These limitations are implemented to ensure that freedom of speech is not misused for personal or group interests that could harm the common welfare. Therefore, although freedom of speech is protected by law, the state still has the authority to limit this freedom under certain conditions outlined in applicable laws and regulations.

Indonesia, as a developing democracy, faces significant challenges in maintaining the balance between freedom of speech and public interest. One of the main challenges is how the state can protect individuals' freedom to express themselves without compromising social and political stability. In some cases, freedom

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of speech can be used for harmful purposes, such as spreading false information (hoaxes), hate speech, or incitement that can lead to social unrest. As a result, the state has a responsibility to ensure that freedom of speech is not abused, but at the same time, it should not excessively suppress individuals' fundamental rights to express themselves freely.

On the other hand, the state must also ensure that limitations on freedom of speech are proportional and do not violate the basic principles of human rights guaranteed by both the constitution and international law. Overly restrictive or unclear limitations can excessively stifle individual freedom and damage the quality of democracy in Indonesia. Therefore, to maintain the balance between freedom and order, the state must establish clear, fair, and transparent regulations regarding how freedom of speech may be limited without infringing upon fundamental human rights.

Given the complexity of this issue, it is important to further examine the concept of freedom of speech within the framework of constitutional law in Indonesia, focusing on how this freedom is guaranteed by the constitution and how the state regulates legitimate limitations on this freedom. This discussion will cover several key areas: (1) the definition of freedom of speech in Indonesian constitutional law, (2) the legal basis that regulates freedom of speech, (3) the legitimate limitations on freedom of speech, and (4) the challenges faced by the state in maintaining the balance between freedom of speech and public order.

As part of this research, the author will employ a normative legal research method, which focuses on analyzing the laws and regulations that govern freedom of speech and its limitations in the context of Indonesian constitutional law. This research will examine the legal norms in the Indonesian constitution, relevant legislation, and decisions by the Constitutional Court that provide guidance on how freedom of speech should be exercised and limited. Additionally, this research will compare policies implemented in Indonesia with similar policies in other countries, particularly those with democratic legal systems and a strong commitment to human rights protection.

As a background, freedom of speech in Indonesia has become a highly relevant topic with the rapid advancement of information and communication technology (Habermas, J, 1996). Social media, which allows individuals to easily share opinions and information, has transformed how people interact and express their views. While this freedom provides great opportunities for public expression, social media also opens up avenues for the spread of harmful information, such as hoaxes, hate speech, and attacks on individuals or specific groups. This phenomenon has posed a significant challenge for the Indonesian government in regulating freedom of speech expressed through social media without undermining public order.

Furthermore, Indonesia also has a long history of upholding freedom of speech. As a country that has only recently transitioned from the New Order regime in the late 1990s, where freedom of speech was heavily restricted, Indonesia is currently undergoing a process of building a more inclusive democratic system. Freedom of speech has now become an essential part of Indonesia's political and social life, but with various challenges that must be addressed both legally and in terms of practical implementation.

Constitutionally, freedom of speech is a right that is highly respected in the 1945 Constitution, but in practice, there are often tensions between this freedom and the public interest. As a result, the state must establish regulations that clearly define how freedom of speech can be used responsibly and how this freedom can be limited if it potentially causes negative impacts on society and the state.

In this context, this article aims to analyze the various aspects related to freedom of speech in Indonesian constitutional law, including how this freedom is guaranteed by the constitution and how the state addresses potential abuses of this freedom that could harm the public interest. Limitations on freedom of speech should be applied with great caution, so as not to violate fundamental human rights principles, nor undermine the quality of the democracy being built in Indonesia.

Additionally, this article will discuss the challenges faced by the state in maintaining the balance between freedom of speech and public order, as well as how legal mechanisms can be used to address these challenges. The discussion will include an analysis of current regulations and how they can be improved or updated to better meet the needs of society and the evolving times, especially in facing new challenges arising from the rapid development of information and communication technology. Overall, this article seeks to provide a deeper understanding of freedom of speech within the context of Indonesian

constitutional law, with a normative approach to analyzing the existing regulations and highlighting the challenges faced by the state in maintaining the balance between freedom and public order.

2. Method

This research uses a normative research method that focuses on the analysis of laws, applicable regulations, and relevant legal doctrines in the context of freedom of speech in Indonesia (Thacher, D., 2006). This method will examine the legal norms that regulate freedom of speech and its limitations, referring to Indonesian legislation such as the 1945 Constitution (UUD 1945), the Electronic Information and Transactions Law (UU ITE), as well as the Constitutional Court decisions related to freedom of speech. This analysis will also include a comparative study of international legal provisions governing freedom of speech, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

In the context of this research, the normative analysis will include a study of:

1. The 1945 Constitution of the Republic of Indonesia (UUD 1945) as the highest legal source that guarantees the right to freedom of speech.
2. The Electronic Information and Transactions Law (UU ITE), which regulates the dissemination of information in cyberspace and sanctions for the misuse of electronic media.
3. Constitutional Court decisions related to the limitation of freedom of speech, as well as constitutional interpretations of the right to freedom of expression in Indonesia.
4. International regulations such as the Universal Declaration of Human Rights (UDHR) and the ICCPR, which provide guidelines on the legitimate limitations of freedom of speech at the global level.

3. Results and Discussion

3.1. Concept of Freedom of Speech in Constitutional Law

Freedom of speech in Constitutional Law refers to the right of every individual to express their opinions, ideas, and thoughts without any pressure or threat from any party. In Indonesia, this right is regulated in Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), which states that "everyone has the right to freedom of opinion and to express their thoughts orally, in writing, and in any other medium." In addition, Article 28F of the UUD 1945 also guarantees the right of every individual to obtain information and express their opinions.

It is important to note that although freedom of speech is protected by the constitution, it is not absolute. Constitutional law sets legitimate limitations on this freedom to prevent abuse that could harm the public interest or destabilize the state. Restrictions on freedom of speech are governed by international legal principles that recognize the right to freedom of expression, with the caveat that this right can be limited to maintain public order, national security, and public morality.

3.2 Limitations on Freedom of Speech

Although freedom of speech is a fundamental right that is essential in a democratic country, limitations on this freedom are permissible if there are legitimate reasons, such as the need to maintain public order, prevent abuse, and protect the rights of others. Some legitimate forms of limitations on freedom of speech include:

1. **Limitation to Maintain Public Order**

Public order encompasses a social condition that is safe and orderly, enabling every individual to exercise their rights without harming others. Therefore, freedom of speech can be limited if the opinions expressed have the potential to incite riots or violence. For example, hate speech or the dissemination of hoaxes that could provoke social tension and divide society should be addressed through restrictions.

2. **Limitation to Protect National Security**

Freedom of speech can also be limited if the expression poses a threat to national security. For instance, in emergency situations or threats to national sovereignty, the state has the right to restrict the spread of information that could disrupt political and social stability. This is aimed at preventing disinformation that could undermine national integrity and harm the country.

3. Limitation to Protect the Rights of Others

Freedom of speech must take into account the rights of others, including their right to honor, privacy, and personal dignity. Therefore, the dissemination of information that harms others, such as slander, defamation, and insults, must be restricted by law to protect these individuals' rights. The purpose of such restrictions is to ensure that freedom of expression is not misused to harm others.

3.3 Case Study: Limitation on Freedom of Speech in Indonesia

Indonesia, as a democratic country that prioritizes freedom of speech, faces various challenges in regulating this freedom. One of the biggest challenges is how to maintain a balance between freedom of expression and the protection of public order. For instance, Indonesia has regulated freedom of speech through the Electronic Information and Transactions Law (UU ITE), which imposes sanctions on those who spread information that is deemed harmful to others or threatens public order (Hasan, A. & Widodo, 2023).

In 2019, the Constitutional Court of Indonesia conducted a judicial review of several provisions in the UU ITE, particularly those articles that were considered to potentially excessively limit freedom of expression. The Constitutional Court decided to amend some articles in the UU ITE to ensure that restrictions on freedom of speech are only applicable in contexts that align with the principles of a constitutional state and democracy.

Additionally, cases of spreading hoaxes, hate speech, and insults against public officials often spark debates regarding the limits of freedom of speech in Indonesia. For example, in cases of religious defamation and insults against the President, some individuals were prosecuted under the UU ITE. However, on the other hand, there is criticism about the abuse of this law to suppress freedom of speech.

3.4 The Role of the State in Maintaining Balance

The state plays a crucial role in maintaining the balance between freedom of speech and public order. The state must ensure that freedom of speech is not abused to incite riots or violence. Restrictions on freedom of speech must be carried out in a lawful and proportional manner, based on clear legal provisions.

Legal education and an understanding of the limitations of freedom of speech are also very important so that the public can exercise their freedom responsibly. In addition, the state must ensure that every individual has equal access to channels through which they can express their opinions, whether orally, in writing, or through social media.

4. Conclusion

Freedom of speech is a human right guaranteed by the Indonesian constitution and plays an important role in the democratic system. However, this freedom is not absolute and must be limited in certain cases to maintain public order, national security, and the rights of others. Legitimate limitations on freedom of speech must be applied proportionally and in accordance with the principles of a democratic rule of law. The state plays a crucial role in creating this balance by ensuring that freedom of speech can be fully utilized without undermining the social and political stability of the country. Through a wise approach, it is hoped that freedom of speech can be effectively implemented in Indonesia without causing negative impacts on public order and social harmony.

Author Contributions

Susianto : Designing structure research and determine focus article scientific based on results research. Directing and coordinating all over stages writing journal , start from determination Topic until

final draft preparation. Do supervision to quality content written by members team, including data consistency, style academic, and compliance to rules scientific. Doing finalization script, including editing end, check conformity with journal template purpose, and citation in accordance format. Do correspondence with journal editors, including the submission process, revisions based on reviewers, and communication administrative others. .. Guarantee originality and integrity academic from submitted manuscript. **Yusuf Eko Nahuddin** : Do review library, collection references, and preparation of bibliography in the appropriate format. Arrange the sections certain in articles, such as study literature, methodology, results and discussion, according to with distribution internal tasks. Doing analysis of the data obtained from study field or studies literature. Editing and revising script in accordance with directions chairman researchers and reviewers. Helping in checking plagiarism, manuscript formatting, and preparation of supporting files. **Riski Febria Nurita** : Do review library, collection references, and preparation of bibliography in the appropriate format. Arrange the sections certain in articles, such as study literature, methodology, results and discussion, according to with distribution internal tasks. Doing analysis of the data obtained from study field or studies literature. Editing and revising script in accordance with directions chairman researchers and reviewers. Helping in checking plagiarism, manuscript formatting, and preparation of supporting files.

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