

Limitations of Human Rights in Freedom of Expression According to Constitutional Law in Indonesia

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Article Info	Abstract
Article History Received : 2026-08-02 Revised: 2026-08-20 Published: 2026-09-17 Keywords: <i>Human Rights; Freedom of Expression; Constitutional Law</i>	Freedom of expression is one of the human rights that is constitutionally guaranteed in Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia and is recognized in various international human rights instruments that have been ratified by Indonesia. However, these guarantees are not absolute. In constitutional practice, restrictions on freedom of expression still raise problems, especially related to the clarity of the legal basis, the potential for criminalization, and the consistency of its application with the principles of human rights protection. This study aims to analyze the restrictions on human rights in freedom of expression according to Indonesian constitutional law and formulate the ideal concept of its limitations within the framework of the state of law, democracy, and human rights protection. This study uses a normative juridical method with a statutory approach, conceptual approach, and analytical approach. Primary, secondary, and tertiary legal materials were analyzed qualitatively through literature studies using the Human Rights Theory of John Locke and Jack Donnelly and the Theory of Constitutional Democracy of Robert A. Dahl. The results of the study show that freedom of expression is a constitutional right that is derogable rights and can be limited as long as it meets the principles of legality, has a legitimate purpose, is necessary in a democratic society, and meets the principle of proportionality as reflected in the 1945 Constitution of the Republic of Indonesia, Law Number 39 of 1999, Law Number 9 of 1998, and the International Covenant on Civil and Political Rights (ICCPR). However, its implementation still faces unclear norms, potential criminalization, and suboptimal protection of citizens' constitutional rights. The ideal concept of restricting freedom of expression must be based on constitutional supremacy, respect for human rights, proportionality, and legal certainty, accompanied by the strengthening of monitoring mechanisms by judicial institutions and human rights protection institutions in order to maintain a balance between the protection of individual rights and the public interest in a democratic state of law.

I. INTRODUCTION

Freedom of expression is one of the human rights that has a fundamental position in the life of a democratic legal state. This freedom is not only related to the ability of each individual to express thoughts, opinions, criticisms, and ideas, but also becomes an important instrument in building public participation, government transparency, and accountability in state administration. From a human rights perspective, freedom of expression is an inseparable part of respect for human dignity as well as a prerequisite for the development of democratic life (Jack Donnelly, 2008).

In the context of Indonesian constitutionality, the guarantee of freedom of expression has a

constitutional basis through the 1945 Constitution of the Republic of Indonesia. Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia affirms that everyone has the right to freedom of association, assembly, and expression. This provision shows that freedom of expression is a constitutional right that receives direct protection from the constitution. This freedom is also closely related to the principle of people's sovereignty because through the expression of opinions, criticisms, aspirations, and ideas, people can participate in the process of state life. This constitutional guarantee is further strengthened through various national legal instruments. Law Number 39 of 1999 concerning

Human Rights recognizes the right of everyone to express opinions, obtain and convey information, and participate in the life of society, nation, and state. On the other hand, Law Number 9 of 1998 concerning the Freedom of Expression in Public specifically provides guarantees for the expression of opinions in public spaces, including through demonstrations, marches, public meetings, and free rostrums. Thus, normatively Indonesia already has a legal framework that provides space for citizens to express their thoughts and opinions.

The protection of freedom of expression also cannot be separated from the state's obligations in the field of human rights. Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia emphasizes that the protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government. This provision places the state not only as a party prohibited from taking arbitrary actions against citizens' freedoms, but also as a party that has an obligation to ensure that these rights can be enjoyed effectively. In this framework, the state has an obligation to respect, protect, and fulfill human rights.

Guarantees of freedom of expression at the national level are also in line with Indonesia's obligations as a state party to the *International Covenant on Civil and Political Rights* (ICCPR) through Law No. 12 of 2005. Article 19 of the ICCPR provides protection for freedom of opinion and expression, including the right to seek, receive, and impart information and ideas. The United Nations Human Rights Committee through *General Comment No. 34* affirms that freedom of opinion and expression is a necessary condition for human development and is one of the foundations of a free and democratic society. Freedom of expression is also closely related to transparency and accountability, which are an important part of the protection of human rights.

However, freedom of expression in Indonesian constitutional law is not an absolute right. The Constitution itself provides space for restrictions on the exercise of rights and freedoms through Article 28J of the 1945 Constitution of the Republic of Indonesia. This provision basically requires that everyone in exercising their rights and freedoms still respects the rights and freedoms of others and is subject to the restrictions set by law to ensure respect for the rights of others, meet moral demands, religious values, security, and public order in a democratic society. Therefore, the main issue in freedom of expression is not solely about the existence or absence of restrictions, but about the basis, purpose, mechanism, and limits of these restrictions so that they do not turn into actions that eliminate the substance of citizens' constitutional rights.

The same principle is reflected in Law Number 39 of 1999 concerning Human Rights. Article 70 of the law stipulates that in exercising his or her rights and freedoms, everyone is obliged to submit to the restrictions set by law with the intention of ensuring recognition and respect for the rights and freedoms of others and fulfilling fair demands in accordance with moral, security, and public order considerations in a democratic society. Thus, the restriction of the right to freedom of expression is legally possible, but the restriction must have a clear legal basis and be aimed at the interests that can be justified in the rule of law.

Problems then arise when the normative construction is confronted with the practice of implementing democratic life. Freedom of expression can be realized through various forms, such as criticism of government policies, journalistic reporting, the expression of aspirations, demonstrations, and the use of digital space. At the same time, certain expressions can intersect with other interests, such as the protection of the reputation and rights of others,

public order, security, and public interests. This condition raises the need to clearly distinguish between expressions that are part of the exercise of constitutional rights and expressions that can legally be restricted under law (Eric Barendt, 2005).

These problems become even more complex when restrictions on freedom of expression are carried out through criminal law instruments or law enforcement actions. Unclear norms and too broad interpretations of restrictive provisions can pose a risk of criminalization of public opinions, criticisms, and aspirations. In the context of a democratic legal state, such a situation can cause a *chilling effect*, which is a situation when individuals or groups of people choose not to express their opinions due to concerns about legal consequences that may arise. Therefore, restrictions on freedom of expression are not enough to be assessed only on the existence of a formal legal basis, but must also be tested based on the legitimate purpose, necessity, and proportionality of the restriction (D. Hadijaya, 2005).

In the perspective of international law, restrictions on freedom of expression under Article 19 paragraph (3) of the ICCPR must meet certain requirements. Restrictions must be established in accordance with the law, directed to legitimate purposes, and necessary to protect the interests recognized in those provisions. *General Comment No. 34* emphasizes that restrictions must meet the principles of necessity and proportionality and should not be excessive. Thus, the existence of a restriction rule does not in itself prove that the restriction is valid; its application must still be linked to the concrete needs and interests to be protected. In the Indonesian context, the issue of restrictions on freedom of expression can also be seen in various forms of expressing people's aspirations, especially demonstrations and criticism of government policies. Law No. 9 of 1998 does

provide space for the public to express their opinions in public, but at the same time establishes certain obligations and limitations in its implementation. Everyone who expresses an opinion is still obliged to respect the rights and freedoms of others, respect generally recognized moral rules, obey laws and regulations, maintain security and public order, and maintain the integrity of the unity and unity of the nation.

This condition shows that there is a complex relationship between individual freedom and the public interest. The state does have the authority to maintain public order and provide protection for the rights of others, but this authority cannot be used indefinitely. In the rule of law, every action of the government and law enforcement officials must be based on the law and limited by the constitution. The principle of *the rule of law* requires the rule of law and equality before the law, so restrictions on citizens' freedoms must have a clear basis, be applied consistently, and must not be used as an instrument to silence legitimate criticism of the administration of government.

These problems show that there is a gap between the normative guarantee of freedom of expression and its implementation in constitutional practice. On the one hand, the constitution and laws and regulations have recognized freedom of expression as a constitutional right and human rights. On the other hand, there are still problems regarding the clarity of restrictive norms, the potential criminalization of expression, the response to the delivery of people's aspirations, and the lack of optimal protection for citizens' constitutional rights. This gap is important to study because the quality of protection of freedom of expression is one of the important indicators in seeing the functioning of the principles of the rule of law and democracy.

A number of previous studies have discussed freedom of expression from the perspective of

human rights and the fulfillment of citizens' rights. Studies on the limits of freedom of opinion, for example, place the protection of human rights as the basis for determining the space for restrictions on these freedoms. Other studies examine the fulfillment of the right to freedom of expression in Indonesia and the issue of its limitations from a human rights perspective. However, the discussion of the limits of freedom of expression still needs to be placed more specifically within the framework of Indonesian constitutional law, especially by linking constitutional guarantees, provisions of laws and regulations, principles of limitation of human rights, ICCPR standards, and constitutional oversight mechanisms.

On this basis, this research is directed not only to identify the various provisions that regulate freedom of expression, but also to analyze how restrictions on these rights are placed in the construction of Indonesian constitutional law. This analysis is important to see whether the restrictions provided by the constitution and laws and regulations have met the principles of legality, legitimate purposes, necessity, proportionality, and protection of the substance of constitutional rights. In this framework, restrictions on rights are not understood as the elimination of freedom of expression, but as a constitutional mechanism to bring together individual freedom with the protection of the rights of others and the public interest (Aharon Barak, 2012).

This research also considers it important to strengthen the role of state institutions that have a function in ensuring the protection of human rights and constitutional supremacy. The Constitutional Court has a strategic position in safeguarding the constitution and ensuring that the formation and implementation of legal norms do not conflict with the 1945 Constitution of the Republic of Indonesia. Meanwhile, the National Human Rights Commission has functions in research, education, monitoring, and mediation of

human rights. The existence of these two institutions is relevant in ensuring that restrictions on freedom of expression remain within the corridor of the constitution and the principles of human rights protection.

Thus, the need to formulate the concept of appropriate restrictions on freedom of expression is becoming increasingly important in the development of national law. The concept must be able to provide a wide space for the public to express opinions, make criticisms, express aspirations, and participate in democratic life, but at the same time provide clear limits on actions that can legitimately interfere with the rights of others, public order, security, or other constitutional interests. Restrictions that are too broad have the potential to reduce the substance of freedom, while unlimited freedom can cause clashes with the rights and interests of others. Therefore, the principle of proportionality is one of the important instruments in determining this balance (Aharon Barak, 2012).

Based on this description, this study focuses on two main issues, namely: first, what are the limits of human rights in freedom of expression according to constitutional law in Indonesia? Second, what is the ideal concept of human rights limitations in freedom of expression according to constitutional law in Indonesia? This study aims to analyze the legal construction of restrictions on freedom of expression in the Indonesian constitutional law system and formulate a concept of restriction that can provide a balance between the protection of individual constitutional rights, public interests, the principle of the rule of law, and democratic life.

With this approach, this research is expected to contribute to the development of constitutional law studies, especially regarding the relationship between human rights, the constitution, democracy, and restrictions on rights in freedom of expression. Conceptually, this research places freedom of expression as a fundamental right that

must be guaranteed, while its limitations must be subject to constitutional supremacy, legal certainty, the principle of proportionality, and effective monitoring mechanisms. Thus, the concept of freedom of expression is not unlimited freedom, but responsible and constitutional freedom of expression within the framework of a democratic legal state.

II. RESEARCH METHODS

This research uses a normative juridical method, which is legal research that conceptualizes law as a norm or rule that becomes a guideline in people's lives. This method is used to examine the limitations of human rights in freedom of expression according to constitutional law in Indonesia by examining primary, secondary, and tertiary legal materials (Soerjono Soekanto, 2006). The approaches used include the statute *approach*, the *conceptual approach*, and the *analytical approach*. The legislative approach is used to examine various regulations related to freedom of expression and restrictions on human rights, especially the Constitution of the Republic of Indonesia in 1945, Law Number 9 of 1998 concerning Freedom of Expression in Public, Law Number 39 of 1999 concerning Human Rights, and Law Number 12 of 2005 concerning the ratification of the ICCPR (Marzuki, 2017).

The conceptual approach is used to understand the concepts of human rights, freedom of expression, the rule of law, democracy, and restrictions on rights based on the views and doctrines that develop in legal science (Soerjono Soekanto, 2006). Furthermore, an analytical approach is used to examine the meaning, concept, and application of legal norms regarding freedom of expression in order to obtain legal arguments regarding justifiable limits based on the principles of the state of law, democracy, and the protection of human rights (Jhonny, 2007). The legal materials used consist of primary, secondary, and tertiary legal materials. Primary

legal materials include laws and regulations related to the object of research, while secondary legal materials are in the form of books, scientific papers, and legal literature that discuss human rights, freedom of expression, and constitutional law. The tertiary legal materials include articles, scientific journals, theses, dissertations, seminar materials, newspapers, and dictionaries that are related to the research (Ishaq, 2017).

III. RESULTS AND DISCUSSION

ANALYSIS OF HUMAN RIGHTS LIMITATIONS IN FREEDOM OF EXPRESSION ACCORDING TO CONSTITUTIONAL LAW IN INDONESIA

1. Regulation of Freedom of Expression According to Indonesian Constitutional Law

Freedom of expression is one of the fundamental human rights in a democratic country. This right allows every individual to express opinions, ideas, information, and criticism of public policies without any pressure or intimidation from any party. In the Indonesian constitutional system, freedom of expression is constitutionally guaranteed through Article 28E paragraph (2) and paragraph (3) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution). However, this freedom is not an absolute right because its implementation must pay attention to the rights and freedoms of others as well as the public interest in a democratic society.

Article 28E of the 1945 Constitution of the Republic of Indonesia is the main constitutional basis that guarantees the freedom of every citizen to embrace religion, worship according to his religion, choose education, work, citizenship, residence, and express his thoughts and attitudes according to his conscience. In addition, paragraph (3) explicitly states that everyone has the right to freedom of association, assembly, and expression. This provision shows that the Indonesian constitution recognizes freedom of

expression as an integral part of the constitutional rights of citizens.

From a constitutional law perspective, the existence of Article 28E shows that the state is not only obliged to respect freedom of expression (*obligation to respect*), but also has an obligation to protect and fulfill these rights through the formation of policies that are in accordance with the principles of a democratic legal state. The state is not allowed to impose arbitrary restrictions on the expression of citizens because this right is one of the main instruments in the implementation of constitutional democracy (Jimly Asshiddiqie, 2021).

Freedom of expression is one of the human rights that has a central position in a democratic legal state. This right allows citizens to express their opinions, ideas, criticisms, and information as part of participation in the life of the nation and state. In the Indonesian legal system, freedom of expression is guaranteed by Article 28E paragraph (2) and paragraph (3) of the 1945 Constitution, which gives everyone the right to express their thoughts and attitudes according to their conscience and express their opinions.

Furthermore, the regulation in Article 28E places freedom of expression as a fundamental right that is a condition for the implementation of public participation in the administration of government. Freedom of expression of opinion allows for a mechanism of control over state power so that an accountable and transparent system of government is created. Therefore, the existence of Article 28E not only provides individual protection, but also strengthens the principle of people's sovereignty as mandated in the 1945 Constitution of the Republic of Indonesia.

Article 28F guarantees everyone to communicate and obtain information in order to develop their personal and social environment. In addition, everyone is also given the right to seek, obtain, possess, store, process, and convey

information using all types of available channels. This provision shows that freedom of expression is not only related to the expression of opinions, but also includes the right to obtain information as a prerequisite for the formation of a democratic society.

From the perspective of constitutional law, the right to obtain information is an integral part of freedom of expression. Without access to information, the public cannot form opinions rationally or participate effectively in the democratic process. Therefore, Article 28F contains a constitutional obligation for the state to ensure the disclosure of public information as a form of respect for the constitutional rights of citizens (Ni'matul Huda, 2005).

These provisions also show that freedom of expression in the Indonesian constitutional system has active and passive dimensions. The active dimension is in the form of the right to convey information, while the passive dimension is in the form of the right to receive information. These two dimensions are an inseparable unit in realizing a healthy democratic life.

Although freedom of expression is guaranteed as a constitutional right, the 1945 Constitution of the Republic of Indonesia also regulates its limitations through Article 28J. The provision emphasizes that in exercising their rights and freedoms, everyone is obliged to respect the human rights of others and to submit to restrictions set by law solely to ensure recognition and respect for the rights and freedoms of others, religious values, morals, security, and public order in a democratic society.

In a democratic legal country, restrictions on freedom of expression are not intended to eliminate these rights, but to maintain a balance between individual interests and public interests. Therefore, restrictions must meet the principles of legality, proportionality, and real necessity in a democratic society so that they do not turn into instruments of silencing public criticism.

The existence of Article 28J shows that the Indonesian constitution adheres to the concept of constitutional balancing, which is a balance between the protection of human rights and the public interest. Thus, freedom of expression is a constitutionally guaranteed right but not an absolute right (Jimly Asshiddiqie, 2021).

The constitutional basis regarding the restriction of human rights in Indonesia is regulated in Article 28J paragraph (2) of the 1945 Constitution which states:

"In the exercise of his rights and freedoms, everyone shall submit to the restrictions established by law with the sole purpose of guaranteeing the recognition and respect for the rights and freedoms of others and of fulfilling just demands in accordance with moral considerations, religious values, security and public order in a democratic society."

This provision shows that the 1945 Constitution recognizes restrictions on human rights, including freedom of expression. Restrictions can only be made through law (*by law*), so they cannot be arbitrarily determined through government administrative policies. Article 28J also affirms that the purpose of restrictions must be directed to protect the rights and freedoms of others and maintain morality, religious values, security, and public order in a democratic society.

Judges have the authority to interpret regulations that restrict freedom of opinion. Court decisions can provide protection for individuals who face legal threats due to expressing opinions. Consistency in the application of the law can help avoid misuse of rules that limit freedom of expression (Raharjo, 2020).

However, as stipulated in Article 28J of the 1945 Constitution, freedom of expression is not an absolute right. The state can restrict the exercise of these rights as long as they are carried out based on the law and aim to protect the rights of others, morality, security, and public order in a

democratic society. From the perspective of human rights theory, these restrictions must still respect the essence of protected rights. Therefore, testing the constitutionality of restrictions on freedom of expression must be carried out through theoretical and normative approaches.

Law Number 9 of 1998 concerning the Freedom of Expression of Opinions in Public is one of the legal bases that provides guarantees for the public to express their thoughts and aspirations openly. This law was born as a form of respect for the constitutional rights of citizens in a democratic country. Freedom of expression is in principle the right of every citizen whose implementation must be carried out responsibly and still respect the law and the rights of others.

In its implementation, Law No. 9 of 1998 does not provide absolute freedom. Article 6 stipulates that citizens who express opinions in public are obliged to respect the rights and freedoms of others, respect moral rules, obey laws and regulations, maintain security and public order, and maintain the integrity of the unity and unity of the nation. Thus, peaceful demonstrations are a form of freedom protected by law, while acts of violence, destruction, or other unlawful actions may be subject to restrictions and accountability in accordance with applicable regulations.

From the perspective of constitutional law, Law No. 9 of 1998 is an instrument to balance between individual freedom and the public interest. This is in line with Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia which guarantees freedom of association, assembly, and expression. However, Article 28J of the 1945 Constitution of the Republic of Indonesia emphasizes that the exercise of rights and freedoms can be limited by law to ensure respect for the rights of others and meet the demands of morals, religious values, security, and public order in a democratic society.

Therefore, restrictions on freedom of expression must be carried out based on the law,

have a legitimate purpose, and must not be carried out excessively. The state has an obligation to protect peaceful demonstrations while taking action against acts that are proven to be unlawful. Thus, Law No. 9 of 1998 in essence not only guarantees freedom of opinion, but also provides limits and responsibilities in the use of this freedom.

Law Number 39 of 1999 strengthens the constitutional guarantee of freedom of expression by regulating the right of everyone to express their opinions, obtain information, and participate in the life of society, nation, and state. This regulation shows the harmonization between the constitution and laws and regulations regarding the protection of human rights in Indonesia.

From the perspective of constitutional law, the Human Rights Law is a concrete form of implementing the constitutional mandate. The existence of the law clarifies the state's obligation to respect, protect, enforce, and fulfill human rights as affirmed in Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia. Thus, freedom of expression according to the Human Rights Law is positioned as a basic right that must be guaranteed by the state as long as its implementation still pays attention to the rights of others and the public interest according to the principles of the rule of law.

The public hopes that the policies implemented can provide a balance between legal protection and freedom of expression. Clear regulations can help avoid legal uncertainty faced by individuals in expressing criticism of the government and public policies. Reforms to policies that are considered to restrict freedom of opinion can strengthen the protection of human rights.

Further provisions regarding the restriction of human rights are regulated in Article 70 of Law Number 39 of 1999 concerning Human Rights, which states:

"In exercising their rights and freedoms, everyone is obliged to submit to the restrictions set by law with the intention of guaranteeing the recognition and respect of human rights as well as the basic freedoms of others, decency, public order and the interests of the nation." This provision emphasizes the principles that have been stipulated in Article 28J of the 1945 Constitution. Human rights cannot be exercised absolutely without regard to the rights of others and the public interest. The State is given the authority to set the necessary restrictions in order to maintain a balance between individual rights and the interests of society. In addition, Article 73 of Law Number 39 of 1999 states:

"The rights and freedoms provided for in this law may only be limited by and based solely on laws to ensure the recognition and respect of human rights as well as the basic freedoms of others, decency, public order and the interests of the nation."

This article emphasizes that the restriction of human rights must meet the principle of legality, which is carried out based on the law. Thus, any form of restriction of freedom of expression must have a clear legal basis, is non-discriminatory, and is aimed at achieving legitimate goals according to the law.

As a state party to the International Covenant on Civil and Political Rights (ICCPR), Indonesia has an obligation to guarantee freedom of expression as stipulated in Article 19 of the ICCPR. These rights include freedom to have opinions without interference and the freedom to seek, receive, and convey information through various media regardless of territorial boundaries.

The ICCPR also recognizes that freedom of expression can be restricted as long as the restrictions are established by law and are necessary to protect the rights or reputations of others, national security, public order, public health, and public morals. Therefore, the

restriction system adopted by the ICCPR is in line with the principles contained in Article 28J of the 1945 Constitution of the Republic of Indonesia. In the context of Indonesian constitutional law, the ratification of the ICCPR strengthens the state's commitment to building a human rights protection system that is in accordance with international standards.

The right to freedom of expression guaranteed in the constitution must be respected in the implementation of applicable policies. Governments have a responsibility to align regulations with international standards that guarantee freedom of expression. Governments have an obligation to ensure that regulations that restrict freedom of expression remain within proportionate limits. Clarity in policy formulation can help reduce legal uncertainty faced by individuals in expressing opinions. Reforms to regulations that are considered to restrict freedom of expression can strengthen human rights protections.

Based on these provisions, restrictions on freedom of expression can only be carried out if they meet three main conditions, namely: first, it is determined by law (*provided by law*); second, it has a legitimate aim; and third, it is necessary in a *democratic society* (Ni'matul Huda, 2021)

Therefore, any restrictions must be interpreted strictly and proportionate to the objectives to be achieved (CCPR/C/GC/34 (2011)).

Freedom of expression is one of the main elements of a constitutional democratic state. Democracy cannot run without guarantees for the freedom of citizens to express criticism, opinions, and aspirations to the government. However, this freedom must be exercised based on the principle of the rule of law so that its implementation remains within the corridor of the constitution and freedom of expression is not only an individual right, but also a mechanism for monitoring state power. The state is obliged to

create a balance between the protection of citizens' rights and the public interest through democratic legal instruments.

Human rights in a constitutional democracy are always accompanied by a constitutional obligation to respect the rights of others so that no one right can be exercised without limits. Therefore, restrictions on freedom of expression are a valid legal instrument as long as they are carried out based on constitutional principles and international human rights standards.

Legal protection of human rights is a consequence of the state of law based on Pancasila. This protection requires recognition of human dignity and dignity through fair legal mechanisms and respect for the basic rights of citizens. A democratic legal state requires a constitutional guarantee of human rights as a limit to state power. Freedom of expression is one of the main indicators of the success of democracy because it provides space for the public to supervise the running of government.

This view shows that the Indonesian constitution has placed freedom of expression as a fundamental right that has a strategic function in realizing a transparent, accountable, and participatory government. Therefore, any restrictions on freedom of expression must be interpreted strictly so as not to contradict the principles of the rule of law and constitutional democracy.

Human rights are universal and inherent in every individual because of their human dignity. The state is obliged to *respect, protect*, and fulfill these rights. In Donnelly's perspective, the restriction of freedom of expression must meet international human rights standards listed in Article 19 paragraph (3) of the ICCPR, namely: *Provided by law*; Have a *legitimate aim*; It is necessary in a *democratic society*.

Donnelly emphasized that it is not enough for a democratic state to recognize human rights normatively, but must ensure that these rights can

be enjoyed effectively by citizens (Henry Shue, 1980). Indonesia has shown progress through: the recognition of human rights in the 1945 Constitution; the establishment of the National Human Rights Commission; the ratification of the ICCPR; the establishment of the Constitutional Court as a protector of constitutional rights. However, various reports still show that there are challenges in the protection of freedom of expression, including the criminalization of opinions, restrictions on demonstrations, and potentially limiting the space for civil liberties.

Normatively, the regulation of demonstrations in Law Number 9 of 1998 is in accordance with the framework of Article 28J of the 1945 Constitution because its restrictions are based on the law and aim to maintain public order. However, empirically, there are still practices of repressive dispersal of demonstrations, excessive use of force, or restrictions on access to public spaces that have the potential to reduce the protection of citizens' constitutional rights. Therefore, the suitability of demonstration restrictions with the constitution is not only determined by its legal norms, but also by its implementation.

Law Number 9 of 1998 regulates various administrative requirements, including the obligation to notify the security forces before a demonstration is carried out. The Constitutional Court in its various rulings emphasized that notification is not a permit. This means that the state must not use administrative procedures as a basis for arbitrarily prohibiting demonstrations. Based on Article 28J of the 1945 Constitution, restrictions on demonstrations can only be carried out if: based on the law; aim to protect legitimate interests; are carried out proportionately. Thus, restrictions on demonstrations in principle are in accordance with the constitution as long as they do not change into restrictions that eliminate the right of citizens to express their opinions.

According to modern Human Rights theory, the state has three main obligations:

- 1) Respect the right (*to respect*);
- 2) To protect;
- 3) Fulfilling the right (*to fulfill*) (Henry Shue, 1980).

This obligation is also reflected in the 1945 Constitution and Law Number 39 of 1999 concerning human rights.

Freedom to express opinions in public is a fundamental part of human rights as well as one of the characteristics of a democratic state. This right not only provides space for the public to express criticism of government policies, but also becomes an instrument for public participation in the administration of the state. This is in line with Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia and Law No. 9 of 1998 which guarantees freedom of expression of opinions in public. In the perspective of Human Rights Theory, as stated by Jimly Asshiddiqie, human rights are inherent rights of every human being and must be respected, protected, and fulfilled by the state. Thus, the state must not arbitrarily restrict freedom of opinion.

The same can be analyzed through Constitutional Theory. According to A.V. Dicey, one of the important elements in the state of law is *the rule of law*, which requires the rule of law and equal treatment before the law. In the context of demonstrations, this principle requires law enforcement officials and courts to act based on the law, not based on political pressure or subjective assessments of the content of aspirations conveyed by the public. The state does have the authority to maintain public order, but this authority must be limited by the constitution and the principle of human rights protection.

In the perspective of Human Rights Theory, the placement of human rights as a right is inherent in human beings and must be the basis for limiting state power. This view is relevant to

the problem of this research because freedom of expression basically functions as an instrument to control power. If public criticism can be easily restricted or condemned without a legal basis and strong evidence, then the function of freedom of expression as part of democracy will lose its meaning. On the other hand, if this freedom is used to commit violence and deprive others of their rights, the state still has the authority to enforce the law.

Based on the overall analysis, the researcher argues that the limit of freedom of expression is not a prohibition against criticism, demonstrations, or differences of opinion, but a limit determined by respect for the rights of others, security, public order, and applicable legal provisions. However, these restrictions must meet the principles of legality, necessity, and proportionality. Thus, a democratic state of law is not a state that eliminates freedom for the sake of order, but a state that is able to create a balance between freedom and order while still placing human rights and the constitution as the main foundation.

2. The Ideal Concept of Human Rights Limits in Freedom of Expression According to Indonesian Constitutional Law

The ideal concept of the limitation of human rights in freedom of expression must depart from the understanding that these rights are constitutional rights of citizens guaranteed directly by the 1945 Constitution of the Republic of Indonesia. Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia provides guarantees that everyone has the right to freedom of association, assembly, and expression. Furthermore, Article 28F provides the right to obtain, possess, store, process, and convey information using all types of available channels.

This guarantee shows that freedom of expression is not a gift from the government, but a right inherent to every human being as part of human rights that must be respected, protected,

and fulfilled by the state. In the perspective of a democratic legal state, freedom of expression is the main instrument for realizing public participation in the administration of government.

Freedom of expression is one of the human rights that has a fundamental position in a democratic legal state. This right not only serves as a means of expressing opinions, but also as an instrument of supervision over the exercise of state power. In constitutional theory, freedom of expression is the main prerequisite for the realization of public participation, government accountability, and protection of citizens' rights.

According to the constitutional theory, the most influential theory in modern constitutional law is the theory put forward by Hans Kelsen. Kelsen developed the theory of *Stufenbau des Recht* or the theory of the level of legal norms. According to this theory, the legal system is arranged in stratified and layered, where the lower norms derive their validity from the higher norms (Pure Theory of Law, 1967). At the top of the hierarchy of norms there is a basic norm (*grundnorm*) which is the source of legitimacy for all legal norms under it. In the Indonesian constitutional system, the 1945 Constitution of the Republic of Indonesia is placed as the highest legal norm that is the basis for the formation of all laws and regulations (Hans Nawiasky, 1948).

This is particularly relevant to the one used in research on freedom of expression because all restrictions on human rights must be in accordance with constitutional norms. Thus, laws restricting freedom of expression must obtain legitimacy from the 1945 Constitution of the Republic of Indonesia and must not conflict with the constitutional rights of citizens.

In the Indonesian context, the ideal concept of freedom of expression must be built on the principles of the rule of law (*rechtstaat*), constitutional democracy, respect for human rights, and the principle of proportionate

restraint. Freedom of expression must be placed as a basic right guaranteed by the state, while restrictions are an exception that must be interpreted strictly.

The ideal concept of limitation of human rights does not place freedom of expression as an absolute right. Almost all democracies recognize that these rights can be restricted as long as they meet constitutional requirements and international human rights standards. Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia provides a constitutional basis that the exercise of the rights and freedoms of every person must be subject to restrictions established by law solely to ensure the recognition and respect of the rights of others and to meet the demands of morals, religious values, security, and public order.

This provision has a substance that is in line with Article 19 paragraph (3) of the *International Covenant on Civil and Political Rights* (ICCPR), which stipulates that restrictions on freedom of expression are only allowed if:

- a. provided by law;
- b. has a legitimate aim; and
- c. necessary in a democratic society.

The state is not allowed to use the grounds of public order as a basis to silence criticism of the government, let alone limit human rights. Criticism of public officials is part of democracy that must be protected as long as it does not contain incitement to violence or discrimination. Thus, the ideal concept according to Indonesian constitutional law must view freedom of expression as a right that can be restricted, but its limitation is an *exception*, while its protection is the main principle (*general rule*). The ideal concept of freedom of expression according to the *International Covenant on Civil and Political Rights* (ICCPR) places freedom of opinion and expression as one of the fundamental human rights. Article 19 of the ICCPR guarantees the right of everyone to have an opinion without interference and the

right to seek, receive, and convey information or ideas through various media. Indonesia ratified the ICCPR through Law Number 12 of 2005, so these principles are an important part of the framework for human rights protection in Indonesia.

However, freedom of expression according to the ICCPR is not an absolute right. Article 19 paragraph (3) of the ICCPR allows restrictions as long as they are established under the law and are necessary to respect the rights or reputations of others and protect national security, public order, health, or public morals. Thus, restrictions must have a clear legal basis, have a legitimate purpose, and be carried out proportionately and are not used to silence criticism of the government.

The ideal concept of freedom of expression in Indonesia is responsible freedom and remains oriented towards the protection of human rights. The state is obliged to provide the widest possible space for the public to express criticism, opinions, and information, but at the same time the public is obliged to respect the rights of others and the provisions of the law. This concept is in line with the principles of the rule of law and democracy which places freedom of expression as a means of public participation as well as as a control of power.

Thus, Law No. 12 of 2005 as an instrument of ratification of the ICCPR must be understood as part of Indonesia's commitment to guarantee freedom of expression. Restrictions on these rights can only be justified if they meet the principles of legality, legitimate purposes, necessity, and proportionality, so that restrictions do not turn into repressive measures that eliminate the substance of freedom of expression.

a) Article 28E Paragraph (2) of the 1945 Constitution

"Everyone has the right to freedom of belief, expression of thoughts and attitudes in accordance with his or her conscience."

b) Article 28E Paragraph (3) of the 1945 Constitution

"Everyone has the right to freedom of association, assembly and expression."

c) Article 28F of the 1945 Constitution

"Everyone has the right to communicate and obtain information to develop his or her personal and social environment."

These provisions show that the 1945 Constitution not only guarantees freedom of oral opinion, but also the freedom to obtain, disseminate, and access information. In the ideal model according to the 1945 Constitution, freedom of expression must be understood as a constitutional right that becomes an instrument of supervision over state power. Therefore, the state should not use its authority to limit public criticism that is carried out legally and responsibly.

However, the 1945 Constitution through Article 28J paragraph (2) provides room for restrictions on human rights. However, these restrictions must be carried out with the aim of protecting the rights of others, security, morality, and public order in a democratic society. Thus, the ideal model based on the 1945 Constitution places freedom of expression as the main principle (*rule*), while restrictions are the *exception*.

Indonesia has ratified the *International Covenant on Civil and Political Rights* (ICCPR) through Law Number 12 of 2005. With this ratification, Indonesia has a legal obligation to adapt national regulations to international human rights standards. Article 19 paragraph (2) of the ICCPR states: "*Everyone shall have the right to freedom of expression.*"

Meanwhile, Article 19 paragraph (3) of the ICCPR stipulates that restrictions can only be made if: Provided *by law*; Aims to protect the rights or reputation of others; Aims to protect national security, public order, public health, or public morals; Necessary in *a democratic society*.

Based on ICCPR standards, the ideal model of freedom of expression in Indonesia must prioritize: protection against political criticism, protection of academic freedom, protection of press freedom and protection of freedom of expression. Thus, national regulations should be directed to expand the protection of rights, not expand the criminalization of citizens' expression.

In a democratic country, groups that play a role in shaping public opinion should be given special protection because they perform important social functions.

a) Protection of Activists

Activists have the function of supervising public policy and fighting for the interests of the community. The state is obliged to ensure that advocacy activities are not criminalized through repressive legal instruments (Jack Donnelly, 2013).

b) Protection of Academics

Academic freedom is part of the freedom of expression recognized in international human rights law. Academics should be given space to conduct research, publication, and scientific criticism without political pressure.

c) Protection of Journalists

The press is the fourth pillar of democracy (*the fourth estate*). Therefore, the state is obliged to guarantee the independence of the press and protect journalists from intimidation, violence, and criminalization.

d) Protection of the Community

Every citizen must have equal access to express opinions both directly and indirectly. The state is obliged to create a safe public space for the exercise of freedom of expression.

The ideal concept of freedom of expression must place human rights and the constitution as the main basis in determining the limits of freedom. In the perspective of Human Rights Theory, freedom of expression is a fundamental right inherent in every human being and must be respected, protected, and fulfilled by the state.

However, this freedom is not an unlimited right because its implementation must still respect the rights and freedoms of others.

Based on Constitutional Theory, freedom of expression is part of the principles of the state of law and democracy. Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia provides guarantees for freedom of expression, while Article 28J provides the basis for its limitations. According to the researcher, the restriction must ideally meet the principles of legality, legitimate purposes, necessity, and proportionality, so that the state does not use security or public order reasons to limit public criticism excessively.

Based on the explanation above, the researcher can conclude several points:

a. The Principle of *Legality*

The challenge of upholding freedom of expression continues to grow along with social and technological changes. The government has an obligation to adapt regulations to the times. Adaptive rules can be a solution in dealing with changes that occur in society.

The principle of legality is the main principle in the restriction of human rights. This principle requires that any restriction on freedom of expression must be based on clear laws and regulations, accessible to the public, and provide legal certainty. From the perspective of constitutional law, the principle of legality aims to prevent arbitrary actions by the government against citizens. Restrictions that do not have a clear legal basis have the potential to violate the principle of the rule of law as stipulated in Article 1 paragraph (3) of the 1945 Constitution (Philipus M. Hadjon, 2011).

According to the *Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR*, a restriction of rights can only be justified if it is regulated in accessible and foreseeable law. Thus, norms that limit freedom of expression must not

be *vague* or multi-interpreted because they can cause legal uncertainty and abuse of authority.

b. Principle of *Necessity*

The principle of *necessity* requires that restrictions on freedom of expression can only be imposed if they are absolutely necessary to achieve legitimate goals. The state must be able to demonstrate a *pressing social need* so that such restrictions cannot be avoided.

In the application of this principle, the government is not enough to show the existence of a legitimate purpose, but also to prove that restrictions are a necessary means to protect the interests in question. If there are other alternatives that are lighter and less restrictive of individual rights, then these alternatives must be prioritized (Manfred Nowak, 2005). The principle of necessity is an important instrument in testing whether a policy that restricts freedom of expression is really necessary or excessive and has the potential to hinder civil liberties in a democratic country.

c. Principle of *Proportionality*

The principle of proportionality requires a balance between the purpose of limitation and the level of restriction imposed on human rights. Limitation must not exceed what is necessary to achieve a legitimate goal. According to Aharon Barak, the principle of proportionality consists of three elements, namely *suitability*, necessity, and balance (*balancing/proportionality stricto sensu*) (Aharon Barak, 2012). A restriction can only be justified if it has a rational relationship with the goal to be achieved, is the lightest way, and the benefits obtained are greater than the losses to individual rights.

In the context of freedom of expression, the principle of proportionality is a test tool to assess whether the sanctions or restrictions imposed by the state are still within reasonable limits. Overbroad *restrictions* can result in a *chilling effect* on the public in expressing opinions and criticism (Eric Barendt, 2005). Therefore, the

principle of proportionality is an important requirement in a democratic country that respects human rights.

Thus, the ideal concept offered is "responsible and constitutional freedom of expression", which provides a wide space for the public to express opinions, criticisms, and aspirations, while providing strict limits on actions that are proven to violate the rights of others or the law. The state is obliged to protect this freedom, while the public is obliged to use it responsibly.

Thus, this balance is a form of application of a democratic legal state, where freedom is not sacrificed for the sake of order, and order is not ignored in the name of freedom. With this principle, the limits of human rights and the supremacy of the constitution can run simultaneously.

IV. CONCLUSIONS AND SUGGESTIONS

A. Conclusion

The limitation of human rights in freedom of expression according to Indonesian constitutional law is a limit that has been regulated through article 28H of the 1945 Constitution of the Republic of Indonesia and also Law No. 9 of 1998 which is an instrument to balance between individual interests and public interests. Likewise, article 73 of Law No. 39 of 1999 states that rights and freedoms regulated in law can only be limited by and based on the law, as well as Law No. 12 of 2005 concerning the ICCPR provides a legal restriction for the sake of national security, public order, health, morals and the protection of others.

The ideal concept of the limitation of human rights in freedom of expression according to Indonesian constitutional law is a limitation that is regulated through the law but does not violate human natural rights because in order not to violate human rights, therefore freedom

of expression must still be given an open space. If necessary, the ideal concept is given in special spaces or in places where there may be frequent actions of expressing opinions and/or freedom of expression, thus this will be more effective and responsible both in terms of rules and implementation.

B. Suggestions

Some of the suggestions presented here are more of a refinement of further research.

1. The government and lawmakers need to evaluate and harmonize regulations related to restrictions on freedom of expression so that each restriction has a clear legal basis, a legitimate purpose, and meets the principles of necessity and proportionality. This is necessary to prevent *overrestrictive* restrictions and criminalization of legitimate expression in democratic public spaces.
2. Law enforcement officials and judicial institutions need to apply an approach oriented towards the protection of human rights in handling cases related to freedom of expression. Law enforcement must clearly distinguish between peaceful expressions or demonstrations and actions that truly meet the elements of lawlessness. Thus, law enforcement does not become an instrument to limit public criticism, but is still able to provide protection for public order and the rights of others.

REFERENCE LIST

- Ariany, L., dan S.P. Perdana. "Batasan Kebebasan Berpendapat di Indonesia Perspektif Hak Asasi Manusia." *Jurnal Hukum dan Legislasi Global*, Vol. 5, No. 12, 2024.
- Barak, Aharon. *Proportionality: Constitutional Rights and Their Limitations*. Cambridge: Cambridge University Press, 2012.

- Barendt, Eric. *Freedom of Speech*. 2nd ed. Oxford: Oxford University Press, 2005.
- Dahl, Robert A. *Polyarchy: Participation and Opposition*. New Haven: Yale University Press, 1971.
- Donnelly, Jack. *Universal Human Rights in Theory and Practice*. 3rd ed. Ithaca: Cornell University Press, 2013.
- Estede, S., et al. *Hak Asasi Manusia di Tengah Polarisasi Sosial*. 2025.
- Hadijaya, D. "Kriminalisasi dalam: Antara Perlindungan Hukum dan Pembungkaman Kebebasan Berekspresi." *Jurnal Ilmu Politik dan Kebijakan*, 2025.
- Hadjon, Philipus M. *Perlindungan Hukum Bagi Rakyat di Indonesia*. Surabaya: Bina Ilmu, 2011.
- Ibrahim, Johnny. *Teori dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia, 2007.
- Ishaq. *Metode Penelitian Hukum Penulisan Skripsi, Tesis, Serta Disertasi*. Bandung: Alfabeta, 2017.
- Kelsen, Hans. *Pure Theory of Law*. Berkeley: University of California Press, 1967.
- Locke, John. *Two Treatises of Government*. Edited by Peter Laslett. Cambridge: Cambridge University Press, 1988.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Edisi Revisi. Jakarta: Kencana, 2017.
- Nawiasky, Hans. *Allgemeine Rechtslehre als System der Rechtlichen Grundbegriffe*. Einsiedeln: Benziger, 1948.
- Ni'matul Huda. *Hukum Tata Negara Indonesia*. Jakarta: Raja Grafindo Persada, 2005.
- Ni'matul Huda. *Negara Hukum, Demokrasi dan Judicial Review*. Yogyakarta: UII Press, 2005.
- Nowak, Manfred. *U.N. Covenant on Civil and Political Rights: CCPR Commentary*. 2nd ed. Kehl: N.P. Engel Publisher, 2005.
- Rahardjo. *Hukum dalam Jagat Ketertiban*. Jakarta: UKI Press, 2020.
- Rhona K.M. Smith, et al. *Hukum Hak Asasi Manusia*. Yogyakarta: PUSHAM UII, 2008.
- Soekanto, Soerjono. *Pengantar Penelitian Hukum*. Jakarta: Raja Grafindo Persada, 2006.
- Strong, C.F. *Modern Political Constitutions*. London: Sidgwick & Jackson, 1966.
- Suhendri. *Pemenuhan Hak Kebebasan Berekspresi di Indonesia*. Pascasarjana Universitas Lampung, t.t.
- Supoyo, S. *Rekonstruksi Regulasi Aspirasi Masyarakat dalam Pembentukan Peraturan Perundang-undangan Berbasis Nilai Keadilan*. Universitas Islam Sultan Agung, 2023.
- United Nations Educational, Scientific and Cultural Organization (UNESCO). *Recommendation concerning the Status of Higher-Education Teaching Personnel*. Paris: UNESCO, 1997.
- United Nations Educational, Scientific and Cultural Organization (UNESCO). *World Trends in Freedom of Expression and Media Development Report*. Paris: UNESCO Publishing, 2023.
- United Nations Economic and Social Council. *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*. New York: United Nations, 1985.

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- United Nations Human Rights Committee. *General Comment No. 34: Article 19 – Freedoms of Opinion and Expression*. CCPR/C/GC/34, 2011.
- Indonesia. *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*.
- Indonesia. *Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia*.
- Indonesia. *Undang-Undang Nomor 12 Tahun 2005 tentang Pengesahan International Covenant on Civil and Political Rights (ICCPR)*.
- Indonesia. *Undang-Undang Nomor 9 Tahun 1998 tentang Kemerdekaan Menyampaikan Pendapat di Muka Umum*.
- International Covenant on Civil and Political Rights (ICCPR)*. 1966.
- Mahkamah Konstitusi Republik Indonesia. *Putusan Mahkamah Konstitusi Nomor 7/PUU-VII/2009*.