



# Digital Democracy and the Challenges of Freedom of Expression in Indonesia

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## How to cite

Jorgi, Jhames., & Firmansyah,  
Hery. 2026. Digital Democracy  
and the Challenges of Freedom of  
Expression in Indonesia. *Jurnal  
Ilmu Hukum Kyadiren* 8(1), 293-308.  
<https://doi.org/10.46924/jihk.v8i1.476>

*Original Article*

## Abstract

The rapid development of social media has significantly expanded opportunities for public participation and freedom of expression. However, it has also generated various legal challenges, including defamation, hate speech, the dissemination of misinformation, and the potential criminalization of public criticism. This study aims to examine the legal framework governing freedom of expression on social media within the Indonesian legal system, identify the legal issues arising from the exercise of freedom of expression in digital spaces, and formulate the legal boundaries of such freedom based on the principles of the rule of law, democracy, and human rights. This research employs a normative juridical method using statutory, conceptual, and human rights approaches through the analysis of primary, secondary, and tertiary legal materials. The findings indicate that freedom of expression is constitutionally protected under the 1945 Constitution of the Republic of Indonesia, the Human Rights Law, and various international human rights instruments. Nevertheless, its exercise is subject to limitations intended to safeguard the rights, freedoms, and legitimate interests of others. The study concludes that proportional law enforcement, enhanced legal certainty, and improved digital literacy are essential to maintaining an appropriate balance between freedom of expression and the protection of public interests in the digital sphere.

**Keywords:** *Freedom of Expression, Social Media, Human Rights, Electronic Information and Transactions Law (ITE Law)*

## Abstrak

Perkembangan media sosial telah memperluas ruang kebebasan berpendapat sekaligus menimbulkan berbagai persoalan hukum terkait penghinaan, pencemaran nama baik, ujaran kebencian, penyebaran informasi bohong, dan potensi kriminalisasi terhadap kritik publik. Penelitian ini bertujuan menganalisis pengaturan hukum kebebasan berpendapat di media sosial dalam perspektif hukum Indonesia, mengidentifikasi permasalahan hukum yang timbul dalam praktik penyampaian pendapat di ruang digital, serta merumuskan batas-batas yuridis kebebasan berpendapat berdasarkan prinsip negara hukum, demokrasi, dan hak asasi manusia. Penelitian menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, konseptual, dan hak asasi manusia melalui analisis bahan hukum primer, sekunder, dan tersier. Dapat dipahami bahwa kebebasan berpendapat dijamin oleh UUD NRI Tahun 1945, UU HAM, dan instrumen HAM internasional, namun pelaksanaannya dibatasi oleh kewajiban menghormati hak dan kepentingan hukum pihak lain. Kesimpulannya, diperlukan penegakan hukum yang proporsional, kepastian hukum yang lebih kuat, serta peningkatan literasi digital guna mewujudkan keseimbangan antara kebebasan berekspresi dan perlindungan hak masyarakat dalam ruang digital.

**Kata kunci:** *Kebebasan Berpendapat, Media Sosial, Hak Asasi Manusia, UU ITE*

## 1. INTRODUCTION

The rapid advancement of information and communication technology has fundamentally transformed patterns of human communication, particularly through the widespread use of the internet and social media. These technological developments enable individuals to disseminate information, express aspirations, and communicate opinions instantly without geographical or temporal constraints.<sup>1</sup> Social media has evolved beyond its original function as a platform for entertainment and interpersonal interaction, becoming a significant digital public sphere that facilitates public discourse, influences public opinion, promotes government accountability, and enables citizens to exercise their democratic rights.<sup>2</sup>

In a democratic state, freedom of expression constitutes a fundamental human right protected under Article 28E(3) and Article 28F of the 1945 Constitution of the Republic of Indonesia. This constitutional guarantee is further reinforced by Article 23(2) of Law Number 39 of 1999 concerning Human Rights, which recognizes every individual's right to express and disseminate opinions through various forms of media, including electronic and digital platforms. As a cornerstone of democratic governance and human rights protection, freedom of expression requires effective legal safeguards from the state.

Despite its significant benefits, the expansion of social media has also generated a range of legal challenges. The speed, accessibility, and extensive reach of digital platforms allow information to spread rapidly, thereby increasing the likelihood that online content may produce legal consequences.<sup>3</sup> Numerous cases demonstrate that social media posts perceived as containing defamation, insults, hate speech, or misinformation frequently become the subject of legal proceedings under the Electronic Information and Transactions Law (ITE Law).<sup>4</sup> Moreover, several provisions of the ITE Law continue to attract public and academic debate due to concerns regarding their potential impact on freedom of expression. Consequently, a comprehensive examination of the legal framework and normative limitations governing freedom of expression in digital spaces is necessary to ensure an appropriate balance between the protection of constitutional rights and broader legal interests.

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<sup>1</sup> Juan Matheus dan Ariawan Gunadi, "Pembentukan Lembaga Pengawas Perlindungan Data Pribadi Di Era Ekonomi Digital: Kajian Perbandingan Dengan KPPU," *JUSTISI* 10, no. 1 (2024): 20–35, <https://doi.org/https://doi.org/10.33506/jurnaljustisi.v10i1.2757>.

<sup>2</sup> Rangga Eka Sakti and Bestian Nainggolan, "Understanding the Role of Social Media Toward Satisfaction of Government in Indonesia," *Jurnal Komunikasi Indonesia* 12, no. 1 (2023): 9, <https://doi.org/10.7454/jkmi.v12i1.1185>.

<sup>3</sup> Muhammad Heykal Albasier et al., "Perpetrators of Spreading Hoaxes Through Social Media During the 2019 Presidential Election in Indonesia," *Tatohi: Jurnal Ilmu Hukum* 5, no. 5 (2025): 215–22, <https://doi.org/10.47268/tatohi.v5i5.2988>.

<sup>4</sup> Ronny Ronny, "Analisis Pengaturan Pasal Berkaitan Hoaks Dalam Undang-Undang No. 19 Tahun 2016," *Locus Journal of Academic Literature Review* 4, no. 6 (2025): 403–9, <https://doi.org/10.56128/ljoalr.v4i6.564>.

Scholarly discussions concerning freedom of expression on social media have expanded alongside the increasing reliance on digital technologies for public communication. Previous studies indicate that social media serves not only as a platform for public participation and expression but also as a source of legal disputes concerning the boundaries between individual freedoms and the protection of the rights and reputations of others. Within the Indonesian context, debates surrounding freedom of expression in digital environments are largely associated with the implementation of the ITE Law, which is frequently viewed as a legal instrument with a dual function: protecting society from the misuse of information technology while potentially limiting freedom of expression.

One of the earlier studies addressing this issue was conducted by Miptahul, which examined freedom of expression on social media from the perspective of Indonesian law. The study explored procedures for expressing opinions through social media, various forms of cybercrime, and legal protections available to social media users. The findings emphasized that the exercise of freedom of expression must remain consistent with applicable legal provisions, particularly those contained in the ITE Law. However, the study did not provide a comprehensive analysis of the legal criteria necessary to distinguish legitimate criticism from conduct that may constitute a criminal offense.<sup>5</sup>

Similarly, Rahmawati et al. investigated students' perceptions of the legal risks associated with criticizing government policies through social media. Their findings revealed the existence of a chilling effect, whereby individuals tend to restrain their expression due to concerns about potential legal consequences under the ITE Law. These findings suggest that legal regulations can significantly influence communication behavior in digital environments. Nevertheless, the study primarily focused on sociological perceptions and behavioral responses rather than conducting a normative legal analysis of the boundaries and limitations of freedom of expression within the framework of Indonesian law.<sup>6</sup>

Furthermore, Ida Bagus Gede Adyaguhyaka and Sinarianda Kurnia Hartantien examined the relationship between freedom of expression and hate speech on social media. Their study emphasized that freedom of expression is not an absolute right and that social media users remain obligated to respect the rights, dignity, and reputations of others.<sup>7</sup> Similarly, Irfan Pratama et al. analyzed freedom of expression from a human rights perspective. Their findings confirmed that criticism of government policies

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<sup>5</sup> Miptahul Miptahul, "Tinjauan Yuridis Hak Kebebasan Berpendapat Bagi Pengguna Media Sosial Menurut Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik" (Universitas Muhammadiyah Sumatera Utara, 2017), <http://repository.umsu.ac.id/handle/123456789/12318>.

<sup>6</sup> Nur Rahmawati et al., "Kebebasan Berpendapat Terhadap Pemerintah Melalui Media Sosial Dalam Perspektif UU ITE," *Widya Pranata Hukum: Jurnal Kajian Dan Penelitian Hukum* 3, no. 1 (2021): 62–75, <https://doi.org/10.37631/widyapranata.v3i1.270>.

<sup>7</sup> Ida Bagus Gede Adyaguhyaka and Sinarianda Kurnia Hartantien, "Hak-Hak Masyarakat Dalam Menyampaikan Pendapat Dan Berekspresi Di Muka Umum Terlindungi Oleh Hukum," *Jurnal Hukum Dan Keadilan* 11, no. 2 (2022): 58–67.

constitutes a fundamental democratic right that must be protected, provided that it is exercised responsibly and in accordance with applicable legal norms.<sup>8</sup>

More recent studies by Halimah and Hidayah, Putri Fithrotin Nikmah, and Setya Budhi Wirawan et al. further highlight the importance of safeguarding freedom of expression within a democratic society. These studies also critically examine several provisions of the Electronic Information and Transactions Law (ITE Law), arguing that certain provisions may create legal uncertainty and potentially restrict the exercise of constitutionally protected rights.<sup>9</sup> In addition, Kadek Ferdian Dwi Arsa and I Dewa Gede Herman Yudiawan specifically investigated the implementation of Article 27(3) of the ITE Law concerning online defamation. Their findings indicate that the broad and potentially ambiguous formulation of the provision creates opportunities for multiple interpretations, thereby increasing the risk of criminalizing public criticism that should otherwise be protected as a manifestation of constitutionally guaranteed freedom of expression.<sup>10</sup>

Existing studies have made significant contributions to understanding the relationship between freedom of expression, human rights protection, and the implementation of the ITE Law. Nevertheless, the majority of these studies examine the issue from a limited perspective, focusing primarily on specific aspects such as defamation, hate speech, human rights protection, or the normative implications of the ITE Law. Consequently, there remains a need for research that integrates constitutional principles, human rights norms, digital communication regulations, and the legal limitations of freedom of expression within a comprehensive analytical framework. Such an approach is essential for promoting legal certainty while ensuring balanced protection for all stakeholders in the digital environment.

Accordingly, this study aims to examine the legal framework governing freedom of expression on social media from the perspective of Indonesian law by analyzing its constitutional foundations, human rights principles, and relevant regulations governing digital activities. The study also identifies key legal issues arising from the exercise of freedom of expression in online spaces, including defamation, insults, hate speech, the

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<sup>8</sup> Muhammad Irfan Pratama et al., “Kebebasan Berpendapat Dan Berekspresi Di Media Sosial Dalam Perspektif Hak Asasi Manusia,” *Qawanin Jurnal Ilmu Hukum* 3, no. 1 (2022): 1–16, <https://doi.org/10.56087/qawaninjih.v3i1.406>.

<sup>9</sup> Lili Halimah and Yayuk Hidayah, “Problematisa Hukum Dalam Kebebasan Berpendapat Pada Bidang Politik: Perspektif Pendidikan Kewarganegaraan Dan Keterlibatan Masyarakat Terhadap Penerapan Undang-Undang Informasi Dan Transaksi Elektronik (UU ITE) i Indonesia,” *Litigasi* 25, no. 2 (2024): 254–68, <https://doi.org/10.23969/litigasi.v25i2.18489>; Putri Fithrotin Nikmah, “Perlindungan Kebebasan Berpendapat Dalam Media Sosial Dalam Perspektif HAM,” *Jurnal Hukum, Politik Dan Ilmu Sosial* 2, no. 4 (2023): 123–30, <https://doi.org/10.55606/jhps.v2i4.2627>; Setya Budhi Wirawan et al., “Tinjauan Yuridis Perlindungan Hak Warga Negara Dalam Menyampaikan Pendapat Di Media Sosial,” *Limbago: Journal of Constitutional Law* 5, no. 1 (2025): 1–13, <https://doi.org/10.22437/limbago.v5i1.37409>.

<sup>10</sup> Kadek Ferdian Dwi Arsa and I Dewa Gede Herman Yudiawan, “Kebebasan Berpendapat Dan Perlindungan Reputasi Dalam Penerapan Pasal 27 Ayat (3) UU ITE,” *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4, no. 1 (2026): 6158–68, <https://doi.org/10.61104/alz.v4i1.3541>.

dissemination of false information, and the potential criminalization of public criticism. Furthermore, this research seeks to formulate the legal boundaries of freedom of expression in order to achieve an appropriate balance between individual liberty, legal certainty, and the protection of the rights and interests of others.

## **2. RESEARCH METHODOLOGY**

This study employs a normative legal research method using statutory, conceptual, and human rights approaches. This methodological framework was selected because the research focuses on examining legal norms, principles, doctrines, and policy frameworks governing freedom of expression on social media within the Indonesian legal system.

The statutory approach is applied to analyze various legal instruments related to freedom of expression, including the 1945 Constitution of the Republic of Indonesia, Law Number 39 of 1999 concerning Human Rights, the Electronic Information and Transactions Law (ITE Law) and its amendments, the Indonesian Criminal Code, and other relevant regulations. The conceptual approach is utilized to examine the theoretical foundations and legal concepts underlying freedom of opinion, freedom of expression, the rule of law, democracy, and the protection of human rights. In addition, the human rights approach is employed to evaluate the extent to which national legal provisions are consistent with international human rights standards, particularly those contained in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

The study relies exclusively on secondary data comprising primary, secondary, and tertiary legal materials collected through an extensive library-based research process. Primary legal materials include constitutional provisions, statutes, and other relevant regulations. Secondary legal materials consist of scholarly literature, journal articles, legal commentaries, and research reports, while tertiary legal materials include legal dictionaries, encyclopedias, and other supporting references.

All legal materials are analyzed qualitatively using descriptive-analytical and prescriptive methods. The descriptive-analytical approach is employed to identify and examine the existing legal framework governing freedom of expression in digital environments as well as the legal issues arising from its implementation. The prescriptive approach is subsequently applied to formulate legal recommendations and determine the appropriate legal boundaries of freedom of expression on social media in accordance with the principles of democracy, the rule of law, and the protection of human rights.

## **3. RESEARCH RESULT AND DISCUSSION**

### **3.1. Legal Framework Governing Freedom of Expression on Social Media**

Freedom of expression constitutes a fundamental constitutional right that receives extensive recognition and protection within the Indonesian legal system. Normatively, this right is guaranteed under Article 28E(3) of the 1945 Constitution of the Republic of Indonesia, which provides every individual with the right to associate, assemble, and express opinions. Furthermore, Article 28F guarantees every citizen the right to communicate, obtain, process, and disseminate information through all available channels of communication. These constitutional provisions demonstrate the State's explicit recognition of freedom of expression as a fundamental right that serves as an essential component of democratic governance.

The protection of freedom of expression is not limited to constitutional guarantees but is further reinforced by Law Number 39 of 1999 concerning Human Rights. Article 23(2) of the Human Rights Law recognizes the right of every individual to express and disseminate opinions through both print and electronic media. This provision reflects the adaptation of Indonesian law to technological developments by acknowledging electronic media as a legitimate platform for exercising freedom of expression. Consequently, social media can be regarded as a lawful medium through which citizens exercise their constitutionally protected rights to express opinions and participate in public discourse.

The regulation of freedom of expression in Indonesia is also closely connected to international human rights instruments. Indonesia ratified the International Covenant on Civil and Political Rights (ICCPR) through Law Number 12 of 2005, thereby affirming the right of every individual to hold opinions and to seek, receive, and impart information without undue interference. Similarly, Article 19 of the Universal Declaration of Human Rights (UDHR) recognizes freedom of expression as a fundamental human right that must be respected and protected by all states. Accordingly, the legal protection of freedom of expression in Indonesia derives not only from constitutional and statutory provisions but also from internationally recognized human rights standards.

The rapid expansion of social media has significantly broadened opportunities for public participation in democratic processes. Social media platforms enable citizens to communicate aspirations, express criticism, and monitor government policies more efficiently and effectively than traditional forms of communication.<sup>11</sup> Platforms such as Instagram, Facebook, TikTok, and X have created a digital public sphere that facilitates active citizen engagement in public discourse and opinion formation. As a result, social media has emerged as a vital instrument of digital democracy that strengthens public participation in governance and policymaking processes.

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<sup>11</sup> Duvalio Adnan Zordi et al., "Peran Media Sosial Dalam Pembentukan Opini Publik Dan Dinamika Kebijakan Pemerintah Di Era Digital," *Jurnal Ilmu Komunikasi, Administrasi Publik Dan Kebijakan Negara* 3, no. 1 (2026): 154–62, <https://doi.org/10.62383/komunikasi.v3i1.882>.

This perspective is consistent with the findings of Irfan Pratama et al., who argued that freedom of expression constitutes a fundamental democratic right that must be respected and protected by the state.<sup>12</sup> Similarly, Putri Fithrotin Nikmah emphasized that social media has become one of the primary mechanisms through which citizens exercise their constitutional right to express opinions.<sup>13</sup> Building upon these perspectives, the present study adopts a broader analytical approach by examining not only the legal protection of freedom of expression but also its interaction with regulatory frameworks governing public activities in digital environments.

Despite providing extensive protection, Indonesian law also imposes limitations on the exercise of freedom of expression. These limitations are grounded in the principle that freedom of expression is not an absolute right. Article 28J of the 1945 Constitution stipulates that, in exercising their rights and freedoms, individuals are obligated to respect the rights and freedoms of others and to comply with limitations prescribed by law for the purpose of safeguarding morality, religious values, public security, public order, and justice within a democratic society. Therefore, freedom of expression must be exercised responsibly and in accordance with applicable legal standards.

One of the most significant legal instruments affecting the exercise of freedom of expression on social media is the Electronic Information and Transactions Law (ITE Law). Although the primary objective of the ITE Law is to maintain security, order, and accountability within digital environments, its implementation has generated considerable legal and academic debate. Several provisions relating to defamation, insults, and the dissemination of electronic information have been criticized for their broad and potentially ambiguous wording, which may give rise to multiple interpretations and legal uncertainty. Consequently, concerns have emerged regarding the possibility that certain provisions of the ITE Law could be applied in a manner that restricts legitimate criticism and public participation, both of which are essential elements of a democratic society.

This perspective is consistent with the findings of Halimah and Hidayah, who concluded that several provisions of the Electronic Information and Transactions Law (ITE Law) continue to pose challenges to the effective protection of freedom of expression.<sup>14</sup> Likewise, Kadek Ferdian Dwi Arsa and I Dewa Gede Herman Yudiawan argued that certain provisions of the ITE Law are characterized by broad and ambiguous formulations that permit multiple interpretations and may lead to the criminalization of expressions that should be regarded as legitimate forms of public criticism.<sup>15</sup> However, the present study offers a more comprehensive analysis by examining the broader legal

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<sup>12</sup> Irfan Pratama et al., “Kebebasan Berpendapat Dan Berekspresi Di Media Sosial Dalam Perspektif Hak Asasi Manusia.”

<sup>13</sup> Putri Fithrotin Nikmah, “Perlindungan Kebebasan Berpendapat Dalam Media Sosial Dalam Perspektif HAM.”

<sup>14</sup> Halimah and Hidayah, “Problematika Hukum Dalam Kebebasan Berpendapat Pada Bidang Politik.”

<sup>15</sup> Kadek Ferdian Dwi Arsa and I Dewa Gede Herman Yudiawan, “Kebebasan Berpendapat Dan Perlindungan Reputasi Dalam Penerapan Pasal 27 Ayat (3) UU ITE.”

framework governing freedom of expression on social media rather than focusing solely on a particular statutory provision.

The protection of freedom of expression is intrinsically linked to the principles of democracy and the rule of law. As noted by Muhammad Wahyu Andriansyah and Sekaring Ayumeida Kusnadi, freedom of expression must be understood within a framework that balances individual rights with broader societal interests. On the one hand, the state has a constitutional obligation to guarantee and protect citizens' freedom of expression as a fundamental right. On the other hand, it also bears responsibility for safeguarding the public from harmful forms of online conduct, including hate speech, defamation, disinformation, and the dissemination of false information.<sup>16</sup> Consequently, the regulation and enforcement of laws governing digital activities must be implemented in a manner that is proportionate, equitable, and consistent with human rights principles.

The Indonesian legal system provides a robust normative foundation for the protection of freedom of expression on social media through constitutional guarantees, human rights legislation, and ratified international human rights instruments. Nevertheless, significant challenges remain with respect to the interpretation and implementation of relevant legal provisions, particularly those contained in the ITE Law. Accordingly, there is a pressing need for more proportionate law enforcement, enhanced legal certainty, and interpretative approaches that prioritize the protection of constitutional rights. Such measures are essential to ensuring that freedom of expression can be effectively exercised while simultaneously protecting the rights, dignity, reputation, and legitimate legal interests of others within the digital sphere.

### **3.2. Legal Issues Arising from the Exercise of Freedom of Expression on Social Media**

The rapid expansion of social media has fundamentally transformed contemporary patterns of communication. Beyond serving as a platform for interpersonal interaction, social media has evolved into a digital public sphere that enables individuals to express opinions, criticisms, aspirations, and information to a broad audience instantaneously and without geographical limitations. This transformation has contributed positively to democratic development by expanding opportunities for public participation in government oversight and public discourse. Nevertheless, the ease with which opinions can be disseminated through social media has also generated increasingly complex legal challenges.

Defamation represents one of the most prevalent legal issues associated with the use of social media. Many users express criticisms, complaints, or personal views

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<sup>16</sup> Muhammad Wahyu Andriansyah and Sekaring Ayumeida Kusnadi, "Hak Kebebasan Berpendapat Di Era Digital Dalam Perspektif Hak Asasi Manusia," *Gorontalo Law Review* 7, no. 2 (2024): 431–43, <https://doi.org/10.32662/golrev.v7i2.3727>.

regarding individuals, institutions, or public officials without adequately considering the legal limitations governing online communication. Consequently, numerous social media posts contain statements that may be perceived as damaging an individual's honor, dignity, or reputation and therefore fall within the legal scope of defamation.<sup>17</sup> One of the principal factors contributing to the increasing number of defamation cases is the limited public understanding of the distinction between legitimate criticism, which is protected under the law, and defamatory or insulting expressions that may give rise to criminal liability.

This observation supports the findings of Miptahul, who argued that the growth of social media has increased the likelihood of legal violations involving insults and defamation.<sup>18</sup> Such issues arise not only from the conduct of social media users but also from the lack of clear legal standards distinguishing protected criticism from unlawful insults in law enforcement practice. Criticism directed at public policies and governmental actions constitutes a fundamental component of democratic participation and is protected as a constitutional right. In contrast, insults involve unjustified attacks on an individual's dignity or reputation. The difficulty in distinguishing between these two forms of expression continues to generate legal controversy and interpretative challenges.

In addition to defamation, hate speech constitutes a legal issue with far-reaching social consequences in digital environments. Hate speech commonly manifests in the form of insults, provocation, incitement, hostility, or discriminatory expressions directed toward individuals or groups on the basis of ethnicity, religion, race, gender, or other social characteristics.<sup>19</sup> Social media platforms facilitate the rapid dissemination of such content due to their extensive reach and instantaneous communication features. As a result, hate speech not only harms individual victims but also has the potential to trigger social conflict, intolerance, polarization, and broader social fragmentation.

This perspective is consistent with the findings of Ida Bagus Gede Adyaguhyaka and Sinarianda Kurnia Hartantien, who concluded that freedom of expression may legitimately be restricted when it extends into hate speech that infringes upon the rights, dignity, and reputations of others.<sup>20</sup> Nevertheless, legal regulation alone is insufficient to address the challenges posed by hate speech. Effective responses also require strengthened legal awareness, enhanced digital literacy, and increased public understanding of responsible online communication. These measures are essential to

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<sup>17</sup> Muhammad Din Al Fajar et al., "Pengaturan Pencemaran Nama Baik Dalam KUHP Baru Dan UU ITE Dalam Perspektif Hukum Pidana," *Causa: Jurnal Hukum Dan Kewarganegaraan* 16, no. 5 (2026), <https://doi.org/10.6679/ahk65105>.

<sup>18</sup> Miptahul Miptahul, "Tinjauan Yuridis Hak Kebebasan Berpendapat Bagi Pengguna Media Sosial Menurut Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik."

<sup>19</sup> Devita Kartika Putri, "Hate Speech and the Harm in Indonesian Judicial Decisions," *Cogent Social Sciences* 9, no. 2 (2023): 2274430, <https://doi.org/10.1080/23311886.2023.2274430>.

<sup>20</sup> Ida Bagus Gede Adyaguhyaka and Sinarianda Kurnia Hartantien, "Hak-Hak Masyarakat Dalam Menyampaikan Pendapat Dan Bereksresi Di Muka Umum Terlindungi Oleh Hukum."

fostering a digital environment that respects both freedom of expression and the rights of others.

Another significant legal challenge is the dissemination of false information, commonly referred to as hoaxes. The spread of misinformation poses a serious threat to the healthy exercise of freedom of expression in digital spaces. Hoaxes are frequently disseminated with the intention of influencing public opinion, generating social unrest, manipulating public perceptions, or advancing particular political and economic interests.<sup>21</sup> The widespread circulation of false information is facilitated by the participatory nature of social media, where users simultaneously function as both content creators and distributors without being subject to the editorial verification processes typically applied by conventional mass media. Consequently, misinformation can spread rapidly across digital networks, reach large audiences within a short period, and significantly influence public understanding of social, political, and legal issues.

Freedom of expression in the digital era faces an additional challenge arising from the limited culture of information verification among social media users. Many individuals tend to share information based on personal beliefs, preferences, or emotional responses without adequately verifying the credibility and accuracy of the source. This phenomenon highlights that the exercise of freedom of expression must be accompanied by a corresponding responsibility to disseminate accurate, reliable, and accountable information. In the digital environment, the right to express opinions should be balanced with ethical obligations to prevent the spread of misinformation and to promote informed public discourse.

Another growing concern is cyberbullying, which represents a significant form of abuse of freedom of expression in digital spaces. Cyberbullying may take various forms, including verbal harassment, defamatory statements, intimidation, personal attacks, and the dissemination of harmful or misleading information through social media platforms.<sup>22</sup> The anonymity and reduced social accountability often associated with online communication may encourage certain individuals to engage in conduct that they would be unlikely to display in direct interpersonal interactions. Consequently, victims of cyberbullying frequently experience adverse psychological effects, including stress, anxiety, diminished self-esteem, emotional distress, and, in severe cases, long-term mental health problems.

A further legal issue concerns the potential criminalization of public criticism through the application of certain legal provisions governing online activities. An examination of legal literature and relevant cases indicates the existence of public concerns regarding the use of specific provisions of the Electronic Information and

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<sup>21</sup> Dedi Rianto Rahadi, "Perilaku Pengguna Dan Informasi Hoax Di Media Sosial," *Jurnal Manajemen Dan Kewirausahaan* 5, no. 1 (2017): 58–70, <https://doi.org/10.26905/jmdk.v5i1.1342>.

<sup>22</sup> Nani Dwi Nurkholifah et al., *Dampak Cyberbullying Terhadap Gangguan Kecemasan Remaja Dan Implikasinya Dalam Bimbingan Dan Konseling*, 5, no. 2 (2025): 6020–33, <https://doi.org/10.31004/joecy.v5i2.847>.

Transactions Law (ITE Law) against individuals who express criticism of government policies or public officials. Although the principal objective of the ITE Law is to maintain order, security, and accountability within digital environments, the application of broadly worded or ambiguously formulated provisions may create legal uncertainty and generate concerns regarding the protection of constitutionally guaranteed freedoms.

This observation is consistent with the findings of Halimah and Hidayah and Rahmawati et al., who identified growing public concern regarding the potential overextension of the ITE Law in ways that may restrict freedom of expression.<sup>23</sup> The fundamental issue lies not in the existence of legal regulation itself but rather in the interpretation and implementation of the relevant provisions by law enforcement authorities. Within a democratic state governed by the rule of law, criticism of public policies and governmental actions should be clearly distinguished from unlawful conduct such as insults, defamation, or the dissemination of harmful and misleading information. The absence of clear interpretative standards may undermine legal certainty and discourage public participation in democratic discourse.

The legal issues associated with the exercise of freedom of expression on social media encompass various forms of misuse, including defamation, hate speech, the dissemination of hoaxes and misinformation, cyberbullying, and the potential criminalization of legitimate public criticism. Although freedom of expression in digital spaces constitutes a constitutionally protected right, its exercise must remain consistent with the protection of the rights, dignity, reputation, and legitimate interests of others. Accordingly, an appropriate balance must be maintained between safeguarding freedom of expression, ensuring proportionate law enforcement, strengthening digital literacy, and enhancing public legal awareness. Such a balanced approach is essential to ensuring that social media functions as a democratic space that is open, safe, responsible, and respectful of human rights.

### **3.3. Legal Boundaries of Freedom of Expression on Social Media Based on the Principles of the Rule of Law, Democracy, and Human Rights Protection**

Freedom of expression on social media constitutes a fundamental constitutional right within a democratic state governed by the rule of law. This right serves as an essential mechanism through which citizens communicate criticism, aspirations, ideas, and concerns regarding public affairs while participating in the oversight of governmental activities. From the perspective of the rule of law, freedom of expression is not merely an individual liberty but also a vital instrument of democratic participation that promotes transparency, accountability, and responsive governance. Consequently,

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<sup>23</sup> Halimah and Hidayah, "Problematika Hukum Dalam Kebebasan Berpendapat Pada Bidang Politik"; Rahmawati et al., "Kebebasan Berpendapat Terhadap Pemerintah Melalui Media Sosial Dalam Perspektif UU ITE."

the protection of freedom of expression forms an integral part of the state's obligation to respect, protect, and fulfill human rights.

Nevertheless, freedom of expression is not an absolute right. Normatively, limitations on the exercise of this right derive constitutional legitimacy from Article 28J of the 1945 Constitution of the Republic of Indonesia. This provision stipulates that, in exercising their rights and freedoms, individuals are required to respect the rights and freedoms of others and to comply with limitations prescribed by law for the purpose of safeguarding morality, religious values, public security, public order, and justice within a democratic society. Accordingly, Article 28J serves as the principal constitutional foundation for establishing that freedom of expression must be exercised responsibly and in a manner that does not infringe upon the legitimate rights and interests of others.

The first legal boundary of freedom of expression on social media concerns the prohibition of insults and defamation. In practice, the exercise of freedom of expression frequently intersects with an individual's right to honor, dignity, and reputation. Criticism directed toward public policies, public services, or the conduct of public officials is, in principle, protected as a legitimate exercise of freedom of expression. However, when such criticism evolves into personal attacks intended to degrade an individual's dignity or reputation without a legitimate factual or public-interest basis, the conduct may constitute defamation or insult and therefore become subject to legal sanctions.

This perspective is consistent with the findings of Kadek Ferdian Dwi Arsa and I Dewa Gede Herman Yudiawan, who identified the ambiguity surrounding the distinction between criticism and insult as one of the principal challenges in the implementation of Article 27(3) of the Electronic Information and Transactions Law (ITE Law).<sup>24</sup> However, the present study advances the existing literature by proposing broader legal parameters for distinguishing legitimate criticism from unlawful insults. These parameters include the purpose of the expression, the existence of a legitimate public interest, the factual basis supporting the statement, and the presence or absence of intent to attack an individual's personal honor or reputation.

The second legal boundary relates to the prohibition of hate speech. From a human rights perspective, freedom of expression guarantees every individual the right to communicate opinions and ideas; however, this protection does not extend to expressions that promote hatred, discrimination, hostility, or incitement against individuals or groups based on ethnicity, religion, race, gender, intergroup affiliation, or other protected social identities.<sup>25</sup> Hate speech possesses a significant capacity to

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<sup>24</sup> Kadek Ferdian Dwi Arsa and I Dewa Gede Herman Yudiawan, "Kebebasan Berpendapat Dan Perlindungan Reputasi Dalam Penerapan Pasal 27 Ayat (3) UU ITE."

<sup>25</sup> Ahmad Muhamad Mustain Nasoha et al., "Kebebasan Berpendapat Dalam Islam: Antara Hak Warga Negara Dan Batasan Syariah," *Amandemen: Jurnal Ilmu Pertambangan, Politik Dan Hukum Indonesia* 2, no. 2 (2025): 90–100, <https://doi.org/10.62383/amandemen.v2i2.886>.

generate social conflict, deepen societal polarization, and threaten public order. Consequently, restrictions on hate speech possess strong legal justification under both domestic law and international human rights standards.

The third legal boundary concerns the dissemination of false information or hoaxes. Freedom of expression cannot be invoked to justify the intentional dissemination of information known to be false or information that is likely to mislead the public. The spread of misinformation has far-reaching consequences, including the manipulation of public opinion, the creation of social unrest, and the disruption of political stability and national security. In digital environments characterized by the rapid circulation of information, the harmful effects of false information can be amplified considerably. Therefore, restrictions on the dissemination of misinformation constitute a legitimate measure aimed at protecting the public interest and preserving democratic stability, consistent with the principles of the rule of law, democracy, and human rights protection.

The application of limitations on freedom of expression must consistently adhere to the principle of proportionality. This principle requires that any restriction imposed by the state pursue a legitimate objective, be prescribed by clear and accessible legal provisions, and not exceed what is necessary to protect the interests at stake. One of the persistent challenges in practice is the broad interpretation and application of certain legal provisions to forms of public expression that should properly be regarded as legitimate criticism. Such practices may generate a chilling effect, discouraging individuals from exercising their right to express opinions due to concerns about potential legal consequences.

This observation is consistent with the findings of Halimah and Hidayah and Rahmawati et al., who identified growing public apprehension regarding the expression of criticism on social media because of the potential application of the Electronic Information and Transactions Law (ITE Law).<sup>26</sup> The appropriate response is not the elimination of all legal restrictions on expression but rather the establishment of a legal framework in which restrictions are implemented in a clear, proportionate, and predictable manner. Such an approach is necessary to prevent arbitrary enforcement and to ensure that citizens' constitutional rights are not unduly constrained.

The legal boundaries of freedom of expression on social media should be determined through a balanced application of three fundamental principles: the rule of law, democracy, and the protection of human rights. The principle of the rule of law requires that any limitation on expression be grounded in clear, accessible, and foreseeable legal norms. Democratic principles demand the preservation of adequate space for citizens to criticize government actions, participate in public discourse, and

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<sup>26</sup> Halimah and Hidayah, "Problematika Hukum Dalam Kebebasan Berpendapat Pada Bidang Politik"; Rahmawati et al., "Kebebasan Berpendapat Terhadap Pemerintah Melalui Media Sosial Dalam Perspektif UU ITE."

contribute to policymaking processes. At the same time, human rights principles require respect for the rights, dignity, reputation, privacy, and security of others in the exercise of freedom of expression within digital environments.

Accordingly, the legal boundaries of freedom of expression on social media encompass prohibitions against defamation and insults, restrictions on hate speech, limitations on the dissemination of false information that threatens public interests, and the obligation to respect the rights and freedoms of others. These restrictions must be applied in a proportionate manner, based on clear legal standards, and interpreted consistently with constitutional and human rights principles. Under no circumstances should such limitations be employed to suppress legitimate criticism of government policies or public officials. Through the balanced application of these principles, it is possible to achieve an appropriate equilibrium between the protection of freedom of expression and the safeguarding of the rights and legitimate interests of others, thereby fostering a democratic, secure, and rights-respecting digital public sphere.

#### **4. CONCLUSION**

This study examines the legal framework governing freedom of expression on social media within the Indonesian legal system, identifies the major legal issues arising from digital expression, and formulates the legal boundaries of such freedom based on the principles of the rule of law, democracy, and human rights protection. The findings reveal that freedom of expression is a fundamental constitutional right guaranteed by the 1945 Constitution, Human Rights Law, and international human rights instruments ratified by Indonesia. However, its implementation in digital spaces raises significant legal concerns, including defamation, hate speech, cyberbullying, misinformation, and the risk of criminalizing legitimate public criticism due to the broad interpretation of certain legal provisions.

The study further demonstrates that freedom of expression is not an absolute right and must be exercised with respect for the rights, dignity, and reputation of others. Legal restrictions on expression, particularly concerning defamation, hate speech, and false information, must comply with the principles of legality, proportionality, and legal certainty to prevent excessive limitations on constitutionally protected speech. This research contributes to the development of balanced regulatory policies for digital communication. Future efforts should strengthen legal certainty, enhance digital literacy, and encourage empirical research to evaluate the effectiveness of freedom of expression regulations in contemporary digital environments.

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