

## THE REGULATION OF THE RIGHT TO EXPRESS OPINIONS IN PUBLIC FREELY AND RESPONSIBLY

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### ABSTRACT

*The right to freedom of expression is a manifestation of the universal values of human rights. Similarly, the right to freedom of opinion in public in a free and responsible for the implementation of the human rights and constitutional rights of citizens. The right to freedom of opinion in public as a constitutional right is one vehicle of social control to citizens (the peoples) to criticize or correct the proportional and objective policies made by the government, so these policies can significantly to make prosperity for the peoples. College students as an important component of society in an era of democracy and freedom climate in Indonesia is opening today has done the right for freedom of expression in public in the form of rallies or demonstrations to criticize the policies made by the government, so these policies can significantly to make prosperity for the peoples. But the facts show, the freedom of the college students in conducting rallies or demonstrations often end up chaotic and anarchic very harmful and disturbing the public interest. This indicates that the right to freedom of expression in public has not been implemented in a responsible, responsible means demonstrations conducted by the college students should not interrupt the public interest, must not harm the rights of others and must comply with statutory regulations. The rights to freedom of expression in a free and responsible have been clearly set out in international legal instruments, namely the Universal Declaration of Human Rights 1948 and the International Covenant on Civil and Political Rights 1966. In the Indonesian national law, freedom of expression freely and responsibly regulated in Indonesian constitution in Chapter XA Act of 1945 on Human Rights, Law No. 39 Year 1999 on Human Rights. More specifically, in the Indonesian national law, the right of freedom of expression in public freely and responsibly regulated in Law No. 9 of 1998 concerning Freedom of Opinion in Public.*

**Keywords:** right, freedom of opinion, responsible.

### INTRODUCTION

Along with the opening of a democratic climate in Indonesia which began in 1998 when the fall of the 'new order government regime' in Indonesia. At present the atmosphere of freedom of euphoria is truly felt by all components of the Indonesian people. Likewise the freedom of citizens in expressing their civil and political rights. One of the citizens' constitutional rights is the right to freedom of expression in public freely and responsibly. The right to freedom of expression in public freely and responsibly is the implementation of the implementation of human rights.<sup>1</sup> In the concept of a modern state that upholds law,

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<sup>1</sup> Human rights or actually should be referred to as "human rights" are rights that (should) be universally recognized as rights inherent in humans because of the nature and nature of human birth it is human. (Soetandyo Wignjosoebroto, 2005, *Human Rights Basic Concepts and Development of Understanding from Time to Time*, Series of Materials for Reading Human Rights Courses for Lawyers X, 2005, Institute for Community Research and Advocacy (ELSAM), URL: [www.elsam.or.id](http://www.elsam.or.id) / Email : [elsam@nusa.or.id](mailto:elsam@nusa.or.id), accessed in 2010).

human rights<sup>2</sup> and democracy, the right of freedom of expression freely and responsibly owned by citizens is very important role to criticize objectively and rationally government policies so that the government policies are pro-the people or can prosper the lives of the people. The right to freedom of expression in public in the form of demonstrations<sup>3</sup> is a manifestation of social control. Control of government policies that are not pro-people. Action demonstrations are nothing new in Indonesia. Every major change that occurs in this country always involves educated people (read: students). Student movements are often the forerunner of the national struggle.<sup>4</sup>

Along with the rapid growth of the Indonesian economy, this creates new middle classes in society, college students are one of the middle classes. With the emergence of a new middle class in society, it means also, emerging forces or layers that always demand rights. Why not, with good and high education, they have the ability to compare and demand their elementary rights to the state or government. With good education, they already have knowledge about who they are and how the state should treat them.<sup>5</sup> College students as one of the important components in society in Indonesia are seen to often exercise the right to freedom of expression in public in the form of demonstrations. Demonstrations as an implementation of the right to freedom of expression in public carried out by college students in Indonesia generally aim to criticize government (executive) policies as well as the parliament (legislative) which does not favor the people. However, the facts in the field show that demonstrations by college students in Indonesia often end in chaos and anarchism which is very detrimental to and disrupt the interests and public order. The college students demonstrations which often ended in chaos and anarchism were often caused by being ridden by the interests of third parties and infiltrated by the provocator.

Demonstrations by college students are now practiced throughout the territory of Indonesia, which is a manifestation of social criticism in criticizing government policies so that government policies can prosper the people. Demonstrations are the implementation of the human rights, especially the right to freedom of expression in public. But based on the facts that have occurred in Indonesia, that college student demonstrations in Indonesia often end in chaos and anarchism which is very detrimental to and disrupt the interests or public order. Seeing this phenomenon, it is necessary for students and other components of Indonesian society besides students to better understand, understand the legal norms that regulate the right to freedom of submission of prayer in public in a free and responsible manner.

Based on the preliminary description, the problem can be formulated as follows: how is the regulation of the right to freedom to express opinions in public freely and responsibly at national and international levels?

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<sup>2</sup> Human rights are basic rights, as stated by Ray August: Human rights: basic rights intended to protect all people from cruel and human rights treatment, threats to their lives, and persecution. (Ray August, 1995, *Public International Law*, Prentice Hall, New Jersey, United States of America, page 248).

<sup>3</sup> The form of public opinion submission can be carried out by demonstrations, marches, public meetings or free speeches (Article 9 Paragraph 1 of Law No. 9 of 1998 concerning Freedom of Delivering Public Opinions). Demonstrations as a form of public expressions of opinion are activities carried out by one or more people to issue thoughts through oral, written, and so on demonstratively in public.

<sup>4</sup> <http://hukum.kompasiana.com / 2012/03/27 / student-and-government-style-new-order movement/>, accessed November 14, 2012.

<sup>5</sup> Hamid Awaludin, 2012, *Human Rights, Politics, Law, & International Hypocrisy*, Kompas Book, Jakarta, page 20.

## RESULT AND ANALYSIS

In using the right to freedom of expression, we must hold the principle of freedom and responsibility. Free means that all our ideas, thoughts or opinions can be expressed freely without pressure from anyone. Responsible means that our ideas, thoughts or opinions must be based on common sense, good intentions and prevailing norms. As stated in the Indonesian national law: in the Explanation section of Law Number 9 of 1998 concerning Independence Delivering Public Opinions which states that the realization of the will of citizens freely in conveying thoughts verbally and in writing and so on must be maintained so that the entire social order and institutions, both infrastructure and the superstructure remains free from irregularities or violations of the law that conflict with the intent, purpose and direction of the process of openness in the formation and enforcement of laws so as not to create social disintegration, but rather must guarantee security in people's lives. Thus, the independence of expressing an opinion in public must be carried out with full responsibility, in line with the provisions of applicable laws and principles of international law. As stated in Article 29 of the 1948 Universal Declaration<sup>6</sup> of Human Rights, which among others stipulates the following :

1. Everyone has an obligation to society that allows the development of personality freely and fully.
2. In the exercise of the right to freedom, each person must submit to the restrictions determined by law with the aim of guaranteeing the recognition and appreciation of the rights and freedoms of others, to fulfill the conditions that are fair to morality, order and the general welfare in a society democratic ones.
3. These rights and freedoms must not be carried out at all in contravention of the purposes and principles of the United Nations.

The Universal Declaration of Human Rights as the beginning of the modern struggle to protect human rights, we can trace the origins of human rights to philosophical theories about 'natural law', a law higher than the positive law of the state. According to this theory, individuals as human beings carry on themselves from birth certain human rights that cannot be eliminated.<sup>7</sup>

In the context of international law the right to freedom of expression freely and responsibly is also regulated in international agreements as one of the instruments of international law, namely Article 19 of the International Covenant on Civil and Political Rights 1966<sup>8</sup>, which states:

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<sup>6</sup> Declarations such as the Universal Declaration of Human Rights 1948 made by the United Nations (UN) are one form of international agreement and are a source of international law. International agreements are also termed by other names, such as: treaty, pact, convention, charter, charter, protocol, arrangement, accord, modus vivendi, covenant. (Mochtar Kusumaatmadja, 1976, *Introduction to International Law*, first edition, Bina Cipta, Bandung, page 111).

<sup>7</sup> David Weissbrodt, *Human Rights: Overview of the Historical Perspective*, in: Peter Davies, 1994, *Human Rights*, original title: *Human Rights*, translator: A. Rahman Zainuddin, first edition, Obor Indonesia Foundation, Jakarta, page 2.

<sup>8</sup> The International Covenant on Civil and Political Rights in 1966 has been ratified by Indonesia under Law No. 12 of 2005. The term of covenant is the same as an agreement which means an international agreement which gives rise to legal rights and obligations for countries that have ratified the international agreement. As stated by Mark W. Janis: International agreements, such as personal contracts, are something more than a statement of expected future behavior. The agreement creates legal rights and obligations, and this mandatory aspect makes them part of international law (Mark W. Janis, 2003, *Introduction to International Law*, fourth edition, Aspen, New York Publisher, page 9).

1. Everyone must have the right to have an opinion without intervention.
2. Everyone must have the right to freedom of expression; this right must include the freedom to seek, receive and disclose all kinds of information and ideas, regardless of border lines, verbally, written or printed, in the form of works of art, or through all other media of his own choice.
3. The implementation of the rights guaranteed in paragraph 2 of this Article carries its own obligations and responsibilities. Therefore this is subject to certain restrictions, but this should only be done as determined by law and is required:
  - (a) To respect the rights or good name of others;
  - (b) To protect national security or public order, or public health or decency.

The freedom to express this opinion is the implementation of human rights values. As written by James W. Nickel in his book entitled *Making Sense of Human Rights*, states that when human rights are implemented in international law, we still call them human rights; but when it is implemented in domestic law, we tend to describe it as civil rights or constitutional rights<sup>9</sup>. Human rights in Indonesian national law have been stipulated in the Second Amendment to the 1945 Constitution. The content of human rights in the Second Amendment to the 1945 Constitution can be said as a form of constitutional guarantee commitment to law enforcement and human rights in Indonesia.<sup>10</sup> In the context of national law (domestic law) of Indonesia, the constitutional rights of citizens regarding the right to freedom of expression have been clearly stipulated in the Constitution of the Republic of Indonesia, namely the 1945 Constitution (Second Amendment to the 1945 Constitution), namely in the following articles:

Article 28E Paragraph (2) of the 1945 Constitution states:

Everyone has the right to freedom of belief, express their thoughts and attitudes, according to their conscience.

Article 28E Paragraph (3) of the 1945 Constitution states:

Everyone has the right to freedom of association, assembly and opinion.

Likewise, Article 25 of Law Number 39 of 1999 concerning Human Rights states:

Everyone has the right to express opinions in public, including the right to strike in accordance with the provisions of the legislation.

Demonstrations as a manifestation of the right to freedom of expression in public which is the implementation or application of human rights values certainly cannot be carried out freely without limits, but must be carried out responsibly so that demonstration actions feelings do not become anarchic or riots that can disrupt and harm the interests and order of the general public. The right to freedom of expression in public in the form of demonstrations must be carried out responsibly, the meaning of the word "responsible" is that the right of freedom or freedom of expression in public is a limitation which must not harm the human rights others, do not interfere and do not harm the interests and public order, and must be in accordance with the laws and regulations. Restrictions on the use of the right to freedom or freedom of expression in public as the implementation of the implementation of human rights are clearly

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<sup>9</sup> James W. Nickel, 1996, *Human Rights, Philosophical Reflections on the Universal Declaration of Human Rights*, original title: *Making Sense of Human Rights, Philosophical Reflection on Universal Declaration of Human Rights*, translator: Titis Eddy Arini, Gramedia Pustaka Utama, Jakarta, page 55.

<sup>10</sup> Majda El-Muhtaj, 2005, *Human Rights in the Indonesian Constitution*, fourth edition, Kencana Prenada Media Group, Jakarta, page 113.

stipulated in the Constitution of the Republic of Indonesia, namely Article 28J of the 1945 Constitution which states:

- (1) Every person must respect the human rights of others in orderly life in the community, nation and state.
- (2) In exercising their rights and freedoms, each person must submit to the restrictions stipulated by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with moral considerations, values religious values, security, and public order in a democratic society.

Likewise the restrictions on the use of the right to freedom or freedom of expression in public as the implementation of human rights are also regulated in Indonesian national law :

Article 69 of Law Number 39 of 1999 concerning Human Rights states:

- (1) Every person must respect the human rights of others, morals, ethics, and order in the life of society, nation and state.
- (2) Every person's human rights give rise to basic obligations and responsibilities to respect the human rights of others reciprocally and it is the duty of the Government to respect, protect, enforce and promote them.

Article 70 of Law Number 39 of 1999 concerning Human Rights states:

In exercising their rights and freedoms, each person must submit to the restrictions set by the law with the intention of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with moral, security and public order considerations in a society democratic.

In the context of international law, restrictions on the use of the right to freedom or freedom of expression in public as the implementation of human rights are regulated in:

Article 29 paragraph 2 of the Universal Declaration of Human Rights 1948, which states:

In the exercise of the right to freedom, each person must submit to the restrictions determined by law with the aim of guaranteeing the recognition and appreciation of the rights and freedoms of others, to fulfill the conditions that are fair to morality, order and public welfare in a democratic society.

Article 19 paragraph 3 of the International Covenant on Civil and Political Rights 1966, which states:

The implementation of the rights guaranteed in paragraph 2 of this Article carries its own obligations and responsibilities. Therefore this is subject to certain restrictions, but this should only be done as determined by law and is required:

- (a) To respect the rights or good name of others;
- (b) To protect national security or public order, or public health or decency.

When a country becomes a party to the international human rights instrument, the government has three obligations, namely respecting, protecting and fulfilling human rights as stipulated in the said international human rights instrument. The obligation to protect human rights means that the state is obliged to take measures to prevent human rights violations against citizens. In this obligation includes efforts to encourage citizens to respect

the rights of others, and regulate sanctions for violations committed by individuals or groups.<sup>11</sup>

More specifically, in Indonesian national law the right to freedom of expression in public has been regulated by Law Number 9 of 1998 concerning Freedom of Delivering Public Opinions. The basis for considering the importance of the right to freedom of expression in public is formulated in a law as seen in the Considering section of Law Number 9 of 1998 concerning Independence Delivering Public Opinions, which states:

- a. that freedom to express opinions in public is human rights guaranteed by the 1945 Constitution and the Universal Declaration of Human Rights;
- b. that the independence of every citizen to express their opinions in public is a manifestation of democracy in the order of life in the community, nation and state;
- c. that in order to build a democratic country that organizes social justice and guarantees human rights, a safe, orderly and peaceful atmosphere is needed;
- d. that the right to express opinions in public is carried out responsibly in accordance with the provisions of applicable laws and regulations;
- e. that based on the considerations referred to in letters a, b, c, and d, it is necessary to establish a Law on the Independence of Delivering Public Opinions;

Why is the right to freedom of expression freely and responsibly so important to be understood by the people (citizens) ? The importance of freedom to express opinions freely and responsibly can be seen in the purpose of the regulation on freedom to express opinions in public as stated in Article 4 of the Law Number 9 of 1998 concerning Independence Delivering Public Opinions which is further abbreviated as Law No. 9 of 1998, which states:

1. Freedom to express opinions freely and responsibly is intended to realize responsible freedom as one of the implementation of human rights in accordance with Pancasila and the 1945 Constitution;
2. Freedom to express opinions freely and responsibly is intended to create consistent and continuous legal protection in guaranteeing freedom of expression;
3. Freedom to express opinions freely and responsibly is intended to create a conducive climate for the development of participation and creativity of every citizen as a manifestation of rights and responsibilities in democratic life;
4. Freedom to express opinions freely and responsibly is intended to place social responsibility in the life of the community, nation, and state, without neglecting the interests of individuals or groups.

Therefore, there are several principles that must be adhered to in the freedom to express opinions in public (Article 3 of Law No. 9 of 1998), namely:

1. The principle of a balance between rights and obligations,
2. The principle of deliberation and consensus,
3. Principles of legal certainty and justice,
4. Principle of proportionality, and
5. Benefit principle.

Thus the essence of freedom of expression is:

- a. Freedom of expression is the right of every citizen to convey their thoughts with oral and written, as well as other attitudes freely and responsibly in accordance with applicable

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<sup>11</sup> Jonny Sinaga, 2007, *State Obligations in the ICCPR*, article in the magazine: *Human Rights Journal*, Vol. 4 No. 4, 2007, ISSN 1693-6027, National Human Rights Commission, Jakarta, page 39-40.

regulations. In essence, independence issues opinion as the realization of the rights and responsibilities of democracy in the life of the community, nation and state.

- b. Freedom of opinion is very important for the life of democracy because it will have a positive impact, including:
- The sensitivity of the community is increased in addressing various social problems that arise in everyday life
  - Familiarize the community for critical thinking and responsiveness
  - Feeling to have ownership and take responsibility for the progress of the nation and state
  - Enhancing democracy in everyday life
- c. Freedom of expression in public must be based on:
- principle of a balance between rights and obligations means that there must be a balance between rights and obligations not to only demand their rights but not willing to carry out obligations
  - principle of deliberation and consensus means that all things are sought through deliberations and consensus based on the spirit of family
  - the principle of legal certainty and justice means that it must be in accordance with applicable law and cause welfare to be impartial and not to afflict other parties
  - the principle of proportionality, namely the principle that places all activities in accordance with the context or purpose of these activities, both those carried out by citizens, institutions and government apparatus, which are based on individual ethics, social ethics and international ethics
  - principle of benefit, that the activity of expressing an opinion in public must be able to provide benefits for the benefit of society in general.

The obligations and responsibilities of citizens in exercising independence express their opinions freely and take responsibility in public (Article 6 of Law No. 9 of 1998) which consists of :

1. respect the rights and freedoms of others,
2. respect for moral rules that are generally recognized,
3. comply with the law and the provisions of applicable laws and regulations,
4. maintain and respect security and public order, and
5. maintain the integrity of national unity and unity.

On the other hand the government apparatus has an obligation and responsibility in carrying out independence expressing opinions freely and responsibly in public (Article 7 of Law No. 9 of 1998), namely:

1. protect human rights,
2. respect the principle of legality,
3. respect the principle of presumption of innocence, and
4. hold security.

Whereas the community also has the right to participate responsibly so that public opinion can take place in a safe, orderly and peaceful manner (Article 8 of Law No. 9 of 1998).

Based on some formulations of the articles in Law Number 9 of 1998 concerning Freedom of Delivering Public Opinions as mentioned above, it appears that citizens in expressing their opinions in public must be responsible, meaning that there are restrictions for citizens in their use. The right to freedom of expression in public (Article 6 of Law No. 9 of 1998), likewise the state (government) can limit the rights of citizens to express their opinions in public (Article 7 of Law No. 9 of 1998). Restrictions on the exercise of the right to freedom of

expression in the formulation of Article 6 of Law No. 9 of 1998 and Article 7 of Law No. 9 of 1998 in line with the International Covenant on Civil and Political Rights 1966. International Covenant On Civil And Political Rights 1966 (ICCPR) classifies existing rights in the type of derogable, namely rights which may be reduced or limited by the States Parties.<sup>12</sup> The rights and freedoms included in this type are: (i) the right to freedom of peaceful assembly; (ii) the right to freedom of association, including forming and becoming a member of a trade union; and (iii) the right to freedom of expression or expression, including the freedom to seek, receive and provide information and all kinds of ideas without regard to boundaries (whether through oral or written). The countries of the International Covenant on Civil And Political Rights 1966 (ICCPR) are allowed to reduce the obligation to fulfill these rights. But the reduction can only be done if it is proportional to the threats faced and not discriminatory, namely for: (i) maintaining national security or public order or health or general morality; and (ii) respecting the rights or freedoms of others.<sup>13</sup>

## CONCLUSION

Based on the description of the result and analysis, following may be concluded:

1. The right to freedom of expression in public freely and responsibly is the implementation of the human rights. The right to freedom of expression in public freely and responsibly constitutes civil rights and constitutional rights held by citizens. Citizens (communities) in using the right to freedom of expression in public must be able to be carried out freely and responsibly, freely, meaning that all ideas, thoughts or opinions can be expressed freely without pressure from anyone. Responsible means that these rights must not be carried out indefinitely, while the limitations of these rights are: respecting the rights and freedoms of others, respecting moral rules that are generally recognized, obeying the laws and regulations that apply, maintaining and respecting security and public order, and maintaining the integrity of national unity. (Article 6 of Act Number 9 of 1998 concerning Freedom of Delivering Public Opinions).
2. The regulation of the right to freedom of expression in public freely and responsibly in international legal instruments is regulated in Article 29 of the Universal Declaration of Human Rights 1948 and Article 19 of the International Covenant on Civil and Political Rights 1966. In Indonesian national law the right to freedom of expression in public freely and responsibly is regulated in the 1945 Constitution as the Constitution of the Republic of Indonesia, namely: Article 28E Paragraph (2), Article 28E Paragraph (3), and Article 28J. In Indonesian law, the right to freedom of expression in public freely and responsibly is also regulated in Article 25, Article 69 and Article 70 of Law Number 39 of 1999 concerning Human Rights. More specifically, the right to freedom of expression in public freely and responsibly is regulated in Law Number 9 of 1998 concerning Independence Delivering Public Opinions.

## SUGGESTIONS

The important points that may be suggested are given below:

1. The Indonesian government must consistently socialize the material or substance of Law Number 9 of 1998 concerning Independence Delivering Public Opinions to the public, so

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<sup>12</sup> States parties are countries that have ratified the International Covenant On Civil And Political Rights 1966 (ICCPR).

<sup>13</sup> Ifdhal Kasim, 2005, *Convention on Civil and Political Rights, An Introduction*, Series of Materials Reading Human Rights Courses for Lawyers X, 2005, Institute for Community Research and Advocacy (ELSAM), Website: [www.elsam.or.id](http://www.elsam.or.id) Email: [elsam@nusa.or.id](mailto:elsam@nusa.or.id), Jakarta, page 2.



that the public in exercising the right to freedom of expression in public does not commit acts or actions that violate the provisions of the law .

2. The state apparatus in this case the police must take firm action against individuals who carry out demonstrations or public demonstrations that have been proven to disturb the public interest, harm other people's human rights and violate the provisions of the law. With the existence of decisive action from the security apparatus (not repressive) will create a conducive atmosphere for the continuation of the democratic climate and maintain the existence of Indonesia as a legal state.

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