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Penulis : Siti Fatimah, Eko Nuriyatman, Nuruzzaman MS.

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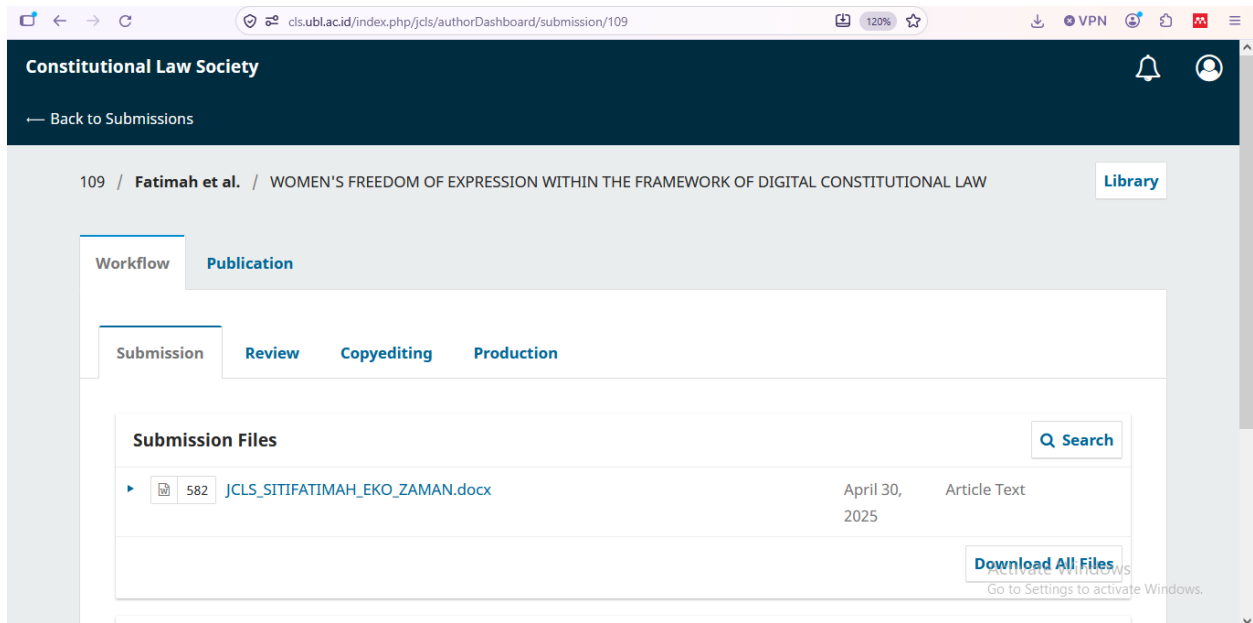
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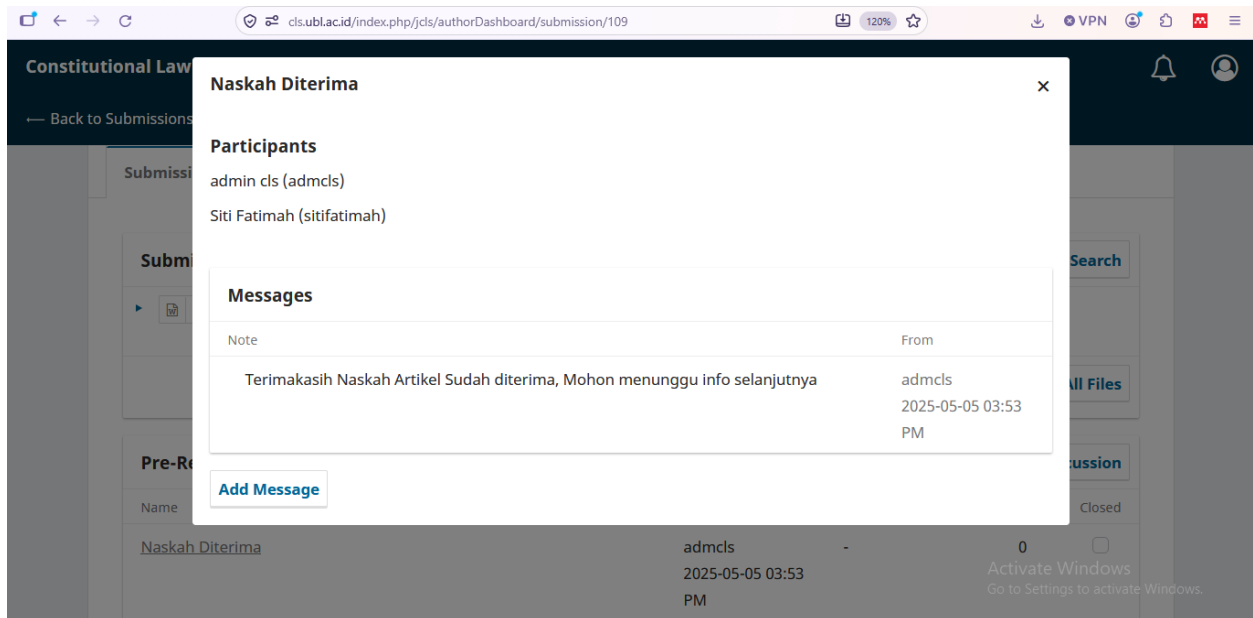
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RECOMMENDATION*

Please check (✓) the selected option.

(...) 1. Manuscripts can be loaded without changes.

(✓) 2. This paper is relevant to the context of the development of constitutional law and women's constitutional rights, but its presentation is still descriptive and does not yet show strong arguments regarding academic and practical contributions. Improvements need to be made in terms of methodology, systematic analysis, and consistency in the use of terms and stations. If the revision notes can be accommodated properly, the article will become a more solid, systematic work that can make a real contribution to the discourse on digital-based constitutional law from a gender perspective.

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Bandar Lampung, August 29, 2025
Review

Dr. Oce Madril, S.H., M.A.

RECOMMENDATION*

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(...) 1. Manuscripts can be loaded without changes.

(√) 2. This article raises a very important and topical issue regarding freedom of expression for women within the framework of digital constitutional law. Substantively, the chosen topic has the potential to contribute significantly to the development of legal and gender studies, but the manuscript still requires a number of fundamental revisions, particularly in sharpening the novelty of the research, detailing the methodology, and strengthening the analysis with case studies and international comparisons. With improvements to the abstract, conclusion, and consistency of references, this article is worthy of consideration for publication.

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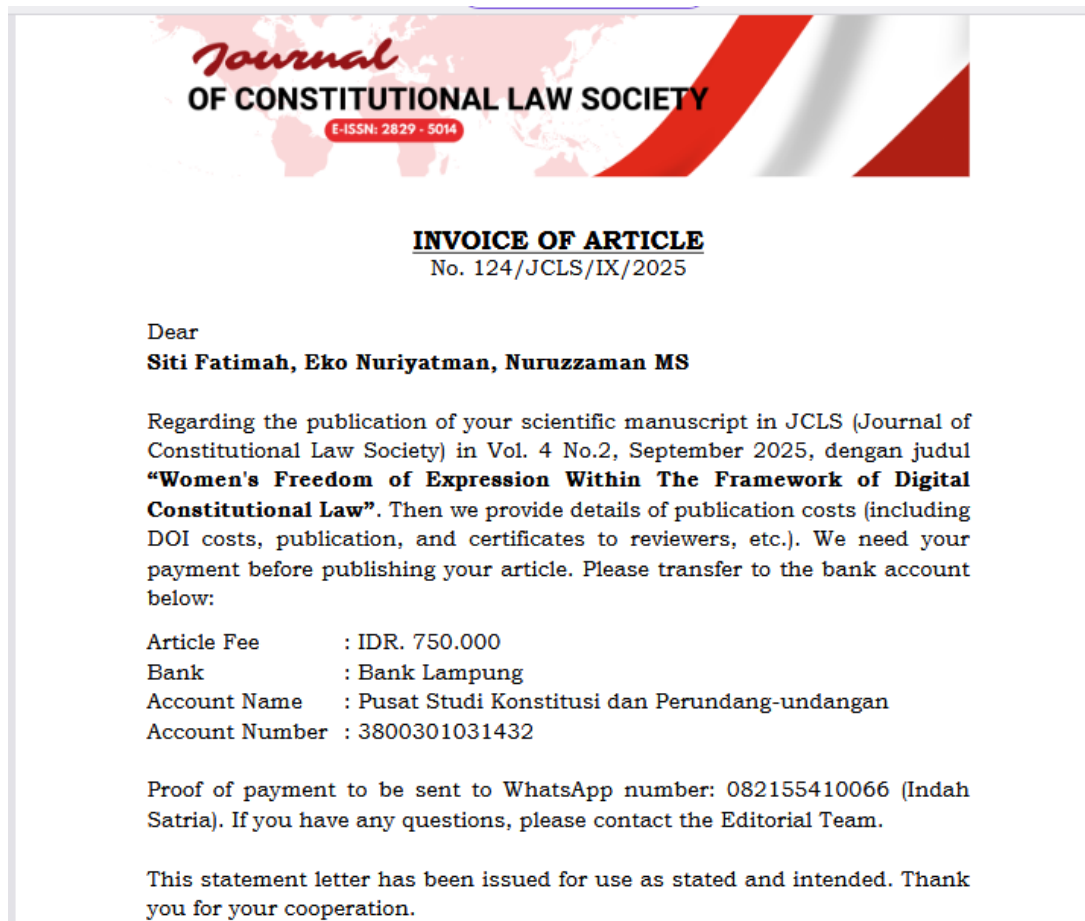
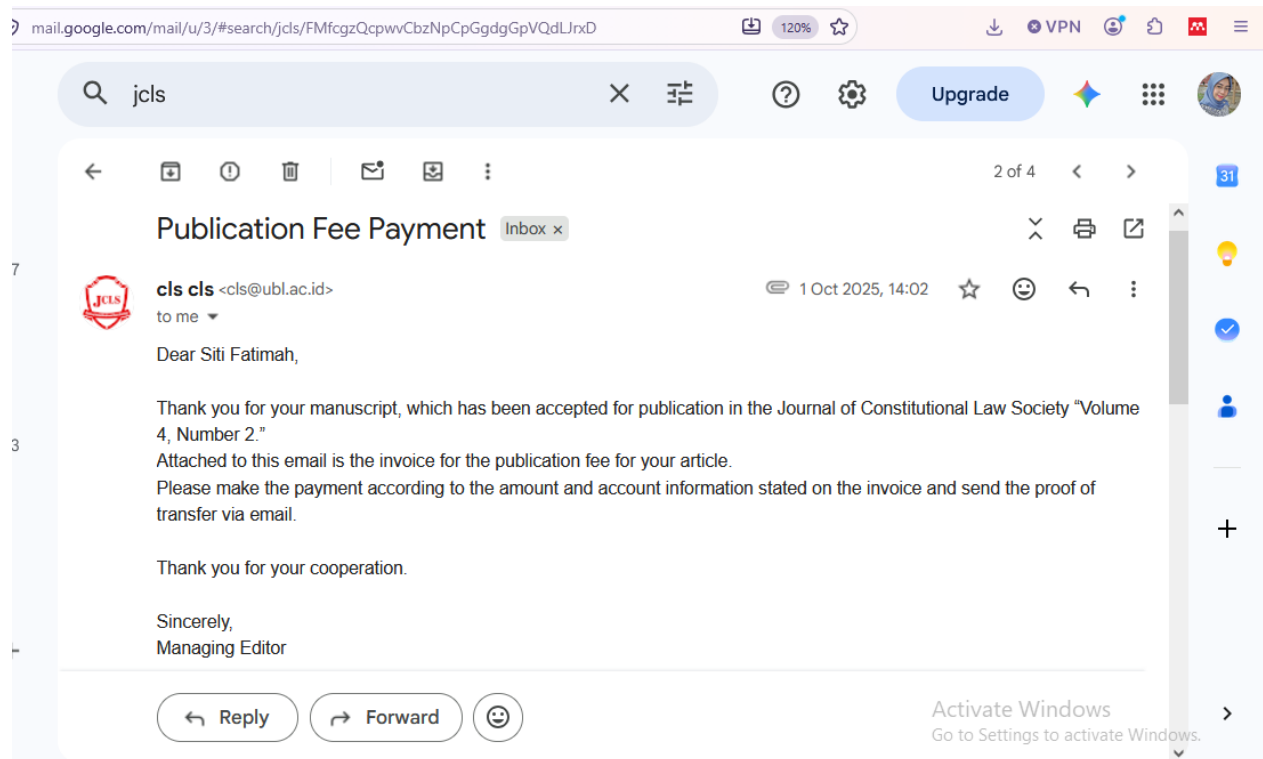
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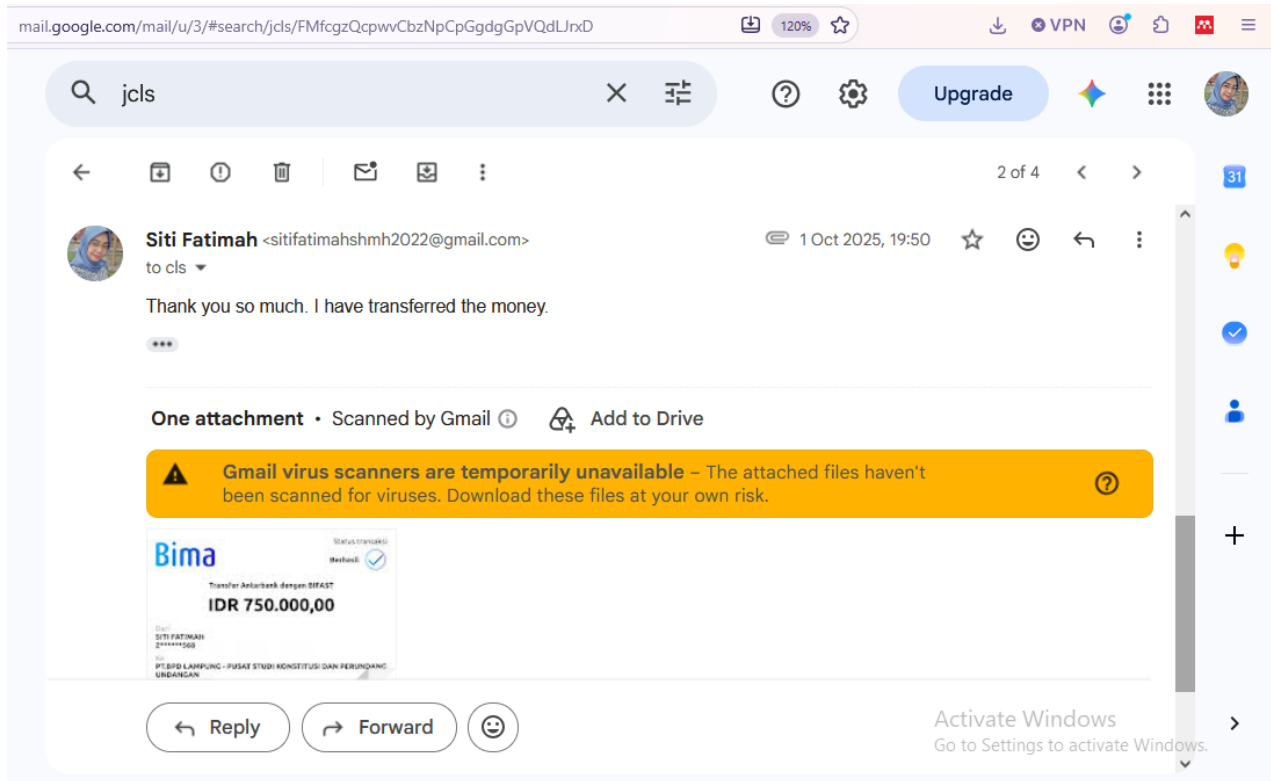
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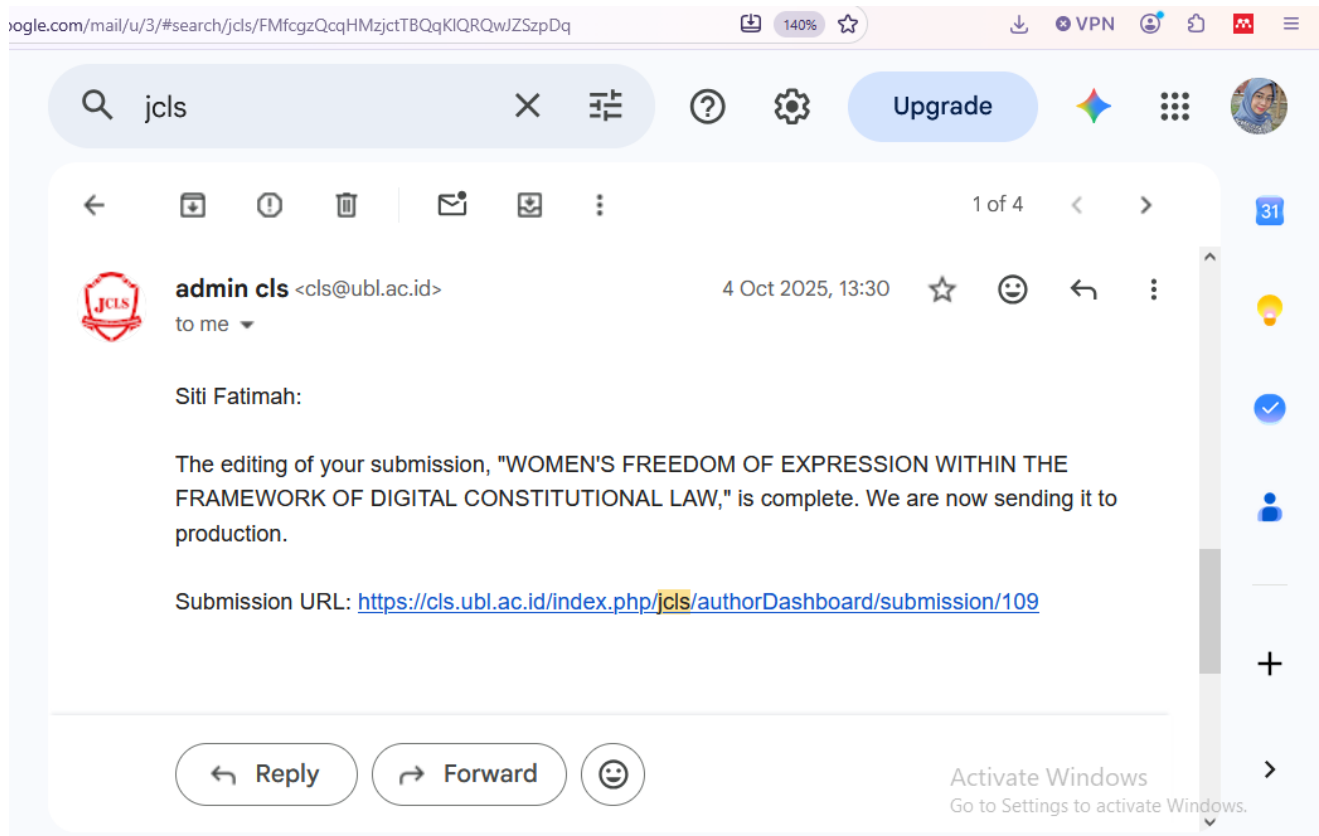
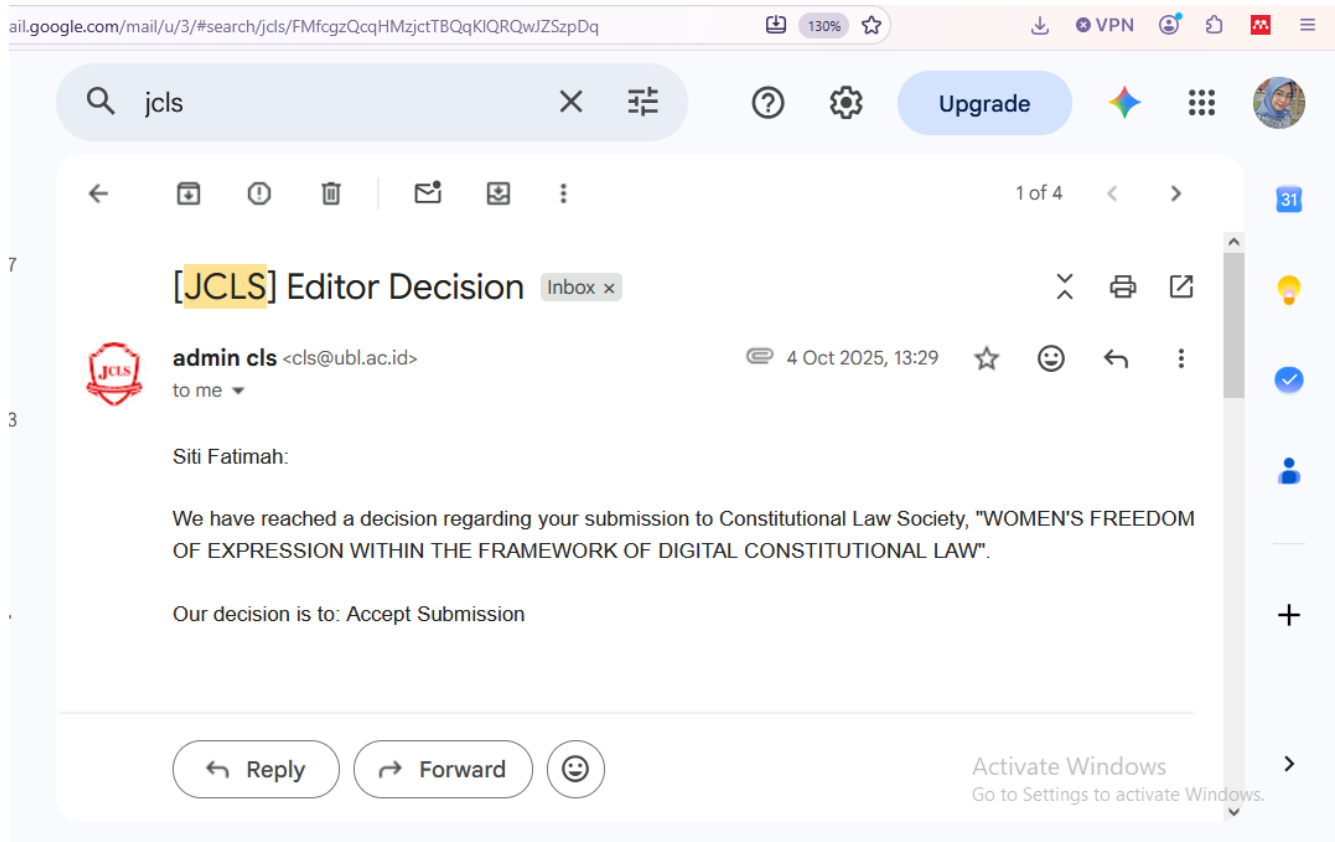
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[JCLS] Editor Decision	2025-10-04 02:30 PM

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109 / Siti Fatimah

Workflow Submission

Round 1

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[JCLS] Editor Decision

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Siti Fatimah:

We have reached a decision regarding your submission to Constitutional Law Society, "WOMEN'S FREEDOM OF EXPRESSION WITHIN THE FRAMEWORK OF DIGITAL CONSTITUTIONAL LAW".

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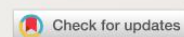
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Section Articles



WOMEN'S FREEDOM OF EXPRESSION WITHIN THE FRAMEWORK OF DIGITAL CONSTITUTIONAL LAW

KEBEBASAN BERPENDAPAT PEREMPUAN DALAM BINGKAI HUKUM KONSTITUSI DIGITAL

<https://doi.org/10.36448/jcls.v4i2.109>

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Nuruzzaman MS

Universitas Nahdlatul Ulama

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**WOMEN'S FREEDOM OF EXPRESSION WITHIN THE
FRAMEWORK OF DIGITAL CONSTITUTIONAL LAW**

***KEBEBASAN BERPENDAPAT PEREMPUAN DALAM BINGKAI
HUKUM KONSTITUSI DIGITAL***

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ABSTRACT

The digital transformation has reshaped the landscape of freedom of expression, creating new opportunities for participation while also exposing women to structural, normative, and cultural challenges. In Indonesia, although Article 28E of the 1945 Constitution guarantees these rights, the digital environment remains unsafe due to weak legal safeguards, gender-blind regulations, and entrenched patriarchal norms. Online gender-based violence or OGBV, including cyber harassment, doxing, and non-consensual image distribution, continues to silence women, while the misuse of the Electronic Information and Transactions (ITE) Law has frequently criminalized victims instead of providing protection. This article employs a normative-conceptual and comparative legal approach to assess these gaps. Case studies, such as the criminalization of women under the ITE Law, reveal how existing frameworks fail to address gender-specific vulnerabilities. A comparative perspective with the European Union's General Data Protection Regulation (GDPR) and Australia's Online Safety Act 2021 highlights best practices for safeguarding women's digital rights through strong data protection and proactive victim-centered mechanisms. The study argues for gender-responsive digital constitutional reform in Indonesia, including legal clarification, enhanced digital literacy, strengthened data protection, and progressive constitutional interpretation. Such reforms are essential to transform formal guarantees into substantive protections and ensure that women's freedom of expression is meaningfully realized in a democratic digital society. This article offers a unique contribution by integrating Indonesian case studies of women's criminalization under the ITE Law with comparative

perspectives from the EU's GDPR and Australia's Online Safety Act. Unlike existing literature that remains largely descriptive, this study provides a prescriptive-analytical framework for gender-responsive digital constitutional reform. It bridges constitutional law, digital rights, and gender justice, presenting concrete pathways to transform formal guarantees into substantive protections for women's freedom of expression.

Keywords : Freedom of Expression, Women, Digital Constitutional Law, Online Gender-Based Violence, Digital Rights.

ABSTRAK

Transformasi digital telah merekonstruksi lanskap kebebasan berpendapat, menciptakan peluang baru untuk partisipasi sekaligus mengekspos perempuan pada tantangan struktural, normatif, dan kultural. Meskipun di Indonesia terdapat jaminan konstitusional dalam Pasal 28E UUD 1945, ruang digital tetap tidak aman akibat lemahnya perlindungan hukum, regulasi yang buta gender, serta norma patriarki yang mengakar. Kekerasan berbasis gender online (KBGO), termasuk pelecehan siber, doxing, dan penyebaran konten intim tanpa persetujuan, terus membungkam suara perempuan, sementara penyalahgunaan Undang-Undang Informasi dan Transaksi Elektronik (UU ITE) seringkali justru mengkriminalisasi korban alih-alih memberi perlindungan. Artikel ini menggunakan pendekatan hukum normatif-konseptual dan komparatif untuk menilai kesenjangan tersebut. Studi kasus, seperti kriminalisasi perempuan melalui UU ITE, menunjukkan bagaimana kerangka hukum yang ada gagal menjawab kerentanan spesifik berbasis gender. Perspektif komparatif dengan General Data Protection Regulation (GDPR) di Uni Eropa dan Online Safety Act 2021 di Australia menyoroti praktik terbaik dalam melindungi hak digital perempuan melalui perlindungan data yang kuat dan mekanisme proaktif berbasis korban. Studi ini berargumen bahwa reformasi hukum konstitusi digital yang responsif gender sangat penting, termasuk melalui klarifikasi hukum, peningkatan literasi digital, penguatan perlindungan data, serta penafsiran konstitusi yang progresif. Reformasi tersebut esensial untuk mengubah jaminan formal menjadi perlindungan substantif, sehingga kebebasan berekspresi perempuan benar-benar terwujud dalam masyarakat digital yang demokratis. Artikel ini memberikan kontribusi dengan mengintegrasikan studi kasus Indonesia terkait kriminalisasi perempuan di bawah UU ITE dengan perspektif komparatif dari GDPR Uni Eropa dan Online Safety Act Australia. Berbeda dengan literatur yang sebagian besar masih bersifat deskriptif, studi ini menawarkan kerangka preskriptif-analitis bagi reformasi hukum konstitusi digital yang responsif gender. Artikel ini menjembatani hukum konstitusi, hak digital, dan keadilan gender, sekaligus menghadirkan jalur konkret untuk mengubah jaminan formal menjadi perlindungan substantif atas kebebasan berekspresi perempuan.

Kata Kunci : Kebebasan Berpendapat, Perempuan, Hukum Konstitusi Digital, Kekerasan Berbasis Gender Online, Hak Digital.

I. INTRODUCTION

The development of the digital era has brought about fundamental transformations in the way society expresses opinions. Public spaces, which were once limited to physical forums, have now expanded into virtual spaces, such as social media, online discussion platforms, and digital community-based information-sharing channels. Freedom of expression, which is one of the fundamental human rights, now faces new forms and challenges in the digital world. Information technology not only accelerates the dissemination of ideas but also creates new dynamics in managing civil rights, including protection of individual expression.¹ The significant changes in social life due to digitalization have led to violations of privacy rights, including the right to freedom of expression and protection from online threats.²

In this context, women have both significant opportunities and face considerable vulnerabilities. Women's access to digital spaces has opened broader opportunities for participation in public discourse, politics, economics, and culture. However, on the other hand, women are also subjected to different types of online gender-based violence, including harassment in cyberspace, stalking through digital platforms, discriminatory hate speech, and the spread of content that degrades women's dignity. This phenomenon causes the digital gender divide, which has the potential to hinder the full realization of the right to freedom of expression.³

Indonesia upholds the rule of law as the foundation of state authority, where every action of the government is required to be grounded in legal norms to prevent arbitrary practices. Indonesia as a state governed by law is obligated to maintain legal order, enforce justice, and realize the objectives of law. The 1945 Constitution of the Republic of Indonesia (UUD 1945) serves as the supreme legal source and the fundamental reference for both written and unwritten governance, making it the basis upon which all laws and regulations in Indonesia are established.⁴

Freedom of expression holds significant value for several reasons. First, freedom of expression is fundamental to realizing personal self-actualization and reaching one's fullest potential. Second, it serves as a vital foundation for the search for truth and the progress of knowledge. In this regard, a person seeking knowledge and truth must be open to listening to all viewpoints, consider all alternatives, test their judgments by confronting opposing views, and use various perspectives as effectively as possible. Third, freedom of expression is important for individuals to actively engage in decision-making processes, particularly in politics. Fourth, freedom of expression allows society and the government to achieve stability and adaptability.⁵

¹ Nalom Kurniawan and Mery Christian Putri, *Laporan Penelitian Konvergensi Hukum Dan Teknologi Dalam Proses Penegakan Hukum Di Mahkamah Konstitusi* (Jakarta, 2021).

² Elvan Maulana and Timbul Dompok, 'Hak Asasi Manusia Di Era Digital : Tantangan Dan Peluang Dalam Mengatasi Kejahatan Siber', 3.1 (2025).

³ UN Women, *Regular Resources Report 2021: Investing In Result*, 2022.

⁴ Wiranata, Khamim, and Imam Asmarudin, 'Kebebasan Berekspresi Melalui Media Digital Dan Penerapannya Di Indonesia', *Pancasakti Law Journal (PLJ)*, 1.2 (2023), pp. 205–18 <<https://doi.org/10.24905/>>.

⁵ Marwandianto Marwandianto and Hilmi Ardani Nasution, 'Hak Atas Kebebasan Berpendapat Dan Berekspresi Dalam Koridor Penerapan Pasal 310 Dan 311 KUHP', *Jurnal HAM*, 11.1 (2020), p. 1, doi:10.30641/ham.2020.11.1-25.

The right to freedom of expression is one of the Constitutional Rights of Citizens (HKWN) as outlined in the 1945 Constitution of the Republic of Indonesia, which has been thoroughly inventoried and categorized into three types of constitutional rights: Individual Rights represented by an icon, Collective Rights represented by 29 icons, and Vulnerable Community Rights represented by 3 icons. The icon display is designed and arranged to represent the characteristics or traits of the objects they symbolize, namely the norms and provisions regarding the constitutional rights of citizens. The right to freedom of expression, as outlined in HKWN, is both an individual and collective right of citizens, which can be represented by the following icons:⁶

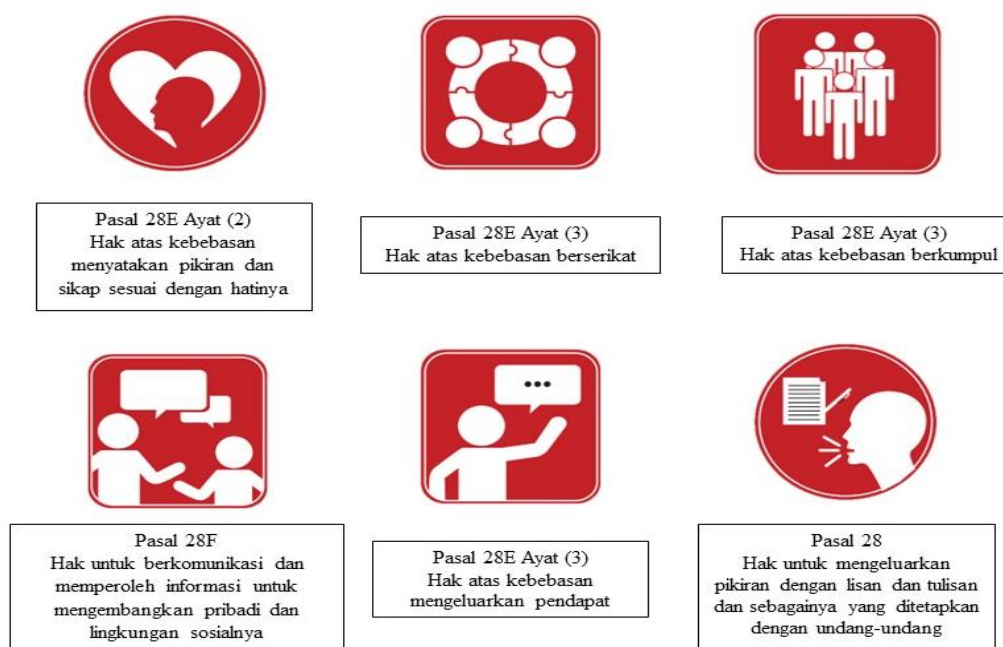


Figure 1 The right to freedom of expression

The Indonesian Constitution, through Article 28E paragraph (3) of the 1945 Constitution, explicitly guarantees the right of every individual to express their opinions. Article 28I paragraph (2) of the 1945 Constitution also emphasizes that everyone has the right to be free from discriminatory treatment on any grounds and has the right to protection from such discriminatory treatment. These rights apply universally, without gender distinction, and therefore constitute the constitutional basis for safeguarding women's freedom of expression in the digital age. Within the framework of constitutional law, this guarantee is part of the principle of constitutional rights that must be respected, protected, and fulfilled by the state through the principles of the rule of law and constitutional democracy.

In addition to national constitutional provisions, there are several international and national regulations that govern the right to freedom of expression. One of the international policy instruments governing freedom of expression is Article 19 of the 1948 Universal Declaration of Human Rights (UDHR), which guarantees the right to freedom of opinion and expression,

⁶ Mahkamah Konstitusi Republik Indonesia, 'Ikon HKWN: Hak Konstitusional Warga Negara', 2022.

and Article 19 of the International Covenant on Civil and Political Rights (ICCPR) 1966, which reaffirms the right to freedom of expression globally, ratified by Indonesia through Law No. 12 of 2005 concerning the International Covenant on Civil and Political Rights. Additionally, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979 requires state parties, including Indonesia, to ensure that women enjoy the right to freedom of expression without discrimination.⁷

Furthermore, the national policies and regulations governing the right to freedom of expression include Law No. 1 of 2024 on the Second Amendment to ITE Law. While aiming to protect rights in the digital space, this law raises concerns about restrictions on freedom of expression, particularly for women victims of digital violence. Additionally, the national instrument regulating freedom of expression is the Regulation of the Ministry of Women's Empowerment and Child Protection (PPPA). The PPPA regulates the protection of women and children in the online realm, including digital literacy and addressing online gender-based violence.⁸

In the perspective of constitutional law, these developments call for a reinterpretation of the constitution to adapt to technological changes. In line with the living constitution principle, the constitution must be interpreted dynamically to meet modern challenges, particularly in safeguarding women's freedom of expression in the digital era.⁹ Therefore, it is important to explore how Indonesian constitutional law, as well as national and international law, shapes the framework for protecting women's freedom of expression, particularly in this complex digital era.

In this research, the author will examine how constitutional law regulates freedom of expression, specifically for women in the digital era, and the challenges faced by women in realizing freedom of expression in the digital space. Through this research, the author will also formulate strategies for the development of a digital constitutional law that is responsive to the protection of women's freedom of expression.

The aim of this article is to analyze the constitutional guarantees of women's freedom of expression in the digital era based on Indonesian constitutional law and international instruments, identify the structural and normative challenges faced by women in exercising their right to free expression in the digital world, and provide recommendations for the development of a digital constitutional law that is more responsive to the protection of women's freedom of expression.

II. METHOD

This study employs a normative-conceptual legal research design with a multi-layered methodological framework to ensure both doctrinal depth and

⁷ Iwan Satriawan, Tareq Muhammad Aziz Elven, and Tanto Lailam, 'Internet Shutdown in Indonesia: An Appropriate Response or A Threat to Human Rights?', *Sriwijaya Law Review*, 7.1 (2023), pp. 19–46, doi:10.28946/slrev.vol7.iss1.1018.pp19-46.

⁸ Ayu Riska Amalia, Putri Raodah, and Nizia Kusuma Wardani, 'Menjamin Hak Perempuan Di Era Digital: Kewajiban Negara Dan Tantangan Regulasi Nasional', *Jurnal Kompilasi Hukum*, 9.2 (2024), pp. 178–91 <<https://jkh.unram.ac.id/index.php/jkh/article/view/184/132>>.

⁹ Adrian Kuenzler, 'What Competition Law Can Do For Data Privacy (and Vice Versa)', *Computer Law & Security Review*, 47 (2022), p. 105757, doi:10.1016/J.CLSR.2022.105757.

comparative insight. The research combines the statute approach, which examines the 1945 Constitution, the ITE Law, Law No. 12 of 2005 on the ratification of the ICCPR, Law No. 7 of 1984 on the ratification of CEDAW, and other relevant national regulations concerning women's protection in digital spaces; the conceptual approach, which analyzes theoretical perspectives on freedom of expression, the doctrine of the living constitution, constitutional rights, and the emerging concept of digital constitutional law; and the comparative approach, which assesses legal frameworks in other jurisdictions, particularly the General Data Protection Regulation (GDPR) in the European Union and the Online Safety Act in Australia, to highlight best practices and lessons for Indonesia. The sources of legal materials are drawn from primary materials, including the 1945 Constitution, ICCPR, CEDAW, the ITE Law, and related legislation; secondary materials, such as constitutional law textbooks, peer-reviewed journal articles, and international reports from UN Women and UNESCO; as well as tertiary materials like legal dictionaries, encyclopedias, and supporting references. Data collection is carried out through systematic library research using official legal databases, scholarly repositories, and authoritative international reports, while the analysis technique applies a prescriptive-analytical method, which not only describes existing legal norms but also critically evaluates their effectiveness, identifies normative gaps, and proposes gender-sensitive constitutional reforms, ensuring that the study contributes both normatively and prescriptively to the discourse on digital constitutional law.

III. ANALYSIS AND DISCUSSION

a. **Protection of the Right to Freedom of Expression in the 1945 Constitution**

The Constitution of the Republic of Indonesia explicitly provides for the right to freedom of expression as a component of human rights safeguarded by the state. In the context of the Indonesian legal system, protection of the right to express opinions is enshrined in several important articles of the 1945 Constitution of the Republic of Indonesia (UUD 1945), whose relevance is increasingly significant in the midst of the evolving digital era.¹⁰ First, Article 28E paragraph (3) of the 1945 Constitution states that *"Every person shall have the right to freedom of association, assembly, and to express opinions."* This provision forms the main foundation that guarantees every citizen, without exception, the right to express their views verbally, in writing, or through other media. Second, Article 28G paragraph (1) states that *"Every person shall have the right to personal protection, family, honor, dignity, and property under their control, and the right to security and protection from threats or fears of doing or not doing something that is a human right."* This provision adds another dimension to the protection of freedom of expression, especially in the context of protection from intimidation, persecution, or digital violence that often affects individuals, particularly women, in cyberspace. Third, Article 28I paragraph (2) affirms that *"Every person shall have the right to be free from any discriminatory treatment on any grounds and the right to*

¹⁰ Muten Nuna and Roy Marthen Moonti, 'Kebebasan Hak Sosial-Politik Dan Partisipasi Warga Negara Dalam Sistem Demokrasi Di Indonesia', *Jurnal Ius Constituendum*, 4.2 (2019), p. 110, doi:10.26623/jic.v4i2.1652.

protection from such discriminatory treatment." This provision reinforces the principle that freedom of expression should be exercised equally, free from any gender-based discrimination, religion, ethnicity, or any other identity, including in the context of the use of information technology.

The interpretation of these provisions is challenged in Law No. 9 of 1998 on the Freedom of Expression in Public, where Article 1 paragraph (1) states that "freedom of thought in the form of oral, written, or other methods may be expressed freely and responsibly in accordance with applicable laws." According to the 1945 Constitution and Law No. 9 of 1998, freedom of expression is a fundamental right that is declared and protected by the state. The principle of freedom of expression in the context of human rights is related to the idea of a state based on law. Indonesia, as a rule-of-law state, has agreed to various international regulations that respect the right to freedom of expression and opinion. This is also guaranteed in the country's constitution, so criticism of the government is not considered illegal. The right to freedom of expression is provided with constitutional protection in Indonesia. The imposition of restrictions on freedom of expression is directed toward preserving both national security and the collective welfare of society.¹¹ In the period from 1999 to 2002, the People's Consultative Assembly (MPR) amended the 1945 Constitution, which previously had no chapter on human rights (HAM). This change was a result of the 1998 reform movement, which emerged after the public, including students and youth, demanded the enforcement of the rule of law, respect for human rights, and the eradication of corruption, collusion, and nepotism (KKN). This was a significant advancement in Indonesia's transformation and an effort by the Indonesian people to make the 1945 Constitution more modern and democratic.

In the digital era, freedom of expression has expanded in form and media. If in the past, expression of opinions occurred in physical forums such as public discussions, print media, or demonstrations, today, most freedom of expression practices take place on digital platforms such as social media, websites, blogs, and online video platforms. The digital space has become the main arena for society to express opinions, social critiques, and resistance against injustice.

The 1998 political reform, spearheaded by the younger generation and students, called for freedom of communication as a manifestation of democracy for society and the state. This reform was carried out through the use of new media, supported by the Internet, to unite movements against the state's power that ignored democracy. This reform aimed to replace the political hegemony of authoritarianism with democracy that prioritizes freedom of expression which finally through the reform, Indonesia embarked on a new direction, one that embraced and institutionalized freedom of the press.¹²

Indonesian human rights are safeguarded in the 1945 Constitution, ensuring the rights of every citizen and resident. The Indonesian believe that

¹¹ Latipah Nasution, 'Hak Kebebasan Berpendapat Dan Berekspresi Dalam Ruang Publik Di Era Digital', *Adalah*, 4.3 (2020), pp. 37–48, doi:10.15408/adalah.v4i3.16200.

¹² Muhammad and Syahnun Harahap, *Kemerdekaan Pers Pada Orde Reformasi Jurnal Ilmiah Hukum Dirgantara-Fakultas Hukum Universitas Dirgantara Marsekal Suryadarma* |, 2019, ix.

human rights must take into account the uniqueness of Indonesia, and each human right must be in line with responsibility, so that there is a relationship of mutual respect and recognition of each individual's human rights, including freedom of religion, belief, freedom of expression, association, and behavior, as well as human rights related to access to information and communication.¹³

Therefore, constitutional protection for the right to freedom of expression must still apply in the digital space. The state has an obligation to ensure that the expression of citizens on the internet is not arbitrarily silenced, and to ensure that this freedom is not used as a pretext for allowing violence or hate speech, especially against vulnerable groups. Thus, the interpretation of the 1945 Constitution must continue to develop progressively to meet the challenges of the times. The Constitutional Court, as the protector of citizens' constitutional rights, plays a crucial role in interpreting constitutional provisions to keep them relevant to the dynamics of today's digital society.

b. National and International Instruments on Freedom of Expression for Women

The freedom to express opinions and communicate verbally or in writing is a fundamental element in democratic governance systems with a very broad definition. Establishing clear legal rules as an initial step in ensuring freedom of expression and the right to voice opinions is a reflection of democracy that respects the law. The protection of women's freedom of expression is not only by the national constitution but is also strengthened by various national and international legal instruments. These legal instruments form the essential foundation to ensure that women have equal opportunities to express their views, both in physical spaces and in the digital world.

The right to freedom of expression, including the right to convey and receive information, is a fundamental human right in Indonesia, as stipulated in various laws, such as the 1945 Constitution, Law No. 9 of 1998 on the Freedom to Express Opinions in Public, Law No. 39 of 1999 on Human Rights, Law No. 40 of 1999 on the Press, Law No. 32 of 2002 on Broadcasting, Law No. 14 of 2008 on Public Information Transparency (KIP), Government Regulation No. 61 of 2010 on the Implementation of Public Information Transparency (KIP), Minister of Administrative and Bureaucratic Reform Regulation No. 83 of 2012 on Social Media Utilization Guidelines for Government Institutions, ITE Law, and Government Regulation No. 71 of 2019 on the Organization of Electronic Systems and Transactions.¹⁴

Within the national instruments, Law No. 39 of 1999 on Human Rights (UU HAM) specifically addresses the right to freedom of expression in Articles 23 to 25. Article 23 states that everyone has the right to freedom of expression, Article 24 recognizes the right of everyone to communicate and receive information, and Article 25 affirms the right of everyone to associate and assemble. This law provides the national legal basis for the protection of

¹³ MPR RI, 'Panduan Pemasyarakatan', *Sekretariat Jendral MPR RI*, 2020 <<https://www.mpr.go.id/sosialisasi/panduan-pemasyarakatan>>.

¹⁴ Siti Fatimah, *Jaminan Kepastian Hukum Atas Kebebasan Berpendapat Di Era Konvergensi Media*, Disertasi (Fakultas Hukum Universitas Sebelas Maret, 2024).

women's right to express opinions, including considering gender equality aspects in its implementation.¹⁵

In addition to the Human Rights Law, there is also Law No. 1 of 2004 in conjunction with ITE Law. The ITE Law regulates new forms of expression in digital spaces, including the use of electronic media to express opinions. While intended to regulate the flow of information, the ITE Law often sparks controversy regarding freedom of expression, particularly due to the potential for criminalizing women's expression in the digital realm. Therefore, in the context of women's rights protection, the implementation of the ITE Law must ensure a balance between maintaining public order and protecting freedom of expression.¹⁶

Law No. 7 of 1984 on the Ratification of CEDAW also serves as a national instrument regulating the right to freedom of expression. Through this law, Indonesia ratified the CEDAW. This ratification strengthens the state's obligation to ensure that women can enjoy their civil and political rights, including freedom of expression, without discrimination. CEDAW encourages countries to remove cultural, social, and legal barriers that hinder women from enjoying their right to express their opinions.

Internationally, principles that reinforce the right to freedom of expression are outlined in several human rights instruments. Indonesia's ratification of the ICCPR through Law No. 12 of 2005 reinforces, under Article 19, the principle that all individuals has the right to freely express opinion and expression without interference, including the ability to seek, obtain, and communicate information through any medium irrespective of national frontiers. In parallel, CEDAW serves as a normative instrument that underscores the eradication of gender-based discrimination, particularly by affirming women's equal rights to access and freely express opinions in both public and private life.¹⁷

Article 19 of the Universal Declaration of Human Rights (UDHR) ensures that *"everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers."* This declaration marks the beginning of universal recognition of the right to freedom of expression, which applies without discrimination, including based on gender.

Furthermore, Article 19 of the ICCPR, which Indonesia ratified through Law No. 12 of 2005, strengthens the right to freedom of expression. The Covenant recognizes the right of everyone to impart information and ideas in various forms. It demands that state parties respect and protect freedom of expression without discrimination, making it relevant in ensuring women's rights in both public and digital spaces.

¹⁵ Della Lusky Selian and others, 'Freedom of Expression in the Era of Democracy: Records of Human Rights Enforcement Kebebasan Berekspresi Di Era Demokrasi: Catatan Penegakan Hak Asasi Manusia', 2.2 (2018), pp. 185–94 <<https://journal.unnes.ac.id/sju/index.php/lslr/index>>.

¹⁶ Stella Hita Arawinda, 'Perlindungan Hukum Terhadap Perempuan Korban Kekerasan Berbasis Gender Online Di Indonesia', *Jurnal Yustika: Media Hukum Dan Keadilan*, 24.02 (2022), pp. 76–90, doi:10.24123/yustika.v24i02.4599.

¹⁷ 'ANNEX Office of the United Nations High Commissioner for Human Rights', no. March (2020), pp. 1–9.

Additionally, the CEDAW mainstreams gender in political rights and freedom of expression. CEDAW not only demands the elimination of discrimination against women in politics but also requires states to take affirmative measures to ensure that women can participate equally in political and public life. This includes the right to express opinions freely in public forums and media, including digital spaces, as well as protection from gender-based violence or intimidation.

According to Article 19 of the ICCPR, global human rights principles interpret the right to express opinions in two ways: internally (within personal thoughts) and externally (in the public environment). Internal freedom is linked to an individual's mental state when expressing opinions (Article 19(1) ICCPR), and it cannot be constrained. For this reason, the state must refrain from intervention. Meanwhile, external freedom considers the freedom to openly express opinions, which may be subject to limitations (International Covenant on Civil and Political Rights, Article 19(2)). The implementation of restrictions must comply with applicable laws and should respect the rights or reputation of others, as well as maintain national security, public order, health, or morals (Article 19(3) ICCPR). The right to express opinions without interference is regulated not only in Article 19(1) of the ICCPR but also in Articles 28 and 28E(2) of the 1945 Constitution of Indonesia. The Human Rights Law also includes regulations on this in Article 23(2), stating that "All individuals have the freedom to voice, disseminate, and express opinions according to their personal beliefs, either orally or in writing through print or electronic media, with due regard to religious values, morality, social order, public interest, and national unity." Therefore, the Indonesian state is prohibited from intervening in the right to freedom of expression.¹⁸

In carrying out its obligations under Article 19(1) of the ICCPR concerning freedom of expression, Indonesia, as a state party, is required to comply with the standards set forth in General Comment No. 34 of the Human Rights Committee. Paragraph 9 of this Comment affirms that freedom of expression constitutes an absolute right that cannot be restricted under any circumstances (a non-derogable right). The opinions protected under this right include those related to politics, science, history, morality, and religion. Any form of interference, intimidation, abuse, including arrest, detention, trial, and imprisonment based on someone's personal opinions, violates the provisions of Article 19(1) ICCPR. Meanwhile, Paragraph (10) clarifies that all forms of coercion to compel an individual to express their opinions are prohibited. Freedom of thought also includes the freedom not to express an opinion.

Freedom of expression is a fundamental right that is not absolute but has certain requirements.¹⁹ This right is emphasized in Article 19(2) of the ICCPR; Articles 28, 28E(2) and (3), 28F of the 1945 Constitution of the Republic of Indonesia; and in Article 23(2) and Article 25 of the Indonesia Human Rights of Law, which states, "Every individual has the right to express

¹⁸ Elfia Farida, 'Kewajiban Negara Indonesia Terhadap Pemenuhan Hak Kebebasan Berpendapat Dan Berekspresi', *Jurnal Ilmiah Ilmu Hukum QISTIE*, 14.2 (2021), p. 43.

¹⁹ Daniel Riffe and Kyla P. Garrett Wagner, 'Freedom of Expression: Another Look at How Much the Public Will Endorse', *Communication Law and Policy*, 26.2 (2021), pp. 161–86, doi:10.1080/10811680.2021.1893096.

their opinion in public...". To ensure the fulfillment of this right, Indonesia must refer to General Comment No. 34 of the ICCPR on the Siracusa Principles. Additionally, in General Comment No. 34, Paragraph (11), state parties are required to ensure freedom of speech, including the right to seek, receive, and share information and ideas about everything without exception. One of the rights included in this situation is the freedom to express and receive ideas or opinions through various forms of communication that can be shared with others. However, this must comply with the provisions set out in Articles 19(3) and 20 of the ICCPR. This includes discussions about politics, opinions about individuals, social issues, human rights issues, journalistic activities, arts and culture, education, religious teachings, and business advertisements. It also involves ideas that may be considered highly inappropriate, even though such expressions can be regulated within the limitations determined by Articles 19(3) and 20 of the ICCPR.

In General Comment No. 34, Paragraph (12), according to this Article, states have the responsibility to preserve and protect all forms of expression and their dissemination methods. Examples include speaking, writing, using sign language, and non-verbal communication such as images, paintings, and other artistic objects. There are various ways to express oneself, including through media such as books, newspapers, brochures, posters, banners, clothing, and legal documents. This also includes audiovisual expressions or those based on electronic technology or the internet. In this regard, law enforcement officers should not use force against murals or social media posts that criticize the government. Provisions in Articles 19(3) and 20 of the ICCPR may limit the right to express opinions. In practice, based on General Comment No. 34, Paragraph (21), as outlined in the text, limitations on freedom of expression are justified solely under two conditions. The first is to protect the rights or reputation of others. The second is to safeguard national security, public order, public health, or public morals. When the government imposes restrictions on freedom of expression, they must ensure that the right remains protected and is not negatively affected by their actions. Regulations regarding restrictions should be established in laws, as outlined in General Comment No. 34, Paragraph (22), explaining the restrictions found in the Siracusa Principles on Limitations and Derogations of Provisions in the ICCPR (Annex, UN.Doc.E/CN.4/1984/4 (1984)). Human rights limitations should not be used as tools to protect the state and public officials from criticism and public opinion, considering their reputation.²⁰

The Indonesian legal system has various important components, including the police, prosecutors, courts, advocates, correctional institutions, and alternative dispute resolution bodies.²¹ Repressive actions taken by the police are a central issue in the application of the law and the protection of human rights (HR) in the context of the freedom of expression.²² In addition, there has been a transformation in how law enforcement authorities

²⁰ Farida, 'Kewajiban Negara Indonesia Terhadap Pemenuhan Hak Kebebasan Berpendapat Dan Berekspresi'.

²¹ Agus Santoso, 'Hukum, Moral, Dan Keadilan: Hukum (Edisi Pertama)', viii (2015) <<https://library.bpk.go.id/koleksi/detil/jkpkbpkpp-e-202111122312>>.

²² Lutfil Ansori, Penegakan Hukum, and Hukum Progresif, 'Reformasi Penegakan Hukum Perspektif Hukum Progresif', 4.2 (2017), pp. 148–63.

understand and respond to the practice of freedom of expression, where this right, originally guaranteed and protected by the constitution, is now viewed as a threat to public order and national security. This has resulted in the reduction of the right to freedom of speech, criminalization, arrests, and other repressive actions. Although freedom of expression is not absolute, its regulation must remain consistent with constitutional provisions and the protection of human rights.²³

Along with the advancement of information technology, media for expressing opinions has undergone significant changes, shifting from physical forums like demonstrations, discussions, or print media, to digital platforms like social media, blogs, video channels, and other online forums. The digital space has become a new arena for people to voice opinions, advocate for rights, and build communities. However, this transition also brings new challenges in terms of legal protection and state oversight. In this context, constitutional law must adapt to digital dynamics to remain relevant in guaranteeing fundamental rights, especially for vulnerable groups such as women.²⁴

As a democratic country, Indonesia has the responsibility to uphold, enhance, implement, and fulfill the right to freedom of expression, which is part of human rights, as stipulated in Article 28I(4) of the 1945 Constitution. However, it is important to emphasize that the right to express opinions and freedom of expression is not without limitations. Freedom of speech must be considered prudently, taking into account individual rights and public interest. Regulations regarding freedom of expression should be formulated clearly and concisely to be understood by all individuals. Those who decide to impose such limitations must be able to justify their need and act reasonably. Furthermore, these limitations must have safeguards to prevent abuse and involve proper legal processes.²⁵

c. Women in the Digital World: Between Opportunities and Vulnerabilities

Women are a vital pillar in the social, economic, and political development of a nation. Their roles are not limited to the domestic sphere but are increasingly evident in the public domain, including leadership, education, and technology. However, women still face various structural challenges such as gender inequality, discrimination, violence, and limited access to resources. To achieve true equality, an intersectional approach is required that ensures the protection of women's rights and sustainable empowerment. Recognition of women's dignity, capabilities, and

²³ Barda Nawawi Arief, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan ...* - Prof.Dr.Barda Nawawi Arief, S.H. - Google Buku, Prenada Media, 5th edn (Kencana (Prenada Media Group), 2018) <https://books.google.co.id/books/about/Masalah_Penegakan_Hukum_dan_Kebijakan_Hu.html?id=AeLJDwAAQBAJ&redir_esc=y>.

²⁴ Jeremy Harris Lipschultz, *Social Media Communication, Social Media Communication* (Taylor and Francis, 2017), doi:10.4324/9781315388144.

²⁵ Syafaat Anugrah Pradana, Rusdianto Sudirman, and Muh. Andri Alvian, 'Kemelitan Penegakan Hukum Terhadap Hak Kebebasan Berpendapat', *DIKTUM: Jurnal Syariah Dan Hukum*, 20.1 (2022), pp. 156–68, doi:10.35905/diktum.v20i1.2811.

contributions is an essential foundation in creating a just, inclusive, and gender-equal society.²⁶

Digital transformation has opened new spaces for women to express themselves, access information, and participate in socio-political life. In the context of digital democracy, women's presence in the online space reflects the expansion of citizen participation and the strengthening of constitutional rights to freedom of expression. Access to the internet and social media allows women to build networks, advocate for gender issues, and push for public policies that are more responsive to their needs. The digital space has also become an important channel for women to express their opinions freely and independently, which was previously often restricted by patriarchal social structures.²⁷

However, behind these opportunities, women also face very real vulnerabilities in the digital world. Various forms of gender-based online violence (GBOV) are becoming more rampant, such as cyberbullying, doxing (public dissemination of personal data), and hate speech targeting women's gender identity or sexuality. These forms of violence not only harm women psychologically but also limit their participation in the online world. UN Women reports indicate that women globally are more vulnerable to digital violence compared to men, particularly when they are active in public or political issues. Moreover, algorithms and social media culture further reinforce gender stereotypes, where women are often portrayed as sexual objects, harassed for their appearance, or considered unworthy of expressing critical opinions.²⁸

Based on SAFEnet monitoring, there were 48 cases of freedom of expression violations in the digital realm between April and June 2024, with 45 reported victims. This number represents an increase of 18 cases compared to the previous quarter, which recorded 30 cases. In terms of the number of reporters, the figure decreased compared to the previous period, which recorded 52 reporters. The most common reports related to digital expression were made under the ITE Law, without specifying a particular article, totaling 15 cases. Hate speech/incitement under Article 28 paragraph (2) of the ITE Law was recorded in 6 cases. Alleged defamation and/or slander under Article 27 paragraph (3), as well as threats of violence or intimidation under Article 45 paragraph (3) of the ITE Law, were each recorded in 4 cases. Furthermore, cases violating decency under Article 27 paragraph (1) were recorded in 3 cases. Of the 48 cases monitored throughout the second quarter of 2024, only 22 cases had reports filed under the new ITE Law.²⁹

Freedom of speech is theoretically considered nearly limitless, but in practice and implementation, it often presents a paradox where the freedom of society, especially for women, to speak or express opinions through various

²⁶ Yulia Hesti and others, 'Korelasi Antara Kebebasan Berekspresi Dalam Peningkatan Kasus Kejahatan Asusila Di Media Digital (Sextorsi)', *JLEB: Journal of Law, Education and Business*, 2.1 (2024), pp. 522–29, doi:10.57235/jleb.v2i1.1890.

²⁷ Siti Fatimah, 'Demokrasi Digital Dan Welfare State Indonesia', *Prosiding Konferensi Nasional APHTN-HAN*, 1.1 (2023), pp. 855–86.

²⁸ 'APC Annual Report 2020' <<https://2020report.apc.org/>> [accessed 22 February 2025].

²⁹ Abul Hasan Banimal and others, *Laporan Pemantauan Hak-Hak Digital Di Indonesia* (Bali, 2025).

forms of expression is often restricted in the name of promoting the greater public good. Most scholars agree that protection of freedom of speech must be maintained at a very high level. In this regard, high protection is necessary for freedom of speech, especially in the context of politics and public policy, due to its importance for the stability of governance. This indicates that there should be consistent communication between society and the government, where communication from society serves as a form of oversight on the government's actions. Freedom of expression is the core of democracy because the effectiveness of democracy depends on citizens' ability to criticize the government and actively participate in discussions on issues that may affect the government, especially in decision-making and policy formation in the current era of social media.³⁰

The phenomenon of women facing criminal charges in connection with their exercise of freedom of expression online has grown increasingly prevalent. For instance, women who share experiences of sexual harassment on social media are often criminalized on the grounds of defamation of the perpetrator. Examples include cases of infidelity in households, such as the case of Valencya who was sued by her husband for scolding him,³¹ the sexual harassment case by Herry Wirawan,³² and instances where the wife of a prisoner is extorted by rogue police officers,³³ among many other cases. This indicates that the ITE Law still does not provide adequate protection for women in expressing themselves; on the contrary, it can be used as a tool to silence their voices. The National Commission on Violence Against Women report in 2021 noted that many victims of sexual violence face revictimization because their courage to speak out in the digital space leads to legal action based on articles in the ITE Law.

Women in the digital world face a complex dual dynamic that simultaneously opens up vast participatory spaces while also presenting new and significant vulnerabilities. The digital world provides various opportunities for women to voice their opinions, expand their social networks, enhance literacy, and develop their economic and intellectual capacities. Social media, community-based platforms, and virtual discussion spaces have enabled women, including those from marginalized groups, to break through the boundaries of private space into public space more equitably. However, as access opens up, women also become the most vulnerable group to experience gender-based online violence (GBOV), doxing, non-consensual

³⁰ Dahliil Imran and Nur Hidayat Sardini, 'Bayang Otoritarianisme Digital: Analisis Rkuhp Kehormatan Penyelenggara Negara Dan Kebebasan Menyatakan Pendapat', *Jurnal Education and Development*, 11.1 (2022), pp. 24–30, doi:10.37081/ed.v11i1.4223.

³¹ Farida Farhan, 'Cerita Valencya, Dituntut Penjara Karena Marahi Suami Mabuk: Kaget Omelannya Direkan Jadi Alat Bukti', *Kompas.Com*, 2021 <<https://regional.kompas.com/read/2021/11/16/125650478/cerita-valencya-dituntut-penjara-karena-marahi-suami-mabuk-kaget-omelannya>>.

³² Rachmadi Rasyad, 'Melihat Ponpes Milik Herry Wirawan, Pemerkosa 12 Santri', *Kumparan.News*, 2021 <<https://kumparan.com/kumparannews/melihat-ponpes-milik-herry-wirawan-pemerkosa-12-santri-1x4n2YB5FK0/full>>.

³³ M. Syofri Kurniawan, 'Istri Tahanan Mengaku Dimintai Rp20 Juta Oleh Oknum Polisi Agar Suaminya Tak Ditembak - TribunJateng', *TribunJateng.Com*, 2021 <<https://jateng.tribunnews.com/2021/12/16/istri-tahanan-mengaku-dimintai-rp20-juta-oleh-oknum-polisi-agar-suaminya-tak-ditembak>>.

content dissemination, and cyberattacks targeting their bodies and gender identities. In the context of freedom of expression, women are often silenced not because of the substance of their arguments but because of their biological and social identity as women. This situation poses a serious challenge to the principle of equality before the law and the constitutional right to freedom of expression. Unfortunately, the existing legal framework, including in Indonesia, is still not fully responsive in protecting women in the digital realm comprehensively. The digital constitutional law instruments must be able to guarantee a safe space for women to express their opinions, free not only from state intervention but also from gender-based violence and intimidation by non-state actors. In other words, digital transformation must be accompanied by affirmative policies that substantively guarantee the protection of women's constitutional rights, not just formally. Without genuine legal support, the digital world, which should be a space for liberation, may turn into a new arena of repression that reinforces women's subordination in society.³⁴

Therefore, it is crucial to place the protection of women in the digital world as an integral part of digital constitutional law. The state is not only obliged to guarantee the right to freedom of expression but also to create a safe and equitable digital space for all, especially vulnerable groups such as women.

d. Case Studies and International Comparative Perspectives on Women's Freedom of Expression in Digital Spaces

The challenges faced by Indonesian women in exercising freedom of expression in the digital sphere are best illustrated through real case studies. One prominent example is the Valencya case, in which a woman was criminally charged under the ITE Law after publicly expressing grievances about domestic abuse on social media. Instead of being recognized as a victim, she was criminalized under defamation provisions, demonstrating how the ITE Law is often used as a tool to silence women rather than protect them.³⁵ Similarly, cases of doxing and cyber harassment against women activists, including those advocating for gender equality and environmental justice, have shown that weak enforcement mechanisms and patriarchal interpretations of law often exacerbate the vulnerability of women in digital spaces.³⁶ These cases prove the normative disparity between the constitutional guarantee of free expression and the actual experiences of women in Indonesia's digital space.

In contrast, international experiences provide valuable comparative lessons. The European Union's General Data Protection Regulation (GDPR)

³⁴ Endah Pertiwi and others, 'Analisis Yuridis Terhadap Penyalahgunaan Data Pribadi Pengguna Media Sosial', *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia*, 3.3 (2022), pp. 10–16, doi:10.52005/rechten.v3i3.65.

³⁵ Farhan, 'Cerita Valencya, Dituntut Pennjara Karena Marahi Suami Mabuk: Kaget Omelannya Direkan Jadi Alat Bukti'.

³⁶ Komnas Perempuan, *CATAHU 2023: Catatan Tahunan Kekerasan Terhadap Perempuan Tahun 2023 Momentum Perubahan: Peluang Penguatan Sistem Penyikapan Di Tengah Peningkatan Kompleksitas Kekerasan Terhadap Perempuan*, CATAHU: Catatan Tahunan Tentang Kekerasan Terhadap Perempuan (Jakarta, 2024) <<https://komnasperempuan.go.id/>>.

establishes strong safeguards for personal data, including sensitive data categories such as gender identity, thereby minimizing the risk of online harassment and misuse of personal information.³⁷ The GDPR framework demonstrates how regulatory clarity, combined with robust enforcement mechanisms, can enhance women's sense of security in digital participation. Likewise, Australia's Online Safety Act 2021 provides a rapid response system for victims of online abuse, allowing the eSafety Commissioner to demand the removal of harmful content within strict timeframes. This proactive approach ensures that women experiencing cyber harassment or non-consensual image sharing have effective legal recourse, contrasting sharply with the slow and often dismissive responses in Indonesia.³⁸

Based on the comparisons above, these comparative perspectives, it is clear that Indonesia lags behind in adopting gender-sensitive digital constitutional safeguards. The Indonesian legal framework remains gender-neutral in form but gender-blind in substance, as it does not explicitly address the structural barriers women face in digital spaces. Meanwhile, both the EU and Australia have demonstrated the importance of embedding gender sensitivity, victim-centered mechanisms, and strong institutional oversight within digital governance frameworks. These comparative lessons suggest that Indonesia should revise the ITE Law to explicitly protect women from online gender-based violence, integrate data protection principles similar to the GDPR, and establish independent bodies with authority to handle digital rights violations swiftly and effectively.

In sum, integrating case studies and international comparisons not only strengthens the normative analysis but also provides concrete pathways for reform. By learning from the criminalization of women under the ITE Law domestically and adopting best practices from the GDPR and the Online Safety Act, Indonesia can move toward a digital constitutional framework that is both inclusive and protective, ensuring that women's freedom of expression is meaningfully guaranteed in practice.

e. Legal Analysis: Constitutional Challenges in Ensuring Women's Freedom of Expression

Within the framework of Indonesian law, women's freedom of expression in the digital sphere faces a number of normative and structural challenges. Normatively, while the 1945 Constitution guarantees the right to freedom of expression, it does not explicitly address the protection of digital rights, including privacy and cybersecurity rights. Articles 28E and 28F provide the foundation for freedom of expression and communication, but in practice, the scope of these protections has not been fully adapted for the digital era.³⁹

³⁷ Regulation (EU) 2016/679 of The European Parliament and of The Council of 27 April 2016, *Official Journal of the European Union*, 2016, doi:10.4324/9781315775203-11.

³⁸ Australian Government, *Statutory Review of the Online Safety Act 2021*, 2021, MMXXI, p. 4 <<https://www.infrastructure.gov.au/have-your-say/statutory-review-online-safety-act-2021>>.

³⁹ Bobi Aswandi and Kholis Roisah, 'Negara Hukum Dan Demokrasi Pancasila Dalam Kaitannya Dengan Hak Asasi Manusia (Ham)', *Jurnal Pembangunan Hukum Indonesia*, 1.1 (2019), p. 128, doi:10.14710/jphi.v1i1.128-145.

The digital age has opened new opportunities for women to engage more actively in the public sphere. However, this technological development also presents serious challenges for the protection of freedom of expression, particularly regarding gender-based violence, regulatory weaknesses, and cultural barriers. Women in the digital space are often targets of gender-based online violence, which threatens their right to freely express their opinions. Forms of Digital Violence or Gender-Based Online Violence (GBOV) include doxing, the dissemination of personal information without consent to intimidate victims, cyber harassment through messages, comments, or the spread of offensive content, and gender-based hate speech, which targets women based on their gender identity.

Legally, freedom of expression is guaranteed by various legal instruments, both national and international. At the national level, the 1945 Constitution of the Republic of Indonesia, Article 28E paragraph (3), states that "Everyone has the right to freedom of association, assembly, and to express opinions." This guarantee is universal and inclusive; however, in practice, there are still gaps in protection for vulnerable groups, particularly women. A key constitutional challenge is the lack of a legal approach that explicitly affirms and responds to the vulnerability of women in exercising their right to express opinions in the public sphere, especially in the digital context. For example, in the case of Agni, a victim of sexual violence at Gadjah Mada University (UGM), the public support and opinions voiced by women through social media faced backlash, labeling, and attempts at silencing, which were not seriously addressed by the state. Despite the principle of equality being recognized in Article 28D paragraph (1) and (3) of the 1945 Constitution, as well as Law No. 7 of 1984 on CEDAW, in practice, women are more likely to become victims of doxing, cyberstalking, and gender-based disinformation. The Constitutional Court, in its Decision No. 50/PUU-VI/2008, affirmed that the protection of human rights constitutes a central element in the guarantee of freedom of expression. However, it has never explicitly addressed the vulnerability of women in the digital space. Indonesian positive law also lacks an effective and gender-sensitive redress mechanism when women become victims of violations of their freedom of expression, whether by the state or non-state actors. Moreover, gender sensitivity among law enforcement officers remains a serious issue, as seen in various cases of digital violence reports against women that often lead to criminalization or neglect. Therefore, a progressive reinterpretation of the constitution must be carried out through a substantive justice approach. Indonesia's digital constitution should place an affirmative principle on vulnerable groups, strengthening the role of the Constitutional Court in interpreting constitutional rights based on the principles of gender inclusivity and adaptation to the dynamics of the digital space. Without this, women's freedom of expression will remain a formal right with no real protective power in practice.

According to a 2022 UN Women report, almost 38% of women globally experience online harassment. In Indonesia, a 2021 SAFEnet (Southeast Asia Freedom of Expression Network) report recorded that 45% of victims of gender-based online violence were young women aged 18-24. These cases

demonstrate the high risks women face when expressing themselves in the digital world.

Both regulatory frameworks and law enforcement practices remain significant hurdles in ensuring the protection of women's expressive rights in the digital sphere. For example, the problematic ITE Law, which is supposed to protect digital rights, is often used as a tool to criminalize opinions. Furthermore, regulations like the ITE Law create ambiguity. On the one hand, the ITE Law aims to protect internet users from cybercrime, including gender-based online violence. On the other hand, vague provisions such as defamation and hate speech articles are often used to silence criticism and limit the expression of female activists in the digital space. This issue is further exacerbated by derivative regulations, such as the Ministry of Communication and Information's Content Moderation Regulation, which has yet to provide adequate gender-sensitive protection standards.⁴⁰

Structural barriers further exacerbate the situation. Law enforcement in cases of gender-based digital violence is still biased and tends to blame the victim.⁴¹ Law enforcement officers often lack an understanding of the characteristics of digital violence, resulting in many women's reports being ignored or processed slowly. Additionally, protection mechanisms for digital rights, such as reporting to digital platforms or authorities, remain ineffective and unresponsive to the needs of female victims.

Compared to some other countries, Indonesia's approach appears insufficiently progressive. In the European Union, the General Data Protection Regulation (GDPR) provides special protection for personal data, including sensitive data related to gender and women's rights, thus strengthening individuals' control over their digital footprints.⁴² Meanwhile, Australia has implemented the Online Safety Act 2021, which explicitly sets out protection for victims of online gender-based violence and provides a fast-track process to remove harmful content.⁴³ Both models illustrate the need for a robust, adaptive, and gender-sensitive regulatory framework to confront the challenges surrounding women's freedom of expression in the digital realm.

Democracy can be seen as a globally expanding system, but in its implementation and development, each country has its own characteristics, influenced by factors such as history and political culture. However, the broadly applicable democratic principle remains inseparable from the value of freedom of expression. Freedom of expression is a right inherent to every human being and must be firmly protected. Moreover, freedom of expression, especially for women, can only be realized when a democratic system ensures

⁴⁰ Hotrun Siregar, 'Analisis Pemanfaatan Media Sosial Sebagai Sarana Sosialisasi Pancasila', *Pancasila: Jurnal Keindonesiaan*, no. 1 (2022), pp. 71–82, doi:10.52738/pjk.v2i1.102.

⁴¹ Komnas Perempuan, *CATAHU 2023: Catatan Tahunan Kekerasan Terhadap Perempuan Tahun 2023 Momentum Perubahan: Peluang Penguatan Sistem Penyikapan Di Tengah Peningkatan Kompleksitas Kekerasan Terhadap Perempuan*.

⁴² Victor Claussen, 'Fighting Hate Speech and Fake News. The Network Enforcement Act (NetzDG) in Germany in the Context of European Legislation', *Rivista Di Diritto Dei Media*, 3, 1-27, 3 (2018), pp. 1–27 <www.reuters.com>.

⁴³ Chapter Author and others, 'Chapter Title: A Positive Freedom of Public Speech? Australian Media Law Reform and Freedom of Political Communication Title: New Directions for Law in Australia Book Subtitle: Essays in Contemporary Law Reform', 2016.

that this freedom remains intact without pressure. The evolving and dynamic freedom to express opinions, particularly in the digital public space, aligns with changes occurring in democratic systems.

Furthermore, deeply rooted patriarchal culture and social stigma exacerbate the challenges of women's freedom of expression. Women who express opinions in the digital public space are often seen as "going against norms" or "improper," reflecting how patriarchal values still strongly limit women's expressive space. Moreover, women who actively voice critical views, especially on political or social issues, are often stigmatized as "provocateurs" or "undeserving". Such actions do more than constrain women's expressive rights; they also instill fear in other women, pressuring them into silence.

Therefore, it is necessary to reformulate Indonesia's digital constitution to not only guarantee freedom of expression but also build real protective mechanisms for women against digital violence, in line with international human rights standards.

f. Future Gender-Responsive Digital Constitution

Digital transformation has changed the face of democracy and human rights, including women's freedom of expression. However, the digital world also presents serious challenges in the form of discrimination, gender-based online violence, and structural vulnerabilities. Therefore, building a gender-responsive digital constitution becomes a crucial step to ensure that women have safe and equal access in the digital space.

One of the key pillars of a gender-responsive digital constitution is strengthening secure access for women, including through affirmative action policies. The state needs to adopt policies that ensure the digital space is inclusive, free of discrimination, and supports the active participation of women. This includes providing secure reporting channels for digital violence, gender-sensitive handling, and training for law enforcement officials.

Furthermore, gender-based digital literacy is vital. Many women lack sufficient understanding of digital privacy, online security, and how to address online violence. Gender-sensitive digital literacy programs will empower women to be better protected and more empowered in using information technology (UNESCO, 2021).

The massive digital transformation has shifted the landscape of public participation, including in the practice of freedom of expression. However, unfortunately, the existing legal framework and digital constitution are still gender-neutral, meaning they have not yet specifically addressed the inequalities and vulnerabilities faced by women. To build a gender-responsive digital constitution, the legal approach should no longer rely solely on the principles of universality and legal formalism but must emphasize substantive justice. This means the state must actively identify the structural barriers that women face in expressing their opinions, both in physical and digital public spaces, and provide genuine legal protection in its truest sense. An ideal digital constitution should not only affirm freedom of expression as a normative guarantee but also provides effective protection instruments against forms of gender-based online violence (GBOV), algorithmic discrimination, and digital silencing experienced by women. In this context, recognizing gender-based digital inequality needs to be enshrined in clear

derivative regulations, such as the Personal Data Protection Bill (PDP), the revision of the ITE Law, and technical regulations from the Ministry of Communication and Information (Kominfo), which have so far lacked adequate gender sensitivity.

Building a gender-responsive digital constitution also requires strengthening the capacity of state institutions to respond to the fast-changing dynamics of the digital space, which is vulnerable to exploitation to harm vulnerable groups. The Constitutional Court, for example, needs to be more open to progressive interpretations of Article 28E of the 1945 Constitution by considering the social and digital dimensions of women's expression. In addition, the parliament and regulatory bodies such as the Indonesian Broadcasting Commission (KPI), the National Commission on Violence Against Women (Komnas Perempuan), and Kominfo must work in synergy to ensure that national digital policies are built with a strong and participatory gender perspective. Women's participation in the formulation of digital policies must also be guaranteed both in terms of quota and substance to ensure that the resulting regulations are not biased toward a masculine perspective. Equally important, gender-responsive digital constitution education should be integrated into law and public policy curricula at the higher education level, so that future policymakers have a strong ethical and legal foundation when designing a safe and just digital space. On the other hand, civil society and digital women's communities must continue to be strengthened as critical partners for the state in building a healthy, open, but gender-just freedom of expression ecosystem. Without multisectoral collaboration and strong political will, the digital constitution will always lag behind the evolving social reality, and women will continue to be victims of a system that should protect their rights. Therefore, building a gender-responsive digital constitution is not just about the law, but about political courage, ethical justice, and a commitment to inclusive democracy.

In efforts to strengthen the national legal framework, reform of the ITE Law becomes crucial. The current ITE Law is considered ambiguous and often used to criminalize expression, including that of women human rights defenders. Revisions should focus on affirming protection for victims of gender-based online violence and removing potentially abusive provisions.

Furthermore, regulations on personal data protection must be drafted with consideration for women's vulnerabilities. Data breaches can have more severe impacts on women, including in the form of doxing, sexual threats, or extortion. Regulations should provide layered protection for gender-sensitive sensitive data and grant greater control to individuals (European Parliament, 2016).

In principle, digital rights should begin to be recognized as part of human rights in constitutional interpretation. The 1945 Constitution currently does not explicitly mention digital rights, but Article 28F can be interpreted progressively as a guarantee for the right to obtain, store, and convey information through digital means. Therefore, there is a need for the Constitutional Court to develop an interpretation of the constitution so that digital rights, especially those of women, are recognized and protected within the framework of human rights.

This effort must also be accompanied by a pro-gender judicial review mechanism for ambiguous regulations that may violate women's rights. The Constitutional Court plays a strategic role in assessing whether a regulation aligns with constitutional principles on equality and freedom of expression.

IV. CONCLUSION

Women's right of free expression in the digital era is both a fundamental human right and a key indicator of the quality of Indonesia's constitutional democracy. Although guaranteed in the 1945 Constitution and reinforced by instruments such as the ICCPR and CEDAW, its implementation in digital spaces continues to face serious obstacles, including online gender-based violence (OGBV), vague provisions in the ITE Law, patriarchal cultural norms, and weak law enforcement. Case studies, such as the criminalization of women under the ITE Law, demonstrate how existing regulations often silence victims rather than protect them, while international experiences—such as the European Union's General Data Protection Regulation (GDPR) and Australia's Online Safety Act 2021—illustrate the importance of strong data protection and victim-centered mechanisms. Therefore, Indonesia urgently needs gender-responsive digital constitutional reform that transforms formal guarantees into substantive protections through revising ambiguous provisions of the ITE Law, strengthening gender-sensitive digital literacy, enhancing data protection, and encouraging progressive constitutional interpretation by the Constitutional Court. Supported by active civil society participation and multi-stakeholder collaboration, such reforms will not only safeguard women's rights but also ensure the development of a more inclusive, equitable, and democratic digital society.

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**HASIL REVIEW
ARTIKEL OLEH
REVIEWER I**



ARTICLE REVIEW FORM

ARTICLE

Article Title : Women's Freedom of Expression within the Framework of Digital Constitutional Law

Date : August 29, 2025

Review Period : Vol. 4 No.2 to 2025

SCORE SHEET*

No	Description	Score			Comments
		Very Good	Average	Poor	
1	Specific and concise manuscript title (no more than 10 words)	√			The title is relevant to the research topic and attracts attention, although it is still rather long. It needs to be condensed to be more effective without reducing the core substance regarding women's freedom of expression in the context of digital constitutional law.

2	Original article content.				
	a) Focuses on constitutional law, government science, political science, and international relations (related to the development and progress of constitutional law).		√		The topic is quite new, topical, and has an important contribution to the development of constitutional law in the digital age. However, the manuscript does not explicitly state what is new compared to previous studies, so its originality needs to be emphasized more.
	b) The manuscript does not contain any elements of plagiarism (maximum similarity of 20%).			√	The similarity of the article manuscript exceeds the maximum limit of the writing policy of the Journal of Constitutional Law Society, which is 34%.
	c) The manuscript has not been published elsewhere.	√			The manuscript has not been published elsewhere.
	d) The length of the manuscript is 8,000-10,000 words (including tables, figures, and footnotes).	√			The length of the text in the article manuscript complies with the requirements of the Journal of Constitutional Law Society.
3	Identity (Author's Name, Affiliation and Institutional Address, and Email Address).	√			The author's identity has been clearly stated. To enhance credibility, it is recommended to include academic credentials.
4	Abstract				
	a) Written clearly, completely, and		√		The abstract contains the objectives,

	describing the entire paper in one paragraph.				methods, and results, but it exceeds the standard length. It needs to be condensed to make it more concise and emphasize the contribution of the research at the end. The keywords are relevant, but the format needs to be reviewed.
	b) The number of words is no more than 200-250 words.	√			The article format complies with the requirements of the Journal of Constitutional Law Society.
	c) The selected keywords reflect the concepts of the article in 3-5 terms.	√			The keywords are relevant to the research focus in accordance with the article writing requirements of the Journal of Constitutional Law Society, which requires 5 (five) keywords.
5	Introduction				
	a) Information on the issues discussed in the manuscript.		√		The introduction has provided an overview of the issue of women's freedom of expression, but it is still descriptive in nature. The research gap is not yet clearly evident. Therefore, the author needs to clarify the legal vacuum or regulatory weaknesses

					that underlie the research.
	b) Meaning and Purpose of the Research.				
	c) Supported by literature review results.				
	d) The manuscript uses citations in the form of footnotes.	√			The article manuscript already uses footnote citations.
6	Research Methodology				
	a) Type of research used (including a review of data collection techniques).		√		The normative method has been mentioned, but it is still too general. Details are needed regarding the approach used, the primary and secondary legal sources analyzed, and the interpretation techniques used. This will strengthen the validity of the research.
	b) Analysis used in the study.				
7	Analysis and Discussion				
	a) Research design is consistent with the objectives.		√		The analysis has touched on important aspects related to freedom of expression and the protection of women, but it still tends to be descriptive.
	b) Research procedures are clearly described.		√		Authors can conduct more comprehensive studies by focusing on the substance of the discussion, supported by concrete case

					studies from the social environment of the community and comparisons with practices in other countries. The arrangement of subsections will also help to make the analysis more systematic.
	c) Research results are compared with relevant theories and findings.				
	d) Discussion is consistent with the scope of the research.				
	e) Data analysis results are interpreted correctly.				
8	Conclusion				
	a) Provides an overview of the article manuscript.		√		The conclusion is still too general and lengthy. It needs to be condensed into the core findings, accompanied by an affirmation of both theoretical and practical contributions.
	b) Conclusions are based on data analysis results and discussion.				
	c) Research results contribute to the application		√		The author needs to add the limitations of the research and

	and/or development of science.				suggestions for future research development.
	d) The novelty and relevance of the analysis results to the references used in the article manuscript.		√		There needs to be a concrete examination of the novelty and research gap.
	e) Addresses weaknesses in the research as input for further research.		√		This article needs to include a statement regarding the limitations of the research and suggestions for further research.

RECOMMENDATION*

Please check (√) the selected option.

(...) 1. Manuscripts can be loaded without changes.

(√) 2. This paper is relevant to the context of the development of constitutional law and women's constitutional rights, but its presentation is still descriptive and does not yet show strong arguments regarding academic and practical contributions. Improvements need to be made in terms of methodology, systematic analysis, and consistency in the use of terms and stations. If the revision notes can be accommodated properly, the article will become a more solid, systematic work that can make a real contribution to the discourse on digital-based constitutional law from a gender perspective.

(...) 3. The manuscript cannot be loaded, because:

Bandar Lampung, August 29, 2025
Review

Dr. Oce Madril, S.H., M.A.

**HASIL REVIEW
ARTIKEL OLEH
REVIEWER II**



ARTICLE REVIEW FORM

ARTICLE

Article Title : Women's Freedom of Expression within the Framework of Digital Constitutional Law

Date : August 29, 2025

Review Period : Vol. 4 No.2 to 2025

SCORE SHEET*

No	Description	Score			Comments
		Very Good	Average	Poor	
1	Specific and concise manuscript title (no more than 10 words)	√			The title is quite interesting and relevant, describing the focus on women's freedom of expression in the context of digital constitutional law. It should be made more concise while retaining its novelty. For example: "Women's Freedom of Expression in Digital Constitutional Law".

2	Original article content.				
	a) Focuses on constitutional law, government science, political science, and international relations (related to the development and progress of constitutional law).		√		The article discusses current issues that are rarely explored, namely gender relations, freedom of expression, and digital constitutional law. Its originality potential is high, but it does not explicitly emphasize novelty. The author needs to emphasize the novelty aspect compared to previous studies, for example: - The lack of research examining women's freedom of expression in the digital space as a constitutional issue. - The weakness of national regulations that are not yet specific in protecting women from digital discrimination.
	b) The manuscript does not contain any elements of plagiarism (maximum similarity of 20%).			√	The similarity of the article manuscript prepared by the Author exceeds the maximum limit of the writing policy of the Journal of Constitutional Law Society.
	c) The manuscript has not been	√			The manuscript has not been published elsewhere.

	published elsewhere.				
	d) The length of the manuscript is 8,000-10,000 words (including tables, figures, and footnotes).	√			The length of the text in the article manuscript complies with the requirements of the Journal of Constitutional Law Society.
3	Identity (Author's Name, Affiliation and Institutional Address, and Email Address).	√			The author's identity and affiliation have been included.
4	Abstract				
	a) Written clearly, completely, and describing the entire paper in one paragraph.		√		The abstract already explains the objectives, methods, and results. However, the author can emphasize the novelty and practical benefits of the research.
	b) The number of words is no more than 200-250 words.	√			The article format complies with the requirements of the Journal of Constitutional Law Society.
	c) The selected keywords reflect the concepts of the article in 3-5 terms.	√			Keywords relevant to the research focus in accordance with the article writing requirements of the Journal of Constitutional Law Society.
5	Introduction				
	a) Information on the issues discussed in the manuscript.	√			The introduction highlights women's issues in the digital space, but it is still

					general in nature. The gap between this study and previous studies is not yet clearly illustrated.
	b) Meaning and Purpose of the Research.		√		The article manuscript prepared by the Author does not yet describe in concrete terms the objectives of conducting research on issues occurring in the social environment of society. Therefore, it is necessary to add a review of relevant literature related to freedom of expression, digital law, and gender perspectives. It should also describe in concrete terms the regulatory gaps or weaknesses in constitutional protection for women in the digital space.
	c) Supported by literature review results.		√		The article manuscript prepared by the Author still focuses solely on normative reviews. In order to advance knowledge in the field of constitutional law, philosophical and sociological reviews are needed that reflect the actual conditions occurring in society and the policy basis required to meet the needs of the community in relation to these issues.

	d) The manuscript uses citations in the form of footnotes.	√			The article manuscript already uses the citation style specified by the Journal of Constitutional Law Society. The citation style used is footnotes in APA Style format.
6	Research Methodology				
	a) Type of research used (including a review of data collection techniques).		√		The article mentions the use of normative methods, but these are still described in general terms. A more detailed review of the data sources, data collection techniques, and data analysis techniques used by the author to address the issues raised in the article needs to be added.
	b) Analysis used in the study.		√		Authors can conduct a more in-depth review of: - The approaches used (statute approach, conceptual approach, case approach). - Primary sources of law (1945 Constitution, ITE Law, Human Rights Law, CEDAW, ICCPR, etc.) and secondary sources (legal literature, journals, international documents).

					- Analysis techniques (systematic interpretation, regulatory comparison).
7	Analysis and Discussion				
	a) Research design is consistent with the objectives.		√		The analysis links gender issues, constitutional rights, and challenges to freedom of expression in the digital space. However, the discussion remains descriptive and lacks depth.
	b) Research procedures are clearly described.		√		Authors can conduct a more comprehensive and in-depth study by focusing on the following: - Support with concrete case studies (e.g., cases of women victims of the Electronic Information and Transactions Law, online harassment, or discrimination on social media). - Compare with international practices, such as the protection of women's freedom of expression within the framework of digital law in Europe or ASEAN.

	c) Research results are compared with relevant theories and findings.		√		The article manuscript prepared by the Author must refer to the framework for preparing a systematically reviewed article analysis, including: - The urgency of women's freedom of expression. - Obstacles in the digital framework. - Evaluation of Indonesian constitutional law. - Proposed improvements to national regulations.
	d) Discussion is consistent with the scope of the research.		√		Further review is needed in accordance with the substance added related to the subtopics that will be included in the research results.
	e) Data analysis results are interpreted correctly.		√		It is necessary to conduct a review that explains the relevance between the substance described in the article manuscript and the theory used in the research method.
8	Conclusion				
	a) Provides an overview of the article manuscript.		√		The conclusion reflects the urgency of constitutional protection of women's freedom of expression,

					but it is still general and lengthy.
	b) Conclusions are based on data analysis results and discussion.				
	c) Research results contribute to the application and/or development of science.		√		The conclusions presented in the article should emphasize the results of the analysis that point to the role or contribution of the research conducted by the author, both theoretically (strengthening constitutional theory in the digital space) and practically (legal policy recommendations to protect women).
	d) The novelty and relevance of the analysis results to the references used in the article manuscript.		√		There needs to be a concrete examination of the novelty and research gap.
	e) Addresses weaknesses in the research as input for further research.		√		This article needs to include a statement regarding the limitations of the research and suggestions for further research.

RECOMMENDATION*

Please check (√) the selected option.

(...) 1. Manuscripts can be loaded without changes.

(√) 2. This article raises a very important and topical issue regarding freedom of expression for women within the framework of digital constitutional law. Substantively, the chosen topic has the potential to contribute significantly to the development of legal and gender studies, but the manuscript still requires a number of fundamental revisions, particularly in sharpening the novelty of the research, detailing the methodology, and strengthening the analysis with case studies and international comparisons. With improvements to the abstract, conclusion, and consistency of references, this article is worthy of consideration for publication.

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Bandar Lampung, August 29, 2025
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HASIL PERBAIKAN ARTIKEL

***WOMEN'S FREEDOM OF EXPRESSION WITHIN THE
FRAMEWORK OF DIGITAL CONSTITUTIONAL LAW***

**KEBEBASAN BERPENDAPAT PEREMPUAN DALAM BINGKAI
HUKUM KONSTITUSI DIGITAL**

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ABSTRACT

The digital transformation has reshaped the landscape of freedom of expression, creating new opportunities for participation while also exposing women to structural, normative, and cultural challenges. In Indonesia, although Article 28E of the 1945 Constitution guarantees these rights, the digital environment remains unsafe due to weak legal safeguards, gender-blind regulations, and entrenched patriarchal norms. Online gender-based violence or OGBV, including cyber harassment, doxing, and non-consensual image distribution, continues to silence women, while the misuse of the Electronic Information and Transactions (ITE) Law has frequently criminalized victims instead of providing protection. This article employs a normative-conceptual and comparative legal approach to assess these gaps. Case studies, such as the criminalization of women under the ITE Law, reveal how existing frameworks fail to address gender-specific vulnerabilities. A comparative perspective with the European Union's General Data Protection Regulation (GDPR) and Australia's Online Safety Act 2021 highlights best practices for safeguarding women's digital rights through strong data protection and proactive victim-centered mechanisms. The study argues for gender-responsive digital constitutional reform in Indonesia, including legal clarification, enhanced digital literacy, strengthened data protection, and progressive constitutional interpretation. Such reforms are essential to transform formal guarantees into substantive protections and ensure that women's freedom of expression is meaningfully realized in a democratic digital society. This article offers a unique contribution by integrating Indonesian

case studies of women's criminalization under the ITE Law with comparative perspectives from the EU's GDPR and Australia's Online Safety Act. Unlike existing literature that remains largely descriptive, this study provides a prescriptive-analytical framework for gender-responsive digital constitutional reform. It bridges constitutional law, digital rights, and gender justice, presenting concrete pathways to transform formal guarantees into substantive protections for women's freedom of expression.

Keywords: freedom of expression, women, digital constitutional law, online gender-based violence, comparative constitutional law, digital rights.

ABSTRAK

Transformasi digital telah merekonstruksi lanskap kebebasan berpendapat, menciptakan peluang baru untuk partisipasi sekaligus mengekspos perempuan pada tantangan struktural, normatif, dan kultural. Meskipun di Indonesia terdapat jaminan konstitusional dalam Pasal 28E UUD 1945, ruang digital tetap tidak aman akibat lemahnya perlindungan hukum, regulasi yang buta gender, serta norma patriarki yang mengakar. Kekerasan berbasis gender online (KBGO), termasuk pelecehan siber, doxing, dan penyebaran konten intim tanpa persetujuan, terus membungkam suara perempuan, sementara penyalahgunaan Undang-Undang Informasi dan Transaksi Elektronik (UU ITE) seringkali justru mengkriminalisasi korban alih-alih memberi perlindungan. Artikel ini menggunakan pendekatan hukum normatif-konseptual dan komparatif untuk menilai kesenjangan tersebut. Studi kasus, seperti kriminalisasi perempuan melalui UU ITE, menunjukkan bagaimana kerangka hukum yang ada gagal menjawab kerentanan spesifik berbasis gender. Perspektif komparatif dengan General Data Protection Regulation (GDPR) di Uni Eropa dan Online Safety Act 2021 di Australia menyoroti praktik terbaik dalam melindungi hak digital perempuan melalui perlindungan data yang kuat dan mekanisme proaktif berbasis korban. Studi ini berargumen bahwa reformasi hukum konstitusi digital yang responsif gender sangat penting, termasuk melalui klarifikasi hukum, peningkatan literasi digital, penguatan perlindungan data, serta penafsiran konstitusi yang progresif. Reformasi tersebut esensial untuk mengubah jaminan formal menjadi perlindungan substantif, sehingga kebebasan berekspresi perempuan benar-benar terwujud dalam masyarakat digital yang demokratis. Artikel ini memberikan kontribusi dengan mengintegrasikan studi kasus Indonesia terkait kriminalisasi perempuan di bawah UU ITE dengan perspektif komparatif dari GDPR Uni Eropa dan Online Safety Act Australia. Berbeda dengan literatur yang sebagian besar masih bersifat deskriptif, studi ini menawarkan kerangka preskriptif-analitis bagi reformasi hukum konstitusi digital yang responsif gender. Artikel ini menjembatani hukum konstitusi, hak digital, dan keadilan gender, sekaligus menghadirkan jalur konkret untuk mengubah jaminan formal menjadi perlindungan substantif atas kebebasan berekspresi perempuan.

Kata kunci: kebebasan berpendapat, perempuan, hukum konstitusi digital, kekerasan berbasis gender online, hukum konstitusi komparatif, hak digital.

I. INTRODUCTION

The development of the digital era has brought about fundamental transformations in the way society expresses opinions. Public spaces, which were once limited to physical forums, have now expanded into virtual spaces, such as social media, online discussion platforms, and digital community-based information-sharing channels. Freedom of expression, which is one of the fundamental human rights, now faces new forms and challenges in the digital world. Information technology not only accelerates the dissemination of ideas but also creates new dynamics in managing civil rights, including protection of individual expression.¹ The significant changes in social life due to digitalization have led to violations of privacy rights, including the right to freedom of expression and protection from online threats.²

In this context, women have both significant opportunities and face considerable vulnerabilities. Women's access to digital spaces has opened broader opportunities for participation in public discourse, politics, economics, and culture. However, on the other hand, women are also subjected to different types of online gender-based violence, including harassment in cyberspace, stalking through digital platforms, discriminatory hate speech, and the spread of content that degrades women's dignity. This phenomenon causes the digital gender divide, which has the potential to hinder the full realization of the right to freedom of expression.³

Indonesia upholds the rule of law as the foundation of state authority, where every action of the government is required to be grounded in legal norms to prevent arbitrary practices. Indonesia as a state governed by law is obligated to maintain legal order, enforce justice, and realize the objectives of law. The 1945 Constitution of the Republic of Indonesia (UUD 1945) serves as the supreme legal source and the fundamental reference for both written and unwritten governance, making it the basis upon which all laws and regulations in Indonesia are established.⁴

Freedom of expression holds significant value for several reasons. First, freedom of expression is fundamental to realizing personal self-actualization and reaching one's fullest potential. Second, it serves as a vital foundation for the search for truth and the progress of knowledge. In this regard, a person seeking knowledge and truth must be open to listening to all viewpoints, consider all alternatives, test their judgments by confronting opposing views, and use various perspectives as effectively as possible. Third, freedom of expression is important for individuals to actively engage in decision-making processes, particularly in politics. Fourth, freedom of expression allows society and the government to achieve stability and adaptability.⁵

¹ Nalom Kurniawan and Mery Christian Putri, *Laporan Penelitian Konvergensi Hukum Dan Teknologi Dalam Proses Penegakan Hukum Di Mahkamah Konstitusi* (Jakarta, 2021).

² Elvan Maulana and Timbul Dompok, 'Hak Asasi Manusia Di Era Digital : Tantangan Dan Peluang Dalam Mengatasi Kejahatan Siber', 3.1 (2025).

³ UN Women, *Regular Resources Report 2021: Investing In Result*, 2022.

⁴ Wiranata, Khamim, and Imam Asmarudin, 'Kebebasan Berekspresi Melalui Media Digital Dan Penerapannya Di Indonesia', *Pancasakti Law Journal (PLJ)*, 1.2 (2023), pp. 205–18 <<https://doi.org/10.24905/>>.

⁵ Marwandianto Marwandianto and Hilmi Ardani Nasution, 'Hak Atas Kebebasan Berpendapat Dan Berekspresi Dalam Koridor Penerapan Pasal 310 Dan 311 KUHP', *Jurnal HAM*, 11.1 (2020), p. 1, doi:10.30641/ham.2020.11.1-25.

The right to freedom of expression is one of the Constitutional Rights of Citizens (HKWN) as outlined in the 1945 Constitution of the Republic of Indonesia, which has been thoroughly inventoried and categorized into three types of constitutional rights: Individual Rights represented by an icon, Collective Rights represented by 29 icons, and Vulnerable Community Rights represented by 3 icons. The icon display is designed and arranged to represent the characteristics or traits of the objects they symbolize, namely the norms and provisions regarding the constitutional rights of citizens. The right to freedom of expression, as outlined in HKWN, is both an individual and collective right of citizens, which can be represented by the following icons:⁶

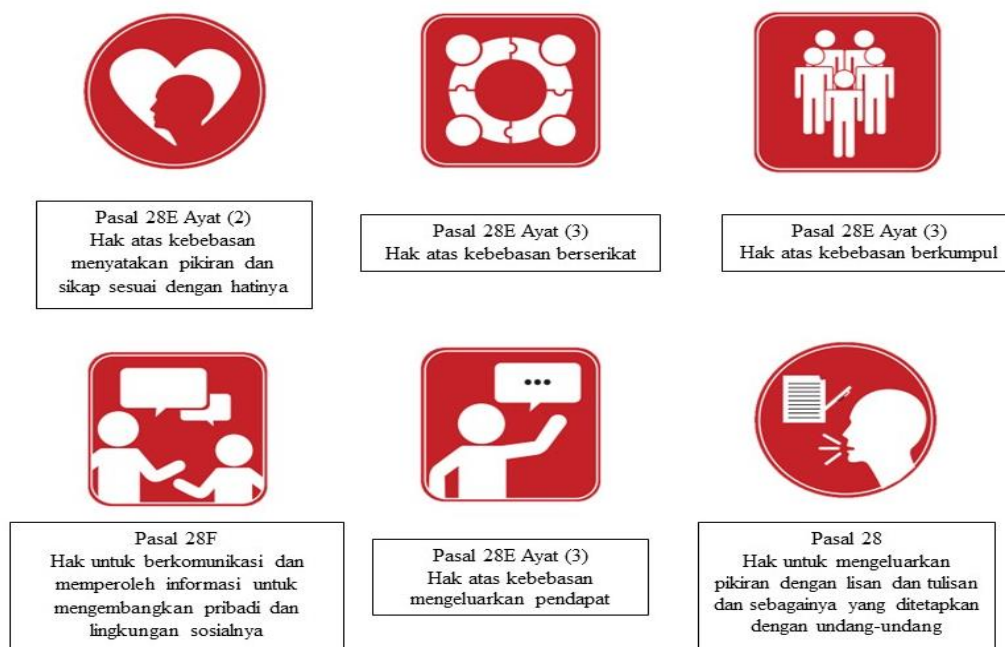


Figure 1

The Indonesian Constitution, through Article 28E paragraph (3) of the 1945 Constitution, explicitly guarantees the right of every individual to express their opinions. Article 28I paragraph (2) of the 1945 Constitution also emphasizes that everyone has the right to be free from discriminatory treatment on any grounds and has the right to protection from such discriminatory treatment. These rights apply universally, without gender distinction, and therefore constitute the constitutional basis for safeguarding women's freedom of expression in the digital age. Within the framework of constitutional law, this guarantee is part of the principle of constitutional rights that must be respected, protected, and fulfilled by the state through the principles of the rule of law and constitutional democracy.

In addition to national constitutional provisions, there are several international and national regulations that govern the right to freedom of expression. One of the international policy instruments governing freedom of expression is Article 19 of the 1948 Universal Declaration of Human Rights

⁶ Mahkamah Konstitusi Republik Indonesia, 'Ikon HKWN: Hak Konstitusional Warga Negara', 2022.

(UDHR), which guarantees the right to freedom of opinion and expression, and Article 19 of the International Covenant on Civil and Political Rights (ICCPR) 1966, which reaffirms the right to freedom of expression globally, ratified by Indonesia through Law No. 12 of 2005 concerning the International Covenant on Civil and Political Rights. Additionally, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979 requires state parties, including Indonesia, to ensure that women enjoy the right to freedom of expression without discrimination.⁷

Furthermore, the national policies and regulations governing the right to freedom of expression include Law No. 1 of 2024 on the Second Amendment to ITE Law. While aiming to protect rights in the digital space, this law raises concerns about restrictions on freedom of expression, particularly for women victims of digital violence. Additionally, the national instrument regulating freedom of expression is the Regulation of the Ministry of Women's Empowerment and Child Protection (PPPA). The PPPA regulates the protection of women and children in the online realm, including digital literacy and addressing online gender-based violence.⁸

In the perspective of constitutional law, these developments call for a reinterpretation of the constitution to adapt to technological changes. In line with the living constitution principle, the constitution must be interpreted dynamically to meet modern challenges, particularly in safeguarding women's freedom of expression in the digital era.⁹ Therefore, it is important to explore how Indonesian constitutional law, as well as national and international law, shapes the framework for protecting women's freedom of expression, particularly in this complex digital era.

In this research, the author will examine how constitutional law regulates freedom of expression, specifically for women in the digital era, and the challenges faced by women in realizing freedom of expression in the digital space. Through this research, the author will also formulate strategies for the development of a digital constitutional law that is responsive to the protection of women's freedom of expression.

The aim of this article is to analyze the constitutional guarantees of women's freedom of expression in the digital era based on Indonesian constitutional law and international instruments, identify the structural and normative challenges faced by women in exercising their right to free expression in the digital world, and provide recommendations for the development of a digital constitutional law that is more responsive to the protection of women's freedom of expression.

II. METHOD

⁷ Iwan Satriawan, Tareq Muhammad Aziz Elven, and Tanto Lailam, 'Internet Shutdown in Indonesia: An Appropriate Response or A Threat to Human Rights?', *Sriwijaya Law Review*, 7.1 (2023), pp. 19–46, doi:10.28946/slrev.vol7.iss1.1018.pp19-46.

⁸ Ayu Riska Amalia, Putri Raodah, and Nizia Kusuma Wardani, 'Menjamin Hak Perempuan Di Era Digital: Kewajiban Negara Dan Tantangan Regulasi Nasional', *Jurnal Kompilasi Hukum*, 9.2 (2024), pp. 178–91
<<https://jkh.unram.ac.id/index.php/jkh/article/view/184/132>>.

⁹ Adrian Kuenzler, 'What Competition Law Can Do For Data Privacy (and Vice Versa)', *Computer Law & Security Review*, 47 (2022), p. 105757, doi:10.1016/J.CLSR.2022.105757.

This study employs a normative-conceptual legal research design with a multi-layered methodological framework to ensure both doctrinal depth and comparative insight. The research combines the statute approach, which examines the 1945 Constitution, the ITE Law, Law No. 12 of 2005 on the ratification of the ICCPR, Law No. 7 of 1984 on the ratification of CEDAW, and other relevant national regulations concerning women's protection in digital spaces; the conceptual approach, which analyzes theoretical perspectives on freedom of expression, the doctrine of the living constitution, constitutional rights, and the emerging concept of digital constitutional law; and the comparative approach, which assesses legal frameworks in other jurisdictions, particularly the General Data Protection Regulation (GDPR) in the European Union and the Online Safety Act in Australia, to highlight best practices and lessons for Indonesia. The sources of legal materials are drawn from primary materials, including the 1945 Constitution, ICCPR, CEDAW, the ITE Law, and related legislation; secondary materials, such as constitutional law textbooks, peer-reviewed journal articles, and international reports from UN Women and UNESCO; as well as tertiary materials like legal dictionaries, encyclopedias, and supporting references. Data collection is carried out through systematic library research using official legal databases, scholarly repositories, and authoritative international reports, while the analysis technique applies a prescriptive-analytical method, which not only describes existing legal norms but also critically evaluates their effectiveness, identifies normative gaps, and proposes gender-sensitive constitutional reforms, ensuring that the study contributes both normatively and prescriptively to the discourse on digital constitutional law.

III. ANALYSIS AND DISCUSSION

Protection of the Right to Freedom of Expression in the 1945 Constitution

The Constitution of the Republic of Indonesia explicitly provides for the right to freedom of expression as a component of human rights safeguarded by the state. In the context of the Indonesian legal system, protection of the right to express opinions is enshrined in several important articles of the 1945 Constitution of the Republic of Indonesia (UUD 1945), whose relevance is increasingly significant in the midst of the evolving digital era.¹⁰ First, Article 28E paragraph (3) of the 1945 Constitution states that *"Every person shall have the right to freedom of association, assembly, and to express opinions."* This provision forms the main foundation that guarantees every citizen, without exception, the right to express their views verbally, in writing, or through other media. Second, Article 28G paragraph (1) states that *"Every person shall have the right to personal protection, family, honor, dignity, and property under their control, and the right to security and protection from threats or fears of doing or not doing something that is a human right."* This provision adds another dimension to the protection of freedom of expression, especially in the context of protection from intimidation, persecution, or digital violence that often affects individuals, particularly women, in cyberspace. Third,

¹⁰ Muten Nuna and Roy Marthen Moonti, 'Kebebasan Hak Sosial-Politik Dan Partisipasi Warga Negara Dalam Sistem Demokrasi Di Indonesia', *Jurnal Ius Constituendum*, 4.2 (2019), p. 110, doi:10.26623/jic.v4i2.1652.

Article 28I paragraph (2) affirms that *"Every person shall have the right to be free from any discriminatory treatment on any grounds and the right to protection from such discriminatory treatment."* This provision reinforces the principle that freedom of expression should be exercised equally, free from any gender-based discrimination, religion, ethnicity, or any other identity, including in the context of the use of information technology.

The interpretation of these provisions is challenged in Law No. 9 of 1998 on the Freedom of Expression in Public, where Article 1 paragraph (1) states that "freedom of thought in the form of oral, written, or other methods may be expressed freely and responsibly in accordance with applicable laws." According to the 1945 Constitution and Law No. 9 of 1998, freedom of expression is a fundamental right that is declared and protected by the state. The principle of freedom of expression in the context of human rights is related to the idea of a state based on law. Indonesia, as a rule-of-law state, has agreed to various international regulations that respect the right to freedom of expression and opinion. This is also guaranteed in the country's constitution, so criticism of the government is not considered illegal. The right to freedom of expression is provided with constitutional protection in Indonesia. The imposition of restrictions on freedom of expression is directed toward preserving both national security and the collective welfare of society.¹¹ In the period from 1999 to 2002, the People's Consultative Assembly (MPR) amended the 1945 Constitution, which previously had no chapter on human rights (HAM). This change was a result of the 1998 reform movement, which emerged after the public, including students and youth, demanded the enforcement of the rule of law, respect for human rights, and the eradication of corruption, collusion, and nepotism (KKN). This was a significant advancement in Indonesia's transformation and an effort by the Indonesian people to make the 1945 Constitution more modern and democratic.

In the digital era, freedom of expression has expanded in form and media. If in the past, expression of opinions occurred in physical forums such as public discussions, print media, or demonstrations, today, most freedom of expression practices take place on digital platforms such as social media, websites, blogs, and online video platforms. The digital space has become the main arena for society to express opinions, social critiques, and resistance against injustice.

The 1998 political reform, spearheaded by the younger generation and students, called for freedom of communication as a manifestation of democracy for society and the state. This reform was carried out through the use of new media, supported by the Internet, to unite movements against the state's power that ignored democracy. This reform aimed to replace the political hegemony of authoritarianism with democracy that prioritizes freedom of expression which finally through the reform, Indonesia embarked on a new direction, one that embraced and institutionalized freedom of the press.¹²

¹¹ Latipah Nasution, 'Hak Kebebasan Berpendapat Dan Berekspresi Dalam Ruang Publik Di Era Digital', *Adalah*, 4.3 (2020), pp. 37–48, doi:10.15408/adalah.v4i3.16200.

¹² Muhammad and Syahnan Harahap, *Kemerdekaan Pers Pada Orde Reformasi Jurnal Ilmiah Hukum Dirgantara-Fakultas Hukum Universitas Dirgantara Marsekal Suryadarma* |, 2019, ix.

Indonesian human rights are safeguarded in the 1945 Constitution, ensuring the rights of every citizen and resident. The Indonesian believe that human rights must take into account the uniqueness of Indonesia, and each human right must be in line with responsibility, so that there is a relationship of mutual respect and recognition of each individual's human rights, including freedom of religion, belief, freedom of expression, association, and behavior, as well as human rights related to access to information and communication.¹³

Therefore, constitutional protection for the right to freedom of expression must still apply in the digital space. The state has an obligation to ensure that the expression of citizens on the internet is not arbitrarily silenced, and to ensure that this freedom is not used as a pretext for allowing violence or hate speech, especially against vulnerable groups. Thus, the interpretation of the 1945 Constitution must continue to develop progressively to meet the challenges of the times. The Constitutional Court, as the protector of citizens' constitutional rights, plays a crucial role in interpreting constitutional provisions to keep them relevant to the dynamics of today's digital society.

National and International Instruments on Freedom of Expression for Women

The freedom to express opinions and communicate verbally or in writing is a fundamental element in democratic governance systems with a very broad definition. Establishing clear legal rules as an initial step in ensuring freedom of expression and the right to voice opinions is a reflection of democracy that respects the law. The protection of women's freedom of expression is not only by the national constitution but is also strengthened by various national and international legal instruments. These legal instruments form the essential foundation to ensure that women have equal opportunities to express their views, both in physical spaces and in the digital world.

The right to freedom of expression, including the right to convey and receive information, is a fundamental human right in Indonesia, as stipulated in various laws, such as the 1945 Constitution, Law No. 9 of 1998 on the Freedom to Express Opinions in Public, Law No. 39 of 1999 on Human Rights, Law No. 40 of 1999 on the Press, Law No. 32 of 2002 on Broadcasting, Law No. 14 of 2008 on Public Information Transparency (KIP), Government Regulation No. 61 of 2010 on the Implementation of Public Information Transparency (KIP), Minister of Administrative and Bureaucratic Reform Regulation No. 83 of 2012 on Social Media Utilization Guidelines for Government Institutions, ITE Law, and Government Regulation No. 71 of 2019 on the Organization of Electronic Systems and Transactions.¹⁴

Within the national instruments, Law No. 39 of 1999 on Human Rights (UU HAM) specifically addresses the right to freedom of expression in Articles 23 to 25. Article 23 states that everyone has the right to freedom of expression, Article 24 recognizes the right of everyone to communicate and receive information, and Article 25 affirms the right of everyone to associate and

¹³ MPR RI, 'Panduan Pemasyarakatan', *Sekretariat Jendral MPR RI*, 2020
<<https://www.mpr.go.id/sosialisasi/panduan-pemasyarakatan>>.

¹⁴ Siti Fatimah, *Jaminan Kepastian Hukum Atas Kebebasan Berpendapat Di Era Konvergensi Media*, Disertasi (Fakultas Hukum Universitas Sebelas Maret, 2024).

assemble. This law provides the national legal basis for the protection of women's right to express opinions, including considering gender equality aspects in its implementation.¹⁵

In addition to the Human Rights Law, there is also Law No. 1 of 2004 in conjunction with ITE Law. The ITE Law regulates new forms of expression in digital spaces, including the use of electronic media to express opinions. While intended to regulate the flow of information, the ITE Law often sparks controversy regarding freedom of expression, particularly due to the potential for criminalizing women's expression in the digital realm. Therefore, in the context of women's rights protection, the implementation of the ITE Law must ensure a balance between maintaining public order and protecting freedom of expression.¹⁶

Law No. 7 of 1984 on the Ratification of CEDAW also serves as a national instrument regulating the right to freedom of expression. Through this law, Indonesia ratified the CEDAW. This ratification strengthens the state's obligation to ensure that women can enjoy their civil and political rights, including freedom of expression, without discrimination. CEDAW encourages countries to remove cultural, social, and legal barriers that hinder women from enjoying their right to express their opinions.

Internationally, principles that reinforce the right to freedom of expression are outlined in several human rights instruments. Indonesia's ratification of the ICCPR through Law No. 12 of 2005 reinforces, under Article 19, the principle that all individuals has the right to freely express opinion and expression without interference, including the ability to seek, obtain, and communicate information through any medium irrespective of national frontiers. In parallel, CEDAW serves as a normative instrument that underscores the eradication of gender-based discrimination, particularly by affirming women's equal rights to access and freely express opinions in both public and private life.¹⁷

Article 19 of the Universal Declaration of Human Rights (UDHR) ensures that *"everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers."* This declaration marks the beginning of universal recognition of the right to freedom of expression, which applies without discrimination, including based on gender.

Furthermore, Article 19 of the ICCPR, which Indonesia ratified through Law No. 12 of 2005, strengthens the right to freedom of expression. The Covenant recognizes the right of everyone to impart information and ideas in various forms. It demands that state parties respect and protect freedom of

¹⁵ Della Lusky Selian and others, 'Freedom of Expression in the Era of Democracy: Records of Human Rights Enforcement Kebebasan Berekspresi Di Era Demokrasi: Catatan Penegakan Hak Asasi Manusia', 2.2 (2018), pp. 185–94
<<https://journal.unnes.ac.id/sju/index.php/lslr/index>>.

¹⁶ Stella Hita Arawinda, 'Perlindungan Hukum Terhadap Perempuan Korban Kekerasan Berbasis Gender Online Di Indonesia', *Jurnal Yustika: Media Hukum Dan Keadilan*, 24.02 (2022), pp. 76–90, doi:10.24123/yustika.v24i02.4599.

¹⁷ 'ANNEX Office of the United Nations High Commissioner for Human Rights', no. March (2020), pp. 1–9.

expression without discrimination, making it relevant in ensuring women's rights in both public and digital spaces.

Additionally, the CEDAW mainstreams gender in political rights and freedom of expression. CEDAW not only demands the elimination of discrimination against women in politics but also requires states to take affirmative measures to ensure that women can participate equally in political and public life. This includes the right to express opinions freely in public forums and media, including digital spaces, as well as protection from gender-based violence or intimidation.

According to Article 19 of the ICCPR, global human rights principles interpret the right to express opinions in two ways: internally (within personal thoughts) and externally (in the public environment). Internal freedom is linked to an individual's mental state when expressing opinions (Article 19(1) ICCPR), and it cannot be constrained. For this reason, the state must refrain from intervention. Meanwhile, external freedom considers the freedom to openly express opinions, which may be subject to limitations (International Covenant on Civil and Political Rights, Article 19(2)). The implementation of restrictions must comply with applicable laws and should respect the rights or reputation of others, as well as maintain national security, public order, health, or morals (Article 19(3) ICCPR). The right to express opinions without interference is regulated not only in Article 19(1) of the ICCPR but also in Articles 28 and 28E(2) of the 1945 Constitution of Indonesia. The Human Rights Law also includes regulations on this in Article 23(2), stating that "All individuals have the freedom to voice, disseminate, and express opinions according to their personal beliefs, either orally or in writing through print or electronic media, with due regard to religious values, morality, social order, public interest, and national unity." Therefore, the Indonesian state is prohibited from intervening in the right to freedom of expression.¹⁸

In carrying out its obligations under Article 19(1) of the ICCPR concerning freedom of expression, Indonesia, as a state party, is required to comply with the standards set forth in General Comment No. 34 of the Human Rights Committee. Paragraph 9 of this Comment affirms that freedom of expression constitutes an absolute right that cannot be restricted under any circumstances (a non-derogable right). The opinions protected under this right include those related to politics, science, history, morality, and religion. Any form of interference, intimidation, abuse, including arrest, detention, trial, and imprisonment based on someone's personal opinions, violates the provisions of Article 19(1) ICCPR. Meanwhile, Paragraph (10) clarifies that all forms of coercion to compel an individual to express their opinions are prohibited. Freedom of thought also includes the freedom not to express an opinion.

Freedom of expression is a fundamental right that is not absolute but has certain requirements.¹⁹ This right is emphasized in Article 19(2) of the ICCPR; Articles 28, 28E(2) and (3), 28F of the 1945 Constitution of the

¹⁸ Elfia Farida, 'Kewajiban Negara Indonesia Terhadap Pemenuhan Hak Kebebasan Berpendapat Dan Berekspresi', *Jurnal Ilmiah Ilmu Hukum QISTIE*, 14.2 (2021), p. 43.

¹⁹ Daniel Riffe and Kyla P. Garrett Wagner, 'Freedom of Expression: Another Look at How Much the Public Will Endorse', *Communication Law and Policy*, 26.2 (2021), pp. 161–86, doi:10.1080/10811680.2021.1893096.

Republic of Indonesia; and in Article 23(2) and Article 25 of the Indonesia Human Rights of Law, which states, "Every individual has the right to express their opinion in public...". To ensure the fulfillment of this right, Indonesia must refer to General Comment No. 34 of the ICCPR on the Siracusa Principles. Additionally, in General Comment No. 34, Paragraph (11), state parties are required to ensure freedom of speech, including the right to seek, receive, and share information and ideas about everything without exception. One of the rights included in this situation is the freedom to express and receive ideas or opinions through various forms of communication that can be shared with others. However, this must comply with the provisions set out in Articles 19(3) and 20 of the ICCPR. This includes discussions about politics, opinions about individuals, social issues, human rights issues, journalistic activities, arts and culture, education, religious teachings, and business advertisements. It also involves ideas that may be considered highly inappropriate, even though such expressions can be regulated within the limitations determined by Articles 19(3) and 20 of the ICCPR.

In General Comment No. 34, Paragraph (12), according to this Article, states have the responsibility to preserve and protect all forms of expression and their dissemination methods. Examples include speaking, writing, using sign language, and non-verbal communication such as images, paintings, and other artistic objects. There are various ways to express oneself, including through media such as books, newspapers, brochures, posters, banners, clothing, and legal documents. This also includes audiovisual expressions or those based on electronic technology or the internet. In this regard, law enforcement officers should not use force against murals or social media posts that criticize the government. Provisions in Articles 19(3) and 20 of the ICCPR may limit the right to express opinions. In practice, based on General Comment No. 34, Paragraph (21), as outlined in the text, limitations on freedom of expression are justified solely under two conditions. The first is to protect the rights or reputation of others. The second is to safeguard national security, public order, public health, or public morals. When the government imposes restrictions on freedom of expression, they must ensure that the right remains protected and is not negatively affected by their actions. Regulations regarding restrictions should be established in laws, as outlined in General Comment No. 34, Paragraph (22), explaining the restrictions found in the Siracusa Principles on Limitations and Derogations of Provisions in the ICCPR (Annex, UN.Doc.E/CN.4/1984/4 (1984)). Human rights limitations should not be used as tools to protect the state and public officials from criticism and public opinion, considering their reputation.²⁰

The Indonesian legal system has various important components, including the police, prosecutors, courts, advocates, correctional institutions, and alternative dispute resolution bodies.²¹ Repressive actions taken by the police are a central issue in the application of the law and the protection of

²⁰ Farida, 'Kewajiban Negara Indonesia Terhadap Pemenuhan Hak Kebebasan Berpendapat Dan Berekspresi'.

²¹ Agus Santoso, 'Hukum, Moral, Dan Keadilan: Hukum (Edisi Pertama)', viii (2015) <<https://library.bpk.go.id/koleksi/detil/jkpkbkpp-e-202111122312>>.

human rights (HR) in the context of the freedom of expression.²² In addition, there has been a transformation in how law enforcement authorities understand and respond to the practice of freedom of expression, where this right, originally guaranteed and protected by the constitution, is now viewed as a threat to public order and national security. This has resulted in the reduction of the right to freedom of speech, criminalization, arrests, and other repressive actions. Although freedom of expression is not absolute, its regulation must remain consistent with constitutional provisions and the protection of human rights.²³

Along with the advancement of information technology, media for expressing opinions has undergone significant changes, shifting from physical forums like demonstrations, discussions, or print media, to digital platforms like social media, blogs, video channels, and other online forums. The digital space has become a new arena for people to voice opinions, advocate for rights, and build communities. However, this transition also brings new challenges in terms of legal protection and state oversight. In this context, constitutional law must adapt to digital dynamics to remain relevant in guaranteeing fundamental rights, especially for vulnerable groups such as women.²⁴

As a democratic country, Indonesia has the responsibility to uphold, enhance, implement, and fulfill the right to freedom of expression, which is part of human rights, as stipulated in Article 28I(4) of the 1945 Constitution. However, it is important to emphasize that the right to express opinions and freedom of expression is not without limitations. Freedom of speech must be considered prudently, taking into account individual rights and public interest. Regulations regarding freedom of expression should be formulated clearly and concisely to be understood by all individuals. Those who decide to impose such limitations must be able to justify their need and act reasonably. Furthermore, these limitations must have safeguards to prevent abuse and involve proper legal processes.²⁵

Women in the Digital World: Between Opportunities and Vulnerabilities

Women are a vital pillar in the social, economic, and political development of a nation. Their roles are not limited to the domestic sphere but are increasingly evident in the public domain, including leadership, education, and technology. However, women still face various structural challenges such as gender inequality, discrimination, violence, and limited access to resources. To achieve true equality, an intersectional approach is

²² Lutfil Ansori, Penegakan Hukum, and Hukum Progresif, 'Reformasi Penegakan Hukum Perspektif Hukum Progresif', 4.2 (2017), pp. 148–63.

²³ Barda Nawawi Arief, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan ... - Prof.Dr.Barda Nawawi Arief, S.H. - Google Buku*, Prenada Media, 5th edn (Kencana (Prenada Media Group), 2018) <https://books.google.co.id/books/about/Masalah_Penegakan_Hukum_dan_Kebijakan_Hu.html?id=AeLJDwAAQBAJ&redir_esc=y>.

²⁴ Jeremy Harris Lipschultz, *Social Media Communication, Social Media Communication* (Taylor and Francis, 2017), doi:10.4324/9781315388144.

²⁵ Syafaat Anugrah Pradana, Rusdianto Sudirman, and Muh. Andri Alvian, 'Kemelitan Penegakan Hukum Terhadap Hak Kebebasan Berpendapat', *DIKTUM: Jurnal Syariah Dan Hukum*, 20.1 (2022), pp. 156–68, doi:10.35905/diktum.v20i1.2811.

required that ensures the protection of women's rights and sustainable empowerment. Recognition of women's dignity, capabilities, and contributions is an essential foundation in creating a just, inclusive, and gender-equal society.²⁶

Digital transformation has opened new spaces for women to express themselves, access information, and participate in socio-political life. In the context of digital democracy, women's presence in the online space reflects the expansion of citizen participation and the strengthening of constitutional rights to freedom of expression. Access to the internet and social media allows women to build networks, advocate for gender issues, and push for public policies that are more responsive to their needs. The digital space has also become an important channel for women to express their opinions freely and independently, which was previously often restricted by patriarchal social structures.²⁷

However, behind these opportunities, women also face very real vulnerabilities in the digital world. Various forms of gender-based online violence (GBOV) are becoming more rampant, such as cyberbullying, doxing (public dissemination of personal data), and hate speech targeting women's gender identity or sexuality. These forms of violence not only harm women psychologically but also limit their participation in the online world. UN Women reports indicate that women globally are more vulnerable to digital violence compared to men, particularly when they are active in public or political issues. Moreover, algorithms and social media culture further reinforce gender stereotypes, where women are often portrayed as sexual objects, harassed for their appearance, or considered unworthy of expressing critical opinions.²⁸

Based on SAFEnet monitoring, there were 48 cases of freedom of expression violations in the digital realm between April and June 2024, with 45 reported victims. This number represents an increase of 18 cases compared to the previous quarter, which recorded 30 cases. In terms of the number of reporters, the figure decreased compared to the previous period, which recorded 52 reporters. The most common reports related to digital expression were made under the ITE Law, without specifying a particular article, totaling 15 cases. Hate speech/incitement under Article 28 paragraph (2) of the ITE Law was recorded in 6 cases. Alleged defamation and/or slander under Article 27 paragraph (3), as well as threats of violence or intimidation under Article 45 paragraph (3) of the ITE Law, were each recorded in 4 cases. Furthermore, cases violating decency under Article 27 paragraph (1) were recorded in 3 cases. Of the 48 cases monitored throughout the second quarter of 2024, only 22 cases had reports filed under the new ITE Law.²⁹

²⁶ Yulia Hesti and others, 'Korelasi Antara Kebebasan Berekspresi Dalam Peningkatan Kasus Kejahatan Asusila Di Media Digital (Sextorsi)', *JLEB: Journal of Law, Education and Business*, 2.1 (2024), pp. 522–29, doi:10.57235/jleb.v2i1.1890.

²⁷ Siti Fatimah, 'Demokrasi Digital Dan Welfare State Indonesia', *Prosiding Konferensi Nasional APHTN-HAN*, 1.1 (2023), pp. 855–86.

²⁸ 'APC Annual Report 2020' <<https://2020report.apc.org/>> [accessed 22 February 2025].

²⁹ Abul Hasan Banimal and others, *Laporan Pemantauan Hak-Hak Digital Di Indonesia* (Bali, 2025).

Freedom of speech is theoretically considered nearly limitless, but in practice and implementation, it often presents a paradox where the freedom of society, especially for women, to speak or express opinions through various forms of expression is often restricted in the name of promoting the greater public good. Most scholars agree that protection of freedom of speech must be maintained at a very high level. In this regard, high protection is necessary for freedom of speech, especially in the context of politics and public policy, due to its importance for the stability of governance. This indicates that there should be consistent communication between society and the government, where communication from society serves as a form of oversight on the government's actions. Freedom of expression is the core of democracy because the effectiveness of democracy depends on citizens' ability to criticize the government and actively participate in discussions on issues that may affect the government, especially in decision-making and policy formation in the current era of social media.³⁰

The phenomenon of women facing criminal charges in connection with their exercise of freedom of expression online has grown increasingly prevalent. For instance, women who share experiences of sexual harassment on social media are often criminalized on the grounds of defamation of the perpetrator. Examples include cases of infidelity in households, such as the case of Valencya who was sued by her husband for scolding him,³¹ the sexual harassment case by Herry Wirawan,³² and instances where the wife of a prisoner is extorted by rogue police officers,³³ among many other cases. This indicates that the ITE Law still does not provide adequate protection for women in expressing themselves; on the contrary, it can be used as a tool to silence their voices. The National Commission on Violence Against Women report in 2021 noted that many victims of sexual violence face revictimization because their courage to speak out in the digital space leads to legal action based on articles in the ITE Law.

Women in the digital world face a complex dual dynamic that simultaneously opens up vast participatory spaces while also presenting new and significant vulnerabilities. The digital world provides various opportunities for women to voice their opinions, expand their social networks, enhance literacy, and develop their economic and intellectual capacities. Social media, community-based platforms, and virtual discussion spaces have enabled women, including those from marginalized groups, to break

³⁰ Dahlil Imran and Nur Hidayat Sardini, 'Bayang Otoritarianisme Digital: Analisis Rkuhp Kehormatan Penyelenggara Negara Dan Kebebasan Menyatakan Pendapat', *Jurnal Education and Development*, 11.1 (2022), pp. 24–30, doi:10.37081/ed.v11i1.4223.

³¹ Farida Farhan, 'Cerita Valencya, Dituntut Penjara Karena Marahi Suami Mabuk: Kaget Omelannya Direkan Jadi Alat Bukti', *Kompas.Com*, 2021 <<https://regional.kompas.com/read/2021/11/16/125650478/cerita-valencya-dituntut-penjara-karena-marahi-suami-mabuk-kaget-omelannya>>.

³² Rachmadi Rasyad, 'Melihat Ponpes Milik Herry Wirawan, Pemerkosa 12 Santri', *Kumparan.News*, 2021 <<https://kumparan.com/kumparannews/melihat-ponpes-milik-herry-wirawan-pemerkosa-12-santri-1x4n2YB5FK0/full>>.

³³ M. Syofri Kurniawan, 'Istri Tahanan Mengaku Dimintai Rp20 Juta Oleh Oknum Polisi Agar Suaminya Tak Ditembak - TribunJateng', *TribunJateng.Com*, 2021 <<https://jateng.tribunnews.com/2021/12/16/istri-tahanan-mengaku-dimintai-rp20-juta-oleh-oknum-polisi-agar-suaminya-tak-ditembak>>.

through the boundaries of private space into public space more equitably. However, as access opens up, women also become the most vulnerable group to experience gender-based online violence (GBOV), doxing, non-consensual content dissemination, and cyberattacks targeting their bodies and gender identities. In the context of freedom of expression, women are often silenced not because of the substance of their arguments but because of their biological and social identity as women. This situation poses a serious challenge to the principle of equality before the law and the constitutional right to freedom of expression. Unfortunately, the existing legal framework, including in Indonesia, is still not fully responsive in protecting women in the digital realm comprehensively. The digital constitutional law instruments must be able to guarantee a safe space for women to express their opinions, free not only from state intervention but also from gender-based violence and intimidation by non-state actors. In other words, digital transformation must be accompanied by affirmative policies that substantively guarantee the protection of women's constitutional rights, not just formally. Without genuine legal support, the digital world, which should be a space for liberation, may turn into a new arena of repression that reinforces women's subordination in society.³⁴

Therefore, it is crucial to place the protection of women in the digital world as an integral part of digital constitutional law. The state is not only obliged to guarantee the right to freedom of expression but also to create a safe and equitable digital space for all, especially vulnerable groups such as women.

Case Studies and International Comparative Perspectives on Women's Freedom of Expression in Digital Spaces

The challenges faced by Indonesian women in exercising freedom of expression in the digital sphere are best illustrated through real case studies. One prominent example is the Valencya case, in which a woman was criminally charged under the ITE Law after publicly expressing grievances about domestic abuse on social media. Instead of being recognized as a victim, she was criminalized under defamation provisions, demonstrating how the ITE Law is often used as a tool to silence women rather than protect them.³⁵ Similarly, cases of doxing and cyber harassment against women activists, including those advocating for gender equality and environmental justice, have shown that weak enforcement mechanisms and patriarchal interpretations of law often exacerbate the vulnerability of women in digital spaces.³⁶ These cases prove the normative disparity between the constitutional guarantee of free expression and the actual experiences of women in Indonesia's digital space.

³⁴ Endah Pertiwi and others, 'Analisis Yuridis Terhadap Penyalahgunaan Data Pribadi Pengguna Media Sosial', *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia*, 3.3 (2022), pp. 10–16, doi:10.52005/rechten.v3i3.65.

³⁵ Farhan, 'Cerita Valencya, Dituntut Penjara Karena Marahi Suami Mabuk: Kaget Omelannya Direkan Jadi Alat Bukti'.

³⁶ Komnas Perempuan, *CATAHU 2023: Catatan Tahunan Kekerasan Terhadap Perempuan Tahun 2023 Momentum Perubahan: Peluang Penguatan Sistem Penyikapan Di Tengah Peningkatan Kompleksitas Kekerasan Terhadap Perempuan*, *Catahu: Catatan Tahunan Tentang Kekerasan Terhadap Perempuan* (Jakarta, 2024) <<https://komnasperempuan.go.id/>>.

In contrast, international experiences provide valuable comparative lessons. The European Union's General Data Protection Regulation (GDPR) establishes strong safeguards for personal data, including sensitive data categories such as gender identity, thereby minimizing the risk of online harassment and misuse of personal information.³⁷ The GDPR framework demonstrates how regulatory clarity, combined with robust enforcement mechanisms, can enhance women's sense of security in digital participation. Likewise, Australia's Online Safety Act 2021 provides a rapid response system for victims of online abuse, allowing the eSafety Commissioner to demand the removal of harmful content within strict timeframes. This proactive approach ensures that women experiencing cyber harassment or non-consensual image sharing have effective legal recourse, contrasting sharply with the slow and often dismissive responses in Indonesia.³⁸

Based on the comparisons above, these comparative perspectives, it is clear that Indonesia lags behind in adopting gender-sensitive digital constitutional safeguards. The Indonesian legal framework remains gender-neutral in form but gender-blind in substance, as it does not explicitly address the structural barriers women face in digital spaces. Meanwhile, both the EU and Australia have demonstrated the importance of embedding gender sensitivity, victim-centered mechanisms, and strong institutional oversight within digital governance frameworks. These comparative lessons suggest that Indonesia should revise the ITE Law to explicitly protect women from online gender-based violence, integrate data protection principles similar to the GDPR, and establish independent bodies with authority to handle digital rights violations swiftly and effectively.

In sum, integrating case studies and international comparisons not only strengthens the normative analysis but also provides concrete pathways for reform. By learning from the criminalization of women under the ITE Law domestically and adopting best practices from the GDPR and the Online Safety Act, Indonesia can move toward a digital constitutional framework that is both inclusive and protective, ensuring that women's freedom of expression is meaningfully guaranteed in practice.

Legal Analysis: Constitutional Challenges in Ensuring Women's Freedom of Expression

Within the framework of Indonesian law, women's freedom of expression in the digital sphere faces a number of normative and structural challenges. Normatively, while the 1945 Constitution guarantees the right to freedom of expression, it does not explicitly address the protection of digital rights, including privacy and cybersecurity rights. Articles 28E and 28F provide the foundation for freedom of expression and communication, but in

³⁷ Regulation (EU) 2016/679 of The European Parliament and of The Council of 27 April 2016, *Official Journal of the European Union*, 2016, doi:10.4324/9781315775203-11.

³⁸ Australian Government, *Statutory Review of the Online Safety Act 2021*, 2021, MMXXI, p. 4 <<https://www.infrastructure.gov.au/have-your-say/statutory-review-online-safety-act-2021>>.

practice, the scope of these protections has not been fully adapted for the digital era.³⁹

The digital age has opened new opportunities for women to engage more actively in the public sphere. However, this technological development also presents serious challenges for the protection of freedom of expression, particularly regarding gender-based violence, regulatory weaknesses, and cultural barriers. Women in the digital space are often targets of gender-based online violence, which threatens their right to freely express their opinions. Forms of Digital Violence or Gender-Based Online Violence (GBOV) include doxing, the dissemination of personal information without consent to intimidate victims, cyber harassment through messages, comments, or the spread of offensive content, and gender-based hate speech, which targets women based on their gender identity.

Legally, freedom of expression is guaranteed by various legal instruments, both national and international. At the national level, the 1945 Constitution of the Republic of Indonesia, Article 28E paragraph (3), states that "Everyone has the right to freedom of association, assembly, and to express opinions." This guarantee is universal and inclusive; however, in practice, there are still gaps in protection for vulnerable groups, particularly women. A key constitutional challenge is the lack of a legal approach that explicitly affirms and responds to the vulnerability of women in exercising their right to express opinions in the public sphere, especially in the digital context. For example, in the case of Agni, a victim of sexual violence at Gadjah Mada University (UGM), the public support and opinions voiced by women through social media faced backlash, labeling, and attempts at silencing, which were not seriously addressed by the state. Despite the principle of equality being recognized in Article 28D paragraph (1) and (3) of the 1945 Constitution, as well as Law No. 7 of 1984 on CEDAW, in practice, women are more likely to become victims of doxing, cyberstalking, and gender-based disinformation. The Constitutional Court, in its Decision No. 50/PUU-VI/2008, affirmed that the protection of human rights constitutes a central element in the guarantee of freedom of expression. However, it has never explicitly addressed the vulnerability of women in the digital space. Indonesian positive law also lacks an effective and gender-sensitive redress mechanism when women become victims of violations of their freedom of expression, whether by the state or non-state actors. Moreover, gender sensitivity among law enforcement officers remains a serious issue, as seen in various cases of digital violence reports against women that often lead to criminalization or neglect. Therefore, a progressive reinterpretation of the constitution must be carried out through a substantive justice approach. Indonesia's digital constitution should place an affirmative principle on vulnerable groups, strengthening the role of the Constitutional Court in interpreting constitutional rights based on the principles of gender inclusivity and adaptation to the dynamics of the digital space. Without this, women's freedom of expression will remain a formal right with no real protective power in practice.

³⁹ Bobi Aswandi and Kholis Roisah, 'Negara Hukum Dan Demokrasi Pancasila Dalam Kaitannya Dengan Hak Asasi Manusia (Ham)', *Jurnal Pembangunan Hukum Indonesia*, 1.1 (2019), p. 128, doi:10.14710/jphi.v1i1.128-145.

According to a 2022 UN Women report, almost 38% of women globally experience online harassment. In Indonesia, a 2021 SAFEnet (Southeast Asia Freedom of Expression Network) report recorded that 45% of victims of gender-based online violence were young women aged 18-24. These cases demonstrate the high risks women face when expressing themselves in the digital world.

Both regulatory frameworks and law enforcement practices remain significant hurdles in ensuring the protection of women's expressive rights in the digital sphere. For example, the problematic ITE Law, which is supposed to protect digital rights, is often used as a tool to criminalize opinions. Furthermore, regulations like the ITE Law create ambiguity. On the one hand, the ITE Law aims to protect internet users from cybercrime, including gender-based online violence. On the other hand, vague provisions such as defamation and hate speech articles are often used to silence criticism and limit the expression of female activists in the digital space. This issue is further exacerbated by derivative regulations, such as the Ministry of Communication and Information's Content Moderation Regulation, which has yet to provide adequate gender-sensitive protection standards.⁴⁰

Structural barriers further exacerbate the situation. Law enforcement in cases of gender-based digital violence is still biased and tends to blame the victim.⁴¹ Law enforcement officers often lack an understanding of the characteristics of digital violence, resulting in many women's reports being ignored or processed slowly. Additionally, protection mechanisms for digital rights, such as reporting to digital platforms or authorities, remain ineffective and unresponsive to the needs of female victims.

Compared to some other countries, Indonesia's approach appears insufficiently progressive. In the European Union, the General Data Protection Regulation (GDPR) provides special protection for personal data, including sensitive data related to gender and women's rights, thus strengthening individuals' control over their digital footprints.⁴² Meanwhile, Australia has implemented the Online Safety Act 2021, which explicitly sets out protection for victims of online gender-based violence and provides a fast-track process to remove harmful content.⁴³ Both models illustrate the need for a robust, adaptive, and gender-sensitive regulatory framework to confront the challenges surrounding women's freedom of expression in the digital realm.

Democracy can be seen as a globally expanding system, but in its implementation and development, each country has its own characteristics, influenced by factors such as history and political culture. However, the

⁴⁰ Hotrun Siregar, 'Analisis Pemanfaatan Media Sosial Sebagai Sarana Sosialisasi Pancasila', *Pancasila: Jurnal Keindonesiaan*, no. 1 (2022), pp. 71–82, doi:10.52738/pjk.v2i1.102.

⁴¹ Komnas Perempuan, *CATAHU 2023: Catatan Tahunan Kekerasan Terhadap Perempuan Tahun 2023 Momentum Perubahan: Peluang Penguatan Sistem Penindakan Di Tengah Peningkatan Kompleksitas Kekerasan Terhadap Perempuan*.

⁴² Victor Claussen, 'Fighting Hate Speech and Fake News. The Network Enforcement Act (NetzDG) in Germany in the Context of European Legislation', *Rivista Di Diritto Dei Media*, 3, 1-27, 3 (2018), pp. 1–27 <www.reuters.com>.

⁴³ Chapter Author and others, 'Chapter Title: A Positive Freedom of Public Speech? Australian Media Law Reform and Freedom of Political Communication Title: New Directions for Law in Australia Book Subtitle: Essays in Contemporary Law Reform', 2016.

broadly applicable democratic principle remains inseparable from the value of freedom of expression. Freedom of expression is a right inherent to every human being and must be firmly protected. Moreover, freedom of expression, especially for women, can only be realized when a democratic system ensures that this freedom remains intact without pressure. The evolving and dynamic freedom to express opinions, particularly in the digital public space, aligns with changes occurring in democratic systems.

Furthermore, deeply rooted patriarchal culture and social stigma exacerbate the challenges of women's freedom of expression. Women who express opinions in the digital public space are often seen as "going against norms" or "improper," reflecting how patriarchal values still strongly limit women's expressive space. Moreover, women who actively voice critical views, especially on political or social issues, are often stigmatized as "provocateurs" or "undeserving". Such actions do more than constrain women's expressive rights; they also instill fear in other women, pressuring them into silence.

Therefore, it is necessary to reformulate Indonesia's digital constitution to not only guarantee freedom of expression but also build real protective mechanisms for women against digital violence, in line with international human rights standards.

Future Gender-Responsive Digital Constitution

Digital transformation has changed the face of democracy and human rights, including women's freedom of expression. However, the digital world also presents serious challenges in the form of discrimination, gender-based online violence, and structural vulnerabilities. Therefore, building a gender-responsive digital constitution becomes a crucial step to ensure that women have safe and equal access in the digital space.

One of the key pillars of a gender-responsive digital constitution is strengthening secure access for women, including through affirmative action policies. The state needs to adopt policies that ensure the digital space is inclusive, free of discrimination, and supports the active participation of women. This includes providing secure reporting channels for digital violence, gender-sensitive handling, and training for law enforcement officials.

Furthermore, gender-based digital literacy is vital. Many women lack sufficient understanding of digital privacy, online security, and how to address online violence. Gender-sensitive digital literacy programs will empower women to be better protected and more empowered in using information technology (UNESCO, 2021).

The massive digital transformation has shifted the landscape of public participation, including in the practice of freedom of expression. However, unfortunately, the existing legal framework and digital constitution are still gender-neutral, meaning they have not yet specifically addressed the inequalities and vulnerabilities faced by women. To build a gender-responsive digital constitution, the legal approach should no longer rely solely on the principles of universality and legal formalism but must emphasize substantive justice. This means the state must actively identify the structural barriers that women face in expressing their opinions, both in physical and digital public spaces, and provide genuine legal protection in its truest sense. An ideal digital constitution should not only affirm freedom of expression as a

normative guarantee but also provides effective protection instruments against forms of gender-based online violence (GBOV), algorithmic discrimination, and digital silencing experienced by women. In this context, recognizing gender-based digital inequality needs to be enshrined in clear derivative regulations, such as the Personal Data Protection Bill (PDP), the revision of the ITE Law, and technical regulations from the Ministry of Communication and Information (Kominfo), which have so far lacked adequate gender sensitivity.

Building a gender-responsive digital constitution also requires strengthening the capacity of state institutions to respond to the fast-changing dynamics of the digital space, which is vulnerable to exploitation to harm vulnerable groups. The Constitutional Court, for example, needs to be more open to progressive interpretations of Article 28E of the 1945 Constitution by considering the social and digital dimensions of women's expression. In addition, the parliament and regulatory bodies such as the Indonesian Broadcasting Commission (KPI), the National Commission on Violence Against Women (Komnas Perempuan), and Kominfo must work in synergy to ensure that national digital policies are built with a strong and participatory gender perspective. Women's participation in the formulation of digital policies must also be guaranteed both in terms of quota and substance to ensure that the resulting regulations are not biased toward a masculine perspective. Equally important, gender-responsive digital constitution education should be integrated into law and public policy curricula at the higher education level, so that future policymakers have a strong ethical and legal foundation when designing a safe and just digital space. On the other hand, civil society and digital women's communities must continue to be strengthened as critical partners for the state in building a healthy, open, but gender-just freedom of expression ecosystem. Without multisectoral collaboration and strong political will, the digital constitution will always lag behind the evolving social reality, and women will continue to be victims of a system that should protect their rights. Therefore, building a gender-responsive digital constitution is not just about the law, but about political courage, ethical justice, and a commitment to inclusive democracy.

In efforts to strengthen the national legal framework, reform of the ITE Law becomes crucial. The current ITE Law is considered ambiguous and often used to criminalize expression, including that of women human rights defenders. Revisions should focus on affirming protection for victims of gender-based online violence and removing potentially abusive provisions.

Furthermore, regulations on personal data protection must be drafted with consideration for women's vulnerabilities. Data breaches can have more severe impacts on women, including in the form of doxing, sexual threats, or extortion. Regulations should provide layered protection for gender-sensitive sensitive data and grant greater control to individuals (European Parliament, 2016).

In principle, digital rights should begin to be recognized as part of human rights in constitutional interpretation. The 1945 Constitution currently does not explicitly mention digital rights, but Article 28F can be interpreted progressively as a guarantee for the right to obtain, store, and convey information through digital means. Therefore, there is a need for the

Constitutional Court to develop an interpretation of the constitution so that digital rights, especially those of women, are recognized and protected within the framework of human rights.

This effort must also be accompanied by a pro-gender judicial review mechanism for ambiguous regulations that may violate women's rights. The Constitutional Court plays a strategic role in assessing whether a regulation aligns with constitutional principles on equality and freedom of expression.

IV. CONCLUSION

Women's right of free expression in the digital era is both a fundamental human right and a key indicator of the quality of Indonesia's constitutional democracy. Although guaranteed in the 1945 Constitution and reinforced by instruments such as the ICCPR and CEDAW, its implementation in digital spaces continues to face serious obstacles, including online gender-based violence (OGBV), vague provisions in the ITE Law, patriarchal cultural norms, and weak law enforcement. Case studies, such as the criminalization of women under the ITE Law, demonstrate how existing regulations often silence victims rather than protect them, while international experiences—such as the European Union's General Data Protection Regulation (GDPR) and Australia's Online Safety Act 2021—illustrate the importance of strong data protection and victim-centered mechanisms. Therefore, Indonesia urgently needs gender-responsive digital constitutional reform that transforms formal guarantees into substantive protections through revising ambiguous provisions of the ITE Law, strengthening gender-sensitive digital literacy, enhancing data protection, and encouraging progressive constitutional interpretation by the Constitutional Court. Supported by active civil society participation and multi-stakeholder collaboration, such reforms will not only safeguard women's rights but also ensure the development of a more inclusive, equitable, and democratic digital society.

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ABSTRACT

The digital transformation has reshaped the landscape of freedom of expression, creating new opportunities for participation while also exposing women to structural, normative, and cultural challenges. In Indonesia, although Article 28E of the 1945 Constitution guarantees these rights, the digital environment remains unsafe due to weak legal safeguards, gender-blind regulations, and entrenched patriarchal norms. Online gender-based violence or OGBV, including cyber harassment, doxing, and non-consensual image distribution, continues to silence women, while the misuse of the Electronic Information and Transactions (ITE) Law has frequently criminalized victims instead of providing protection. This article employs a normative-conceptual and comparative legal approach to assess these gaps. Case studies, such as the criminalization of women under the ITE Law, reveal how existing frameworks fail to address gender-specific vulnerabilities. A comparative perspective with the European Union's General Data Protection Regulation (GDPR) and Australia's Online Safety Act 2021 highlights best practices for safeguarding women's digital rights through strong data protection and proactive victim-centered mechanisms. The study argues for gender-responsive digital constitutional reform in Indonesia, including legal clarification, enhanced digital literacy, strengthened data protection, and progressive constitutional interpretation. Such reforms are essential to transform formal guarantees into substantive protections and ensure that women's freedom of expression is meaningfully realized in a democratic digital society. This article offers a unique contribution by integrating Indonesian case studies of women's criminalization under the ITE Law with comparative perspectives from the EU's GDPR and Australia's Online Safety Act. Unlike existing literature that remains largely descriptive, this study provides a prescriptive-analytical framework for gender-responsive digital constitutional reform. It bridges constitutional law, digital rights, and gender justice, presenting concrete pathways to transform formal guarantees into substantive protections for women's freedom of expression.

Keywords: freedom of expression, women, digital constitutional law, online gender-based violence, comparative constitutional law, digital rights.

ABSTRAK

Transformasi digital telah merekonstruksi lanskap kebebasan berpendapat, menciptakan peluang baru untuk partisipasi sekaligus mengekspos perempuan pada tantangan struktural, normatif, dan kultural. Meskipun di Indonesia terdapat jaminan konstitusional dalam Pasal 28E UUD 1945, ruang digital tetap tidak aman akibat lemahnya perlindungan hukum, regulasi yang buta gender, serta norma patriarki yang mengakar. Kekerasan berbasis gender online (KBGO), termasuk pelecehan siber, doxing, dan penyebaran konten intim

88 tanpa persetujuan, terus membungkam suara perempuan, sementara penyalahgunaan Undang-Undang Informasi dan Transaksi Elektronik (UU ITE) seringkali justru mengkriminalisasi korban alih-alih memberi perlindungan. Artikel ini menggunakan pendekatan hukum normatif-konseptual dan komparatif untuk menilai kesenjangan tersebut. Studi kasus, seperti kriminalisasi perempuan melalui UU ITE, menunjukkan bagaimana kerangka hukum yang ada gagal menjawab kerentanan spesifik berbasis gender. 68 Perspektif komparatif dengan General Data Protection Regulation (GDPR) di Uni Eropa dan Online Safety Act 2021 di Australia menyoroti praktik terbaik dalam melindungi hak digital perempuan melalui perlindungan data yang kuat dan mekanisme proaktif berbasis korban. Studi ini berargumen bahwa reformasi hukum konstitusi digital yang responsif gender sangat penting, termasuk melalui klarifikasi hukum, peningkatan literasi digital, penguatan perlindungan data, serta penafsiran konstitusi yang progresif. Reformasi tersebut esensial untuk mengubah jaminan formal menjadi perlindungan substantif, sehingga kebebasan berekspresi perempuan benar-benar terwujud dalam masyarakat digital yang demokratis. Artikel ini memberikan kontribusi dengan mengintegrasikan studi kasus Indonesia terkait kriminalisasi perempuan di bawah UU ITE dengan perspektif komparatif dari GDPR Uni Eropa dan Online Safety Act Australia. Berbeda dengan literatur yang sebagian besar masih bersifat deskriptif, studi ini menawarkan kerangka preskriptif-analitis bagi reformasi hukum konstitusi digital yang responsif gender. Artikel ini menjembatani hukum konstitusi, hak digital, dan keadilan gender, sekaligus menghadirkan jalur konkret untuk mengubah jaminan formal menjadi perlindungan substantif atas kebebasan berekspresi perempuan.

Kata kunci: kebebasan berpendapat, perempuan, hukum konstitusi digital, kekerasan berbasis gender online, hukum konstitusi komparatif, hak digital.

I. INTRODUCTION

20 The development of the digital era has brought about fundamental transformations in the way society expresses opinions. Public spaces, which were once limited to physical forums, have now expanded into virtual spaces, such as social media, online discussion platforms, and digital community-based information-sharing channels. Freedom of expression, which is one of the fundamental human rights, now faces new forms and challenges in the digital world. Information technology not only accelerates the dissemination of ideas but also creates new dynamics in managing civil rights, including protection of individual expression.¹ The significant changes in social life due to digitalization have led to violations of privacy rights, including the right to freedom of expression and protection from online threats.² 28

In this context, women have both significant opportunities and face considerable vulnerabilities. Women's access to digital spaces has opened broader opportunities for participation in public discourse, politics,

43 ¹ Nalom Kurniawan and Mery Christian Putri, *Laporan Penelitian Konvergensi Hukum Dan Teknologi Dalam Proses Penegakan Hukum Di Mahkamah Konstitusi* (Jakarta, 2021).

² Elvan Maulana and Timbul Dompok, 'Hak Asasi Manusia Di Era Digital : Tantangan Dan Peluang Dalam Mengatasi Kejahatan Siber', 3.1 (2025).

economics, and culture. However, on the other hand, women are also subjected to different types of online gender-based violence, including harassment in cyberspace, stalking through digital platforms, discriminatory hate speech, and the spread of content that degrades women's dignity. This phenomenon causes the digital gender divide, which has the potential to hinder the full realization of the right to freedom of expression.³

Indonesia upholds the rule of law as the foundation of state authority, where every action of the government is required to be grounded in legal norms to prevent arbitrary practices. Indonesia as a state governed by law is obligated to maintain legal order, enforce justice, and realize the objectives of law. The 1945 Constitution of the Republic of Indonesia (UUD 1945) serves as the supreme legal source and the fundamental reference for both written and unwritten governance, making it the basis upon which all laws and regulations in Indonesia are established.⁴

Freedom of expression holds significant value for several reasons. First, freedom of expression is fundamental to realizing personal self-actualization and reaching one's fullest potential. Second, it serves as a vital foundation for the search for truth and the progress of knowledge. In this regard, a person seeking knowledge and truth must be open to listening to all viewpoints, consider all alternatives, test their judgments by confronting opposing views, and use various perspectives as effectively as possible. Third, freedom of expression is important for individuals to actively engage in decision-making processes, particularly in politics. Fourth, freedom of expression allows society and the government to achieve stability and adaptability.⁵

The right to freedom of expression is one of the Constitutional Rights of Citizens (HKWN) as outlined in the 1945 Constitution of the Republic of Indonesia, which has been thoroughly inventoried and categorized into three types of constitutional rights: Individual Rights represented by an icon, Collective Rights represented by 29 icons, and Vulnerable Community Rights represented by 3 icons. The icon display is designed and arranged to represent the characteristics or traits of the objects they symbolize, namely the norms and provisions regarding the constitutional rights of citizens. The right to freedom of expression, as outlined in HKWN, is both an individual and collective right of citizens, which can be represented by the following icons:⁶

³ UN Women, *Regular Resources Report 2021: Investing In Result*, 2022.

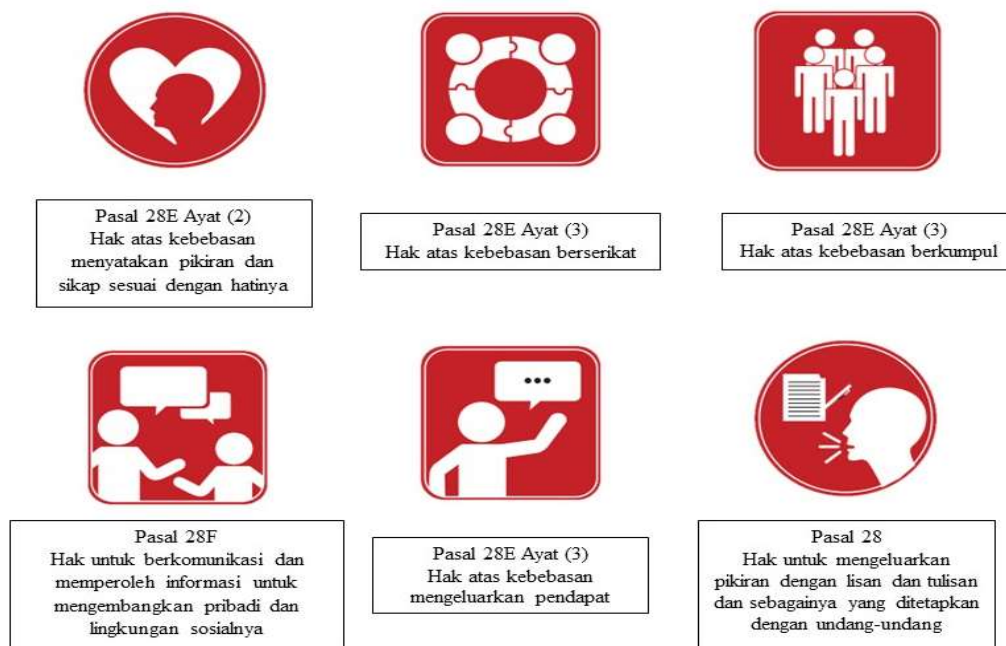
⁴ Wiranata, Khamim, and Imam Asmarudin, 'Kebebasan Berekspresi Melalui Media Digital Dan Penerapannya Di Indonesia', *Pancasakti Law Journal (PLJ)*, 1.2 (2023), pp. 205–18 <<https://doi.org/10.24905/>>.

⁵ Marwandianto Marwandianto and Hilmi Ardani Nasution, 'Hak Atas Kebebasan Berpendapat Dan Berekspresi Dalam Koridor Penerapan Pasal 310 Dan 311 KUHP', *Jurnal HAM*, 11.1 (2020), p. 1, doi:10.30641/ham.2020.11.1-25.

⁶ Mahkamah Konstitusi Republik Indonesia, 'Ikon HKWN: Hak Konstitusional Warga Negara', 2022.

Figure 1

The Indonesian Constitution, through Article 28E paragraph (3) of the 1945 Constitution, explicitly guarantees the right of every individual to express their opinions. Article 28I paragraph (2) of the 1945 Constitution also emphasizes that everyone has the right to be free from discriminatory treatment on any grounds and has the right to protection from such discriminatory treatment. These rights apply universally, without gender



distinction, and therefore constitute the constitutional basis for safeguarding women's freedom of expression in the digital age. Within the framework of constitutional law, this guarantee is part of the principle of constitutional rights that must be respected, protected, and fulfilled by the state through the principles of the rule of law and constitutional democracy.

In addition to national constitutional provisions, there are several international and national regulations that govern the right to freedom of expression. One of the international policy instruments governing freedom of expression is Article 19 of the 1948 Universal Declaration of Human Rights (UDHR), which guarantees the right to freedom of opinion and expression, and Article 19 of the International Covenant on Civil and Political Rights (ICCPR) 1966, which reaffirms the right to freedom of expression globally, ratified by Indonesia through Law No. 12 of 2005 concerning the International Covenant on Civil and Political Rights. Additionally, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979 requires state parties, including Indonesia, to ensure that women enjoy the right to freedom of expression without discrimination.⁷

⁷ Iwan Satriawan, Tareq Muhammad Aziz Elven, and Tanto Lailam, 'Internet Shutdown in Indonesia: An Appropriate Response or A Threat to Human Rights?', *Sriwijaya Law Review*, 7.1 (2023), pp. 19–46, doi:10.28946/slrev.vol7.iss1.1018.pp19-46.

Furthermore, the national policies and regulations governing the right to freedom of expression include Law No. 1 of 2024 on the Second Amendment to ITE Law. While aiming to protect rights in the digital space, this law raises concerns about restrictions on freedom of expression, particularly for women victims of digital violence. Additionally, the national instrument regulating freedom of expression is the Regulation of the Ministry of Women's Empowerment and Child Protection (PPPA). The PPPA regulates the protection of women and children in the online realm, including digital literacy and addressing online gender-based violence.⁸

In the perspective of constitutional law, these developments call for a reinterpretation of the constitution to adapt to technological changes. In line with the living constitution principle, the constitution must be interpreted dynamically to meet modern challenges, particularly in safeguarding women's freedom of expression in the digital era.⁹ Therefore, it is important to explore how Indonesian constitutional law, as well as national and international law, shapes the framework for protecting women's freedom of expression, particularly in this complex digital era.

In this research, the author will examine how constitutional law regulates freedom of expression, specifically for women in the digital era, and the challenges faced by women in realizing freedom of expression in the digital space. Through this research, the author will also formulate strategies for the development of a digital constitutional law that is responsive to the protection of women's freedom of expression.

The aim of this article is to analyze the constitutional guarantees of women's freedom of expression in the digital era based on Indonesian constitutional law and international instruments, identify the structural and normative challenges faced by women in exercising their right to free expression in the digital world, and provide recommendations for the development of a digital constitutional law that is more responsive to the protection of women's freedom of expression.

II. METHOD

This study employs a normative-conceptual legal research design with a multi-layered methodological framework to ensure both doctrinal depth and comparative insight. The research combines the statute approach, which examines the 1945 Constitution, the ITE Law, Law No. 12 of 2005 on the ratification of the ICCPR, Law No. 7 of 1984 on the ratification of CEDAW, and other relevant national regulations concerning women's protection in digital spaces; the conceptual approach, which analyzes theoretical perspectives on freedom of expression, the doctrine of the living constitution, constitutional rights, and the emerging concept of digital constitutional law; and the comparative approach, which assesses legal frameworks in other jurisdictions, particularly the General Data Protection Regulation (GDPR) in

⁸ Ayu Riska Amalia, Putri Raodah, and Nizia Kusuma Wardani, 'Menjamin Hak Perempuan Di Era Digital: Kewajiban Negara Dan Tantangan Regulasi Nasional', *Jurnal Kompilasi Hukum*, 9.2 (2024), pp. 178–91

<<https://jkh.unram.ac.id/index.php/jkh/article/view/184/132>>.

⁹ Adrian Kuenzler, 'What Competition Law Can Do For Data Privacy (and Vice Versa)', *Computer Law & Security Review*, 47 (2022), p. 105757, doi:10.1016/J.CLSR.2022.105757.

the European Union and the Online Safety Act in Australia, to highlight best practices and lessons for Indonesia. The sources of legal materials are drawn from primary materials, including the 1945 Constitution, ICCPR, CEDAW, the ITE Law, and related legislation; secondary materials, such as constitutional law textbooks, peer-reviewed journal articles, and international reports from UN Women and UNESCO; as well as tertiary materials like legal dictionaries, encyclopedias, and supporting references. Data collection is carried out through systematic library research using official legal databases, scholarly repositories, and authoritative international reports, while the analysis technique applies a prescriptive-analytical method, which not only describes existing legal norms but also critically evaluates their effectiveness, identifies normative gaps, and proposes gender-sensitive constitutional reforms, ensuring that the study contributes both normatively and prescriptively to the discourse on digital constitutional law.

III. ANALYSIS AND DISCUSSION

Protection of the Right to Freedom of Expression in the 1945 Constitution

The Constitution of the Republic of Indonesia explicitly provides for the right to freedom of expression as a component of human rights safeguarded by the state. In the context of the Indonesian legal system, protection of the right to express opinions is enshrined in several important articles of the 1945 Constitution of the Republic of Indonesia (UD 1945), whose relevance is increasingly significant in the midst of the evolving digital era.¹⁰ First, Article 28E paragraph (3) of the 1945 Constitution states that *"Every person shall have the right to freedom of association, assembly, and to express opinions."* This provision forms the main foundation that guarantees every citizen, without exception, the right to express their views verbally, in writing, or through other media. Second, Article 28G paragraph (1) states that *"Every person shall have the right to personal protection, family, honor, dignity, and property under their control, and the right to security and protection from threats or fears of doing or not doing something that is a human right."* This provision adds another dimension to the protection of freedom of expression, especially in the context of protection from intimidation, persecution, or digital violence that often affects individuals, particularly women, in cyberspace. Third, Article 28I paragraph (2) affirms that *"Every person shall have the right to be free from any discriminatory treatment on any grounds and the right to protection from such discriminatory treatment."* This provision reinforces the principle that freedom of expression should be exercised equally, free from any gender-based discrimination, religion, ethnicity, or any other identity, including in the context of the use of information technology.

The interpretation of these provisions is challenged in Law No. 9 of 1998 on the Freedom of Expression in Public, where Article 1 paragraph (1) states that "freedom of thought in the form of oral, written, or other methods may be expressed freely and responsibly in accordance with applicable laws." According to the 1945 Constitution and Law No. 9 of 1998, freedom of

¹⁰ Muten Nuna and Roy Marthen Moonti, 'Kebebasan Hak Sosial-Politik Dan Partisipasi Warga Negara Dalam Sistem Demokrasi Di Indonesia', *Jurnal Ius Constituendum*, 4.2 (2019), p. 110, doi:10.26623/jic.v4i2.1652.

expression is a fundamental right that is declared and protected by the state. The principle of freedom of expression in the context of human rights is related to the idea of a state based on law. Indonesia, as a rule-of-law state, has agreed to various international regulations that respect the right to freedom of expression and opinion. This is also guaranteed in the country's constitution, so criticism of the government is not considered illegal. The right to freedom of expression is provided with constitutional protection in Indonesia. The imposition of restrictions on freedom of expression is directed toward preserving both national security and the collective welfare of society.¹¹ In the period from 1999 to 2002, the People's Consultative Assembly (MPR) amended the 1945 Constitution, which previously had no chapter on human rights (HAM). This change was a result of the 1998 reform movement, which emerged after the public, including students and youth, demanded the enforcement of the rule of law, respect for human rights, and the eradication of corruption, collusion, and nepotism (KKN). This was a significant advancement in Indonesia's transformation and an effort by the Indonesian people to make the 1945 Constitution more modern and democratic.

In the digital era, freedom of expression has expanded in form and media. If in the past, expression of opinions occurred in physical forums such as public discussions, print media, or demonstrations, today, most freedom of expression practices take place on digital platforms such as social media, websites, blogs, and online video platforms. The digital space has become the main arena for society to express opinions, social critiques, and resistance against injustice.

The 1998 political reform, spearheaded by the younger generation and students, called for freedom of communication as a manifestation of democracy for society and the state. This reform was carried out through the use of new media, supported by the Internet, to unite movements against the state's power that ignored democracy. This reform aimed to replace the political hegemony of authoritarianism with democracy that prioritizes freedom of expression which finally through the reform, Indonesia embarked on a new direction, one that embraced and institutionalized freedom of the press.¹²

Indonesian human rights are safeguarded in the 1945 Constitution, ensuring the rights of every citizen and resident. The Indonesian believe that human rights must take into account the uniqueness of Indonesia, and each human right must be in line with responsibility, so that there is a relationship of mutual respect and recognition of each individual's human rights, including freedom of religion, belief, freedom of expression, association, and behavior, as well as human rights related to access to information and communication.¹³

¹¹ Latipah Nasution, 'Hak Kebebasan Berpendapat Dan Berekspresi Dalam Ruang Publik Di Era Digital', *Adalah*, 4.3 (2020), pp. 37–48, doi:10.15408/adalah.v4i3.16200.

¹² Muhammad and Syahnan Harahap, *Kemerdekaan Pers Pada Orde Reformasi Jurnal Ilmiah Hukum Dirgantara-Fakultas Hukum Universitas Dirgantara Marsekal Suryadarma* |, 2019, IX.

¹³ MPR RI, 'Panduan Pemasyarakatan', *Sekretariat Jendral MPR RI*, 2020 <<https://www.mpr.go.id/sosialisasi/panduan-pemasyarakatan>>.

Therefore, constitutional protection for the right to freedom of expression must still apply in the digital space. The state has an obligation to ensure that the expression of citizens on the internet is not arbitrarily silenced, and to ensure that this freedom is not used as a pretext for allowing violence or hate speech, especially against vulnerable groups. Thus, the interpretation of the 1945 Constitution must continue to develop progressively to meet the challenges of the times. The Constitutional Court, as the protector of citizens' constitutional rights, plays a crucial role in interpreting constitutional provisions to keep them relevant to the dynamics of today's digital society.

National and International Instruments on Freedom of Expression for Women

The freedom to express opinions and communicate verbally or in writing is a fundamental element in democratic governance systems with a very broad definition. Establishing clear legal rules as an initial step in ensuring freedom of expression and the right to voice opinions is a reflection of democracy that respects the law. The protection of women's freedom of expression is not only by the national constitution but is also strengthened by various national and international legal instruments. These legal instruments form the essential foundation to ensure that women have equal opportunities to express their views, both in physical spaces and in the digital world.

The right to freedom of expression, including the right to convey and receive information, is a fundamental human right in Indonesia, as stipulated in various laws, such as the 1945 Constitution, Law No. 9 of 1998 on the Freedom to Express Opinions in Public, Law No. 39 of 1999 on Human Rights, Law No. 40 of 1999 on the Press, Law No. 32 of 2002 on Broadcasting, Law No. 14 of 2008 on Public Information Transparency (KIP), Government Regulation No. 61 of 2010 on the Implementation of Public Information Transparency (KIP), Minister of Administrative and Bureaucratic Reform Regulation No. 83 of 2012 on Social Media Utilization Guidelines for Government Institutions, ITE Law, and Government Regulation No. 71 of 2019 on the Organization of Electronic Systems and Transactions.¹⁴

Within the national instruments, Law No. 39 of 1999 on Human Rights (UU HAM) specifically addresses the right to freedom of expression in Articles 23 to 25. Article 23 states that everyone has the right to freedom of expression, Article 24 recognizes the right of everyone to communicate and receive information, and Article 25 affirms the right of everyone to associate and assemble. This law provides the national legal basis for the protection of women's right to express opinions, including considering gender equality aspects in its implementation.¹⁵

In addition to the Human Rights Law, there is also Law No. 1 of 2004 in conjunction with ITE Law. The ITE Law regulates new forms of expression in digital spaces, including the use of electronic media to express opinions.

¹⁴ Siti Fatimah, *Jaminan Kepastian Hukum Atas Kebebasan Berpendapat Di Era Konvergensi Media*, Disertasi (Fakultas Hukum Universitas Sebelas Maret, 2024).

¹⁵ Della Lusky Selian and others, 'Freedom of Expression in the Era of Democracy: Records of Human Rights Enforcement Kebebasan Berekspresi Di Era Demokrasi: Catatan Penegakan Hak Asasi Manusia', 2.2 (2018), pp. 185–94
<<https://journal.unnes.ac.id/sju/index.php/lslr/index>>.

While intended to regulate the flow of information, the ITE Law often sparks controversy regarding freedom of expression, particularly due to the potential for criminalizing women's expression in the digital realm. Therefore, in the context of women's rights protection, the implementation of the ITE Law must ensure a balance between maintaining public order and protecting freedom of expression.¹⁶

Law No. 7 of 1984 on the Ratification of CEDAW also serves as a national instrument regulating the right to freedom of expression. Through this law, Indonesia ratified the CEDAW. This ratification strengthens the state's obligation to ensure that women can enjoy their civil and political rights, including freedom of expression, without discrimination. CEDAW encourages countries to remove cultural, social, and legal barriers that hinder women from enjoying their right to express their opinions.

Internationally, principles that reinforce the right to freedom of expression are outlined in several human rights instruments. Indonesia's ratification of the ICCPR through Law No. 12 of 2005 reinforces, under Article 19, the principle that all individuals has the right to freely express opinion and expression without interference, including the ability to seek, obtain, and communicate information through any medium irrespective of national frontiers. In parallel, CEDAW serves as a normative instrument that underscores the eradication of gender-based discrimination, particularly by affirming women's equal rights to access and freely express opinions in both public and private life.¹⁷

Article 19 of the Universal Declaration of Human Rights (UDHR) ensures that *"everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers."* This declaration marks the beginning of universal recognition of the right to freedom of expression, which applies without discrimination, including based on gender.

Furthermore, Article 19 of the ICCPR, which Indonesia ratified through Law No. 12 of 2005, strengthens the right to freedom of expression. The Covenant recognizes the right of everyone to impart information and ideas in various forms. It demands that state parties respect and protect freedom of expression without discrimination, making it relevant in ensuring women's rights in both public and digital spaces.

Additionally, the CEDAW mainstreams gender in political rights and freedom of expression. CEDAW not only demands the elimination of discrimination against women in politics but also requires states to take affirmative measures to ensure that women can participate equally in political and public life. This includes the right to express opinions freely in public forums and media, including digital spaces, as well as protection from gender-based violence or intimidation.

¹⁶ Stella Hita Arawinda, 'Perlindungan Hukum Terhadap Perempuan Korban Kekerasan Berbasis Gender Online Di Indonesia', *Jurnal Yustika: Media Hukum Dan Keadilan*, 24.02 (2022), pp. 76–90, doi:10.24123/yustika.v24i02.4599.

¹⁷ 'ANNEX Office of the United Nations High Commissioner for Human Rights', no. March (2020), pp. 1–9.

According to Article 19 of the ICCPR, global human rights principles interpret the right to express opinions in two ways: internally (within personal thoughts) and externally (in the public environment). Internal freedom is linked to an individual's mental state when expressing opinions (Article 19(1) ICCPR), and it cannot be constrained. For this reason, the state must refrain from intervention. Meanwhile, external freedom considers the freedom to openly express opinions, which may be subject to limitations (International Covenant on Civil and Political Rights, Article 19(2)). The implementation of restrictions must comply with applicable laws and should respect the rights or reputation of others, as well as maintain national security, public order, health, or morals (Article 19(3) ICCPR). The right to express opinions without interference is regulated not only in Article 19(1) of the ICCPR but also in Articles 28 and 28E(2) of the 1945 Constitution of Indonesia. The Human Rights Law also includes regulations on this in Article 23(2), stating that "All individuals have the freedom to voice, disseminate, and express opinions according to their personal beliefs, either orally or in writing through print or electronic media, with due regard to religious values, morality, social order, public interest, and national unity." Therefore, the Indonesian state is prohibited from intervening in the right to freedom of expression.¹⁸

In carrying out its obligations under Article 19(1) of the ICCPR concerning freedom of expression, Indonesia, as a state party, is required to comply with the standards set forth in General Comment No. 34 of the Human Rights Committee. Paragraph 9 of this Comment affirms that freedom of expression constitutes an absolute right that cannot be restricted under any circumstances (a non-derogable right). The opinions protected under this right include those related to politics, science, history, morality, and religion. Any form of interference, intimidation, abuse, including arrest, detention, trial, and imprisonment based on someone's personal opinions, violates the provisions of Article 19(1) ICCPR. Meanwhile, Paragraph (10) clarifies that all forms of coercion to compel an individual to express their opinions are prohibited. Freedom of thought also includes the freedom not to express an opinion.

Freedom of expression is a fundamental right that is not absolute but has certain requirements.¹⁹ This right is emphasized in Article 19(2) of the ICCPR; Articles 28, 28E(2) and (3), 28F of the 1945 Constitution of the Republic of Indonesia; and in Article 23(2) and Article 25 of the Indonesia Human Rights of Law, which states, "Every individual has the right to express their opinion in public...". To ensure the fulfillment of this right, Indonesia must refer to General Comment No. 34 of the ICCPR on the Siracusa Principles. Additionally, in General Comment No. 34, Paragraph (11), state parties are required to ensure freedom of speech, including the right to seek, receive, and share information and ideas about everything without exception. One of the rights included in this situation is the freedom to express and receive ideas or opinions through various forms of communication that can

¹⁸ Elfia Farida, 'Kewajiban Negara Indonesia Terhadap Pemenuhan Hak Kebebasan Berpendapat Dan Berekspresi', *Jurnal Ilmiah Ilmu Hukum QISTIE*, 14.2 (2021), p. 43.

¹⁹ Daniel Riffe and Kyla P. Garrett Wagner, 'Freedom of Expression: Another Look at How Much the Public Will Endorse', *Communication Law and Policy*, 26.2 (2021), pp. 161–86, doi:10.1080/10811680.2021.1893096.

be shared with others. However, this must comply with the provisions set out in Articles 19(3) and 20 of the ICCPR. This includes discussions about politics, opinions about individuals, social issues, human rights issues, journalistic activities, arts and culture, education, religious teachings, and business advertisements. It also involves ideas that may be considered highly inappropriate, even though such expressions can be regulated within the limitations determined by Articles 19(3) and 20 of the ICCPR.

In General Comment No. 34, Paragraph (12), according to this Article, states have the responsibility to preserve and protect all forms of expression and their dissemination methods. Examples include speaking, writing, using sign language, and non-verbal communication such as images, paintings, and other artistic objects. There are various ways to express oneself, including through media such as books, newspapers, brochures, posters, banners, clothing, and legal documents. This also includes audiovisual expressions or those based on electronic technology or the internet. In this regard, law enforcement officers should not use force against murals or social media posts that criticize the government. Provisions in Articles 19(3) and 20 of the ICCPR may limit the right to express opinions. In practice, based on General Comment No. 34, Paragraph (21), as outlined in the text, limitations on freedom of expression are justified solely under two conditions. The first is to protect the rights or reputation of others. The second is to safeguard national security, public order, public health, or public morals. When the government imposes restrictions on freedom of expression, they must ensure that the right remains protected and is not negatively affected by their actions. Regulations regarding restrictions should be established in laws, as outlined in General Comment No. 34, Paragraph (22), explaining the restrictions found in the Siracusa Principles on Limitations and Derogations of Provisions in the ICCPR (Annex, UN.Doc.E/CN.4/1984/4 (1984)). Human rights limitations should not be used as tools to protect the state and public officials from criticism and public opinion, considering their reputation.²⁰

The Indonesian legal system has various important components, including the police, prosecutors, courts, advocates, correctional institutions, and alternative dispute resolution bodies.²¹ Repressive actions taken by the police are a central issue in the application of the law and the protection of human rights (HR) in the context of the freedom of expression.²² In addition, there has been a transformation in how law enforcement authorities understand and respond to the practice of freedom of expression, where this right, originally guaranteed and protected by the constitution, is now viewed as a threat to public order and national security. This has resulted in the reduction of the right to freedom of speech, criminalization, arrests, and other repressive actions. Although freedom of expression is not absolute, its

²⁰ Farida, 'Kewajiban Negara Indonesia Terhadap Pemenuhan Hak Kebebasan Berpendapat Dan Berekspresi'.

²¹ Agus Santoso, 'Hukum, Moral, Dan Keadilan: Hukum (Edisi Pertama)', viii (2015) <<https://library.bpk.go.id/koleksi/detil/jkpkbpkpp-e-202111122312>>.

²² Lutfil Ansori, Penegakan Hukum, and Hukum Progresif, 'Reformasi Penegakan Hukum Perspektif Hukum Progresif', 4.2 (2017), pp. 148–63.

regulation must remain consistent with constitutional provisions and the protection of human rights.²³

Along with the advancement of information technology, media for expressing opinions has undergone significant changes, shifting from physical forums like demonstrations, discussions, or print media, to digital platforms like social media, blogs, video channels, and other online forums. The digital space has become a new arena for people to voice opinions, advocate for rights, and build communities. However, this transition also brings new challenges in terms of legal protection and state oversight. In this context, constitutional law must adapt to digital dynamics to remain relevant in guaranteeing fundamental rights, especially for vulnerable groups such as women.²⁴

As a democratic country, Indonesia has the responsibility to uphold, enhance, implement, and fulfill the right to freedom of expression, which is part of human rights, as stipulated in Article 28I(4) of the 1945 Constitution. However, it is important to emphasize that the right to express opinions and freedom of expression is not without limitations. Freedom of speech must be considered prudently, taking into account individual rights and public interest. Regulations regarding freedom of expression should be formulated clearly and concisely to be understood by all individuals. Those who decide to impose such limitations must be able to justify their need and act reasonably. Furthermore, these limitations must have safeguards to prevent abuse and involve proper legal processes.²⁵

Women in the Digital World: Between Opportunities and Vulnerabilities

Women are a vital pillar in the social, economic, and political development of a nation. Their roles are not limited to the domestic sphere but are increasingly evident in the public domain, including leadership, education, and technology. However, women still face various structural challenges such as gender inequality, discrimination, violence, and limited access to resources. To achieve true equality, an intersectional approach is required that ensures the protection of women's rights and sustainable empowerment. Recognition of women's dignity, capabilities, and contributions is an essential foundation in creating a just, inclusive, and gender-equal society.²⁶

Digital transformation has opened new spaces for women to express themselves, access information, and participate in socio-political life. In the

²³ Barda Nawawi Arief, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan ...* - Prof.Dr.Barda Nawawi Arief, S.H. - Google Buku, Prenada Media, 5th edn (Kencana (Prenada Media Group), 2018) <https://books.google.co.id/books/about/Masalah_Penegakan_Hukum_dan_Kebijakan_Hu.html?id=AeLJDwAAQBAJ&redir_esc=y>.

²⁴ Jeremy Harris Lipschultz, *Social Media Communication, Social Media Communication* (Taylor and Francis, 2017), doi:10.4324/9781315388144.

²⁵ Syafaat Anugrah Pradana, Rusdianto Sudirman, and Muh. Andri Alvian, 'Kemelitan Penegakan Hukum Terhadap Hak Kebebasan Berpendapat', *DIKTUM: Jurnal Syariah Dan Hukum*, 20.1 (2022), pp. 156–68, doi:10.35905/diktum.v20i1.2811.

²⁶ Yulia Hesti and others, 'Korelasi Antara Kebebasan Berekspresi Dalam Peningkatan Kasus Kejahatan Asusila Di Media Digital (Sextorsi)', *JLEB: Journal of Law, Education and Business*, 2.1 (2024), pp. 522–29, doi:10.57235/jleb.v2i1.1890.

13 context of digital democracy, women's presence in the online space reflects the expansion of citizen participation and the strengthening of constitutional rights to freedom of expression. Access to the internet and social media allows women to build networks, advocate for gender issues, and push for public policies that are more responsive to their needs. The digital space has also become an important channel for women to express their opinions freely and independently, which was previously often restricted by patriarchal social structures.²⁷

However, behind these opportunities, women also face very real vulnerabilities in the digital world. Various forms of gender-based online violence (GBOV) are becoming more rampant, such as cyberbullying, doxing (public dissemination of personal data), and hate speech targeting women's gender identity or sexuality. These forms of violence not only harm women psychologically but also limit their participation in the online world. UN Women reports indicate that women globally are more vulnerable to digital violence compared to men, particularly when they are active in public or political issues. Moreover, algorithms and social media culture further reinforce gender stereotypes, where women are often portrayed as sexual objects, harassed for their appearance, or considered unworthy of expressing critical opinions.²⁸

2 Based on SAFEnet monitoring, there were 48 cases of freedom of expression violations in the digital realm between April and June 2024, with 45 reported victims. This number represents an increase of 18 cases compared to the previous quarter, which recorded 30 cases. In terms of the number of reporters, the figure decreased compared to the previous period, which recorded 52 reporters. The most common reports related to digital expression were made under the ITE Law, without specifying a particular article, totaling 15 cases. Hate speech/incitement under Article 28 paragraph (2) of the ITE Law was recorded in 6 cases. Alleged defamation and/or slander under Article 27 paragraph (3), as well as threats of violence or intimidation under Article 45 paragraph (3) of the ITE Law, were each recorded in 4 cases. Furthermore, cases violating decency under Article 27 paragraph (1) were recorded in 3 cases. Of the 48 cases monitored throughout the second quarter of 2024, only 22 cases had reports filed under the new ITE Law.²⁹

2 Freedom of speech is theoretically considered nearly limitless, but in practice and implementation, it often presents a paradox where the freedom of society, especially for women, to speak or express opinions through various forms of expression is often restricted in the name of promoting the greater public good. Most scholars agree that protection of freedom of speech must be maintained at a very high level. In this regard, high protection is necessary for freedom of speech, especially in the context of politics and public policy, due to its importance for the stability of governance. This indicates that there should be consistent communication between society and the government, where communication from society serves as a form of oversight on the

²⁷ Siti Fatimah, 'Demokrasi Digital Dan Welfare State Indonesia', *Prosiding Konferensi Nasional APHTN-HAN*, 1.1 (2023), pp. 855–86.

²⁸ 'APC Annual Report 2020' <<https://2020report.apc.org/>> [accessed 22 February 2025].

²⁹ Abul Hasan Banimal and others, *Laporan Pemantauan Hak-Hak Digital Di Indonesia* (Bali, 2025).

13 government's actions. Freedom of expression is the core of democracy because
the effectiveness of democracy depends on citizens' ability to criticize the
90 government and actively participate in discussions on issues that may affect
the government, especially in decision-making and policy formation in the
current era of social media.³⁰

The phenomenon of women facing criminal charges in connection with
their exercise of freedom of expression online has grown increasingly
prevalent. For instance, women who share experiences of sexual harassment
on social media are often criminalized on the grounds of defamation of the
perpetrator. Examples include cases of infidelity in households, such as the
case of Valencya who was sued by her husband for scolding him,³¹ the sexual
harassment case by Herry Wirawan,³² and instances where the wife of a
prisoner is extorted by rogue police officers,³³ among many other cases. This
indicates that the ITE Law still does not provide adequate protection for
women in expressing themselves; on the contrary, it can be used as a tool to
77 silence their voices. The National Commission on Violence Against Women
report in 2021 noted that many victims of sexual violence face revictimization
because their courage to speak out in the digital space leads to legal action
based on articles in the ITE Law.

Women in the digital world face a complex dual dynamic that
simultaneously opens up vast participatory spaces while also presenting new
and significant vulnerabilities. The digital world provides various
opportunities for women to voice their opinions, expand their social networks,
enhance literacy, and develop their economic and intellectual capacities.
Social media, community-based platforms, and virtual discussion spaces
have enabled women, including those from marginalized groups, to break
through the boundaries of private space into public space more equitably.
However, as access opens up, women also become the most vulnerable group
to experience gender-based online violence (GBOV), doxing, non-consensual
content dissemination, and cyberattacks targeting their bodies and gender
identities. In the context of freedom of expression, women are often silenced
not because of the substance of their arguments but because of their
biological and social identity as women. This situation poses a serious
14 challenge to the principle of equality before the law and the constitutional
right to freedom of expression. Unfortunately, the existing legal framework,
including in Indonesia, is still not fully responsive in protecting women in the

63 ³⁰ Dahlil Imran and Nur Hidayat Sardini, 'Bayang Otoritarianisme Digital: Analisis Rkuhp
Kehormatan Penyelenggara Negara Dan Kebebasan Menyatakan Pendapat', *Jurnal*
89 *Education and Development*, 11.1 (2022), pp. 24–30, doi:10.37081/ed.v11i1.4223.

³¹ Farida Farhan, 'Cerita Valencya, Dituntut Penjara Karena Marahi Suami Mabuk: Kaget
1 Omelannya Direkan Jadi Alat Bukti', *Kompas.Com*, 2021
<<https://regional.kompas.com/read/2021/11/16/125650478/cerita-valencya-dituntut-penjara-karena-marahi-suami-mabuk-kaget-omelannya>>.

³² Rachmadi Rasyad, 'Melihat Ponpes Milik Herry Wirawan, Pemerkosa 12 Santri',
1 *Kumparan.News*, 2021 <<https://kumparan.com/kumparannews/melihat-ponpes-milik-herry-wirawan-pemerkosa-12-santri-1x4n2YB5FK0/full>>.

³³ M. Syofri Kurniawan, 'Istri Tahanan Mengaku Dimintai Rp20 Juta Oleh Oknum Polisi
1 Agar Suaminya Tak Ditembak - TribunJateng', *TribunJateng.Com*, 2021
<<https://jateng.tribunnews.com/2021/12/16/istri-tahanan-mengaku-dimintai-rp20-juta-oleh-oknum-polisi-agar-suaminya-tak-ditembak>>.

digital realm comprehensively. The digital constitutional law instruments must be able to guarantee a safe space for women to express their opinions, free not only from state intervention but also from gender-based violence and intimidation by non-state actors. In other words, digital transformation must be accompanied by affirmative policies that substantively guarantee the protection of women's constitutional rights, not just formally. Without genuine legal support, the digital world, which should be a space for liberation, may turn into a new arena of repression that reinforces women's subordination in society.³⁴

Therefore, it is crucial to place the protection of women in the digital world as an integral part of digital constitutional law. The state is not only obliged to guarantee the right to freedom of expression but also to create a safe and equitable digital space for all, especially vulnerable groups such as women.

Case Studies and International Comparative Perspectives on Women's Freedom of Expression in Digital Spaces

The challenges faced by Indonesian women in exercising freedom of expression in the digital sphere are best illustrated through real case studies. One prominent example is the Valencia case, in which a woman was criminally charged under the ITE Law after publicly expressing grievances about domestic abuse on social media. Instead of being recognized as a victim, she was criminalized under defamation provisions, demonstrating how the ITE Law is often used as a tool to silence women rather than protect them.³⁵ Similarly, cases of doxing and cyber harassment against women activists, including those advocating for gender equality and environmental justice, have shown that weak enforcement mechanisms and patriarchal interpretations of law often exacerbate the vulnerability of women in digital spaces.³⁶ These cases prove the normative disparity between the constitutional guarantee of free expression and the actual experiences of women in Indonesia's digital space.

In contrast, international experiences provide valuable comparative lessons. The European Union's General Data Protection Regulation (GDPR) establishes strong safeguards for personal data, including sensitive data categories such as gender identity, thereby minimizing the risk of online harassment and misuse of personal information.³⁷ The GDPR framework demonstrates how regulatory clarity, combined with robust enforcement mechanisms, can enhance women's sense of security in digital participation. Likewise, Australia's Online Safety Act 2021 provides a rapid response system

³⁴ Endah Pertiwi and others, 'Analisis Yuridis Terhadap Penyalahgunaan Data Pribadi Pengguna Media Sosial', *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia*, 3.3 (2022), pp. 10–16, doi:10.52005/rechten.v3i3.65.

³⁵ Farhan, 'Cerita Valencia, Dituntut Penjara Karena Marahi Suami Mabuk: Kaget Omelannya Direkan Jadi Alat Bukti'.

³⁶ Komnas Perempuan, *CATAHU 2023: Catatan Tahunan Kekerasan Terhadap Perempuan Tahun 2023 Momentum Perubahan: Peluang Penguatan Sistem Penyikapan Di Tengah Peningkatan Kompleksitas Kekerasan Terhadap Perempuan*, *Catahu: Catatan Tahunan Tentang Kekerasan Terhadap Perempuan* (Jakarta, 2024) <<https://komnasperempuan.go.id/>>.

³⁷ *Regulation (EU) 2016/679 of The European Parliament and of The Council of 27 April 2016, Official Journal of the European Union*, 2016, doi:10.4324/9781315775203-11.

for victims of online abuse, allowing the eSafety Commissioner to demand the removal of harmful content within strict timeframes. This proactive approach ensures that women experiencing cyber harassment or non-consensual image sharing have effective legal recourse, contrasting sharply with the slow and often dismissive responses in Indonesia.³⁸

Based on the comparisons above, these comparative perspectives, it is clear that Indonesia lags behind in adopting gender-sensitive digital constitutional safeguards. The Indonesian legal framework remains gender-neutral in form but gender-blind in substance, as it does not explicitly address the structural barriers women face in digital spaces. Meanwhile, both the EU and Australia have demonstrated the importance of embedding gender sensitivity, victim-centered mechanisms, and strong institutional oversight within digital governance frameworks. These comparative lessons suggest that Indonesia should revise the ITE Law to explicitly protect women from online gender-based violence, integrate data protection principles similar to the GDPR, and establish independent bodies with authority to handle digital rights violations swiftly and effectively.

In sum, integrating case studies and international comparisons not only strengthens the normative analysis but also provides concrete pathways for reform. By learning from the criminalization of women under the ITE Law domestically and adopting best practices from the GDPR and the Online Safety Act, Indonesia can move toward a digital constitutional framework that is both inclusive and protective, ensuring that women's freedom of expression is meaningfully guaranteed in practice.

Legal Analysis: Constitutional Challenges in Ensuring Women's Freedom of Expression

Within the framework of Indonesian law, women's freedom of expression in the digital sphere faces a number of normative and structural challenges. Normatively, while the 1945 Constitution guarantees the right to freedom of expression, it does not explicitly address the protection of digital rights, including privacy and cybersecurity rights. Articles 28E and 28F provide the foundation for freedom of expression and communication, but in practice, the scope of these protections has not been fully adapted for the digital era.³⁹

The digital age has opened new opportunities for women to engage more actively in the public sphere. However, this technological development also presents serious challenges for the protection of freedom of expression, particularly regarding gender-based violence, regulatory weaknesses, and cultural barriers. Women in the digital space are often targets of gender-based online violence, which threatens their right to freely express their opinions. Forms of Digital Violence or Gender-Based Online Violence (GBOV) include doxing, the dissemination of personal information without consent to intimidate victims, cyber harassment through messages, comments, or the

³⁸ Australian Government, *Statutory Review of the Online Safety Act 2021*, 2021, MMXXI, p. 4 <<https://www.infrastructure.gov.au/have-your-say/statutory-review-online-safety-act-2021>>.

³⁹ Bobi Aswandi and Kholis Roisah, 'Negara Hukum Dan Demokrasi Pancasila Dalam Kaitannya Dengan Hak Asasi Manusia (Ham)', *Jurnal Pembangunan Hukum Indonesia*, 1.1 (2019), p. 128, doi:10.14710/jphi.v1i1.128-145.

spread of offensive content, and gender-based hate speech, which targets women based on their gender identity.

18 Legally, freedom of expression is guaranteed by various legal instruments, both national and international. At the national level, the 1945 Constitution of the Republic of Indonesia, Article 28E paragraph (3), states that "Everyone has the right to freedom of association, assembly, and to express opinions." This guarantee is universal and inclusive; however, in practice, there are still gaps in protection for vulnerable groups, particularly women. A key constitutional challenge is the lack of a legal approach that explicitly affirms and responds to the vulnerability of women in exercising their right to express opinions in the public sphere, especially in the digital context. For example, in the case of Agni, a victim of sexual violence at Gadjah Mada University (UGM), the public support and opinions voiced by women through social media faced backlash, labeling, and attempts at silencing, which were not seriously addressed by the state. Despite the principle of equality being recognized in Article 28D paragraph (1) and (3) of the 1945 Constitution, as well as Law No. 7 of 1984 on CEDAW, in practice, women are more likely to become victims of doxing, cyberstalking, and gender-based disinformation. The Constitutional Court, in its Decision No. 50/PUU-VI/2008, affirmed that the protection of human rights constitutes a central element in the guarantee of freedom of expression. However, it has never explicitly addressed the vulnerability of women in the digital space. Indonesian positive law also lacks an effective and gender-sensitive redress mechanism when women become victims of violations of their freedom of expression, whether by the state or non-state actors. Moreover, gender sensitivity among law enforcement officers remains a serious issue, as seen in various cases of digital violence reports against women that often lead to criminalization or neglect. Therefore, a progressive reinterpretation of the constitution must be carried out through a substantive justice approach. Indonesia's digital constitution should place an affirmative principle on vulnerable groups, strengthening the role of the Constitutional Court in interpreting constitutional rights based on the principles of gender inclusivity and adaptation to the dynamics of the digital space. Without this, women's freedom of expression will remain a formal right with no real protective power in practice.

According to a 2022 UN Women report, almost 38% of women globally experience online harassment. In Indonesia, a 2021 SAFEnet (Southeast Asia Freedom of Expression Network) report recorded that 45% of victims of gender-based online violence were young women aged 18-24. These cases demonstrate the high risks women face when expressing themselves in the digital world.

Both regulatory frameworks and law enforcement practices remain significant hurdles in ensuring the protection of women's expressive rights in the digital sphere. For example, the problematic ITE Law, which is supposed to protect digital rights, is often used as a tool to criminalize opinions. Furthermore, regulations like the ITE Law create ambiguity. On the one hand, the ITE Law aims to protect internet users from cybercrime, including gender-based online violence. On the other hand, vague provisions such as defamation and hate speech articles are often used to silence criticism and

limit the expression of female activists in the digital space. This issue is further exacerbated by derivative regulations, such as the Ministry of Communication and Information's Content Moderation Regulation, which has yet to provide adequate gender-sensitive protection standards.⁴⁰

Structural barriers further exacerbate the situation. Law enforcement in cases of gender-based digital violence is still biased and tends to blame the victim.⁴¹ Law enforcement officers often lack an understanding of the characteristics of digital violence, resulting in many women's reports being ignored or processed slowly. Additionally, protection mechanisms for digital rights, such as reporting to digital platforms or authorities, remain ineffective and unresponsive to the needs of female victims.

Compared to some other countries, Indonesia's approach appears insufficiently progressive. In the European Union, the General Data Protection Regulation (GDPR) provides special protection for personal data, including sensitive data related to gender and women's rights, thus strengthening individuals' control over their digital footprints.⁴² Meanwhile, Australia has implemented the Online Safety Act 2021, which explicitly sets out protection for victims of online gender-based violence and provides a fast-track process to remove harmful content.⁴³ Both models illustrate the need for a robust, adaptive, and gender-sensitive regulatory framework to confront the challenges surrounding women's freedom of expression in the digital realm.

Democracy can be seen as a globally expanding system, but in its implementation and development, each country has its own characteristics, influenced by factors such as history and political culture. However, the broadly applicable democratic principle remains inseparable from the value of freedom of expression. Freedom of expression is a right inherent to every human being and must be firmly protected. Moreover, freedom of expression, especially for women, can only be realized when a democratic system ensures that this freedom remains intact without pressure. The evolving and dynamic freedom to express opinions, particularly in the digital public space, aligns with changes occurring in democratic systems.

Furthermore, deeply rooted patriarchal culture and social stigma exacerbate the challenges of women's freedom of expression. Women who express opinions in the digital public space are often seen as "going against norms" or "improper," reflecting how patriarchal values still strongly limit women's expressive space. Moreover, women who actively voice critical views, especially on political or social issues, are often stigmatized as "provocateurs"

⁴⁰ Hotrun Siregar, 'Analisis Pemanfaatan Media Sosial Sebagai Sarana Sosialisasi Pancasila', *Pancasila: Jurnal Keindonesiaan*, no. 1 (2022), pp. 71–82, doi:10.52738/pjk.v2i1.102.

⁴¹ Komnas Perempuan, *CATAHU 2023: Catatan Tahunan Kekerasan Terhadap Perempuan Tahun 2023 Momentum Perubahan: Peluang Penguatan Sistem Penyikapan Di Tengah Peningkatan Kompleksitas Kekerasan Terhadap Perempuan*.

⁴² Victor Claussen, 'Fighting Hate Speech and Fake News. The Network Enforcement Act (NetzDG) in Germany in the Context of European Legislation', *Rivista Di Diritto Dei Media*, 3, 1-27, 3 (2018), pp. 1–27 <www.reuters.com>.

⁴³ Chapter Author and others, 'Chapter Title: A Positive Freedom of Public Speech? Australian Media Law Reform and Freedom of Political Communication Title: New Directions for Law in Australia Book Subtitle: Essays in Contemporary Law Reform', 2016.

or "undeserving". Such actions do more than constrain women's expressive rights; they also instill fear in other women, pressuring them into silence.

Therefore, it is necessary to reformulate Indonesia's digital constitution to not only guarantee freedom of expression but also build real protective mechanisms for women against digital violence, in line with international human rights standards.

Future Gender-Responsive Digital Constitution

Digital transformation has changed the face of democracy and human rights, including women's freedom of expression. However, the digital world also presents serious challenges in the form of discrimination, gender-based online violence, and structural vulnerabilities. Therefore, building a gender-responsive digital constitution becomes a crucial step to ensure that women have safe and equal access in the digital space.

One of the key pillars of a gender-responsive digital constitution is strengthening secure access for women, including through affirmative action policies. The state needs to adopt policies that ensure the digital space is inclusive, free of discrimination, and supports the active participation of women. This includes providing secure reporting channels for digital violence, gender-sensitive handling, and training for law enforcement officials.

Furthermore, gender-based digital literacy is vital. Many women lack sufficient understanding of digital privacy, online security, and how to address online violence. Gender-sensitive digital literacy programs will empower women to be better protected and more empowered in using information technology (UNESCO, 2021).

The massive digital transformation has shifted the landscape of public participation, including in the practice of freedom of expression. However, unfortunately, the existing legal framework and digital constitution are still gender-neutral, meaning they have not yet specifically addressed the inequalities and vulnerabilities faced by women. To build a gender-responsive digital constitution, the legal approach should no longer rely solely on the principles of universality and legal formalism but must emphasize substantive justice. This means the state must actively identify the structural barriers that women face in expressing their opinions, both in physical and digital public spaces, and provide genuine legal protection in its truest sense. An ideal digital constitution should not only affirm freedom of expression as a normative guarantee but also provides effective protection instruments against forms of gender-based online violence (GBOV), algorithmic discrimination, and digital silencing experienced by women. In this context, recognizing gender-based digital inequality needs to be enshrined in clear derivative regulations, such as the Personal Data Protection Bill (PDP), the revision of the ITE Law, and technical regulations from the Ministry of Communication and Information (Kominfo), which have so far lacked adequate gender sensitivity.

Building a gender-responsive digital constitution also requires strengthening the capacity of state institutions to respond to the fast-changing dynamics of the digital space, which is vulnerable to exploitation to harm vulnerable groups. The Constitutional Court, for example, needs to be more open to progressive interpretations of Article 28E of the 1945

55 Constitution by considering the social and digital dimensions of women's expression. In addition, the parliament and regulatory bodies such as the Indonesian Broadcasting Commission (KPI), the National Commission on Violence Against Women (Komnas Perempuan), and Kominfo must work in synergy to ensure that national digital policies are built with a strong and participatory gender perspective. Women's participation in the formulation of digital policies must also be guaranteed both in terms of quota and substance to ensure that the resulting regulations are not biased toward a masculine perspective. Equally important, gender-responsive digital constitution education should be integrated into law and public policy curricula at the higher education level, so that future policymakers have a strong ethical and legal foundation when designing a safe and just digital space. On the other hand, civil society and digital women's communities must continue to be strengthened as critical partners for the state in building a healthy, open, but gender-just freedom of expression ecosystem. Without multisectoral collaboration and strong political will, the digital constitution will always lag behind the evolving social reality, and women will continue to be victims of a system that should protect their rights. Therefore, building a gender-responsive digital constitution is not just about the law, but about political courage, ethical justice, and a commitment to inclusive democracy.

In efforts to strengthen the national legal framework, reform of the ITE Law becomes crucial. The current ITE Law is considered ambiguous and often used to criminalize expression, including that of women human rights defenders. Revisions should focus on affirming protection for victims of gender-based online violence and removing potentially abusive provisions.

Furthermore, regulations on personal data protection must be drafted with consideration for women's vulnerabilities. Data breaches can have more severe impacts on women, including in the form of doxing, sexual threats, or extortion. Regulations should provide layered protection for gender-sensitive sensitive data and grant greater control to individuals (European Parliament, 2016).

32 In principle, digital rights should begin to be recognized as part of human rights in constitutional interpretation. The 1945 Constitution currently does not explicitly mention digital rights, but Article 28F can be interpreted progressively as a guarantee for the right to obtain, store, and convey information through digital means. Therefore, there is a need for the Constitutional Court to develop an interpretation of the constitution so that digital rights, especially those of women, are recognized and protected within the framework of human rights.

This effort must also be accompanied by a pro-gender judicial review mechanism for ambiguous regulations that may violate women's rights. The Constitutional Court plays a strategic role in assessing whether a regulation aligns with constitutional principles on equality and freedom of expression.

7 IV. CONCLUSION

Women's right of free expression in the digital era is both a fundamental human right and a key indicator of the quality of Indonesia's constitutional democracy. Although guaranteed in the 1945 Constitution and reinforced by instruments such as the ICCPR and CEDAW, its implementation in digital

spaces continues to face serious obstacles, including online gender-based violence (OGBV), vague provisions in the ITE Law, patriarchal cultural norms, and weak law enforcement. Case studies, such as the criminalization of women under the ITE Law, demonstrate how existing regulations often silence victims rather than protect them, while international experiences—such as the European Union’s General Data Protection Regulation (GDPR) and Australia’s Online Safety Act 2021—illustrate the importance of strong data protection and victim-centered mechanisms. Therefore, Indonesia urgently needs gender-responsive digital constitutional reform that transforms formal guarantees into substantive protections through revising ambiguous provisions of the ITE Law, strengthening gender-sensitive digital literacy, enhancing data protection, and encouraging progressive constitutional interpretation by the Constitutional Court. Supported by active civil society participation and multi-stakeholder collaboration, such reforms will not only safeguard women’s rights but also ensure the development of a more inclusive, equitable, and democratic digital society.

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ABSTRACT

The digital transformation has reshaped the landscape of freedom of expression, creating new opportunities for participation while also exposing women to structural, normative, and cultural challenges. In Indonesia, although Article 28E of the 1945 Constitution guarantees these rights, the digital environment remains unsafe due to weak legal safeguards, gender-blind regulations, and entrenched patriarchal norms. Online gender-based violence or OGBV, including cyber harassment, doxing, and non-consensual image distribution, continues to silence women, while the misuse of the Electronic Information and Transactions (ITE) Law has frequently criminalized victims instead of providing protection. This article employs a normative-conceptual and comparative legal approach to assess these gaps. Case studies, such as the criminalization of women under the ITE Law, reveal how existing frameworks fail to address gender-specific vulnerabilities. A comparative perspective with the European Union's General Data Protection Regulation (GDPR) and Australia's Online Safety Act 2021 highlights best practices for safeguarding women's digital rights through strong data protection and proactive victim-centered mechanisms. The study argues for gender-responsive digital constitutional reform in Indonesia, including legal clarification, enhanced digital literacy, strengthened data protection, and progressive constitutional interpretation. Such reforms are essential to transform formal guarantees into substantive protections and ensure that women's freedom of expression is meaningfully realized in a democratic digital society. This article offers a unique contribution by integrating Indonesian case studies of women's criminalization under the ITE Law with comparative perspectives from the EU's GDPR and Australia's Online Safety Act. Unlike existing literature that remains largely descriptive, this study provides a prescriptive-analytical framework for gender-responsive digital constitutional reform. It bridges constitutional law, digital rights, and gender justice, presenting concrete pathways to transform formal guarantees into substantive protections for women's freedom of expression.

Keywords: freedom of expression, women, digital constitutional law, online gender-based violence, comparative constitutional law, digital rights.

ABSTRAK

Transformasi digital telah merekonstruksi lanskap kebebasan berpendapat, menciptakan peluang baru untuk partisipasi sekaligus mengekspos perempuan pada tantangan struktural, normatif, dan kultural. Meskipun di Indonesia terdapat jaminan konstitusional dalam Pasal 28E UUD 1945, ruang digital tetap tidak aman akibat lemahnya perlindungan hukum, regulasi yang buta gender, serta norma patriarki yang mengakar. Kekerasan berbasis gender online (KBGO), termasuk pelecehan siber, doxing, dan penyebaran konten intim

tanpa persetujuan, terus membungkam suara perempuan, sementara penyalahgunaan Undang-Undang Informasi dan Transaksi Elektronik (UU ITE) seringkali justru mengkriminalisasi korban alih-alih memberi perlindungan. Artikel ini menggunakan pendekatan hukum normatif-konseptual dan komparatif untuk menilai kesenjangan tersebut. Studi kasus, seperti kriminalisasi perempuan melalui UU ITE, menunjukkan bagaimana kerangka hukum yang ada gagal menjawab kerentanan spesifik berbasis gender. Perspektif komparatif dengan General Data Protection Regulation (GDPR) di Uni Eropa dan Online Safety Act 2021 di Australia menyoroti praktik terbaik dalam melindungi hak digital perempuan melalui perlindungan data yang kuat dan mekanisme proaktif berbasis korban. Studi ini berargumen bahwa reformasi hukum konstitusi digital yang responsif gender sangat penting, termasuk melalui klarifikasi hukum, peningkatan literasi digital, penguatan perlindungan data, serta penafsiran konstitusi yang progresif. Reformasi tersebut esensial untuk mengubah jaminan formal menjadi perlindungan substantif, sehingga kebebasan berekspresi perempuan benar-benar terwujud dalam masyarakat digital yang demokratis. Artikel ini memberikan kontribusi dengan mengintegrasikan studi kasus Indonesia terkait kriminalisasi perempuan di bawah UU ITE dengan perspektif komparatif dari GDPR Uni Eropa dan Online Safety Act Australia. Berbeda dengan literatur yang sebagian besar masih bersifat deskriptif, studi ini menawarkan kerangka preskriptif-analitis bagi reformasi hukum konstitusi digital yang responsif gender. Artikel ini menjembatani hukum konstitusi, hak digital, dan keadilan gender, sekaligus menghadirkan jalur konkret untuk mengubah jaminan formal menjadi perlindungan substantif atas kebebasan berekspresi perempuan.

Kata kunci: kebebasan berpendapat, perempuan, hukum konstitusi digital, kekerasan berbasis gender online, hukum konstitusi komparatif, hak digital.

I. INTRODUCTION

The development of the digital era has brought about fundamental transformations in the way society expresses opinions. Public spaces, which were once limited to physical forums, have now expanded into virtual spaces, such as social media, online discussion platforms, and digital community-based information-sharing channels. Freedom of expression, which is one of the fundamental human rights, now faces new forms and challenges in the digital world. Information technology not only accelerates the dissemination of ideas but also creates new dynamics in managing civil rights, including protection of individual expression.¹ The significant changes in social life due to digitalization have led to violations of privacy rights, including the right to freedom of expression and protection from online threats.²

In this context, women have both significant opportunities and face considerable vulnerabilities. Women's access to digital spaces has opened broader opportunities for participation in public discourse, politics,

¹ Nalom Kurniawan and Mery Christian Putri, *Laporan Penelitian Konvergensi Hukum Dan Teknologi Dalam Proses Penegakan Hukum Di Mahkamah Konstitusi* (Jakarta, 2021).

² Elvan Maulana and Timbul Dompok, 'Hak Asasi Manusia Di Era Digital : Tantangan Dan Peluang Dalam Mengatasi Kejahatan Siber', 3.1 (2025).

economics, and culture. However, on the other hand, women are also subjected to different types of online gender-based violence, including harassment in cyberspace, stalking through digital platforms, discriminatory hate speech, and the spread of content that degrades women's dignity. This phenomenon causes the digital gender divide, which has the potential to hinder the full realization of the right to freedom of expression.³

Indonesia upholds the rule of law as the foundation of state authority, where every action of the government is required to be grounded in legal norms to prevent arbitrary practices. Indonesia as a state governed by law is obligated to maintain legal order, enforce justice, and realize the objectives of law. The 1945 Constitution of the Republic of Indonesia (UUD 1945) serves as the supreme legal source and the fundamental reference for both written and unwritten governance, making it the basis upon which all laws and regulations in Indonesia are established.⁴

Freedom of expression holds significant value for several reasons. First, freedom of expression is fundamental to realizing personal self-actualization and reaching one's fullest potential. Second, it serves as a vital foundation for the search for truth and the progress of knowledge. In this regard, a person seeking knowledge and truth must be open to listening to all viewpoints, consider all alternatives, test their judgments by confronting opposing views, and use various perspectives as effectively as possible. Third, freedom of expression is important for individuals to actively engage in decision-making processes, particularly in politics. Fourth, freedom of expression allows society and the government to achieve stability and adaptability.⁵

The right to freedom of expression is one of the Constitutional Rights of Citizens (HKWN) as outlined in the 1945 Constitution of the Republic of Indonesia, which has been thoroughly inventoried and categorized into three types of constitutional rights: Individual Rights represented by an icon, Collective Rights represented by 29 icons, and Vulnerable Community Rights represented by 3 icons. The icon display is designed and arranged to represent the characteristics or traits of the objects they symbolize, namely the norms and provisions regarding the constitutional rights of citizens. The right to freedom of expression, as outlined in HKWN, is both an individual and collective right of citizens, which can be represented by the following icons:⁶

³ UN Women, *Regular Resources Report 2021: Investing In Result*, 2022.

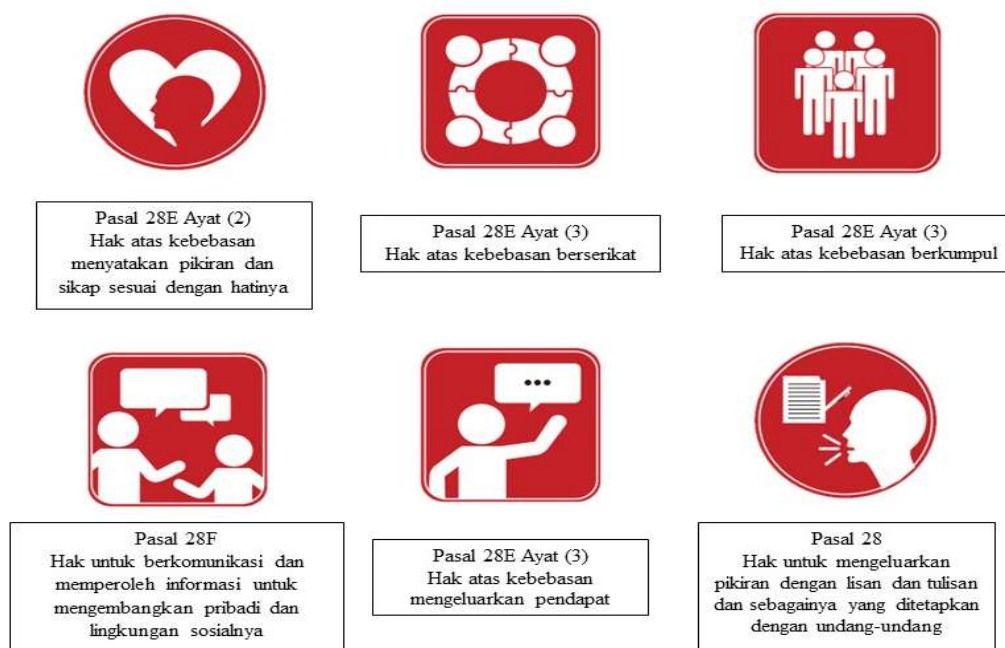
⁴ Wiranata, Khamim, and Imam Asmarudin, 'Kebebasan Berekspresi Melalui Media Digital Dan Penerapannya Di Indonesia', *Pancasakti Law Journal (PLJ)*, 1.2 (2023), pp. 205–18 <<https://doi.org/10.24905/>>.

⁵ Marwandianto Marwandianto and Hilmi Ardani Nasution, 'Hak Atas Kebebasan Berpendapat Dan Berekspresi Dalam Koridor Penerapan Pasal 310 Dan 311 KUHP', *Jurnal HAM*, 11.1 (2020), p. 1, doi:10.30641/ham.2020.11.1-25.

⁶ Mahkamah Konstitusi Republik Indonesia, 'Ikon HKWN: Hak Konstitusional Warga Negara', 2022.

Figure 1

The Indonesian Constitution, through Article 28E paragraph (3) of the 1945 Constitution, explicitly guarantees the right of every individual to express their opinions. Article 28I paragraph (2) of the 1945 Constitution also emphasizes that everyone has the right to be free from discriminatory treatment on any grounds and has the right to protection from such discriminatory treatment. These rights apply universally, without gender



distinction, and therefore constitute the constitutional basis for safeguarding women's freedom of expression in the digital age. Within the framework of constitutional law, this guarantee is part of the principle of constitutional rights that must be respected, protected, and fulfilled by the state through the principles of the rule of law and constitutional democracy.

In addition to national constitutional provisions, there are several international and national regulations that govern the right to freedom of expression. One of the international policy instruments governing freedom of expression is Article 19 of the 1948 Universal Declaration of Human Rights (UDHR), which guarantees the right to freedom of opinion and expression, and Article 19 of the International Covenant on Civil and Political Rights (ICCPR) 1966, which reaffirms the right to freedom of expression globally, ratified by Indonesia through Law No. 12 of 2005 concerning the International Covenant on Civil and Political Rights. Additionally, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979 requires state parties, including Indonesia, to ensure that women enjoy the right to freedom of expression without discrimination.⁷

⁷ Iwan Satriawan, Tareq Muhammad Aziz Elven, and Tanto Lailam, 'Internet Shutdown in Indonesia: An Appropriate Response or A Threat to Human Rights?', *Sriwijaya Law Review*, 7.1 (2023), pp. 19–46, doi:10.28946/slrev.vol7.iss1.1018.pp19-46.

Furthermore, the national policies and regulations governing the right to freedom of expression include Law No. 1 of 2024 on the Second Amendment to ITE Law. While aiming to protect rights in the digital space, this law raises concerns about restrictions on freedom of expression, particularly for women victims of digital violence. Additionally, the national instrument regulating freedom of expression is the Regulation of the Ministry of Women's Empowerment and Child Protection (PPPA). The PPPA regulates the protection of women and children in the online realm, including digital literacy and addressing online gender-based violence.⁸

In the perspective of constitutional law, these developments call for a reinterpretation of the constitution to adapt to technological changes. In line with the living constitution principle, the constitution must be interpreted dynamically to meet modern challenges, particularly in safeguarding women's freedom of expression in the digital era.⁹ Therefore, it is important to explore how Indonesian constitutional law, as well as national and international law, shapes the framework for protecting women's freedom of expression, particularly in this complex digital era.

In this research, the author will examine how constitutional law regulates freedom of expression, specifically for women in the digital era, and the challenges faced by women in realizing freedom of expression in the digital space. Through this research, the author will also formulate strategies for the development of a digital constitutional law that is responsive to the protection of women's freedom of expression.

The aim of this article is to analyze the constitutional guarantees of women's freedom of expression in the digital era based on Indonesian constitutional law and international instruments, identify the structural and normative challenges faced by women in exercising their right to free expression in the digital world, and provide recommendations for the development of a digital constitutional law that is more responsive to the protection of women's freedom of expression.

II. METHOD

This study employs a normative-conceptual legal research design with a multi-layered methodological framework to ensure both doctrinal depth and comparative insight. The research combines the statute approach, which examines the 1945 Constitution, the ITE Law, Law No. 12 of 2005 on the ratification of the ICCPR, Law No. 7 of 1984 on the ratification of CEDAW, and other relevant national regulations concerning women's protection in digital spaces; the conceptual approach, which analyzes theoretical perspectives on freedom of expression, the doctrine of the living constitution, constitutional rights, and the emerging concept of digital constitutional law; and the comparative approach, which assesses legal frameworks in other jurisdictions, particularly the General Data Protection Regulation (GDPR) in

⁸ Ayu Riska Amalia, Putri Raodah, and Nizia Kusuma Wardani, 'Menjamin Hak Perempuan Di Era Digital: Kewajiban Negara Dan Tantangan Regulasi Nasional', *Jurnal Kompilasi Hukum*, 9.2 (2024), pp. 178–91

<<https://jkh.unram.ac.id/index.php/jkh/article/view/184/132>>.

⁹ Adrian Kuenzler, 'What Competition Law Can Do For Data Privacy (and Vice Versa)', *Computer Law & Security Review*, 47 (2022), p. 105757, doi:10.1016/J.CLSR.2022.105757.

the European Union and the Online Safety Act in Australia, to highlight best practices and lessons for Indonesia. The sources of legal materials are drawn from primary materials, including the 1945 Constitution, ICCPR, CEDAW, the ITE Law, and related legislation; secondary materials, such as constitutional law textbooks, peer-reviewed journal articles, and international reports from UN Women and UNESCO; as well as tertiary materials like legal dictionaries, encyclopedias, and supporting references. Data collection is carried out through systematic library research using official legal databases, scholarly repositories, and authoritative international reports, while the analysis technique applies a prescriptive-analytical method, which not only describes existing legal norms but also critically evaluates their effectiveness, identifies normative gaps, and proposes gender-sensitive constitutional reforms, ensuring that the study contributes both normatively and prescriptively to the discourse on digital constitutional law.

III. ANALYSIS AND DISCUSSION

Protection of the Right to Freedom of Expression in the 1945 Constitution

The Constitution of the Republic of Indonesia explicitly provides for the right to freedom of expression as a component of human rights safeguarded by the state. In the context of the Indonesian legal system, protection of the right to express opinions is enshrined in several important articles of the 1945 Constitution of the Republic of Indonesia (UD 1945), whose relevance is increasingly significant in the midst of the evolving digital era.¹⁰ First, Article 28E paragraph (3) of the 1945 Constitution states that *"Every person shall have the right to freedom of association, assembly, and to express opinions."* This provision forms the main foundation that guarantees every citizen, without exception, the right to express their views verbally, in writing, or through other media. Second, Article 28G paragraph (1) states that *"Every person shall have the right to personal protection, family, honor, dignity, and property under their control, and the right to security and protection from threats or fears of doing or not doing something that is a human right."* This provision adds another dimension to the protection of freedom of expression, especially in the context of protection from intimidation, persecution, or digital violence that often affects individuals, particularly women, in cyberspace. Third, Article 28I paragraph (2) affirms that *"Every person shall have the right to be free from any discriminatory treatment on any grounds and the right to protection from such discriminatory treatment."* This provision reinforces the principle that freedom of expression should be exercised equally, free from any gender-based discrimination, religion, ethnicity, or any other identity, including in the context of the use of information technology.

The interpretation of these provisions is challenged in Law No. 9 of 1998 on the Freedom of Expression in Public, where Article 1 paragraph (1) states that "freedom of thought in the form of oral, written, or other methods may be expressed freely and responsibly in accordance with applicable laws." According to the 1945 Constitution and Law No. 9 of 1998, freedom of

¹⁰ Muten Nuna and Roy Marthen Moonti, 'Kebebasan Hak Sosial-Politik Dan Partisipasi Warga Negara Dalam Sistem Demokrasi Di Indonesia', *Jurnal Ius Constituendum*, 4.2 (2019), p. 110, doi:10.26623/jic.v4i2.1652.

expression is a fundamental right that is declared and protected by the state. The principle of freedom of expression in the context of human rights is related to the idea of a state based on law. Indonesia, as a rule-of-law state, has agreed to various international regulations that respect the right to freedom of expression and opinion. This is also guaranteed in the country's constitution, so criticism of the government is not considered illegal. The right to freedom of expression is provided with constitutional protection in Indonesia. The imposition of restrictions on freedom of expression is directed toward preserving both national security and the collective welfare of society.¹¹ In the period from 1999 to 2002, the People's Consultative Assembly (MPR) amended the 1945 Constitution, which previously had no chapter on human rights (HAM). This change was a result of the 1998 reform movement, which emerged after the public, including students and youth, demanded the enforcement of the rule of law, respect for human rights, and the eradication of corruption, collusion, and nepotism (KKN). This was a significant advancement in Indonesia's transformation and an effort by the Indonesian people to make the 1945 Constitution more modern and democratic.

In the digital era, freedom of expression has expanded in form and media. If in the past, expression of opinions occurred in physical forums such as public discussions, print media, or demonstrations, today, most freedom of expression practices take place on digital platforms such as social media, websites, blogs, and online video platforms. The digital space has become the main arena for society to express opinions, social critiques, and resistance against injustice.

The 1998 political reform, spearheaded by the younger generation and students, called for freedom of communication as a manifestation of democracy for society and the state. This reform was carried out through the use of new media, supported by the Internet, to unite movements against the state's power that ignored democracy. This reform aimed to replace the political hegemony of authoritarianism with democracy that prioritizes freedom of expression which finally through the reform, Indonesia embarked on a new direction, one that embraced and institutionalized freedom of the press.¹²

Indonesian human rights are safeguarded in the 1945 Constitution, ensuring the rights of every citizen and resident. The Indonesian believe that human rights must take into account the uniqueness of Indonesia, and each human right must be in line with responsibility, so that there is a relationship of mutual respect and recognition of each individual's human rights, including freedom of religion, belief, freedom of expression, association, and behavior, as well as human rights related to access to information and communication.¹³

¹¹ Latipah Nasution, 'Hak Kebebasan Berpendapat Dan Berekspresi Dalam Ruang Publik Di Era Digital', *Adalah*, 4.3 (2020), pp. 37–48, doi:10.15408/adalah.v4i3.16200.

¹² Muhammad and Syahnan Harahap, *Kemerdekaan Pers Pada Orde Reformasi Jurnal Ilmiah Hukum Dirgantara-Fakultas Hukum Universitas Dirgantara Marsekal Suryadarma* |, 2019, IX.

¹³ MPR RI, 'Panduan Pemasyarakatan', *Sekretariat Jendral MPR RI*, 2020 <<https://www.mpr.go.id/sosialisasi/panduan-pemasyarakatan>>.

Therefore, constitutional protection for the right to freedom of expression must still apply in the digital space. The state has an obligation to ensure that the expression of citizens on the internet is not arbitrarily silenced, and to ensure that this freedom is not used as a pretext for allowing violence or hate speech, especially against vulnerable groups. Thus, the interpretation of the 1945 Constitution must continue to develop progressively to meet the challenges of the times. The Constitutional Court, as the protector of citizens' constitutional rights, plays a crucial role in interpreting constitutional provisions to keep them relevant to the dynamics of today's digital society.

National and International Instruments on Freedom of Expression for Women

The freedom to express opinions and communicate verbally or in writing is a fundamental element in democratic governance systems with a very broad definition. Establishing clear legal rules as an initial step in ensuring freedom of expression and the right to voice opinions is a reflection of democracy that respects the law. The protection of women's freedom of expression is not only by the national constitution but is also strengthened by various national and international legal instruments. These legal instruments form the essential foundation to ensure that women have equal opportunities to express their views, both in physical spaces and in the digital world.

The right to freedom of expression, including the right to convey and receive information, is a fundamental human right in Indonesia, as stipulated in various laws, such as the 1945 Constitution, Law No. 9 of 1998 on the Freedom to Express Opinions in Public, Law No. 39 of 1999 on Human Rights, Law No. 40 of 1999 on the Press, Law No. 32 of 2002 on Broadcasting, Law No. 14 of 2008 on Public Information Transparency (KIP), Government Regulation No. 61 of 2010 on the Implementation of Public Information Transparency (KIP), Minister of Administrative and Bureaucratic Reform Regulation No. 83 of 2012 on Social Media Utilization Guidelines for Government Institutions, ITE Law, and Government Regulation No. 71 of 2019 on the Organization of Electronic Systems and Transactions.¹⁴

Within the national instruments, Law No. 39 of 1999 on Human Rights (UU HAM) specifically addresses the right to freedom of expression in Articles 23 to 25. Article 23 states that everyone has the right to freedom of expression, Article 24 recognizes the right of everyone to communicate and receive information, and Article 25 affirms the right of everyone to associate and assemble. This law provides the national legal basis for the protection of women's right to express opinions, including considering gender equality aspects in its implementation.¹⁵

In addition to the Human Rights Law, there is also Law No. 1 of 2004 in conjunction with ITE Law. The ITE Law regulates new forms of expression in digital spaces, including the use of electronic media to express opinions.

¹⁴ Siti Fatimah, *Jaminan Kepastian Hukum Atas Kebebasan Berpendapat Di Era Konvergensi Media*, Disertasi (Fakultas Hukum Universitas Sebelas Maret, 2024).

¹⁵ Della Lusky Selian and others, 'Freedom of Expression in the Era of Democracy: Records of Human Rights Enforcement Kebebasan Berekspresi Di Era Demokrasi: Catatan Penegakan Hak Asasi Manusia', 2.2 (2018), pp. 185–94
<<https://journal.unnes.ac.id/sju/index.php/lslr/index>>.

While intended to regulate the flow of information, the ITE Law often sparks controversy regarding freedom of expression, particularly due to the potential for criminalizing women's expression in the digital realm. Therefore, in the context of women's rights protection, the implementation of the ITE Law must ensure a balance between maintaining public order and protecting freedom of expression.¹⁶

Law No. 7 of 1984 on the Ratification of CEDAW also serves as a national instrument regulating the right to freedom of expression. Through this law, Indonesia ratified the CEDAW. This ratification strengthens the state's obligation to ensure that women can enjoy their civil and political rights, including freedom of expression, without discrimination. CEDAW encourages countries to remove cultural, social, and legal barriers that hinder women from enjoying their right to express their opinions.

Internationally, principles that reinforce the right to freedom of expression are outlined in several human rights instruments. Indonesia's ratification of the ICCPR through Law No. 12 of 2005 reinforces, under Article 19, the principle that all individuals has the right to freely express opinion and expression without interference, including the ability to seek, obtain, and communicate information through any medium irrespective of national frontiers. In parallel, CEDAW serves as a normative instrument that underscores the eradication of gender-based discrimination, particularly by affirming women's equal rights to access and freely express opinions in both public and private life.¹⁷

Article 19 of the Universal Declaration of Human Rights (UDHR) ensures that *"everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers."* This declaration marks the beginning of universal recognition of the right to freedom of expression, which applies without discrimination, including based on gender.

Furthermore, Article 19 of the ICCPR, which Indonesia ratified through Law No. 12 of 2005, strengthens the right to freedom of expression. The Covenant recognizes the right of everyone to impart information and ideas in various forms. It demands that state parties respect and protect freedom of expression without discrimination, making it relevant in ensuring women's rights in both public and digital spaces.

Additionally, the CEDAW mainstreams gender in political rights and freedom of expression. CEDAW not only demands the elimination of discrimination against women in politics but also requires states to take affirmative measures to ensure that women can participate equally in political and public life. This includes the right to express opinions freely in public forums and media, including digital spaces, as well as protection from gender-based violence or intimidation.

¹⁶ Stella Hita Arawinda, 'Perlindungan Hukum Terhadap Perempuan Korban Kekerasan Berbasis Gender Online Di Indonesia', *Jurnal Yustika: Media Hukum Dan Keadilan*, 24.02 (2022), pp. 76–90, doi:10.24123/yustika.v24i02.4599.

¹⁷ 'ANNEX Office of the United Nations High Commissioner for Human Rights', no. March (2020), pp. 1–9.

According to Article 19 of the ICCPR, global human rights principles interpret the right to express opinions in two ways: internally (within personal thoughts) and externally (in the public environment). Internal freedom is linked to an individual's mental state when expressing opinions (Article 19(1) ICCPR), and it cannot be constrained. For this reason, the state must refrain from intervention. Meanwhile, external freedom considers the freedom to openly express opinions, which may be subject to limitations (International Covenant on Civil and Political Rights, Article 19(2)). The implementation of restrictions must comply with applicable laws and should respect the rights or reputation of others, as well as maintain national security, public order, health, or morals (Article 19(3) ICCPR). The right to express opinions without interference is regulated not only in Article 19(1) of the ICCPR but also in Articles 28 and 28E(2) of the 1945 Constitution of Indonesia. The Human Rights Law also includes regulations on this in Article 23(2), stating that "All individuals have the freedom to voice, disseminate, and express opinions according to their personal beliefs, either orally or in writing through print or electronic media, with due regard to religious values, morality, social order, public interest, and national unity." Therefore, the Indonesian state is prohibited from intervening in the right to freedom of expression.¹⁸

In carrying out its obligations under Article 19(1) of the ICCPR concerning freedom of expression, Indonesia, as a state party, is required to comply with the standards set forth in General Comment No. 34 of the Human Rights Committee. Paragraph 9 of this Comment affirms that freedom of expression constitutes an absolute right that cannot be restricted under any circumstances (a non-derogable right). The opinions protected under this right include those related to politics, science, history, morality, and religion. Any form of interference, intimidation, abuse, including arrest, detention, trial, and imprisonment based on someone's personal opinions, violates the provisions of Article 19(1) ICCPR. Meanwhile, Paragraph (10) clarifies that all forms of coercion to compel an individual to express their opinions are prohibited. Freedom of thought also includes the freedom not to express an opinion.

Freedom of expression is a fundamental right that is not absolute but has certain requirements.¹⁹ This right is emphasized in Article 19(2) of the ICCPR; Articles 28, 28E(2) and (3), 28F of the 1945 Constitution of the Republic of Indonesia; and in Article 23(2) and Article 25 of the Indonesia Human Rights of Law, which states, "Every individual has the right to express their opinion in public...". To ensure the fulfillment of this right, Indonesia must refer to General Comment No. 34 of the ICCPR on the Siracusa Principles. Additionally, in General Comment No. 34, Paragraph (11), state parties are required to ensure freedom of speech, including the right to seek, receive, and share information and ideas about everything without exception. One of the rights included in this situation is the freedom to express and receive ideas or opinions through various forms of communication that can

¹⁸ Elfia Farida, 'Kewajiban Negara Indonesia Terhadap Pemenuhan Hak Kebebasan Berpendapat Dan Berekspresi', *Jurnal Ilmiah Ilmu Hukum QISTIE*, 14.2 (2021), p. 43.

¹⁹ Daniel Riffe and Kyla P. Garrett Wagner, 'Freedom of Expression: Another Look at How Much the Public Will Endorse', *Communication Law and Policy*, 26.2 (2021), pp. 161–86, doi:10.1080/10811680.2021.1893096.

be shared with others. However, this must comply with the provisions set out in Articles 19(3) and 20 of the ICCPR. This includes discussions about politics, opinions about individuals, social issues, human rights issues, journalistic activities, arts and culture, education, religious teachings, and business advertisements. It also involves ideas that may be considered highly inappropriate, even though such expressions can be regulated within the limitations determined by Articles 19(3) and 20 of the ICCPR.

In General Comment No. 34, Paragraph (12), according to this Article, states have the responsibility to preserve and protect all forms of expression and their dissemination methods. Examples include speaking, writing, using sign language, and non-verbal communication such as images, paintings, and other artistic objects. There are various ways to express oneself, including through media such as books, newspapers, brochures, posters, banners, clothing, and legal documents. This also includes audiovisual expressions or those based on electronic technology or the internet. In this regard, law enforcement officers should not use force against murals or social media posts that criticize the government. Provisions in Articles 19(3) and 20 of the ICCPR may limit the right to express opinions. In practice, based on General Comment No. 34, Paragraph (21), as outlined in the text, limitations on freedom of expression are justified solely under two conditions. The first is to protect the rights or reputation of others. The second is to safeguard national security, public order, public health, or public morals. When the government imposes restrictions on freedom of expression, they must ensure that the right remains protected and is not negatively affected by their actions. Regulations regarding restrictions should be established in laws, as outlined in General Comment No. 34, Paragraph (22), explaining the restrictions found in the Siracusa Principles on Limitations and Derogations of Provisions in the ICCPR (Annex, UN.Doc.E/CN.4/1984/4 (1984)). Human rights limitations should not be used as tools to protect the state and public officials from criticism and public opinion, considering their reputation.²⁰

The Indonesian legal system has various important components, including the police, prosecutors, courts, advocates, correctional institutions, and alternative dispute resolution bodies.²¹ Repressive actions taken by the police are a central issue in the application of the law and the protection of human rights (HR) in the context of the freedom of expression.²² In addition, there has been a transformation in how law enforcement authorities understand and respond to the practice of freedom of expression, where this right, originally guaranteed and protected by the constitution, is now viewed as a threat to public order and national security. This has resulted in the reduction of the right to freedom of speech, criminalization, arrests, and other repressive actions. Although freedom of expression is not absolute, its

²⁰ Farida, 'Kewajiban Negara Indonesia Terhadap Pemenuhan Hak Kebebasan Berpendapat Dan Berekspresi'.

²¹ Agus Santoso, 'Hukum, Moral, Dan Keadilan: Hukum (Edisi Pertama)', viii (2015) <<https://library.bpk.go.id/koleksi/detil/jkpkbpkpp-e-202111122312>>.

²² Lutfil Ansori, Penegakan Hukum, and Hukum Progresif, 'Reformasi Penegakan Hukum Perspektif Hukum Progresif', 4.2 (2017), pp. 148–63.

regulation must remain consistent with constitutional provisions and the protection of human rights.²³

Along with the advancement of information technology, media for expressing opinions has undergone significant changes, shifting from physical forums like demonstrations, discussions, or print media, to digital platforms like social media, blogs, video channels, and other online forums. The digital space has become a new arena for people to voice opinions, advocate for rights, and build communities. However, this transition also brings new challenges in terms of legal protection and state oversight. In this context, constitutional law must adapt to digital dynamics to remain relevant in guaranteeing fundamental rights, especially for vulnerable groups such as women.²⁴

As a democratic country, Indonesia has the responsibility to uphold, enhance, implement, and fulfill the right to freedom of expression, which is part of human rights, as stipulated in Article 28I(4) of the 1945 Constitution. However, it is important to emphasize that the right to express opinions and freedom of expression is not without limitations. Freedom of speech must be considered prudently, taking into account individual rights and public interest. Regulations regarding freedom of expression should be formulated clearly and concisely to be understood by all individuals. Those who decide to impose such limitations must be able to justify their need and act reasonably. Furthermore, these limitations must have safeguards to prevent abuse and involve proper legal processes.²⁵

Women in the Digital World: Between Opportunities and Vulnerabilities

Women are a vital pillar in the social, economic, and political development of a nation. Their roles are not limited to the domestic sphere but are increasingly evident in the public domain, including leadership, education, and technology. However, women still face various structural challenges such as gender inequality, discrimination, violence, and limited access to resources. To achieve true equality, an intersectional approach is required that ensures the protection of women's rights and sustainable empowerment. Recognition of women's dignity, capabilities, and contributions is an essential foundation in creating a just, inclusive, and gender-equal society.²⁶

Digital transformation has opened new spaces for women to express themselves, access information, and participate in socio-political life. In the

²³ Barda Nawawi Arief, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan ...* - Prof.Dr.Barda Nawawi Arief, S.H. - Google Buku, Prenada Media, 5th edn (Kencana (Prenada Media Group), 2018) <https://books.google.co.id/books/about/Masalah_Penegakan_Hukum_dan_Kebijakan_Hu.html?id=AeLJDwAAQBAJ&redir_esc=y>.

²⁴ Jeremy Harris Lipschultz, *Social Media Communication, Social Media Communication* (Taylor and Francis, 2017), doi:10.4324/9781315388144.

²⁵ Syafaat Anugrah Pradana, Rusdianto Sudirman, and Muh. Andri Alvian, 'Kemelitan Penegakan Hukum Terhadap Hak Kebebasan Berpendapat', *DIKTUM: Jurnal Syariah Dan Hukum*, 20.1 (2022), pp. 156–68, doi:10.35905/diktum.v20i1.2811.

²⁶ Yulia Hesti and others, 'Korelasi Antara Kebebasan Berekspresi Dalam Peningkatan Kasus Kejahatan Asusila Di Media Digital (Sextorsi)', *JLEB: Journal of Law, Education and Business*, 2.1 (2024), pp. 522–29, doi:10.57235/jleb.v2i1.1890.

context of digital democracy, women's presence in the online space reflects the expansion of citizen participation and the strengthening of constitutional rights to freedom of expression. Access to the internet and social media allows women to build networks, advocate for gender issues, and push for public policies that are more responsive to their needs. The digital space has also become an important channel for women to express their opinions freely and independently, which was previously often restricted by patriarchal social structures.²⁷

However, behind these opportunities, women also face very real vulnerabilities in the digital world. Various forms of gender-based online violence (GBOV) are becoming more rampant, such as cyberbullying, doxing (public dissemination of personal data), and hate speech targeting women's gender identity or sexuality. These forms of violence not only harm women psychologically but also limit their participation in the online world. UN Women reports indicate that women globally are more vulnerable to digital violence compared to men, particularly when they are active in public or political issues. Moreover, algorithms and social media culture further reinforce gender stereotypes, where women are often portrayed as sexual objects, harassed for their appearance, or considered unworthy of expressing critical opinions.²⁸

Based on SAFEnet monitoring, there were 48 cases of freedom of expression violations in the digital realm between April and June 2024, with 45 reported victims. This number represents an increase of 18 cases compared to the previous quarter, which recorded 30 cases. In terms of the number of reporters, the figure decreased compared to the previous period, which recorded 52 reporters. The most common reports related to digital expression were made under the ITE Law, without specifying a particular article, totaling 15 cases. Hate speech/incitement under Article 28 paragraph (2) of the ITE Law was recorded in 6 cases. Alleged defamation and/or slander under Article 27 paragraph (3), as well as threats of violence or intimidation under Article 45 paragraph (3) of the ITE Law, were each recorded in 4 cases. Furthermore, cases violating decency under Article 27 paragraph (1) were recorded in 3 cases. Of the 48 cases monitored throughout the second quarter of 2024, only 22 cases had reports filed under the new ITE Law.²⁹

Freedom of speech is theoretically considered nearly limitless, but in practice and implementation, it often presents a paradox where the freedom of society, especially for women, to speak or express opinions through various forms of expression is often restricted in the name of promoting the greater public good. Most scholars agree that protection of freedom of speech must be maintained at a very high level. In this regard, high protection is necessary for freedom of speech, especially in the context of politics and public policy, due to its importance for the stability of governance. This indicates that there should be consistent communication between society and the government, where communication from society serves as a form of oversight on the

²⁷ Siti Fatimah, 'Demokrasi Digital Dan Welfare State Indonesia', *Prosiding Konferensi Nasional APHTN-HAN*, 1.1 (2023), pp. 855–86.

²⁸ 'APC Annual Report 2020' <<https://2020report.apc.org/>> [accessed 22 February 2025].

²⁹ Abul Hasan Banimal and others, *Laporan Pemantauan Hak-Hak Digital Di Indonesia* (Bali, 2025).

government's actions. Freedom of expression is the core of democracy because the effectiveness of democracy depends on citizens' ability to criticize the government and actively participate in discussions on issues that may affect the government, especially in decision-making and policy formation in the current era of social media.³⁰

The phenomenon of women facing criminal charges in connection with their exercise of freedom of expression online has grown increasingly prevalent. For instance, women who share experiences of sexual harassment on social media are often criminalized on the grounds of defamation of the perpetrator. Examples include cases of infidelity in households, such as the case of Valencya who was sued by her husband for scolding him,³¹ the sexual harassment case by Herry Wirawan,³² and instances where the wife of a prisoner is extorted by rogue police officers,³³ among many other cases. This indicates that the ITE Law still does not provide adequate protection for women in expressing themselves; on the contrary, it can be used as a tool to silence their voices. The National Commission on Violence Against Women report in 2021 noted that many victims of sexual violence face revictimization because their courage to speak out in the digital space leads to legal action based on articles in the ITE Law.

Women in the digital world face a complex dual dynamic that simultaneously opens up vast participatory spaces while also presenting new and significant vulnerabilities. The digital world provides various opportunities for women to voice their opinions, expand their social networks, enhance literacy, and develop their economic and intellectual capacities. Social media, community-based platforms, and virtual discussion spaces have enabled women, including those from marginalized groups, to break through the boundaries of private space into public space more equitably. However, as access opens up, women also become the most vulnerable group to experience gender-based online violence (GBOV), doxing, non-consensual content dissemination, and cyberattacks targeting their bodies and gender identities. In the context of freedom of expression, women are often silenced not because of the substance of their arguments but because of their biological and social identity as women. This situation poses a serious challenge to the principle of equality before the law and the constitutional right to freedom of expression. Unfortunately, the existing legal framework, including in Indonesia, is still not fully responsive in protecting women in the

³⁰ Dahlil Imran and Nur Hidayat Sardini, 'Bayang Otoritarianisme Digital: Analisis Rkuhp Kehormatan Penyelenggara Negara Dan Kebebasan Menyatakan Pendapat', *Jurnal Education and Development*, 11.1 (2022), pp. 24–30, doi:10.37081/ed.v11i1.4223.

³¹ Farida Farhan, 'Cerita Valencya, Dituntut Penjara Karena Marahi Suami Mabuk: Kaget Omelannya Direkan Jadi Alat Bukti', *Kompas.Com*, 2021 <<https://regional.kompas.com/read/2021/11/16/125650478/cerita-valencya-dituntut-penjara-karena-marahi-suami-mabuk-kaget-omelannya>>.

³² Rachmadi Rasyad, 'Melihat Ponpes Milik Herry Wirawan, Pemerkosa 12 Santri', *Kumparan.News*, 2021 <<https://kumparan.com/kumparannews/melihat-ponpes-milik-herry-wirawan-pemerkosa-12-santri-1x4n2YB5FK0/full>>.

³³ M. Syofri Kurniawan, 'Istri Tahanan Mengaku Dimintai Rp20 Juta Oleh Oknum Polisi Agar Suaminya Tak Ditembak - TribunJateng', *TribunJateng.Com*, 2021 <<https://jateng.tribunnews.com/2021/12/16/istri-tahanan-mengaku-dimintai-rp20-juta-oleh-oknum-polisi-agar-suaminya-tak-ditembak>>.

digital realm comprehensively. The digital constitutional law instruments must be able to guarantee a safe space for women to express their opinions, free not only from state intervention but also from gender-based violence and intimidation by non-state actors. In other words, digital transformation must be accompanied by affirmative policies that substantively guarantee the protection of women's constitutional rights, not just formally. Without genuine legal support, the digital world, which should be a space for liberation, may turn into a new arena of repression that reinforces women's subordination in society.³⁴

Therefore, it is crucial to place the protection of women in the digital world as an integral part of digital constitutional law. The state is not only obliged to guarantee the right to freedom of expression but also to create a safe and equitable digital space for all, especially vulnerable groups such as women.

Case Studies and International Comparative Perspectives on Women's Freedom of Expression in Digital Spaces

The challenges faced by Indonesian women in exercising freedom of expression in the digital sphere are best illustrated through real case studies. One prominent example is the Valencya case, in which a woman was criminally charged under the ITE Law after publicly expressing grievances about domestic abuse on social media. Instead of being recognized as a victim, she was criminalized under defamation provisions, demonstrating how the ITE Law is often used as a tool to silence women rather than protect them.³⁵ Similarly, cases of doxing and cyber harassment against women activists, including those advocating for gender equality and environmental justice, have shown that weak enforcement mechanisms and patriarchal interpretations of law often exacerbate the vulnerability of women in digital spaces.³⁶ These cases prove the normative disparity between the constitutional guarantee of free expression and the actual experiences of women in Indonesia's digital space.

In contrast, international experiences provide valuable comparative lessons. The European Union's General Data Protection Regulation (GDPR) establishes strong safeguards for personal data, including sensitive data categories such as gender identity, thereby minimizing the risk of online harassment and misuse of personal information.³⁷ The GDPR framework demonstrates how regulatory clarity, combined with robust enforcement mechanisms, can enhance women's sense of security in digital participation. Likewise, Australia's Online Safety Act 2021 provides a rapid response system

³⁴ Endah Pertiwi and others, 'Analisis Yuridis Terhadap Penyalahgunaan Data Pribadi Pengguna Media Sosial', *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia*, 3.3 (2022), pp. 10–16, doi:10.52005/rechten.v3i3.65.

³⁵ Farhan, 'Cerita Valencya, Dituntut Penjara Karena Marahi Suami Mabuk: Kaget Omelannya Direkan Jadi Alat Bukti'.

³⁶ Komnas Perempuan, *CATAHU 2023: Catatan Tahunan Kekerasan Terhadap Perempuan Tahun 2023 Momentum Perubahan: Peluang Penguatan Sistem Penyikapan Di Tengah Peningkatan Kompleksitas Kekerasan Terhadap Perempuan*, CATAHU: Catatan Tahunan Tentang Kekerasan Terhadap Perempuan (Jakarta, 2024) <<https://komnasperempuan.go.id/>>.

³⁷ *Regulation (EU) 2016/679 of The European Parliament and of The Council of 27 April 2016, Official Journal of the European Union*, 2016, doi:10.4324/9781315775203-11.

for victims of online abuse, allowing the eSafety Commissioner to demand the removal of harmful content within strict timeframes. This proactive approach ensures that women experiencing cyber harassment or non-consensual image sharing have effective legal recourse, contrasting sharply with the slow and often dismissive responses in Indonesia.³⁸

Based on the comparisons above, these comparative perspectives, it is clear that Indonesia lags behind in adopting gender-sensitive digital constitutional safeguards. The Indonesian legal framework remains gender-neutral in form but gender-blind in substance, as it does not explicitly address the structural barriers women face in digital spaces. Meanwhile, both the EU and Australia have demonstrated the importance of embedding gender sensitivity, victim-centered mechanisms, and strong institutional oversight within digital governance frameworks. These comparative lessons suggest that Indonesia should revise the ITE Law to explicitly protect women from online gender-based violence, integrate data protection principles similar to the GDPR, and establish independent bodies with authority to handle digital rights violations swiftly and effectively.

In sum, integrating case studies and international comparisons not only strengthens the normative analysis but also provides concrete pathways for reform. By learning from the criminalization of women under the ITE Law domestically and adopting best practices from the GDPR and the Online Safety Act, Indonesia can move toward a digital constitutional framework that is both inclusive and protective, ensuring that women's freedom of expression is meaningfully guaranteed in practice.

Legal Analysis: Constitutional Challenges in Ensuring Women's Freedom of Expression

Within the framework of Indonesian law, women's freedom of expression in the digital sphere faces a number of normative and structural challenges. Normatively, while the 1945 Constitution guarantees the right to freedom of expression, it does not explicitly address the protection of digital rights, including privacy and cybersecurity rights. Articles 28E and 28F provide the foundation for freedom of expression and communication, but in practice, the scope of these protections has not been fully adapted for the digital era.³⁹

The digital age has opened new opportunities for women to engage more actively in the public sphere. However, this technological development also presents serious challenges for the protection of freedom of expression, particularly regarding gender-based violence, regulatory weaknesses, and cultural barriers. Women in the digital space are often targets of gender-based online violence, which threatens their right to freely express their opinions. Forms of Digital Violence or Gender-Based Online Violence (GBOV) include doxing, the dissemination of personal information without consent to intimidate victims, cyber harassment through messages, comments, or the

³⁸ Australian Government, *Statutory Review of the Online Safety Act 2021*, 2021, MMXXI, p. 4 <<https://www.infrastructure.gov.au/have-your-say/statutory-review-online-safety-act-2021>>.

³⁹ Bobi Aswandi and Kholis Roisah, 'Negara Hukum Dan Demokrasi Pancasila Dalam Kaitannya Dengan Hak Asasi Manusia (Ham)', *Jurnal Pembangunan Hukum Indonesia*, 1.1 (2019), p. 128, doi:10.14710/jphi.v1i1.128-145.

spread of offensive content, and gender-based hate speech, which targets women based on their gender identity.

Legally, freedom of expression is guaranteed by various legal instruments, both national and international. At the national level, the 1945 Constitution of the Republic of Indonesia, Article 28E paragraph (3), states that "Everyone has the right to freedom of association, assembly, and to express opinions." This guarantee is universal and inclusive; however, in practice, there are still gaps in protection for vulnerable groups, particularly women. A key constitutional challenge is the lack of a legal approach that explicitly affirms and responds to the vulnerability of women in exercising their right to express opinions in the public sphere, especially in the digital context. For example, in the case of Agni, a victim of sexual violence at Gadjah Mada University (UGM), the public support and opinions voiced by women through social media faced backlash, labeling, and attempts at silencing, which were not seriously addressed by the state. Despite the principle of equality being recognized in Article 28D paragraph (1) and (3) of the 1945 Constitution, as well as Law No. 7 of 1984 on CEDAW, in practice, women are more likely to become victims of doxing, cyberstalking, and gender-based disinformation. The Constitutional Court, in its Decision No. 50/PUU-VI/2008, affirmed that the protection of human rights constitutes a central element in the guarantee of freedom of expression. However, it has never explicitly addressed the vulnerability of women in the digital space. Indonesian positive law also lacks an effective and gender-sensitive redress mechanism when women become victims of violations of their freedom of expression, whether by the state or non-state actors. Moreover, gender sensitivity among law enforcement officers remains a serious issue, as seen in various cases of digital violence reports against women that often lead to criminalization or neglect. Therefore, a progressive reinterpretation of the constitution must be carried out through a substantive justice approach. Indonesia's digital constitution should place an affirmative principle on vulnerable groups, strengthening the role of the Constitutional Court in interpreting constitutional rights based on the principles of gender inclusivity and adaptation to the dynamics of the digital space. Without this, women's freedom of expression will remain a formal right with no real protective power in practice.

According to a 2022 UN Women report, almost 38% of women globally experience online harassment. In Indonesia, a 2021 SAFEnet (Southeast Asia Freedom of Expression Network) report recorded that 45% of victims of gender-based online violence were young women aged 18-24. These cases demonstrate the high risks women face when expressing themselves in the digital world.

Both regulatory frameworks and law enforcement practices remain significant hurdles in ensuring the protection of women's expressive rights in the digital sphere. For example, the problematic ITE Law, which is supposed to protect digital rights, is often used as a tool to criminalize opinions. Furthermore, regulations like the ITE Law create ambiguity. On the one hand, the ITE Law aims to protect internet users from cybercrime, including gender-based online violence. On the other hand, vague provisions such as defamation and hate speech articles are often used to silence criticism and

limit the expression of female activists in the digital space. This issue is further exacerbated by derivative regulations, such as the Ministry of Communication and Information's Content Moderation Regulation, which has yet to provide adequate gender-sensitive protection standards.⁴⁰

Structural barriers further exacerbate the situation. Law enforcement in cases of gender-based digital violence is still biased and tends to blame the victim.⁴¹ Law enforcement officers often lack an understanding of the characteristics of digital violence, resulting in many women's reports being ignored or processed slowly. Additionally, protection mechanisms for digital rights, such as reporting to digital platforms or authorities, remain ineffective and unresponsive to the needs of female victims.

Compared to some other countries, Indonesia's approach appears insufficiently progressive. In the European Union, the General Data Protection Regulation (GDPR) provides special protection for personal data, including sensitive data related to gender and women's rights, thus strengthening individuals' control over their digital footprints.⁴² Meanwhile, Australia has implemented the Online Safety Act 2021, which explicitly sets out protection for victims of online gender-based violence and provides a fast-track process to remove harmful content.⁴³ Both models illustrate the need for a robust, adaptive, and gender-sensitive regulatory framework to confront the challenges surrounding women's freedom of expression in the digital realm.

Democracy can be seen as a globally expanding system, but in its implementation and development, each country has its own characteristics, influenced by factors such as history and political culture. However, the broadly applicable democratic principle remains inseparable from the value of freedom of expression. Freedom of expression is a right inherent to every human being and must be firmly protected. Moreover, freedom of expression, especially for women, can only be realized when a democratic system ensures that this freedom remains intact without pressure. The evolving and dynamic freedom to express opinions, particularly in the digital public space, aligns with changes occurring in democratic systems.

Furthermore, deeply rooted patriarchal culture and social stigma exacerbate the challenges of women's freedom of expression. Women who express opinions in the digital public space are often seen as "going against norms" or "improper," reflecting how patriarchal values still strongly limit women's expressive space. Moreover, women who actively voice critical views, especially on political or social issues, are often stigmatized as "provocateurs"

⁴⁰ Hotrun Siregar, 'Analisis Pemanfaatan Media Sosial Sebagai Sarana Sosialisasi Pancasila', *Pancasila: Jurnal Keindonesiaan*, no. 1 (2022), pp. 71–82, doi:10.52738/pjk.v2i1.102.

⁴¹ Komnas Perempuan, *CATAHU 2023: Catatan Tahunan Kekerasan Terhadap Perempuan Tahun 2023 Momentum Perubahan: Peluang Penguatan Sistem Penyikapan Di Tengah Peningkatan Kompleksitas Kekerasan Terhadap Perempuan*.

⁴² Victor Claussen, 'Fighting Hate Speech and Fake News. The Network Enforcement Act (NetzDG) in Germany in the Context of European Legislation', *Rivista Di Diritto Dei Media*, 3, 1-27, 3 (2018), pp. 1–27 <www.reuters.com>.

⁴³ Chapter Author and others, 'Chapter Title: A Positive Freedom of Public Speech? Australian Media Law Reform and Freedom of Political Communication Title: New Directions for Law in Australia Book Subtitle: Essays in Contemporary Law Reform', 2016.

or "undeserving". Such actions do more than constrain women's expressive rights; they also instill fear in other women, pressuring them into silence.

Therefore, it is necessary to reformulate Indonesia's digital constitution to not only guarantee freedom of expression but also build real protective mechanisms for women against digital violence, in line with international human rights standards.

Future Gender-Responsive Digital Constitution

Digital transformation has changed the face of democracy and human rights, including women's freedom of expression. However, the digital world also presents serious challenges in the form of discrimination, gender-based online violence, and structural vulnerabilities. Therefore, building a gender-responsive digital constitution becomes a crucial step to ensure that women have safe and equal access in the digital space.

One of the key pillars of a gender-responsive digital constitution is strengthening secure access for women, including through affirmative action policies. The state needs to adopt policies that ensure the digital space is inclusive, free of discrimination, and supports the active participation of women. This includes providing secure reporting channels for digital violence, gender-sensitive handling, and training for law enforcement officials.

Furthermore, gender-based digital literacy is vital. Many women lack sufficient understanding of digital privacy, online security, and how to address online violence. Gender-sensitive digital literacy programs will empower women to be better protected and more empowered in using information technology (UNESCO, 2021).

The massive digital transformation has shifted the landscape of public participation, including in the practice of freedom of expression. However, unfortunately, the existing legal framework and digital constitution are still gender-neutral, meaning they have not yet specifically addressed the inequalities and vulnerabilities faced by women. To build a gender-responsive digital constitution, the legal approach should no longer rely solely on the principles of universality and legal formalism but must emphasize substantive justice. This means the state must actively identify the structural barriers that women face in expressing their opinions, both in physical and digital public spaces, and provide genuine legal protection in its truest sense. An ideal digital constitution should not only affirm freedom of expression as a normative guarantee but also provides effective protection instruments against forms of gender-based online violence (GBOV), algorithmic discrimination, and digital silencing experienced by women. In this context, recognizing gender-based digital inequality needs to be enshrined in clear derivative regulations, such as the Personal Data Protection Bill (PDP), the revision of the ITE Law, and technical regulations from the Ministry of Communication and Information (Kominfo), which have so far lacked adequate gender sensitivity.

Building a gender-responsive digital constitution also requires strengthening the capacity of state institutions to respond to the fast-changing dynamics of the digital space, which is vulnerable to exploitation to harm vulnerable groups. The Constitutional Court, for example, needs to be more open to progressive interpretations of Article 28E of the 1945

Constitution by considering the social and digital dimensions of women's expression. In addition, the parliament and regulatory bodies such as the Indonesian Broadcasting Commission (KPI), the National Commission on Violence Against Women (Komnas Perempuan), and Kominfo must work in synergy to ensure that national digital policies are built with a strong and participatory gender perspective. Women's participation in the formulation of digital policies must also be guaranteed both in terms of quota and substance to ensure that the resulting regulations are not biased toward a masculine perspective. Equally important, gender-responsive digital constitution education should be integrated into law and public policy curricula at the higher education level, so that future policymakers have a strong ethical and legal foundation when designing a safe and just digital space. On the other hand, civil society and digital women's communities must continue to be strengthened as critical partners for the state in building a healthy, open, but gender-just freedom of expression ecosystem. Without multisectoral collaboration and strong political will, the digital constitution will always lag behind the evolving social reality, and women will continue to be victims of a system that should protect their rights. Therefore, building a gender-responsive digital constitution is not just about the law, but about political courage, ethical justice, and a commitment to inclusive democracy.

In efforts to strengthen the national legal framework, reform of the ITE Law becomes crucial. The current ITE Law is considered ambiguous and often used to criminalize expression, including that of women human rights defenders. Revisions should focus on affirming protection for victims of gender-based online violence and removing potentially abusive provisions.

Furthermore, regulations on personal data protection must be drafted with consideration for women's vulnerabilities. Data breaches can have more severe impacts on women, including in the form of doxing, sexual threats, or extortion. Regulations should provide layered protection for gender-sensitive sensitive data and grant greater control to individuals (European Parliament, 2016).

In principle, digital rights should begin to be recognized as part of human rights in constitutional interpretation. The 1945 Constitution currently does not explicitly mention digital rights, but Article 28F can be interpreted progressively as a guarantee for the right to obtain, store, and convey information through digital means. Therefore, there is a need for the Constitutional Court to develop an interpretation of the constitution so that digital rights, especially those of women, are recognized and protected within the framework of human rights.

This effort must also be accompanied by a pro-gender judicial review mechanism for ambiguous regulations that may violate women's rights. The Constitutional Court plays a strategic role in assessing whether a regulation aligns with constitutional principles on equality and freedom of expression.

IV. CONCLUSION

Women's right of free expression in the digital era is both a fundamental human right and a key indicator of the quality of Indonesia's constitutional democracy. Although guaranteed in the 1945 Constitution and reinforced by instruments such as the ICCPR and CEDAW, its implementation in digital

spaces continues to face serious obstacles, including online gender-based violence (OGBV), vague provisions in the ITE Law, patriarchal cultural norms, and weak law enforcement. Case studies, such as the criminalization of women under the ITE Law, demonstrate how existing regulations often silence victims rather than protect them, while international experiences—such as the European Union’s General Data Protection Regulation (GDPR) and Australia’s Online Safety Act 2021—illustrate the importance of strong data protection and victim-centered mechanisms. Therefore, Indonesia urgently needs gender-responsive digital constitutional reform that transforms formal guarantees into substantive protections through revising ambiguous provisions of the ITE Law, strengthening gender-sensitive digital literacy, enhancing data protection, and encouraging progressive constitutional interpretation by the Constitutional Court. Supported by active civil society participation and multi-stakeholder collaboration, such reforms will not only safeguard women’s rights but also ensure the development of a more inclusive, equitable, and democratic digital society.

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11

**WOMEN'S FREEDOM OF EXPRESSION WITHIN THE
FRAMEWORK OF DIGITAL CONSTITUTIONAL LAW**

**KEBEBASAN BERPENDAPAT PEREMPUAN DALAM BINGKAI
HUKUM KONSTITUSI DIGITAL**

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ABSTRACT

The digital transformation has reshaped the landscape of freedom of expression, creating new opportunities for participation while also exposing women to structural, normative, and cultural challenges. In Indonesia, although Article 28E of the 1945 Constitution guarantees these rights, the digital environment remains unsafe due to weak legal safeguards, gender-blind regulations, and entrenched patriarchal norms. Online gender-based violence or OGBV, including cyber harassment, doxing, and non-consensual image distribution, continues to silence women, while the misuse of the Electronic Information and Transactions (ITE) Law has frequently criminalized victims instead of providing protection. This article employs a normative-conceptual and comparative legal approach to assess these gaps. Case studies, such as the criminalization of women under the ITE Law, reveal how existing frameworks fail to address gender-specific vulnerabilities. A comparative perspective with the European Union's General Data Protection Regulation (GDPR) and Australia's Online Safety Act 2021 highlights best practices for safeguarding women's digital rights through strong data protection and proactive victim-centered mechanisms. The study argues for gender-responsive digital constitutional reform in Indonesia, including legal clarification, enhanced digital literacy, strengthened data protection, and progressive constitutional interpretation. Such reforms are essential to transform formal guarantees into substantive protections and ensure that women's freedom of expression is meaningfully realized in a democratic digital society. This article offers a unique contribution by integrating Indonesian case studies of women's criminalization under the ITE Law with comparative

perspectives from the EU's GDPR and Australia's Online Safety Act. Unlike existing literature that remains largely descriptive, this study provides a prescriptive-analytical framework for gender-responsive digital constitutional reform. It bridges constitutional law, digital rights, and gender justice, presenting concrete pathways to transform formal guarantees into substantive protections for women's freedom of expression.

Keywords : Freedom of Expression, Women, Digital Constitutional Law, Online Gender-Based Violence, Digital Rights.

ABSTRAK

Transformasi digital telah merekonstruksi lanskap kebebasan berpendapat, menciptakan peluang baru untuk partisipasi sekaligus mengekspos perempuan pada tantangan struktural, normatif, dan kultural. Meskipun di Indonesia terdapat jaminan konstitusional dalam Pasal 28E UUD 1945, ruang digital tetap tidak aman akibat lemahnya perlindungan hukum, regulasi yang buta gender, serta norma patriarki yang mengakar. Kekerasan berbasis gender online (KBGO), termasuk pelecehan siber, doxing, dan penyebaran konten intim tanpa persetujuan, terus membungkam suara perempuan, sementara penyalahgunaan Undang-Undang Informasi dan Transaksi Elektronik (UU ITE) seringkali justru mengkriminalisasi korban alih-alih memberi perlindungan. Artikel ini menggunakan pendekatan hukum normatif-konseptual dan komparatif untuk menilai kesenjangan tersebut. Studi kasus, seperti kriminalisasi perempuan melalui UU ITE, menunjukkan bagaimana kerangka hukum yang ada gagal menjawab kerentanan spesifik berbasis gender. Perspektif komparatif dengan General Data Protection Regulation (GDPR) di Uni Eropa dan Online Safety Act 2021 di Australia menyoroti praktik terbaik dalam melindungi hak digital perempuan melalui perlindungan data yang kuat dan mekanisme proaktif berbasis korban. Studi ini berargumen bahwa reformasi hukum konstitusi digital yang responsif gender sangat penting, termasuk melalui klarifikasi hukum, peningkatan literasi digital, penguatan perlindungan data, serta penafsiran konstitusi yang progresif. Reformasi tersebut esensial untuk mengubah jaminan formal menjadi perlindungan substantif, sehingga kebebasan berekspresi perempuan benar-benar terwujud dalam masyarakat digital yang demokratis. Artikel ini memberikan kontribusi dengan mengintegrasikan studi kasus Indonesia terkait kriminalisasi perempuan di bawah UU ITE dengan perspektif komparatif dari GDPR Uni Eropa dan Online Safety Act Australia. Berbeda dengan literatur yang sebagian besar masih bersifat deskriptif, studi ini menawarkan kerangka preskriptif-analitis bagi reformasi hukum konstitusi digital yang responsif gender. Artikel ini menjembatani hukum konstitusi, hak digital, dan keadilan gender, sekaligus menghadirkan jalur konkret untuk mengubah jaminan formal menjadi perlindungan substantif atas kebebasan berekspresi perempuan.

Kata Kunci : Kebebasan Berpendapat, Perempuan, Hukum Konstitusi Digital, Kekerasan Berbasis Gender Online, Hak Digital.

I. INTRODUCTION

The development of the digital era has brought about fundamental transformations in the way society expresses opinions. Public spaces, which were once limited to physical forums, have now expanded into virtual spaces, such as social media, online discussion platforms, and digital community-based information-sharing channels. Freedom of expression, which is one of the fundamental human rights, now faces new forms and challenges in the digital world. Information technology not only accelerates the dissemination of ideas but also creates new dynamics in managing civil rights, including protection of individual expression.¹ The significant changes in social life due to digitalization have led to violations of privacy rights, including the right to freedom of expression and protection from online threats.²

In this context, women have both significant opportunities and face considerable vulnerabilities. Women's access to digital spaces has opened broader opportunities for participation in public discourse, politics, economics, and culture. However, on the other hand, women are also subjected to different types of online gender-based violence, including harassment in cyberspace, stalking through digital platforms, discriminatory hate speech, and the spread of content that degrades women's dignity. This phenomenon causes the digital gender divide, which has the potential to hinder the full realization of the right to freedom of expression.³

Indonesia upholds the rule of law as the foundation of state authority, where every action of the government is required to be grounded in legal norms to prevent arbitrary practices. Indonesia as a state governed by law is obligated to maintain legal order, enforce justice, and realize the objectives of law. The 1945 Constitution of the Republic of Indonesia (UUD 1945) serves as the supreme legal source and the fundamental reference for both written and unwritten governance, making it the basis upon which all laws and regulations in Indonesia are established.⁴

Freedom of expression holds significant value for several reasons. First, freedom of expression is fundamental to realizing personal self-actualization and reaching one's fullest potential. Second, it serves as a vital foundation for the search for truth and the progress of knowledge. In this regard, a person seeking knowledge and truth must be open to listening to all viewpoints, consider all alternatives, test their judgments by confronting opposing views, and use various perspectives as effectively as possible. Third, freedom of expression is important for individuals to actively engage in decision-making processes, particularly in politics. Fourth, freedom of expression allows society and the government to achieve stability and adaptability.⁵

¹ Nalom Kurniawan and Mery Christian Putri, *Laporan Penelitian Konvergensi Hukum Dan Teknologi Dalam Proses Penegakan Hukum Di Mahkamah Konstitusi* (Jakarta, 2021).

² Elvan Maulana and Timbul Dompok, 'Hak Asasi Manusia Di Era Digital : Tantangan Dan Peluang Dalam Mengatasi Kejahatan Siber', 3.1 (2025).

³ UN Women, *Regular Resources Report 2021: Investing In Result*, 2022.

⁴ Wiranata, Khamim, and Imam Asmarudin, 'Kebebasan Berekspresi Melalui Media Digital Dan Penerapannya Di Indonesia', *Pancasakti Law Journal (PLJ)*, 1.2 (2023), pp. 205–18 <<https://doi.org/10.24905/>>.

⁵ Marwandianto Marwandianto and Hilmi Ardani Nasution, 'Hak Atas Kebebasan Berpendapat Dan Berekspresi Dalam Koridor Penerapan Pasal 310 Dan 311 KUHP', *Jurnal HAM*, 11.1 (2020), p. 1, doi:10.30641/ham.2020.11.1-25.

The right to freedom of expression is one of the Constitutional Rights of Citizens (HKWN) as outlined in the 1945 Constitution of the Republic of Indonesia, which has been thoroughly inventoried and categorized into three types of constitutional rights: Individual Rights represented by an icon, Collective Rights represented by 29 icons, and Vulnerable Community Rights represented by 3 icons. The icon display is designed and arranged to represent the characteristics or traits of the objects they symbolize, namely the norms and provisions regarding the constitutional rights of citizens. The right to freedom of expression, as outlined in HKWN, is both an individual and collective right of citizens, which can be represented by the following icons:⁶

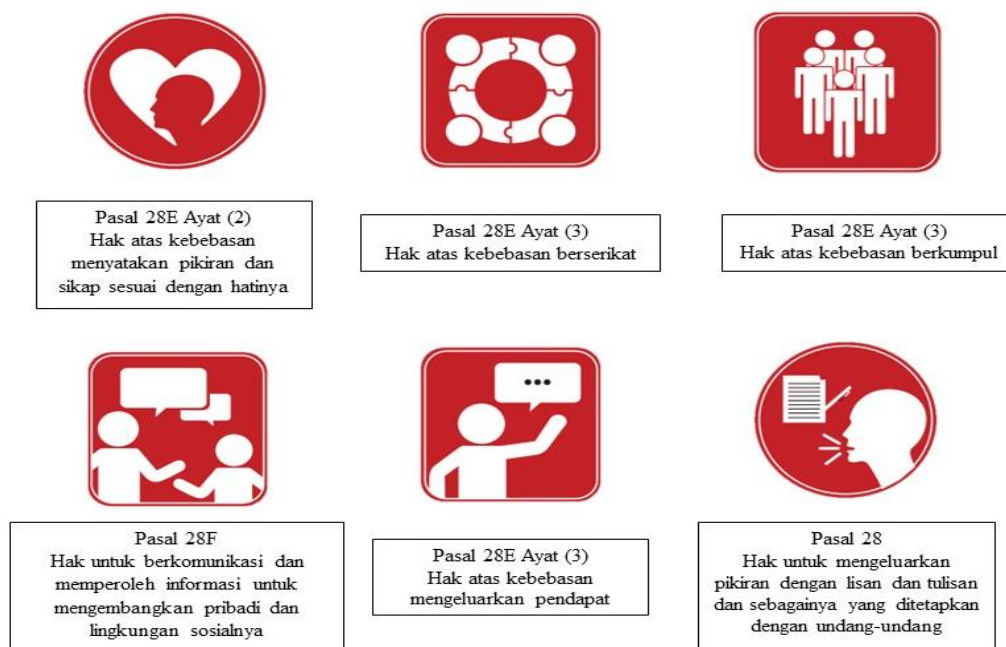


Figure 1 The right to freedom of expression

The Indonesian Constitution, through Article 28E paragraph (3) of the 1945 Constitution, explicitly guarantees the right of every individual to express their opinions. Article 28I paragraph (2) of the 1945 Constitution also emphasizes that everyone has the right to be free from discriminatory treatment on any grounds and has the right to protection from such discriminatory treatment. These rights apply universally, without gender distinction, and therefore constitute the constitutional basis for safeguarding women's freedom of expression in the digital age. Within the framework of constitutional law, this guarantee is part of the principle of constitutional rights that must be respected, protected, and fulfilled by the state through the principles of the rule of law and constitutional democracy.

In addition to national constitutional provisions, there are several international and national regulations that govern the right to freedom of expression. One of the international policy instruments governing freedom of expression is Article 19 of the 1948 Universal Declaration of Human Rights (UDHR), which guarantees the right to freedom of opinion and expression,

⁶ Mahkamah Konstitusi Republik Indonesia, 'Ikon HKWN: Hak Konstitusional Warga Negara', 2022.

and Article 19 of the International Covenant on Civil and Political Rights (ICCPR) 1966, which reaffirms the right to freedom of expression globally, ratified by Indonesia through Law No. 12 of 2005 concerning the International Covenant on Civil and Political Rights. Additionally, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979 requires state parties, including Indonesia, to ensure that women enjoy the right to freedom of expression without discrimination.⁷

Furthermore, the national policies and regulations governing the right to freedom of expression include Law No. 1 of 2024 on the Second Amendment to ITE Law. While aiming to protect rights in the digital space, this law raises concerns about restrictions on freedom of expression, particularly for women victims of digital violence. Additionally, the national instrument regulating freedom of expression is the Regulation of the Ministry of Women's Empowerment and Child Protection (PPPA). The PPPA regulates the protection of women and children in the online realm, including digital literacy and addressing online gender-based violence.⁸

In the perspective of constitutional law, these developments call for a reinterpretation of the constitution to adapt to technological changes. In line with the living constitution principle, the constitution must be interpreted dynamically to meet modern challenges, particularly in safeguarding women's freedom of expression in the digital era.⁹ Therefore, it is important to explore how Indonesian constitutional law, as well as national and international law, shapes the framework for protecting women's freedom of expression, particularly in this complex digital era.

In this research, the author will examine how constitutional law regulates freedom of expression, specifically for women in the digital era, and the challenges faced by women in realizing freedom of expression in the digital space. Through this research, the author will also formulate strategies for the development of a digital constitutional law that is responsive to the protection of women's freedom of expression.

The aim of this article is to analyze the constitutional guarantees of women's freedom of expression in the digital era based on Indonesian constitutional law and international instruments, identify the structural and normative challenges faced by women in exercising their right to free expression in the digital world, and provide recommendations for the development of a digital constitutional law that is more responsive to the protection of women's freedom of expression.

II. METHOD

This study employs a normative-conceptual legal research design with a multi-layered methodological framework to ensure both doctrinal depth and

⁷ Iwan Satriawan, Tareq Muhammad Aziz Elven, and Tanto Lailam, 'Internet Shutdown in Indonesia: An Appropriate Response or A Threat to Human Rights?', *Sriwijaya Law Review*, 7.1 (2023), pp. 19–46, doi:10.28946/slrev.vol7.iss1.1018.pp19-46.

⁸ Ayu Riska Amalia, Putri Raodah, and Nizia Kusuma Wardani, 'Menjamin Hak Perempuan Di Era Digital: Kewajiban Negara Dan Tantangan Regulasi Nasional', *Jurnal Kompilasi Hukum*, 9.2 (2024), pp. 178–91 <<https://jkh.unram.ac.id/index.php/jkh/article/view/184/132>>.

⁹ Adrian Kuenzler, 'What Competition Law Can Do For Data Privacy (and Vice Versa)', *Computer Law & Security Review*, 47 (2022), p. 105757, doi:10.1016/J.CLSR.2022.105757.

comparative insight. The research combines the statute approach, which examines the 1945 Constitution, the ITE Law, Law No. 12 of 2005 on the ratification of the ICCPR, Law No. 7 of 1984 on the ratification of CEDAW, and other relevant national regulations concerning women's protection in digital spaces; the conceptual approach, which analyzes theoretical perspectives on freedom of expression, the doctrine of the living constitution, constitutional rights, and the emerging concept of digital constitutional law; and the comparative approach, which assesses legal frameworks in other jurisdictions, particularly the General Data Protection Regulation (GDPR) in the European Union and the Online Safety Act in Australia, to highlight best practices and lessons for Indonesia. The sources of legal materials are drawn from primary materials, including the 1945 Constitution, ICCPR, CEDAW, the ITE Law, and related legislation; secondary materials, such as constitutional law textbooks, peer-reviewed journal articles, and international reports from UN Women and UNESCO; as well as tertiary materials like legal dictionaries, encyclopedias, and supporting references. Data collection is carried out through systematic library research using official legal databases, scholarly repositories, and authoritative international reports, while the analysis technique applies a prescriptive-analytical method, which not only describes existing legal norms but also critically evaluates their effectiveness, identifies normative gaps, and proposes gender-sensitive constitutional reforms, ensuring that the study contributes both normatively and prescriptively to the discourse on digital constitutional law.

III. ANALYSIS AND DISCUSSION

a. Protection of the Right to Freedom of Expression in the 1945 Constitution

The Constitution of the Republic of Indonesia explicitly provides for the right to freedom of expression as a component of human rights safeguarded by the state. In the context of the Indonesian legal system, protection of the right to express opinions is enshrined in several important articles of the 1945 Constitution of the Republic of Indonesia (UUD 1945), whose relevance is increasingly significant in the midst of the evolving digital era.¹⁰ First, Article 28E paragraph (3) of the 1945 Constitution states that *"Every person shall have the right to freedom of association, assembly, and to express opinions."* This provision forms the main foundation that guarantees every citizen, without exception, the right to express their views verbally, in writing, or through other media. Second, Article 28G paragraph (1) states that *"Every person shall have the right to personal protection, family, honor, dignity, and property under their control, and the right to security and protection from threats or fears of doing or not doing something that is a human right."* This provision adds another dimension to the protection of freedom of expression, especially in the context of protection from intimidation, persecution, or digital violence that often affects individuals, particularly women, in cyberspace. Third, Article 28I paragraph (2) affirms that *"Every person shall have the right to be free from any discriminatory treatment on any grounds and the right to*

¹⁰ Muten Nuna and Roy Marthen Moonti, 'Kebebasan Hak Sosial-Politik Dan Partisipasi Warga Negara Dalam Sistem Demokrasi Di Indonesia', *Jurnal Ius Constituendum*, 4.2 (2019), p. 110, doi:10.26623/jic.v4i2.1652.

protection from such discriminatory treatment." This provision reinforces the principle that freedom of expression should be exercised equally, free from any gender-based discrimination, religion, ethnicity, or any other identity, including in the context of the use of information technology.

The interpretation of these provisions is challenged in Law No. 9 of 1998 on the Freedom of Expression in Public, where Article 1 paragraph (1) states that "freedom of thought in the form of oral, written, or other methods may be expressed freely and responsibly in accordance with applicable laws." According to the 1945 Constitution and Law No. 9 of 1998, freedom of expression is a fundamental right that is declared and protected by the state. The principle of freedom of expression in the context of human rights is related to the idea of a state based on law. Indonesia, as a rule-of-law state, has agreed to various international regulations that respect the right to freedom of expression and opinion. This is also guaranteed in the country's constitution, so criticism of the government is not considered illegal. The right to freedom of expression is provided with constitutional protection in Indonesia. The imposition of restrictions on freedom of expression is directed toward preserving both national security and the collective welfare of society.¹¹ In the period from 1999 to 2002, the People's Consultative Assembly (MPR) amended the 1945 Constitution, which previously had no chapter on human rights (HAM). This change was a result of the 1998 reform movement, which emerged after the public, including students and youth, demanded the enforcement of the rule of law, respect for human rights, and the eradication of corruption, collusion, and nepotism (KKN). This was a significant advancement in Indonesia's transformation and an effort by the Indonesian people to make the 1945 Constitution more modern and democratic.

In the digital era, freedom of expression has expanded in form and media. If in the past, expression of opinions occurred in physical forums such as public discussions, print media, or demonstrations, today, most freedom of expression practices take place on digital platforms such as social media, websites, blogs, and online video platforms. The digital space has become the main arena for society to express opinions, social critiques, and resistance against injustice.

The 1998 political reform, spearheaded by the younger generation and students, called for freedom of communication as a manifestation of democracy for society and the state. This reform was carried out through the use of new media, supported by the Internet, to unite movements against the state's power that ignored democracy. This reform aimed to replace the political hegemony of authoritarianism with democracy that prioritizes freedom of expression which finally through the reform, Indonesia embarked on a new direction, one that embraced and institutionalized freedom of the press.¹²

Indonesian human rights are safeguarded in the 1945 Constitution, ensuring the rights of every citizen and resident. The Indonesian believe that

¹¹ Latipah Nasution, 'Hak Kebebasan Berpendapat Dan Berekspresi Dalam Ruang Publik Di Era Digital', *'Adalah*, 4.3 (2020), pp. 37–48, doi:10.15408/adalah.v4i3.16200.

¹² Muhammad and Syahn Harahap, *Kemerdekaan Pers Pada Orde Reformasi Jurnal Ilmiah Hukum Dirgantara-Fakultas Hukum Universitas Dirgantara Marsekal Suryadarma* |, 2019, ix.

human rights must take into account the uniqueness of Indonesia, and each human right must be in line with responsibility, so that there is a relationship of mutual respect and recognition of each individual's human rights, including freedom of religion, belief, freedom of expression, association, and behavior, as well as human rights related to access to information and communication.¹³

Therefore, constitutional protection for the right to freedom of expression must still apply in the digital space. The state has an obligation to ensure that the expression of citizens on the internet is not arbitrarily silenced, and to ensure that this freedom is not used as a pretext for allowing violence or hate speech, especially against vulnerable groups. Thus, the interpretation of the 1945 Constitution must continue to develop progressively to meet the challenges of the times. The Constitutional Court, as the protector of citizens' constitutional rights, plays a crucial role in interpreting constitutional provisions to keep them relevant to the dynamics of today's digital society.

b. National and International Instruments on Freedom of Expression for Women

The freedom to express opinions and communicate verbally or in writing is a fundamental element in democratic governance systems with a very broad definition. Establishing clear legal rules as an initial step in ensuring freedom of expression and the right to voice opinions is a reflection of democracy that respects the law. The protection of women's freedom of expression is not only by the national constitution but is also strengthened by various national and international legal instruments. These legal instruments form the essential foundation to ensure that women have equal opportunities to express their views, both in physical spaces and in the digital world.

The right to freedom of expression, including the right to convey and receive information, is a fundamental human right in Indonesia, as stipulated in various laws, such as the 1945 Constitution, Law No. 9 of 1998 on the Freedom to Express Opinions in Public, Law No. 39 of 1999 on Human Rights, Law No. 40 of 1999 on the Press, Law No. 32 of 2002 on Broadcasting, Law No. 14 of 2008 on Public Information Transparency (KIP), Government Regulation No. 61 of 2010 on the Implementation of Public Information Transparency (KIP), Minister of Administrative and Bureaucratic Reform Regulation No. 83 of 2012 on Social Media Utilization Guidelines for Government Institutions, ITE Law, and Government Regulation No. 71 of 2019 on the Organization of Electronic Systems and Transactions.¹⁴

Within the national instruments, Law No. 39 of 1999 on Human Rights (UU HAM) specifically addresses the right to freedom of expression in Articles 23 to 25. Article 23 states that everyone has the right to freedom of expression, Article 24 recognizes the right of everyone to communicate and receive information, and Article 25 affirms the right of everyone to associate and assemble. This law provides the national legal basis for the protection of

¹³ MPR RI, 'Panduan Pemasyarakatan', *Sekretariat Jendral MPR RI*, 2020 <<https://www.mpr.go.id/sosialisasi/panduan-pemasyarakatan>>.

¹⁴ Siti Fatimah, *Jaminan Kepastian Hukum Atas Kebebasan Berpendapat Di Era Konvergensi Media*, Disertasi (Fakultas Hukum Universitas Sebelas Maret, 2024).

women's right to express opinions, including considering gender equality aspects in its implementation.¹⁵

In addition to the Human Rights Law, there is also Law No. 1 of 2004 in conjunction with ITE Law. The ITE Law regulates new forms of expression in digital spaces, including the use of electronic media to express opinions. While intended to regulate the flow of information, the ITE Law often sparks controversy regarding freedom of expression, particularly due to the potential for criminalizing women's expression in the digital realm. Therefore, in the context of women's rights protection, the implementation of the ITE Law must ensure a balance between maintaining public order and protecting freedom of expression.¹⁶

Law No. 7 of 1984 on the Ratification of CEDAW also serves as a national instrument regulating the right to freedom of expression. Through this law, Indonesia ratified the CEDAW. This ratification strengthens the state's obligation to ensure that women can enjoy their civil and political rights, including freedom of expression, without discrimination. CEDAW encourages countries to remove cultural, social, and legal barriers that hinder women from enjoying their right to express their opinions.

Internationally, principles that reinforce the right to freedom of expression are outlined in several human rights instruments. Indonesia's ratification of the ICCPR through Law No. 12 of 2005 reinforces, under Article 19, the principle that all individuals has the right to freely express opinion and expression without interference, including the ability to seek, obtain, and communicate information through any medium irrespective of national frontiers. In parallel, CEDAW serves as a normative instrument that underscores the eradication of gender-based discrimination, particularly by affirming women's equal rights to access and freely express opinions in both public and private life.¹⁷

Article 19 of the Universal Declaration of Human Rights (UDHR) ensures that *"everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers."* This declaration marks the beginning of universal recognition of the right to freedom of expression, which applies without discrimination, including based on gender.

Furthermore, Article 19 of the ICCPR, which Indonesia ratified through Law No. 12 of 2005, strengthens the right to freedom of expression. The Covenant recognizes the right of everyone to impart information and ideas in various forms. It demands that state parties respect and protect freedom of expression without discrimination, making it relevant in ensuring women's rights in both public and digital spaces.

¹⁵ Della Lusky Selian and others, 'Freedom of Expression in the Era of Democracy: Records of Human Rights Enforcement Kebebasan Berekspresi Di Era Demokrasi: Catatan Penegakan Hak Asasi Manusia', 2.2 (2018), pp. 185–94 <<https://journal.unnes.ac.id/sju/index.php/lslr/index>>.

¹⁶ Stella Hita Arawinda, 'Perlindungan Hukum Terhadap Perempuan Korban Kekerasan Berbasis Gender Online Di Indonesia', *Jurnal Yustika: Media Hukum Dan Keadilan*, 24.02 (2022), pp. 76–90, doi:10.24123/yustika.v24i02.4599.

¹⁷ 'ANNEX Office of the United Nations High Commissioner for Human Rights', no. March (2020), pp. 1–9.

Additionally, the CEDAW mainstreams gender in political rights and freedom of expression. CEDAW not only demands the elimination of discrimination against women in politics but also requires states to take affirmative measures to ensure that women can participate equally in political and public life. This includes the right to express opinions freely in public forums and media, including digital spaces, as well as protection from gender-based violence or intimidation.

According to Article 19 of the ICCPR, global human rights principles interpret the right to express opinions in two ways: internally (within personal thoughts) and externally (in the public environment). Internal freedom is linked to an individual's mental state when expressing opinions (Article 19(1) ICCPR), and it cannot be constrained. For this reason, the state must refrain from intervention. Meanwhile, external freedom considers the freedom to openly express opinions, which may be subject to limitations (International Covenant on Civil and Political Rights, Article 19(2)). The implementation of restrictions must comply with applicable laws and should respect the rights or reputation of others, as well as maintain national security, public order, health, or morals (Article 19(3) ICCPR). The right to express opinions without interference is regulated not only in Article 19(1) of the ICCPR but also in Articles 28 and 28E(2) of the 1945 Constitution of Indonesia. The Human Rights Law also includes regulations on this in Article 23(2), stating that "All individuals have the freedom to voice, disseminate, and express opinions according to their personal beliefs, either orally or in writing through print or electronic media, with due regard to religious values, morality, social order, public interest, and national unity." Therefore, the Indonesian state is prohibited from intervening in the right to freedom of expression.¹⁸

In carrying out its obligations under Article 19(1) of the ICCPR concerning freedom of expression, Indonesia, as a state party, is required to comply with the standards set forth in General Comment No. 34 of the Human Rights Committee. Paragraph 9 of this Comment affirms that freedom of expression constitutes an absolute right that cannot be restricted under any circumstances (a non-derogable right). The opinions protected under this right include those related to politics, science, history, morality, and religion. Any form of interference, intimidation, abuse, including arrest, detention, trial, and imprisonment based on someone's personal opinions, violates the provisions of Article 19(1) ICCPR. Meanwhile, Paragraph (10) clarifies that all forms of coercion to compel an individual to express their opinions are prohibited. Freedom of thought also includes the freedom not to express an opinion.

Freedom of expression is a fundamental right that is not absolute but has certain requirements.¹⁹ This right is emphasized in Article 19(2) of the ICCPR; Articles 28, 28E(2) and (3), 28F of the 1945 Constitution of the Republic of Indonesia; and in Article 23(2) and Article 25 of the Indonesia Human Rights of Law, which states, "Every individual has the right to express

¹⁸ Elfia Farida, 'Kewajiban Negara Indonesia Terhadap Pemenuhan Hak Kebebasan Berpendapat Dan Berekspresi', *Jurnal Ilmiah Ilmu Hukum QISTIE*, 14.2 (2021), p. 43.

¹⁹ Daniel Riffe and Kyla P. Garrett Wagner, 'Freedom of Expression: Another Look at How Much the Public Will Endorse', *Communication Law and Policy*, 26.2 (2021), pp. 161–86, doi:10.1080/10811680.2021.1893096.

4 their opinion in public...". To ensure the fulfillment of this right, Indonesia must refer to General Comment No. 34 of the ICCPR on the Siracusa Principles. Additionally, in General Comment No. 34, Paragraph (11), state parties are required to ensure freedom of speech, including the right to seek, receive, and share information and ideas about everything without exception. One of the rights included in this situation is the freedom to express and receive ideas or opinions through various forms of communication that can be shared with others. However, this must comply with the provisions set out in Articles 19(3) and 20 of the ICCPR. This includes discussions about politics, opinions about individuals, social issues, human rights issues, journalistic activities, arts and culture, education, religious teachings, and business advertisements. It also involves ideas that may be considered highly inappropriate, even though such expressions can be regulated within the limitations determined by Articles 19(3) and 20 of the ICCPR.

18 In General Comment No. 34, Paragraph (12), according to this Article, states have the responsibility to preserve and protect all forms of expression and their dissemination methods. Examples include speaking, writing, using sign language, and non-verbal communication such as images, paintings, and other artistic objects. There are various ways to express oneself, including through media such as books, newspapers, brochures, posters, banners, clothing, and legal documents. This also includes audiovisual expressions or those based on electronic technology or the internet. In this regard, law enforcement officers should not use force against murals or social media posts that criticize the government. Provisions in Articles 19(3) and 20 of the ICCPR may limit the right to express opinions. In practice, based on General Comment No. 34, Paragraph (21), as outlined in the text, limitations on freedom of expression are justified solely under two conditions. The first is to protect the rights or reputation of others. The second is to safeguard national security, public order, public health, or public morals. When the government imposes restrictions on freedom of expression, they must ensure that the right remains protected and is not negatively affected by their actions. Regulations regarding restrictions should be established in laws, as outlined in General Comment No. 34, Paragraph (22), explaining the restrictions found in the Siracusa Principles on Limitations and Derogations of Provisions in the ICCPR (Annex, UN.Doc.E/CN.4/1984/4 (1984)). Human rights limitations should not be used as tools to protect the state and public officials from criticism and public opinion, considering their reputation.²⁰

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2 The Indonesian legal system has various important components, including the police, prosecutors, courts, advocates, correctional institutions, and alternative dispute resolution bodies.²¹ Repressive actions taken by the police are a central issue in the application of the law and the protection of human rights (HR) in the context of the freedom of expression.²² In addition, there has been a transformation in how law enforcement authorities

²⁰ Farida, 'Kewajiban Negara Indonesia Terhadap Pemenuhan Hak Kebebasan Berpendapat Dan Berekspresi'.

²¹ Agus Santoso, 'Hukum, Moral, Dan Keadilan: Hukum (Edisi Pertama)', viii (2015) <<https://library.bpk.go.id/koleksi/detil/jkpkbpkpp-e-202111122312>>.

²² Lutfil Ansori, Penegakan Hukum, and Hukum Progresif, 'Reformasi Penegakan Hukum Perspektif Hukum Progresif', 4.2 (2017), pp. 148–63.

understand and respond to the practice of freedom of expression, where this right, originally guaranteed and protected by the constitution, is now viewed as a threat to public order and national security. This has resulted in the reduction of the right to freedom of speech, criminalization, arrests, and other repressive actions. Although freedom of expression is not absolute, its regulation must remain consistent with constitutional provisions and the protection of human rights.²³

Along with the advancement of information technology, media for expressing opinions has undergone significant changes, shifting from physical forums like demonstrations, discussions, or print media, to digital platforms like social media, blogs, video channels, and other online forums. The digital space has become a new arena for people to voice opinions, advocate for rights, and build communities. However, this transition also brings new challenges in terms of legal protection and state oversight. In this context, constitutional law must adapt to digital dynamics to remain relevant in guaranteeing fundamental rights, especially for vulnerable groups such as women.²⁴

As a democratic country, Indonesia has the responsibility to uphold, enhance, implement, and fulfill the right to freedom of expression, which is part of human rights, as stipulated in Article 28I(4) of the 1945 Constitution. However, it is important to emphasize that the right to express opinions and freedom of expression is not without limitations. Freedom of speech must be considered prudently, taking into account individual rights and public interest. Regulations regarding freedom of expression should be formulated clearly and concisely to be understood by all individuals. Those who decide to impose such limitations must be able to justify their need and act reasonably. Furthermore, these limitations must have safeguards to prevent abuse and involve proper legal processes.²⁵

c. Women in the Digital World: Between Opportunities and Vulnerabilities

Women are a vital pillar in the social, economic, and political development of a nation. Their roles are not limited to the domestic sphere but are increasingly evident in the public domain, including leadership, education, and technology. However, women still face various structural challenges such as gender inequality, discrimination, violence, and limited access to resources. To achieve true equality, an intersectional approach is required that ensures the protection of women's rights and sustainable empowerment. Recognition of women's dignity, capabilities, and

²³ Barda Nawawi Arief, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan ...* - Prof.Dr.Barda Nawawi Arief, S.H. - Google Buku, Prenada Media, 5th edn (Kencana (Prenada Media Group), 2018) <https://books.google.co.id/books/about/Masalah_Penegakan_Hukum_dan_Kebijakan_Hu.html?id=AeLJDwAAQBAJ&redir_esc=y>.

²⁴ Jeremy Harris Lipschultz, *Social Media Communication, Social Media Communication* (Taylor and Francis, 2017), doi:10.4324/9781315388144.

²⁵ Syafaat Anugrah Pradana, Rusdianto Sudirman, and Muh. Andri Alvian, 'Kemelitan Penegakan Hukum Terhadap Hak Kebebasan Berpendapat', *DIKTUM: Jurnal Syariah Dan Hukum*, 20.1 (2022), pp. 156–68, doi:10.35905/diktum.v20i1.2811.

contributions is an essential foundation in creating a just, inclusive, and gender-equal society.²⁶

Digital transformation has opened new spaces for women to express themselves, access information, and participate in socio-political life. In the context of digital democracy, women's presence in the online space reflects the expansion of citizen participation and the strengthening of constitutional rights to freedom of expression. Access to the internet and social media allows women to build networks, advocate for gender issues, and push for public policies that are more responsive to their needs. The digital space has also become an important channel for women to express their opinions freely and independently, which was previously often restricted by patriarchal social structures.²⁷

However, behind these opportunities, women also face very real vulnerabilities in the digital world. Various forms of gender-based online violence (GBOV) are becoming more rampant, such as cyberbullying, doxing (public dissemination of personal data), and hate speech targeting women's gender identity or sexuality. These forms of violence not only harm women psychologically but also limit their participation in the online world. UN Women reports indicate that women globally are more vulnerable to digital violence compared to men, particularly when they are active in public or political issues. Moreover, algorithms and social media culture further reinforce gender stereotypes, where women are often portrayed as sexual objects, harassed for their appearance, or considered unworthy of expressing critical opinions.²⁸

Based on SAFEnet monitoring, there were 48 cases of freedom of expression violations in the digital realm between April and June 2024, with 45 reported victims. This number represents an increase of 18 cases compared to the previous quarter, which recorded 30 cases. In terms of the number of reporters, the figure decreased compared to the previous period, which recorded 52 reporters. The most common reports related to digital expression were made under the ITE Law, without specifying a particular article, totaling 15 cases. Hate speech/incitement under Article 28 paragraph (2) of the ITE Law was recorded in 6 cases. Alleged defamation and/or slander under Article 27 paragraph (3), as well as threats of violence or intimidation under Article 45 paragraph (3) of the ITE Law, were each recorded in 4 cases. Furthermore, cases violating decency under Article 27 paragraph (1) were recorded in 3 cases. Of the 48 cases monitored throughout the second quarter of 2024, only 22 cases had reports filed under the new ITE Law.²⁹

Freedom of speech is theoretically considered nearly limitless, but in practice and implementation, it often presents a paradox where the freedom of society, especially for women, to speak or express opinions through various

²⁶ Yulia Hesti and others, 'Korelasi Antara Kebebasan Berekspresi Dalam Peningkatan Kasus Kejahatan Asusila Di Media Digital (Sextorsi)', *JLEB: Journal of Law, Education and Business*, 2.1 (2024), pp. 522–29, doi:10.57235/jleb.v2i1.1890.

²⁷ Siti Fatimah, 'Demokrasi Digital Dan Welfare State Indonesia', *Prosiding Konferensi Nasional APHTN-HAN*, 1.1 (2023), pp. 855–86.

²⁸ 'APC Annual Report 2020' <<https://2020report.apc.org/>> [accessed 22 February 2025].

²⁹ Abul Hasan Banimal and others, *Laporan Pemantauan Hak-Hak Digital Di Indonesia* (Bali, 2025).

forms of expression is often restricted in the name of promoting the greater public good. Most scholars agree that protection of freedom of speech must be maintained at a very high level. In this regard, high protection is necessary for freedom of speech, especially in the context of politics and public policy, due to its importance for the stability of governance. This indicates that there should be consistent communication between society and the government, where communication from society serves as a form of oversight on the government's actions. Freedom of expression is the core of democracy because the effectiveness of democracy depends on citizens' ability to criticize the government and actively participate in discussions on issues that may affect the government, especially in decision-making and policy formation in the current era of social media.³⁰

The phenomenon of women facing criminal charges in connection with their exercise of freedom of expression online has grown increasingly prevalent. For instance, women who share experiences of sexual harassment on social media are often criminalized on the grounds of defamation of the perpetrator. Examples include cases of infidelity in households, such as the case of Valencya who was sued by her husband for scolding him,³¹ the sexual harassment case by Herry Wirawan,³² and instances where the wife of a prisoner is extorted by rogue police officers,³³ among many other cases. This indicates that the ITE Law still does not provide adequate protection for women in expressing themselves; on the contrary, it can be used as a tool to silence their voices. The National Commission on Violence Against Women report in 2021 noted that many victims of sexual violence face revictimization because their courage to speak out in the digital space leads to legal action based on articles in the ITE Law.

Women in the digital world face a complex dual dynamic that simultaneously opens up vast participatory spaces while also presenting new and significant vulnerabilities. The digital world provides various opportunities for women to voice their opinions, expand their social networks, enhance literacy, and develop their economic and intellectual capacities. Social media, community-based platforms, and virtual discussion spaces have enabled women, including those from marginalized groups, to break through the boundaries of private space into public space more equitably. However, as access opens up, women also become the most vulnerable group to experience gender-based online violence (GBOV), doxing, non-consensual

³⁰ Dahlil Imran and Nur Hidayat Sardini, 'Bayang Otoritarianisme Digital: Analisis Rkuhp Kehormatan Penyelenggara Negara Dan Kebebasan Menyatakan Pendapat', *Jurnal Education and Development*, 11.1 (2022), pp. 24–30, doi:10.37081/ed.v11i1.4223.

³¹ Farida Farhan, 'Cerita Valencya, Dituntut Penjara Karena Marahi Suami Mabuk: Kaget Omelannya Direkan Jadi Alat Bukti', *Kompas.Com*, 2021 <<https://regional.kompas.com/read/2021/11/16/125650478/cerita-valencya-dituntut-penjara-karena-marahi-suami-mabuk-kaget-omelannya>>.

³² Rachmadi Rasyad, 'Melihat Ponpes Milik Herry Wirawan, Pemerkosa 12 Santri', *Kumparan.News*, 2021 <<https://kumparan.com/kumparannews/melihat-ponpes-milik-herry-wirawan-pemerkosa-12-santri-1x4n2YB5FK0/full>>.

³³ M. Syofri Kurniawan, 'Istri Tahanan Mengaku Dimintai Rp20 Juta Oleh Oknum Polisi Agar Suaminya Tak Ditembak - TribunJateng', *TribunJateng.Com*, 2021 <<https://jateng.tribunnews.com/2021/12/16/istri-tahanan-mengaku-dimintai-rp20-juta-oleh-oknum-polisi-agar-suaminya-tak-ditembak>>.

content dissemination, and cyberattacks targeting their bodies and gender identities. In the context of freedom of expression, women are often silenced not because of the substance of their arguments but because of their biological and social identity as women. This situation poses a serious challenge to the principle of equality before the law and the constitutional right to freedom of expression. Unfortunately, the existing legal framework, including in Indonesia, is still not fully responsive in protecting women in the digital realm comprehensively. The digital constitutional law instruments must be able to guarantee a safe space for women to express their opinions, free not only from state intervention but also from gender-based violence and intimidation by non-state actors. In other words, digital transformation must be accompanied by affirmative policies that substantively guarantee the protection of women's constitutional rights, not just formally. Without genuine legal support, the digital world, which should be a space for liberation, may turn into a new arena of repression that reinforces women's subordination in society.³⁴

Therefore, it is crucial to place the protection of women in the digital world as an integral part of digital constitutional law. The state is not only obliged to guarantee the right to freedom of expression but also to create a safe and equitable digital space for all, especially vulnerable groups such as women.

d. Case Studies and International Comparative Perspectives on Women's Freedom of Expression in Digital Spaces

The challenges faced by Indonesian women in exercising freedom of expression in the digital sphere are best illustrated through real case studies. One prominent example is the Valencya case, in which a woman was criminally charged under the ITE Law after publicly expressing grievances about domestic abuse on social media. Instead of being recognized as a victim, she was criminalized under defamation provisions, demonstrating how the ITE Law is often used as a tool to silence women rather than protect them.³⁵ Similarly, cases of doxing and cyber harassment against women activists, including those advocating for gender equality and environmental justice, have shown that weak enforcement mechanisms and patriarchal interpretations of law often exacerbate the vulnerability of women in digital spaces.³⁶ These cases prove the normative disparity between the constitutional guarantee of free expression and the actual experiences of women in Indonesia's digital space.

In contrast, international experiences provide valuable comparative lessons. The European Union's General Data Protection Regulation (GDPR)

³⁴ Endah Pertiwi and others, 'Analisis Yuridis Terhadap Penyalahgunaan Data Pribadi Pengguna Media Sosial', *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia*, 3.3 (2022), pp. 10–16, doi:10.52005/rechten.v3i3.65.

³⁵ Farhan, 'Cerita Valencya, Dituntut Pennjara Karena Marahi Suami Mabuk: Kaget Omelannya Direkan Jadi Alat Bukti'.

³⁶ Komnas Perempuan, *CATAHU 2023: Catatan Tahunan Kekerasan Terhadap Perempuan Tahun 2023 Momentum Perubahan: Peluang Penguatan Sistem Penyikapan Di Tengah Peningkatan Kompleksitas Kekerasan Terhadap Perempuan*, CATAHU: Catatan Tahunan Tentang Kekerasan Terhadap Perempuan (Jakarta, 2024) <<https://komnasperempuan.go.id/>>.

establishes strong safeguards for personal data, including sensitive data categories such as gender identity, thereby minimizing the risk of online harassment and misuse of personal information.³⁷ The GDPR framework demonstrates how regulatory clarity, combined with robust enforcement mechanisms, can enhance women's sense of security in digital participation. Likewise, Australia's Online Safety Act 2021 provides a rapid response system for victims of online abuse, allowing the eSafety Commissioner to demand the removal of harmful content within strict timeframes. This proactive approach ensures that women experiencing cyber harassment or non-consensual image sharing have effective legal recourse, contrasting sharply with the slow and often dismissive responses in Indonesia.³⁸

Based on the comparisons above, these comparative perspectives, it is clear that Indonesia lags behind in adopting gender-sensitive digital constitutional safeguards. The Indonesian legal framework remains gender-neutral in form but gender-blind in substance, as it does not explicitly address the structural barriers women face in digital spaces. Meanwhile, both the EU and Australia have demonstrated the importance of embedding gender sensitivity, victim-centered mechanisms, and strong institutional oversight within digital governance frameworks. These comparative lessons suggest that Indonesia should revise the ITE Law to explicitly protect women from online gender-based violence, integrate data protection principles similar to the GDPR, and establish independent bodies with authority to handle digital rights violations swiftly and effectively.

In sum, integrating case studies and international comparisons not only strengthens the normative analysis but also provides concrete pathways for reform. By learning from the criminalization of women under the ITE Law domestically and adopting best practices from the GDPR and the Online Safety Act, Indonesia can move toward a digital constitutional framework that is both inclusive and protective, ensuring that women's freedom of expression is meaningfully guaranteed in practice.

e. Legal Analysis: Constitutional Challenges in Ensuring Women's Freedom of Expression

Within the framework of Indonesian law, women's freedom of expression in the digital sphere faces a number of normative and structural challenges. Normatively, while the 1945 Constitution guarantees the right to freedom of expression, it does not explicitly address the protection of digital rights, including privacy and cybersecurity rights. Articles 28E and 28F provide the foundation for freedom of expression and communication, but in practice, the scope of these protections has not been fully adapted for the digital era.³⁹

³⁷ Regulation (EU) 2016/679 of The European Parliament and of The Council of 27 April 2016, *Official Journal of the European Union*, 2016, doi:10.4324/9781315775203-11.

³⁸ Australian Government, *Statutory Review of the Online Safety Act 2021*, 2021, MMXXI, p. 4 <<https://www.infrastructure.gov.au/have-your-say/statutory-review-online-safety-act-2021>>.

³⁹ Bobi Aswandi and Kholis Roisah, 'Negara Hukum Dan Demokrasi Pancasila Dalam Kaitannya Dengan Hak Asasi Manusia (Ham)', *Jurnal Pembangunan Hukum Indonesia*, 1.1 (2019), p. 128, doi:10.14710/jphi.v1i1.128-145.

The digital age has opened new opportunities for women to engage more actively in the public sphere. However, this technological development also presents serious challenges for the protection of freedom of expression, particularly regarding gender-based violence, regulatory weaknesses, and cultural barriers. Women in the digital space are often targets of gender-based online violence, which threatens their right to freely express their opinions. Forms of Digital Violence or Gender-Based Online Violence (GBOV) include doxing, the dissemination of personal information without consent to intimidate victims, cyber harassment through messages, comments, or the spread of offensive content, and gender-based hate speech, which targets women based on their gender identity.

Legally, freedom of expression is guaranteed by various legal instruments, both national and international. At the national level, the 1945 Constitution of the Republic of Indonesia, Article 28E paragraph (3), states that "Everyone has the right to freedom of association, assembly, and to express opinions." This guarantee is universal and inclusive; however, in practice, there are still gaps in protection for vulnerable groups, particularly women. A key constitutional challenge is the lack of a legal approach that explicitly affirms and responds to the vulnerability of women in exercising their right to express opinions in the public sphere, especially in the digital context. For example, in the case of Agni, a victim of sexual violence at Gadjah Mada University (UGM), the public support and opinions voiced by women through social media faced backlash, labeling, and attempts at silencing, which were not seriously addressed by the state. Despite the principle of equality being recognized in Article 28D paragraph (1) and (3) of the 1945 Constitution, as well as Law No. 7 of 1984 on CEDAW, in practice, women are more likely to become victims of doxing, cyberstalking, and gender-based disinformation. The Constitutional Court, in its Decision No. 50/PUU-VI/2008, affirmed that the protection of human rights constitutes a central element in the guarantee of freedom of expression. However, it has never explicitly addressed the vulnerability of women in the digital space. Indonesian positive law also lacks an effective and gender-sensitive redress mechanism when women become victims of violations of their freedom of expression, whether by the state or non-state actors. Moreover, gender sensitivity among law enforcement officers remains a serious issue, as seen in various cases of digital violence reports against women that often lead to criminalization or neglect. Therefore, a progressive reinterpretation of the constitution must be carried out through a substantive justice approach. Indonesia's digital constitution should place an affirmative principle on vulnerable groups, strengthening the role of the Constitutional Court in interpreting constitutional rights based on the principles of gender inclusivity and adaptation to the dynamics of the digital space. Without this, women's freedom of expression will remain a formal right with no real protective power in practice.

According to a 2022 UN Women report, almost 38% of women globally experience online harassment. In Indonesia, a 2021 SAFEnet (Southeast Asia Freedom of Expression Network) report recorded that 45% of victims of gender-based online violence were young women aged 18-24. These cases

demonstrate the high risks women face when expressing themselves in the digital world.

Both regulatory frameworks and law enforcement practices remain significant hurdles in ensuring the protection of women's expressive rights in the digital sphere. For example, the problematic ITE Law, which is supposed to protect digital rights, is often used as a tool to criminalize opinions. Furthermore, regulations like the ITE Law create ambiguity. On the one hand, the ITE Law aims to protect internet users from cybercrime, including gender-based online violence. On the other hand, vague provisions such as defamation and hate speech articles are often used to silence criticism and limit the expression of female activists in the digital space. This issue is further exacerbated by derivative regulations, such as the Ministry of Communication and Information's Content Moderation Regulation, which has yet to provide adequate gender-sensitive protection standards.⁴⁰

Structural barriers further exacerbate the situation. Law enforcement in cases of gender-based digital violence is still biased and tends to blame the victim.⁴¹ Law enforcement officers often lack an understanding of the characteristics of digital violence, resulting in many women's reports being ignored or processed slowly. Additionally, protection mechanisms for digital rights, such as reporting to digital platforms or authorities, remain ineffective and unresponsive to the needs of female victims.

Compared to some other countries, Indonesia's approach appears insufficiently progressive. In the European Union, the General Data Protection Regulation (GDPR) provides special protection for personal data, including sensitive data related to gender and women's rights, thus strengthening individuals' control over their digital footprints.⁴² Meanwhile, Australia has implemented the Online Safety Act 2021, which explicitly sets out protection for victims of online gender-based violence and provides a fast-track process to remove harmful content.⁴³ Both models illustrate the need for a robust, adaptive, and gender-sensitive regulatory framework to confront the challenges surrounding women's freedom of expression in the digital realm.

Democracy can be seen as a globally expanding system, but in its implementation and development, each country has its own characteristics, influenced by factors such as history and political culture. However, the broadly applicable democratic principle remains inseparable from the value of freedom of expression. Freedom of expression is a right inherent to every human being and must be firmly protected. Moreover, freedom of expression, especially for women, can only be realized when a democratic system ensures

⁴⁰ Hotrun Siregar, 'Analisis Pemanfaatan Media Sosial Sebagai Sarana Sosialisasi Pancasila', *Pancasila: Jurnal Keindonesiaan*, no. 1 (2022), pp. 71–82, doi:10.52738/pjk.v2i1.102.

⁴¹ Komnas Perempuan, *CATAHU 2023: Catatan Tahunan Kekerasan Terhadap Perempuan Tahun 2023 Momentum Perubahan: Peluang Penguatan Sistem Penyikapan Di Tengah Peningkatan Kompleksitas Kekerasan Terhadap Perempuan*.

⁴² Victor Claussen, 'Fighting Hate Speech and Fake News. The Network Enforcement Act (NetzDG) in Germany in the Context of European Legislation', *Rivista Di Diritto Dei Media*, 3, 1-27, 3 (2018), pp. 1–27 <www.reuters.com>.

⁴³ Chapter Author and others, 'Chapter Title: A Positive Freedom of Public Speech? Australian Media Law Reform and Freedom of Political Communication Title: New Directions for Law in Australia Book Subtitle: Essays in Contemporary Law Reform', 2016.

that this freedom remains intact without pressure. The evolving and dynamic freedom to express opinions, particularly in the digital public space, aligns with changes occurring in democratic systems.

Furthermore, deeply rooted patriarchal culture and social stigma exacerbate the challenges of women's freedom of expression. Women who express opinions in the digital public space are often seen as "going against norms" or "improper," reflecting how patriarchal values still strongly limit women's expressive space. Moreover, women who actively voice critical views, especially on political or social issues, are often stigmatized as "provocateurs" or "undeserving". Such actions do more than constrain women's expressive rights; they also instill fear in other women, pressuring them into silence.

Therefore, it is necessary to reformulate Indonesia's digital constitution to not only guarantee freedom of expression but also build real protective mechanisms for women against digital violence, in line with international human rights standards.

f. Future Gender-Responsive Digital Constitution

Digital transformation has changed the face of democracy and human rights, including women's freedom of expression. However, the digital world also presents serious challenges in the form of discrimination, gender-based online violence, and structural vulnerabilities. Therefore, building a gender-responsive digital constitution becomes a crucial step to ensure that women have safe and equal access in the digital space.

One of the key pillars of a gender-responsive digital constitution is strengthening secure access for women, including through affirmative action policies. The state needs to adopt policies that ensure the digital space is inclusive, free of discrimination, and supports the active participation of women. This includes providing secure reporting channels for digital violence, gender-sensitive handling, and training for law enforcement officials.

Furthermore, gender-based digital literacy is vital. Many women lack sufficient understanding of digital privacy, online security, and how to address online violence. Gender-sensitive digital literacy programs will empower women to be better protected and more empowered in using information technology (UNESCO, 2021).

The massive digital transformation has shifted the landscape of public participation, including in the practice of freedom of expression. However, unfortunately, the existing legal framework and digital constitution are still gender-neutral, meaning they have not yet specifically addressed the inequalities and vulnerabilities faced by women. To build a gender-responsive digital constitution, the legal approach should no longer rely solely on the principles of universality and legal formalism but must emphasize substantive justice. This means the state must actively identify the structural barriers that women face in expressing their opinions, both in physical and digital public spaces, and provide genuine legal protection in its truest sense. An ideal digital constitution should not only affirm freedom of expression as a normative guarantee but also provides effective protection instruments against forms of gender-based online violence (GBOV), algorithmic discrimination, and digital silencing experienced by women. In this context, recognizing gender-based digital inequality needs to be enshrined in clear

derivative regulations, such as the Personal Data Protection Bill (PDP), the revision of the ITE Law, and technical regulations from the Ministry of Communication and Information (Kominfo), which have so far lacked adequate gender sensitivity.

Building a gender-responsive digital constitution also requires strengthening the capacity of state institutions to respond to the fast-changing dynamics of the digital space, which is vulnerable to exploitation to harm vulnerable groups. The Constitutional Court, for example, needs to be more open to progressive interpretations of Article 28E of the 1945 Constitution by considering the social and digital dimensions of women's expression. In addition, the parliament and regulatory bodies such as the Indonesian Broadcasting Commission (KPI), the National Commission on Violence Against Women (Komnas Perempuan), and Kominfo must work in synergy to ensure that national digital policies are built with a strong and participatory gender perspective. Women's participation in the formulation of digital policies must also be guaranteed both in terms of quota and substance to ensure that the resulting regulations are not biased toward a masculine perspective. Equally important, gender-responsive digital constitution education should be integrated into law and public policy curricula at the higher education level, so that future policymakers have a strong ethical and legal foundation when designing a safe and just digital space. On the other hand, civil society and digital women's communities must continue to be strengthened as critical partners for the state in building a healthy, open, but gender-just freedom of expression ecosystem. Without multisectoral collaboration and strong political will, the digital constitution will always lag behind the evolving social reality, and women will continue to be victims of a system that should protect their rights. Therefore, building a gender-responsive digital constitution is not just about the law, but about political courage, ethical justice, and a commitment to inclusive democracy.

In efforts to strengthen the national legal framework, reform of the ITE Law becomes crucial. The current ITE Law is considered ambiguous and often used to criminalize expression, including that of women human rights defenders. Revisions should focus on affirming protection for victims of gender-based online violence and removing potentially abusive provisions.

Furthermore, regulations on personal data protection must be drafted with consideration for women's vulnerabilities. Data breaches can have more severe impacts on women, including in the form of doxing, sexual threats, or extortion. Regulations should provide layered protection for gender-sensitive sensitive data and grant greater control to individuals (European Parliament, 2016).

In principle, digital rights should begin to be recognized as part of human rights in constitutional interpretation. The 1945 Constitution currently does not explicitly mention digital rights, but Article 28F can be interpreted progressively as a guarantee for the right to obtain, store, and convey information through digital means. Therefore, there is a need for the Constitutional Court to develop an interpretation of the constitution so that digital rights, especially those of women, are recognized and protected within the framework of human rights.

This effort must also be accompanied by a pro-gender judicial review mechanism for ambiguous regulations that may violate women's rights. The Constitutional Court plays a strategic role in assessing whether a regulation aligns with constitutional principles on equality and freedom of expression.

IV. CONCLUSION

Women's right of free expression in the digital era is both a fundamental human right and a key indicator of the quality of Indonesia's constitutional democracy. Although guaranteed in the 1945 Constitution and reinforced by instruments such as the ICCPR and CEDAW, its implementation in digital spaces continues to face serious obstacles, including online gender-based violence (OGBV), vague provisions in the ITE Law, patriarchal cultural norms, and weak law enforcement. Case studies, such as the criminalization of women under the ITE Law, demonstrate how existing regulations often silence victims rather than protect them, while international experiences—such as the European Union's General Data Protection Regulation (GDPR) and Australia's Online Safety Act 2021—illustrate the importance of strong data protection and victim-centered mechanisms. Therefore, Indonesia urgently needs gender-responsive digital constitutional reform that transforms formal guarantees into substantive protections through revising ambiguous provisions of the ITE Law, strengthening gender-sensitive digital literacy, enhancing data protection, and encouraging progressive constitutional interpretation by the Constitutional Court. Supported by active civil society participation and multi-stakeholder collaboration, such reforms will not only safeguard women's rights but also ensure the development of a more inclusive, equitable, and democratic digital society.

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