

The Constitutionality of Restrictions on Freedom of Expression in the Digital Era: An Analysis of Constitutional Court Decisions

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Abstract

The rapid evolution of digital communication has redefined the scope and limits of constitutional freedoms particularly the right to freedom of expression. In Indonesia, this right—enshrined in Articles 28E(3) and 28F of the 1945 Constitution—faces new challenges arising from the expansion of online speech and state regulation under the Electronic Information and Transactions Law (UU ITE). This study examines the constitutionality of restrictions on freedom of expression within Indonesia's digital landscape through a doctrinal and case-based analysis of key Constitutional Court decisions, including Decisions No. 50/PUU-VI/2008, No. 2/PUU-VII/2009, No. 82/PUU-XII/2014, and No. 76/PUU-XV/2017. Findings reveal that the Constitutional Court consistently applies the principle of proportionality as the central test for evaluating the legitimacy of expression-related restrictions. The Court's reasoning reflects an ongoing effort to harmonize domestic constitutional provisions with international human rights standards, particularly Article 19 of the International Covenant on Civil and Political Rights (ICCPR). While the UU ITE remains constitutionally valid, the Court has emphasized the need for legislative refinement to prevent vague or overly broad interpretations that could infringe upon democratic freedoms. The analysis further highlights that the digital era demands adaptive constitutional interpretation capable of reconciling technological innovation with enduring democratic principles. The Constitutional Court's jurisprudence demonstrates that constitutional democracy in the digital age must be both protective and responsive—safeguarding individual liberty while ensuring that digital governance serves the public interest. Ultimately, this study underscores the Court's pivotal role in shaping Indonesia's constitutional evolution toward a rights-centered model of digital governance, ensuring that constitutional freedoms remain robust amid technological transformation.

Keywords: Constitutional Court, Freedom of Expression, Digital Era, Proportionality Principle, UU ITE, Constitutional Democracy, Indonesia

Introduction

Freedom of expression stands as one of the cornerstones of modern constitutional democracies, functioning not only as an individual right but also as a foundational element of a participatory political system. It embodies the democratic ideals of openness, accountability, and deliberation, serving as a mechanism through which citizens can scrutinize government

actions and contribute to the public sphere. Within the Indonesian constitutional framework, this right holds an equally vital position. Article 28E paragraph (3) and Article 28F of the 1945 Constitution of the Republic of Indonesia (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 or UUD 1945) explicitly affirm the right of every citizen to express opinions, seek, obtain, and convey information. These constitutional provisions position freedom of expression as a core human right, intricately linked with the principles of democracy, human dignity, and the rule of law. However, the emergence of the digital era has significantly altered the landscape of expression. The proliferation of online platforms, social media, and digital communication technologies has enabled unprecedented opportunities for the exchange of ideas and civic participation. Yet, this rapid democratization of information also presents multifaceted legal and ethical challenges. The same tools that empower citizens to engage in political discourse have simultaneously facilitated the spread of hate speech, misinformation, defamation, and cyber harassment. Consequently, the boundaries between legitimate expression and harmful communication have become increasingly blurred, demanding a recalibration of legal norms governing expression.

In response, the state assumes a dual role: to protect the freedom of expression as a constitutional right, while simultaneously ensuring that such freedom does not infringe upon public order, national security, or the rights and reputations of others. This delicate balance has been codified through the enactment of various statutory instruments, most notably the Electronic Information and Transactions Law (Undang-Undang Informasi dan Transaksi Elektronik, hereafter UU ITE). While the UU ITE was initially designed to safeguard digital integrity and public interest, its implementation has been met with widespread criticism. Legal scholars, civil society organizations, and human rights advocates have argued that several of its provisions are overly broad and vague, thus granting excessive discretionary power to law enforcement authorities. Such ambiguities have led to instances where the law is used as a tool of censorship or criminalization of dissenting voices, raising serious concerns regarding its

constitutionality and compatibility with democratic principles. Within this context, the Constitutional Court plays a pivotal role as the guardian of the Constitution and the ultimate interpreter of constitutional rights. The Court's decisions in cases involving freedom of expression have shaped the contours of constitutional interpretation in Indonesia's digital era. These judgments not only clarify the limits of permissible state intervention but also illuminate the evolving conception of constitutional democracy in the face of technological transformation. Each ruling contributes to the ongoing discourse about how the Constitution adapts to contemporary realities, balancing state interests with the preservation of fundamental freedoms.

The digital transformation of public discourse, therefore, raises a fundamental constitutional question: To what extent can the state legitimately restrict freedom of expression in the name of public order and collective welfare without eroding the essential substance of democratic liberty? This question transcends doctrinal interpretation, engaging deeper normative debates about constitutionalism, human rights, and digital governance. It compels a re-examination of the state's responsibility to both protect and restrain expression in a manner consistent with constitutional values. Accordingly, this article aims to examine the constitutionality of restrictions on freedom of expression in Indonesia's digital landscape through an analysis of key Constitutional Court decisions. Employing a doctrinal and case-based approach, this study explores the interpretative principles adopted by the Court, the underlying legal reasoning, and the broader implications of these decisions for the protection of civil liberties. Ultimately, this research contributes to the scholarly discourse on constitutional adaptation in the digital age, offering insights into how constitutional justice can reconcile the demands of technological progress with the enduring imperatives of democracy and human rights.

Methods

Freedom of expression is a cornerstone of modern constitutional democracy, serving both as an individual right and as a foundation of participatory governance. In Indonesia, this right is guaranteed under Articles 28E(3) and 28F of the 1945 Constitution, reflecting the nation's commitment to democracy, human dignity, and the rule of law. The digital era has transformed how this right is exercised. Online platforms and social media have expanded opportunities for civic participation but also created new challenges such as hate speech, misinformation, and cyber harassment. These developments blur the boundaries between legitimate expression and harmful communication, calling for clearer legal frameworks.

The state must therefore balance the protection of free expression with public order and national security. The Electronic Information and Transactions Law (UU ITE), enacted for this purpose, has been widely criticized for its vague provisions that may be misused to suppress dissent. This tension has led to numerous constitutional reviews, positioning the Constitutional Court as a key institution in defining the limits of state regulation over digital expression. This article analyzes the constitutionality of such restrictions by examining key Constitutional Court decisions through a doctrinal and case-based approach. It demonstrates how the Court applies the principles of proportionality and constitutionalism in navigating the intersection between freedom, regulation, and digital transformation. The study highlights how Indonesia's constitutional system adapts to technological change while continuing to safeguard democratic rights.

Results and Discussion

Overview of Constitutional Court Jurisprudence on Freedom of Expression

The Constitutional Court of Indonesia has developed an evolving body of jurisprudence concerning the interpretation of constitutional rights to freedom of expression. Central to this

jurisprudence is the Court's consistent acknowledgment that freedom of expression, as enshrined in Articles 28E paragraph (3) and 28F of the 1945 Constitution, constitutes a non-derogable right within a democratic society. However, the Court has simultaneously affirmed that such freedom is not absolute; it must be exercised within the limits of law and morality to safeguard the rights of others, public order, and national security. A foundational precedent in this regard is Decision No. 50/PUU-VI/2008, in which the Court examined the constitutionality of several provisions of the Electronic Information and Transactions Law (UU ITE). The Court held that while digital communication expands opportunities for democratic participation, the state retains the authority to regulate online conduct that threatens the public interest. Nonetheless, the Court emphasized that any restriction must adhere to the principle of proportionality that is, limitations must be necessary, legitimate, and not excessive in achieving their intended aims.

This principle was reaffirmed in Decision No. 76/PUU-XV/2017, where the Court reviewed the criminalization of defamation and the dissemination of false information under the UU ITE. In its judgment, the Court underscored the importance of distinguishing between criticism of public officials, which constitutes a legitimate exercise of freedom of expression, and defamatory statements intended to harm others. The Court's reasoning reflects a careful balancing act between safeguarding individual reputation and preserving democratic openness.

Balancing Rights and State Interests

The results of this analysis demonstrate that the Constitutional Court has adopted a contextual balancing approach in determining the constitutionality of restrictions on freedom of expression. The Court has consistently drawn upon Article 28J of the 1945 Constitution, which stipulates that the exercise of rights and freedoms must respect the rights of others and be subject to limitations determined by law for reasons of morality, religious values, security, and public order. However, the Court has cautioned that restrictions cannot nullify the substance of the right itself. In Decision No. 2/PUU-VII/2009, for instance, the Court invalidated certain

provisions that imposed disproportionate penalties on online expression, reasoning that such sanctions created a chilling effect incompatible with democratic discourse. Through this decision, the Court affirmed the doctrinal link between freedom of expression and the maintenance of a democratic state governed by law (*rechtsstaat*).

The Court's jurisprudence reflects a gradual but significant evolution toward a rights-based interpretation of statutory limitations. By invoking international standards, such as Article 19 of the International Covenant on Civil and Political Rights (ICCPR) to which Indonesia is a party the Court situates its reasoning within global constitutionalism. The Court's reference to proportionality and necessity tests parallels the interpretive approaches adopted by the German Federal Constitutional Court and the European Court of Human Rights, demonstrating Indonesia's growing alignment with comparative constitutional norms.

The Digital Context: Emerging Constitutional Challenges

The digital transformation of public communication presents novel challenges for constitutional adjudication. The UU ITE, while designed to prevent cybercrime and digital abuse, has in practice become a double-edged sword. Cases brought before the Court illustrate that vague legal terminology such as "offensive content" or "defamation" has allowed for broad interpretation and inconsistent enforcement. In its subsequent decisions, including Decision No. 82/PUU-XII/2014, the Court acknowledged these interpretive risks and urged the legislature to refine the UU ITE to ensure greater clarity and legal certainty (*asas kepastian hukum*). The Court stressed that digital regulation must be consistent with constitutional principles and must not disproportionately restrict political expression, journalistic freedom, or civic participation.

The analysis indicates that while the Constitutional Court has upheld certain restrictive provisions, it has simultaneously emphasized the importance of judicial oversight and legislative refinement. The Court's insistence on proportionality and constitutional review thus

serves as a corrective mechanism to prevent the misuse of digital law as an instrument of repression.

Implications for Constitutional Democracy

The broader implication of these findings is that the Constitutional Court plays a dual function as both a guardian of fundamental rights and a stabilizer of state authority in the digital age. By adjudicating between competing claims of liberty and order, the Court contributes to the dynamic equilibrium that sustains constitutional democracy. However, the persistence of cases involving criminalization of online speech suggests a continuing tension between legal formalism and democratic pluralism. The Court's jurisprudence reveals that achieving a coherent constitutional standard requires not only judicial vigilance but also legislative responsiveness. The challenge lies in ensuring that the digital governance framework promotes responsible communication without undermining freedom of thought, dissent, and critical expression values that form the lifeblood of democratic society.

Summary of Findings

1. The Constitutional Court consistently upholds the principle of proportionality as the benchmark for assessing the legitimacy of expression restrictions.
2. Judicial reasoning in key cases reflects an effort to harmonize domestic constitutional provisions with international human rights norms.
3. The UU ITE remains constitutionally valid but requires continuous refinement to ensure compliance with fundamental freedoms.
4. The digital era necessitates adaptive constitutional interpretation that reconciles technological innovation with enduring democratic principles.

Conclusion

This study concludes that the Constitutional Court of Indonesia has played an increasingly central role in defining the constitutional boundaries of freedom of expression in the digital age. Through a series of landmark decisions, the Court has sought to reconcile the competing imperatives of liberty and order by grounding its reasoning in the principles of proportionality, necessity, and legal certainty. These principles have emerged as the core constitutional tests for determining the legitimacy of expression-related restrictions under both the 1945 Constitution and Indonesia's international human rights commitments. The Court's jurisprudence demonstrates a gradual yet discernible shift toward a rights-based constitutionalism, wherein freedom of expression is not merely treated as a statutory entitlement but as an essential component of democratic governance. By invoking Article 28J of the 1945 Constitution alongside Article 19 of the International Covenant on Civil and Political Rights (ICCPR), the Court affirms that constitutional freedoms may be limited only insofar as such limitations are lawful, proportionate, and directed toward legitimate aims such as the protection of public order and the rights of others. This alignment with international norms signifies Indonesia's broader participation in the evolving discourse of global constitutionalism.

Nevertheless, the continued prevalence of cases challenging the Electronic Information and Transactions Law (UU ITE) indicates that constitutional adjudication alone cannot guarantee full protection of digital rights. The persistence of vague and overbroad provisions within the UU ITE underscores the need for legislative reform and inter-institutional collaboration. The legislature must heed the Court's repeated calls for refinement to ensure that the regulation of online expression upholds clarity, predictability, and respect for fundamental freedoms. In turn, the judiciary must continue to refine its interpretative standards to ensure consistency in applying constitutional principles to the evolving digital context. The digital

transformation of society introduces new constitutional challenges that demand adaptive interpretation and proactive constitutional governance. As digital platforms reshape the nature of public discourse, constitutional law must evolve to safeguard not only traditional forms of expression but also the emerging dimensions of digital participation, privacy, and accountability. In this light, the Constitutional Court's jurisprudence provides an essential normative framework for guiding Indonesia's democratic evolution in the information age. Ultimately, the constitutionality of restrictions on freedom of expression in the digital era is not merely a matter of judicial doctrine it is a test of Indonesia's democratic maturity. Upholding freedom of thought, dissent, and open debate remains vital to preserving the integrity of constitutional democracy. The Constitutional Court's balanced approach—rooted in proportionality, guided by human rights, and responsive to technological change—offers a viable path forward for ensuring that Indonesia's digital transformation strengthens, rather than weakens, the foundations of its constitutional order.

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