

CHAPTER ONE

INTRODUCTION

A. Background

In 2019, there were several people who were reported to the police due to comments against General Wiranto in social media. The persons who reported have used The Law of Information and Electronic Transaction (ITE Law) as a tool to attack everyone who is pouring their mind into social media. The individuals who were reported over police are Jerinx SID as personnel of Superman is Dead, Hanum Rais, Jonru Ginting, Bhagavad Samabhada, Gilang Kazuya Shimura, Colonel HZ, Sergeant Z, and First Lieutenant Assistant YNS.¹ Some of them were imposed with Article 28 paragraph 2 of The Law Number 11 Year 2008 about The Law of Information and Electronic Transaction (ITE), this article contains a prohibition of someone who is dealing with hate speech over the ethnic, race, religion, and inter group (SARA). This case gives additional anxiety towards Indonesian people to demonstrate a critical thought that they would pour it into social media as a freedom of speech.

Obviously, the regulations concerning freedom of speech are revealed in 1945 Constitution such as in Article 28E paragraph (3), Article 28F, and Article 28I. In addition, freedom of speech is also regulated in Article 14, Article

¹ Mela Arnani, "Mereka yang Dilaporkan atas Dugaan Langgar UU ITE Karena Cuitan Soal Wiranto" ,<https://www.kompas.com/tren/read/2019/10/12/160000765/mereka-yang-dilaporkan-atas-dugaan-langgar-uu-ite-karena-cuitan-soal?page=all>, accessed on 14th October 2019 at 07.45 pm

19, Article 20 and Article 21 of People Consultative Assembly Decree of Republic of Indonesia No. XVII/MPR/1998. Moreover, regulated in The Law Number 39 of 1999 about human rights and these articles are Article 14, Article 23 paragraph (2), and Article 25.² Those articles have similar meaning to guarantee each human to demonstrate their thought, likewise Article 28F of 1945 Constitution as stated below: “Everyone has the right to communicate and obtain information to develop their personal and social environment, and has the right to seek, obtain, own, store, cultivate, and deliver information using the whole kinds of available channels”³ This article specifically provides the right to communicate their thoughts and as a guarantee to everyone to reveal whichever what they want to say, obviously through any tools. Based on hierarchy, 1945 Constitution is the highest regulation in which there is no law could against its 1945 Constitution, if any regulation that against its 1945 Constitution, its law shall be reviewed.

Freedom of speech existed since in 5th or 6th BC in Ancient Greece, people there hold *isegoria*, as the equal right to speak. As the flourish of globalization, many regulations appeared to harmonize its people. The law is a forceful regulation that is held to protect the interests of people in society.⁴ To fulfill its interest, especially speak against anything which contradict in their perspective, everyone has the right to communicate through any tools. Nowadays,

² Aji Medan, 2015, “Negara Harus Menjamin Kebebasan Berekspresi Sebagai Hak Konstitusional”, The Alliance of Independent Journalist, <https://medan.aji.or.id/negara-harus-menjamin-kebebasan-berekspresi-sebagai-hak-konstitusional/>, Accessed on 1st November 2019 at 04.30 pm

³ 1945 Constitution

⁴ Van Kan and J.H. Beekhuis, 1972, *Pengantar Ilmu Hukum*. Jakarta, Indonesia, Pembangunan.

the world has been in globalization era which means everything can be accessed through internet. Everyone has their own interest to access and surf the internet. Article 4 of The Law Number 11 of 2008 on Information and Electronic Transaction has some purposes, namely: to enlighten the lives of nation; to give a chance widely for everyone to advance thinking and ability in the field of use and utilization of Information and Technology as optimal as possible, and responsible; and the last is to give a sense of security, justice, and legal certainty over the users and Information and Technology organizer.⁵ For those purposes, obviously the government and society have already understood the purpose of the ITE's Law. Nevertheless, ITE's Law sometimes is used to trap the others with hate speech reason. The case above is one of many examples of case which use its law to become a reason for someone who is presumed violates ITE's Law.

Freedom of speech in Indonesia based on national data is doubted because some politicians argue that there is interference by some parties, it couldn't be assured as a trusty data, therefore the writer took the data from freedom house, and the data can be shown in below:

No	Year	Status (100=MostFree)	Freedom Rating (1=Best,7=Worst)	Civil Liberties (1=Best,7=Worst)	Political Liberties (1=Best,7=Worst)
1.	2013	Free	2.5	3	2

⁵ The Law Number 11 Year 2008 about Information and Electronic Transaction (ITE's Law)

2.	2014	Partly Free	3.0	4	2
3.	2015	Partly Free	3.0	4	2
4.	2016	Partly Free (65/100)	3.0	4	2
5.	2017	Partly Free (65/100)	3.0	4	2
6.	2018	Partly Free (64/100)	3.0	4	2
7.	2019	Partly Free (62/100)	3.0	4	2

Source: Freedom House

From its phenomenon since 2013 up to 2019, Indonesia's position was "free" and in 2019 becomes "partly free". Freedom house demonstrates Indonesia in 2019 stand in 62/100 score related its democracy. This tables contains political rights and civil liberties afterwards the writer focuses on civil liberties, which include freedom of speech. The majority scales of civil liberties from 2013 up to 2019 are 4, which is more $\frac{1}{2}$ from 7 of scale that means quite crucial to discuss. In addition, based on "Southeast Asia Freedom of Expression

Network” (SAFENet) since ITE’s Law was promulgated in 2008, there have been 297 cases deal with its law.⁶

The existence of The Law Number 11 Year 2008 concerning on Information and Electronic Transaction (ITE’s Law) invites dilemmas in the mid of society. Not all of the society agreed on the existence of the ITE law because it is seen as restricting freedom of expression, while freedom of speech includes on it. Some provisions of the ITE rule, in particular Article 27(3), which governs insults and/or libel, are often regarded as causing people especially netizen who has an accessed through internet on choose silence or "self-censorship" for social and political circumstances in society. These conditions mean that not only the presence of the ITE law makes the public aware of freedom and responsibility. The existence of this law causes people to fear talking about the injustices around them and to shout against violations committed by the authorities for fear of being considered insulting or defamation. Society do indeed want freedom of expression on the one hand. We must also acknowledge, however, there are still parts of our society that are not responsible for using this freedom. Therefore, the government tends to respond by enforcing a rule in the form of a law to make the group accountable (read: force).⁷

⁶ Anonymous, “Daftar Kasus Netizen yang Terjerat UU ITE”, <https://id.safenet.or.id/daftarkasus/>, Southeast Asia Freedom of Expression Network, accessed on 1st December 2019 at 11.55 pm

⁷ Rini Irianti Sundry, 2017, “Pengaturan Pembatasan Pemanfaatan Teknologi Informasi Dihubungkan Dengan Kebebasan Berpendapat dan Berekspresi di Indonesia”, *Celscitech-UMRI Journal*, Vol. 2, No. 2.

Besides, freedom of speech is assured in Article 28F of 1945 Constitution, in which there is a restriction contains in Article 28J of 1945 Constitution: (1) everyone is obliged to respect the other human rights in an orderly life in society, nation, and state. (2). In exercising their rights and freedoms, everyone is obliged to obey towards restriction stipulated by law for the sole purpose of ensuring recognition and respect for the rights of freedom of others and to fulfill fair demands in accordance with moral considerations, religious values, security, and public order in a democratic society.

In addition, Article 29 Paragraph (2) of Universal Declaration of Human Rights also regulates about restriction of freedom of speech, namely: “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”.⁸ Those restrictions are headed to everyone who shall be aware and uphold the human rights with realizing the morality that alive in society. Meanwhile, in accordance with The Law of Information and Electronic Transaction (ITE Law) as a regulation which restrict freedom of expression especially freedom of speech (as mentioned in above) the articles in the law that is not clear, it presumably leads to subjective interpretation by the law enforcer in enforcing this law.

⁸ See Article 29 Paragraph (2) of Universal Declaration of Human Rights (UDHR).

As the case that is mentioned above, with discussing the rights and restrictions which already stipulated in regulation, there is the ultimate goal which protect the users of internet, the netizen who has the rights to reveal their opinion in social media, the rights to access information, and the rights over security. The rights of netizen must be fulfilled. The last but not least, as explained on above, the author emphasis on understanding and analyzing the protection of netizen within freedom of speech on social media in Indonesia.

B. Research Question

How is the protection for netizen of freedom of speech on social media?

C. Objective of Research

The objectives of the research are to understand and analyze the protection of netizen within freedom of speech on social media by netizen in Indonesia.

D. Benefits of Research

There are two benefits of this research, such as:

1. Theoretical Aspect

The research would give advantage to understand genuinely related to the protection of netizen of freedom of speech on social media in Indonesia.

2. Practical Aspect

The research gives a comprehensive understanding towards society which linked to how to utilize freedom of speech on social media in Indonesia towards the protection of netizen.

E. Systematic of Writing

The research consists of five chapters, namely: Chapter One of Introduction, Chapter Two of Literature Review, Chapter Three of Research Method, Chapter Four of Finding and Analysis, and Chapter Five of Conclusion and Recommendation.

The aim of the research is to analyze the protection of netizen within freedom of speech on social media in Indonesia by understanding the history and development of freedom of speech and connect with some regulations. The research also finds that the protection of freedom of speech for netizen is crucial. Netizen as a part of Indonesia are needed to develop democracy and enrich the understanding through discussion with using social media as a tool to gain information.

The most essential thing is to explain clearly in regulation in terms of the restrictions of freedom of speech, to protect from any reckless interferences. Chapter One of Introduction contains the Background, Research Question, Objective of Research, Benefits of Research, and Systematic of Writing. The introduction attempts to combine the background of the issue by explaining about the case of freedom of speech in Indonesia and the barriers to gain the genuine freedom securely. Problem of the topic is how the protection of netizen within freedom of speech on social media in Indonesia. The author also explains the research problem, which will be discussed in further chapter.

Chapter two of the Literature Review combines the general theories related to the issue. It provides the explanation definition of freedom of speech, freedom of speech on social media, the importance of freedom of speech, and the challenges freedom of speech.

Chapter three of Research Method is divided into four, they are as follows: the type of research, type of data, which consist of primary, secondary, and tertiary legal materials, method of collecting data and method of data analysis.

Chapter four explains the major discussion, namely the Finding and Analysis. The research attempts to answer the issue by elaborating comprehensively about the historical development of freedom of speech from Ancient Athens, Roman Empire, European Enlightenment until freedom of speech becomes a fundamental rights. Another sub-chapter is the condition freedom of speech from Sukarno period until Jokowi Period. Lastly, in this chapter, the research attempts to show the problems of netizen on freedom of speech and how it supposed to be protect by existing law and other international legal instruments.

To sum up the research, Chapter Five of Conclusion and Recommendations consists of the concludes from previous research and give some personal recommendations based on the findings and analysis throughout the research to answer the issue of the protection of netizen within freedom of speech on social media in Indonesia.