

PROTECTION OF FREEDOM OF EXPRESSION THROUGH INTERNET MEDIA FROM A HUMAN RIGHTS PERSPECTIVE

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ABSTRACT

This research is motivated by the basic rights of human rights (HAM), namely the right to freedom of opinion which needs to be analyzed how the protection of freedom of opinion is regulated in the ITE Law. And what is the form of the obligation of the State of Indonesia in protecting the right to freedom of expression on social media. This type of research uses a normative juridical research type using a statutory research approach and a case approach and using primary and secondary legal materials obtained from literature study consisting of primary and secondary law. The results of writing this thesis can be concluded that article 27 paragraph 3 UU ITE only contains obligations that must be fulfilled by social media users and tends to be restrictive because it does not clearly include the rights possessed in using social media, bearing in mind that rights also cause an obligation to respect and respect the rights of others, then the implementation of these rights can be limited through article 28J paragraph 2 of the 1945 Constitution, the State has an obligation to protect freedom of opinion on social media which is regulated constitutionally in the 1945 Constitution, Law no. 39 of 1999, Law no. 12 of 2005. In the form of protecting, respecting and fulfilling human rights (HAM).

Keywords : Freedom of Expression, Human Rights, Social Media

I. INTRODUCTION

The State of Indonesia is a State that places law as the basis of State power and the administration of the State in all its forms is carried out under the rule of law [1]. A state based on the power of law means that the state with all its governmental actions must be based on law so that there is little possibility of abuse of power. In addition, the state or government must guarantee legal order, guarantee law enforcement and ensure the achievement of legal objectives [2].

The 1945 Constitution of the Republic of Indonesia (1945 UUD RI 1945) is the basic law for guidelines in administering government, both written and unwritten [3]. So that various laws in Indonesia refer to the 1945 Constitution of the Republic of Indonesia. There are many legal regulations governing human rights, one of which is article 1 of Law No. 39 of 1999 concerning Human Rights which reads "Human rights are a set of inherent rights in the nature and existence of humans as creatures created by God Almighty and is His gift that must be respected, upheld and protected by the State, law and human dignity.

In this article, everyone is burdened with the same obligations as the government and the state [4]. Everyone is also an actor holding obligations, namely the obligation to respect (to respect) the rights and freedoms of others. However, when viewed from the article, everyone is also obliged to uphold and protect human rights. The enforcement of the protection of human rights in Indonesia is still far from what the public expects in general because the government is considered in its implementation to have not been able to resolve issues related to human rights.

Indonesia has inevitable principles, namely freedom of opinion and freedom of expression, these principles are contained in the International Covenant for Civil and Political Rights (ICCPR) which was later ratified by the Government of Indonesia by establishing Law Number 12 of 2005 concerning international covenants on civil and political rights (international convention on civil and political rights) [5].

Like the right to freedom of opinion which is freedom to speak and think freely but responsibly. Regulations regarding human rights, especially regarding freedom of expression on social media in Indonesia, have been included in the Constitution, namely in chapter XA of the 1945 Constitution of the Republic of Indonesia Article 28e paragraph (3) which reads "Every person has the right to freedom of association, assembly and expression of opinions". UU no. 9 of 1988 concerning Freedom of Expressing Opinions in Public, so that individual freedom of opinion is a legally protected right. Someone who has an attitude, opinion or draws a conclusion, then decides by expressing it, in this context on social media, of course, has gone through various considerations. In this case the formation of perceptions is a fundamental thing before someone has an opinion or draws conclusions [6]

Jimly Asshidiqie, as cited by Nurul Qamar in his book entitled human rights in a democratic rule of law argues that opinions are not only conveyed verbally such as speeches but can also be conveyed through writing in various forms, one of which is writing on social media. Expressing an opinion is actually the right of all citizens. In fact, several cases in Indonesia occurred because the opinions in society were not accepted by groups. Meanwhile, the protection and respect for human rights is the responsibility of the state through the government apparatus [7].

In 2021 there was a case that charged the Indonesian artist Medina Zein with a defamation case. Celebrity Medina Zain was reported by celebrity program Marissya Icha regarding alleged defamation of Polda Metro Jaya. Marissya Icha's lawyer, Ahmad Razmy, said that the defamation was allegedly carried out via uploads on Instagram social media. Medina Zain's problem with the reporter Marissya Icha started through the Instagram social media account by uploading Medina Zain the items he gave, the checks he gave and the transfer proof he gave and did not receive to Marissya Icha and then slandered Marissya Icha. Then this case spread to Marissya Icha's family, he said. In this report, Marissya's party also included a number of pieces of evidence, including screenshots of social media uploads and invitations to mediation. The report was received by the police with LP: B4517/IX/2021/SPKT Polda Metro Jaya, 13 September 2021.

On April 9 2023 there was a case of a child born from Lampung City (Bima Yudho Saputro) criticizing the condition of Lampung province. Students from Lampung who are currently studying in Australia were reported by Advocate Gindha Ansori LP/B/161/IV/2023/SPKT/POLDA LAMPUNG on Thursday 13 April 2023 because they were accused of spreading hate speech containing hate speech through a video criticizing the Lampung government, in In the video uploaded on TikTok under the account name @awbimaxreborn, Bima uses the word Dajjal when giving criticism. The reason is that he is disappointed with the conditions in Lampung which are not progressing. Starting from infrastructure, new city projects, education system, bureaucracy and agriculture.

Of these cases, actually in Indonesia all citizens have the right to freedom of opinion in public because freedom of expression is a form of freedom without fear because it is guaranteed by law, one of which is article 27 Paragraph 1 of the 1945 Constitution of the Republic of Indonesia which reads "All citizens have the same status in law and government and is obliged to uphold the law and government without exception." However, freedom of expression and opinion is threatened by the existence of Law No. 11 of 2008 concerning Information and Electronic Transactions (ITE), this Law actually limits freedom of expression and opinion with several points, namely: a) This law does not provide clear and clear boundaries in the definition of defamation, b) Non-fulfillment of the elements that are a requirement in terms of limiting the right to freedom of expression, c) There are several provisions that are irrelevant to other statutory provisions and d) In the use of this law hit almost all levels of society.

With reference to the concept of a social contract, namely a rational agreement to determine how broad the freedom of citizens is (which is basically unlimited) and on the other hand how

big is the authority of the state (which is basically limited). The necessary restrictions on the rights and freedoms of citizens can only be carried out on the basis of the citizens themselves in a free atmosphere[10].

Based on the explanation and description above, the writer is interested in writing a thesis with the title "Freedom of Opinion Through Internet Media From a Human Rights Perspective". Given the efforts of the State of Indonesia in providing protection for Human Rights. The purpose of this study is to explain and analyze the protection of freedom of expression regulated by the Electronic Information and Transaction Law and to analyze the form of the Indonesian state's obligation to protect the right to freedom of expression on social media.

II. LITERATURE REVIEWS

Legal Protection

Legal protection is all efforts to fulfill rights and provide assistance to give witnesses and/or victims a sense of security, legal protection for victims of crime as part of community protection, can be realized in various forms, such as through the provision of restitution, compensation, medical services, and legal assistance. Legal protection given to legal subjects in the form of instruments both preventive and repressive in nature, both verbal and written [8]. In carrying out and providing legal protection, a place or container is needed in its implementation which is often referred to as a means of legal protection. Legal protection facilities are divided into two types which can be understood, as follows:

- 1) Means of Preventive Legal Protection, In this preventive legal protection, legal subjects are given the opportunity to submit objections or opinions before a government decision gets a definitive form. The goal is to prevent disputes from occurring. Preventive legal protection is very significant for government actions based on freedom of action because with the existence of preventive legal protection, the government is encouraged to be careful in making decisions based on discretion. In Indonesia there is no specific regulation regarding preventive legal protection.
- 2) Means of Repressive Legal Protection, Repressive legal protection aims to resolve disputes. The handling of legal protection by the General Courts and Administrative Courts in Indonesia is included in this category of legal protection. The principle of legal protection against government actions rests on and originates from the concept of recognition and protection of human rights.

Freedom of Opinion

Freedom of expression is one of the basic rights that every human being has and is guaranteed in the 1945 Constitution. Therefore, every individual has the right to express opinions both orally and in writing. Freedom of expression should be carried out with full responsibility and with due observance of legal regulations. In Indonesia the provisions governing and guaranteeing freedom of expression can be seen from various provisions as follows;

- 1) Article 28 of the 1945 Constitution, which reads "freedom to associate and assemble, to express thoughts verbally or in writing and so on is stipulated by law
- 2) Article 28E of the 1945 Constitution paragraph 3, reads "everyone has the right to freedom of association, assembly and expression of opinion"
- 3) Article 28 F of the 1945 Constitution, reads "Every person has the right to communicate and obtain information to develop his personality and social environment, and has the right to seek, obtain, possess, store, process and convey information using all types of available channels.

Human Rights

Human Rights or HAM are rights that have been owned by a person since he was still in the womb. Human rights can apply universally. The basic human rights contained in the

Declaration of Independence of the United States or the Declaration of Independence of the USA and those contained in the 1945 Constitution of the Republic of Indonesia, as contained in Article 27 paragraph 1, Article 28, Article 29 paragraph 2, Article 31 paragraph 1, and Article 30 paragraph 1. In the theory of state agreements, there are Pactum Unionis and Pactum Subjectionis. Pactum unionis is an agreement between individuals to form a state, while pactum subjectionis is an agreement between individuals and the state that is formed. In this regard, human rights are fundamental rights that cannot be taken away because he is a human being. The human rights referred to now are a set of rights developed by the United Nations since the beginning of the end of World War II. As a consequence, countries cannot avoid protecting the human rights of non-citizens.

Internet Media

Internet comes from English, consists of Inter and Net. Internet stands for interconnection-networking with the meaning of an automated system of interconnected computers through a network using standard tools called the Internet Protocol Suite (TCP/IP). The internet is a computer network that is interconnected throughout the world without time, territorial, legal and cultural boundaries. In fact, the internet is synonymous with a spider's web (WEB) which spreads and covers the globe based on nodes and is always connected.

The internet is short for "interconnected networking" which means computer networks that are interconnected or connected between one computer and another computer, thus forming an extensive computer network throughout the world, so that these computer networks can communicate with each other, interact, interact with each other. exchanging information or exchanging data.

Information and Electronic Transactions

Electronic information is one or a set of electronic data, including but not limited to writing, sound, images, maps, plans, photographs, electronic data interchange (EDI), electronic mail, telegrams, telex, telecopy or the like, letters, signs, numbers, codes, access, symbols, or processed perforations that have a meaning or can be understood by people who are able to understand them. While electronic transactions are legal actions carried out using computers, computer networks, and/or other electronic media.

Electronic System Users are everyone, state administrators, Business Entities, and the public who utilize goods, services, facilities, or information provided by Electronic System Operators. electronic systems can take the form of: a) Visual, b) Audios, c) Electronic data and Other forms. Transactions that can be made via the internet continue to grow indefinitely. Electronic payment services have developed very quickly and technological factors have contributed to this development.

III. RESEARCH METHODS

The type of research used in this study is normative juridical using legal materials in the form of statutory regulations and literature related to human rights, especially in freedom of expression on social media according to Law No.39 of 1999 concerning Human Rights [9]. This form of research prioritizes the use of literature as the main source and is also used to analyze laws that exist in society [10]. In this study the approach used is a conceptual approach and a case study approach. a) The statutory approach, by examining all laws and regulations related to the legal issues raised. b) The conceptual approach is an approach that departs from the views and doctrines that have developed within the science of law. This view clarifies ideas by providing legal definitions, legal concepts and principles relevant to the problem. c) The case approach is by analyzing the history of cases that have occurred and have permanent laws, namely by discussing the Medina Zain case for defamation with the BANDUNG District Court decision Number 528/Pid.Sus/2021/Pn Bdg and the Bima Yudho Saputro case for criticism of the Lampung government regarding Infrastructure, new city project, education system,

bureaucracy and agriculture. Bima was reported by Advocate Gindha Ansori LP/B/161/IV/2023/SPKT/POLDA LAMPUNG on Thursday 13 April 2023 because he was accused of spreading hate speech that contained hate speech via video. By focusing more on discussing freedom of expression on social media from a human rights perspective.

In this normative legal research, researchers use legal materials obtained from library materials, which have been made in the form of a collection such as: documents, books, legislation, theory, material from the literature and other sources related to the problem under study. In this case, it was obtained from library materials related to freedom of expression on social media from a human rights perspective. This research belongs to the type of normative juridical research so that the legal materials used are: a) Primary Legal Materials, are legal materials that have legally binding jurisdiction, consisting of: 1) The 1945 Constitution of the Republic of Indonesia, 2) Law Number 39 of 1999 concerning Human Rights, 3) Law Number 12 of 2005 concerning international covenants on civil and political rights (international conventions on civil and political rights), 4) Law Number 11 of 2008 with the renewal of Law Number 19 of 2016 concerning information and electronic transaction, 5) Medina Zain's decision with the decision of the BANDUNG District Court Number 528/Pid.Sus/2021/Pn Bdg, 6) Decision of Bima Yudho Saputro with decision of LP/B/161/IV/2023/SPKT/POLDA LAMPUNG. b) Secondary legal material, namely legal material consisting of text books written by influential legal experts, legal journals, opinions of scholars, legal cases, theses, dissertations, seminars and symposium results. up-to-date with regard to the research topic.

IV. RESEARCH RESULTS AND DISCUSSION

Protection of freedom of opinion regulated by the Electronic Information and Transaction Law

Freedom of opinion is interpreted as a right to personal freedom that demands fulfillment and protection, and is guaranteed in the constitution. Freedom of opinion is an indicator for a country of the sustainability of democracy in that country and can describe the protection and recognition of human rights in a country. As John W. Johnson said "For a country to be considered truly democratic, it must be prepared to provide substantial protection for the ideas of expression of media opinion [11]. Freedom of opinion is owned by all individuals and/or legal entities as legal subjects who are considered capable, with the guarantee of freedom of assembly, association and giving opinions as mandated in Article 19 of the Universal Declaration of Human Rights Everyone has the right to freedom of holding and expressing opinions, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers (territory). The protection and guarantee of the right to freedom of expression that belongs to a person is also contained in the 1945 Constitution of the Republic of Indonesia Article 28 which states that freedom to associate and assemble, express thoughts orally and in writing and so on is stipulated by law. This provision accommodates the protection and guarantee of freedom of expression which is upheld in Indonesia. Because the regulation on the recognition and guarantee of freedom of opinion is regulated in a constitution, it is an obligation that all provisions and statutory regulations under it must also comply with and not conflict with it.

The technological convergence experienced by Indonesia in the field of Telematics (Technology, Media and Informatics) has been regulated in Law no. 11 of 2008 concerning Information and Electronic Transactions. As a legal umbrella in Indonesia for the first time in the field of Information Technology and Electronic Transactions, it should also regulate guarantees for the protection of freedom of expression, especially in internet media. It is inevitable that the internet has become the ultimate challenge for freedom of expression. While

the internet can facilitate global access to information, it can also cause problems for countries, individuals, and the international community that seeks to regulate information.

As mentioned above, the use of technology in cyberspace in Indonesia is regulated by ITE Law No. 11 of 2008. However, the regulation regarding freedom of opinion is not strictly regulated in this law, because provisions relating to freedom of expression are only contained in one article, namely Article 27, in particular paragraph (3) which states a prohibition for anyone who intentionally and without the right to distribute and/or transmit and/or make accessible electronic information that contains insults and/or defamation. It is this provision in this article that has received protests and opposition from various interested parties because it is considered to have curbed and silenced freedom of opinion which is the right of legal subjects as one of the human rights that must be protected. As a result, several parties submitted a Judicial Review to the Constitutional Court (MK) regarding this article because they were deemed to have curbed freedom of expression and violated human rights. However, in its decision, the Constitutional Court considered that the ITE Law, particularly in relation to Article 27 paragraph (3) does not conflict with the right to freedom of expression owned by a person and does not violate human rights.

As one of the Human Rights, freedom of expression is also regulated in Law no. 39 of 1999 concerning Human Rights, in Article 23 paragraph (2) "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, decency, order, public interest, and the integrity of the nation." So that the provisions regarding freedom of opinion in the ITE Law mentioned above must be relevant to Article 23 paragraph (2) of this Law on Human Rights. Meanwhile, as one of a person's political rights, the recognition and protection of freedom of opinion is also regulated in the 1966 Covenant on Civil and Political Rights as ratified by Indonesia in Law no. 12 of 2005, which in the law states that all the provisions and contents of the Covenant on Civil and Political Rights are an integral part of this law. Therefore the provisions governing the protection of freedom of expression are also regulated in Article 19 of this Law, which states that everyone has the right to hold opinions without interference, (paragraph 1) and paragraph (2) states "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, either orally, in writing, or in printed form, in works of art or through any other media of his choice." As a political right, the protection of freedom of opinion is absolute because it is the mouthpiece of the people's voice in participating in the administration of government so that it participates in the development of a country's democracy.

With so many arrangements regarding the protection of freedom of expression regulated in Indonesian laws and regulations, it is clear that Indonesia is one of the countries that upholds the protection and respect for human rights. This will appear different when compared to the provisions contained in Article 27 paragraph (3) of the ITE Law No. 11 of 2008 said. In the ITE Law, especially Article 27 paragraph (3) it is considered that it does not reflect the protection of freedom of opinion owned by a person, even as if it actually curbs the freedom of expression.

Reviewing the provisions in Article 27 paragraph (3), the author interprets it grammatically or linguistically. From the provisions of Article 27 paragraph (3) which reads that every person intentionally and without rights distributes and/or transmits and/or makes accessible electronic information that contains insults and/or defamation, we can divide it into several elements that can be discussed , namely:

- a) Elements intentionally and without rights.

In this element without rights, the Constitutional Court in its Decision No. 2/PUU-VII/2009 states: That the elements intentionally and without rights are one unit which, at the level of law enforcement, must be proven by law enforcers. The element intentionally and

without rights means that the perpetrator willingly and knowingly knows that his actions are carried out without rights. Inclusion of elements without rights is intended to prevent people from committing acts of distributing and/or transmitting and/or making electronic information and/or electronic documents accessible that contain insults and/or defamation (MK Decision No. 2/PUU-VII/2009).

Based on the decision of the Constitutional Court Judge (MK) which said that what is meant by being without rights is an unlawful act, the authors try to compare this with the provisions of Article 30 of the ITE Law which explicitly state the words against the law. So there is a difference in the use of words in one law, but according to the Constitutional Court they contain the same meaning, resulting in inconsistencies in the use of words in one law. Because there are two words in one law, but have the same meaning or meaning, this is clearly very confusing. According to M. Yasin Kara, one of the Special Committees drafting the ITE Law, in one of his interviews at a television station said that what is meant without rights here is that an act was actually committed by a person who does not have the right to data or information. or in other words that the person has intercepted other people's data or information (M. Yasin Kara, TVONE. 27 December 2009, 19.20 WIB). So if someone expresses his opinion through a data or information of his own, such as e-mail, and other friendship services, and he has a personal "password" that has become his right, because only the owner has it, then he cannot be subject to Article 27 paragraph (3) this. This means that this also applies to the recent case that happened to Prita Mulyasari if the author links it, so that Prita cannot be charged with Article 27 paragraph (3) of the ITE Law.

b) The element of distributing and/or transmitting and/or making electronic information accessible

In the Big Indonesian Dictionary, what is meant by distributing is the activity of distributing (sharing, sending) to several people or several places (Depdikbud, 1996: 238). Meanwhile, the definition of transmitting in the Big Indonesian Dictionary states that sending (forwarding) messages and so on from one person to another (Depdikbud, 1996: 1071). These two elements are based on the meaning in the Big Indonesian Dictionary, which means regulating efforts to distribute information or one's opinion. While the element of "accessibility" is indeed more directed to the owner of the rights to the information or opinion, but what about the electronic system operator or service provider (Provider) who provides services so that the information can be accessed, does this element also include that (service provider) /Providers). The above has not been regulated in detail in the provisions of the Electronic Information and Transaction Law. With arrangements that are more inclined to an effort to convey or send one person's information to another person, one day there will be a lot of information that will not be conveyed to the public.

c) Elements containing insults and/or defamation

An opinion or information containing insults and defamation is a very subjective notion, so the parameters and criteria in this provision are still very broad. What kind of boundaries can be said that someone's opinion can be said to insult or defame someone. There are many classifications and types of insult and defamation content. Based on the provisions in the Criminal Code, if it is related to the object, this crime can be classified into several parts, namely:

- 1) Insult and defamation of state officials, such as against the President or Vice President (Article 134 of the Criminal Code);
- 2) Humiliation of representatives of foreign countries in Indonesia (Article 143 of the Criminal Code);
- 3) Contempt for the Government of Indonesia (Article 154 of the Criminal Code);
- 4) Humiliation and defamation of a group or class (Article 156 of the Criminal Code);

5) Humiliation and defamation of individuals (Article 310 of the Criminal Code), f. Insult and defamation of officials or civil servants (Article 316 of the Criminal Code).

When connected with the type, humiliation can be classified into 5 types, namely:

- 1) Oral defamation or defamation {Article 310 paragraph (1) of the Criminal Code};
- 2) Defamation or Defamation in writing {Article 310 paragraph (2) KHUP};
- 3) Defamation {Article 311 paragraph (1) of the Criminal Code};
- 4) Mild humiliation (Article 315 of the Criminal Code);
- 5) Complaint {Article 313 Criminal Code};
- 6) The accusation {Article 310 of the Criminal Code};
- 7) False allegation {Article 318 paragraph (1) of the Criminal Code}.

Freedom of opinion is recognized as a "basic human right" and is guaranteed protection in the 1948 Universal Declaration of Human Rights. In Article 19 "Everyone has the right to freedom of thought and expression (the right to freedom of opinion and expression); this right includes freedom to hold opinions without interference and the freedom to seek, receive and impart information and ideas, through any media and regardless of national borders." In order for the freedom to hold opinions well, guarantees of freedom and immunity must be guaranteed, so that the offender will be free from the fear of being subject to "retaliation" by any party [12].

In Indonesia, this guarantee of freedom is contained in several laws and regulations, including the 1945 Constitution of the Republic of Indonesia. In Article 28 before the amendment, as mentioned above, it has recognized the protection and guarantee of freedom of expression for the Indonesian people. After the amendments, especially the second amendment, the guarantee of this protection is increasingly emphasized in Article 28 letter E paragraph (2) everyone has the right to freedom of belief, express thoughts and attitudes, according to his conscience, while paragraph (3) everyone has the right to freedom associate, gather and express opinions and in Article 28 letter F states that everyone has the right to communicate and obtain information to develop his personality and social environment, and has the right to seek, obtain, possess, store, process and convey information using all kinds of channels. which are available. The meaning contained in these provisions very clearly states that constitutionally the state guarantees the freedom of everyone to obtain and convey information or communicate through any media, because the right to obtain and convey information and communicate is a right and freedom (HAM) for all people or citizens regardless of except [13]. Referring to the provisions governing human rights, namely Law no. 39 of 1999 concerning Human Rights as stated above, that the guarantee for freedom of opinion in this Law is contained in Article 23 paragraph (2). As a democratic country that upholds human rights protection with all its rights, including the civil and political rights of its citizens, Indonesia has ratified the provisions of the Covenant on Civil and Political Rights into Law no. 12 of 2005 as mentioned above.

Associated with the provisions of Article 27 paragraph (3) in the Electronic Information and Transaction Law, it is felt that the ITE Law has not provided a guarantee for freedom of expression in internet media. Because what is regulated here is limited to the form of prohibitions (actions that may not be done), while the rights that can be owned (performed) by the user (user) are not contained in the provisions of the law. So it can be said that Article 27 paragraph (3) only regulates obligations that must be fulfilled by a person, not regarding his rights. Whereas with regard to rights, what is regulated in the ITE Law only regulates matters relating to evidence and conditions that must be met in terms of using Electronic Information or Electronic Data, as contained in Article 7 for every person who declares rights, strengthening the rights granted. already exists, or rejects the rights of other Persons based on the existence of Electronic Information and/or Electronic Data must ensure that the Electronic Information and/or Electronic Data in it originates from an Electronic System that fulfills the requirements based on Laws and Regulations. In fact, as described above, there are many statutory provisions

that regulate and guarantee freedom of expression for these people. Bearing in mind that the internet is a means of communication that knows no boundaries, in order to create a sense of justice and protect freedom of opinion, it should regulate the rights that a person can have as a user or connoisseur of services so that he can exercise his personal rights without fear. Because by only regulating the obligations that must be obeyed, then users will be blind to what rights they can have, so it will create feelings of fear and anxiety in using their freedom rights to express opinions. Obviously this will be related to a person's personal rights.

Form of the obligation of the Indonesian State to protect the Right to Freedom of expression on Social Media

Protection regarding freedom of expression in the ITE Law has not been regulated in a "rigid" manner. If discussing freedom of opinion from the perspective of human rights, then as a personal right, the protection of the right to express an opinion is highly guaranteed in various provisions. The Universal Declaration of Human Rights (DUHAM) 1948, Article 12 states "No one may arbitrarily disturb (arbitrary interference with his privacy) his private life, his family, his home or his correspondence, and violate his honor or good name (reputation). Everyone has the right to legal protection against such disturbances or violations." It is clear in these provisions that a person's personal rights cannot be disturbed by anyone. In addition, in Article 4 of Law no. 39 of 1999 on Human Rights states "The right to life, the right not to be tortured, the right to personal freedom, thoughts and conscience, the right to religion, the right not to be enslaved, the right to be recognized as an individual and equal before the law, and the right not to be prosecuted for the legal basis that applies retroactively is human rights which cannot be reduced under any circumstances and by anyone." This provision also regulates the protection of the right to personal freedom and even thoughts and conscience which cannot be reduced by anyone or under any circumstances. In another section in Law no. 39 of 1999 concerning Human Rights, there are also provisions governing the protection of personal rights as in Article 29 paragraph (1) and even protection regarding correspondence including communication via electronic means in Article 32 which may not be disturbed, unless ordered Judge or other lawful authorities in accordance with the provisions of the legislation. Therefore, the regulation regarding the protection of freedom of correspondence and information relations can be related to the delivery of opinions via the Internet [14].

Regarding the limitation of freedom of opinion owned by other people, especially Law no. 11 of 2008 concerning ITE is not regulated therein. This limitation can be seen in the laws and regulations that are still related to it, namely in the 1945 Constitution of the Republic of Indonesia Article 28 before it was amended. In these provisions there is a clause that says further arrangements with the law. So this limitation can only be made if it is contained in a statutory regulation. Arrangements regarding this limitation are also contained in Law no. 39 of 1999 concerning Human Rights which in more detail regulates the restrictions imposed in terms of expressing these opinions, namely in Article 23 paragraph (2) as described above, where in that paragraph there is a provision that says taking into account religious values, decency, public order, and the integrity of the nation. Therefore, in terms of using the right to express opinions anywhere and through any media, including via the internet, it is also necessary to pay attention to the rights of other people and the limitations regulated in this law and regulation. The enactment and ratification of the restrictions on the rights possessed by a person apply on the basis of the provisions in Law no. 39 of 1999 Article 73 which states that "the rights and freedoms regulated in this law can only be limited by and based on the law solely to guarantee recognition and respect for human rights and basic freedoms of others, decency, public order, and the interests of the nation. Meanwhile, the Human Rights Law also emphasizes that the meaning of this limitation is not an act that legalizes or justifies reasons for reducing, damaging or eliminating human rights or basic freedoms that a person has. This

is stated in Article 74 which reads that none of the provisions in this Law may be interpreted that the Government, party, group or any party is justified in reducing, destroying, or eliminating human rights or basic freedoms regulated in this Law [15].

Apart from that, in exercising this right to express an opinion, there is also a special obligation and special responsibility that follows it. In the Civil and Political Rights Convention, as it is known that it has been ratified in Law no. 12 of 2005 especially Article 19 paragraph (3) states: "The implementation of the rights listed in paragraph 2 creates special obligations and responsibilities. It may therefore be subject to certain restrictions, but these can only be done by law and to the extent necessary to:

- a) Respect the rights or good name of others;
- b) Protect national security or public order or public health or morals.

Provisions regarding the imposition of obligations that must also be upheld by a person as a subject of rights are also contained in the provisions of the 1945 Constitution of the Republic of Indonesia Constitution Article 28 letter J paragraph (1) "everyone is obliged to respect the human rights of others in an orderly life in society, nation and state." Furthermore, in paragraph (2) still in Article 28 letter J it states "in exercising their rights and freedoms, everyone is obliged to comply with the restrictions determined by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to meet just demands in accordance with moral considerations, religious values, security, and public order in a democratic society. Based on several provisions regarding restrictions in the legislation above, the objects of restrictions that can or may be made are only limited to:

- a) Recognition and respect for human rights and basic freedoms of others;
- b) Pay attention to religious values;
- c) Morals and decency;
- d) Public security and order, and;
- e) The integrity and interests of the nation.

V. CONCLUSION

From the results of the analysis carried out by the author in the discussion section, it is concluded that the protection of freedom of expression in Law no. 11 of 2008 concerning Information and Electronic Transactions (ITE) has not received the protection it deserves. In this ITE Law, there is only one provision in the article relating to the right to freedom of expression via the internet media, namely in Article 27 paragraph (3) which reads "everyone intentionally and without rights distributes and/or transmits and/or makes access to electronic information that contains insults and/or defamation."

This article is regulated in the Chapter on Prohibited Actions, so that it can be said that it only contains obligations that must be fulfilled by people who use internet technology. By only containing provisions regarding obligations, Law no. 11 of 2008 concerning ITE tends to restrict the freedom of expression that is owned by a person, because without clearly stating the rights that can be owned by users (users) in utilizing internet media to communicate with other people.

The regulation regarding the prohibition in Article 27 paragraph (3) also contains provisions that are still multi-interpreted and even tend to be subjective so that in practice it will cause many problems. In the absence of a clear understanding of an opinion that is considered to contain elements of insulting or defaming someone, it is highly subjective. In addition, there is no strict limitation regarding the implementation of freedom of expression as in other statutory provisions related to or regulating freedom of opinion. This can lead to various new problems, which also affect other personal rights, such as the right to assemble. library.uns.ac.id digilib.uns.ac.id lxxx and unionized. If connected with other statutory provisions relating to Human Rights, then in this ITE Law there are several provisions that are

not in accordance with other statutory provisions, for example related to the goal of educating the life of the nation, the right to self-development, etc. So that the provisions of Article 27 paragraph (3) are considered irrelevant to the 1945 Constitution of the Republic of Indonesia and the provisions in other laws that regulate the protection of human rights. Viewed from a human rights perspective, where freedom of opinion is part of the first generation of rights which is identical to a person's civil and political rights apart from being a personal right that demands fulfillment and protection which cannot be reduced or limited by anyone and anything, not even the state. Because the state here is the party that bears the responsibility in terms of respecting and protecting these human rights through statutory provisions. However, remembering that the rights possessed by a person also carry the consequence of having an obligation to respect the rights of other people or there is a link between individual rights and other individuals or with the social community. So this right really needs to get restrictions which also play a role as an ethic in interacting through various media, including via the internet media. These restrictions are not necessarily enforced because of certain interests.

Rather, there are elements that must be fulfilled, such as those that must be contained in the law and have legitimate objectives and must not be too broad and proportional. Looking at the provisions of the ITE Law, there are still various deficiencies related to the existing restrictions, because it is not clearly stated regarding the limitations that a person may not violate in expressing his opinion and the elements that are a requirement in terms of restrictions on the right to freedom of opinion that can be violated are not fulfilled. owned by someone through the internet media.

In connection with the problems above, suggestions that can be given by the author to the Government and Members of the Council, in this case, those who have the authority to make statutory provisions and for users of internet services in carrying out their activities to express opinions and interact with other people is Revise the provisions in Law no. 11 of 2008 concerning Information and Electronic Transactions by clarifying the provisions in Article 27 paragraph (3) regarding what is meant intentionally or without rights, distributing and transmitting and making information accessible, as well as the criteria for an opinion that can be said to contain elements of insulting or defaming a person's good name and include provisions regarding the limitations of the exercise of the right to express an opinion owned by a person and the obligations attached to it in order to guarantee respect and protection of the human rights of other people, both individually and in certain communities.

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