

The Constitutional Protection of Freedom of Artistic Expression: A Comparison between Indonesia, Iran and the United States

Nurul Aisahrani¹, Salwa Raudhatul Nurjannah², Intan Nadia Putri³, Amit Kumar Kashyap⁴

^{1,2,3}Faculty of Law, Universitas Trunojoyo Madura, Indonesia

⁴Institute of Law, Nirma University, India

Corresponding Author: intannadia433@gmail.com

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ABSTRACT

This study aims to analyse the protection of human rights in the context of artistic freedom of expression in Indonesia, Iran, and the United States, placing artworks as the primary subject of legal examination. The main contribution lies in its comparative approach, highlighting how state ideologies and legal systems influence both the protection and restriction of artistic expression. The research employs normative legal methods, incorporating statutory and comparative approaches, with a focus on national and international legal instruments that regulate freedom of expression. The findings reveal that Indonesia and Iran share similar patterns of restriction. Indonesia, through multi-interpretable provisions, such as the Electronic Information and Transactions Law (Undang-undang Informasi dan transaksi Elektronik or ITE Law), and Iran, through strict, religion-based controls, particularly targeting female artists. In contrast, the United States adopts a liberal model that provides strong constitutional protection for artistic expression, with only limited exceptions such as child pornography or threatening speech. The study concludes that Indonesia's legal protection for artistic freedom remains inconsistent and prone to repression, while Iran demonstrates systematic restriction, and the United States offers near-absolute constitutional safeguards. Recommendations include regulatory reform in Indonesia, particularly revising the ITE Law and strengthening constitutional guarantees, to ensure that vague legal interpretations, political interests, or narrow moral constraints do not curtail artistic freedom.

Introduction

Freedom of expression is one of the fundamental rights in the human rights regime that is universally recognized,¹ both through national and international legal

¹ Emily Howie, "Protecting the Human Right to Freedom of Expression in International Law," *International Journal of Speech-Language Pathology* 20, no. 1 (January 2, 2018): 12–15, <https://doi.org/10.1080/17549507.2018.1392612>.

instruments.² In Indonesia, this right is guaranteed in Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that “every person shall have the right to freedom of association, assembly and expression”.³ Although the phrase “to express opinions” is used, in practice, this right also includes non-verbal forms of expression such as works of art, music, dance, painting, and other artistic media, as a means of manifestation of individual and collective expression⁴.

Artworks possess a unique expressive power because they can convey messages, social criticism, and cultural identity in ways that cannot always be explained in literal terms. David Ewen notes that music, as a form of art, is a rhythmic combination of notes, vocals, and instruments, featuring melodies and harmonies that reflect human emotional expression⁵. In this context, artistic expression becomes an integral part of the right to freedom of expression that should be protected by the state.

However, in practice, freedom of expression in art is not always guaranteed adequate legal protection. In Indonesia, for example, the case of the band Sukatani, with their song “Bayar Bayar Bayar,” shows how artistic expression containing social criticism can lead to a ban on digital distribution, the dismissal of one of the band members from their profession, and other forms of intimidation. This sets a bad precedent, illustrating how art can be vulnerable to being silenced when it addresses issues considered sensitive by the authorities.⁶

A similar phenomenon occurs in Iran, where female artists such as Parastoo Ahmadi and her music group face legal threats just for performing an online concert on YouTube without wearing a hijab.⁷ In these countries, artistic expression, especially by women, is considered to violate legal and moral norms, so artists are often victims of silencing by the state.⁸

On the other hand, the United States shows a stronger model of protecting freedom of expression. The First Amendment of the United States Constitution guarantees freedom of speech and expression, including in the form of works of art,

² Natalie Alkiviadou, “Platform Liability, Hate Speech and the Fundamental Right to Free Speech,” *Information & Communications Technology Law* 34, no. 2 (May 4, 2025): 207–17, <https://doi.org/10.1080/13600834.2024.2411799>.

³ Mohammad Ibrahim, “The Judicialisation of Discrimination in the Indonesian Constitutional Court,” *International Journal of Discrimination and the Law* 22, no. 2 (June 3, 2022): 125–51, <https://doi.org/10.1177/13582291221094923>.

⁴ Aria S. Halliday and Nadia E. Brown, “The Power of Black Girl Magic Anthems: Nicki Minaj, Beyoncé, and ‘Feeling Myself’ as Political Empowerment,” *Souls* 20, no. 2 (April 2018): 222–38, <https://doi.org/10.1080/10999949.2018.1520067>.

⁵ Andrew Kania, *Philosophy of Western Music* (Routledge, 2020), <https://doi.org/10.4324/9781315210629>.

⁶ Kompas, “Lagu ‘Bayar Bayar Bayar’ Band Sukatani Dihapus Dari Platform Digital,” Kompas.com, 2024.

⁷ Bahar Almasi, “Creative Defiance: Subverting Hegemony through Art in Iran,” *Journal of Integrated Studies* 16, no. 1 (2025): 1–32, <https://jis.athabascau.ca/index.php/jis/article/view/452>.

⁸ Pamela Karimi, “Art of Protest in Five Acts,” *Iranian Studies* 56, no. 3 (July 3, 2023): 585–95, <https://doi.org/10.1017/irn.2023.18>.

as a constitutional right that is not easily restricted.⁹ Despite the controversy surrounding hate speech, the country refuses to criminalise such expression in general, preferring instead to use such expression as evidence of motivation in the context of hate crimes. This indicates that in the United States, artworks are considered part of civil liberties that should not be restricted without a compelling constitutional reason.

The different approaches of Indonesia, Iran and the United States in protecting freedom of expression through art show the importance of comparative studies on how countries balance the protection of human rights and the regulation of artistic expression. Many previous studies have discussed freedom of expression in general or in the context of social media, but have not specifically addressed artistic expression as the main object. For example, Andra Matei & Sanchit Saluja (2024) discuss the right to freedom of artistic expression under international law, focusing on the tension between cultural relativism and universal human rights. Their study emphasises that although the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights (ECHR), and regional instruments formally protect artists, in practice, states often disregard these obligations.¹⁰ Elena V. Barasheva, Alexey S. Stepanenko, Elena L. Vlasova & Irina I. Zedgenizova (2019), examines the implementation of constitutional rights to freedom of expression and artistic freedom in Russia. It focuses on the impact of anti-extremism legislation and state restrictions on “extremist materials,” showing how these measures often conflict with international standards such as the ICCPR and ECHR. The authors argue that although these rights are constitutionally and internationally guaranteed, their realisation in practice remains inconsistent due to state control and restrictive interpretation.¹¹

Subsequent studies from Eleni Polymenopoulou (2023), examines the evolution of artistic freedom within the framework of international human rights law. It situates artistic freedom within both the freedom of expression under Article 19 of the ICCPR and the cultural rights under Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The author analyses the role of the Universal Declaration of Human Rights (UDHR), the United Nations Educational, Scientific and Cultural Organization (UNESCO), and regional systems such as the ECHR in shaping its legal scope. She emphasizes that artistic freedom has a dual nature—protecting artists as speakers and as cultural actors—yet faces

⁹ Jennifer L. Pomeranz, “United States: Protecting Commercial Speech under the First Amendment,” *Journal of Law, Medicine & Ethics* 50, no. 2 (July 27, 2022): 265–75, <https://doi.org/10.1017/jme.2022.51>.

¹⁰ Andra Matei and Sanchit Saluja, “The ‘Right to Freedom of Artistic Expression’ and Cultural Relativism” (Stuttgart: Ifa (Institut für Auslandsbeziehungen e.V.), 2024), <https://doi.org/https://doi.org/10.17901/1252>.

¹¹ Elena V. Barasheva et al., “Realization of Citizens’ Constitutional Rights to Freedom of Expression and Artistic Freedom,” in *Proceedings of the International Conference “Topical Problems of Philology and Didactics: Interdisciplinary Approach in Humanities and Social Sciences” (TPHD 2018)* (Paris, France: Atlantis Press, 2019), <https://doi.org/10.2991/tphd-18.2019.10>.

significant challenges in achieving consistent protection across jurisdictions.¹² Sanja Djajić & Dubravka Lazić (2021) evaluate the jurisprudence of the European Court of Human Rights (ECtHR) regarding artistic expression in the visual and performing arts. They argue that the Court affords less protection to art than to political expression, even though art plays an equally subversive and democratic role in public debate.¹³ Andryka Syayed Achmad Assagaf et al. (2023) conduct a comparative jurisprudential analysis of freedom of expression in Europe and Indonesia. Their findings reveal inconsistencies in judicial decisions, as judges' subjective preferences and discretionary powers frequently limit artistic expression, despite the guarantees provided under international human rights law.¹⁴

The research gaps of this research are addressed by focusing on the protection of freedom of expression in the form of works of art, particularly in the context of state-imposed restrictions or silencing. This research aims to identify forms of human rights violations against artistic expression and compare how the legal systems in Indonesia, Iran and the United States respond to this phenomenon. The novelty of this research lies in its effort to place artworks at the centre of the debate on freedom of expression, rather than merely as an instrument or medium of opinion.

The urgency of this research is all the more relevant given the increasing attempts to restrict artworks under the pretext of morality, social stability, or public order. Censorship, criminalisation, and social and political pressure on artists show that the space for expression through art is shrinking. In fact, in a democratic society, art plays a crucial role in fostering collective consciousness, expressing social criticism, and promoting human rights values. Therefore, mapping legal practices and human rights protection in artistic expression is essential in seeking a fairer legal system that favours freedom of expression.

Methods

This research employs normative legal research methods, including a statutory approach and comparative legal research.¹⁵ Normative legal research is an approach that focuses on the study of written legal norms, including laws, constitutions, international conventions, and legal doctrines developed by scholars.¹⁶ In this

¹² Eleni Polymenopoulou, *Artistic Freedom in International Law* (Cambridge: Cambridge University Press, 2023), <https://doi.org/10.1017/9781108933667>.

¹³ Sanja Djajić and Dubravka Lazić, "Artistic Expression: Freedom or Curse?," *The Age of Human Rights Journal*, no. 17 (December 17, 2021): 97–124, <https://doi.org/10.17561/tahrj.v17.6269>.

¹⁴ Andryka Syayed Achmad Assagaf et al., "Public Debate and Artistic Expression: A Jurisprudential Analysis of Freedom of Expression in Europe And Indonesia," *Journal of Law and Sustainable Development* 11, no. 12 (December 2023): e2160, <https://doi.org/10.55908/sdgs.v11i12.2160>.

¹⁵ Sanne Taekema, "Methodologies of Rule of Law Research: Why Legal Philosophy Needs Empirical and Doctrinal Scholarship," *Law and Philosophy* 40, no. 1 (February 14, 2021): 33–66, <https://doi.org/10.1007/s10982-020-09388-1>.

¹⁶ Dinah Shelton, "Normative Hierarchy in International Law," *American Journal of International Law* 100, no. 2 (April 2006): 291–323, <https://doi.org/10.1017/S0002930000016675>.

research, the normative approach is employed to examine how laws and regulations in each country regulate and restrict freedom of expression in the form of artworks, and to assess the extent to which these regulations align with human rights principles.

In the Indonesian context, the focus of analysis is on Article 28E paragraph (3) of the 1945 Constitution, Law No. 39/1999 on Human Rights, and ITE Law¹⁷. These three legal instruments serve as the primary reference point for assessing the extent to which freedom of expression in artworks can be protected or restricted by the state, particularly in cases involving the silencing of artworks that contain social criticism.

In Iran, the normative approach is used to analyse domestic regulations based on Islamic law (sharia), including restrictions on women in the performing arts, as well as the prohibition of certain types of artistic expression considered contrary to moral or religious values. In this country, freedom of expression in art is often strictly limited, even leading to criminal sanctions, making it an important area of study within the international human rights framework.

In the United States, this research focuses on the First Amendment to the United States Constitution, which explicitly guarantees freedom of expression, as well as case law showing how courts in the country have protected artistic expression despite its controversial nature. In addition, reference is made to the International Covenant on Civil and Political Rights (ICCPR), particularly Article 19, which guarantees the right to expression and Article 20, which the United States has not ratified as a rejection of restrictions on speech.

The comparative legal research method is used to analyse the similarities and differences between the legal systems of Indonesia, Iran, and the United States in protecting freedom of expression in the arts. This approach aims to understand how each country's historical, political, cultural and ideological background affects the way it regulates artistic expression. By comparing the three countries, this research aims to identify the most effective and progressive model of legal protection for artistic expression, while also recommending regulatory formulations that align more closely with democratic principles and universal human rights.

This combination of normative and comparative approaches enables the research to present a more in-depth and contextual analysis, assessing not only the written law but also its practice and application in various legal systems. The results of this method are expected to provide concrete input for Indonesian policymakers in formulating regulations that are not only repressive but also support the development of art as a legitimate form of expression in a democratic state of law.

¹⁷ Hanafi Ramsi, "The Dialectics of Freedom of Expression and Legal Restrictions on Digital Platforms: An Analysis of Human Rights Principles, the Electronic Information and Transactions Law, and Constitutional Court Decision No. 105/PUU-XXII/2024," *International Journal of Law, Environment, and Natural Resources* 5, no. 1 (August 2025): 57–75, <https://doi.org/10.51749/injurlens.v5i1.132>.

Discussion

The Right to Freedom of Artistic Expression in Various International Legal Instruments

The right to freedom of artistic expression is part of the broader right to freedom of opinion and expression, which is recognised as a fundamental pillar of the international human rights system.¹⁸ The UDHR of 1948 affirms in Article 19 that everyone has the right to freedom of opinion and expression. Including the freedom to seek, receive, and impart information and ideas through any media and regardless of frontiers, a formulation that naturally encompasses artistic works such as music, painting, theatre, literature, and film as legitimate means of expression¹⁹. This principle was later codified into binding international law through the ICCPR 1966, whose Article 19(2) explicitly extends the right of expression to the form of art as a medium of communication²⁰. The UN Human Rights Committee, in its *General Comment No. 34* (2011), clarified that this protection covers artistic works regardless of medium and recognises the role of art in both individual self-expression and broader public discourse²¹.

Nevertheless, Article 19(3) of the ICCPR allows restrictions on expression only if prescribed by law and necessary to respect the rights or reputations of others, or to protect national security, public order, public health, or morals. This standard is particularly relevant to artistic expression, which often provokes debates over morality, politics, or social norms. Complementing the ICCPR, the ICESCR 1966 in Article 15(1)(a) recognizes the right of everyone to take part in cultural life, which the UN Committee on Economic, Social and Cultural Rights (CESCR) interprets in *General Comment No. 21* (2009) as including the creation, dissemination, and enjoyment of the arts, with states required to respect artists' freedom from interference.²² Specialised instruments provide even more direct protection. The UNESCO Recommendation concerning the Status of the Artist (1980) calls upon states to ensure artists enjoy favourable conditions for creation, including protection against censorship and arbitrary restrictions.²³ Similarly, the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)

¹⁸ Howie, "Protecting the Human Right to Freedom of Expression in International Law."

¹⁹ Gordon Brown, ed., *The Universal Declaration of Human Rights in the 21st Century*, vol. 2, Open Reports Series (Cambridge, UK: Open Book Publishers, 2016), <https://doi.org/10.11647/OBP.0091>.

²⁰ Sarah Joseph, "International Covenant on Civil and Political Rights (ICCPR)," in *Elgar Encyclopedia of Human Rights* (Edward Elgar Publishing, 2022), 178–87, <https://doi.org/10.4337/9781789903621.int.covenant.civil>.

²¹ Caroline Turner and Jen Webb, *Art and Human Rights* (Manchester University Press, 2016), <https://doi.org/10.7765/9781526100719>.

²² Céline Romainville, "Defining the Right to Participate in Cultural Life as a Human Right," *Netherlands Quarterly of Human Rights* 33, no. 4 (December 20, 2015): 405–36, <https://doi.org/10.1177/016934411503300404>.

²³ Ronald Kakungulu-Mayambala, Rukundo Solomon, and Victor Philip Makmot, "An Examination of the Legislative Limitations of Artistic Freedom of Expression in Uganda," *African Journal of Legal Studies* 12, no. 1 (December 18, 2019): 47–80, <https://doi.org/10.1163/17087384-12340043>.

emphasises the obligation of states to create an enabling environment for individuals to produce and disseminate diverse cultural expressions, directly linking this to freedom of expression.²⁴

The UN Special Rapporteur on cultural rights has underscored in her 2013 report that artistic expression should receive the same degree of protection as political speech, warning that it must not be subjected to greater limitations merely because of its form or content. Regional human rights systems further reinforce this protection. In Europe, Article 10 of the ECHR has been interpreted by the European Court of Human Rights to include artistic expression, as demonstrated in cases such as *Müller v. Switzerland* (1988) and *Karataş v. Turkey* (1999), where the Court affirmed that artistic works play an essential role in a democratic society. In the Americas, Article 13 of the American Convention on Human Rights (ACHR) similarly guarantees freedom of thought and expression without prior censorship, and the Inter-American Court of Human Rights has recognised art as a vital medium for both cultural identity and political participation²⁵. The African human rights system, through Article 9 of the African Charter on Human and Peoples' Rights (ACHPR)²⁶ and the 2019 *Declaration of Principles on Freedom of Expression and Access to Information in Africa*, explicitly affirms the protection of creative and artistic works as part of the broader right to freedom of expression.²⁷

From a normative perspective, the recognition of artistic expression in international law evolves in a clear hierarchy.²⁸ It begins with broad guarantees of freedom of expression in instruments such as the UDHR and ICCPR, moves toward cultural rights frameworks like the ICESCR and UNESCO instruments, is further clarified by interpretative guidance from treaty bodies and special rapporteurs, and is reinforced through regional human rights jurisprudence.²⁹ This progression demonstrates that artistic expression is not a peripheral subset of free expression but a fully protected manifestation of both freedom of expression and cultural rights. Under these frameworks, states bear three principal obligations: to respect artistic

²⁴ Mira Burri, "The UNESCO Convention on Cultural Diversity: An Appraisal Five Years after Its Entry into Force," *International Journal of Cultural Property* 20, no. 4 (November 2013): 357–80, <https://doi.org/10.1017/S0940739113000209>.

²⁵ Soledad Bertelsen, "A Margin for the Margin of Appreciation: Deference in the Inter-American Court of Human Rights," *International Journal of Constitutional Law*, July 2021, <https://doi.org/10.1093/icon/moab063>.

²⁶ Estifanos Balew Liyew, "A Critical Appraisal of the Effectiveness of the African Charter on Human and Peoples' Rights," *The International Journal of Human Rights*, May 12, 2025, 1–14, <https://doi.org/10.1080/13642987.2025.2501569>.

²⁷ Yohannes Eneyew Ayalew, "Assessing the Limitations to Freedom of Expression on the Internet in Ethiopia against the African Charter on Human and Peoples' Rights," *African Human Rights Law Journal* 22, no. 2 (January 2023): 1–31, <https://doi.org/10.17159/1996-2096/2020/v20n1a12>.

²⁸ Sarah Thin, "Community Interest and the International Public Legal Order," *Netherlands International Law Review* 68, no. 1 (May 2021): 35–59, <https://doi.org/10.1007/s40802-021-00186-7>.

²⁹ Mohamed Elewa Badar, "Basic Principles Governing Limitations on Individual Rights and Freedoms in Human Rights Instruments," *The International Journal of Human Rights* 7, no. 4 (December 2003): 63–92, <https://doi.org/10.1080/13642980310001726226>.

freedom by refraining from unjustified censorship or criminalisation; to protect artists from threats, harassment, or violence by non-state actors; and to fulfil the right by fostering conditions that enable the creation, distribution, and enjoyment of art. While legitimate restrictions may be applied under narrowly defined circumstances—such as preventing incitement to violence—the presumption under international law favours protection.³⁰ However, in practice, many states, including Indonesia and Iran, rely on vague morality or security provisions to impose disproportionate limitations, thereby contravening the proportionality principle articulated by the Human Rights Committee.

The Regulation of Guarantees on Freedom of Expression through Art in the Constitutions of Indonesia, Iran, and the United States.

Speaking of freedom of expression, freedom itself is a right for every individual, and expression is part of freedom of speech.³¹ This right can be expressed in various ways, such as through written works, works of art, either music or painting, and others. In general, freedom of expression is expressed through musical works of art because it is considered the right medium for expression, in addition to the many music media platforms and the high number of enthusiasts in music as based on the results of the Populix Survey that 77% of respondents have a very high interest in music, this is what encourages someone to choose to express their right to freedom of expression in musical works of art.³²

In Indonesia, freedom of expression is not explicitly regulated.³³ However, this right has been guaranteed in the 1945 Constitution of the Republic of Indonesia in Article 28E Paragraph (3), which says "*Everyone has the right to freedom of association, assembly, and expression*".³⁴ Although Indonesia has regulations governing its state of law, it still imposes restrictions on freedom of expression in works of art, one of which is the ITE Law.³⁵ One form of freedom limitation in the ITE Law is not violating the law, such as hate speech and defamation; however, this freedom

³⁰ Yael Ronen, "Incitement to Terrorist Acts and International Law," *Leiden Journal of International Law* 23, no. 3 (September 2010): 645–74, <https://doi.org/10.1017/S0922156510000269>.

³¹ Gehan Gunatilleke, "Justifying Limitations on the Freedom of Expression," *Human Rights Review* 22, no. 1 (March 2021): 91–108, <https://doi.org/10.1007/s12142-020-00608-8>.

³² Ainun Najib et al., "Regulation on Freedom of Expression on Social Media in Indonesia and Malaysia," *Journal of Indonesian Constitutional Law* 1, no. 1 (2024): 46–60, <https://doi.org/https://doi.org/10.71239/jicl.v1i1.20>.

³³ Souad Ezzerouali, "Expanding the Authority of Muhtasib to Protect Consumers: A Comparison between Moroccan Law and Islamic Qanun of Aceh," *Trunojoyo Law Review* 7, no. 2 (2025): 161–91, <https://doi.org/10.21107/tlr.v7i2.29151>.

³⁴ Zaka Firma Aditya and Sholahuddin Al-Fatih, "Indonesian Constitutional Rights: Expressing and Purposing Opinions on the Internet," *The International Journal of Human Rights* 25, no. 9 (October 21, 2021): 1395–1419, <https://doi.org/10.1080/13642987.2020.1826450>.

³⁵ Moh. Fadhil, "Criminal Law Reform in Indonesia : The Perspective on Freedom of Expression and Opinion," *Al-Jinayah Jurnal Hukum Pidana Islam* 9, no. 2 (December 7, 2023): 128–46, <https://doi.org/10.15642/aj.2023.9.2.128-146>.

limitation is often misused to limit the rights of its citizens when exercising their right to freedom of expression in artistic works.³⁶

The Islamic Republic of Iran is one of the countries that pays particular attention to human rights issues and developments worldwide.³⁷ Iran has basically regulated the fulfilment and protection of the rights of each of its citizens in its national regulations, such as the right to freedom of expression, which is regulated in *the Constitution of the Islamic Republic of Iran*, precisely article 19 states:

Table 1. Constitutional Provisions on Freedom of Expression in Iran

Article	Content	Key Guarantees & Limitations
Article 19	"All people of Iran, whatever the ethnic group or tribe to which they belong, enjoy equal rights; and colour, race, language, and the like, do not bestow any privilege."	Guarantees equality of rights for all Iranian citizens without discrimination based on ethnicity, race, or language.
Article 26	"The formation of parties, societies, political or professional associations, as well as religious societies, whether Islamic or on one of the recognised religious minorities, is permitted provided they do not violate the principles of independence, freedom, national unity, the criteria of Islam, or the basis of the Islamic Republic. No one may be prevented from participating in the aforementioned groups, or be compelled to participate in them."	Guarantees the freedom to establish and join political, professional, or religious organisations, with limitations that such activities must not violate independence, national unity, Islamic criteria, or the foundations of the Islamic Republic.
Article 175	"The freedom of expression and dissemination of thoughts in the Radio and Television of the Islamic Republic of Iran must be guaranteed in keeping with the Islamic criteria and the best interests of the country. The appointment and dismissal of the head of the Radio and Television of the Islamic Republic of Iran rests with the Leader. A council consisting of two representatives, including the President, the head of the judiciary branch and the Islamic Consultative	Guarantees freedom of expression in radio and television in accordance with Islamic criteria and the national interest. A special council oversees the management, and the head is appointed or dismissed by the Supreme Leader.

³⁶ Mikhael Feka et al., "Navigating the Legal Minefield: The Impact of Articles 27A and 27B of Indonesia's EIT Law on Freedom of Expression and the Path to Legal Reform," *Journal of Law and Legal Reform* 6, no. 1 (March 13, 2025): 265–304, <https://doi.org/10.15294/jllr.v6i1.19116>.

³⁷ Shabnam Moinipour, "UN Treaty-Based Bodies and the Islamic Republic of Iran: Human Rights Dialogue (1990–2016)," ed. Mark Bendall, *Cogent Social Sciences* 4, no. 1 (January 1, 2018): 1440910, <https://doi.org/10.1080/23311886.2018.1440910>.

Assembly, shall supervise the functioning of this organisation. The policies and the manner of managing the organisation and its supervision will be determined by law."

Source: *Compiled by the author based on several references*

The regulation of freedom of expression in Iran and Indonesia is not much different; neither is specifically regulated, but both countries have restrictions on freedom of expression. In Iran, the limitation of rights is more emphasised in terms of Islamic criteria and the interests of the state.

Furthermore, the regulation of freedom of expression in the United States, as well as the regulation of freedom of expression between the United States and the other two countries, namely Iran and Indonesia. In the first amendment of the United States Constitution (1971), in the first amendment

Table 2. Constitutional Provisions on Freedom of Expression in the United States

Country	Constitutional / Legal Basis	Main Guarantees	Limitations	Notes
United States	First Amendment to the U.S. Constitution (1791): "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."	Protects freedom of speech, press, assembly, religion, and petition, as well as artistic expression.	Limited exceptions: defamation, child pornography, obscenity (Miller Test), incitement to imminent lawless action. Rejects ICCPR Article 20 (hate speech prohibition).	Very strong judicial protection; content-based restrictions are highly scrutinised.
International Standard	ICCPR Article 19 (1966): 1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression...including in the form of art. 3. Restrictions allowed only if provided by law and necessary for: (a) respect of	Universal guarantee of freedom of opinion and expression, including artistic forms.	Only narrow, necessary, and lawful restrictions are allowed.	U.S. ratified ICCPR but with reservations; it interprets restrictions narrowly.

rights/reputation of others; (b) protection of national security, public order, public health, or morals.

Source: Compiled by the author based on several references

The United States rejects Article 20 of the ICCPR, which regulates the prohibition of hate speech, because it is considered contrary to the principle of freedom guaranteed by the US Constitution. This emphasises that the United States guarantees and protects the rights of its citizens in freedom of expression. The US has a different legal system from that of other countries, especially in terms of handling hate speech.³⁸ This can be seen in contrast to the two countries of Iran and Indonesia, both of which make hate speech a restriction on the right to freedom of expression.

Restrictions on Freedom of Expression through Art by the Governments of Indonesia, Iran, and the United States.

Governments in each country have implemented various forms of restrictions on artistic expression, both through regulation and direct silencing of artists.³⁹ In Indonesia, freedom of artistic expression is often restricted through the application of the multi-interpretive ITE Law, which is frequently used to criminalise artistic expression, especially when it contains social and political criticism. The Kompas report recorded at least 530 cases of criminalisation of expression between 2019 and 2024, mostly related to defamation articles in the ITE Law.⁴⁰ The case of the band Sukatani and the song "Bayar Bayar Bayar" is a clear example of how artwork containing social criticism was silenced through the takedown of digital platforms and intimidation of its members.⁴¹

Furthermore, in addition to the ITE Law, restrictions on artistic freedom also arise from other regulations, such as the Job Creation Law and the 1966 MPRS Tap, which have been used on several occasions to censor or prohibit art performances deemed contrary to political or religious norms. For example, the cancellation of an exhibition of Yos Suprpto's paintings at the National Gallery of Indonesia in 2024

³⁸ James Banks, "Regulating Hate Speech Online," *International Review of Law, Computers & Technology* 24, no. 3 (November 29, 2010): 233–39, <https://doi.org/10.1080/13600869.2010.522323>.

³⁹ Souad Ezzerouali, Ridwan Arifin, and Mohamed Cheick Banane, "Can Moroccan Law Ensure Substantive Justice in Protecting Private Life from AI's Impact?," *Substantive Justice International Journal of Law* 8, no. 1 (June 4, 2025): 1–15, <https://doi.org/10.56087/substantivejustice.v8i1.333>.

⁴⁰ Budi Suhariyanto, Agus Suntoro, and Aghia Khumaesi Su'ud, "Criminalisation Due to Ambiguities in Defamation and Insult Regulations via Electronic Means in Indonesia: A Threat to Civil Liberties," in *The Palgrave Handbook of Criminology and the Global South* (Cham: Springer Nature Switzerland, 2025), 1–17, https://doi.org/10.1007/978-3-031-74932-2_31-1.

⁴¹ Barlian Najma Elhanuna, "Lagu 'Bayar Bayar Bayar', Kritik Sosial Atau Hate Speech?: Implikasi Terhadap Kebebasan Berekspresi Di Indonesia," Universitas Islam Indonesia, 2025, <https://law.uii.ac.id/blog/2025/06/26/lagu-bayar-bayar-bayar-kritik-sosial-atau-hate-speech-implikasi-terhadap-kebebasan-berekspresi-di-indonesia/>.

demonstrates restrictive practices that threaten artistic freedom.⁴² Although the 1945 Constitution, Article 28E, paragraph (3), and Human Rights Law No. 39/1999 guarantee freedom of expression, their implementation is often misguided and becomes a tool to curb artists. Art censorship and repressive measures limit public dialogue and threaten the economic rights of cultural workers.

In sharp contrast to Indonesia, in Iran, the government uses the legal framework of religion and theocratic state to restrict artistic expression systematically.⁴³ Since the 1979 Revolution, the Ministry of Culture and Islamic Guidance (Ershad) has overseen the licensing of all artistic activities. Artists who do not adhere to Islamic moral standards are subject to criminal sanctions, including license revocation and detention.⁴⁴ Special restrictions apply to women who are prohibited from singing solos in public or without the hijab. The case of Parastoo Ahmadi's arrest after live-streaming on YouTube without a hijab and the wave of arrests of female singers in the 2025 season show the government's tight control over women's artistic expression. The cases of directors such as Behtash Sanaeie and Maryam Moghaddam, who were prosecuted for featuring alcohol, dancing, and women without hijab in the film "My Favourite Cake", show that artistic expression that deviates from Islamic norms is considered morally damaging propaganda. This policy reflects a systematic restriction of the right to expression based on a strict interpretation of religious law, with severe consequences for those who fail to comply.

Meanwhile, the United States places freedom of expression in art as a key pillar protected by the First Amendment of the Constitution.⁴⁵ The US Supreme Court upheld the principle of content neutrality, which prohibits restrictions on expression simply because the content is controversial.⁴⁶ However, there are limited exceptions, such as child pornography, threatening speech, defamation, and obscenity, that are regulated through legal standards such as the Miller Test (Miller v. California) and the precedent of Heller v. New York. Local regulations also allow restrictions on content involving public nudity or pornography, such as in the case of Barnes v. Glen Theatre, which allowed restrictions on nude dancing to protect public morals.⁴⁷ In the digital realm, the Reno v. ACLU case became a significant milestone that

⁴² Herlambang P. Wiratraman, "Artistic Freedom and Legal Boundaries: Navigating Censorship and Expression in Indonesia's Democratic Framework," *Masalah-Masalah Hukum* 54, no. 1 (March 27, 2025): 102–14, <https://doi.org/10.14710/mmh.54.1.2025.102-114>.

⁴³ Lorraine V. Aragon, "Pluralities of Power in Indonesia's Intellectual Property Law, Regional Arts and Religious Freedom Debates," *Anthropological Forum* 32, no. 1 (January 2022): 20–40, <https://doi.org/10.1080/00664677.2022.2042793>.

⁴⁴ F Syaqqii and A Syahbana, "Reaksi Iran Dan Arab Saudi Atas Beragam Kritikan: Studi Komparasi Kebijakan Ali Khamenei Dan Muhammad Bin Salman," *Al-Ijtima'i: International Journal of Government and Social Science* 10, no. 1 (2024): 22–29.

⁴⁵ Uladzislau Belavusau, *Freedom of Speech* (Routledge, 2013), <https://doi.org/10.4324/9780203595671>.

⁴⁶ Geoffrey R. Stone, "Restrictions of Speech Because of Its Content: The Peculiar Case of Subject-Matter Restrictions," *The University of Chicago Law Review* 46, no. 1 (1978): 81, <https://doi.org/10.2307/1599289>.

⁴⁷ Scott Fraley, "Law and Belief: The Reality of Judicial Interpretation," in *Law and Imagination in Troubled Times* (London: Routledge, 2020), 93–108, <https://doi.org/10.4324/9780429325649-6>.

reinforced the notion that the internet, as a medium of artistic expression, is also protected by the Constitution, as long as it does not violate laws such as those prohibiting child pornography.⁴⁸

These three countries demonstrate three models of regulating artistic expression: a restrictive model based on common law in Indonesia; a theocratic and religious law model in Iran; and a liberal model with legal exceptions in the United States. This comparison emphasises the urgency of legal reform in Indonesia to avoid reverting to the use of multi-interpretive articles to silence art, as well as the importance of setting clear boundaries when restrictions are necessary to protect the public interest.⁴⁹

Similarities and Differences in the Regulation of Freedom of Artistic Expression in the Constitutions of Indonesia, Iran, and the United States

Injustice in the application of freedom of expression in Indonesia is a complex issue that reflects various challenges in the legal, political and social systems.⁵⁰ Although the right to freedom of expression has been guaranteed in Article 28E, paragraph (3), of the 1945 Constitution of the Republic of Indonesia,⁵¹ in practice, various obstacles still hinder its practical application. Factors contributing to this injustice include multiple interpretations of regulations, the criminalisation of critics, a lack of protection for journalists and activists, as well as the influence of politics and elite interests.⁵² One of the primary factors contributing to the injustice in the implementation of freedom of speech is the existence of regulations that are subject to multiple interpretations and often used as a tool to silence criticism.⁵³

The ITE Law is one of the most controversial regulations in the context of freedom of expression.⁵⁴ Articles in the ITE Law, such as those on defamation and hate speech, have broad interpretations that can be misused to take action against individuals who criticise the government or certain institutions, including artists who express themselves through works of art, such as music or visual art.

⁴⁸ Christopher Terry, Stephen Schmitz, and Eliezer Joseph Silberberg, "A Cheerleader, a Snapchat, and a Profanity Go to Supreme Court but the Punchline in Mahanoy Isn't Funny," *Communication Law and Policy* 27, no. 2 (April 3, 2022): 79–101, <https://doi.org/10.1080/10811680.2022.2055377>.

⁴⁹ Jon Yuan Jiang, *The Belt and Road Initiative and Australian Mainstream Media* (London: Routledge, 2024), <https://doi.org/10.4324/9781003424215>.

⁵⁰ Zico Junius Fernando et al., "The Freedom of Expression in Indonesia," *Cogent Social Sciences* 8, no. 1 (December 2022), <https://doi.org/10.1080/23311886.2022.2103944>.

⁵¹ I Gede Pasek Eka Wisanjaya and Putri Bella Rosy Widodo, "Pengaturan Tentang Pembatasan Hak Kebebasan Berekspresi Pada Media Sosial Dalam Perspektif Hukum Nasional," *Jurnal Legislasi Indonesia* 21, no. 4 (December 19, 2024): 562–72, <https://doi.org/10.54629/jli.v21i4.1187>.

⁵² Nilman Ghofur, "Law, Media, and Democracy in the Digital Era: Freedom of Expression and ITE Regulation in Indonesia," *Al-Mazaahib: Jurnal Perbandingan Hukum* 12, no. 2 (December 2024): 184–204, <https://doi.org/10.14421/al-mazaahib.v12i2.3703>.

⁵³ Wiwin, H. Syafa'at Anugrah Pradana, and Muhammad Imam Dhiya'ul Haq, "Regulation of Articles on State Institutional Insults to The Right to Freedom of Expression in Indonesia: A Critical Review," *Mulawarman Law Review*, July 14, 2023, 21–31, <https://doi.org/10.30872/mulrev.v8i1.1122>.

⁵⁴ Ghofur, "Law, Media, and Democracy in the Digital Era: Freedom of Expression and ITE Regulation in Indonesia."

In the context of constitutional law, Indonesia, Iran and the United States have very different approaches to freedom of expression, particularly in the arts. Indonesia's constitution normatively guarantees freedom of expression. Article 28E paragraph (3) of the 1945 Constitution states that "Everyone has the right to freedom of association, assembly, and expression"⁵⁵. The case of the Sukatani band with the song "Bayar Bayar Bayar", which was forced to be removed from digital platforms, is a clear example of how legal mechanisms can be used to control critical expression spaces, even though constitutional freedom of expression is guaranteed.⁵⁶

In contrast to Indonesia, Iran explicitly restricts freedom of expression, especially in the arts, based on strict religious law. The Constitution of the Islamic Republic of Iran recognises freedom of expression in Article 24, but strictly limits this right in accordance with Islamic principles.⁵⁷ For example, Iranian law prohibits women from singing solos in public, and the act can be considered a violation of sharia norms. The case of Parastoo Ahmadi, who was arrested for performing an online concert without a hijab, is a clear example of how the legal system in Iran cracks down on artistic expression that does not conform to the official interpretation of religious values.⁵⁸ In other words, in the Iranian context, freedom of expression in art is strictly subject to ideological and religious censorship.

Meanwhile, the United States occupies a contrasting position to these two countries. The First Amendment of the US Constitution provides strong protection to freedom of expression, including controversial or offensive artistic expression.⁵⁹ The US legal system requires proof that an expression poses a real and immediate danger before it can be restricted. In the case of *National Endowment for the Arts v. Finley* (1998), the US Supreme Court affirmed that the state may not use aesthetic or moral preferences to restrict arts funding, indicating the protection is not only negative (freedom from state intervention), but also positive (right to state support).⁶⁰

The three countries share similarities in their formal recognition of freedom of expression in their respective constitutions or key legal documents.⁶¹ However,

⁵⁵ Edi Sofwan, Muhammad Sopiya, and Ali Masykur Fathurrahman, "The Application of the Right to Freedom of Expression in Demonstration Based on Principles of a Democratic State," *Jurnal Civics: Media Kajian Kewarganegaraan* 19, no. 2 (October 2022): 310–19, <https://doi.org/10.21831/jc.v19i2.53464>.

⁵⁶ Latipah Nasution, "Hak Kebebasan Berpendapat Dan Berekspresi Dalam Ruang Publik Di Era Digital," *Adalah* 4, no. 3 (June 25, 2020): 37–48, <https://doi.org/10.15408/adalah.v4i3.16200>.

⁵⁷ Cekli Setya Pratiwi, "The Permissible Scope of Legal Limitation on Freedom of Religion or Belief (FoRB) and Freedom of Expression (FoE) under International Human Rights Law (IHRL): The Study of Blasphemy Cases in Indonesia," *SSRN Electronic Journal*, 2019, <https://doi.org/10.2139/ssrn.3312715>.

⁵⁸ Raha Shojaei, "Introduction: Her Veiled Voice," in *Veiled Voices in Postrevolutionary Iranian Cinema* (Cham: Springer Nature Switzerland, 2025), 1–28, https://doi.org/10.1007/978-3-031-92273-2_1.

⁵⁹ James Moore, "Assaults on Freedom of Speech: Why Social Studies Must Defend the First Amendment," *The Social Studies* 113, no. 1 (January 2022): 30–49, <https://doi.org/10.1080/00377996.2021.1949258>.

⁶⁰ Tryan Zaki Aulia Yanis et al., "The Unconstitutionality of the Offence of Insulting the Government in the 2023 Criminal Code: A Critical Review of Freedom of Expression," *As-Siyasi: Journal of Constitutional Law* 5, no. 1 (June 15, 2025): 111–19, <https://doi.org/10.24042/as-siyasi.v5i1.24739>.

⁶¹ Mark Tushnet, "The Possibilities of Comparative Constitutional Law," *The Yale Law Journal* 108, no. 6 (April 1999): 1225, <https://doi.org/10.2307/797327>.

differences arise in the way the countries interpret and apply the principle. Indonesia and Iran tend to provide conditional protection, depending on certain social norms, criminal law or moral principles.⁶² Indonesia uses a legal approach that ambivalently recognises but restricts, while Iran openly restricts artistic expression based on religious norms. On the other hand, the United States takes an absolutist approach to freedom of expression, although it recognises certain restrictions, such as speech that incites violence or child pornography.

Thus, the regulation of freedom of expression in artworks is influenced not only by the constitutional text but also by the country's legal culture, power structures, and dominant values.⁶³ This comparative study emphasises the importance of harmony between legal norms and implementative practices so that freedom of expression can truly be guaranteed, not only on paper but also in the daily lives of artists and citizens in general.

In this case, we will present the similarities between Indonesia and Iran in regulating freedom of expression through art, as well as the differences between Indonesia, Iran, and the United States in terms of legal aspects, constitutional protection, and the practical implementation of this right.

Table 3. Differences and Similarities Between Indonesia, Iran and the US

Category	Equation (Indonesia and Iran)	Difference (Indonesia, Iran, United States)
Constitutional basis	Both guarantee freedom of expression normatively in their respective constitutions.	1) Indonesia: Guaranteed in Article 28E paragraph (3) of the 1945 Constitution; 2) Iran: Guaranteed in Article 24 of the Iranian Constitution with Islam-based restrictions; 3) United States of America: Guaranteed in the First Amendment with no limits on artistic expression.
Restrictions on artistic expression	Both have regulations that can be used to restrict artistic expression, such as the ITE Law in Indonesia and religious norms in Iran.	1) Indonesia: ITE Law is often used to silence criticism through art. 2) Iran: Very strict restrictions based on religious law, such as the ban on female singers performing in public. 3) United States: Almost no explicit restrictions on art, heavily guarded through Supreme Court jurisprudence.
Implementation and protection of rights	Weak protection of artists from intimidation, criminalisation, and censorship.	1) Indonesia: The ITE Law is frequently used to silence artistic criticism; <i>Kompas</i> recorded 530 cases of expression criminalisation (2019–2024), several of which involved art.

⁶² Herlambang Perdana Wiratraman and Sébastien Lafrance, “Protecting Freedom of Expression in Multicultural Societies: Comparing Constitutionalism in Indonesia and Canada,” *Yuridika* 36, no. 1 (2021): 75, <https://doi.org/10.20473/ydk.v36i1.24032>.

⁶³ Adrienne Stone, “The Comparative Constitutional Law of Freedom of Expression,” in *Comparative Constitutional Law* (Edward Elgar Publishing, n.d.), <https://doi.org/10.4337/9780857931214.00031>.

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- 2) Iran: Very strict religious-based restrictions, e.g., ban on female singers performing in public; *BBC* reports over 20 female artists prosecuted between 2023–2025.
 - 3) USA: Almost no explicit limits on art; fewer than 5 court cases in the last decade sought to restrict art, most overturned by the Supreme Court.
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Source: Compiled by the author based on several references

From a human rights perspective, the three constitutional models of protecting freedom of artistic expression in Indonesia, Iran, and the United States illustrate the dynamic interaction between constitutional guarantees, legal culture, and international obligations. In Indonesia, the constitutional recognition of freedom of expression, as outlined in Article 28E (3) of the 1945 Constitution, aligns with Article 19 of the ICCPR, to which Indonesia is a party. However, the persistent use of vaguely formulated laws, such as the ITE Law, to suppress critical art undermines the principle of legality and violates the necessity and proportionality tests prescribed in Article 19(3) ICCPR. Iran, although recognising equality and certain freedoms in its constitution, systematically restricts artistic expression based on strict interpretations of Islamic law.

This practice conflicts with Iran's obligations under the ICCPR, particularly Article 19, and fails to meet the limited grounds for restriction permitted under international law.⁶⁴ The prohibition on women singing publicly or appearing without a hijab in performances also breaches Articles 3 (gender equality) and 15 of the ICESCR, which safeguards the right to participate in cultural life. Conversely, the United States' First Amendment model represents a liberal approach consistent with the broad protections envisioned under Article 19 ICCPR, even though the US has entered reservations to Article 20, rejecting restrictions on hate speech.

Through jurisprudence, the US applies strict scrutiny to any content-based restriction, thereby providing the strongest practical safeguard for artistic freedom among the three. Human rights theory, particularly the universality and indivisibility of rights, demands that all states not only guarantee artistic expression in their constitutions but also ensure that any restriction is lawful, necessary, and proportionate to a legitimate aim. When measured against these standards, the US model most closely fulfils international human rights norms, Indonesia reflects an inconsistent and sometimes repressive application despite its formal guarantees, and Iran exemplifies systemic and ideological suppression of a right recognised as fundamental under global human rights law.

⁶⁴ Bahram Soltani, "Human Rights in International Law, State Responsibilities and Accountability Mechanisms: A Case Study of Iran," *The International Journal of Human Rights* 28, no. 6 (July 2024): 883–911, <https://doi.org/10.1080/13642987.2024.2328714>.

Conclusion

This research confirms that freedom of expression, as embodied in artworks, is an integral part of human rights that are normatively guaranteed in each country's constitution. However, its implementation and protection are strongly influenced by the state's ideology, legal system, and prevailing societal values. In Indonesia, although the constitution and human rights law guarantee freedom of expression, regulations such as the ITE Law are often misused to restrict artistic expression that contains social criticism, creating a repressive climate for artists. Vagueness and multiple interpretations in regulations are significant obstacles to the protection of this right. In Iran, restrictions are systematic and based on religious law. The state actively controls art through strict regulations, especially against women, using Islamic norms as a benchmark to justify the silencing of artistic expression. Cases of artists being arrested for violating “Islamic morals” are strong evidence of structural repression. In contrast, the United States has a strong and liberal model of protection for freedom of expression, including in the arts. The First Amendment of the US Constitution explicitly guarantees this right with very few restrictions. Judicial protection of artistic expression even extends to controversial works.

In general, the three countries show very different approaches: Indonesia with an ambiguous and inconsistent model, Iran with a restrictive theocratic approach, and the United States with absolute constitutional protection. Therefore, this study recommends the need for legal reform in Indonesia, particularly regarding the ITE Law and other regulations that are subject to multiple interpretations, as well as the strengthening of constitutional protection to ensure that political interests, narrow morality, or social pressure do not limit freedom of artistic expression.

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