

## Implementation of Law on Freedom of Expression in the Digital Era: Perspective of Law Number 19 of 2016

Shela Agnesia Shelvira<sup>✉</sup>, Siti Nur Ajjiah, Moch Rifat Novri Mulyana,  
Lucky Hakim, M. Algi Fahril, Dedi Mulyadi

Universitas Suryakencana Cianjur, Indonesia

✉ shelashelvira13@gmail.com

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### ABSTRACT

In the increasingly advanced Digital Era, social media has become an important platform for people to communicate, share information and express themselves. The platform provides a space for individuals to build an online identity, connect with others, and engage in various communities. Expression on social media varies greatly and is influenced by many factors, including culture, education, social environment, and technology. This journal focuses on the application of law to freedom of expression in the digital era, referring to the perspective of Law Number 19 concerning Information and Electronics (UU ITE). The method used in this research uses a formative juridical method, namely the preparation and application of law in a structured and systematic manner using clear and simple language and the use of case examples. Although social media provides many benefits, there are risks and challenges associated with self-expression such as; Cyberbullying, Harassment, Hoaxes and one of them is Defamation.

**Keywords:** implementation, law, freedom of expression, digital era, social media

### INTRODUCTION

In everyday life, humans cannot separate themselves from communication activities. Every interaction conducted by humans requires communication to ensure that all activities run smoothly and to avoid miscommunication. In relation to this, in this digital era, communication is not



only limited to face-to-face interactions but can also be conducted through media devices. The development of media devices, one example being social media as a current communication medium, facilitates all human communication for socializing, expressing oneself, and connecting with many people around the world.

Some social media platforms that are currently rapidly growing with many users include Instagram, Twitter, Facebook, WhatsApp, and TikTok. However, while some members of society perceive communication through media positively, others consider it a problem. These social media platforms have now become part of people's daily lives wherever they are. This phenomenon has changed the communication landscape, allowing individuals to quickly share ideas, perspectives, and information with a much wider audience than before. Social media has also played a key role in mobilizing society on various social, political, and cultural issues.

Freedom of expression on social media becomes increasingly complicated when considering issues such as the spread of false information (hoaxes), hate speech, online harassment, and the potential for excessive surveillance by authorities. Questions arise about how freedom of expression should be regulated in the context of social media, and where the line should be drawn between the freedom of expression granted to individuals and the protection of public interests and the rights of other individuals. Law is one of the instruments used to regulate freedom of expression on social media. Every country has different regulations and rules governing these issues.<sup>1</sup>

The laws governing these issues encompass copyright, defamation, hate speech, as well as criminal and civil actions related to online behavior. The novelty lies in the rapid changes in legislation and the social media platforms' response to these new regulations. The importance of this research is further strengthened by the comparison of international laws in regulating freedom of expression on social media. Each country has a different approach to freedom of expression, often reflecting different values, cultures, and histories. Comparative law across various countries can provide deeper insights into the complexity and consequences of these different approaches.

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<sup>1</sup> Budi Prasetyo, "Pertanggungjawaban Pidana Pelanggaran Hak Cipta Terhadap Ciptaan yang Dilindungi dalam UU No.19 / 2002 (Studi Kasus No.3683/Pid.B/2008/Pn.Mdn)," *Judge : Jurnal Hukum* 2, no. 2 (2021): 8–16.

## RESEARCH METHOD

The approach method in this research is to use a normative juridical approach, namely a legal research method that examines library materials or secondary data. Thus, this research method is also often called doctrinal legal research, research that originates from secondary data, legal principles, legal rules, positive results from library materials, statutory regulations and court decisions. This method allows researchers to gain an in-depth understanding of the problems being studied and provides a strong legal basis for their analysis

## RESULT AND DISCUSSION

### Background of Freedom of Expression on Social Media

Expression on social media varies greatly and is influenced by many factors, including culture, education, social environment, and technology. Expression on social media can take the form of communication, creativity, social support, or even the channeling of emotions and opinions. Expression on social media refers to how individuals express themselves, their opinions, feelings, or ideas through social media platforms such as Facebook, Twitter, Instagram, and others. This can be done through text, images, videos, or even memes. Expression on social media can encompass everything from sharing personal experiences to voicing political or social opinions. Factors such as anonymity, wide reach, and technology adoption play a role in how people express themselves on these platforms.<sup>2</sup>

Freedom of expression is a right of every Indonesian citizen. The rights and obligations regarding freedom of expression are regulated in the Body of the 1945 Constitution Article 28 and Law No. 9 of 1998 concerning Freedom of Expression in Public, freedom of expression itself cannot be separated from the right to assemble, protest, and demand change. The freedom to assemble and the freedom to express opinions are regulated in Articles 28, 28E, and 28F of the 1945 Constitution. Article 28F states that every individual has the right to communicate and obtain information for their own development needs and social environment, and has the right to seek, obtain, possess, and store information obtained through electronic media.<sup>3</sup>

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<sup>2</sup> I Made Vidi Jayananda, I Nyoman Gede Sugiarta, dan Made Minggu Widiantara, "Analisis Tentang Pencemaran Nama Baik dan Penyalahgunaan Hak Kebebasan Berpendapat di Media Sosial," *Jurnal Analogi Hukum* 3, no. 2 (2021): 261–65, <https://doi.org/10.22225/ah.3.2.2021.261-265>.

<sup>3</sup> Jayananda, Sugiarta, dan Widiantara.

With the advancement of technology, especially in terms of information and communication, social media has become a tool for criminal activities. The progress in information and communication has brought about fundamental and extensive changes in the dissemination of information. Considering that now everyone can access information according to their desires and there are no limitations in responding to news or information obtained, this often leads to criminal acts of defamation on social media or other information and communication media.<sup>4</sup>

Law Number 11 of 2008 Concerning Electronic Information and Transactions is the first law that regulates Information and Communication Technology as one of the much-needed legislative products. It has become a reference laying down the foundation for regulation in the field of electronic information and transaction utilization.<sup>5</sup>

Freedom of information among millennials needs to be balanced with competency in digital literacy. This includes knowledge, skills, and attitudes to understand and utilize information accessed through computer devices. As millennials strive to enhance their digital literacy competencies, it must be accompanied by normative knowledge related to legal regulations and regulations. The issue of freedom of information is associated with normative reviews related to knowledge about conventions, regulations, norms, and other legislative rules that serve as a basis for social media engagement.<sup>6</sup>

The positive aspects of social media include serving as a means of communication, interaction, and information sharing to build a wide social network. It can be said that with social media, users are free to act as producers and consumers of information without intervention. Millennials should also be aware of legal products such as Law Number 14 of 2008 concerning Public Information Disclosure in Indonesia. Guidelines and forms of regulatory frameworks are needed to ensure that users adhere to principles and behave more wisely in using social media.<sup>7</sup>

The government through the Ministry of Communication and Information Technology (Kemkominfo) also takes firm action against information that disturbs society, for example: enacting regulations as a legal umbrella in ensuring freedom of information, blocking dangerous websites, and

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<sup>4</sup> Jayananda, Sugiarta, dan Widianara.

<sup>5</sup> Jayananda, Sugiarta, dan Widianara.

<sup>6</sup> Endang Fatmawati, "Kebebasan Informasi Kalangan Milenial Dalam Ber-media Sosial," *JPUA: Jurnal Perpustakaan Universitas Airlangga: Media Informasi dan Komunikasi Kepustakawanan* 10, no. 2 (2020): 94, <https://doi.org/10.20473/jpua.v10i2.2020.94-103>.

<sup>7</sup> Fatmawati.

regulating online platforms. In addition, there is also a concerted effort to prosecute or punish perpetrators of cybercrime. To prevent the spread of negative access and the proliferation of irresponsible individuals, the government's decisive action in blocking is effective.<sup>8</sup>

The background of freedom of expression on social media is driven by the advancement of information and communication technology, enabling individuals to voice opinions, ideas, and views widely to the public. This opens up vast opportunities for public participation, information sharing, and advocating important issues. Social media also serves as a platform to gather support, mobilize collective action, and disseminate information quickly and efficiently.

Freedom of expression on social media is considered a crucial part of human rights, including the right to express opinions without fear of unfair suppression or restriction. However, along with this freedom of expression, challenges such as the spread of fake news, cyberbullying, and misuse of platforms for unethical or illegal purposes also arise. Therefore, it is important to consider individual responsibility in using freedom of expression on social media to avoid causing harm to oneself or others.

### **Problems in Expressing Oneself on Social Media**

Lately, there has been a surge in legal cases related to technology, namely the internet and social media, including cases of defamation through social media on the internet. Based on the data found, it can be seen that the most common violations of the Information and Electronic Transactions Law (ITE Law) occur in cases of:

1. Defamation, charged under Article 27 (3), which states "Anyone who intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents containing defamation and/or slander".
2. Hate speech, prosecuted under Article 28 (2) jo. Article 45A (2), which states "Anyone who intentionally and without right spreads information aimed at inciting hatred or hostility towards individuals and/or certain groups of society based on ethnicity, religion, race, and inter-group relations (SARA) as referred to in Article 28 (2) shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of up to Rp1,000,000,000.00 (one billion rupiahs)".

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<sup>8</sup> Fatmawati.

3. Defamation and spreading hatred, charged under both Articles 27 (3) and 28 paragraph (2) jo. Article 45A (2) of the ITE Law.
4. Other offenses, such as:
  - a. Pornography, under Article 27 (1), which states "Anyone who intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that violate decency"
  - b. Gambling, under Article 27 (2), which states "Anyone who intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents containing gambling content".
  - c. Spreading fake news/hoaxes, prosecuted under Article 28 (2) jo. Article 45A (2) of the ITE Law, and others.<sup>9</sup>

Defamation is an act of tarnishing someone's reputation by stating something either verbally or in writing. In defamation, there are 3 important notes to consider:

1. First, defamation is a subjective offense.
2. Second, defamation is a dissemination offense.
3. Third, it involves accusing someone of something.

Based on these notes, defamation is a subjective offense, meaning the assessment of defamation heavily depends on the party whose reputation is being attacked. Therefore, defamation is an actionable offense that can only be processed by the authorized party if there is a complaint from the victim of defamation. Defamation is a dissemination offense. For the Indonesian people, defamation is considered in line with the nation's character, which values Eastern customs and culture. Defamation is seen as violating etiquette norms and can even violate religious norms if the accusations contain elements of slander.<sup>10</sup>

Based on that, defamation is essentially considered an act of injustice even before it is declared in the law because it violates the norms of decency. Moreover, insults and defamation are considered to violate religious norms if the substance of the defamation contains slander. Furthermore, in the Indonesian Criminal Code (KUHP), this matter has been regulated in Article 310 regarding defamation, which states:

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<sup>9</sup> Vonny Kristanti Kusumo dkk., "Pengaruh UU ITE terhadap Kebebasan Berekspresi di Media Sosial," *Prosiding Senapenmas* 1069 (2021).

<sup>10</sup> Asrianto Zainal, "Pencemaran Nama Baik Melalui Teknologi Informasi Ditinjau Dari Hukum Pidana," *Jurnal Al-'Adl* 9, no. 1 (2016): 57–74.

1. Anyone who intentionally attacks the honor or reputation of someone by accusing them of something, with the intention that it be known to the public, is threatened with defamation punishable by imprisonment for up to 9 (nine) months or a fine of up to Rp. 4,500,000 (Four Million Five Hundred Thousand Rupiah).
2. If this is done in writing or in a picture that is published, displayed, or posted in public, then it is threatened with written defamation punishable by imprisonment for up to one year and four months or a fine of up to Rp. 4,500,000 (Four Million Five Hundred Thousand Rupiah).
3. It is not defamation or written defamation if the act is clearly done for the public interest or out of necessity to defend oneself.<sup>11</sup>

One example of defamation cases that often occur among artists and public figures is the case involving Tamara Bleszynski, who was reported by her brother, Ryszard Bleszynski alias Rick, for alleged defamation to the West Java Regional Police. The case began when Tamara posted a photo of Ryszard Bleszynski with derogatory words. Feeling aggrieved, Ryszard Bleszynski eventually reported Tamara to the Bandung Regional Police. The report was said to have been made on April 7th. Susanti Agustina, Rick's legal representative, mentioned that Tamara had been questioned three times. Additionally, the two siblings also underwent mediation, but it ended in failure. Regarding another case, Tamara was reported by Pak Rick to the West Java Regional Police regarding the ITE Law.

Rick's legal representative revealed the content that was contested by Rick, which was allegedly tarnishing his reputation, leading to the police report against Tamara. Tamara is suspected of uploading a photo of her brother with negative subtitles. However, Tamara Bleszynski has not commented on the allegations of defamation by her brother. She is awaiting the verdict in a breach of contract case regarding the medical expenses of her late father, which amounted to Rp34 billion. Tamara was sued by Ryszard in the South Jakarta District Court for breach of contract amounting to Rp34 billion. According to her brother, this amount is a debt that Tamara must pay for the medical expenses of their late father. As of now, the court's verdict has been postponed because Tamara has not responded to the case.<sup>12</sup>

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<sup>11</sup> Zainal.

<sup>12</sup> Rifat Alhamdi, "Polisi Dalami Kasus Dugaan Pencemaran Nama Baik oleh Tamara Bleszynski," *detikjabar*, 2023, <https://www.detik.com/jabar/hukum-dan-kriminal/d-6965919/polisi-dalami-kasus-dugaan-pencemaran-nama-baik-oleh-tamara-bleszynski>.

Another case involves a celebrity influencer from Aceh, Cut Wahyuni Rosita, also known as Cut Bul, who was named a suspect in a defamation case by the Aceh Regional Police. Cut Bul became embroiled in a defamation case after uploading content related to the engagement of Imam Masykur, who died after being killed by a Presidential Security Force member, Praka Riswandi Manik. Linguistics and IT experts concluded that Cut Bul's actions met the elements of defamation under Article 27 paragraph 3 of the ITE Law.<sup>13</sup>

From the two aforementioned cases, it can be concluded that defamation often stems from posts or uploads on social media. The difference between the two cases is that Tamara's case has not been commented on yet, pending the decision on the breach of contract case. Meanwhile, in the second case involving Cut Bul, she was designated as a suspect, and the case file was handed over to the prosecutor. These two cases illustrate how social media posts can lead to legal issues.

### **Efforts to Resolve Issues in Expressing Oneself on Social Media**

To address this issue, educational media literacy has been developed, which is the ability to access, analyze, evaluate, and communicate information in various forms of media. Media literacy involves a set of perspectives actively used when accessing mass media to interpret the messages encountered. To encourage teenagers to use social media wisely, for example, ebooks have been created that can be accessed online through the portal websites [literasidigital.id/](http://literasidigital.id/) and [www2.slideshare.net/](http://www2.slideshare.net/). However, according to the results of a questionnaire distributed to 127 respondents, about 58.6% of the respondents were unaware of ebooks on how to use social media wisely, approximately 26% of teenagers have not been using social media wisely, and about 53.5% occasionally encounter sensitive content such as hate speech and similar content. Therefore, there is a need for educational media that is close and easily accessible to teenagers.<sup>14</sup>

To address defamation on social media based on Law Number 19 of 2016 concerning Copyright Protection and Respect for Copyright, Artistic

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<sup>13</sup> Syahdan Nurdin dan Dani Randi, "Selebgram Aceh Cut Bul Ditetapkan Tersangka," [viva.co.id](http://viva.co.id), 2024, <https://www.viva.co.id/berita/nasional/1685319-kasus-pencemaran-nama-baik-selebgram-aceh-cut-bul-jadi-tersangka>.

<sup>14</sup> Natasyia Sisca Eka Pratiwi, Diana Aqidatun Nisa, dan Aditya Rahman Yani, "Perancangan Komik Online tentang Cara Menggunakan Media Sosial dengan Bijak pada Remaja Usia 15-17 Tahun," *Jurnal Desain Idea: Jurnal Desain Produk Industri Institut Teknologi Sepuluh Nopember Surabaya* 20, no. 2 (2021): 42–49.

Rights, and Related Rights, as well as Protection Against Copyright, Artistic Rights, and Related Rights Incidents, there are several steps that can be taken:

1. Reporting

If you encounter content that defames your reputation on social media, the first step is to report it to the appropriate authorities. This can be done through the social media platform itself or through authorized institutions such as the Ministry of Law and Human Rights (Kemenkumham) or authorized institutions at the provincial or district/city level.

2. Content Removal

If you have evidence that the content violates the law, you can request the owner of the content to remove it. This can be done by sending a formal request to the content owner through social media or email.

3. Use of Copyright

If you have copyright over the defamed reputation, you can use your copyright to protect your reputation. This can be done by sending a legal request to the content owner who has defamed your reputation.

4. Education and Awareness

In addition to legal steps, it is also important to increase awareness and education about the importance of maintaining a good reputation on social media. This can be done through social campaigns, webinars, or other social media to educate the public about the importance of maintaining a good reputation and how to protect it.

5. Social Media Regulations

Social media platforms also have their own regulations regarding the use of inappropriate content. Make sure to read and understand the applicable social media regulations to avoid future violations.<sup>15</sup>

## CONCLUSION

Law Number 19 of 2016 concerning Electronic Information and Transactions (ITE) is a regulation that governs the use of information technology and electronic transactions in Indonesia. This law also includes provisions regarding freedom of expression in the digital era. One aspect regulated is the use of the internet and social media. However, it should be

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<sup>15</sup> Erizka Permatasari, "Penanganan Pencemaran Nama Baik di Medsos Harus Mengedepankan *Restorative Justice*," hukumonline.com, 2021, <https://www.hukumonline.com/klinik/a/penanganan-pencemaran-nama-baik-di-medsos-harus-mengedepankan-irestorative-justice-i-cl6666/>.

noted that in practice, the ITE Law often becomes controversial as it is seen as potentially being misused to suppress freedom of speech and expression. Several articles in this law have been used to arrest individuals deemed to have violated it, especially on social media platforms.

Essentially, the ITE Law asserts that freedom of expression in the digital realm is guaranteed but must be exercised while adhering to applicable legal boundaries, such as prohibitions on disseminating content containing defamation, slander, or spreading information that may disrupt public order. Defamation on social media is defined as the act of spreading false information or insulting someone through social media, with the aim of damaging that person's honor or reputation. Applications available on social media are closely related to smartphones, which are prevalent among millennials. Social media enables hyper-actuality, hyper-activity, and interactivity without spatial and temporal limitations. Besides hoaxes, crimes also emerge with the development of technology, hence it is morally imperative for millennials to equip themselves with digital literacy competence, intellectual intelligence, and understanding of legal products. The presence of various hoax information circulating on social media is deliberately carried out by certain parties. It's important to be cautious in using social media and not to spread false information or defame others.

Social media has become a fertile ground for defamation crimes. The Electronic Information and Transactions Law (ITE Law) regulates this with the threat of imprisonment and fines. However, it's important to note that defamation on social media is now considered an admissible offense, meaning the victim must report it to the police. Prevention efforts are crucial. Being prudent in social media usage and thinking clearly before posting something that attacks others' honor is necessary. To address this issue, educational literacy media has been created, which is the ability to access, analyze, evaluate, and communicate information in various media forms. Additionally, efforts to resolve defamation issues on social media based on Law Number 19 of 2016 concerning Copyright Protection and Respect for Copyright, Artistic Rights, and Related Rights, as well as Protection Against Copyright, Artistic Rights, and Related Rights Incidents include: Reporting, Content Removal, Use of Copyright, Education and Awareness, and Social Media Regulations.

In conclusion, regarding the application of law to freedom of expression in the digital era, based on Law Number 19 of 2016, the government has an obligation to protect online freedom of expression, but also has a responsibility to regulate content that violates the law, such as disseminating content containing defamation, insults, or provocation of hatred. This law creates a legal

framework that provides guidance on the boundaries and obligations in using digital technology in the context of freedom of expression.

## REFERENCE

- Alhamdi, Rifat. “Polisi Dalam Kasus Dugaan Pencemaran Nama Baik oleh Tamara Bleszynski.” *detikjabar*, 2023. <https://www.detik.com/jabar/hukum-dan-kriminal/d-6965919/polisi-dalami-kasus-dugaan-pencemaran-nama-baik-oleh-tamara-bleszynski>.
- Fatmawati, Endang. “Kebebasan Informasi Kalangan Milenial Dalam Ber-media Sosial.” *JPUA: Jurnal Perpustakaan Universitas Airlangga: Media Informasi dan Komunikasi Kepustakawanan* 10, no. 2 (2020): 94. <https://doi.org/10.20473/jpua.v10i2.2020.94-103>.
- Jayananda, I Made Vidi, I Nyoman Gede Sugiarta, dan Made Minggu Widiantara. “Analisis Tentang Pencemaran Nama Baik dan Penyalahgunaan Hak Kebebasan Berpendapat di Media Sosial.” *Jurnal Analogi Hukum* 3, no. 2 (2021): 261–65. <https://doi.org/10.22225/ah.3.2.2021.261-265>.
- Kusumo, Vonny Kristanti, Ie Lien Risey Junia, Yuwono Prianto, dan Tatang Ruchimat. “Pengaruh UU ITE terhadap Kebebasan Berekspresi di Media Sosial.” *Prosiding Senapenmas 1069* (2021).
- Nurdin, Syahdan, dan Dani Randi. “Selebgram Aceh Cut Bul Ditetapkan Tersangka.” *viva.co.id*, 2024. <https://www.viva.co.id/berita/nasional/1685319-kasus-pencemaran-nama-baik-selebgram-aceh-cut-bul-jadi-tersangka>.
- Permatasari, Erizka. “Penanganan Pencemaran Nama Baik di Medsos Harus Mengedepankan *Restorative Justice*.” *hukumonline.com*, 2021. <https://www.hukumonline.com/klinik/a/penanganan-pencemaran-nama-baik-di-medsos-harus-mengedepankan-irestorative-justice-i-cl6666/>.
- Prasetyo, Budi. “Pertanggungjawaban Pidana Pelanggaran Hak Cipta Terhadap Ciptaan yang Dilindungi dalam UU No.19 / 2002 (Studi Kasus No.3683/Pid.B/2008/Pn.Mdn).” *Judge : Jurnal Hukum* 2, no. 2 (2021): 8–16.
- Pratiwi, Natasyia Sisca Eka, Diana Aqidatun Nisa, dan Aditya Rahman Yani. “Perancangan Komik Online tentang Cara Menggunakan Media Sosial dengan Bijak pada Remaja Usia 15-17 Tahun.” *Jurnal Desain Idea: Jurnal Desain Produk Industri Institut Teknologi Sepuluh Nopember Surabaya* 20, no. 2 (2021): 42–49.

Zainal, Asrianto. "Pencemaran Nama Baik Melalui Teknologi Informasi Ditinjau Dari Hukum Pidana." *Jurnal Al-'Adl* 9, no. 1 (2016): 57–74.