

Restrictions on the Right to Freedom of Expression in Public from the Perspective of the Rule of Law

Edi Sofwan¹

¹ University of Pamulang

ABSTRACT

Freedom of expression is a foundational human right and a core precondition for democratic governance, transparency, and public participation. Nevertheless, international and domestic legal orders consistently recognize that this right is not absolute and may be restricted under certain conditions. This article conducts a qualitative, normative-juridical analysis of restrictions on the exercise of freedom of expression in public, examined through the lens of the rule of law. Drawing on international human rights instruments, particularly Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and its “three-part test”, as well as constitutional and statutory norms in Indonesia, the article develops a set of rule-of-law-based criteria for assessing the legitimacy of restrictions. Qualitative doctrinal analysis is combined with thematic examination of case law, statutory frameworks, and critical commentary. The findings show a persistent tension between justified, narrowly tailored limitations and broader, vague or disproportionate restrictions that risk converting the rule of law into “rule by law”. The article concludes by proposing normative benchmarks and practical safeguards to ensure that any limitations on public expression remain compatible with democratic constitutionalism and the rule of law..

Keywords: Right, freedom, expression, public, law.

Received: 25.11.2025	Revised: 20.12.2025	Accepted: 20.01.2026	Available online: 12.02.2026
-------------------------	------------------------	-------------------------	---------------------------------

Suggested citations:

Edi.S (2026). Restrictions on the Right to Freedom of Expression in Public from the Perspective of the Rule of Law. *International Journal of Community Service*, 5 (1), 109-123
DOI: 10.55299/ijcs.v5i1.1809

INTRODUCTION

Freedom of expression has long been recognized as a cornerstone of a democratic society and a prerequisite for the protection of all other rights. Without the ability to communicate ideas, criticize public authorities, and participate in public debate, citizens cannot meaningfully exercise political agency or hold the government accountable. Article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) enshrine this right as including the freedom to seek, receive, and impart information and ideas through any media and regardless of frontiers. At the domestic level, many constitutions, including

¹Corresponding Author: Publisher, Inovasi Pratama Internasional Ltd; Cempaka Street, No. 25, Ujung Padang, Padang Sidempuan, North Sumatra; Email: xxx@xxx.com

those of Indonesia, provide explicit guarantees for freedom of opinion and expression in public, thereby linking individual autonomy with democratic self-governance.

However, international human rights law has never considered freedom of expression as an absolute entitlement. Article 19 paragraph (3) of the ICCPR allows restrictions on expression where they are “provided by law” and “necessary” for respect of the rights or reputations of others, or for the protection of national security, public order, or public health or morals. This formulation is echoed in many domestic constitutions and human rights statutes, and is often accompanied by broad clauses on public order and morality. In Indonesia, for example, Article 28 J paragraph (2) of the 1945 Constitution states that the exercise of rights and freedoms, including expression, is subject to limitations determined by law to guarantee recognition and respect for the rights of others and to meet just demands based on considerations of morality, religious values, security, and public order (Psota, 2024).

The coexistence of strong guarantees and broad limitation clauses generates central tension. On one hand, states are under a positive obligation to safeguard the conditions for open, pluralistic public discourse. On the other hand, they retain a margin of appreciation to protect competing interests such as public order, national security, and the rights of others. The key normative and practical question is not whether freedom of expression may ever be limited, but under what conditions and criteria such limitations can be regarded as legitimate. This question becomes especially acute in the context of public expression such as street demonstrations, public assemblies, protest marches, and online campaigns because these forms of expression are highly visible and often confront state authority directly.

The rule of law offers a powerful normative framework for evaluating restrictions on public expression. In its classical formulation, the rule of law requires that public power be exercised under and constrained by general, publicly known, prospective, stable and equally applied norms. The law must be capable of guiding conduct, and both officials and citizens must be subject to it in an equal and non arbitrary manner. Modern, “thick” conceptions of the rule of law additionally emphasize respect for fundamental rights, judicial independence, and accountability of power. In this sense, freedom of expression is both protected by and constitutive of the rule of law: open criticism and public debate are necessary to ensure that authorities remain subject to law rather than acting with unchecked discretion.

However the rule of law is also invoked by states to justify restrictions on freedom of expression. Governments frequently argue that certain forms of speech such as hate speech, incitement to violence, disinformation capable of causing panic, or insults to public authorities undermine public order, social cohesion, or institutional integrity. Legal measures such as criminal defamation, “fake news” offences, or restrictions on demonstrations are often defended as necessary to secure the conditions under which the rule of law and democratic institutions can function. This dual role of the rule of law—as both guardian and potential instrument of restriction—creates a conceptual and practical risk that the vocabulary of the rule of law will be appropriated to legitimize measures that in substance erode freedoms (“Legal Frameworks and Public Service Quality: The Rule of Law in Governance,” 2024).

The Indonesian experience illustrates this tension in a particularly vivid manne. On the one hand, Indonesia has formally embraced international human rights norms,

including the ICCPR, and has incorporated extensive rights protections in its post reformasi constitutional framework. The 1945 Constitution, as amended, explicitly protects freedom of expression, whereas Law No. 39 of 1999 on Human Rights affirms similar guarantees. On the other hand, various statutory provisions ranging from criminal defamation and blasphemy provisions to the Electronic Information and Transactions Law (ITE Law) and, more recently, the new Criminal Code have been criticized domestically and internationally to enable disproportionate restrictions on public expression. Reports document the use of these provisions to prosecute journalists, activists, and ordinary citizens for online and offline statements deemed insulting, defamatory, or disruptive to public order.

These developments give rise to a central problem that this article seeks to address: How should the legitimacy of restrictions on the right to freedom of expression in public be assessed from the perspective of the rule of law? More concretely, what rule of law criteria can be derived from international standards and comparative practice, and how do existing patterns of regulation, particularly in Indonesia, measure against those criteria? Addressing these questions requires going beyond a purely positivist account of applicable norms and engaging in a normative analysis of legality, clarity, proportionality, and institutional safeguards (Aditya & Al-Fatih, 2025).

This inquiry was significant at least three times. First, at the theoretical level, it clarifies the relationship between the rule of law and freedom of expression, moving beyond simplistic formulations that either absolutize expression or defer uncritically to state interest. Second, at the doctrinal level, it offers a structured framework—rooted in international human rights law’s “three-part test” and in rule-of-law theory—for evaluating specific legal restrictions on public expression, including those contained in criminal, administrative, and cyber law. Third, at the policy level, the analysis contributes to ongoing debates in Indonesia and other constitutional democracies about how to reform legal frameworks so that the necessary limitations on expression do not slip into arbitrary or politically motivated suppression of dissent (Sambor, 2025).

This study employed a qualitative, normative juridical research design. Rather than collecting empirical data from respondents, this study systematically analyzed legal texts, case law, and scholarly commentary. The primary sources include constitutional provisions, statutes (especially those concerning public order and information technology), and relevant judicial decisions. Secondary sources consist of academic literature, reports from human rights organizations, and comparative studies of freedom of expression and the rule of law. Through thematic coding of these materials, the article distills the core rule-of-law criteria and then applies them to categories of restrictions on public expression.

The remainder of this paper is organized as follows. The next section provides a literature review that maps core debates on freedom of expression, legitimate limitations, and the rule of law, with a focus on international standards and Indonesian scholarship. The subsequent section outlines the qualitative research methodology and explains the normative–juridical approach and thematic analysis. The “Results” section then presents the main findings in the form of several qualitative tables summarizing rule-of-law criteria, types of restrictions, and identified gaps between principle and practice. These findings are then examined more deeply in the “Discussion” section, which critically interprets the implications for democratic governance and legal reform.

Finally, the conclusion synthesizes the argument and offers recommendations for aligning restrictions on public expression more closely with the demands of the Rule of Law.

METODE

This study adopted a qualitative, normative and juridical research methodology. Normative juridical (doctrinal) research seeks to analyze law as a coherent normative system, focusing on legal principles, rules, doctrines, and their interpretation, rather than on quantitative measurement of attitudes or behaviors. Within this framework, the research examines the legal regulation of freedom of expression and its limitations and evaluates these norms through the lens of the rule of law and international human rights standards (Achmad & Yulianto, 2010).

Qualitative methodology is particularly appropriate for this topic for several reasons. First, the core research questions concern meaning, interpretation, and normative coherence rather than numerical prevalence or causal relationships. Second, the concepts of freedom of expression, public order, the rule of law, necessity, and proportionality are inherently qualitative and require contextual, discursive analysis. Third, the sources of data are predominantly textual (constitutional provisions, statutes, case law, scholarly commentary, and human rights reports) and best approached through interpretive and thematic methods rather than statistical techniques (Creswell, 2021).

Types and Sources of Legal Materials

The research relies on three main categories of legal materials:

Primary legal materials

These include:

International instruments, particularly the UDHR and ICCPR, together with General Comment No. 34 of the Human Rights Committee.

Relevant soft law instruments and interpretive documents concerning the “three-part test” for restrictions on freedom of expression.

The Constitution of the Republic of Indonesia of 1945 (as amended), especially Articles 28E and 28J.

Indonesian statutory law, including Law No. 39 of 1999 on Human Rights, provisions of the Criminal Code (old and new), and ITE Law and its amendments.

Judicial decisions from constitutional and ordinary courts were selected, as reported in the secondary literature and human rights analyses.

These consist of academic books, journal articles, policy reports, and comparative studies on freedom of expression, the rule of law, and Indonesian constitutional development. They are used to clarify doctrinal debates, identify interpretive controversies, and situate Indonesian developments in broader international and comparative contexts.

These include reports and briefings from human rights organizations, bar associations, and research institutes that document patterns of enforcement, case statistics, and critical evaluations of legal reforms. While not binding, they provide important contextual information on how legal provisions operate in practice and how they are perceived by stakeholders (Arikunto, 2016).

Several analytical approaches are combined within the normative–juridical framework:

The study first undertakes a close reading of the relevant constitutional and statutory provisions relating to freedom of expression and its limitations. This includes examining the language of major clauses, their internal structure (e.g., rights and corresponding limitation clauses), and their relationship with each other within the broader constitutional architecture.

This research draws on legal and political theory literature on the rule of law, fundamental rights, and democratic constitutionalism to develop a conceptual lens. This theoretical framework is used to interpret and evaluate positive laws and not merely to describe them. Concepts such as legality, foreseeability, equality before the law, and the distinction between the rule of law and rule by law are operationalized as analytical criteria.

The international standard as expressed in the ICCPR and related interpretive documents was treated as a benchmark. Comparative examples, particularly from jurisdictions where courts have elaborated detailed proportionality tests and “reasonable limits” clauses, are used illustratively and not exhaustively. The goal is not to transplant foreign doctrines wholesale but to draw analytical parallels and contrasts that illuminate Indonesia’s regulatory choices.

Selected cases—both reported judicial decisions and documented incidents of enforcement—were examined to illustrate how restrictions on public expression are invoked and applied in practice. This contextual lens helps to reveal potential gaps between the normative framework (law in the books) and its implementation (law in action).

Coded segments were then grouped into higher order themes that corresponded to core research questions. For instance, codes relating to legality, clarity, foreseeability, and accessibility of norms are grouped under a “legality in the rule-of-law sense” theme; those relating to proportionality, least-restrictive means, and alternative sanctions form a “necessity and proportionality” necessity and proportionality’ theme.

The final step in the analysis involves synthesizing these themes into structured qualitative tables. These tables do not present numerical data; instead, they map relationships between rule of law criteria, types of restrictions, and observed or potential impacts on public expression. This format allows for a systematic comparison and highlights areas of compatibility or tension between legal provisions and rule of law standards.

Given the interpretive nature of normative juridical research, issues of validity and reliability are addressed through the transparency of the method and triangulation of sources. First, the analytical framework especially the rule of law criteria derived from international standards is explicitly stated, enabling readers to evaluate reasoning. Second, the findings are triangulated across different types of sources: doctrinal writings, international standards, and empirical documentation of enforcement patterns.

Moreover, the adoption of internationally recognized standards, such as the ICCPR’s three part test and associated jurisprudence, provides an external benchmark that reduces subjective bias in evaluating domestic norms. Where possible, interpretations that align with multiple authoritative sources (e.g., UN bodies, reputable

NGOs, and constitutional jurisprudence) are preferred over those grounded solely from a single perspective. Finally, the study does not purport to cover all possible restrictions or jurisdictions; its conclusions are framed within the limitations of doctrinal and documentary analyses and are presented as normative, not empirical, generalizations

RESULTS AND DISCUSSION

Drawing from international standards, particularly Article 19(3) of the ICCPR, General Comment No. 34, and expert analyses of the threepart test, as well as rule-of-law theory, this research identifies a set of criteria that any legitimate restriction on public expression should meet. These criteria are summarized in Table 1.

Table 1. Rule-of-law-based criteria for legitimate restrictions on public expression

Criterion	Core Content	Key Implications for Public Expression
Legality (formal)	Restriction must be prescribed by law, not by executive discretion alone.	Prohibitions on demonstrations or speech must be grounded in clear legal norms.
Accessibility & foreseeability	Law must be publicly accessible, clear, and foreseeable in its application.	Individuals should reasonably predict when public expression may be sanctioned.
Legitimate aim	Restriction must pursue only aims listed in Article 19(3) ICCPR (rights of others, national security, public order, public health/morals).	Vague aims such as “protecting authority’s dignity” are suspect if beyond listed aims.
Necessity	Restriction must address a pressing social need and be supported by evidence, not mere assertion.	Authorities must demonstrate concrete risks posed by specific forms of expression.
Proportionality	Restriction must be the least intrusive measure among available options and proportionate to harm.	Criminal sanctions for minor, non-harmful speech are prima facie disproportionate.
Non-discrimination & equality	Application of restrictions must not be discriminatory; officials and citizens are equally bound.	Laws must not favour state officials or particular groups in protecting “reputation”.
Judicial oversight	Independent courts must be able to review restrictions and provide effective remedies.	Decisions banning protests or punishing speech must be open to timely challenge.
Protection of core political speech	Political discourse and criticism of public authorities enjoy the highest level of protection.	Restrictions on criticism of government require especially strict scrutiny.
Presumption in favour of freedom	In cases of doubt, interpretation should err on the side of permitting expression.	Ambiguities in law and evidence should not be resolved against the speaker.

Table 1 synthesizes the research's first major finding: when the ICCPR threepart test is read together with rule-of-law requirements of legality, equality, and judicial accountability, a relatively robust set of constraints on state power emerges. A key insight is that "legality" in the human rights sense goes beyond mere codification; it requires clarity and foreseeability, hallmarks of the rule of law. Similarly, "necessity" and "proportionality" integrate both substantive evaluations (is there a pressing social need?) and institutional evaluation (are there less restrictive means, such as civil remedies or counter-speech?).

The analysis also underlines the special status of political and public interest expressions. International practice recognizes that such speech lies at the core of democratic self government and that restrictions on it demand the most rigorous scrutiny. From a rule of law perspective, criticism of public authorities is particularly important because it enables society to monitor whether those authorities themselves remain subject to law. Consequently, legal provisions that privilege the reputation or dignity of state officials above that of ordinary citizens run counter to the principle of equality before law.

Applying the above criteria to the Indonesian framework, this study identified several principal categories of restrictions on public expression. These categories are not exhaustive but capture dominant patterns as documented in legal texts and reports. Table 2 summarizes these categories.

Table 2. Main categories of restrictions on public expression in Indonesia

Category of Restriction	Legal Basis (Illustrative)	Typical Targeted Expression	Rule-of-Law Issues Identified
General limitation clause	Article 28J(2) of the 1945 Constitution; Law No. 39/1999	All rights, including freedom of expression	Very broad concepts (morality, religious values, public order) may invite wide discretion.
Criminal defamation & insult	Criminal Code provisions; new Criminal Code insult offences	Criticism of officials, reputation-related statements	Risk of protecting officials' dignity beyond ICCPR legitimate aims; potential inequality. ojs.cahayamandalika+1
Blasphemy and religious offence norms	Criminal Code and specific religious provisions	Statements considered insulting to religion or religious symbols	Vague boundaries between legitimate debate and criminal offence; chilling effect.

Category of Restriction	Legal Basis (Illustrative)	Typical Targeted Expression	Rule-of-Law Issues Identified
ITE Law (online expression)	ITE Law provisions on defamation, hate speech, false information	Social media posts, online criticism, digital activism	Broad wording; reports of selective enforcement; severe sanctions compared to harm. ijrrjournal+1
Public assembly and demonstration rules	Laws on public order and assemblies; police regulations	Street protests, marches, public gatherings	Discretionary permit systems; occasional disproportionate dispersal or restrictions.
"False news" and public unrest offences	Old and new Criminal Code provisions on spreading "false" or "exaggerated" information	Public comments on public affairs, rumours, critical reporting	Vague standards for falsity; high risk of suppressing investigative journalism. hrw+1

The analysis showed that Indonesia's legal framework contains both general and specific mechanisms for restricting public expression. At the highest level, constitutional and human rights law limitation clauses incorporate international references to the rights of others, morality, religion, security, and public order. These provisions are consistent with the ICCPR, which permits such aims. However, their breadth, especially when combined with equally broad statutory provisions, raises rule-of-law concerns regarding foreseeability and the scope for discretionary enforcement.

Specific provisions, particularly those relating to criminal defamation, insult to public officials, and online expression under the ITE Law, have been used in practice to pursue cases against journalists, activists, and government critics. Reports suggest that powerful individuals and state officials are more likely to trigger criminal investigations, resulting in a pattern in which the law is perceived as protecting the authorities rather than citizens. This pattern conflicts with the rule of-law principle that the law should stand above both rulers and the ruled and should not be wielded as an instrument of political retaliation.

The new Criminal Code's inclusion of offences criminalizing insults to the resident, state institutions, and vaguely defined "false" or "incomplete" information likely to cause public unrest has intensified concerns. From a rule-of-law perspective, such provisions may fail the criteria of clarity and foreseeability and risk privileging institutional dignity over open public debate about matters of public interest. Where

terminology such as “honour” or “dignity” is not narrowly defined, citizens may self-censor out of fear that robust criticism will be interpreted as criminal insult.

The final set of findings involves a comparative assessment of how the identified categories of restrictions measure against the rule of law criteria set out in Table 1. The results are presented in Table 3.

Table 3. Compatibility of Indonesian restrictions on public expression with rule-of-law criteria

Category of Restriction	Legality & Clarity	Legitimate Aim (ICCPR-consistent)	Necessity & Proportionality	Equality & Non-discrimination	Overall Rule-of-Law Assessment
General limitation clause	Formally lawful; broad and open-textured terms	Aims broadly align with ICCPR (rights of others, order, morals)	Depends on implementing legislation; potential for over-broad use	Neutral on face; risk of differential impact	Requires careful, narrow interpretation to avoid abuse.
Criminal defamation & insult norms	Codified but often vague regarding “insult”, “honour”	Protection of reputation is legitimate; protection of institutional “dignity” more problematic	Criminal sanctions often severe; civil remedies under-used; risk of chilling criticism	Reports suggest officials benefit more than ordinary citizens ojs.cahayaman.dalika+1	Partially compatible; significant tension with equality and proportionality.
Blasphemy and religious offences	Codified but terms such as “insult” to religion are not precisely defined	Protection of rights of others and public order invoked	Risk of suppressing legitimate theological or socio-political debate; proportionality concerns	Minority beliefs may be disadvantaged	High risk of rule-by-law use; needs strict limiting interpretation.
ITE Law (online expression)	Legal basis clear; material elements of offences often broad	Protection of reputation, order, and possibly security	Disproportionate penalties; criminalization instead of civil remedies; documented	Reports of selective enforcement favouring powerful complainants	Frequently inconsistent with necessity, proportion

Category of Restriction	Legality & Clarity	Legitimate Aim (ICCPR-consistent)	Necessity & Proportionality	Equality & Non-discrimination	Overall Rule-of-Law Assessment
			chilling effect ijrrjournal+1		ality, and equality.
Public assembly and demonstration rules	Legal permit frameworks; some discretion in implementation	Aims of public order and safety generally legitimate	Proportionality depends on practice (time-place-manner vs prior restraint)	Risk of selective restrictions on politically sensitive protests	Mixed record; compatible in principle but vulnerable to discretionary suppression.
"False news" and public unrest offences	Legal but use indeterminate terms ("uncertain", "exaggerated", "incomplete") hrw+1	Claimed aims: public order, security	Vague scope makes necessary and proportionate application difficult to ensure	Potentially used to shield officials from criticism or suppress uncomfortable reporting	Strong rule-of-law concerns; high potential for misuse.

The qualitative assessment presented in Table 3 highlights several systemic patterns. First, most restrictions meet the formal requirements of legality in the sense of being codified in statutes. However, legality in the rule-of-law sense—requiring clarity, foreseeability, and guiding capacity—is often compromised by vague terms like “insult” “dignity” “uncertain information” or “public unrest.” This vagueness allows broad discretion for enforcement authorities and undermines individuals’ ability to foresee when expression attracts criminal liability.

Second, while declared aims generally mirror those recognized as legitimate under Article 19(3) of the ICCPR, such as protecting public order or the rights of others, in practice they sometimes slide into protecting institutional prestige or suppressing criticism. From a rule-of-law perspective, this blurs the distinction between legitimate restriction and the illegitimate use of law for political self-protection, moving from the rule of law toward rule by law.

Third, necessity and proportionality are recurrent weaknesses. The frequent resort to criminal sanctions, including imprisonment, for non-violent, non-harmful expressions—especially where civil or administrative remedies could suffice—suggests

that less restrictive means are not systematically considered. In addition, documented patterns of self censorship and chilling effects point to disproportionate impacts on public discourse, particularly online (et al., 2026).

Fourth, issues of equality and non discrimination emerge when laws are used primarily to respond to complaints by powerful actors, such as public officials or influential groups, while similar harms experienced by ordinary citizens do not lead to vigorous enforcement. This asymmetry erodes public confidence in the impartiality of the legal system and contravenes the rule-of-law principle that law applies equally to all.

Overall, the findings indicate significant tension between the normative aspirations of Indonesia's constitutional and human rights framework which formally endorses freedom of expression and the rule of law and the content and application of certain specific restrictions. This tension is not unique to Indonesia but exemplifies the broader challenges faced by constitutional democracies when balancing public order, security, and morality against the imperative of open public discourse.

The results highlight a complex and often paradoxical relationship between restrictions on public expression and rule of law. On one level, the existence of restrictions is not inherently inconsistent with the rule of law or human rights. International law, including the ICCPR, explicitly envisages circumstances in which freedom of expression may be limited to protecting the rights of others and safeguarding legitimate public interests. Indeed, a minimal level of regulation may be necessary to prevent speech inciting violence, discrimination, or other serious harms. However, the decisive question is not whether restrictions exist but how they are designed, interpreted, and applied (Ramsi, 2025).

One of the central insights of the analysis is that the boundary between the rule of law and rule by law can be crossed subtly through the proliferation of vaguely worded offences and general limitation clauses. When terms such as "insult "dignity of the state "false news or "public unrest" are left undefined or are framed in open-ended language, they empower authorities to decide, case by case, what counts as unacceptable expression. This discretion may be exercised in good faith, but also creates a structural space for arbitrary or selective enforcement, particularly in politically sensitive contexts.

From a rule of law perspective, such vagueness undermines the requirement that laws be capable of guiding conduct. If citizens cannot predict whether the sharp criticism of a public official or the sharing of unverified information about public affairs will expose them to criminal liability, they are likely to self censor. This chilling effect is incompatible with the ideal of an open public sphere in which citizens can debate and scrutinize matters of public interest. The law's role shifts from enabling informed participation to deterring it, thus weakening one of the core functions of the rule of law: to facilitate informed voluntary compliance by rational agents (Nye, 2025).

In Indonesia, the combination of broad constitutional limitation clauses with equally broad statutory offences, particularly in ITE Law and the new Criminal Code, exemplifies this danger. While constitutional references to morality, religious values, and public order are not unusual from a comparative perspective, the absence of precise

definitions or strict judicial interpretations increases the risk that these concepts will be used to suppress nonconforming or critical views rather than genuinely harmful expressions.

Another key finding concerns equality and non discrimination. The rule of law requires that such cases be treated alike and that both rulers and the ruled be subject to the same legal standards. In practice, some restrictions on expression create de facto hierarchies of protection. Offences that criminalize insult or the defamation of public officials or state institutions often grant these entities greater protection than ordinary individuals enjoy, particularly when criminal investigation is more readily initiated at their behest (Lukianova, 2025).

This asymmetry is typically problematic. In a democracy governed by the rule of law, public officials who wield power on behalf of citizens should reasonably be expected to tolerate a higher degree of criticism, scrutiny, and even harsh or unfair comments than private individuals. Inverting this expectation—by granting officials special protection against insult—erodes the principle that law stands above all, including those in power. It also risks transforming legal provisions into tools to silence dissent and entrench political authority.

Moreover, equality concerns extend beyond the relationships between officials and citizens. Restrictions on expressions related to religion, morality, or national identity can disproportionately affect minority groups whose beliefs or practices diverge from dominant norms. When such groups face greater legal risk in expressing their views, the law ceases to be an impartial arbiter and becomes an instrument for enforcing majoritarian preferences. This dynamic undermines substantive equality, which is an important component of the modern understanding of the rule of law (Park & Yi, 2025).

The ICCPR's requirement that restrictions be "necessary" and "proportionate" to a legitimate aim is central to differentiating justified from unjustified limitations. Research suggests that, in many instances, Indonesian law relies heavily on criminal sanctions for expression related conduct that could be addressed through less restrictive means. Criminal defamation, insult, and certain ITE offences are punishable by imprisonment, even where the harm involved is reputational or relates to offence or discomfort rather than concrete threats to security or public order.

From a rule of law standpoint, this raises two concerns. First, criminal law is the most intrusive form of legal regulation, carrying stigma and, in the case of imprisonment, severe deprivation of liberty. Therefore, it should be reserved for conduct that poses serious threats to fundamental interests and cannot be effectively addressed by civil, administrative, or self regulatory mechanisms. Over criminalizing speech blurs the boundary between morally objectionable or socially disapproved expressions and genuinely harmful conduct.

Second, the existence of civil remedies—for example, civil defamation suits or rights-of-replies in the media—demonstrates that less intrusive means are available to protect reputations or correct misleading information. International practice suggests that where such alternatives exist, recourse to criminal sanctions is seldom "necessary" in a strict sense. The persistence of criminal defamation and insult provisions,

particularly when used to protect public officials, therefore appears difficult to reconcile with a robust application of the necessity and proportionality test.

This article's focus on public expression extends beyond traditional physical spaces such as streets and squares to include digital spaces where much contemporary public discourse occurs. The ITE Law and related regulations illustrate how the governance of online content has become a central arena for debates on freedom of expression and the rule of law.

Digital platforms amplify the benefits and risks associated with expression. On the one hand, they enable the rapid dissemination of information, mobilization of protests, and participation by voices previously marginalized in mainstream media. However, they facilitate the spread of disinformation, hate speech, and targeted harassment. States, including Indonesia, have responded by enacting laws that impose liability for online defamation, "fake news and content deemed harmful to public order or morality.

The results suggest that in Indonesia, some of these digital regulations are framed and applied in ways that raise acute rule-of-law concerns. Vague definitions of prohibited content, combined with broad takedown powers and criminal penalties, create a regulatory environment in which legitimate public critiques and investigative journalism can be easily conflated with harmful disinformation. The possibility of content removal without prior judicial authorization or based on complaints from powerful actors further exacerbates the risk of arbitrary interference with online expressions.

From a rule of law perspective, digital regulation should adhere to the same legality, necessity, and proportionality standards as offline restrictions. This included clear definitions, transparent procedures, opportunities for appeal, and independent oversight. In the absence of such safeguards, the digital sphere, which has become the primary locus of public deliberation, may be transformed into a space of intensified surveillance and control, undermining both freedom of expression and democratic accountability.

CONCLUSION

This article has examined restrictions on the right to freedom of expression in public from the perspective of the rule of law using a qualitative, normative-juridical methodology. Drawing on international human rights standards, particularly the ICCPR's three part test, and on rule-of-law theory, this study developed a set of criteria—legality, clarity, legitimate aim, necessity, proportionality, equality, judicial oversight, and a presumption in favor of freedom—against which domestic restrictions can be evaluated. Applied to the Indonesian context, the analysis revealed a complex regulatory landscape in which constitutional and statutory guarantees of expression coexist with broad limitation clauses, criminal defamation and insult norms, digital expression offences, and "false news" provisions. While many restrictions are formally grounded in law and pursue aims that are, in principle, legitimate, significant concerns arise regarding vagueness, over criminalization, selective enforcement, and the

protection of institutional dignity at the expense of open public debate. These patterns risk transforming the rule of law into rule by law, particularly when laws are used to shield public authorities from criticism. The article concludes that a rule of law compatible regime of restrictions on public expression requires legislative narrowing of vague offences, greater reliance on civil rather than criminal sanctions, enhanced judicial scrutiny, and robust safeguards in the regulation of digital expression. Such reforms would not eliminate all limitations on speech but would ensure that they operate as genuine instruments for protecting rights and democratic order, rather than as tools of political control.

Thank-you note

The author thanks all people and institutions in most cases for helping and funding this research

REFERENCES

- I., Liyawanti, T., Sanusi, & Gunawan, M. S. (2026). THE EFFECTIVENESS OF PROTECTING WOMEN'S REPRODUCTIVE RIGHTS FROM THE PERSPECTIVE OF HEALTH LAW AND SUBSTANTIVE JUSTICE: A JURIDICAL ANALYSIS OF THE IMPLEMENTATION OF LOCAL POLICIES IN CIREBON REGENCY. *Veredas Do Direito*, 23(2), e234285. <https://doi.org/10.18623/rvd.v23.n2.4285>
- Achmad, M. F., & Yulianto. (2010). *Dualisme Penelitian Hukum Normatif & Empiris*.
- Aditya, Z. F., & Al-Fatih, S. (2025). Freedom of Expression vs Political Stability: Legal Interpretation of Commotion in Social Media After the Issuing of a Constitutional Court Decision. *Jurnal Jurisprudence*, 60–77. <https://doi.org/10.23917/jurisprudence.v15i2.10648>
- Arikunto, S. (2016). *Metodologi Penelitian Suatu Pendekatan Proposal*. Jakarta: Rineka Cipta.
- Creswell, J. W. (2021). *Research design: Qualitative, quantitative, and mixed methods approaches (5th ed.)*. SAGE Publications.
- Legal Frameworks and Public Service Quality: The Rule of Law in Governance. (2024). *Hong Kong Journal of Social Sciences*, 63. <https://doi.org/10.55463/hkjs.issn.1021-3619.63.41>
- Lukianova, H. (2025). Legitimacy and Rule of Law: Fundamental Administrative and Legal Principles in Ensuring the Function of Coordinating Anti-Corruption Subjects. *Visnik Nacional'nogo Universitetu «Lvivska Politehnika»*. *Seria: Uridicni Nauki*, 12(48), 236–245. <https://doi.org/10.23939/law2025.48.236>
- Nye, H. (2025). The Rule of Law without Law. In *Promise of Legality* (pp. 131–144). Hart Publishing. <https://doi.org/10.5040/9781509970988.ch-008>
- Park, J.-H., & Yi, H.-W. (2025). A Study on the Declaration of Provisional Execution in Public Law Litigation. *Kyung Hee Law Journal*, 60(4), 3–42. <https://doi.org/10.15539/KHLJ.60.4.1>
- Psota, T. (2024). RESPECT FOR HUMAN RIGHTS AND FREEDOMS AS A PREREQUISITE FOR THE REALIZATION OF THE LEGAL STATUS OF AN INDIVIDUAL IN A DEMOCRATIC STATE. *The Journal of V. N. Karazin Kharkiv National University, Series "Law,"* 38, 86–94. <https://doi.org/10.26565/2075-1834-2024-38-08>
- Ramsi, H. (2025). 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(1), 57–75. <https://doi.org/10.51749/injurlens.v5i1.132>
- Sambor, M. A. (2025). The right to the freedom of peaceful assembly under the rule of law: convergence and mutual implementation. *Bulletin of Kharkiv National University of Internal Affairs*, 108(1 (Part 1)), 33–47. <https://doi.org/10.32631/v.2025.1.03>

Copyright and License



This is an open access article distributed under the terms of the Creative Commons Attribution 4.0 International License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

© 2026 Edi Sofwan

Published by IPI Global Press in collaboration with the Inovasi Pratama Internasional Ltd