

LEGAL CERTAINTY IN EXPRESSING OPINIONS IN PUBLIC DURING THE INDUSTRIAL REVOLUTION ERA ACCORDING TO POSITIVE LAW IN INDONESIA AND SIYASAH DUSTURIYAH

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Abstract: This research aims to identify and explain the forms of restrictions on freedom of expression on social media and the forms of legal certainty regarding freedom of expression according to positive law and siyasah dusturiyah. In recent years, there have been efforts to narrow the space for expressing opinions, especially through social media. Often, people who express their opinions on social media receive unfavorable treatment after expressing their views. The type of research in this thesis is normative legal research with a statute approach and case approach. The primary data sources in this research are the Quran and Sunnah, as well as laws related to the right to freedom of expression in Indonesia. The data collection technique used in this research involves library research by searching for books, articles, journals, and websites. The data analysis technique in this research is descriptive. The research results show that, first, the forms of restrictions on freedom of expression on social media can be categorized into two forms: indirect and direct. Indirectly, through ambiguous articles in the Electronic Information and Transactions Law (UU ITE) and articles related to insulting the president and the government. Directly, through digital attacks, persecution, terror and intimidation, and criminal reporting or criminalization. Second, the forms of legal certainty in positive law were found to be in three forms: legal certainty guarantees through individual or group rights, legal certainty guarantees through the government's obligation to protect individuals who use their right to freedom of expression, and legal certainty in the form of sanctions against those who attempt to hinder others' freedom of expression. Third, from the perspective of siyasah dusturiyah, there is also legal certainty for freedom of expression through the right to express opinions and the obligation of rulers to protect those who express their views. Based on the research results, it was found that restrictions on freedom of expression have occurred, which will ultimately lead to authoritarian governance. This occurs due to the suboptimal performance of the government, making it averse to criticism and resorting to restricting freedom of expression. However, it prohibits excessive and wasteful consumption patterns, categorized as al-israf behavior.

Keywords: Legal Certainty, Freedom of Expression, Industrial Revolution

Introduction

Freedom of expression is implemented from the fourth principle of Pancasila, which emphasizes "democracy led by the wisdom of deliberations among representatives." Furthermore, in Article 28 of the 1945 Constitution (henceforth referred to as the UUD 1945), it is stated that "freedom to assemble and associate to express ideas through speech, writing, and other media" is regulated by law, as mentioned in Article 28E paragraph (3), which states, "every individual has the right to assemble, associate, and express opinions" (Mastura, 2021). In recent years, the issue of

freedom of expression has become a frequent topic of discussion, especially now that we have entered the digitalization era where everything has become easier, including expressing and conveying opinions on social media. The increasing ease of expressing opinions on social media is not accompanied by the fact that people tend to fear expressing their opinions both directly and on social media. The fear of expressing opinions is not without reason; many people who voice their opinions on social media end up facing legal consequences, such as the case of Haris and Fatia, who were alleged to have committed defamation in a video uploaded on Haris Azhar's YouTube channel, even though what they expressed was based on rapid research findings and not without basis (Kompas, 2023).

Another example from among students is Melki, the President of the Student Executive Board at the University of Indonesia, who claimed that his family received intimidation from authorities after he criticized the Constitutional Court's decision regarding the minimum age for vice-presidential candidates (Kompas, 2023). From these cases, it can be seen that there have been attempts to narrow the space for expressing opinions, especially through social media, with many people receiving negative responses after expressing their opinions. Everyone should have the right to freedom of expression, and it is guaranteed by law.

Research on the freedom to express opinions in public has been extensively conducted before. According to the author's view, it can be categorized into four aspects. First, freedom to express opinions in public is based on Law No. 9 of 1998, for instance, in the research by (Bakhtiar, 2020). Second, freedom to express opinions within the framework of human rights, for instance, in the research by (Kusuma, 2023). Third, freedom to express opinions under Law No. 19 of 2016, for instance, in the research by (Antaguna, 2023). Fourth, freedom to express opinions in public in the era of the industrial revolution, for instance, (Nasution, 2020). Among these various research aspects, none have thoroughly explored legal certainty in expressing opinions in public during the industrial revolution era according to the positive law in Indonesia and *siyasah dusturiyah*.

This research will delve into the issue of legal certainty for individuals who boldly voice their opinions on various issues and government policies but receive negative responses after expressing their views. This study will address the forms of restrictions on freedom of expression on social media and examine the forms of legal certainty regarding freedom of expression according to positive law in Indonesia and *siyasah dusturiyah*.

This study is important for two reasons. First, as a democratic country, freedom of expression is fundamental and needs to be guaranteed to ensure that expressing opinions and criticisms will create stability in a democratic state and also serve as a control mechanism against the abuse of power. Second, there is a need for legal certainty and protection for those who express their opinions, especially on social media, as long as it does not involve personal attacks.

Method

This type of research is normative legal research with a statutory approach, which prioritizes legal materials in the form of legislation as the basic reference material for conducting the research. The author also uses a case approach, which involves examining cases related to the issues at hand. This research emphasizes legal materials in the form of legislation as the basic reference material for conducting the research and examines cases related to the issues to be studied.

The primary data sources in this research are the Quran and Sunnah, as well as laws related to the right to freedom of expression in Indonesia, including the 1945 Constitution of the Republic, Law Number 9 of 1998 on Freedom of Expressing Opinions in Public, Law Number 39 of 1999 on Human Rights, Law Number 12 of 2005 on the Ratification of the International Covenant on Civil

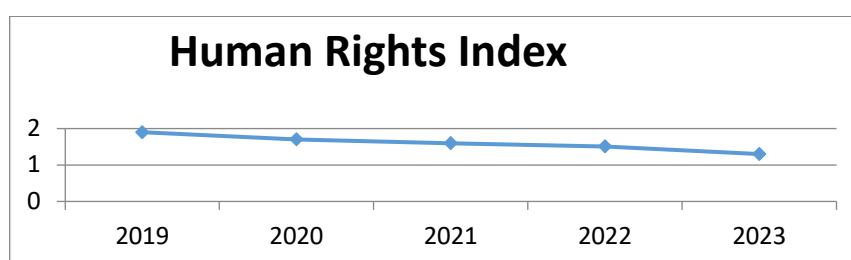
and Political Rights, and Law Number 1 of 2024 on the Second Amendment to Law Number 11 of 2008 on Electronic Information and Transactions. The data collection technique used in this research involves library research by searching for books, articles, journals, and websites. The data analysis technique in this research is descriptive analysis.

Results and Discussion

Restrictions on Freedom of Expression are limitations or obstructions on an individual's right to express their opinions. Restricting freedom of expression is a violation of human rights, as everyone has the right to freedom of expression. Based on a survey on freedom of expression and opinion conducted by the National Commission on Human Rights (Komnas HAM) together with the Kompas Research and Development Center in 34 provinces in Indonesia in 2020, there is noticeable concern among the public when participating in the public space. The details can be seen in the following table.

| No | Percentage (%) | Response |
|----|----------------|---|
| 1 | 36 | Feel they are not free to express themselves on social media. |
| 2 | 66 | Worry that their accounts or personal data might be hacked or misused. |
| 3 | 29 | Believe that criticizing the government is the issue with the least freedom to be stated and expressed. |
| 4 | 80 | Fear that in emergencies, the government may misuse its authority to limit freedom of expression and opinion. |

The SETARA Institute, in collaboration with INFID, revealed that the subindicator for freedom of expression and opinion in the human rights (HR) index has declined over the past 5 years. Compared to the end of Jokowi's first term in 2019, which reached 1.9, it has dropped to 1.3 in 2023 and has never reached two, consistently decreasing. This can be seen in the graph below:



With the rampant occurrence of restrictions on freedom of speech, this situation is considered worrisome among the public. Among the forms of restrictions on freedom of speech on social media are as follows:

The Role of Women as Consumers in the Inclusion of Digitalization of the Women's Economy in Online Buying and Selling Practices

The data related to women's involvement includes: SDGS (Sustainable Development Goals) data and data from Kemenkraf (Ministry of Tourism and Creative Economy).

SDGS (Sustainable Development Goals) data:

| No | Case | Form of Suppression |
|----|--------------|---|
| 1 | Ruslan Buton | Viral after calling for the president to resign as a solution for Indonesia's progress. Shortly after, he |

| | | |
|---|----------------------------------|---|
| | | was reported for allegedly spreading hoaxes and hate speech. Ruslan was charged with Article 14 paragraphs (1) and (2) and/or Article 15 of Law No. 1 of 1946 on Criminal Law Regulations, layered with Article 28 paragraph (2) of the ITE Law. (Idntimes, 2021) |
| 2 | Leaders of the KAMI Organization | Several KAMI activists including Jumhur Hidayat, Syahganda, Khairi Amri were accused of spreading false news related to the omnibus law on the Job Creation Act (UU CIPTAKER) that sparked unrest. As a result, the four were charged with Article 28 paragraph (2) in conjunction with Article 45 paragraph (2) of the ITE Law. (Idntimes, 2021) |
| 3 | Dandhy Dwi Laksono | Arrested for allegedly spreading hate speech due to content showing photos of Papuan residents who were victims of violence by security forces in Wamena and Jayapura. Dandhy was considered to have violated Article 28 paragraph (2) and Article 45 paragraph (2) of the ITE Law. (Idntimes, 2021) |
| 4 | Ravio Putra | An activist who criticized the government related to the presidential special staff allegedly involved in conflicts of interest in government projects in Papua and about the government's handling of COVID-19. Ravio was accused of spreading provocative information, leading to charges under Article 28 paragraph (2) of the ITE Law. (Idntimes, 2021) |
| 5 | Bintang Emon | A comedian who faced intimidation from unknown persons and had his personal account hacked after making content about the verdict for the acid attack perpetrator against Novel Baswedan. (Kompas, 2022) |
| 6 | Melki Sedek Huang | The chairman of the University of Indonesia Student Executive Board (BEM UI), actively protesting the Constitutional Court's decision regarding the minimum age limit for vice-presidential candidates. Melki also faced intimidation directed at his family. (Kompas, 2023) |
| 7 | Husein Ali Rafsanjani | A teacher who passed the Civil Servant Candidate (CPNS) selection but was asked for money during his training, despite being told that the costs were covered by the state. After sharing his experience of extortion on social media, Husein faced intimidation from the local government. (Detik, 2023) |
| 8 | Bima Yudho Saputro | A content creator from Lampung reported after sharply criticizing the Lampung Provincial Government. Bima's viral video led to a report against him for using language considered hate speech and insulting elements related to SARA (ethnic, religious, racial, and intergroup issues) under Article 28 paragraph (2) of the ITE Law. There |

| | | |
|----|-----------------------|---|
| | | are also allegations of intimidation directed at Bima's family. (Kompas, 2023) |
| 9 | Rocky Gerung | Reported after harshly criticizing President Jokowi's policies related to the new capital (IKN), which he saw as merely seeking a legacy. After making these comments, he was reported for violating Article 218 paragraph (1) of the Criminal Code (KUHP) concerning insults to the president's dignity. (Detik, 2023) |
| 10 | Haris Azhar and Fatia | Reported after presenting quick study findings by a socio-economic organization regarding the involvement of officials in the Intan Jaya mine. Haris and Fatia were charged with Article 27 paragraph (3) in conjunction with Article 45 paragraph (3) of the ITE Law. (Kompas, 2023) |
| 11 | Faisol Abod Batis | Arrested for statements against President Jokowi regarding dozens of deaths due to agrarian conflict from 2015-2018 |
| 12 | Mohammad Hisbun Payu | Arrested in his boarding room for allegedly insulting President Jokowi. (Tempo, 2020) |

Forms of Suppression of Freedom of Expression on Social Media

Indirect suppression is the narrowing or restriction of the space for freedom of expression that is not directly aimed at specific individuals who express opinions but is also directed at society in general, which at some point will use their right to express their opinions. Among the forms of indirect suppression are: **First**, through elastic articles in the ITE Law, Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 on Electronic Information and Transactions. The ITE Law is a regulation that applies to everyone who commits legal acts as mentioned in the regulation. The content of the ITE Law is generally divided into two types, namely: first, regulations regarding electronic information and transactions. Second, regulations regarding what acts are prohibited in the Law. To date, this Law is considered controversial because it has become a tool for the government to enforce authoritarianism. (Sidik, 2013:140). Second, through articles on insulting the president and the government. The draft of the Criminal Code (RKUHP), which plans to revise several rules in the previous Criminal Code, has sparked various forms of controversy, especially from the public. Some articles are considered problematic and detrimental to society in their implementation, such as Article 240 and Article 241 of the RKUHP regarding insults to the Legitimate Government. The offense contained in Articles 240 and 241 of the RKUHP is a general offense that allows anyone to report if there is an alleged insult to the Legitimate Government. This is certainly not appropriate because the offense from these two articles should be a complaint offense so that the aggrieved party, in this case, the legislative body, does not arbitrarily use this offense. If Articles 240 and 241 of the RKUHP are enacted, it will result in violations of human rights in voicing and expressing opinions in criticism of the performance of the legitimate government. (Khanza, 2022:33).

Direct suppression is the narrowing or restriction of the freedom of space for expressing opinions that is aimed directly at individuals who express their opinions, resulting in immediate feedback on what has been conveyed. The forms of direct suppression include:

First, digital attacks which are carried out through cybercrime or crimes conducted via networks and computers. Digital attacks can be considered a very effective way to spread fear, as they can involve hacking personal data. Types of violations of freedom of expression in the digital

space include, for example, via social media. The National Commission on Human Rights (Komnas HAM) records various forms of attacks on freedom of expression. These include cyber attacks such as account hijacking, doxing (exposing personal identities), hoax attacks, attacks by buzzers, disruption of discussions on Zoom (zoom bombing), and harassment from unknown phone numbers (spam calls) (Komnas HAM, 2022).

Second, persecution against a teenager from Cipinang, East Jakarta, with the initials M (15). The persecution of M even forced him and his family to be evacuated from their residence in the Cipinang area of East Jakarta. The teenager not only faced verbal abuse but was also seen being struck in the face. (Kompas, 2020). A similar situation happened to Bima, who faced persecution against his family after harshly criticizing the provincial government of Lampung. He stated that Lampung was not progressing because its budget was often embezzled by Lampung officials. Shortly after his video spread, Bima's family in Lampung was visited by the police and interrogated without any legal process. (Kompas, 2023).

Third, Intimidation and Terror, Terror against Ravio after he criticized the presentation of COVID-19 case data by the National Disaster Management Agency (BNPB), which he considered misleading. Not only that, Ravio often criticized various government policies (bbc.com). Then, terror against the organization of a discussion with the theme "Clarifying the Issue of the President's Dismissal from the Perspective of the Constitutional System" (tirto.id). Next, terror against the organizers of a discussion themed on Papua (Kompas.com). Terror against one of the stand-up comedians, Bintang Emon, who roasted the one-year prison sentence verdict in the case of the acid attack on Novel Baswedan (kompas.com).

Fourth, Criminal Reporting or Criminalization. This criminalization occurred to Haris and Fatia after they presented quick research results that mentioned the involvement of Luhut in Intan Jaya. Shortly afterward, they received a police report regarding defamation. In the decision considerations, the panel of judges assessed that the discussion or podcast between Haris and Fatia did not constitute insult or defamation. Instead, it presented the results of a quick study conducted by nine civil society organizations on the economy and politics of military deployment in Papua, in the Intan Jaya case (Hukum Online, 2024).

Forms of Legal Certainty for Freedom of Expression According to Positive Law in Indonesia and *Siyasah Dusturiyah*

Legal certainty in freedom of expression is regulated under positive law in Indonesia. Even the constitution, in Article 28E, Paragraph (3), guarantees that every person has the right to associate, assemble, and express their opinions. In this article, the legal norms created are very clear and explicit, so there can be no doubt about this highest norm, because the clarity of this rule ensures the creation of fair legal certainty. However, in practice, the creation of implementing regulations for such an important freedom is often neglected. Besides guaranteeing the existence of human rights in nine articles (28A-28I), the chapter on human rights is concluded with Article 28J, which imposes an obligation in the form of restrictions on human rights, including non-derogable rights, with the aim of protecting the rights of others. (Mahfud, 2010: 602)

Forms of legal certainty in freedom of expression under positive law in Indonesia can be seen in the form of guarantees enshrined in laws. Among the forms of legal certainty guarantees are the rights to freedom for individuals or groups that are guaranteed in the Constitution of the Republic of Indonesia in Article 23E (3), Article 28C (2), Article 28D (1). Additionally, in Law Number 39 of 1999 on Human Rights, there are provisions in Article 23, Article 24 (1), Article 25, and Article 44. In Law Number 9 of 1998 on the Freedom to Express Opinions in Public, there are provisions in Article 2, Article 5, and Article 9. In Law Number 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights (ICCPR), there are provisions in Article 19.

In addition to guarantees of legal certainty in the form of rights, there are also obligations for the government or the state to protect the right to freedom of expression. This is stated in Law Number 39 of 1999 on Human Rights in Article 71, Article 72, and Article 74. Furthermore, in Law Number 9 of 1998 on the Freedom to Express Opinions in Public, there is a provision in Article 7.

The last form of legal certainty is in the form of sanctions against those who obstruct freedom of expression in public, as stated in Law Number 9 of 1998 on the Freedom to Express Opinions in Public, in Article 18.

As for legal certainty according to siyasaḥ dusturiyah, it is found in the Qur'an, which commands us to always remind everyone to speak the truth, whether to leaders or the community, so that they always do good. Allah's command in Surah Al-Baqarah, verse 147:

الْحَقُّ مِنْ رَبِّكَ فَلَا تَكُونَنَّ مِنَ الْمُمْتَرِينَ

"Truth is from your Lord, so do not be among the doubters."

According to the interpretation by the Ministry of Religious Affairs, truth is what Allah has revealed to His Messenger, not what the Jews and Christians say. In this regard, Muslims must not doubt. The matter of the qibla is not a fundamental issue as the foundation of religion such as monotheism, belief in the Day of Judgment, and so on. Rather, the qibla is merely a direction that each community is commanded to face during their prayers. According to the Al-Azhar interpretation, this verse clearly states that indeed, you are that Messenger. No matter how much they hide the truth, the truth comes from God. There is no power in this world that can obstruct or hide that truth. In this worldly life, you may have disagreements, but know that you will all die, and wherever you are, surely Allah will gather you all on the Day of Judgment to give His judgment. Allah is Almighty over all things.

The principle of expressing opinions in conveying the truth is also found in one of the seven advices of the Prophet Muhammad to Abu Dzar, which is mentioned in the following hadith:

حَدَّثَنَا عَقَّانُ حَدَّثَنَا سَلَامٌ أَبُو الْمُندِرِ عَنْ مُحَمَّدِ بْنِ وَاسِعٍ عَنْ عَبْدِ اللَّهِ بْنِ الصَّامِتِ عَنْ أَبِي ذَرٍّ قَالَ قَالَ أَمَرَنِي خَلِيلِي صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِسَبْعٍ أَمَرَنِي بِحُبِّ الْمَسَاكِينِ وَالْدُّنُوِّ مِنْهُمْ وَأَمَرَنِي أَنْ أَنْظُرَ إِلَى مَنْ هُوَ دُونِي وَلَا أَنْظُرَ إِلَى مَنْ هُوَ فَوْقِي وَأَمَرَنِي أَنْ أَصِلَ الرَّحِمَ وَإِنْ أَدْبَرْتُ وَأَمَرَنِي أَنْ لَا أَسْأَلَ أَحَدًا شَيْئًا وَأَمَرَنِي أَنْ أَقُولَ بِالْحَقِّ وَإِنْ كَانَ مُرًّا وَأَمَرَنِي أَنْ لَا أَخَافَ فِي اللَّهِ لَوْمَةً لَائِمَةً وَأَمَرَنِي أَنْ أَكْثِرَ مِنْ قَوْلٍ لَا حَوْلَ وَلَا قُوَّةَ إِلَّا بِاللَّهِ فَإِنَّهُنَّ مِنْ كَنْزٍ تَحْتَ الْعَرْشِ

It was narrated to us by 'Affan, who said that it was narrated to us by Sallam Abul Mundzir from Muhammad bin Wasi' from Abdullah bin Shamit from Abu Dzar who said, "My beloved (the Messenger of Allah) instructed me with seven things: to love the poor and to be close to them, to look at those who are below me and not to look at those who are above me, to maintain kinship ties even if others dislike it, and not to ask anyone for anything. He also instructed me to speak the truth even if it is bitter, not to fear the reproach for the sake of Allah, and to frequently say 'laa haula walaa quwwata illa billahi' (There is no power and no strength except by Allah), for it is a treasure from the treasures of Paradise." (Narrated by Ahmad: 20447)

In this hadith, there is a command to speak the truth even if it leads to something bitter. Then, this command can also be related to freedom of opinion in Islam because the essence of expressing opinions is to convey ideas that contain truth and goodness. Conveying the truth in the form of opinion can also be directed towards rulers or governments who make policies without careful consideration. Thus, in this case, Muslims can convey the truth to the government or rulers even if what is conveyed may lead to bitterness.

In Islam, the freedom to express opinions (*hurriyyat al-ra'y*) is the most important aspect of freedom of speech. In Islamic governance, freedom of opinion is an individual right that leads to his interests and conscience, which cannot be diminished by the state or abandoned by the individual. This is important for the intellectual and humane conditions of every individual, so that a Muslim

can fulfill his Islamic obligations. Among these obligations is enjoining what is right and forbidding what is wrong, which requires and demands the ability to express opinions freely. (In'amuzzahidin, 2017)

According to Taqiyuddin An-Nabhani, correcting rulers by law is obligatory (fardhu). And obeying them even if they commit injustice and usurp the rights of the people does not mean staying silent about them. Rather, obeying them is obligatory, while correcting them for their behavior and actions is also equally obligatory. If rulers command to commit acts of disobedience, then real disbelief (kufr) is evident. If clear disbelief has indeed appeared, then it is obligatory to fight against it. (Muhammad Syukur, 2017: 81)

The relevance between the two is clearly seen as a unified and interconnected whole. In general, the purpose of freedom of expression in constitutional politics (siyasah dusturiyah) is to urge people to do good and to criticize actions or things that deviate from legal norms, whether between individuals or between individuals and the government. From both legal systems, positive law and constitutional politics, the implementation of the right to freedom of opinion should be utilized for the purpose of spreading goodness and truth, and not for spreading evil and injustice.

Conclusion

The restraint of freedom of opinion is the limitation or hindrance of an individual's right to express their opinions. Restraints on freedom of opinion can be categorized into two forms. Indirectly, indirect restraint is the narrowing or restriction of the space for freedom of opinion, not specifically targeting individuals expressing opinions, but also aimed at society in general who may eventually exercise their right to opinion. Forms of indirect restraint can include laws such as the ITE Law, Article 4 of the ITE Law, and cases of insulting the President. Directly, direct restraint is the narrowing or restriction of the freedom to express opinions aimed directly at individuals who have expressed their opinions, thereby receiving less feedback on what has been conveyed. Forms of direct restraint include digital attacks, persecution, intimidation, terrorism, criminal reports, or criminalization.

Legal certainty in expressing opinions in public according to positive law in Indonesia is regulated in three forms: personal freedom, government obligations, and sanctions against those who obstruct freedom of expression in public. Meanwhile, in constitutional politics, legal certainty takes the form of the right to express opinions to the government, especially to unjust leaders to convey truth and goodness. It also includes the government's duty to protect the freedom of its people.

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