

Constitutional Rights to Freedom of Expression in Indonesia: Analysis of Law No. 9/1998

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Abstract

The constitutional right to freedom of expression in public is a fundamental aspect of democracy and human rights. In Indonesia, this right is enshrined in the 1945 Constitution and further regulated by Law No. 9/1998 on Freedom of Expression in Public. However, its implementation often faces challenges, including excessive restrictions, potential violations, and conflicts with public order and national security. This study aims to analyze the legal provisions of Law No. 9/1998, evaluate its implementation, and assess its alignment with universal human rights principles. Employing a normative legal research approach, this study examines legal norms, doctrines, and relevant court decisions. Findings reveal that while Law No. 9/1998 provides legal guarantees for freedom of expression, its implementation is hindered by ambiguous interpretations, inconsistent enforcement, and socio-political factors. Recommendations include revising ambiguous regulations, enhancing law enforcement training, and increasing public legal literacy to ensure a balance between individual freedoms and public interests within a democratic legal framework.

Keywords: Constitutional Rights, Freedom of Expression, Law No. 9/1998, Human Rights, Rule of Law

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2nd International Conference on Islamic Community Studies (ICICS)

Theme: History of Malay Civilisation and Islamic Human Capacity and Halal Hub in the Globalization Era

<https://proceeding.pancabudi.ac.id/index.php/ICIE/index>

Introduction

Constitutional rights are fundamental entitlements guaranteed by a state's constitution, reflecting the principle of popular sovereignty. In Indonesia, the right to freedom of expression is protected under Article 28E of the 1945 Constitution [1]. This right, integral to democracy, is further regulated by Law No. 9/1998, which governs the expression of opinions in public spaces [2]. Globally, freedom of expression is recognized as a universal human right under the 1948 Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) [3], [4]. Despite legal protections, the implementation of this right in Indonesia faces challenges, including repressive actions by authorities and conflicts with public order [5]. The rise of digital platforms and regulations like the Electronic Information and Transactions Law (ITE Law) further complicates the exercise of this right [6]. This study analyzes the legal framework of Law No. 9/1998, its practical implementation, and the barriers to protecting freedom of expression in Indonesia, aiming to propose solutions that align with democratic and human rights principles [7].

Literature Review

Freedom of expression is a cornerstone of democratic governance, enabling citizens to voice aspirations and hold governments accountable [8]. The 1945 Constitution, particularly Article 28E(3), guarantees the right to assemble and express opinions [1]. Law No. 9/1998 operationalizes this right by regulating public demonstrations and speeches, balancing individual freedoms with public order [2]. However, scholars like Asshiddiqie argue that excessive restrictions often undermine constitutional guarantees [9]. Internationally, the ICCPR allows limitations on freedom of expression only when necessary to protect public safety or others' rights [4]. In Indonesia, the ITE Law has been criticized for vague provisions that curb online expression [10]. Studies by KontraS and Amnesty International highlight instances of repressive actions against peaceful protests, indicating gaps in enforcement [11], [12]. This review underscores the need for a balanced legal framework that protects freedom of expression while addressing public order concerns.

Research Methodology

This study employs a normative legal research approach, utilizing statute, conceptual, and case-based methods. Data were collected from primary legal sources, including the 1945 Constitution and Law No. 9/1998, as well as secondary sources such as legal literature, journals, and court decisions [13]. The analysis focuses on qualitative interpretation, emphasizing legal logic and normative arguments to assess the implementation of freedom of expression and identify barriers to its protection.

Results

The 1945 Constitution and Law No. 9/1998 provide a robust legal framework for freedom of expression in Indonesia. Article 28E(3) guarantees the right to express opinions, while Law No. 9/1998 outlines procedures for public demonstrations, requiring prior notification to authorities to ensure public safety [1], [2]. However, implementation challenges persist. Table 1 summarizes key issues identified in the study.

Table 1. Challenges in Implementing Freedom of Expression

No.	Issue	Description
1	Repressive Actions	Excessive use of force by authorities during peaceful protests [11].
2	Ambiguous Regulations	Vague provisions in the ITE Law used to suppress online expression [10].

No.	Issue	Description
3	Socio-Political Factors	Political motives limiting freedom of expression to maintain stability [14].
4	Low Legal Literacy	Public unawareness of rights and legal recourse mechanisms [15].

These challenges highlight a gap between normative guarantees and practical implementation. For instance, the requirement for prior notification under Law No. 9/1998 is often misused to deny permissions, undermining constitutional rights [16]. The ITE Law's vague provisions have led to criminalization of legitimate criticism, creating a chilling effect [10]. Comparisons with international standards, such as the ICCPR, suggest that restrictions in Indonesia sometimes exceed permissible limits [4]. Strengthening enforcement mechanisms and public education is critical to addressing these issues.

Conclusion

The constitutional right to freedom of expression in Indonesia, guaranteed by the 1945 Constitution and Law No. 9/1998, is a vital democratic pillar. However, its implementation faces significant challenges, including repressive enforcement, ambiguous regulations, and socio-political constraints. To align with the rule of law and human rights principles, reforms are needed, such as revising the ITE Law, enhancing law enforcement training, and improving public legal literacy. These measures will strengthen democratic participation and ensure a balanced approach to protecting freedom of expression while maintaining public order. The findings underscore the importance of continuous efforts to uphold constitutional rights in a dynamic socio-political landscape.

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