

## Regulation on Freedom of Expression on Social Media in Indonesia and Malaysia

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### ABSTRACT

This study aims to examine and analyse the forms of regulation of freedom of opinion in the formation of good laws in Indonesia and Malaysia and how the practice and obstacles to freedom of opinion on social media between the two. In the research method, the statutory regulatory approach (Statute Approach), analytical approach (Analytical Approach), and case approach (Case Approach) are used as aspects of normative analysis. Legal materials are collected by tracing authoritative documents related to legal issues and using the literature study method. The legal materials collected are then described descriptively by combining and comparing regulations about freedom of opinion/expression to answer the legal issues raised and reach a clear solution. The results of this study show that the existence of rules that have regulated freedom of expression/opinion for Indonesia and Malaysia is still a debate in its civil society. In Malaysia, the main challenge is the strict regulations often used to suppress freedom of expression in the interests of its constitution. In Indonesia, freedom of expression rules is considered repressive, too broad, and prone to abuse to silence public criticism in the mass media.

## Introduction

The development of communication and information technology in the current digital era has significantly impacted the way individuals interact and transact with others through various mass media platforms. Driven by the development of the internet network, interactions are no longer limited to direct or face-to-face meetings but also occur online or through online media. This has profound implications for how each individual expresses themselves in response to every information presented through the mass media. Providing opportunities for them to be accessible and respond without forgetting the limitations of that

freedom. Freedom is a concept always present in the panorama and is a phenomenon in the development of human civilization. This is because freedom is an essential and existential issue that many humans have always fought for until now.<sup>1</sup>

In the context of freedom of expression in social media, it has become a concern in the international debate on human rights at the UN. This has resulted in several vital charters and agreements, including the Universal Declaration of Human Rights. As in Article 21, paragraph (3) of the Universal Declaration of Human Rights which states that "The will of the people shall be the basis of government power; this will must be expressed in general elections that are held periodically and genuinely, with universal and equal suffrage, by secret ballot or by other procedures that guarantee freedom of voting" Looking definitively at freedom of expression is a human right that is guaranteed by law that regulates not only nationally but also internationally. This is an essential thing to note for every element of society in expressing themselves on social media.<sup>2</sup>

The Republic of Indonesia upholds human rights; its implementation of law enforcement and justice must be relevant to the 1945 Constitution, which states that human rights are one of the essential elements of the concept of a state of law. Considering the urgency, the Constitution must firmly guarantee the rights of every citizen.<sup>3</sup> Human rights are rights inherent in a person that cannot be violated. As a country that upholds human rights, Indonesia provides complete protection of human rights for every Indonesian citizen as a form of guarantee ratified in its constitution, such as Law No. 39 of 1999 concerning Human Rights. Human rights also contain the rights inherent in Indonesian citizens, such as the right to freedom of opinion or Freedom of speech as the most crucial part in providing legal protection for the views and opinions of citizens regarding the running of a democratic state or a state whose sovereignty lies with the people or in this case, citizens.<sup>4</sup>

Social media has become the leading platform for people to voice their opinions and express themselves on all the information. Many regulations already exist regulating freedom of opinion and expression on social media, and these vary in each country, including Indonesia and Malaysia. Both countries are the most active social media users in Southeast Asia. Indonesia and Malaysia are Southeast

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<sup>1</sup> Patricia Crone, "Islam and Religious Freedom," in *The Qur'ānic Pagans and Related Matters* (Leiden, The Netherlands: BRILL, 2016), 410–21, [https://doi.org/10.1163/9789004319288\\_015](https://doi.org/10.1163/9789004319288_015).

<sup>2</sup> 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>.

<sup>3</sup> Komang Vita Dianita, "The Freedom of Speech Based on Jerinx Case, ITE Law Approach," *Journal of Digital Law and Policy* 1, no. 1 (September 29, 2021): 29–36, <https://doi.org/10.58982/jdlp.v1i1.91>.

<sup>4</sup> Sholahuddin Al-Fatih et al., "Academic Freedom of Expression in Indonesia: A Maqashid Sharia Notes," *El-Mashlahah* 13, no. 2 (December 31, 2023): 203–24, <https://doi.org/10.23971/el-mashlahah.v13i2.7573>.

Asian countries with very different cultural, political, and social backgrounds. However, both countries face similar challenges in regulating and implementing freedom of expression on social media, including spreading fake news, hate speech, and using the platform by specific individuals.

Legally speaking, in Indonesia, freedom of speech is regulated in several forms of legislation, such as Law Number 9 of 1998 concerning freedom of expression in public and its development in today's digital world; the state has also regulated Law Number 19 of 2016 concerning Information and Electronic Transactions "UU ITE," both laws are regulated by the Republic of Indonesia as part of the protection of citizens for freedom of opinion and expression both in public in the context of offline or online, the meaning of offline here is the implementation of freedom of opinion and expression outside the network or expressing opinions in public directly, while the meaning of online is exercising freedom of opinion and expression on the network or in the digital world.<sup>5</sup>

Freedom of opinion is the most essential part of this democratic world because it is tangible evidence of the granting of fundamental rights for citizens in implementing democracy.<sup>6</sup> Democracy and freedom of expression with Law No. 19 of 2016; it is hoped that it will become a forum for the community to express their opinions to protect their rights. However, empirically, the implementation of freedom of opinion and expression still faces many shortcomings that are very detrimental to society, such as criminalization, data leaks, site blocking, and cyberbullying. The National Human Rights Commission (Komnas HAM) noted that throughout 2020-2021, there were 44 cases related to freedom of opinion and expression. This figure comes from 29 public complaints and 15 media monitoring cases by the Freedom of Expression and Opinion Situation Monitoring Team.<sup>7</sup>

One of the other countries is Malaysia, which also has rules on public freedom of speech. Human rights and freedom of speech in Malaysia are regulated in the constitution. They are guidelines for implementing law enforcement and legal protection for freedom of speech. However, there is still control over freedom of expression as stated in Article 10 paragraph (2), where the Parliament (a Malaysian institution) can make laws limiting freedom of expression for national security and public order. In this case, for those who violate the rules, the highest court of Malaysia will impose a fine of 500,000 ringgit, equivalent to 1.74 billion

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<sup>5</sup> Wita Setyaningrum et al., "Anticipation of the ITE Law and Reconciliation of Its Forms Freedom of Expression through the E-Hights Website," *Jurnal Hukum Novelty* 13, no. 2 (December 24, 2022): 266, <https://doi.org/10.26555/novelty.v13i2.a23799>.

<sup>6</sup> Md Nurul Momen, "Myth and Reality of Freedom of Expression on the Internet," *International Journal of Public Administration* 43, no. 3 (February 17, 2020): 277–81, <https://doi.org/10.1080/01900692.2019.1628055>.

<sup>7</sup> Muh. Akbar Fhad Syahril, "Cyber Crime in Terms of the Human Rights Perspective," *International Journal of Multicultural and Multireligious Understanding* 10, no. 5 (May 8, 2023): 119, <https://doi.org/10.18415/ijmmu.v10i5.4611>.

rupiah. Criticism of human rights in Malaysia is only by certain parties because demands are increasingly becoming due to political problems experienced in 1990. Malaysia provides space for its citizens the right to freedom of speech. It guarantees its legal protection, even though Malaysia adheres to the standard legal system and has a parliamentary monarchy government different from Indonesia. However, both have similar laws on the right to freedom of speech.

According to the provisions of freedom of opinion in the country of Malaysia, which is regulated in the Malaysian constitution, article 10, paragraph 1 reads: "(a) Every citizen has the right to speak and express his thoughts freely "(b) All citizens have the right to assemble peacefully and unarmed". Furthermore, in paragraphs 2, 3, and 4 of this article, it is clearly stated about the restrictions on the rules of Article 1. Another thing in article 10, paragraph 2 reads: "Parliament may by law impose: on the rights regulated by parentheses (a) article 1, whatever restrictions are deemed necessary or important in the interests of the security of the federation or any state, public order to protect the privileges of parliament or any state assembly to avoid contempt of court, defamation or acts of incitement to do something mistake".

Based on the above research on freedom of expression between Indonesia and Malaysia, several times have the same position, which is to apply legal protection for freedom of opinion and guarantee it in the form of a constitution or law, even though both have differences in the system of government. Seeing how the two countries, Indonesia and Malaysia, manage the right to freedom of expression, it is exciting to study and comment on the legal aspects of its implementation and practice. Essentially, the right to freedom of opinion is inherent in humans and is known as Human Rights (HAM), which must be guaranteed and protected. However, the forms of freedom of opinion arrangements in forming good laws between Indonesia and Malaysia and the practice and obstacles to freedom of opinion in social media have become very relevant and require a deeper analysis.

## Methods

The type of research used in this study is normative legal research; normative legal research, also known as doctrinal research,<sup>8</sup> According to Peter Mahmud Marzuki, is a process that aims to find legal rules, principles, and doctrines to answer the legal issues faced.<sup>9</sup> This study uses the Statute, Analytical, and Case approaches. Its sources of legal materials include primary and secondary sources. The techniques used to collect legal materials involve analyzing

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<sup>8</sup> Victor Imanuel W. Nalle, "The Relevance of Socio-Legal Studies in Legal Science," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 27, no. 1 (February 15, 2015): 179, <https://doi.org/10.22146/jmh.15905>.

<sup>9</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media, 2019).

authoritative documents related to legal issues and using literature study methods.<sup>10</sup> The collected legal materials are then described descriptively by combining and comparing regulations regarding freedom of opinion/expression.

## Discussion

### Regulation on Freedom of Expression on Social Media in Indonesia and Malaysia

Forms of Legal Regulation of Freedom of Opinion in Indonesia and Malaysia. The freedom of opinion in Indonesia is legally regulated in the Constitution of the Republic of Indonesia in 1945, specifically in Article 28, Article 28E, and Article 28F. Article 28E reads, "freedom of association and assembly, expressing thoughts orally and in writing and so on is stipulated by Law."<sup>11</sup> Article 28E paragraph (2), "Everyone has the right to freedom of belief, expressing thoughts and attitudes, by their conscience", and Article 28E paragraph (3) "Everyone has the right to freedom of association, assembly, and expression". Furthermore, Article 28F states, "Everyone has the right to communicate and obtain information to develop their personal and social environment, and has the right to seek, obtain, possess, store, process and convey information using all types of available channels."<sup>12</sup>

Freedom of opinion is a human right known and protected by many international constitutions and laws in various countries. It allows individuals to express their opinions, ideas, or opinions without fear of oppression or resistance from other governments or organisations. However, this freedom of opinion may also be subject to certain restrictions to protect the public interest and the rights of others. Freedom of opinion in Indonesia has been formed through several legal rules, such as laws and regulations. For example, it is regulated in Law No. 9 of 1998. In this context, this freedom is listed in Article 4 of Law Number 9 of 1998 concerning Freedom of Public Expression, which mentions the rights and limitations of freedom of opinion. Paragraph 1 of Article 4 narrates that "Everyone has the right to express their opinions in public orally and in writing, as well as paying attention to religious values, morality, order, public interest, and the integrity of the state, and subject to applicable laws" Meanwhile, paragraph 2 explains the form of expressing opinions with provisions by the law. This means

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<sup>10</sup> Pradeep M.D., "Legal Research- Descriptive Analysis on Doctrinal Methodology," *International Journal of Management, Technology, and Social Sciences* 4, no. 2 (2019): 95–103, <https://doi.org/10.47992/ijmts.2581.6012.0075>.

<sup>11</sup> Muwaffiq Jufri, *Hukum Dan Hak Asasi Manusia; Dasar Teori Dan Praktiknya* (Depok: Rajawali Pers, 2023), <https://www.rajagrafindo.co.id/produk/hukum-dan-hak-asasi-manusia-dasar-teori-dan-praktiknya-muwaffiq-jufri/>.

<sup>12</sup> Nurus Zaman, "Constitution in Legal Political Perspective," *Trunojoyo Law Review* 4, no. 1 (August 8, 2022): 45–68, <https://doi.org/10.21107/tlr.v4i1.16487>.

that every public opinion submission must be carried out according to the requirements of the law or laws and regulations.<sup>13</sup>

Regarding the forms of expressing opinions in public, it is further described in Article 5 Paragraph 1, which explains that the expression of opinions in public can be done through: "demonstrations; parade; free pulpit; open meetings; information dissemination; broadcasting; and other forms that do not violate the law". Meanwhile, the rights of a person to express opinions in public are regulated in Article 6 of the same Law, which states "the rights possessed by a person who expresses opinions in public", namely:<sup>14</sup>

- a) The right to express their opinions, thoughts, and ideas.
- b) The right to protection from harassment, threats, and violence.
- c) The right to obtain valid and accurate information.
- d) The right to obtain permission to express opinions publicly; and
- e) The right to use the available facilities and infrastructure.

Legal regulation is integral to freedom of opinion as a human right in a democratic law system. It can give citizens ideas, views, or criticism of government policies. That way, citizens can have discussions and debates freely in society. However, we need to know that freedom of opinion is not absolute because the law has certain limitations on liberty, such as defamation, slander, or threats to national security.<sup>15</sup>

The exact form of regulation not only in Indonesia, like the State of Malaysia, also has legal arrangements in the right to freedom of opinion, with the 1957 federal constitution having many elements of a democratic state, including the rule of law, institutions and rights that govern the freedom of society. The commissioners of Reid, in the "Report of the Constitutional Commission", defended it: The Federal Constitution defines and guarantees the rights of the Federation and the States, and it is in our opinion correct that the Constitution must also define and guarantee certain fundamental individual rights which are generally regarded as essential conditions for a free and democratic way of life. The guarantees provided by the Constitution are the rule of law and the power

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<sup>13</sup> Firman Aziz et al., "The Future of Human Rights in the Digital Age: Indonesian Perspectives and Challenges," *Journal of Digital Law and Policy* 2, no. 1 (September 30, 2022): 29–40, <https://doi.org/10.58982/jdlp.v2i1.292>.

<sup>14</sup> Elvin Ong, "Online Repression and Self-Censorship: Evidence from Southeast Asia," *Government and Opposition* 56, no. 1 (January 30, 2021): 141–62, <https://doi.org/10.1017/gov.2019.18>.

<sup>15</sup> Ni Putu Suci Meinarni and Emmy Febriani Thalib, "Privacy Related to Cyber Space Activities," in *Proceedings of the International Conference on Innovation in Research (ICIIR 2018) – Section: Economics and Management Science* (Paris, France: Atlantis Press, 2019), 123–39, <https://doi.org/10.2991/iciir-18.2019.32>.

and obligation of the Court to enforce these rights and to annul any attempt to overthrow either through legislative or administrative action or otherwise.<sup>16</sup>

The legal system of freedom of opinion in Malaysia is based on the relevant law. Malaysians have the freedom of opinion or idea while not violating the applicable law under article 10 (1) (a) of the constitution. The people also have the freedom to express their opinions as long as they do not violate the laws that have been set. Article 10 (1) states that (a) all citizens have the right to freedom of speech and expression, (b) all citizens have the right to assemble peacefully and without weapons, and (c) all citizens have the right to form associations. However, even though citizens have the right to freedom of opinion, Section 2 of this Article limits this right by allowing Parliament to enforce it by law.<sup>17</sup> This article limits the rights granted by Paragraph (1) by permitting restrictions deemed necessary or expedient in the interests of the security of the Federation or any part thereof, friendly relations with other States, public order or morality, as well as restrictions designed to protect the privileges of Parliament or the Legislative Council or to protect against contempt of court, defamation, or incitement to commit any offence. In addition, a form of regulation in Malaysia talks about freedom of expression in Article 63 of the Federal Constitution, which is regulated in the Sedition Act 1948 in the Constitution of Malaysia.

Reasons of public interest, good governance, state needs, public policy,<sup>18</sup> efficiency and common sense are not constitutionally permissible reasons to deprive citizens of their rights. Restrictions on freedom of speech must be limited to things articulated in the Constitution.<sup>19</sup> The Barisan Nasional government insists it allows Malaysia to maintain racial harmony, political and social stability and internal security without sacrificing its economic resilience or becoming overly enthusiastic about the democratic system. Mahathir Mohamad's last sitting in parliament in October 2003 said that too much freedom could lead to anarchy and the destruction of a multiracial society in Malaysia.<sup>20</sup>

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<sup>16</sup> Donato Vese, "Governing Fake News: The Regulation of Social Media and the Right to Freedom of Expression in the Era of Emergency," *European Journal of Risk Regulation* 13, no. 3 (September 11, 2022): 477–513, <https://doi.org/10.1017/err.2021.48>.

<sup>17</sup> Saidah Fasihah Binti Che Yussoff and Rohaida Nordin, "Freedom of Expression in Malaysia: Compatibility with the International Human Rights Standard," *BESTUUR* 9, no. 1 (August 12, 2021): 44, <https://doi.org/10.20961/bestuur.v9i1.51637>.

<sup>18</sup> Nurus Zaman, "The Meaning of Authority Relation of Central Government and Local Government in The Land Sector According To The 1945 Constitution of The Republic of Indonesia," *Yustisia Jurnal Hukum* 6, no. 3 (December 31, 2017): 531, <https://doi.org/10.20961/yustisia.v6i3.16788>.

<sup>19</sup> Rebecca K Helm and Hitoshi Nasu, "Regulatory Responses to 'Fake News' and Freedom of Expression: Normative and Empirical Evaluation," *Human Rights Law Review* 21, no. 2 (March 12, 2021): 302–28, <https://doi.org/10.1093/hrlr/ngaa060>.

<sup>20</sup> Sebastian Dettman, "Authoritarian Innovations and Democratic Reform in the 'New Malaysia,'" *Democratization* 27, no. 6 (August 17, 2020): 1037–52, <https://doi.org/10.1080/13510347.2019.1705791>.

The Malaysian government has good reasons to restrict political speech based on civil order and racial harmony.<sup>21</sup> However, the government still manipulates these issues to strengthen the security or stability of the regime or its position in power. The Deputy Minister in the Ministry of Information, Zainuddin Maidin, reportedly told Parliament in October 2002 that opposition parties would not be given airtime on state-owned television and radio because Malaysia's state-owned television and radio were "not yet developed" and said that opposition parties could disseminate their views through commercial media and the internet.<sup>22</sup> However, this is not convincing because opposition parties and the public participate in the decision-making political process as long as they do not provoke racial and religious conflicts. Opposition parties should have the right to criticize the government and should be allowed to publish their criticism in the mainstream media. Therefore, these restrictions are almost entirely unjustifiable, and without openness and criticism, there can be no political freedom or democratic democracy. It is concluded that the existence of the form of legal regulation seeks to ensure that everyone has the right to freedom of opinion and expression, which is carried out responsibly with these limitations so as not to harm the freedom of opinion and the rights of others.

## **The Practice of Freedom of Opinion and the Obstacles Experienced on Social Media in Indonesia and Malaysia**

The constitution guarantees freedom of expression in Indonesia, namely in Article 28E paragraph (3) of the 1945 Constitution, which states, "Everyone has the right to freedom of association, assembly, and expression."<sup>23</sup> However, in practice, freedom of expression on social media is further regulated by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE). The ITE Law provides a legal framework that governs how digital content on social media should be managed, including existing restrictions to maintain security and public order.<sup>24</sup>

Although the ITE Law is intended to regulate and protect information technology, many criticisms have arisen related to its application that hinders

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<sup>21</sup> Bahiyah Omar and Sadollah Ahrari, "Mainstream and Nonmainstream Media in Malaysia: Does Lack of Credibility Lead to Displacement?," *Newspaper Research Journal* 41, no. 2 (June 22, 2020): 127–45, <https://doi.org/10.1177/0739532920919825>.

<sup>22</sup> Azizuddin Mohd Sani Mohd and Dian Diana Abdul Hamed Shah, "Freedom of Religious Expression in Malaysia," *Journal of International Studies* 7 (2011): 33–49, <http://jis.uum.edu.my>.

<sup>23</sup> Abdul Kadir Jaelani and Resti Dian Luthviati, "The Crime Of Damage After the Constitutional Court's Decision Number 76/PUU-XV/2017," *Journal of Human Rights, Culture and Legal System* 1, no. 1 (March 30, 2021): 31–42, <https://doi.org/10.53955/jhcls.v1i1.5>.

<sup>24</sup> Alvedi Sabani, "Investigating the Influence of Transparency on the Adoption of E-Government in Indonesia," *Journal of Science and Technology Policy Management* 12, no. 2 (June 10, 2021): 236–55, <https://doi.org/10.1108/JSTPM-03-2020-0046>.



freedom of expression. One controversial example is Article 27, paragraph (3), which regulates insult and defamation. This provision is often considered multi-interpreted and vulnerable to abuse.<sup>25</sup> Cases related to defamation are frequently reported, resulting in many social media users being tried and imprisoned for their posts or comments on digital platforms. In addition, the Indonesian government has a mechanism to block content that violates the law or social norms. The Ministry of Communication and Information Technology (Kominfo) has the authority to block websites or social media accounts that are considered to be spreading unlawful information, such as hoaxes, hate speech, and pornographic content. Although this measure is intended to protect the public, many are concerned that it could be used as an excessive censorship tool.<sup>26</sup>

However, freedom of expression on social media also receives support from various civil society groups fighting for digital rights. Organizations such as SAFEnet (Southeast Asia Freedom of Expression Network) advocate for and educate the public about the importance of freedom of expression and the risks that may be faced.<sup>27</sup>

In Malaysia, freedom of expression is also recognised as a fundamental right. However, the regulations governing freedom of expression on social media are strict and often invite controversy. Article 10 of the Malaysia Constitution guarantees freedom of speech but allows the government to impose restrictions on national security, public order and morality.<sup>28</sup> Some laws regulating freedom of expression on social media in Malaysia include the Communications and Multimedia Act of 1998, the Sedition Act of 1948, the Official Secrets Act of 1972, and the Printing Presses and Publications Act of 1984. The Communications and Multimedia Act 1998, for example, prohibits disseminating content that is considered offensive or contrary to social values. Under this law, the government can monitor, and control content disseminated through social media.<sup>29</sup>

One high-profile case that reflects the strict control of freedom of expression in Malaysia is the fine imposed on the Malaysiakini.com news portal in February 2021. Malaysia's highest court has imposed a fine of 500,000 ringgit

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<sup>25</sup> Wahyuddin Naro et al., "Shariah Assessment Toward the Prosecution of Cybercrime in Indonesia," *International Journal of Criminology and Sociology* 9 (April 5, 2022): 572–86, <https://doi.org/10.6000/1929-4409.2020.09.56>.

<sup>26</sup> 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>.

<sup>27</sup> Risya Fadhilah Ahmad, "Criminal Acts for Event Organizers Online Game Tournament Organizers Who Receive Sponsorship from Online Gambling Sites Based on Indonesian Criminal Law," *Trunjoyo Law Review* 5, no. 2 (August 29, 2023): 161–74, <https://doi.org/10.21107/tlr.v5i2.20942>.

<sup>28</sup> Dian Shah, "The 'Three RS' in Malaysia's Struggle for Constitutional Democracy," *Federal Law Review* 50, no. 2 (June 17, 2022): 137–55, <https://doi.org/10.1177/0067205X221087460>.

<sup>29</sup> Muhammad Izwan Ikhsan and Lenny James Matah, "Enacting Freedom of Information Act in Malaysia: A Cost-Benefit Analysis," *Malaysian Journal of Social Sciences and Humanities (MJSSH)* 7, no. 2 (February 10, 2022): e001297, <https://doi.org/10.47405/mjssh.v7i2.1297>.

(about 1.74 billion rupiah) on Malaysiakini.com for five reader comments deemed contempt of court. This case has sparked widespread debate regarding the boundary between freedom of expression and contempt for institutions.<sup>30</sup> Besides, the 1948 Sedition Act is often used to crack down on speech that incites hatred or dissatisfaction with the government. For example, this law usually targets politicians, activists, and social media users when voicing criticism of certain governments or institutions. This raises concerns that the law could be used to silence the opposition and stifle constructive criticism.<sup>31</sup>

In Indonesia, the main obstacle to freedom of expression on social media is the implementation of the ITE Law, which is often considered repressive. The provisions in the ITE Law, such as Article 27 paragraph (3), are considered too broad and vulnerable to being abused to silence criticism. There are many cases where social media users are prosecuted for posts or comments deemed insulting or defamatory to a particular party.<sup>32</sup>

This condition creates a climate of fear among social media users worried about the possibility of being charged with the law. In addition, Kominfo's mechanism for blocking content is often considered less transparent and accountable. Blocking websites or social media accounts can be done without court proceedings, raising concerns about potential power abuse. While this measure is intended to protect the public from harmful content, many feel this policy can be used for excessive censorship.

In Malaysia, the main challenge is that strict regulations are often used to suppress freedom of expression. Laws such as the Sedition Act 1948 and the Communications and Multimedia Act 1998 give the government broad authority to control content on social media. Using this law against criticism of certain governments or institutions is often seen as an attempt to silence the opposition and hinder healthy public debate. The case of Malaysiakini.com is a vivid example of how this law can be used to crack down on press freedom and freedom of expression. The fines imposed on the news portal because of readers' comments show the tight controls on content detrimental to specific institutions. This creates a climate of fear among the media and social media users worried about the possibility of being charged with the law.<sup>33</sup>

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<sup>30</sup> Mahyuddin Daud and Ida Madieha Abd Ghani Azmi, "Digital Disinformation and the Need for Internet Co-Regulation in Malaysia," *Pertanika Journal of Social Sciences and Humanities* 29, no. S2 (May 17, 2021): 169–83, <https://doi.org/10.47836/pjssh.29.s2.12>.

<sup>31</sup> Noor'Ashikin Hamid et al., "Rukun Negara as a Preamble to Malaysian Constitution," *Pertanika Journal of Social Sciences and Humanities* 29, no. S2 (May 17, 2021), <https://doi.org/10.47836/pjssh.29.s2.03>.

<sup>32</sup> Mukhlis Mukhlis et al., "The Legal Culture to Prevent Radical Islamism by a Pesantren in Madura," *De Jure: Jurnal Hukum Dan Syariah* 16, no. 1 (June 24, 2024): 58–87, <https://doi.org/10.18860/j-fsh.v16i1.26216>.

<sup>33</sup> Muhammad Hassan and Johan Shamsuddin Bin Sabaruddin, "An Induction of Basic Structure Doctrine in Malaysian Jurisprudence and Federal Constitution: An Overview," *Jurnal Undang-Undang Dan Masyarakat* 26, no. 2020 (September 1, 2020): 3–14, <https://doi.org/10.17576/juum-2020-26-01>.

Based on the explanation above, the main challenge faced by the two countries regarding freedom of expression on social media is balancing the protection of freedom of expression and the safety of national security and public order. On the one hand, the government is responsible for protecting the public from harmful content, such as hoaxes, hate speech, and platform abuse. On the other hand, overly restrictive policies can hinder freedom of expression and create a climate of fear among social media users. The opportunity is to carry out regulatory reforms that are more balanced and transparent. In Indonesia, revisions to the ITE Law can be made to clarify the definitions and limitations related to insult and defamation so that they are no longer multi-interpreted and vulnerable to abuse. Governments can also increase transparency in content-blocking mechanisms by engaging in court proceedings or oversight from independent bodies to ensure these policies are implemented fairly and not arbitrarily.<sup>34</sup>

In addition, digital literacy education is very important in increasing public awareness about their rights and responsibilities on social media.<sup>35</sup> With good digital literacy, people can use social media wisely, avoid spreading hoaxes, and participate in public discussions constructively.<sup>36</sup> Civil society organisations and advocacy groups can also be important in providing education and advocacy regarding freedom of expression. In Malaysia, revisions to laws regulating freedom of expression, such as the Sedition Act 1948 and the Communications and Multimedia Act 1998, can be made to reduce the potential for abuse.<sup>37</sup>

Governments can introduce more transparent oversight mechanisms and involve public participation in legislation to ensure that policies reflect the community's aspirations.<sup>38</sup> Increased dialogue between governments and civil society is also essential to creating an environment conducive to freedom of expression. Governments can work with non-governmental organizations, academics, and digital communities to formulate policies more inclusive and responsive to social dynamics.<sup>39</sup>

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<sup>34</sup> Mohammad Naefi, "Future Challenge of the Freedom of Religion Act: Comparing Indonesia and Malaysia," *Semarang State University Undergraduate Law and Society Review* 1, no. 2 (July 31, 2021): 125–40, <https://doi.org/10.15294/lsr.v1i2.50551>.

<sup>35</sup> Seraphine F. Maerz et al., "State of the World 2019: Autocratization Surges – Resistance Grows," *Democratization* 27, no. 6 (August 17, 2020): 909–27, <https://doi.org/10.1080/13510347.2020.1758670>.

<sup>36</sup> Tasaddaq Hussain, "Treason of Expression: An Alarming Trend in Freedom of Expression," *Ilkogretim Online - Elementary Education Online* 20, no. 4 (February) (2021): 199–205, <https://doi.org/10.2139/ssrn.3789000>.

<sup>37</sup> Naefi, "Future Challenge of the Freedom of Religion Act: Comparing Indonesia and Malaysia."

<sup>38</sup> Richard B. Lillich, "The Constitution and International Human Rights," *American Journal of International Law* 83, no. 4 (October 27, 1989): 851–62, <https://doi.org/10.2307/2203374>.

<sup>39</sup> Alexander Gilder, "Contracting Space for Opposing Speech in South East Asia and Restrictions on the Online Freedom of Expression," in *The Asian Yearbook of Human Rights and Humanitarian Law* (Leiden, The Netherlands: Brill | Nijhoff, 2022), 293–308, [https://doi.org/10.1163/9789004520806\\_015](https://doi.org/10.1163/9789004520806_015).

## Conclusion

A comparison of social media freedom of expression regulations and practices between Indonesia and Malaysia shows that while the two countries share similar challenges, their approaches to addressing this issue differ. Indonesia has faced criticism of the ITE Law, which is often repressive, while Malaysia has enacted several strict laws frequently used to control criticism and opposition. Both countries must carry out more balanced, transparent, and participatory regulatory reforms to protect freedom of expression without sacrificing security and public order. Digital literacy education and collaboration with technology companies are essential to creating a safe and inclusive social media environment. These measures allow freedom of expression on social media to be maintained and improved, providing space for healthy and constructive public discussion. This study provides an in-depth picture of the dynamics of freedom of expression on social media in both countries, which could be the basis for better policies and practices in the future.

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