

## THE CONCEPT OF FREEDOM OF OPINION IN ISLAM AND ITS LIMITATIONS AS SEEN IN THE FACE OF CONSTITUTIONAL LAW

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**Abstract:** This study aims to analyze the concept of freedom of speech (*Hurriyatul Ra'yi*) in Islamic teachings and compare its limitations with the provisions of Indonesian Constitutional Law (UUD NRI 1945), particularly in the context of restrictions on hate speech, blasphemy, and the spread of fake news. This study uses a normative (doctrinal) legal type. We apply a philosophical-theological approach to examine Islamic Law and a juridical-normative approach to analyze the Constitutional framework. The analysis is conducted in a comparative-synchronized manner to find common ground and philosophical harmony between the two legal systems. The main primary legal materials include the Qur'an, Hadith, *Fiqh Siyasah* books, as well as the 1945 UUD NRI and the ITE Law. Freedom of speech in Islam is seen as a right bound by responsibilities and obligations (*amar ma'ruf nahi munkar*), whose main purpose is to realize the public good (*maslahat*) and must be stopped if it causes harm (*mafsadah*). These limitations are supported by the principles of ethics and prevention (*Sadd al-Dzarā'i'*). Accordingly, the Indonesian Constitution guarantees freedom (Article 28E), but imposes mandatory restrictions through Article 28J Paragraph (2) for the sake of "religious values" and "public order." There is a strong philosophical alignment, where Islamic restrictions aimed at preventing *mafsadah* align with the Constitutional restrictions that protect religious values and public order. Both legal systems fundamentally reject absolute and destructive freedom of expression. This synchronization forms the legal basis for the implementation of positive law (such as the ITE Law) in demanding digital accountability, which in essence protects collective ethics and morality.

**Keywords:** freedom of speech, islamic law, constitutional law, limitations, *sadd al-dzarā'i'*, UUD NRI 1945.

### INTRODUCTION

Freedom of expression is a universally recognized fundamental right that serves as the lifeblood of every healthy modern democratic system. This right not only guarantees individuals the freedom to express their thoughts and beliefs, but is also an essential prerequisite for accountable, transparent, and participatory state governance<sup>1</sup>.

In a democratic context, freedom of expression plays three central roles: First, it embodies popular sovereignty: this freedom allows citizens to actively participate in the

political process, criticize public policies, and express their aspirations. Without this space for expression, sovereignty, which theoretically rests with the people, becomes reduced to a mere formality, and governments can tend toward authoritarianism. Second, it promotes control and accountability: freedom of expression, especially through a free press, acts as a watchdog over the executive, legislative, and judicial branches of government. Healthy criticism holds public officials accountable for their actions and

<sup>1</sup> Prawira's Sorrow, *Philosophy and Theory of Modern Democracy* (Yogyakarta: Pustaka Pelajar, 2018), p. 45.

prevents abuse of power and corruption<sup>2</sup>. Third, enriching the public sphere: open and diverse public discourse generates innovative ideas and better solutions to social and state problems. Truth is believed to emerge from a competitive and free marketplace of ideas.

Under international law, this right is enshrined in the main instruments of Human Rights, such as the Universal Declaration of Human Rights (UDHR) Article 19 and the International Covenant on Civil and Political Rights (ICCPR) Article 19, affirming its status as a natural right inherent in the dignity of every human being.

The recognition of this right often faces challenges when faced with the context of a multicultural and religious society, such as in Indonesia. Freedom of expression, as stipulated in Article 28E of the 1945 Constitution of the Republic of Indonesia, must be exercised responsibly and limited by law to maintain security, public order, and most crucially, respect the rights and beliefs of others (as stipulated in Article 28J). Although guaranteed, freedom of expression is not an absolute right. The Indonesian Constitution, through Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), expressly stipulates that the implementation of human rights, including the right to expression, must be subject to restrictions established by law in order to guarantee recognition and respect for the rights and freedoms of others, and to meet just demands in accordance with considerations of morality, religious values, security, and public order<sup>3</sup>.

In the context of Indonesia, a Muslim-majority country that recognizes Islamic Sharia as a source of positive law, the debate

over these limitations is particularly complex. There is an urgent need to balance universal human rights principles with binding local religious and ethical values. This debate is particularly pronounced on sensitive issues such as blasphemy, hate speech based on ethnicity, religion, race, and intergroup relations, and the spread of fake news that has the potential to disrupt social harmony<sup>4</sup>.

The core of this problem lies in the potential normative conflict between the principle of absolute freedom (liberal) and ethical/religious constraints (Islam), as well as the limitations of positive law (the Constitution). First, the Liberal/Absolute Perspective: Freedom of expression is seen as a primary right that may only be restricted under very narrow conditions, such as direct provocation of violence. Second, the Islamic Perspective: Freedom of opinion (*hurriyatul ra'yi*) is a responsible right, bound by the principle of *maslahat* (public good) and prohibited from causing *mafsadah* (damage), such as *ghibah* (backbiting), *slander* (baseless accusations), and *tahridh* (incitement). Ibn Taymiyyah even emphasized that every act of power (*Siyasah Syar'iyah*) must be based on the goal of the welfare of the people<sup>5</sup>.

Third, Constitutional Perspective: Taking a middle path, guaranteeing freedom while limiting it for the sake of public interest and religious values, a principle that is in line with the spirit of Islam, but often overlaps in the implementation of legislation (for example, Law Number 11 of 2008 concerning Electronic Information and Transactions or the ITE Law).

The critical point that is the focus of this research is how the teachings of Islamic law

<sup>2</sup> Frederick Schauer, *Free Speech: A Philosophical Inquiry* (Cambridge: Cambridge University Press, 1982), p. 15.

<sup>3</sup> The 1945 Constitution of the Republic of Indonesia, Article 28J paragraph (2).

<sup>4</sup> Achmad Syaiful, "The Dilemma of Freedom of Expression and Blasphemy in Indonesia: A Legal and Social Review," *Journal of Legal Studies* 22, no. 1 (2021), p. 110.

<sup>5</sup> Ibn Taimiyyah, *As-Siyasah ash-Syar'iyah: Governance in Islam*, trans. Achmad Sobari (Jakarta: Pustaka Firdaus, 2004), p. 105.

that uphold the ethics of communication and prevention of harm (mafsadah) impose limits on freedom of expression, and how these limits interact, conflict, or synchronize with the constitutional limits of the Indonesian state in addressing contemporary issues such as hate speech, blasphemy, and fake news. Analyzing the urgency and limits of this freedom from two legal frameworks (Islam and the Constitution) is crucial to maintaining the balance between individual rights and social order. Therefore, this research is crucial. An in-depth analysis is needed of how Islamic teachings establish ethical limits on freedom of expression, and how these limits can be synchronized and legally implemented within the framework of Indonesian Constitutional Law to produce a legal formulation that guarantees civil rights while maintaining social harmony and legal certainty<sup>6</sup>.

## METHODS

This research uses a normative (doctrinal) legal type with a focus on descriptive analysis of legal norms, both written (statutory regulations) and unwritten (religious teachings). We apply three main approaches: Philosophical Theological to understand the limitations based on Islamic Law (Shari'a), especially the principles of maqashid sharia and prevention of harm (mafsadah); Juridical-Normative to examine the framework of the 1945 Constitution of the Republic of Indonesia and the ITE Law and Comparative Synchronization to find common ground and harmonization between the two normative systems.

Data collection was carried out through literature study, by classifying materials as primary (Al-Qur'an, Hadith, Fiqh Siyasah, UUD 1945), secondary (journals, books), and tertiary (dictionaries). The analysis was carried

out qualitatively using Doctrinal Interpretation and Synchronized Comparative Analysis techniques to formulate a normative solution that is balanced between guaranteeing freedom of opinion and protecting religious values and public order.

## DISCUSSION

### A. Freedom Bound by Ethics and Benefit (Islamic Concept)

Freedom of speech in Islam, known as Hurriyatul Ra'yi, goes far beyond an individual human right. It is both an inherent right of every Muslim and a collective obligation of the community. This concept is deeply rooted in the fundamental pillar of religion: amar ma'ruf nahi munkar (enjoining good and forbidding evil).

#### 1. Freedom as a Collective Right and Obligation

The principle of amar ma'ruf nahi munkar is the theological basis for why having an opinion is obligatory:

- a. Control of Power: In the tradition of Siyasah Syar'iyah (Islamic Constitutional Law), this obligation functions as a mechanism of social control and political control of the ruler (ulil amri). A leader must be able to be criticized and advised (nasihatul aimmah) if he deviates from the Shari'a or acts unjustly. Honest and constructive criticism is considered the highest form of worship.
- b. Upholding Justice: Freedom of expression is an instrument for revealing the truth and fighting injustice.<sup>7</sup> If injustice is left without a voice, then the entire community is considered sinful. The Prophet Muhammad SAW said, "Whoever among you sees evil, let him change it with his hands; if he is unable, with his tongue; if he is unable, with his

<sup>6</sup> Suteki and Galang Taufani, *Legal Research Methodology (Philosophy, Theory and Practice)* (Jakarta: Rajawali Pers, 2020), p. 12.

<sup>7</sup> Imam al-Ghazali, *Ihya' 'Ulumuddin*, Juz II (Beirut: Darul Ma'rifah, tt), p. 350.

heart, and that is the weakest faith." It is this verbal obligation that underlines the urgency of Hurriyatul Ra'yi.

The ultimate goal of this obligation to express opinions is not the satisfaction of individual expression, but rather the achievement of *maslahat* (goodness, benefit, or public interest). This concept of *maslahat* is at the heart of *Maqasid Sharia* (the objectives of Islamic law), which is generally oriented toward the benefit of humanity and the prevention of harm.

This principle of benefit is the main ethical filter for freedom of expression:

- a. **Public Priority:** Every opinion or criticism must be judged based on whether it contributes to the greater good of the community. For example, strong criticism of public policy is permissible as long as it aims to improve the system, not undermine the stability of the state.
- b. **Prevention of Harm (Mafsada):** Conversely, speech that has the potential to cause unrest, division, and horizontal conflict is considered to violate the *maslahah* and is called *mafsadah* (harm). This is the reason why Islam strictly prohibits slander (false accusations), *ghibah* (backbiting), and *namimah* (incitement), because their social impact directly damages *hifz an-nafs* (protection of the soul) and *hifz ad-din* (protection of religion), two main elements of *Maqasid Sharia*<sup>8</sup>.

Thus, freedom of expression in Islam is bound by obligations and responsibilities. It is a freedom that is morally mandated to build, not tear down, with the benefit of the community as its ethical compass

## 2. Islamic Communication Ethics: The Limits of Hurriyatul Ra'yi

Freedom of speech in Islam (*Hurriyatul Ra'yi*) is not an ethical vacuum, but is strictly bound by the morality of communication aimed at protecting individual honor (*hifz al-'irdh*) and social cohesion. These limitations stem directly from the commands and prohibitions of the Qur'an and Sunnah, which stipulate that the goal of *maslahat* (the common good) must not be achieved through destructive means<sup>9</sup>.

### a. Prohibition of Speech that Destroys Individual Dignity

Islamic communication ethics strictly prohibits speech that can damage a person's dignity and reputation, which directly limits freedom of expression:

*First* The prohibition of backbiting is the prohibition of gossiping or speaking about other people's faults behind their backs, even if the matter is true. Backbiting is prohibited because it destroys brotherhood and spreads hatred.

*Second* The prohibition on slander and defamation. Slander is the spreading of false news or accusations to damage someone's reputation. Defamation is a more serious form of slander, a deliberate lie. This prohibition ensures that criticism and opinions must be based on valid facts and evidence, thus blocking accusations without proof (contempt of evidence).

### b. Prohibition of Speech that Destroys Unity and Religion

These restrictions focus on protecting public order and sacred values:

*First* The prohibition of *Namimah* (dividing and dividing), is a prohibition on spreading statements intended to damage relationships between individuals or groups. The prohibition of *Namimah* directly serves as the basis for prohibiting speech that undermines unity and instigates communal

<sup>8</sup> Al-Syatibi, *Al-Muwafaqat fi Ushul al-Syari'ah*, Juz II (Cairo: Dar al-Fikr, tt), p. 8-10.

<sup>9</sup> Abdul Haris, "Maslahah Mursale Paradigm as a Method of Limiting Freedom of Opinion in Islamic Law," *Journal of Islamic Law* 15, no. 2 (2020): p.218.

conflict (equivalent to the concept of hate speech).

*Second*, insult to religion (blasphemy), although Islam guarantees freedom of religion, Sharia strictly limits speech that openly insults or demeans religion (Islam or other religions) and its symbols<sup>10</sup>. This is prohibited because it can massively hurt public feelings, trigger uncontrolled reactions, and ultimately, damage *hifz ad-din* (protection of religion) and *hifz an-nafs* (protection of the soul), two main objectives of Sharia.

Thus, freedom of speech in Islam must always be in line with the principles of *qalū qawlan sadīdā* (speaking with truthful words) and *qalū lahū qawlan layyinā* (speaking with gentle words), ensuring that verbal expression is always a means to build truth and goodness, not a tool for social destruction.

### **B. Freedom with Limited Responsibility (Constitutional Concept)**

The guarantee of freedom of expression within the framework of Indonesian Constitutional Law adheres to the principle of institutionalized freedom. This means that this right is granted by the state, not pre-constitutional, and therefore must be exercised within the bounds of responsibility and compliance with established positive law. This concept is a manifestation of the idea that individual rights should not be at the expense of collective interests and harmony.

#### **1. Guarantees and Philosophy of Constitutional Limitations (Articles 28E and 28J)**

The guarantee of freedom of expression is explicitly stated in Article 28E Paragraph (3) of the 1945 Constitution of the Republic of Indonesia: "Everyone has the right to freedom of association, assembly and expression of opinion." This article reflects Indonesia's

commitment as a modern democratic country to uphold civil rights.

However, the core of Indonesia's human rights philosophy lies in Article 28J Paragraph (2), which is the key limitation and balancing clause in the legal system:

*"In exercising rights and freedoms, every person is obliged to submit to the restrictions established by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with considerations of morality, religious values, security and public order in a democratic society."*<sup>11</sup>

Article 28J Paragraph (2) shows that freedom of expression in Indonesia is limited and proportional. The limitations mentioned there (morals, religious values, security, public order) are a direct reflection of the state philosophy of Pancasila, especially the first principle ("Belief in the One and Only God") and the third principle ("Unity of Indonesia"). The phrases "religious values" and "morals" firmly place the spiritual and ethical dimensions as mandatory limitations, distinguishing it from the Western liberal model which tends to limit only on the basis of threats to physical security. Thus, the Constitution requires every citizen to be responsible for their expression, ensuring that individual rights do not damage the collective social and spiritual order.

#### **2. Implementation of Limitations Through Lex Specialis and Its Challenges**

The constitutional limitations of Article 28J Paragraph (2) are operationalized through laws of a *lex specialis* nature (special law), which creates legal offenses against speech:

- a. Prohibition of Hate Speech (SARA) and the ITE Law: The prohibition of hate speech containing racist elements, SARA

<sup>10</sup> Yusuf al-Qaradawi, *Priority Fiqh*, trans. by Achmad Fuad Fanani (Jakarta: Gema Insani, 11th Ed., 2005), p. 185.

<sup>11</sup> The 1945 Constitution of the Republic of Indonesia, Article 28J Paragraph (2).

(Ethnicity, Religion, Race, and Intergroup), aimed at inciting hostility or social division, is regulated in the (old) Criminal Code and strengthened by the Electronic Information and Transactions Law (ITE Law)<sup>12</sup>. The ITE Law has become the most controversial instrument because the offenses of defamation and hate speech can be applied to digital communications. These offenses reflect the state's need to maintain the integrity of unity in a pluralistic society, a requirement that aligns with the principle of *hifz an-nasl* (protection of descendants/community) in Islamic law.

- b. Blasphemy (Law No. 1/1965): Law No. 1 of 1965 restricts expressions deemed to insult or demean the teachings or symbols of a recognized religion<sup>13</sup>. This law directly embodies the restrictions on the basis of "religious values" in the Constitution. In judicial practice, this law is often used to maintain harmony and avoid horizontal conflict. However, critics argue that the law's wording is too broad and potentially restricts legitimate theological criticism.
  - c. Criminal Law and State Symbols: Regulations restricting speech that demeans state institutions and symbols of sovereignty, as stipulated in the Criminal Code, are seen as restrictions for the sake of public order and security. The goal is to ensure the stability of state institutions as organizers of democracy.
3. Equilibrium and Supremacy of the Constitution

Despite the multiple layers of legal restrictions, it is important to emphasize that all of these *lex specialis* must comply with

the Constitution. The Constitutional Court (MK) often acts as a guardian of these boundaries, ensuring that restrictions imposed by laws (such as the ITE Law) do not exceed the limits permitted by Article 28J and do not violate the fundamental rights of citizens. In contemporary cases, Indonesian courts consistently strive to strike a balance between guaranteeing the right to freedom of expression and protecting the public from the destructive impacts of speech, in line with the principles of *maslahah* (benefit) in Islamic law and public order in state law.

### C. Limit Synchronization (Meeting Point)

This section presents a comparative-synchronization analysis which is the methodological climax of the research, namely seeking philosophical and operational harmony between the limitations set by Islamic Sharia and the Indonesian Constitution in regulating freedom of expression

#### 1. Philosophical Similarity: The Rejection of Absolute Freedom

Fundamentally, there are strong philosophical similarities between the boundaries of Islamic Law and Indonesian Constitutional Law:

- a. Communal Orientation (Balance of Rights): Both Islam and the Indonesian Constitution firmly reject the principle of absolute freedom (unrestricted freedom). Islamic law views freedom as an obligation bound by the principle of *maslahat* (common good), which means that individual expression must be stopped if it causes *mafsadah* (harm). This philosophy is parallel to Article 28J Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which limits rights for the sake of "protecting the rights and freedoms of others" and "public order." Both prioritize social harmony over egoistic expression.

<sup>12</sup> Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions.

<sup>13</sup> Law of the Republic of Indonesia Number 1 of 1965 concerning the Prevention of Abuse and/or Blasphemy of Religion.

- b. Protection of Sacred Values: The Constitution specifically lists “religious values” as a legal limitation, a clause that is philosophically an affirmation of *hifz ad-din* (protection of religion) in *Maqashid Sharia*<sup>14</sup>. This shows that the state recognizes the spiritual dimension as an inseparable part of public order that must be protected from derogatory or defamatory speech.
  - c. The Principle of Prevention: The Islamic concept of *Sadd al-Dzarāi'* (blocking the path to harm) has a functional parallel with the goal of preventive legislation in Indonesia, such as the hate speech offense in the ITE Law. Both aim to prevent potential social unrest and conflict before they occur, rather than simply punishing them after the damage has occurred.
2. Implementation Challenges and the Role of the Judiciary

Despite having philosophical similarities, the implementation of these limitations in judicial practice often faces juridical-technical challenges, especially in determining the boundaries between legitimate criticism and punitive speech:

- a. Terminological Discrepancy: Positive law uses specific terms such as “blasphemy” and “hate speech,” while Islam uses ethically oriented terms such as “slander,” “backbiting,” and “*namimah*.” The challenge is the extent to which the judiciary can accommodate Islamic ethical principles in interpreting positive legal offenses.
- b. Hate Speech Cases (ITE Law): In hate speech cases, the General Court (as the implementer of the ITE Law) tends to focus on the elements of malicious intent (*mens rea*) and the impact on public order. The extent to which Islamic

principles such as *tabayyun* (clarification or verification of information) are used as a defense tool or as a judicial consideration is important. If the perpetrator spreads false information, the principle of the prohibition of slander and the obligation of *tabayyun* can strengthen the argument for a claim of digital liability.

- c. Family Cases (Religious Courts): While case studies related to freedom of speech in Religious Courts are not as popular as in General Courts, Islamic principles are also relevant. An example is a divorce dispute involving abusive speech, slander, or backbiting by one party against the in-laws. Here, the principles of enjoining good and forbidding evil and the implicit prohibition of backbiting can be used as a basis for judges' considerations in determining guilt (*syuqaq*) and child custody.

By analyzing key rulings, this study will measure the extent to which normative coherence is realized. Ideal synchronization occurs when the boundaries of positive law (the Constitution) serve as a legal bulwark that substantially protects the collective ethical and moral values upheld by Islamic Sharia.

## CONCLUSION

This study concludes that the concept of freedom of opinion (*Hurriyatul Ra'yi*) in Islam and the guarantee of freedom of expression in the Indonesian Constitutional Law (UUD NRI 1945) philosophically have fundamental harmony (synchronization) in terms of restrictions, because both reject absolute freedom (unrestricted freedom).

Islamic Concept (*Shari'a*): Freedom of speech is seen as a right bound by responsibilities and obligations (*amar ma'ruf nahi munkar*), the main objective of which is to achieve the public good (*maslahat*). The limitations in Islam are preventive and ethical, regulated by the principle of *Sadd al-Dzarāi'*

<sup>14</sup> Jimly Asshiddiqie, *Constitutional Law and the Pillars of Democracy* (Jakarta: Sinar Grafika, 2012), p. 150.

(blocking the path to corruption), which prohibits any speech (such as slander, backbiting, or namimah) that has the potential to trigger social chaos (mafsadah) and damage the Maqasid of Sharia (especially the protection of religion, life, and honor).

**Constitutional Concept (Positive Law):** The Constitution guarantees freedom through Article 28E Paragraph (3), but establishes mandatory restrictions through Article 28J Paragraph (2) for the sake of "public order, security, morals, and religious values." These restrictions are implemented through special laws (*lex specialis*) such as the ITE Law and the Blasphemy Law, which serve as legal bulwarks against speech that damages unity (SARA hate speech).

**Meeting Point (Synchronization):** The limitations of Islamic law aimed at preventing mafsadah share a close philosophical similarity with the Constitution's limitations aimed at maintaining public order and religious values. Both emphasize that individual freedom of expression must be subordinated to the collective interest. In judicial implementation, Islamic ethical principles (such as the prohibition of slander and the obligation of *tabayyun*) implicitly support the interpretation of positive legal offenses, strengthening the argument that digital responsibility must be upheld to maintain social harmony.

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