

## **The Right to Free Speech of Social Media Users under Law 11/2008 on Information and Electronic Transactions**

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### **Abstract:**

**Background:** The right to free speech has been written in the basic constitution of the country, namely the Constitution of the Republic of Indonesia year 1945 precisely in Article 28 E paragraph (3). The issue of this research is about the extent of the clarity of the regulation solving the legislation and then how legal protections are applied to social media users in terms of expressing their opinions. Today there are some examples of cases of violations of the ITE Act, but this is not necessarily accepted by the public. Other issues also some people think that expressing opinions and free speech that can now of course be done by anyone and anytime and with social media is everyone's right. However, the impression of ITE Law according to the public can be used as a tool of dissenting opinion. The purpose of the first year research is to seek legal certainty and fairness from positive laws regarding the right to free speech. The second goal is to ensure people's position in expressing opinions on social media as a form of free speech rights.

**Materials and Methods:** The analysis method in this study uses descriptive normative legal research which is a solving procedure that is investigated by describing and compiling about systematically solving the problems found in the Right to Free Speech Through Social Media. The study was also reviewed by normative juridical methods associated with the theory of justice as its analytical knife. This research approach is also able to reach short, medium and long-term predictions.

**Results**The results of this study aim to examine the right of free speech for social media users by being linked to the legislation namely the 1945 Constitution, ITE Law and some cases of violation of the laws and regulations that have been and are happening in the community. The analysis tool used is SWOT, which is based on logic that can be maximized strength and opportunity, but simultaneously minimize weakness and threats (theats).

**Key Word:**Free Speech Of Social Media, Information And Electronic Transactions

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### **I. INTRODUCTION**

Freedom of thought and opinion is regulated in the fourth amendment of the 1945 Constitution Article 28 E paragraph (3) Everyone is entitled to freedom of association, assembly, and opinion. Freedom of expression including freedom of speech is one of the most fundamental rights in state life. Law No. 9 of 1998 On The Freedom to Express Opinions in public article 1 paragraph (1) of independence expressing opinions is the right of every citizen to express thoughts by oral, written, and so on freely and responsibly in accordance with the provisions of the prevailing laws and regulations.

Currently there is a new law known as cyber law as the match of cyber law which is a law related to the utilization of information technology or called Cyber Law and Mayantara Law which is summarized in a law namely law No. 19 of 2016 concerning Amendment to Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law). With cyber law there are many problems or problematic problems of proof and law enforcement, because law enforcement will assume as invisible, pseudo or virtual. Cyber activity is no longer simple, with activities that cannot be restricted to the territory of the country, access can be done easily from any country. Losses can occur to both internet actors and others who have never been in contact at all. [1]

According to Article 28 of the Constitution 1945 (Constitution 1945) the right to free speech is a human right. Each individual has the right to use freedom of speech including the right to seek, receive, and provide any information and thoughts, whether in oral, written, printed, artwork or through any other media he chooses. Along with the development of technology and information, one can exercise the right to free speech in online media. One of the most popular online media facilities used by the public today is social media. Freedom of speech through online media, especially through social media is not absolute freedom. The application of ITE Law, especially Article 27 paragraph (3) and Article 28 paragraph (2) raises many problems in society, because the Article in question is considered to have silenced the right to free speech of social media users through the internet. On that basis, there is a legal protection effort to guarantee the free speech rights of social media users.

The issue of this research is about the extent of the clarity of the regulation solving the legislation and then how legal protections are applied to social media users in terms of expressing their opinions. Today there are some examples of cases of violations of the ITE Act, but this is not necessarily accepted by the public. Some people think that expressing opinions and freedom of speech that can now of course be done by anyone and anytime and with social media is everyone's right. However, the impression of ITE Law according to the public can be used as a tool of dissenting opinion. The urgency of this research is very important, given the need for legal protection efforts in guaranteeing the right to free speech as stated in the 1945 Constitution Article 28 E paragraph (3).

## **II. MATERIAL AND METHODS**

### **1. Research Approach**

This research approach is a descriptive normative legal study that is a solving procedure that is investigated by describing and compiling systematic problems in solving the problems contained in the Right to Free Speech Through Social Media and leads to descriptive research research intended to provide the most thorough data possible about humans, circumstances or other symptoms. The research approach is able to reach short, medium and long-term predictions.

### **2. Research Data**

This study uses materials that are in accordance with the research conducted which is the result of literature research, from literature research collected secondary data that includes primary legal materials, secondary legal materials and tertiary legal materials. With details including: The Constitution of 1945, Law No. 19/2016 on changes to Law No. 11/2008 on Electronic Information and Transactions, Law No. 9/1998 on Freedom of Public Opinion, and Law No. 39/1999 on Human Rights, Criminal Code (Penal Code), Criminal Code (KUHAP)

## **III. RESULT**

### **Freedom of Speech in Fundamental and Constitutional Rights**

Freedom of speech or freedom of speech is one of the human rights that is the right to reason or expression. [2] If examined from generations of human rights is a category of fundamental rights. A first generation right in the history and development of human rights, namely the politic and civil right. It is said to be fundamental because long before the people gave birth to a state organization, the people had been given the most human rights and freedoms. Based on the classic theory of the origin of the country of a philosopher and adherent of social contract theory, John Locke in his book *Two Treatises Of Civil Government* which explains the process of birth of the state in the form of a covenant society.

According to the concept of the welfare state, the nature of people's relations is positively-active where the state actively organizes the welfare or prosperity of the people while the people actively participate in government. As with most rights, the right to argue in the sense of human rights always contains two aspects, namely entitlement and freedom. So-called equal rights mean so-called freedom. For example, the right to education, this basic right is not biased to the maximum embodiment if there is no guarantee of free speech. This includes the institution of the press can only maximize its control function if there is freedom of speech and expression. As a civil and political rights group, the right to argue is negative, i.e. its implementation is better if it lacks state intervention. This is based on the aspect of freedom in itself that cannot be restricted and imperati. On the other hand in principle the right to argue includes a right that can be suspended while its implementation in certain circumstances such as in a state of war. Certain restrictions on this right are permitted as long as they relate to the interests of the community as a whole. The general comment of Article 10 paragraph (4) of the International Covenant Civil and Political Rights (ICCPR) affirms that the application of restrictions on freedom of expression should not harm the essence of the right itself. In the context of a democratic country such as Indonesia, this right of opinion is guaranteed in the clause of the constitution. The guarantee is stipulated in Article 28 of the Constitution 1945 (1945 Constitution) which affirms the independence of association and assembly, issuing thoughts with oral and written. As a social value, this constitutional and ideal normative reference must still be empirically realized. Where the process is expected to be consistent, so that the social value of people's freedom can be realized. The empirical form is determined by several things such as the conditions and prerequisites given by the power (government) to the people in the form of the oriented and subjectivity of the ruler. The embodiment of constitutional rights can be guaranteed if the orientation of state or bureaucratic protection is in line with the individual tendencies of citizens. On the other hand, the embodiment is not aligned but only departs from the individual tendencies of state organizers or bureaucracy that enter the personal domain of state officials, which can be realized in the will of state officials.

#### IV. DISCUSSION

Freedom of Speech in Human Rights, Human rights are human rights solely because they are human beings. Mankind has it not because it is given to him by society or based on positive laws, but solely based on his dignity as a human being. Everyone, whether born with different skin colors, genders, languages, cultures and nationalities, still has those rights. This is the universal nature of the company. In addition to being universal, those rights are also inalienable. [2] It means that no matter how bad a person's treatment or how cruel a person's treatment is, he will not cease to be human and therefore retain those rights.

These rights arise from demands to break away from the shackles of absolute power of the state and other social forces. That's why the rights of the first generation are said to be classic rights. These rights are in fact to protect people's private lives or respect each person's autonomy over himself (individual sovereignty).

Included in this first generation are the right to life, physical wholeness, the right to freedom of movement, protection of property rights, freedom of thought, religion and belief, freedom to gather and express thoughts, the right to freedom from arbitrary detention and arrest, the right to freedom from torture, the right to freedom from retroactive law, and the right to a just judicial process. [3]

Justice

Keadilan is actually a relative concept. (Mahmutarom, 2009) [4] On the other hand, justice is the result of interaction between expectations and existing reality, whose formulation can be a guideline in the lives of individuals and groups. From the etymological aspect of language, the word "adil" comes from the Arabic "adala" which contains the meaning "middle" or "middle". From this meaning, the word "adala" is then synonymous with wasith which lowers the word wasith meaning "mediator" or the person standing in the middle who has a fair attitude. [4]

Distributive justice governs the distribution of goods and awards to each person in accordance with his position in society, and requires equal treatment for those who are equal according to the law. (Prasetyo & Barakatullah, 2014) [5] Collective justice is primarily a measure of the technical principles that govern the administration rather than the implementation of the law. In regulating legal relationships it is necessary to do so, regardless of who the person is and what he means according to the size of an objective value. [5]

The results of this study aim to examine the right of free speech for social media users by being linked to the legislation namely the 1945 Constitution, ITE Law and some cases of violation of the laws and regulations that have been and are happening in the community. The analysis tool used is SWOT, which is based on logic that can be maximized strength and opportunity, but can simultaneously minimize weakness and threat (threats). The study was also reviewed by normative juridical methods associated with the theory of justice as its analytical knife.

#### V. CONCLUSION

Freedom of speech and expressing opinions in public and on social media has been granted equal rights to the whole community. Freedom of speech has been written in the basic constitution of the country namely the Constitution of the Republic of Indonesia year 1945 precisely in Article 28 E paragraph (3). The issue of this research is about the extent of the clarity of the regulation solving the legislation and then how legal protections are applied to social media users in terms of expressing their opinions. Today there are some examples of cases of violations of the ITE Act, but this is not necessarily accepted by the public. Other issues also some people think that expressing opinions and free speech that can now of course be done by anyone and anytime and with social media is everyone's right. However, the impression of ITE Law according to the public can be used as a tool of dissenting opinion. The purpose of the first year research is to seek legal certainty and fairness from positive laws regarding the right to free speech. The second goal is to ensure people's position in expressing opinions on social media as a form of free speech rights.

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