23 YEARS OF REFORMATION, FREEDOM IS STILL A UTOPIA

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ABSTRACT

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Background: Freedom of expression is still a problem in the implementation of democracy in Indonesia. Amnesty noted that throughout 2020 there were 132 cases of alleged violations of the right to freedom of expression using the ITE Law with a total of 156 victims, among them 18 activists and four journalists. In 2021, there have been 56 similar cases with a total of 62 victims.

Aim: This research aims to discuss Indonesia's reformation along with its obstacle throughout the years.

Method: This study used a qualitative approach and a case study. The data was gathered from a number of different places. The sources explore the challenges that Indonesia has faced in its reformation over the years.

Findings: The ITE Act is still needed to prevent and punish crime in the digital world. However, there are several articles in this Law that need to be revised because there are multi-interpretation articles, rubber articles, and semantic improvements of several articles to be better. If it is not immediately revised, then the public will be afraid to convey criticism for fear of making the critic’s party entangled in the punishment of libel and defamation charges.

KEYWORDS freedom of expression; democracy; ITE law; criticism

INTRODUCTION

The conception of the State of Law or "Rechtsstaat" was previously only stated in the Explanation of the 1945 Constitution after the fourth amendment was explicitly formulated in Article 1 paragraph (3) which states that "the State of Indonesia is the State of Law." In the concept of the State of Law, it is idealized that what must be made commander in chief in the dynamics of state life is law, not politics or economics. Arief Sidhartha, Scheltema, formulated his views on the elements and principles of the State of Law, including the recognition, respect, and protection of human rights rooted in respect for human dignity and democratic principles in which everyone has equal rights and opportunities to participate in government or to influence acts of government.

The principle of democracy is realized through freedom of opinion or belief and expression of opinions as well as freedom of the press and information traffic. As stated in the consideration section of Law No. 39 of 1999 on Human Rights, human rights are fundamental rights that are naturally inherent in the human self, therefore must be protected, respected, defended, and should not be ignored, reduced, or deprived by anyone. The respect and protection of human rights with legal guarantees for their enforcement demands is an important feature of a democratic State of Law. If in a state, human rights are ignored or violated deliberately and the suffering they cause cannot be overcome fairly, then the state concerned cannot be called the State of Law in the true sense.

Freedom of thought and opinion is regulated in the Constitution of the Republic of Indonesia in 1945 Article 28 E paragraph (3) which affirms that everyone is entitled to freedom
of association, assembly, and opinion. Freedom of expression including freedom of opinion is the embodiment of democracy in the order of community life, nationhood, and statehood. Law No. 9 of 1998 on Independence of Public Opinion in Article 1 paragraph (1) affirms that the independence of expressing opinions is the right of every citizen to convey thoughts orally, written, and so on freely and responsibly in accordance with the provisions of applicable laws and regulations. Freedom of opinion and expression is considered important because of four things, namely: (1) Freedom of expression is "important as a way to ensure one's self-fulfillment" and also to reach one's maximum potential; (2) For the search for truth and the advancement of knowledge or in other words, "a person seeking knowledge and truth must hear all sides of the question, consider all alternatives, test his judgment by presenting that Judgment to the opposite view, and utilize different thoughts as optimally as possible; (3) Freedom of expression is essential so that people can participate in the decision-making process, particularly in the political arena; and (4) Freedom of expression enables society (and the state) to achieve stability and adaptability. Although freedom of speech is guaranteed, its implementation is not unlimited. The right to freedom of opinion of any person is limited by the rights of others as provided for in article 28 J paragraph (2) which affirms that "In exercising his or her rights and freedoms, every person shall submit to the restrictions established by law with the sole purpose of guaranteeing the recognition and respect for the rights and freedoms of others and to fulfilling fair demands in accordance with moral considerations, the values of religion, security, and public order in a democratic society." Indonesia itself already has legal instruments to guarantee and protect the implementation of responsible freedom of opinion, namely, among others, the ITE Law, the Press Law, and the Independence of Speech Law in Public.

The "Democracy Index 2020 in Sickness and in Health?" report from The Economist Intelligence Unit (EIU) ranked Indonesia 64th globally, 11th in Asia and Australia. Indonesia received a total score of 6.3 and was ranked in the category of rudimentary democracy or flawed democracies. Of the five assessment indicators, Indonesia scored 7.92 for the electoral process and pluralism, 7.14 for government functions, 6.11 for political participation, 5.63 for democratic political culture, and 5.59 for civil liberties. The report showed Indonesia experienced a decrease in total score, causing the total score of the democracy index obtained by Indonesia in 2020 to be the lowest number in the last 14 years. So what is the state of freedom of speech in Indonesia today? This research tries to answer that question.

METHOD
The qualitative approach and case study were employed in this study. The information was compiled from a variety of sources. The sources discuss the issue of Indonesia’s reformation over the years and its obstacles.

RESULTS AND DISCUSSION
Case Study 1: Terror and Intimidation of Student Discussions of Faculty of Law Universitas Gadjah Mada
Student discussion organized by the Constitutional Law Society (CLS) on the topic "Straightening the Issue of Presidential Dismissal Reviewed from the State System", which was held on May 29, 2020, was forced to be canceled, even though the registration had reached
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250 people (CNN Indonesia, 2020). This was due to terror and assassination threats against cls speakers, moderators, contacts, and chairmen the night before. The terror obtained is diverse, ranging from the delivery of mysterious fictitious online motorcycle taxi bookings to the residence of related parties, text death threats, telephones, to the presence of several people who come to their residence. Even more threatening is that this terror not only attacks the person of the party concerned but also threatens the family of the relevant party so that for security reasons, this diskusi was forced to be canceled.

According to the Dean of the Faculty of Law, Universitas Gadjah Mada, Sigit Riyanto, this agenda is purely a student activity to conduct scientific discussions in accordance with the interests and concentration of student science in the field of Constitutional Law. There was no attempt to treason and overthrow the president in office at all. Allegations of makar efforts and viral posters are actually triggered by writings from a lecturer from the Faculty of Engineering, Ugm Graduate School, Bagas Pujilaksomo Widyakanigara, in one of the mass media with the title "Makar Movement at UGM when Jokowi is Busy Addressing Covid-19". Finally on May 28 night until the date of implementation, which is May 29, 2020, various terrors are increasingly indiscriminate both in the form of threats via SMS to the parents of the committee (Detik.com, 2020).

The response from the Faculty of Law, Universitas Gadjah Mada, as the relevant institution, in this case, regrets and condemns the acts of terror that occurred, even according to the Dean of the Faculty of Law, Universitas Gadjah Mada, Sigit Riyanto, the Faculty of Law condemned provocative and unfounded news related to academic activities that were then spread in various media and aggravated the situation, which led to the criminal act of spreading false news, and defamation (Gultom, 2020). According to the Coordinating Minister for Political Law and Human Rights, Mahfud MD, this is a violation of human rights and adversely affects the sustainability of Democracy and Law in Indonesia so Mahfud also said that it has asked the Police of the Republic of Indonesia (Polri) to investigate the organizers and sources, and suggested that the organizers and prospective sources report that there is information to trace the identity and traces of the terrorizer, especially the digital footprint (Garjito & Intan, 2020). In essence, the existence of terror carried out has violated the Law and Human Rights, especially regarding freedom of assembly, expressing opinions, and academic freedom so there needs to be law enforcement so that events like this are not repeated in the future.

Case Study 2: The Case of 'Insulting' Mayor of Solo, Arkham Mukmin

Arkham Mukmin, who is a student, is secured by the Solo Police Cyber Police Team through the Virtual Police Team. Arkham Mukmin was arrested for his tweets that were deemed insulting and commented not according to the facts against the Mayor of Solo, Gibran Rakabuming Raka in a photo post on Twitter @garudarevolution which read "Want semi-finals and final Menpora cup in Solo" (JPNN.com, 2021). Arkham himself, who has a Twitter account @arkham_87 commented on the post with "Know what he is about the ball, he's only given the position. "From here, the reason the police arrested him was that Arkham was considered insulting to Solo Mayor Gibran Rakabuming Raka. Arkham is considered to spread hoaxes because it says that Gibran can serve as mayor of Solo because he was given office by his own father, President Joko Widodo, which is a hoax because Gibran can hold the post of
mayor of Solo as a result of his victory in the Solo Regional Head Election organized by the Election Commission, Election Supervision Agency, Military, Police, etc.

According to the Police Chief of Solo City Kombes, Ade Safri Simanjuntak will injure the KPU, Bawaslu, TNI, Polri, and all elements of the solo city community who have taken pains to hold elections directly in accordance with the 1945 Constitution. However, Arkham was not secured for arrest but only to testify. After that, Arkham also made an apology to the Mayor of Solo and the entire solo community through the official Instagram of @PolrestaSurakarta, which read "I apologize to Mr. Gibran Rakabuming Raka and to the people of Solo City. I'm not going to repeat it again. If I repeat it, I am ready to be prosecuted." Through this, it can be seen that the Surakarta Police did not directly arrest and convict Arkham, but secured the perpetrator and made a persuasive approach so that Arkham did not do the same thing again and the community was also educated to spread hoax news (Mumpuni, 2021).

This action has come under scrutiny from the Legal Aid Institute (LBH) Mega Bintang Solo. Chairman of LBH Mega Bintang Solo, Boyamin Saiman, stated that this lawsuit was filed because the Surakarta Police was considered invalid in making arrests against Arkham because Arkham's comments were considered not to meet the element of defamation such as investigators' reasons. Furthermore, Boyamin said that Arkham's comments are criticism and not a hoax or defamation. Boyamin also added that defamation is a criminal offense that can be processed if the aggrieved party, in this case, Gibran, does report so that the virtual police are considered not authorized to arrest him because Arkham is not a reported status. Because in fact, Gibran himself did not submit a report to the Surakarta Police. Many people ask about the difference between Cyber Police and Virtual Police and many also assume that the Virtual Police policy issued by Police Chief Listyo Sigit Prabowo is a policy that can curb freedom of opinion, especially after a speech from President Joko Widodo that opened the opportunity for people to criticize the Government.

In essence, the difference between the Cyber Team or Cyber Police and Virtual Police lies in the functions and approaches used (Tribunnews.com, 2021). Coordinator of the Central Java Peradi Region Badrus Zaman said that Virtual Police prioritizes preventive and persuasive efforts. Therefore, law enforcement using the Electronic Information and Transactions Act (UU ITE) becomes the last resort while the Cyber Team or Cyber Police conducts enforcement based on existing regulations. In Arkham's case, the Virtual Police has actually carried out its duties, namely carrying out preventive and persuasive actions and not directly punishing or imprisoning Arkham but rather making calls and clarifications. The problem here is that Arkham is actually just making his criticism of Solo Mayor Gibran Rakabuming Raka, without any element of spreading hoaxes and defamation. This is the assumption that this policy is a policy that restricts freedom of expression and freedom of opinion in Indonesia.

**Low Press Protection in Indonesia**

In a country that uses a democratic system, the press becomes one of the fourth pillars in a democracy that serves to provide information or events that occur at home and abroad, oversee the running of bureaucracy, and social control. Quoted from the book about communication by McQuail (1992) explained that the term fourth pillar of democracy was first coined by Edmund Burke in the late 18th century. The term refers to the political power that
the press has on par with the other three pillars of life in England: god, the church, and the House of Commons.

When it comes to the current democratic system, the power of the press is considered equal to other pillars of democracy, namely the executive, legislative, and judiciary. The power of the press refers to the power to oversee the running of government and channel the aspirations of the people. In order for the hope of democracy to be a true democracy, the people must also be active participants in political discourse, and for this to happen, the press itself must be an active agent that makes this happen. The role of the press is not to entertain or educate, or even just to inform. The role of the press is to bring about real political discourse. Therefore, press freedom must remain upheld as one of the efforts to uphold democracy in Indonesia and be able to carry out the function of the press properly.

The results of the Reporters Without Borders survey put press freedom in Indonesia in 2020 in the 119th position or increased by five points compared to 2019. In Southeast Asia, Indonesia ranks third after Malaysia and Timor Leste. The survey, conducted by Reporters Without Borders (RSF) in 180 countries, shows that the role of the state is critical in providing an ecosystem that supports press freedom. In Indonesia, this condition allows the media to play a very decisive role in ensuring that democracy functions as it should, especially during the 2019 election.

Based on AJI advocacy data, since 2006 cases of violence against journalists have occurred 848 times. The largest percentage will occur in 2020. As for physical violence, there were 258 cases, expulsion or prohibition of coverage of 92 cases, 77 terror threats, 58 destruction of tools or data from coverage, and 41 threats of violence. As for the perpetrators of violence against journalists, the most perpetrators of the mob and police are 60 times, unknown or do not have a clear identity 36 times, and unknown people 17. As for most cities is Jakarta with 60 cases. Similar to AJI data, in monitoring LBH Pers, the number of violence against journalists increased dramatically throughout 2020. The Monitoring Alliance of Independent Journalists (AJI) also showed similar results. A total of 78 cases were recorded throughout 2020, up far from 58 in 2019, with the highest figure since 2016.

Cases that occur to journalists who get threats in conducting journalistic practices can not be separated from the role of the state that makes policies that threaten freedom of the press and expression and not seriously the state in providing protection to the press. Regulations that threaten press freedom in Indonesia are as follows.

**The Decision to Disconnect or Block Internet Access**

The events that occurred in Papua and West Papua in August-September 2019 which the government claimed to ward off fake news in the interests of socio-political stability became the government's way to control the flow of information about the conflict that occurred in Papua. These actions have hampered the journalistic process and hurt freedom of the press and freedom of expression as a whole.

**Electronic Information and Transactions Act (UU ITE)**

This law is often used to criminalize journalists in the line of their duties. Some articles are problematic and threaten press freedom Article 26 Paragraph 3 (on the elimination of electronic information), Article 27 Paragraph 3 (on defamation and insult), Article 28
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Paragraph 2 and 45A Paragraph 2 (on hate speech), Article 40 Paragraph 2B (on blocking). This ITE Law is considered a terror in terms of freedom of opinion, which is because of the many rubber articles in this law, the ITE Law is considered often a tool to silence public criticism of the government, UUITE is often used by groups or individuals who do not want to accept criticism under the pretext of hate speech, and many errors, especially in terms of the Application of Law and Human Rights to Freedom of Opinion in Indonesia.

**Draft Criminal Code Law (Criminal Code Bill)**

There are several articles in the draft Criminal Code Bill that have the potential to criminalize journalists in carrying out their functions, namely article 219 (about insults to the president or vice president), Article 241 (about insults to the government), Article 247 (Incitement against the ruler), Article 262 (broadcasting false news), Article 263 (uncertain news), Article 281 (insult to the court), Article 305 (insult to religion), Article 354 (insult to public power or state institutions), Article 440 (defamation).

**Work Copyright Law**

Article 11 on press investment has the potential to make the government re-regulate the press as before the Press Law in 1999 and article 18 changes to the points in this article clearly violate the spirit of the Press Law of 1999 which stipulates that press disputes are more driven by collective efforts and education.

**CONCLUSION**

The interest in revising the ITE Law has been a hot debate in the public since President Joko Widodo stated that the Government opened the opportunity for ITE revision, on Monday, February 15, 2021. This is because there are many legal reports submitted by some parties using articles in the Electronic Information and Transactions Act (UU ITE). The ease of one of the parties to file charges related to violations of the ITE Law indicates the possibility of errors and abuse in the implementation, some articles in the ITE Law are often used to silence freedom of opinion, expression and have been used as instruments or tools to hit and attack political opponents.

Speaking about the revision of the ITE Law we must recall the original purpose of the establishment of the ITE Law aimed as a guideline for the people of Indonesia when entering the digital information era. The ITE Law was formed with a legal perspective that serves to provide a sense of security, fairness, and legal certainty for users and organizers of information technology. Throughout 2020. Amnesty International recorded at least 119 cases of alleged violations of the right to freedom of expression using the ITE Law, with a total of 141 suspects, including 18 activists and four journalists. The number of such cases is the highest in the last six years. Many of them were accused of violating the ITE Law after expressing criticism of government policies, such as the three leaders of the Indonesian Rescue Action Coalition (KAMI) Jumhur Hidayat, Anton Permana, and Syahganda Nainggolan who are currently undergoing trial.

The ITE Act is still needed to prevent and punish crime in the digital world. However, there are several articles in this Law that need to be revised because there are multi-interpretation articles, rubber articles, and semantic improvements of several articles to be
better. So, obviously, this ITE Law does not have to be repealed in its entirety but the necessary efforts are revisions. If it is not immediately revised, then the public will be afraid to convey criticism for fear of making the critic’s party entangled in the punishment of libel and defamation charges.

REFERENCES


