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## The Right to Freedom of Expression on Social Media in the Perspective of Human Rights and Islam\*

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### Abstract

Freedom of expression is one of the human rights (HAM) that is still often violated. Until now, there are still many people who do not respect and respect one's right to freedom of expression. The purpose of this study is to protect the right to freedom of expression on social media under Law on Information and Electronic Transactions (ITE) and the right to freedom of expression on social media from the perspective of human rights (HAM) and Islam. The method used in this research is normative legal research or instructional research. The results of the research obtained are that the protection of freedom of expression has not received adequate protection in Law No. 19 of 2016 amending Law No. 11 of 2008 on Information and Electronic Transactions (ITE). In this ITE Act there is only one article provision related to the right to freedom of expression through internet media, in this case social media, namely Article 27(3). The right to freedom of expression in social media belongs to the first generation of rights from a human rights perspective, which are identical to a person's civil, political and religious rights, save for a personality right that requires their fulfilment and protection.

**Keywords:** Right to Freedom, Opinion, Islam

### Abstrak

Kebebasan berpendapat merupakan salah satu Hak Asasi Manusia (HAM) yang masih sering di langgar. Sampai saat ini, masih banyak orang yang belum menghargai dan menghormati hak kebebasan berpendapat seseorang. Tujuan dilakukan penelitian ini yaitu untuk mengetahui perlindungan atas hak kebebasan berpendapat di media sosial yang diatur dalam Undang-Undang tentang Informasi dan Transaksi Elektronik (ITE) dan untuk mengetahui hak kebebasan berpendapat di media sosial dalam perspektif Hak Asasi Manusia (HAM) dan Islam. Metode yang digunakan dalam penelitian ini adalah penelitian yuridis normatif atau penelitian doktrinal (*doctrinal research*). Hasil penelitian yang didapatkan yaitu perlindungan kebebasan berpendapat dalam Undang-Undang Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik (ITE) belum mendapat perlindungan sebagaimana mestinya. Dalam Undang-Undang ITE ini, hanya terdapat satu ketentuan pasal yang berkaitan dengan hak kebebasan menyatakan pendapat melalui media internet dalam hal ini media sosial, yaitu dalam Pasal 27 ayat (3). Hak kebebasan berpendapat di media sosial dalam perspektif Hak Asasi Manusia, merupakan bagian dari hak generasi pertama yang identik dengan hak sipil, politik, beragama seseorang selain sebagai hak pribadi yang menuntut pemenuhan serta perlindungannya.

**Kata Kunci:** Hak Kebebasan, Berpendapat, Islam

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## A. INTRODUCTION

Humans have the ability to think. Humans have the mental capacity to thought and act. The freedom of mind is incomplete without the freedom of opinion. With freedom of expression, others can transmit an idea or thought. Freedom of mind and opinion encompasses freedom of public expression and freedom of writing and distribution.

An individual's right to express their thoughts and beliefs uninhibitedly is what we mean when we talk about "freedom of opinion," which is derived from the words "free" and "opinion," which mean "freedom" and "someone's concept or idea about something," respectively. John W. Johnson (2001) argues that government at whatever level should respect the right to freely express oneself and the press.<sup>3</sup>

The right to free speech is protected by numerous statutes. Laws such as Article 28 E paragraph (2), Article 28 E paragraph (3), and Article 28 F of the 1945 Constitution of the Republic of Indonesia, Law Number 9 of 1998 concerning Freedom to Express Opinions in Public, Law Number 39 of 1999 concerning Human Rights, and Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights all protect the right to free speech in Indonesia.

The extent to which a country adheres to the democratic principle varies widely from one instance to the next. And yet, in each of these nations, democracy lives on. Democracy introduces a novel concept, the rule of law, which includes human rights protection concepts (HAM). The assurance of political freedom that democracy provides is insufficient to justify the necessity of ensuring human rights. Meanwhile, the concepts of free speech and political participation can be found within human rights documents.

Every Muslim has the right and is provided for by Islam to express themselves freely. The Islamic faith allows for unrestricted debate on any and all global issues. As Muslims, we are obligated to help each other out, to point out the good and the bad, and to encourage each other to do the former.

Human rights in Islamic law are carefully formulated and studied by Muslim experts. The Organization of the Islamic Conference issued the Cairo Declaration of Human Rights in Islam in August 1990, while the European Islamic Council formulated the Universal Islamic Declaration of Human Rights at its 1981 Paris meeting. This is a breakthrough in the polemics of human rights concept in Islam and a compilation of two essential texts in the field of human rights studies in the modern era. As the first comprehensive articulation of human rights from an Islamic perspective, the Universal Declaration of Human Rights in Islam was proclaimed in 1981 and consists of 32 articles.<sup>4</sup>

The Information and Electronic Transactions Law, also known as Law No. 19 of 2016 or the ITE Law, controls information and electronic transactions, as well as information technology in general. This law applies to anyone who engages in legal

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<sup>3</sup> John W, Johnson. 2001. *"Peran Media Bebas"*. Demokrasi. Office of International Information Programs U.S. Department of States, p.53.

<sup>4</sup> Rahman, A. (2018). *Kebebasan Berpendapat dan Informasi: Tinjauan Filosofis Terhadap Pasal 22 Deklarasi Kairo*. *Jurnal Hukum Islam*, 3(1), p.81-94.

actions as outlined in this law, both within the jurisdiction of Indonesia and outside the jurisdiction of Indonesia, which have legal repercussions in the jurisdiction of Indonesia and/or outside the jurisdiction of Indonesia and harm Indonesia's interests.

Freedom of expression is one of the frequently violated Human Rights (HAM). There are still many individuals who do not recognize and appreciate the right to free expression. There are several instances of violations of human rights (HAM), particularly the right to freedom of expression. The right to freedom of expression still requires actual evidence and enforcement to prevent abuses of human rights. Human Rights (HAM) are extremely crucial for ensuring their protection, promotion, and fulfillment. The right to freedom of expression is one among them.

In the present era, social media has caused numerous challenges. A For instance, those who are solely angered by someone's social media comments instantly file a defamation claim because they feel protected by the ITE Law. Essentially, the ITE Law is utilized when a person feels wronged in the pursuit of mutual respect between humans.

In light of the aforesaid phenomena, scholars are curious to examine the concept of free speech on social media from the perspective of Human Rights (HAM) and Islam. The goal of this study is to provide a human rights-based analysis of the provisions of Law No. 19 of 2016 amending Law No. 11 of 2008 on Information and Electronic Transactions (ITE) that guarantee individuals' rights to free speech online (HAM).

## **B. METHODS**

The study takes a normative, judicial approach to the topic, analyzing its essential aspects in light of their extent and identification. Doctrinal research, another name for the normative approach to jurisprudence, examines the relationship between the written text of the law and judicial interpretations of that text.<sup>5</sup> Research methods used are primarily descriptive analytic in nature. To describe, analyze, explain, and study a legal regulation is the goal of analytical descriptive research.

Multiple scientific methods, including the statutory approach and the conceptual approach, are employed in normative research. Because of its emphasis on the subject matter and major idea of the research, the statutory approach is employed. Regarding the legal principles that underpin consumer protection and internet transportation rules and regulations, a conceptual approach (conceptual approach) is implemented.

The key data sources for this study are the 1945 Constitution of the Republic of Indonesia, Law No. 19 of 2016 on Amendments to Law No. 11 of 2008 on Information and Electronic Transactions (ITE), and Law No. 39 of 1999 on Human Rights (HAM). The 1945 Constitution of the Republic of Indonesia, Law Number 19 of 2016 Concerning Amendments to Law Number 11 of 2008 Concerning Information and Electronic

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<sup>5</sup> Ronald Dwokrin, 2003. *Metode Penelitian Hukum Normatif dan Perbandingan Hukum dan Hasil pada Majalah Akreditasi*, Sekolah Pasca Sarjana Universitas Sumatera Utara, Medan, p. 2.

Transactions (ITE), and Law Number 39 1999 Concerning Human Rights are the secondary sources used by the researcher (HAM).

The data gathering method for normative legal research is library research, which means that if the data needed to answer research questions are included in library resources, the data collection activity is called literary study. In addition, this can be accomplished through researching materials pertaining to the implementation of the death penalty in Indonesian law.

Researchers analyzed data using qualitative analysis methods, i.e., the analysis was conducted not by using numbers or statistical formulas, but by using words or sentence descriptions by making assessments based on laws and regulations, theories or expert opinions and logic, so that a logical conclusion could be drawn and the solution to the problem could be determined. Here, the researcher analyzes the Indonesian legislation and regulations governing the application of the death penalty in Indonesia.

## **C. RESULTS AND DISCUSSION**

### **1. Protection of the Right to Freedom of Expression on Social Media as Regulated by Law 19 of 2016 Regarding Amendments to Law 11 of 2008 Regarding Information and Electronic Transactions (ITE)**

Constitutionally-guaranteed freedom of expression is described as a right to personal liberty that requires its fulfillment and protection. Freedom of expression is an indicator of a nation's democratic continuity and can describe the protection and recognition of human rights in a nation. According to John W. Johnson, for a nation to be called truly democratic, it must be willing to grant extensive protection for media expression. In accordance with Article 19 of the Universal Declaration of Human Rights, all competent persons and/or legal entities have the right to freedom of speech, which includes the freedoms of assembly, association, and expression. "Everyone has the right to freedom of expression and opinion; this includes the freedom to hold opinions without interference and to seek, receive, and disseminate information and ideas by any means and without respect to national boundaries."

Article 28 of the 1945 Constitution of the Republic of Indonesia protects and guarantees the right to freedom of expression. This article specifies that "freedom of association and assembly, expressing opinions verbally and in writing, etc., are guaranteed by law." This clause accommodates the Indonesian protection and assurance of the freedom of expression. Because the recognition and protection of freedom of expression is governed by a constitution, it is required that all articles, laws, and regulations enacted pursuant to the constitution be in agreement with it and not in conflict with it.

Law No. 19 of 2016 on Amendments to Law No. 11 of 2008 on Information and Electronic Transactions governs the technological convergence experienced by Indonesia in the field of Telematics (Technology, Media, and Informatics) (ITE). As a legal umbrella for the first time in Indonesia in the sphere of Information Technology and Electronic Transactions, which should also govern the guarantee of the protection

of freedom of expression, particularly in the Internet media. Internet has inevitably become the greatest threat to freedom of expression. While the Internet can promote worldwide access to information, it can also pose difficulties for nations, people, and the international community that wish to govern information.

In Indonesia, the use of technology online is governed by Law No. 19 of 2016 on Amendments to Law No. 11 of 2008 on Information and Electronic Transactions (ITE). However, this Law does not provide clear guidelines for the protection of free speech; the only relevant provisions can be found in Article 27, specifically paragraph 3 which prohibits "any person intentionally and without rights distribute and/or transmit and/or make accessible electronic information that has insulting and/or defamatory content." Protests and resistance have been lodged against the provisions of this article from a variety of quarters because of concerns that they stifle the right of legal subjects to freedom of opinion, which is an element of human rights that must be safeguarded. As a result, many groups have filed a Judicial Review with the Constitutional Court (MK) challenging the article on the grounds that it violates fundamental rights to free expression and due process. On the other hand, the Constitutional Court ruled that Article 27 paragraph (3) of the ITE Law did not violate human rights or infringe upon the right to freedom of opinion.

Free speech is protected under Article 23 (2) of Law No. 39 of 1999 on Human Rights, which states, "everyone is free to have, issue, and disseminate opinions according to his conscience, orally and/or in writing through print and electronic media with due observance of religious values, morality, order, public interest, and the integrity of the nation." Consequently, Article 23 paragraph (2) of this Law on Human Rights should be considered in light of the ITE Law's provisions addressing freedom of thought. Indonesia ratified the 1966 Covenant on Civil and Political Rights in Law No. 12 of 2005, which states that all provisions and contents of the Covenant on Civil and Political Rights are an inseparable part of this Law, including the recognition and protection of freedom of expression as one of a person's political rights.

Therefore, Article 19 of this Law regulates the provisions governing the protection of freedom of expression, which states that "everyone has the right to hold opinions without interference" (paragraph 1) and that "everyone has the right to freedom of expression; this right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers or limitations, orally, in writing or in print, in the form of art, or through any other means, without interference and regardless of frontiers." Because it allows citizens to have a say in how their government is run, protecting people's right to free speech is essential to any functioning democracy.

Given the number of safeguards for free speech found in Indonesian legislation and regulation, it is evident that Indonesia is a human rights defender. When compared to the language of Article 27 paragraph (3) of Law No. 19 of 2016 amending Law No. 11 of 2008 on Information and Electronic Transactions, this will look different (ITE). In the

ITE Law, especially Article 27 paragraph (3), it is considered not to reflect the protection of a person's freedom of opinion, even as if it restricts freedom of expression.<sup>6</sup>

The researcher does a linguistic or grammar analysis of the provisions of Article 27 paragraph (3). Paragraph 3 of Article 27 reads, in relevant part, "everyone purposefully distributes and/or transmits and/or makes electronic material accessible that contains insults and/or defamatory contents," and can be broken down into the following categories for discussion.

#### **First: The element "...intentionally and without rights"**

It is acknowledged that this clause is still somewhat ambiguous and can be interpreted in different ways; but, when seen in the context of intentionality, it becomes clear that there was some forethought behind the action. Since the scope and boundaries of an opinion that is said to attack and slander a person are not governed by this law, it is very subjective. Next, regarding "without rights" In its Decision No. 2/PUU-VII/2009, the Constitutional Court declares on this element without rights: "That the element purposefully and without rights is a unity that must be established by law enforcement at the level of law application. The components "deliberately" and "without rights" indicate that the perpetrator "wants" and "is aware" that his actions were performed without rights.

The element without rights is a lawbreaking element. The inclusion of parts without rights is meant to prohibit the distribution, transmission, and accessibility of electronic information and electronic documents containing insults and/or defamation" (MK Decision No. 2/PUU-VII/ 2009).<sup>7</sup> So if someone expresses his opinion through his own data or information, such as email, and other friendship services, and he has a personal "password" which has become his right, because only the owner has it, then he cannot be subject to Article 27 paragraph (3). This means that this also applies to the case that befell Prita Mulyasari, if the author relates it, so that Prita cannot be charged with Article 27 paragraph (3) of the ITE Law.

#### **Second: The element "...distributing and/or transmitting and/or making electronic information accessible"**

The provisions of Law No. 19 of 2016 on Amendments to Law No. 11 of 2008 on Information and Electronic Transactions do not clarify further on this topic (ITE). So, what does it mean to distribute and/or transmit? The Big Indonesian Dictionary defines distribution as the act of distributing (sharing, delivering) to multiple individuals or locations. The Big Indonesian Dictionary defines transmitting as the act of sending (forwarding) messages and other information from one person to another.

The definition of these two aspects in the Big Indonesian Dictionary is regulating efforts to channel information or an individual's perspective. What about the creator, who in this instance is the owner of the rights to the viewpoint or data? While the "accessibility" element is primarily intended at the owner of the right to the information

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<sup>6</sup> Budi Agus Riswandi, 2003. *Hukum Dan Internet Di Indonesia*, UII Pers, Yogyakarta.

<sup>7</sup> Leah Levin, 1987. *Hak-Hak Asasi Manusia Tanya Jawab*, Jakarta: PT. Pradnya Paramita, p. 45.

or opinion, does it also include the electronic system operator or service provider (Provider) who offers services so that the information can be accessed?

The provisions of the Electronic Information and Transaction Law have not addressed this matter in detail. With a setting that is more focused on conveying or sending information from one person to another, there will be a great deal of information that is never shared with the public. Many information carriers will be susceptible to criminal threats if they are found to have offended or slandered another individual or organization. Whereas the dissemination of information or opinions is an effort in terms of social control and an effort to educate the nation's life in accordance with the objectives outlined in the preamble of the Republic of Indonesia's 1945 Constitution.<sup>8</sup>

### **Third: The element "... has an insult and/or defamation charge"**

There are many classifications and types of this insulting and defamatory charge. Based on the provisions in the Criminal Code, if it is related to the object, this crime can be classified into several parts, namely:

- a. Insults and defamation of state officials, such as against the President or Vice President (Article 134 of the Criminal Code) (already canceled through the decision of the Constitutional Court Number 013-022/PUU-IV/2006);
- b. Insults against representatives of foreign countries in Indonesia (Article 143 33 Ibid, p. 32.46 of the Criminal Code);
- c. Insulting the Indonesian Government (Article 154 of the Criminal Code);
- d. Insults and defamation of a group or class (Article 156 of the Criminal Code);
- e. Insults and defamation of individuals (Article 310 of the Criminal Code), and;
- f. Insults and defamation of officials or civil servants (Article 316 of the Criminal Code).

When associated with the type, insults can be classified into 5 types, namely: a). Verbal blasphemy or defamation {Article 310 paragraph (1) of the Criminal Code}; b). Blasphemy or Defamation in writing {Article 310 paragraph (2) of the KHUP}; c). Slander {Article 311 paragraph (1) of the Criminal Code}; d). Minor insults (Article 315 of the Criminal Code); e). Complaints {Article 313 of the Criminal Code}; f). The allegation {Article 310 of the Criminal Code}; g). False suspicion {Article 318 paragraph (1) of the Criminal Code}. However, in the ITE Law, insults and defamation are no longer distinguished based on object, legal gradation and also based on type, but are only united and also generalize all the contents of the insult and defamation in one Article 27 paragraph (3).

Regarding the criminal sanctions imposed for defamation in Law Number 19 of 2016 Concerning Amendments to Law Number 11 of 2008 Concerning Information and Electronic Transactions (ITE) contained in Article 45 paragraph (3), where it states that a person is threatened with a maximum sentence of four years in prison or a maximum

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<sup>8</sup> Aji, A.M.; Yunus, N.R. 2018. *Basic Theory of Law and Justice*, Jakarta: Jurisprudence Institute. See also: Maggalatung, A.S.; Aji, A.M.; Yunus, N.R. 2014. *How The Law Works*, Jakarta: Jurisprudence Institute.

fine of Rp. 750 million rupiah, this is merely an excuse for weighting it with a different medium, namely the internet.

The 1948 Universal Declaration of Human Rights recognizes the freedom of speech as a "fundamental human right" and guarantees its protection. Article 19 states, "Everyone has the right to freedom of expression and opinion; This right includes the ability to hold opinions without interference and the freedom to seek, collect, and distribute information and ideas through any medium and regardless of national borders." In order for the right to hold beliefs to be fully exercised, guarantees of freedom and immunity must be provided, so that the perpetrator does not fear "retaliation" from any party.<sup>9</sup>

## **2. The Right to Freedom of Expression on Social Media in the Perspective of Human Rights (HAM)**

Regarding constraints on others' freedom of expression, Law No. 19 of 2016 pertaining to Amendments to Law No. 11 of 2008 pertaining to Information and Electronic Transactions (ITE) makes no mention. This limitation is reflected in the rules and regulations that still pertain to it, specifically Article 28 of the Constitution of the Republic of Indonesia from 1945, before it was changed. The section has a paragraph that refers to other arrangements with the Act. Therefore, this restriction can only be imposed if it is already stipulated by law.

The regulation regarding this limitation is also contained in Law No. 39 of 1999 concerning Human Rights, which regulates in greater detail the restrictions imposed on the submission of such opinions, specifically in Article 23 paragraph (2), as described above, wherein that paragraph contains the provision "...with due respect for religious values, decency, public order, and the integrity of the nation." Consequently, when enjoying the freedom to express one's thoughts anywhere and through any medium, including the Internet, one must also be mindful of the rights of others and the constraints imposed by this legislative rule.<sup>10</sup>

It comes with a specific obligation and a special responsibility. Article 19 paragraph 3 of the convention on civil and political rights, which was adopted by Law No. 12 of 2005, states: "The execution of the rights set forth in paragraph 2 entails unique obligations and responsibilities. It may consequently be subject to certain limits, but only to the extent required by law to: Respect the rights or reputations of others; and Protect national security, public order, public health, or morals."

Freedom of expression is linked with a nation's democratic principles. It can even be claimed that a democracy originates from disagreements in opinion, whereas a state arises from a consensus of view (according to the social contract theory presented by J.J. Rousseau). As stated by Kuntjoro Probopranoto in his book *Human Rights and Pancasila*, the "will of the people" cannot be determined in the absence of regularly

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<sup>9</sup> Budhi Irawan, 2005. *Jaringan Komputer*. Graha Ilmu, Bandung, p. 79

<sup>10</sup> Agus Raharjo. 2002. *Cyberbrime Pemahaman dan Upaya Pencegahan Kejahatan Berteknologi*. PT Citra Aditya Bakti, p. 88.



voiced free opinions, notably in the form of questions and replies in a joint meeting or session. It comes out that the "volonte generale" or "general will" of the people must be the foundation of a democratic nation's political structure. As indicated in the preceding theory, the state should also respect and preserve the right to freedom of expression without exception.

Freedom of expression, in the context of democracy, is the most significant and indispensable factor in enhancing public engagement in a democratic nation and enhancing social control. This right is essential because it facilitates the interchange of ideas, wholesome discussions, and high-quality arguments. Where the conversation or argument will involve the coalition and the opposition, do not assume that "opposition" literally means "fight" or "oppose." Second, acknowledging human rights entails acknowledging the reality of human obligations or responsibilities. Second, acknowledging human rights entails acknowledging the reality of human obligations or responsibilities.<sup>11</sup>

Human rights as a whole deserve formal recognition and protection, including in Law No. 19 of 2016 on Amendments to Law No. 11 of 2008 on Information and Electronic Transactions (ITE), so that human rights (opinion freedom) are protected in cyberspace.

### 3. The Right to Freedom of Expression on Social Media in an Islamic Perspective

Human rights are the subject of discussion among thinkers to protect the rights of citizens from tyrannical powers. The history of the codification of human rights is also quite long. However, it was agreed that Magna Charta 1215 was the oldest codification of human rights and became a reference for other declarations after that. It was only then that the United Nations declared it at the 1948 trial in Vienna, which is now known as the Universal Declaration of Human Rights (UDHR). The UDHR is a reference for every member of the United Nations to ratify it in the laws and regulations of each country, including Indonesia.<sup>12</sup>

Human rights (HAM) are synonymous with individual liberty. 10 Regarding freedom in accordance with Islamic ideology, specifically freedom in accordance with the Shari'a. While maqashid al-syariah is the primary source of Islamic law, it is the fundamental reference. According to al-Syatibi, the most prominent formulation of maqashid al-syariah lists five aspects of maqashid as-syariah: guarding religion (hifz al-diin), guarding life (hifz al-nafs), shielding reason (hifz al-'aql), guarding offspring (hifz al-nals), and guarding property (hifz al-mal).<sup>13</sup>

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<sup>11</sup> Albert Hasibuan. 2008. "Politik Hak Asasi Manusia (HAM) dan UUD 1945". Law Review Fakultas Hukum Universitas Pelita Harapan. Vol. VIII, No. 1, p. 48

<sup>12</sup> According to Abdurrahman Kasdi, there are three periodizations of this formulation of human rights, namely customary law, statutory law and constitutional law. See: Abdurrahman Kasdi, 2014. *Maqashid al-syariah dan Hak Asasi Manusia (Implementasi HAM dalam Pemikiran Islam)*, Jurnal Penelitian, Vol. 8, No. 2, Agustus, p. 253-257.

<sup>13</sup> Asy-Syathibi, 1975. *Al-Muwafawat fi ushul al-Syari'ah*, (Mesir: Maktabah al-Tijariyah al-Kura,) juz 2, p.10.

In Islam, freedom is expressed in two ways. First, regarding the word *hurriyah*. In *al-Mausu'ah al-Islamiyah al-'Ammah*, freedom is defined as "a state of Islam and faith that enables humans to perform or abandon things according to their will and choice, within the *aqidah* and morals of the Islamic system."<sup>14</sup> Second, independence is characterized by *ikhtiyar* (freedom or Liberty). True freedom is the ability to choose what is best, which requires knowledge of what is good and what is wrong.

According to Hasyim Kamali, recognizing the right to free speech is one approach to defend the truth. Freedom of expression enhances human dignity, continued Kamali. Therefore, a person's dignity will be diminished if he declines to express his view on subjects in which he believes they are correct.<sup>15</sup>

#### D. CONCLUSION

The right to free speech is inadequately protected by Amendments to Information and Electronic Transactions (ITE) Law No. 19 of 2016. Article 27 paragraph (3) of this ITE Law reads, "everyone intentionally and without the right to distribute and/or transmit and/or make accessible electronic information that has insulting and/or defamatory content." This is the only provision in this ITE Law that directly addresses the right to freedom of expression through internet media, in this case social media. Since this article falls outside the purview of the Prohibited Acts Chapter, it can be safely assumed that the only responsibilities it imposes are those of internet users.

Without explicitly stating the rights that can be owned by users (users) in utilizing internet media to communicate with other people, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE) tends to restrict the freedom of expression that is owned by a person. Many difficulties will arise from putting into practice the regulation pertaining to the prohibition in Article 27 paragraph (3), as it contains clauses that are still open to multiple interpretations and even seem to be subjective. It's difficult to objectively define what constitutes an offensive or defamatory opinion because there is sometimes a lack of context.

In addition, the implementation of freedom of expression is not restricted in the same manner as in other relevant laws and regulations pertaining to the freedom to gather and associate. If it is related to other statutory provisions about Human Rights, then there are various provisions in this ITE Law that are not in conformity with other statutory provisions, such as those concerning the goal of educating the nation's life, the right to self-development, etc. Therefore, the requirements of Article 27 paragraph 3 are irrelevant to the 1945 Constitution of the Republic of Indonesia and the provisions of other laws that regulate the protection of human rights.

The right to freedom of expression on social media from the perspective of Human Rights (HAM), where freedom of opinion is part of the first generation of rights that are

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<sup>14</sup> *Hai'ah at-Tahrir, al-Mausu'ah al-Islamiyah al-'Ammah* (Kairo: Wazarat al-Awqaf wa al-Majlis al-'Ala li as-Syu'un al-Islamiyah, 2001), p.536

<sup>15</sup> Muhammad Hasyim Kamali, *Kebebasan Berpendapat dalam Islam*, pp. 24-25.

identical to a person's civil and political rights other than as a personal right that requires fulfillment and protection that cannot be reduced or limited by anyone or anything, including the state. Because the state is responsible for ensuring that these human rights are respected and protected through the provisions of the law. However, recognizing that a person's rights also have implications for the need to respect the rights of others or the link between individual rights and those of other individuals or the social community. Therefore, this privilege requires constraints that also serve as a code of conduct for interacting via various media, including the Internet. Certain interests prevent early enforcement of these prohibitions. Rather, there are criteria that must be satisfied, such as those that must be contained in the law, have reasonable aims, and not be overly broad or disproportionate. Looking at the provisions of the ITE Law, there are still a number of deficiencies in relation to existing restrictions, as it is not clearly stated about the limits that a person should not exceed when expressing his opinion and the 66 elements that are a requirement for limiting the right to freedom of opinion that can be owned by someone via the internet.

Following the right to liberty, opinion is a fundamental human right. The article examines the legal standards in light of the theological principles of Islam. According to the teachings of Islam, it is obligatory for every human being to express an opinion on behavior, attitudes, and beliefs. Therefore, Islam also governs the ethics of opinion in order to prevent slandering. Text 22 contains this philosophical value, such that the spirit of the article also bears the value of *maqashid al-syari'ah*.

#### REFERENCES:

- Aji, A.M.; Yunus, N.R. 2018. *Basic Theory of Law and Justice*, Jakarta: Jurisprudence Institute.
- Aliamsyah, M. 2008. "Kebebasan Memperoleh dan Menyampaikan Informasi dalam Perspektif Undang-Undang Informasi dan Transaksi Elektronik". *Jurnal Legislasi Indonesia*. Vol. 5, No. 4.
- Al-Jabiri, Muhammad Abed. 2003. *Syura; Tradisi-Prtikularitas-Universalitas*, terj. Mujiburrahman (Yogyakarta: LKiS).
- Antari, Putu Eva Ditayani. 2017. "Tinjauan Yuridis Pembatasan Kebebasan Berpendapat Pada Media Sosial di Indonesia", *Jurnal Hukum Undiknas* Vol.4 No.1.
- Baderin, Mashood A., 2007. *Hukum Internasional Hak Asasi Manusia dan Hukum Islam*, Jakarta: Komnas HAM.
- Budi, Hardiman, F. 2006. 'Manusia' dari Hak-Hak Asasi Manusia: Sebuah Kontroversi antara Islam dan Barat, dalam I Wibobo dan B Herry Priyono, *Sesudah Filsafat: Esai-esai untuk Franz Magnes-Suseno*, Yogyakarta: Kanisius.
- Cawidu, Ismail. 2013. *Bijak Bermedia Sosial*, Direktorat Jendral Informasi dan Komunikasi Publik Kementerian Komunikasi dan Informatika RI, Jakarta.
- Daulay, Hamdan, 2008. *Kode Etika Jurnalis dan Kebebasan Pers di Indonesia Ditinjau dari Perspektif Islam*, *Jurnal Penelitian Agama* 12 (2).

- El-Muhtaj, Majda. 2009. *Hak Asasi Manusia dalam konstitusi Indonesia*, Prenanda Media, Jakarta.
- El-Muhtaj, Majda. 2013. *Dimensi-Dimensi HAM*, PT Raja Grafindo Persada, Jakarta.
- Harahap, Krisna. 2003. *HAM dan Upaya Penegakannya di Indonesia*, Grafiti, Bandung.
- Hasibuan, Albert. 2008. "Politik Hak Asasi Manusia (HAM) dan UUD 1945". *Law Review Fakultas Hukum Universitas Pelita Harapan*. Vol. VIII, No. 1.
- Ibrahim, Johnny. 2008. *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia, Malang.
- Iqbal, Muhammad. 2001. *Fiqh Siyasyah: Kontekstualisasi Doktrin Politik Islam*, Jakarta: Gaya Media Pratama.
- Irawan, Budhi. 2005. *Jaringan Komputer*. Graha Ilmu, Bandung.
- Johnson, John W, 2001. "Peran Media Bebas". *Demokrasi*. Office of International Information Programs U.S. Departement of State. No. 7.
- Jorgensen, Rikke Frank. 2001. "Internet and Freedom of Expression". *European Master Degree in Human Rights and Democratisation*, Raoul Wallenberg Institute.
- Levin, Leah. 1987. *Hak-Hak Asasi Manusia Tanya Jawab*, Jakarta: PT. Pradnya Paramita.
- Maggalatung, A.S.; Aji, A.M.; Yunus, N.R. 2014. *How The Law Works*, Jakarta: Jurisprudence Institute.
- Mansur, Didik M. Arief; Gultom, Elisatris. 2005. *Cyber Law Aspek Hukum Teknologi Informasi*. Refika Aditama. Bandung.
- Raharjo, Agus. 2002. *Cyberbrime Pemahaman dan Upaya Pencegahan Kejahatan Berteknologi*. PT Citra Aditya Bakti.
- Riswandi, Budi Agus. 2003. *Hukum Dan Internet Di Indonesia*, UII Pers, Yogyakarta.
- Sumodinigrat, Gunawan; Wulandari, Ari. 2015. *Revolusi Mental Pembentukan Karakter Bangsa Indonesia*, Media Pressindo, Yogyakarta.
- Tambukara, Apriadi. 2013. *Literasi Media: Cerdas Bermedia Khalayak Media Massa*, PT Raja Grafindo Persada, Jakarta.
- Wahid, Abdul; Labib, Moh. 2005. *Kejahatan Mayantara (Cyber Crime)*, PT. Refika Aditama, Bandung.

**Peraturan Perundang-undangan:**

- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945
- Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia
- Undang-Undang Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik (ITE)