

## **Freedom of Expression in Critical Content on Public Infrastructure via Social Media**

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### **ABSTRACT**

Freedom of speech is the right of every person to express their opinions regarding criticism, suggestions, and opinions. One form of conveying criticism is by creating content related to public infrastructure. Based on this background, the author proposes a formulation of the problem, namely, first, how are the legal rules for freedom of speech on social media. Second, how is the legal protection for content creators criticizing public infrastructure on social media. This research method uses a normative juridical research type, with a statute approach. The legal materials used are primary legal materials including: the 1945 Constitution, Law Number 9 of 1998, Law Number 39 of 1999 and Law Number 1 of 2024, the second amendment to Law Number 11 of 2008. From the results of the study, it can be concluded that: the legal rules for freedom of opinion on social media are regulated in Article 28E paragraph (3) of the 1945 Constitution, regulated in Article 1 paragraph (1) of Law Number 9 of 1998 and in Article 23 paragraph (2) of Law Number 39 of 1999. And legal protection for creators of content criticizing public infrastructure is regulated in Article 28F of the 1945 Constitution and regulated in Article 14 paragraph (2) of Law Number 39 of 1999, and based on the Constitutional Court Decision Number 105/PUU-XXII/2024. Given that the rights that a person has carry the consequence of an obligation to respect the rights of others or with society, then this right does need to be limited. This limitation is regulated in Law Number 1 of 2024, the second amendment to Law Number 11 of 2008, where this limitation also plays a role as an ethic in interacting through various media, one of which is social media.

### **Keywords:**

Freedom of Exspression, Critical Content, Public Infrastructure, Social Media.

## **Introduction**

Information and communication technology is currently developing very rapidly and has proven to provide many benefits to its users. Now, anyone can access information simply by using a mobile phone or other internet-connected communication device. People of all backgrounds and ages can easily use the internet as a tool for communicating and exchanging information without being tied to time. One of the most common media used for this purpose is social media<sup>1</sup>.

Social media also serves as a platform for conveying aspirations or opinions, as it has an audience that pays attention and provides responses. According to Leonard W. Doob, public opinion can be defined as the views held by individuals or groups of people on a particular issue. Public opinion is a combination of thoughts, feelings, and suggestions expressed by citizens personally regarding policies taken by the government, which has the responsibility to maintain social order, especially in situations rife with conflict, differences of opinion, and debates regarding the actions taken and how they are implemented<sup>2</sup>.

According to Kevin Popovic, there are seven categories of social media users: creator, conversationalist, critic, collector, joiner, spectator, and inactive. Creators are users who utilize social media to share content such as blogs, articles, photos, or videos with a wide audience. Conversationalists are those who actively discuss and exchange opinions in online forums. Critics are users who frequently provide personal views or reviews of events. Collectors are individuals who actively seek in-depth information through various channels or website notifications. Joiners are users who utilize more than one social media platform to access information. Spectators are the type of users who only observe or follow

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<sup>1</sup> Nur Rahmawati dkk, *Kebebasan Berpendapat Terhadap Pemerintah Melalui Media Sosial dalam Prespektif UU ITE*, Jurnal pranata hukum, Vol. 3 No. 1 (2021), h.62

<sup>2</sup> Satria Firdaus dkk, *TikTok Sebagai Media Sosial dalam Melakukan Kritik terhadap Pembangunan di Lampung*, Jurnal Publishing, Vol. 1 No. 2 (2024), h.5

other people's posts without interacting, while inactives are users who have a low level of activity and rarely interact on social media<sup>3</sup>.

In this discussion, the author will highlight the type of social media user who acts as a critic. Criticism itself is the process of examining and evaluating something with the goal of increasing understanding, broadening appreciation, or helping improve work. Through criticism, someone receiving feedback can examine their weaknesses, understand the errors they made, be motivated to find solutions, and open their minds to develop and improve the quality of their performance. One example is criticism of public infrastructure.

Infrastructure can generally be defined as public facilities and infrastructure needed for the operational activities of the community and businesses. Public infrastructure, including roads in Indonesia, remains largely damaged and in need of repair. This has led many social media creators to create content or critique it. Content is information conveyed through various platforms, such as TikTok, Instagram, and Facebook. Content can be used for various purposes, one of which is to provide information.

Freedom of expression on social media provides a space for every individual to express their views without censorship or restrictions from any party. This encourages people to be more open in expressing ideas, criticisms, and opinions on various issues. Therefore, social media plays a role as a tool that can strengthen democratic principles and increase public participation in the political and social spheres. Social media indirectly opens up a space for people to express their opinions freely, in accordance with statutory provisions.

Indonesia is a democratic country, one of whose key characteristics is the guarantee of freedom of expression. Therefore, the government and relevant institutions should be committed to respecting and supporting this right. A country can be considered truly democratic if it can provide strong protection for freedom

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<sup>3</sup> Hanan Cahya Fidela dkk, *Studi Kasus Tiktoker Bima Yudho Saputro Terkait Kritik Terhadap Pemerintah Lampung ditinjau dari Sudut Pandang Demokrasi dan TIK*, Jurnal ilmiah wahana pendidikan Vol. 10 No. 14 (2024), h.624

of expression, including the sharing of opinions through social media<sup>4</sup>. Untuk mencegah kebebasan berpendapat dan berekspresi yang berlebihan atau melampaui batas, kebebasan tersebut diatur dan dibatasi oleh Undang-undang. Peraturan yang dibuat sebagai implementasi dari konstitusi menjadi penting terutama dalam sistem hukum positivis untuk menentukan batasan-batasan kebebasan tersebut. Kebebasan berpendapat datang dengan tanggung jawab dan harus dibatasi oleh hukum demi menghormati hak-hak orang lain.<sup>5</sup>

### **Research Method**

This research uses a normative juridical method, namely a process of searching for legal rules and legal doctrines in order to answer the legal problems faced<sup>6</sup>. Therefore, this legal research focuses on examining legal research on rules or norms in positive law, namely legal norms related to freedom of expression on social media. The problem-solving approach used is a statute approach. This statutory approach is conducted by examining all laws and regulations related to the legal issue being discussed<sup>7</sup>. The primary legal materials used in this research are: Law Number 9 of 1998 concerning Freedom of Expression in Public, Law Number 39 of 1999 concerning Human Rights, and Law Number 1 of 2024, the second amendment to Law Number 11 of 2008 concerning electronic and transactions of information.

### **Results and Discussion**

#### **Legal Rules for Freedom of Expression on Social Media**

##### **1. Freedom of Expression in Human Rights Law**

Freedom of expression is a fundamental right in life that is guaranteed and protected by the state. Implementation of freedom of expression can take the form of writings, books, discussions, or press activities. When discussing freedom of expression from a human rights perspective, as a personal right,

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<sup>4</sup> Nur Rahmawati dkk, *Kebebasan Berpendapat Terhadap Pemerintah Melalui Media Sosial dalam Prespektif UU ITE*, Jurnal pranata hukum, Vol. 3 No. 1 (2021), h.64

<sup>5</sup> Muhammad Irfan Pratama, *Kebebasan Berpendapat dan Bereksresi di Media Sosial dalam Prespektif Hak Asasi Manusia*, Qawanin jurnal ilmu hukum, Vol. 3 No. 1 (2022), h.8

<sup>6</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana, Jakarta, 2021, h. 35.

<sup>7</sup> ibid h.133

protection of the right to express opinions is guaranteed in various provisions<sup>8</sup>.

In Article 4 of Law Number 39 of 1999 concerning Human Rights, it states, "The right to life, the right not to be tortured, the right to personal freedom, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person and equality before the law, and the right not to be prosecuted on the basis of retroactive law are human rights that cannot be reduced under any circumstances and by anyone".

This provision also regulates the protection of the right to personal freedom, including freedom of thought and conscience, which cannot be reduced by anyone or any circumstances<sup>9</sup>. Legal regulations regarding freedom of opinion through social media are regulated as stated in Article 23 paragraph (2) of Law Number 39 of 1999 concerning Human Rights, "everyone is free to have, express and disseminate opinions according to their conscience, verbally and/or in writing through print or electronic media while paying attention to religious values, morality, order, public interest and the integrity of the nation."

Freedom of opinion is also regulated in Article 19 of Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Rights, "The right of people to have opinions without interference from other parties and the right to freedom to express opinions."

When expressing opinions on social media, one must also observe ethical principles, such as using polite language, avoiding hate speech, and not spreading false news or hoaxes. They must also adhere to the limitations stipulated in the law. These limitations are stipulated in Law Number 1 of

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<sup>8</sup> Nabilah, Wardatun, Ja'far Shodiq, and Deri Rizal. "Basic Analysis of the Exercise of Judicial Power (Integration of Islamic Law and Positive Law)." *Jurnal Independent* 12, no. 1 (2024), h. 6.

<sup>9</sup> Bima Guntara dan Ayni Suwarni Herry, *Hak Kebebasan Berpendapat di Media Sosial Dalam Perspektif Hak Asasi Manusia*, Jurnal Pendidikan dan Konseling, Vol. 4 No. 6 (2022), h.6955

2024, the second amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions.

Regarding the dissemination of news that causes hatred or hostility, it is regulated as stated in Article 28 paragraph (2) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions, "Any person who intentionally and without the right distributes and/or transmits Electronic Information and/or Electronic Documents that are inciting, inviting or influencing other people so as to cause hatred or hostility towards certain individuals and/or community groups based on race, nationality, ethnicity, skin color, religion, belief, gender, mental disability or physical disability."

Juncto Article 45A paragraph (2) of Law Number 1 of 2024, "Any person who intentionally and without the right distributes and/or transmits Electronic Information and/or Electronic Documents that are inciting, inviting or influencing other people so as to give rise to feelings of hatred or hostility towards certain individuals and/or community groups based on race, nationality, ethnicity, skin color, religion, belief, gender, mental disability or physical disability as referred to in Article 28 paragraph (2) shall be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah)."

Regarding the spread of fake news that causes unrest in society, it is regulated as stated in Article 28 paragraph (3) of Law Number 1 of 2024, "Any person who intentionally spreads Electronic Information and/or Electronic Documents that he knows contain false notifications that cause unrest in society." And in Article 45A paragraph (3) of Law Number 1 of 2024 it is also explained: "Any person who intentionally spreads Electronic Information and/or Electronic Documents that he knows contain false notifications that cause unrest in society as referred to in Article 28 paragraph (3) shall be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah)."

Regarding defamation, it is regulated as stated in Article 27A of Law Number 1 of 2024, "Any person who intentionally attacks the honor or good name of another person by accusing something, with the intention that this matter becomes public knowledge in the form of Electronic Information and/or Electronic Documents carried out through an electronic system." Juncto Article 45 paragraph (4) of Law Number 1 of 2024 as follows, "Any person who intentionally attacks the honor or good name of another person by accusing something, with the intention that this matter becomes public knowledge in the form of Electronic Information and/or Electronic Documents carried out through an electronic system as referred to in Article 27A shall be punished with imprisonment for a maximum of 2 (two) years and/or a maximum fine of IDR 400,000,000.00 (four hundred million rupiah)."

### **Legal Protection for the Creation of Content Criticizing Public Infrastructure on Social Media**

Legal protection is the provision of protection for human rights that may be violated by other parties. This protection is provided so that the public can enjoy the rights guaranteed by law. In other words, legal protection is a series of actions that must be taken by law enforcement officials to create a sense of security, both mentally and physically, from any disturbance or threat. In the context of content creators, this protection aims to protect creators from various legal issues they may face.

This is also regulated as stated in Article 14 paragraph (2) of Law Number 39 of 1999 concerning Human Rights, "Everyone has the right to seek, obtain, possess, store, process and convey information using all available means." Based on the description of Article 28F of the 1945 Constitution and also Article 14 paragraph (2) of Law Number 39 of 1999 concerning Human Rights, it can be seen that everyone has the right to disseminate information. When linked to critical content of public infrastructure carried out by the public or individuals, then the creation of critical content on social media is one form of information dissemination. In essence, the creation of critical content of public infrastructure is

carried out to review the current conditions so that the government is aware of it and aims for the government to immediately improve the infrastructure.

In addition, the decision of the Constitutional Court of the Republic of Indonesia Number 105/PUU-XXII/2024 also provides legal protection. The Constitutional Court's decision stated that the phrase "other people" in Article 27A and Article 45 paragraph (4) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (State Gazette of the Republic of Indonesia of 2024 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 6905) is contrary to the 1945 Constitution of the Republic of Indonesia and does not have conditional binding legal force as long as it is not interpreted as "except for government institutions, groups of people with specific or certain identities, institutions, corporations, professions or positions". So that content creators who criticize public infrastructure cannot be punished because those criticized are officials, not individuals.

### **Conclusion**

Regulations regarding freedom of expression both in public and on social media must be based on the law. Legal regulations regarding freedom of expression on social media are regulated in Article 28E paragraph (3) of the 1945 Constitution, Article 1 paragraph (1) of Law Number 9 of 1998, Article 23 paragraph (2) of Law Number 39 of 1999, and in Article 19 of Law Number 12 of 2005. In expressing opinions on social media, one must pay attention to the ethics or limitations regulated in the law, namely Law Number 1 of 2024.

Legal protection for creators of critical content related to public infrastructure on social media is protected in Article 28F of the 1945 Constitution, Article 14 paragraph (2) of Law Number 39 of 1999, and based on Constitutional Court Decision Number 105/PUU-XXII/2024 which confirms that creators of critical content regarding public infrastructure cannot be punished because those being criticized are officials, not individuals.

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