

CHAPTER I

INTRODUCTION

A. Background

In line with the times, currently the development of communication and information technology is so rapid. With such rapid development, everyone can freely access and disseminate information on social media. In this case, the internet can facilitate all affairs carried out by the community in almost all sectors of life, such as communication, education, politics, economy, and so on.¹ Indonesia is a state of law where every action of its citizens is regulated by legislation, as well as the regulation of ethics in the delivery of expression through social media. The issue of information technology in the delivery of opinions or expressions is regulated in Law Number 19 of 2016 concerning Electronic Information and Transactions, concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. As a means of communication and information. Social media has become a new platform for people to express themselves, where a person can express their ideas and feelings on social media, either from themselves or in response to something.² This expression can take the form of videos, pictures, and so on. Today, social media is a means or digital marketing activity, such as Social

¹ Simarmata, Janner, et al, 2020, *Teknologi Informasi: Aplikasi dan Penerapannya*, Medan, Yayasan Kita Menulis

² Alhakim, Abdurrakhman, “Urgensi Perlindungan Hukum terhadap Jurnalis dari Risiko Kriminalisasi UU Informasi dan Transaksi Elektronik di Indonesia”, *Jurnal Pembangunan Hukum Indonesia*, Vol. 4, No.1, (2022), p. 89-106

Media Maintenance, Social Media Endorsement and Social Media Activation.³

There are several types of social media including the following:

- a) Bookmarking, allowing to share important links and tags. Made for everyone to enjoy what they like.
- b) Wiki, as a site that has a variety of different characteristics, such as knowledge sharing sites, wikitravel which focuses on information on a place.
- c) Flickr, a site owned by Yahoo, which specializes in image sharing with contributors who are experts in every field of photography around the world. Flickr makes as a photo catalog that every product can be marketed.
- d) Creating Opinion, the social media provides a means to share opinions with others around the world. Through the social media, everyone can write a journal, as well as comment on it.
- e) Social networking, through these content sharing sites people create various media and publications to share with others. Some examples of social media applications are Facebook, WhatsApp, Line, Youtube, Twitter, Instagram.⁴

According to William Benton, in the Encyclopaedia Britannica published in 1972, etymologically Ethics comes from the Greek, Ethos which means character. And the definition of Ethics according to terminology is a systematic study of the concepts of good, bad, should, right, wrong and so on or of the

³ Cahyono, A. S, "Pengaruh media sosial terhadap perubahan sosial masyarakat di Indonesia", *Publiciana*, Vol. 9, No. 1, (2016), p. 140-157

⁴ Novi Fuji Astuti, 2021, "*Mengenal fungsi Media Sosial*", <https://www.merdeka.com/jabar/mengenal-fungsi-media-sosial-berikut-pengertian-dan-jenisnya-klm.html>, (Accessed on May 09, 2023 at 20.45 WIB)

general principles that justify their application in all matters, also called moral philosophy (from the Latin word "mores" which means customs).⁵

According to Richard J. in Karimah and Wahyudin, ethics tries to examine human behavior which is considered a reflection of what is contained in his soul or in his conscience. For example: humans can laugh, even though their hearts are crying. The following three notions of ethics relate to the need for communication ethics in using social media.⁶

- a. Descriptive Ethics is ethics concerned with values and science that addresses the issue of good and bad human behavior in social life.
- b. Normative ethics is ethics that is often seen as a science that holds measures or norms that can be used to respond to or assess the actions and behavior of a person in society. This ethics seeks a general measure of good and bad behavior.\
- c. Philosophical Ethics is the analysis of what is meant when using the predicates of morality. In this ethics is related to norms. Norms are rules or guidelines for how humans should behave and act in society.

In Indonesia, freedom of expression is guaranteed by the constitution in Article 28E paragraph (3) of the 1945 Constitution "Everyone has the right to freedom of association, assembly and expression." Everyone has the right to freedom of opinion and expression which includes to hold opinions without interference as well as to seek, receive and share information through any

⁵ Karimah, Kismiyati, El., dan Wahyudin, Uud, 2010, *Filsafat dan Etika Komunikasi: Aspek Ontologis, Epistemologis, dan Aksiologis dalam Memandang Ilmu Komunikasi*, Bandung: Widya Padjadjaran

⁶ *Ibid*

media regardless of national borders as stated in the Universal Declaration of Human Rights.⁷ In Law Number 39 of 1999 concerning Human Rights Article 1 paragraph (1) Human Rights are a set of rights inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld, and protected by the state, law, and everyone for the sake of honor and protection of human dignity.

In human rights law, the rights holder is the individual, while the obligation holder is the state.⁸ The state has three generic obligations in relation to human rights, namely the obligation to respect, the obligation to protect, and the obligation to fulfill. Individuals on the other hand assess the obligation not to interfere with the human rights of other individuals.⁹ However, at present, there are frequent attacks, harassment and intimidation experienced by activists, human rights defenders, journalists, academics and organizations in civil society, both physically and online. the government, which is obliged to protect and guarantee the right to freedom of expression, often fails to prevent these attacks or prosecute the cases.¹⁰ In general, freedom of expression is important for four reasons. First, freedom of expression is "essential as a means of ensuring one's self-fulfillment", and also for achieving one's fullest potential. Second, it is for the pursuit of truth and progress; in other words, "a person

⁷ UNESCO, 2003, *Toolkit Kebebasan Berpendapat dan Berekspresi Bagi Aktivis Informasi*, Paris, UNESCO, p. 9

⁸ Isra, Saldi, "Peran Mahkamah Konstitusi dalam Penguatan Hak Asasi Manusia di Indonesia", *Jurnal Konstitusi*, Vol. 11, No. 3, (2016), p. 409-427

⁹ Hilmi Ardani Nasution, "Hak Atas Kebebasan Berpendapat dan Berekspresi dalam Koridor Penerapan Pasal 310 dan 311 KUHP", *Jurnal HAM*, Vol. 11, No.1, (2020), p. 1-25

¹⁰ Herdanto, Rizaldi Naufal, 2022, "Kebijakan Cyber Security terhadap Keamanan Negara: Studi Kasus Australia pada Tahun 2010-2020", (PhD diss., UPN "Veteran" Yogyakarta)

who discovers knowledge and truth must hear all sides of a question, consider all alternatives, test his judgments by confronting them with opposing views, and make the most of different ideas". Third, freedom of expression is essential for people to participate in decision-making processes, especially in the political arena. Finally, it is freedom of expression that enables societies (and states) to achieve achievements and adaptability.¹¹ To improve development in order to improve better public services, the Indonesian government requires active participation from the community to provide input and criticism to the government. With the input and criticism from the community, it is hoped that the government can improve its performance. Indonesia is a democratic country, this is characterized by the guarantee of protection of freedom of expression, so in this case the government should protect this freedom of expression.¹²

A country considered truly democratic, should be prepared to provide substantial protection for ideas put forward by the media.¹³ Before the EIT Law was amended or counter-amended, there were still pros and cons related to certain articles. Nevertheless, the EIT Law is important considering the large and increasing number of internet users in Indonesia. To reduce the negative impact, of course, there needs to be limits to ensure the comfort and protection of its users. In connection with the above problems, the author is interested in

¹¹ UNESCO, *Op.Cit*, p.17

¹² Nasution, Latipah, "Hak Kebebasan Berpendapat dan Berekspresi Dalam Ruang Publik di Era Digital", *ADALAH*, Vol. 4, No. 3, (2020), p. 37-48

¹³ Darlisma, and Ernawati, "Perlindungan Hukum terhadap Kebebasan Berpendapat melalui Media Internet berdasarkan Undang-Undang No. 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik ditinjau dari Perspektif HAM", *Ensiklopedia of Journal*, Vol. 4, No. 2, (2022), p. 267-273

choosing a title "**FREEDOM OF EXPRESSION IN SOCIAL MEDIA: LIMITATION AND PROTECTION IN HUMAN RIGHTS.**"

B. Research Problem

Before the EIT Law was amended or counter-amended, there were still pros and cons related to certain articles. Nevertheless, the EIT Law is important considering the large and increasing number of internet users in Indonesia. To reduce the negative impact, of course, there needs to be limits to ensure the comfort and protection of its users. In connection with the above problems, the author is interested in choosing two questions that must be answered, namely:

1. How is the implementation of freedom of expression through social media in Indonesia?
2. How is the legal protection of freedom of expression on social media according to the EIT Law viewed from a human rights perspective?

C. Research Objectives

The expected objectives of this research are as follows:

1. To know and study the implementation of freedom of expression through social media in Indonesia.
2. To know and examine the legal protection of freedom of expression on social media according to the EIT Law in terms of human rights perspective.

D. Research Benefits

The expected benefits of this research are as follows:

1. Theoretical Benefits

Theoretically, the research conducted by the author will bring benefits to the development of science, especially in the field of Constitutional Law regarding the legal protection of freedom of expression on social media in terms of human rights.

2. Practical Benefits

Practically, the research conducted by the author is expected to bring benefits to society in general and a more democratic government, as well as a better understanding of the legal protection of freedom of expression on the social media in terms of human rights.