

# **The Constitutionality of Restrictions on Freedom of Expression in Pancasila Democracy: A Human Rights Perspective**

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## **Abstract**

Freedom of expression constitutes a fundamental pillar of democratic governance, yet its exercise increasingly faces restrictions in Indonesia within the framework of Pancasila democracy. While international human rights law recognizes freedom of expression as a derogable right subject to strict conditions, the use of Pancasila as a basis for restricting this freedom often lacks clear operational parameters. This paper analyzes the constitutionality of restrictions on freedom of expression in Indonesia by examining their conformity with international human rights standards, particularly the three-part test. This study employs a normative legal research method, drawing on statutory, conceptual, and

comparative approaches, as well as secondary data from legislation, court decisions, international human rights instruments, and academic literature. The findings indicate that although Indonesia formally adopts the principles of legality, legitimate aim, and necessity-proportionality, their implementation remains inconsistent due to vague legal norms and the abstract deployment of Pancasila as a justificatory framework. As a result, certain restrictions risk exceeding permissible limits and undermining democratic values. This research contributes by proposing an integrative analytical model that positions Pancasila as a normative lens within the three-part test framework, thereby bridging universal human rights standards with national ideological values. It concludes that restrictions on freedom of expression in Pancasila democracy can only be considered constitutional when they satisfy both international standards and clearly operationalized Pancasila values.

**Keywords:** Freedom of expression; Pancasila democracy; constitutional limitations; human rights law; three-part test

## A. Introduction

Freedom of expression is truly one of the main foundations of a modern democratic state because it functions as a means of public participation, control over power, and a space for articulating citizens' interests.<sup>1</sup> From a philosophical perspective, freedom of expression is not only seen as an individual right, but also as a prerequisite for the realization of rational and inclusive public deliberation, as stated in the tradition of deliberative democracy.<sup>2</sup> However, within the framework of human rights (HAM), freedom of expression is not an absolute right, but is included in the category of derogable rights which can be limited as long as certain

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<sup>1</sup> Siti Nurbayani et al., "Freedom of Expression, Aspiration and Gender: A Cultuling in the Student Demonstration," *Social Sciences & Humanities Open* 11 (2025), <https://doi.org/10.1016/j.ssaho.2024.101267>.

<sup>2</sup> Johanne Orchard-Webb et al., "Deliberative Democratic Monetary Valuation to Implement the Ecosystem Approach," *Ecosystem Services* 21 (2016): 308–18, <https://doi.org/10.1016/j.ecoser.2016.09.005>.

conditions are met.<sup>3</sup> International standards, particularly as reflected in Article 19 paragraph (3) International Covenant on Civil and Political Rights (ICCPR), require that such restrictions must meet a three-part test: based on law (legality), have a legitimate purpose (legitimate aim), and be necessary and proportional in a democratic society (necessity and proportionality).<sup>4</sup> In Indonesia, freedom of expression is guaranteed by strong constitutional provisions through Article 28E paragraph (3) and Article 28F of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945).<sup>5</sup> However, at the same time, restrictions on these freedoms are also possible under Article 28J of the 1945 Constitution of the Republic of Indonesia, citing morality, religious values, security, and public order. Herein lies the normative complexity of Pancasila democracy, which not only recognizes individual freedom but also emphasizes its balance with collective values and social harmony.<sup>6</sup> Pancasila, the foundation of the state, is often used to justify restrictions on freedom of expression, both in legislation and law enforcement. Philosophically, this reflects the unique character of Indonesian democracy, which is not entirely "free," but rather integrates communal values.<sup>7</sup> However, problems arise when Pancasila is used elastically without measurable parameters, thus potentially blurring the boundaries

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<sup>3</sup> Moh. Fadhil, "Criminal Law Reform in Indonesia : The Perspective on Freedom of Expression and Opinion," *Al-Jinayah Jurnal Hukum Pidana Islam* 9, no. 2 (2023): 128–46, <https://doi.org/10.15642/aj.2023.9.2.128-146>.

<sup>4</sup> Syahwal and Raihan Muhammad, "Asian Values Discourses and Its Impact on Freedom of Expression in Social Media," *The Indonesian Journal of International Clinical Legal Education* 7, no. 3 (2025): 343–98, <https://doi.org/10.15294/iccle.v7i3.26869>.

<sup>5</sup> Mara Ongku Hsb, "HAM DAN Kebebasan Berpendapat dalam UUD 1945," *AL WASATH Jurnal Ilmu Hukum* 2, no. 1 (2021): 29–40, <https://doi.org/10.47776/alwasath.v2i1.135>.

<sup>6</sup> Andini Eka Anggraeni et al., "The Role of Students in Developing Democratic Awareness: Implementation Fourth Principle of Pancasila," *Indonesian Journal of Pancasila and Global Constitutionalism* 4, no. 1 (March 2026): 74–96, <https://doi.org/10.15294/ijpgc.v4i1.36575>.

<sup>7</sup> Martitah Martitah, "Reactualization of the Pancasila Ideology in the Spirit of Moral Law Formation," *Law Research Review Quarterly* 2, no. 1 (2016): 79–92, <https://doi.org/10.15294/snh.v2i01.21404>.

between legitimate and excessive restrictions.<sup>8</sup> Sociologically, the dynamics of freedom of expression in Indonesia are increasingly complex in the digital era.<sup>9</sup> The transformation of public space into digital space has transformed citizens from mere consumers of information into producers of opinion, which broadens democratic participation while increasing the potential for conflict and disinformation.<sup>10</sup> However, this development has also been accompanied by an increase in the practice of criminalizing expression, both through the Electronic Information and Transactions Law and provisions in the Criminal Code (KUHP).<sup>11</sup> This phenomenon cannot be separated from the global trend, which shows a decline in civil liberties, including freedom of expression, over the past two decades, as reported by Freedom House<sup>12</sup> and Amnesty

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<sup>8</sup> The reliance on Pancasila as a basis for restricting freedom of expression presents an epistemic difficulty due to its open-textured and indeterminate nature, which lacks clear operational standards. Rather than functioning as a concrete test in constitutional adjudication, Pancasila operates at the level of general normative guidance. Such indeterminacy may widen the scope of state discretion and create opportunities for disproportionate or excessive restrictions. From a human rights perspective, this situation is problematic because it departs from the principle of legality, which requires that any limitation on rights be formulated with sufficient clarity, accessibility, and foreseeability.. Pranoto Iskandar, "The Pancasila Delusion," *Journal of Contemporary Asia* 46, no. 4 (2016): 723–35, <https://doi.org/10.1080/00472336.2016.1195430>.

<sup>9</sup> Nurul Listiyani and Yholanda Christiyana, "Comparison of The Provisions On Freedom of Expression On Social Media From A Human Rights Perspective And Law Number 19 of 2016 Concerning Information And Electronic Transactions In Indonesia," *International Journal of Educational Research & Social Sciences* 6, no. 4 (2025): 475–80, <https://doi.org/10.51601/ijersc.v6i4.998>.

<sup>10</sup> Michele Giuseppe Giuranno and Mauro Sebastian Manni, "The Impact of TikTok on Elections: (Mis)Information and Regulatory Challenges," *Cyclops*, ahead of print, 2026, <https://doi.org/10.1111/kykl.70054>.

<sup>11</sup> Devi Tri Indriasari and Karman Karman, "Freedom of Expression in Regulatory Pressure: Case Study on the Electronic Information and Transaction Law," *The Messenger Journal* 15, no. 1 (2024): 34–51, <https://doi.org/10.26623/themessenger.v15i1.5787>.

<sup>12</sup> Freedom House, "Indonesia: Freedom in the World 2025 Country Report," Freedom House, 2025, <https://freedomhouse.org/country/indonesia/freedom-world/2025>.

International.<sup>13</sup> Excessive restrictions can create a chilling effect, in which people limit their freedom of expression out of fear of legal consequences. In the long term, this condition not only threatens individual freedom but also undermines the quality of substantive democracy.

Several previous studies have examined freedom of expression and its restrictions from various perspectives. For example, research by Fernando et al. (2022) shows that the development of social media in the digital era has expanded the space for freedom of expression, but has also given rise to new problems such as hoaxes, hate speech, and criminalization through regulations like the ITE Law, which are considered subjective and have the potential to excessively restrict expression.<sup>14</sup> Meanwhile, a study by Triwahyuningsih (2021) emphasized that freedom of expression in the Indonesian context cannot be separated from the values of Pancasila, which demands a balance between rights and obligations and places freedom within a framework of social and moral responsibility.<sup>15</sup> Meanwhile, the study by Saparina and Dewi (2021) shows that freedom of expression is understood as a manifestation of Pancasila values in democratic practice, although this relationship is mostly explained normatively without in-depth conceptual elaboration.<sup>16</sup> These three studies make important contributions to understanding the dynamics of freedom of expression, both in the digital context and within the Pancasila framework.

However, these studies have fundamental limitations. *First*, most studies still focus on describing phenomena or providing normative justifications, without systematically examining whether restrictions on

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<sup>13</sup> Amnesty International, *Situasi Hak Asasi Manusia di Dunia* (2026), [https://www.amnesty.id/wp-content/uploads/2026/04/041726\\_AIR-Bahasa-Indonesia\\_FIN.pdf](https://www.amnesty.id/wp-content/uploads/2026/04/041726_AIR-Bahasa-Indonesia_FIN.pdf).

<sup>14</sup> Zico Junius Fernando et al., "The Freedom of Expression in Indonesia," *Cogent Social Sciences* 8, no. 1 (2022), <https://doi.org/10.1080/23311886.2022.2103944>.

<sup>15</sup> Triwahyuningsih Triwahyuningsih, "The Right to Freedom of Express Opinions in Public Based on Pancasila," *Journal of Transcendental Law* 3, no. 1 (2021): 1–14, <https://doi.org/10.23917/jtl.v3i1.15682>.

<sup>16</sup> Amalya Salsa Saparina and Dinie Anggraeni Dewi, "Implementasi Nilai-Nilai Pancasila Melalui Praktik Kebebasan Berpendapat Di Indonesia," *Jurpis: Jurnal Pendidikan Ilmu Sosial* 18, no. 1 (2021): 49–62.

freedom of expression meet the three-part test in international human rights law. *Second*, although several studies have linked freedom of expression to Pancasila values, this relationship has not been elaborated within an operational and measurable constitutional framework. In other words, there has been no analysis that comprehensively integrates international human rights standards with the characteristics of Pancasila democracy as the foundation of the state. Therefore, this article seeks to fill this gap by examining whether restrictions on freedom of expression within Pancasila democracy can be constitutionally justified and in compliance with international human rights standards.

This research makes an original contribution by developing an analytical framework that integrates the three-part test, a universal human rights standard, with Pancasila, the philosophical and constitutional foundation of the Indonesian state. With this approach, this article is not only descriptive but also critically evaluative in assessing the legitimacy of restrictions on freedom of expression. Academically, this research is expected to contribute to the development of constitutional law and human rights studies, particularly in bridging the gap between the universality of human rights and the particularity of national values.

Against this background, this article aims to analyze the constitutionality of restrictions on freedom of expression in Pancasila democracy through an international human rights lens. More specifically, this study asks the following questions: (i) What are the standards for restrictions on freedom of expression from an international human rights perspective? (ii) How is Pancasila positioned as the basis for restrictions in the Indonesian legal system? and (iii) whether these restrictions meet the criteria of the three-part test. This article will begin with a discussion of the theoretical framework regarding freedom of expression and its limitations, followed by an analysis of the practice of limitations in Indonesia, and conclude with an evaluation of its constitutionality from the perspective of Pancasila democracy.

This study employs normative legal research methods with statutory, conceptual, and comparative approaches. The data used are secondary data obtained through library research, including laws and

regulations, court decisions, international human rights instruments, and academic literature in the form of books and scientific journal articles. The analysis was conducted qualitatively using the three-part test framework as a measuring tool to assess the legitimacy of restrictions on freedom of expression in the context of Pancasila democracy. This method is expected to provide a comprehensive picture of the conformity of restrictive practices in Indonesia with constitutional and international human rights standards.

This article departs from the position that the use of Pancasila as a basis for restricting freedom of expression cannot be accepted uncritically. While Pancasila provides an important philosophical foundation for the Indonesian constitutional system, its abstract and open-ended nature creates the potential for misuse as a tool of excessive restriction. Therefore, this study adopts a critical approach that does not merely seek to reconcile Pancasila with international human rights standards, but also to examine the limits of such reconciliation. In this sense, the integrative model proposed in this article is intended not to legitimize restriction, but to discipline it within a framework that prioritizes the protection of fundamental rights.

## **B. Discussion**

### **1. What is Freedom of Expression?**

Freedom of expression is a fundamental right that allows every individual to convey thoughts, ideas, and information without arbitrary intervention.<sup>17</sup> Within the framework of international human rights law, this freedom is not only limited to the act of speaking, but also includes the right to seek, receive, and impart information through various media without geographical boundaries.<sup>18</sup> Therefore, freedom of expression is not only the “right to speak”, but also the “right to know” and the “right

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<sup>17</sup> Gaikwad Sadhana and Research Supervisor: Dr Rajvardhan, “The Study of Right to Freedom of Expression, Digital Media Laws and Demand for Innovation,” *Law and World* 11, no. 33 (March 2025): 114–24, <https://doi.org/10.36475/11.1.9>.

<sup>18</sup> Sara Morrell, “Why (Not) Talk about Human Rights? Politics in the Global Digital Compact,” *Telecommunications Policy* 49, no. 10 (2025), <https://doi.org/10.1016/j.telpol.2025.103077>.

to be heard” in the public sphere.

Conceptually, freedom of expression consists of two main dimensions. *First*, freedom to have an opinion (freedom of opinion),<sup>19</sup> which is absolute and cannot be limited under any circumstances. *Second*, freedom to express such opinions (freedom of expression), which may be subject to certain restrictions.<sup>20</sup> This distinction is important because it demonstrates that the state may not interfere with an individual's thoughts, but may regulate external expression as long as it meets strict legal requirements. In this regard, freedom of expression does not stand alone but always interacts with other rights, such as the right to reputation, security, and public order.

From a democratic perspective, freedom of expression has a very strategic function as enabling right, namely rights that enable other rights to function.<sup>21</sup> Without freedom of expression, political participation becomes illusory because citizens have no space to express criticism or aspirations.<sup>22</sup> Thus, freedom of expression is often referred to as the “lifeblood of democracy” because it is the primary means for society to monitor power, test public policy, and maintain state accountability.<sup>23</sup> In fact, protecting controversial or unpopular expression is a crucial indicator of a democratic society. As emphasized in international human rights law, freedom of expression also protects ideas that are “offensive,

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<sup>19</sup> Sue Anne Teo, “How to Think about Freedom of Thought (and Opinion) in the Age of AI,” *Computer Law & Security Review* 53 (2024), <https://doi.org/10.1016/j.clsr.2024.105969>.

<sup>20</sup> Michael Zakharin and Timothy C. Bates, “Psychological Pillars of Support for Free Speech: Tolerance for Offensive, Disagreeing, Socially Divisive, and Heterodox Speech,” *Personality and Individual Differences* 219 (2024), <https://doi.org/10.1016/j.paid.2023.112502>.

<sup>21</sup> Mohammad Alsharif and Hussein Hnit, “Digital Human Rights: Legal Debates and Emerging Foundations under the International Bill of Human Rights,” *Social Sciences & Humanities Open* 12 (2025), <https://doi.org/10.1016/j.ssaho.2025.102160>.

<sup>22</sup> Sissel Hovik, Sveinung Legard, and Inger Miriam Bertelsen, “Area-Based Initiatives and Urban Democracy,” *Cities* 144 (2024), <https://doi.org/10.1016/j.cities.2023.104638>.

<sup>23</sup> Jamie Vickery, “Using an Intersectional Approach to Advance Understanding of Homeless Persons’ Vulnerability to Disaster,” *Environmental Sociology* 4, no. 1 (2018): 136–47, <https://doi.org/10.1080/23251042.2017.1408549>.

shocking, or disturbing."<sup>24</sup> However, freedom of expression is not an absolute right. In international human rights law, this right is categorized as a derogable *right*, which means it can be limited under certain conditions. Article 19 paragraph (3) of the ICCPR stipulates that restrictions can only be made if they meet three cumulative conditions, namely: they are established by law, have a legitimate aim, and are necessary and proportionate in a democratic society.<sup>25</sup> In other words, restrictions on freedom of expression cannot be imposed arbitrarily; they must be implemented through a measured, legally accountable mechanism. Problems arise when such restrictions fail to meet these standards, potentially turning them into instruments of repression against civil liberties.

In contemporary developments, particularly in the digital era, freedom of expression has expanded and become more complex. Digital technology enables every individual to become an information producer, thereby expanding the space for public participation. However, on the other hand, the state also has a greater capacity to control and restrict expression through regulation and technology.<sup>26</sup> This condition creates tension between freedom and control, which demands a legal framework

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<sup>24</sup> Julia Kapelańska-Pręgowska and Maja Pucelj, "Freedom of Expression and Hate Speech: Human Rights Standards and Their Application in Poland and Slovenia," *Laws* 12, no. 4 (2023): 64, <https://doi.org/10.3390/laws12040064>.

<sup>25</sup> Freedom of expression is widely recognized in international human rights law as a non-absolute right, subject to permissible limitations under strict conditions. Article 19(3) of the ICCPR establishes a cumulative test requiring that any restriction must be provided by law, pursue a legitimate aim—such as the protection of the rights or reputations of others, national security, public order, public health, or morals—and be necessary and proportionate in a democratic society. These criteria are designed to prevent arbitrary interference and to ensure that restrictions remain exceptional rather than routine. The Human Rights Committee has further clarified that limitations must not be overly broad or vague and must be the least intrusive means to achieve the intended objective. See Fadiza Amalia Putri and M. Rizki Yudha Prawira, "Criminal Act of Attack on Honor Following the Constitutional Court Decision No. 105/PUU-XXII/2024: Human Rights Perspective," *Jurnal Daulat Hukum* 8, no. 4 (2025): 654–76, <https://doi.org/10.30659/jdh.v8i4.49048>.

<sup>26</sup> J. E. Goncalves et al., "Process First, Tools Second: A Conceptual Framework to Embed Digital Participation in Planning Processes for Citizen Empowerment," *Cities* 170 (2026), <https://doi.org/10.1016/j.cities.2025.106645>.

capable of balancing the protection of individual rights with the public interest. To facilitate understanding, freedom of expression can be likened to an "open public space." Within this space, everyone has the right to speak, express ideas, and debate. However, this freedom is not limitless—it still has "rules of the game," such as not harming others or threatening public order. The problem arises when these "rules of the game" are made too vague or overused, so that what should be an open space turns into a space full of restrictions. In such conditions, freedom of expression no longer functions as a tool of democracy but instead becomes an object of control by those in power.

In the tradition of classical liberal thought, freedom of expression receives a strong philosophical justification through the great work of John Stuart Mill in *On Liberty*.<sup>27</sup> Mill argued that restrictions on expression not only harm the individual who is silenced, but also harm society as a whole by hindering the process of seeking truth.<sup>28</sup> According to him, even wrong opinions still have value, because they can test and strengthen the truth through open debate.<sup>29</sup> Within this framework, freedom of expression is viewed as an epistemic tool—that is, a means of discovering truth through the free and rational exchange of ideas. Mill's ideas form a crucial foundation in many modern legal systems, which place freedom of expression as a fundamental right that must be vigorously protected.<sup>30</sup>

From a modern constitutional perspective, Ronald Dworkin emphasized that freedom of expression is a form of respect for human dignity and political equality.<sup>31</sup> For Dworkin, the state should not restrict

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<sup>27</sup> John Stuart Mill, *On Liberty* (Union, N.J.: Lawbook Exchange, 2002).

<sup>28</sup> Roxanne Van Der Puil, Andreas Spahn, and Lambèr Royakkers, "Which Democratic Way to Go?: Using Democracy Theories in Social Media Design," *International Journal of Technoethics* 14, no. 1 (2023): 1–20, <https://doi.org/10.4018/IJT.331800>.

<sup>29</sup> Vincent Blasi, "Is John Stuart Mill's *On Liberty* Obsolete?," *Daedalus* 153, no. 3 (2024): 14–30.

<sup>30</sup> *Ibid.*

<sup>31</sup> Ronald Dworkin argues that freedom of expression is grounded in the principles of human dignity and political equality, as it reflects the idea that each individual must be treated as a responsible moral agent capable of forming, expressing, and defending personal convictions. Restrictions on expression, therefore, cannot be justified merely

expression simply because it is deemed wrong, offensive, or unpopular, because this would reduce citizens to objects, not subjects in a democracy.<sup>32</sup> Freedom of expression, in this view, is a manifestation of the principle that every individual has an equal right to participate in the formation of public opinion. Therefore, restrictions on expression should be viewed as exceptions requiring very strong justification.

Meanwhile, within the framework of deliberative democracy, Jürgen Habermas places freedom of expression as a prerequisite for the formation of a rational public sphere. According to Habermas, legitimacy in a democratic system does not only come from formal procedures, but also from a free and undistorted communication process between citizens.<sup>33</sup> In this case, freedom of expression is not only an individual right but also a social mechanism that enables the formation of a rational public consensus. In contemporary developments, the understanding of freedom of expression has also expanded with the emergence of the digital space. Jack M. Balkin, for example, argues that freedom of expression in the digital age is no longer solely concerned with the relationship between the state and individuals, but also involves the role of private actors, such as digital platforms.<sup>34</sup> In an “algorithmic society,” control over expression is exercised not only through law, but

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on the basis that certain views are offensive, erroneous, or unpopular, because such limitations would undermine the equal status of citizens in public discourse. For Dworkin, protecting free expression is essential to ensuring that all members of a political community have an equal voice in shaping collective decisions, which lies at the core of democratic legitimacy. See Ronald Dworkin, *Freedom's Law: The Moral Reading of the American Constitution* (Cambridge, Mass: Harvard University Press, 1996).

<sup>32</sup> Ronald Dworkin, “A New Map of Censorship,” *Index on Censorship* 23, nos. 1–2 (1994): 9–15, <https://doi.org/10.1080/03064229408535633>.

<sup>33</sup> Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, 1. publ. in paperback, repr (Cambridge: Polity, 2011).

<sup>34</sup> Jack Balkin, “The Future of Free Expression in a Digital Age,” *Pepperdine Law Review* 36, no. 2 (2012), <https://digitalcommons.pepperdine.edu/plr/vol36/iss2/9>.

also through algorithms, content moderation, and platform policies.<sup>35</sup> This poses new challenges because restrictions on freedom of expression are no longer always visible as state action, but can occur covertly through technological mechanisms. Frederick Schauer reminded that freedom of expression cannot be understood as an unlimited right, because in practice there is always a need to balance between freedom and other interests.<sup>36</sup> However, Schauer also emphasized that restrictions on expression must be carried out carefully, because there is a tendency for states to use reasons such as security or public order as excessive justification.<sup>37</sup> Therefore, strict and objective standards are needed to assess the legitimacy of these restrictions, which, in the context of international human rights law, are met through a three-part test.

To facilitate understanding of these various perspectives, freedom of expression can be likened to the "heart of a democratic system": pumping ideas, criticism, and information throughout the political system. If this heart functions well, democracy will be vibrant and dynamic. However, if this flow is blocked by excessive restrictions, democracy will weaken and lose its vitality. In this sense, restrictions on freedom of expression are like "valves" that must be carefully regulated—not too loose to cause chaos, but also not too tight to stop the flow itself.

From the perspective of modern human rights theory, Jack Donnelly views freedom of expression as an integral part of civil and political rights, grounded in respect for human dignity. According to Donnelly, human rights are essentially "rights inherent to all human beings by virtue of their humanity," so that freedom of expression cannot be separated from the principle of universality.<sup>38</sup> Within this framework,

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<sup>35</sup> Chris Townley and Christel Koop, "Exploring the Potential and Limits of Digital Tools for Inclusive Regulatory Engagement with Citizens," *Government Information Quarterly* 41, no. 1 (2024), <https://doi.org/10.1016/j.giq.2023.101901>.

<sup>36</sup> Lee C. Bollinger and Agnès Callamard, eds., *Regardless of Frontiers: Global Freedom of Expression in a Troubled World* (New York: Columbia University Press, 2021); Frederick F. Schauer, *Free Speech: A Philosophical Enquiry* (Cambridge [Cambridgeshire] ; New York: Cambridge University Press, 1982).

<sup>37</sup> *Ibid.*

<sup>38</sup> Muhammad Ashri and Abdul Munif Ashri, *Hak Asasi Manusia: Filosofi, Teori, dan Instrumen Dasar (Edisi Revisi)* (Jakarta: Kencana, 2025); Jack Donnelly,

freedom of expression is not simply an individual's freedom to speak, but also reflects a recognition of the moral autonomy of every human being as a rational subject with the right to determine and express their views. Therefore, restrictions on freedom of expression must be viewed with caution, as they may diminish the space for individual autonomy at the heart of the concept of human rights. Donnelly also emphasized that although human rights are universal, their implementation remains within a specific social and political context.<sup>39</sup> This is relevant in the context of a country like Indonesia that integrates local values, such as Pancasila, into its legal system, even though human rights are universal.<sup>40</sup> However, Donnelly cautioned that cultural relativism cannot be used as an excuse to ignore international minimum human rights standards.<sup>41</sup> In other words, although states have the space to interpret and implement human rights in their own contexts, restrictions on freedom of expression must still be subject to universal principles agreed internationally.

A similar view was expressed by Henry J. Steiner, Philip Alston, and Ryan Goodman, who emphasized that freedom of expression is one of the most essential rights in the human rights system because it

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*Universal Human Rights in Theory and Practice*, 2. ed (Ithaca, N.Y.: Cornell University Press, 2003).

<sup>39</sup> *Ibid.*

<sup>40</sup> The claim of the universality of human rights has long been contested in the "Asian values" debate, where some scholars and political leaders argue that human rights should be interpreted in light of cultural, social, and communitarian traditions prevalent in Asian societies. However, this position has been widely challenged on the ground that cultural particularities cannot be invoked to dilute or negate the core content of human rights, which are grounded in the inherent dignity of all human beings. As Jack Donnelly argues, while the implementation of human rights may vary across contexts, their normative foundation remains universal and cannot be subordinated to relativistic claims. The 1993 Vienna Declaration and Programme of Action further reaffirms that "all human rights are universal, indivisible and interdependent and interrelated," thereby rejecting attempts to justify limitations based solely on cultural or regional values. See Syahwal and Muhammad, "Asian Values Discourses and Its Impact on Freedom of Expression in Social Media."

<sup>41</sup> Jack Donnelly, "Cultural Relativism and Universal Human Rights," *Human Rights Quarterly* 6, no. 4 (1984): 400, <https://doi.org/10.2307/762182>.

functions as a “gateway right” for other rights.<sup>42</sup> They emphasized that without freedom of expression, protection of other rights—such as the right to political participation, freedom of association, and the right to information—would be weakened or even illusory. In this case, restrictions on freedom of expression would not only impact one right but could permeate the entire structure of human rights protection. Meanwhile, Eric Barendt in his classic study on freedom of expression emphasizes that the justification for this freedom is not only instrumental (as a means to achieve certain goals), but also intrinsic.<sup>43</sup> This means that freedom of expression has value in itself as part of human freedom. Barendt identifies several justifications for freedom of expression, including the pursuit of truth, participation in government, and individual development.<sup>44</sup> This approach enriches the understanding that freedom of expression cannot be reduced to a mere tool of democracy, but is also part of human existence itself. In contemporary international law, Manfred Nowak asserts that freedom of expression is one of the rights most frequently restricted by states, both directly and

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<sup>42</sup> Henry J. Steiner, Philip Alston, and Ryan Goodman emphasize that freedom of expression occupies a central position within the architecture of international human rights, as it enables the effective exercise of other rights, including political participation, freedom of association, and access to information. Its characterization as a “gateway right” reflects the understanding that without the ability to communicate ideas, challenge authority, and disseminate information, the protection of other civil and political rights becomes significantly weakened. In this sense, restrictions on freedom of expression may have a cascading effect, undermining the broader system of human rights protection. See Henry J. Steiner, Philip Alston, and Ryan Goodman, *International Human Rights in Context: Law, Politics, Morals ; Text and Materials*, 3rd ed (Oxford: Oxford University Press, 2008), 938–945.

<sup>43</sup> Eric Barendt argues that the justification for freedom of speech cannot be reduced solely to its instrumental value—such as facilitating democratic participation or the search for truth—but must also be understood as intrinsically valuable. Freedom of expression, in this sense, is an essential component of individual autonomy and self-realization, reflecting the capacity of individuals to develop and communicate their thoughts and identities. Even where expression does not directly contribute to collective goals, its protection remains justified as part of the broader commitment to human freedom and personal development. See Eric Barendt, *Freedom of Speech*, 2nd ed. (New York: Oxford University Press, 2005), 13–29.

<sup>44</sup> *Ibid.*

indirectly.<sup>45</sup> Therefore, strict standards are needed to ensure that such restrictions do not violate human rights principles. Nowak emphasized the importance of the three-part test as an instrument to assess whether a restriction is legally justifiable.<sup>46</sup> This approach shows that the protection of freedom of expression depends not only on normative recognition but also on concrete, measurable testing mechanisms.

By incorporating the perspectives of these human rights thinkers, it can be understood that freedom of expression has very complex dimensions: as a right rooted in human dignity (Donnelly), as a prerequisite for the protection of other rights (Steiner, Alston, and Goodman), as an intrinsic value of human freedom (Barendt), and as a right that requires strict protection through international legal standards (Nowak).

This conceptual framework is essential for understanding that freedom of expression, while fundamental, operates within a structured system of limitations. It provides the theoretical foundation for assessing whether restrictions—particularly in the context of Pancasila democracy—are constitutionally justified and consistent with international human rights standards. Accordingly, the following section examines how such principles are translated into legal instruments and regulatory frameworks.

## **2. Instruments for Regulating Freedom of Expression**

The regulation of freedom of expression in modern legal systems has never existed in a vacuum, but has always been in tension between two fundamental interests: the protection of individual freedom and the need to maintain social order.<sup>47</sup> Within the framework of international human rights law, this tension has been accommodated from the outset through a normative construction that positions freedom of expression as both a

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<sup>45</sup> Manfred Nowak, *Pengantar Pada Rezim HAM Internasional*, trans. Sri Sulastini (Jakarta: Pustaka Hak Asasi Manusia Raoul Wallenberg Institute, 2003).

<sup>46</sup> *Ibid.*

<sup>47</sup> Zehlul Pasha Karim and Abdul Jalil Salam, "Repression of Academic Freedom in Colleges: An Alternative Perspective on the ICSECR," *Journal of Southeast Asian Human Rights* 9, no. 2 (2025), <https://doi.org/10.19184/jseahr.v9i2.45109>.

fundamental right and a right that can be restricted.

Article 19 of the Universal Declaration of Human Rights affirms that everyone has the right to “seek, receive and convey information and ideas through any media without territorial boundaries.”<sup>48</sup> This formulation shows that freedom of expression is not only related to active expression (conveying), but also includes passive (receiving) and interactive (exchange of information) dimensions.<sup>49</sup> Thus, at the declarative level, freedom of expression has been positioned as the foundation for an open global communication space.

However, this recognition is not unlimited. In Article 19 paragraph (3) ICCPR, freedom of expression is explicitly placed within a framework of strict restrictions.<sup>50</sup> This provision carries an important meaning: that restrictions are not a deviation from human rights principles, but rather an inherent part of their normative design. However, these restrictions cannot be imposed freely by the state, but must be subject to strict standards as stated in General Comment No. 34 by the Human Rights Committee.<sup>51</sup> This is where construction comes in: a three-part test that serves as the main “measuring tool” for assessing the legitimacy of restrictions: legality, legitimate objectives, and necessity and proportionality.

Upon closer examination, this standard is not merely technical in nature, but reflects the philosophy of limitations in international human rights law. The principle of legality, for example, requires not only a formal legal basis but also clarity, certainty, and accessibility of norms. In

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<sup>48</sup> Diana Voerman-Tam, Arthur Grimes, and Nicholas Watson, “The Economics of Free Speech: Subjective Wellbeing and Empowerment of Marginalized Citizens,” *Journal of Economic Behavior & Organization* 212 (2023): 260–74, <https://doi.org/10.1016/j.jebo.2023.05.047>.

<sup>49</sup> Asma Elfadl et al., “Revisiting Preferences for Communication Styles in Computer-Mediated Communication: A Study amongst UK and Arab Samples,” *Telematics and Informatics Reports* 20 (2025), <https://doi.org/10.1016/j.teler.2025.100263>.

<sup>50</sup> Rebecca K. Helm and Hitoshi Nasu, “Regulatory Responses to ‘Fake News’ and Freedom of Expression: Normative and Empirical Evaluation,” *Human Rights Law Review* 21, no. 2 (2021): 302–28, <https://doi.org/10.1093/hrlr/ngaa060>.

<sup>51</sup> Ismail Hasani and Halili Halili, “Human Rights and Constitutionality Issues of Blasphemy Law in Indonesia,” *Jurnal Konstitusi* 19, no. 2 (2022): 406, <https://doi.org/10.31078/jk1927>.

other words, the law underlying the limitation must not be vague or have multiple interpretations because it opens up space for abuse of power.<sup>52</sup> Meanwhile, the legitimate aim principle requires states to demonstrate that restrictions are genuinely aimed at protecting internationally recognized interests, such as the rights of others or national security, rather than merely protecting certain political powers or interests.<sup>53</sup> The principles of necessity and proportionality require a rational relationship between the restriction and the goal to be achieved, and ensure that there are no easier alternatives to achieving that goal.<sup>54</sup> In addition to the ICCPR, various soft law instruments, such as the Johannesburg Principles and the Rabat Plan of Action, further emphasize that restrictions on freedom of expression must be understood restrictively.<sup>55</sup> These instruments were born from empirical experience in various countries, where reasons such as “national security” or “public order” were often used as pretexts to silence criticism.<sup>56</sup> Thus, international standards consistently place states on the defensive—that is, requiring them to prove that restrictions are truly necessary, rather than requiring individuals to prove their rights. In Indonesia, these principles have been adopted as normative principles in the national legal system. The 1945 Constitution of the Republic of Indonesia provides constitutional guarantees for freedom of expression through Articles 28E and 28F,

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<sup>52</sup> Michela Scalpello, “Malta: The Use of Ambiguity for Corruption and (Mis)Rule of Law,” *Journal of Economic Criminology* 5 (2024), <https://doi.org/10.1016/j.jeconc.2024.100088>.

<sup>53</sup> Ammar Zafar, “Protectionism, Power, and the Erosion of WTO Discipline: Legal and Economic Lessons from the Trade Wars,” *Social Sciences & Humanities Open* 12 (2025), <https://doi.org/10.1016/j.ssaho.2025.101983>.

<sup>54</sup> Aman Sonkar, “Sedition Recast: Analysing Section 150 of the BNS in Light of the Right to Free Speech,” *Social Sciences & Humanities Open* 13 (2026), <https://doi.org/10.1016/j.ssaho.2025.102276>.

<sup>55</sup> Swikani Ncube, “Human Rights Enforcement in Africa: Enhancing the Pan-African Parliament’s Capacity to Promote and Protect Human Rights,” *African Human Rights Law Journal* 22, no. 2 (2023): 1–22, <https://doi.org/10.17159/1996-2096/2020/v20n1a4>.

<sup>56</sup> Niroshan Ramachandran and Matthew Wright, “Framing and the Mechanisms of Criminalisation in the Migration Context,” *International Review of Sociology*, January 14, 2026, 1–30, <https://doi.org/10.1080/03906701.2026.2614010>.

which guarantee freedom of opinion and the right to information.<sup>57</sup> However, Article 28J also allows restrictions on grounds of morality, religious values, security, and public order. Theoretically, this construction aligns with the ICCPR because both recognize that freedom of expression is not an absolute right. However, there are fundamental differences in the level of normative precision. If the ICCPR and General Comment No. 34 provide relatively clear and measurable parameters, Article 28J tends to use more general and open terms, such as “religious values” and “public order”, which are susceptible to broad interpretation. These differences become significant when translated into sectoral regulations. The Electronic Information and Transactions Law, for example, regulates various forms of expression in the digital space, including defamation and hate speech.<sup>58</sup> Similarly, the new Criminal Code includes provisions regarding insults against the government and state institutions. Normatively, these provisions can be understood as the state's effort to maintain order and protect the public interest.<sup>59</sup> However, problems arise when the formulation of norms used lacks clear boundaries, leaving room for broad interpretation by law enforcement officials. Under these circumstances, the law no longer functions as an objective tool of delimitation but can become a subjective instrument of power.<sup>60</sup> In Indonesia, regulating freedom of expression is inextricably linked to the role of Pancasila as the state ideology. Pancasila is often used as a normative basis for limiting freedom, particularly by referring to values such as social harmony, morality, and unity.<sup>61</sup> From a

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<sup>57</sup> *Ibid.*

<sup>58</sup> Junius Fernando et al., “The Freedom of Expression in Indonesia.”

<sup>59</sup> Athallah Zahran Ellandra, Muhammad Faqih, and Kemal Azizi, “Status Quo Pengaturan Pasal Penghinaan Presiden sebagai Pembatas Hak Konstitusional terkait Kebebasan Berpendapat di Indonesia beserta Potensi Pengaturannya di Masa Depan: Studi Kasus Penghinaan Presiden di Media Sosial (Kasus Ruslan Buton),” *Jurnal Studia Legalia* 3, no. 01 (2022): 1–12, <https://doi.org/10.61084/jsl.v3i01.20>.

<sup>60</sup> Raihan Muhammad, “Peranan dan Problematika Mahkamah Konstitusi sebagai Positive Legislature di Tengah Regresi Demokrasi Indonesia,” *Lex Renaissance* 10, no. 1 (2025): 65–93, <https://doi.org/10.20885/JLR.vol10.iss1.art3>.

<sup>61</sup> Stanny Terianus Rumaseb, Ulul Albab, and Sarwani Sarwani, “A Systematic Literature Review on the Protection and Promotion of Human Rights In Indonesia,”

certain perspective, this can be understood as an effort to integrate local values into the national legal system.<sup>62</sup> However, problems arise when Pancasila is used in an overly abstract form without clear operational parameters, three-part test, which has a strict analytical structure, Pancasila often functions as a normative justification that is general and flexible. This situation raises the question: Is such flexibility a strength or a weakness in the legal system? On the one hand, flexibility allows the law to adapt to evolving social values. However, excessive flexibility can reduce legal certainty and create room for abuse of authority. In the case of freedom of expression, this can shift restrictions from protective to repressive. In other words, without clear parameters, restrictions imposed in the name of Pancasila values risk being inconsistent with international human rights standards. To deepen our understanding of the instruments regulating freedom of expression, a comparative approach alone is insufficient at the constitutional level; it also requires examining how this right is operationalized through legislation and sectoral policies. This is crucial because in many legal systems, it is the derivative rules that determine how freedom of expression is actually exercised in practice.

In the United States legal system, in addition to the First Amendment as a constitutional basis, the regulation of freedom of expression has also evolved through various laws and judicial practices. One important instrument is the Communications Decency Act (CDA) of 1996, specifically Section 230, which protects digital platforms from liability for user-generated content.<sup>63</sup> This provision indirectly expands

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*Kajian Administrasi Publik dan Ilmu Komunikasi* 2, no. 3 (2025): 172–90, <https://doi.org/10.62383/kajian.v2i3.570>.

<sup>62</sup> Didik Sukriono et al., “Local Wisdom as Legal Dispute Settlement: How Indonesia’s Communities Acknowledge Alternative Dispute Resolution?,” *Legality: Scientific Journal of Law* 33, no. 1 (2025): 261–85, <https://doi.org/10.22219/ljih.v33i1.39958>.

<sup>63</sup> Section 230 of the Communications Decency Act (1996) has been widely regarded as a cornerstone of online free expression in the United States, as it shields digital platforms from liability for content generated by users while allowing them to engage in content moderation in good faith. This legal framework has enabled the growth of open digital forums by reducing the risk of excessive self-censorship by intermediaries. However, it has also attracted significant criticism for creating a regulatory imbalance, as platforms are granted broad immunity without corresponding accountability for harmful or misleading content. Scholars have noted that this approach reflects a strong

the space for freedom of expression in the digital age by allowing individuals to express themselves through platforms without excessive state interference. Furthermore, regulations such as the Freedom of Information Act (FOIA) also strengthen the dimension of freedom of expression in terms of access to public information.<sup>64</sup> Thus, United States law shows that freedom of expression is protected not only as a negative right (freedom from interference), but also as a positive right supported by access to information. In Germany, besides the *Grundgesetz*, the regulation of freedom of expression is also strengthened through various sectoral laws, such as the Telemedia Act And Network Enforcement Act.<sup>65</sup> This regulation governs the responsibilities of digital platforms in handling content, while maintaining the principle of freedom of expression within the framework of the rule of law.<sup>66</sup> Interestingly, Germany's approach demonstrates an attempt to balance freedom of

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commitment to protecting speech in the digital sphere, yet raises concerns regarding the governance of online spaces and the limits of intermediary responsibility. Uta Kohl, "Towards a Regulatory Theory Of Platform Rule: Corporate 'Sovereignty' Through Immunities," *St. Mary's Law Journal* 56, no. 3 (2025): 465–552.

<sup>64</sup> The Freedom of Information Act (FOIA) plays a crucial role in reinforcing the informational dimension of freedom of expression by ensuring public access to government-held information, thereby enabling informed public discourse and democratic oversight. Access to information is widely recognized as an integral component of freedom of expression, as it allows individuals not only to impart but also to seek and receive information. However, FOIA regimes are not without limitations, as exemptions related to national security, privacy, and administrative discretion may restrict access in practice. These constraints highlight the ongoing tension between transparency and other competing interests, even within systems that strongly protect expressive freedoms. Eric Afful-Dadzie and Anthony Afful-Dadzie, "Liberation of Public Data: Exploring Central Themes in Open Government Data and Freedom of Information Research," *International Journal of Information Management* 37, no. 6 (2017): 664–72, <https://doi.org/10.1016/j.ijinfomgt.2017.05.009>.

<sup>65</sup> Network Enforcement Act [Netzwerkdurchsetzungsgesetz], "NetzDG - Law for Improving Law Enforcement in Social Networks," 2017, <https://www.gesetze-im-internet.de/netzdg/BJNR335210017.html>; Anke Fiedler and James Morrison, "How Different Models of Media Regulation Address Social Inequality: A Qualitative Textual Analysis of Key Media Regulation Texts from Germany and the United Kingdom," *The Public* 32, no. 4 (2025): 435–55, <https://doi.org/10.1080/13183222.2025.2579387>.

<sup>66</sup> *Ibid.*

expression with the protection of constitutional values, such as human dignity and democracy.<sup>67</sup>

This is reflected in the role of the Federal Constitutional Court, which actively develops the doctrine of freedom of expression through progressive decisions.<sup>68</sup> Thus, German regulation is not only normative but also institutional, and it develops through judicial practice.

Meanwhile, Singapore regulates freedom of expression not only through the constitution, but also through various sectoral laws such as the Broadcasting Act and the Protection from Online Falsehoods and Manipulation Act (POFMA).<sup>69</sup> This regulation demonstrates that the

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<sup>67</sup> The German approach to freedom of expression is characterized by a structured balancing framework that places significant weight on constitutional values, particularly human dignity and the protection of the democratic order. Rather than treating free speech as an absolute right, the German Federal Constitutional Court consistently applies the principle of proportionality to reconcile competing interests, ensuring that limitations on expression are justified, narrowly tailored, and grounded in constitutional principles. This model reflects a constitutional culture in which fundamental rights are understood as part of an integrated value system, allowing for a more nuanced accommodation between individual freedoms and collective interests. See Connor Donaldson, "Militant Moralism: The Hegemonic Consequences of German Content Moderation," *German Law Journal* 25, no. 3 (2024): 497–513, <https://doi.org/10.1017/glj.2024.18>.

<sup>68</sup> The German Federal Constitutional Court has played a pivotal role in shaping and advancing the doctrine of freedom of expression through its jurisprudence, often adopting a structured and principled approach grounded in proportionality and the protection of human dignity. Its decisions demonstrate a consistent effort to balance expressive freedom with other constitutional values, while at the same time ensuring that restrictions remain narrowly tailored and justified within a democratic order. This jurisprudential development reflects the Court's broader function in articulating constitutional principles through case-based reasoning and in progressively refining the scope and limits of fundamental rights. See Michaela Hailbrunner and Stefan Martini, "The German Federal Constitutional Court," in *Comparative Constitutional Reasoning*, 1st ed., ed. András Jakab, Arthur Dyevre, and Giulio Itzcovich (Cambridge University Press, 2017), 356–93, <https://doi.org/10.1017/9781316084281.012>.

<sup>69</sup> Singapore regulates freedom of expression through a combination of constitutional provisions and sectoral legislation, including the Broadcasting Act and the Protection from Online Falsehoods and Manipulation Act (POFMA), which grant the state significant authority to control and correct online content deemed false or harmful. While these instruments are justified as necessary to safeguard public order and prevent

state has a more active role in managing spaces for expression, particularly in the digital age. Unlike the United States, which tends to limit the state's role, Singapore integrates freedom of expression regulations with broader public policy, including information and communication management.<sup>70</sup> This reflects a more pragmatic approach based on collective interests. In Indonesia, freedom of expression is not only enshrined in the 1945 Constitution of the Republic of Indonesia, but is also scattered throughout various laws and regulations. Law No. 39 of 1999 concerning Human Rights recognizes freedom of opinion and access to information, while Law No. 14 of 2008 concerning Public Information Transparency further strengthens access to information. Furthermore, the Electronic Information and Transactions Law is a crucial instrument for regulating expression in the digital space. However, unlike in countries such as the United States or Germany, Indonesian regulations are more scattered and not systematically integrated into a coherent framework.

To provide a more comprehensive picture, the following is a comparative table that includes the constitution and derivative rules:

**Table 1. Comparison of Instruments Regulating Freedom of Expression (Constitution and Derivative Regulations)**

| Country | Constitution | Derivative Rules | Regulatory Approach | Main Features |
|---------|--------------|------------------|---------------------|---------------|
|---------|--------------|------------------|---------------------|---------------|

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misinformation, they have been widely critiqued for concentrating discretionary power in the executive and for potentially restricting legitimate political expression. The broad and preventive nature of such regulations reflects a governance model that prioritizes social stability and state control over a more liberal conception of expressive freedom, raising concerns regarding proportionality and the risk of overreach in limiting dissent. See Netina Tan, "Electoral Management of Digital Campaigns and Disinformation in East and Southeast Asia," *Election Law Journal: Rules, Politics, and Policy* 19, no. 2 (2020): 214–39, <https://doi.org/10.1089/elj.2019.0599>.

<sup>70</sup> Kai Xiang Teo, "Civil Society Responses to Singapore's Online 'Fake News' Law," *International Journal of Communication* 15 (2021).

|                          |                                            |                                                                                                                                                    |                           |                                                     |
|--------------------------|--------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|-----------------------------------------------------|
| United States of America | First Amendment                            | CDA (Sec. 230), FOIA                                                                                                                               | Protective-individual     | Strong protection + information access support      |
| Germany                  | Basic Law, Article 5                       | NetzDG, Telemedia Act                                                                                                                              | Systematic-constitutional | Integration of law & institutions                   |
| Singapore                | Constitution, Article 14                   | POFMA, Broadcasting Act                                                                                                                            | Communal-pragmatic        | The state actively manages spaces for expression    |
| Indonesia                | 1945 Constitution (Articles 28E, 28F, 28J) | Human Rights Law (Law No. 39/1999), Public Information Disclosure Law (Law No. 14/2008), Electronic Information and Transactions Law (Law No. ...) | Flexible-normative        | Fragmented regulation, lacks systematic integration |

|  |  |                     |  |  |
|--|--|---------------------|--|--|
|  |  | 11/2008 as amended) |  |  |
|--|--|---------------------|--|--|

Source: personally processed.

The table shows that freedom of expression regulations differ not only at the constitutional level but also in how countries operationalize it through derivative regulations. The United States demonstrates an approach that supports freedom through the protection of platforms and access to information, while Germany exhibits a more structured model that integrates laws, institutions, and constitutional values. Singapore, on the other hand, demonstrates a more centralized and active approach to managing the space for expression.

Indonesia is in a unique position because it has relatively comprehensive regulations, but they are scattered across various instruments that are not yet fully integrated. This situation creates challenges in terms of consistency and legal certainty, as there is no single framework that systematically regulates freedom of expression. In other words, existing regulations tend to be fragmented, leaving room for wide interpretation in practice.

From a comparative perspective, this demonstrates that the strength of a system lies not only in the abundance of regulations but also in their coherence and consistency. Countries like Germany demonstrate that integrating the constitution, laws, and judicial practice can create a more stable and predictable system. Meanwhile, the United States' experience demonstrates the importance of maintaining freedom of expression by limiting the state's role. In Indonesia, the lesson is to strengthen integration among existing legal instruments, so that regulations on freedom of expression are not only normatively comprehensive but also consistently implemented.

To facilitate understanding, the instruments regulating freedom of expression can be likened to "layers of safeguards." The first layer consists of international standards that serve as the primary safeguards against states overstepping their bounds. The second layer is the

constitution, which provides both guarantees and limits. The third layer consists of laws that operationalize these restrictions. Meanwhile, Pancasila serves as a philosophical layer, providing a value direction.<sup>71</sup> The problem arises when these layers are misaligned—for example, when laws or law enforcement practices no longer align with international standards. In such circumstances, the safeguards system becomes an overly restrictive tool. Thus, the regulation of freedom of expression in Indonesia demonstrates a complexity that is not only normative but also structural and philosophical. This complexity demands an analytical framework capable of assessing whether the restrictions imposed are truly legitimate and proportionate. Without such a framework, the regulation of freedom of expression risks becoming trapped in immeasurable normative justifications. Therefore, an objective and systematic evaluation mechanism is needed, which, in this context, is realized through a three-part test that will be used in the next sub-discussion to assess the constitutionality of restrictions in Pancasila Democracy.

In contemporary developments, the regulation of freedom of expression cannot be separated from the emergence of digital constitutionalism,<sup>72</sup> which seeks to adapt constitutional principles to the governance of digital platforms. In the digital environment, restrictions on expression are no longer exercised solely by the state, but also by private actors such as social media platforms that regulate content through algorithms, moderation policies, and community standards. This creates a complex regulatory landscape where freedom of expression is shaped by a hybrid system of public law and private governance. Within this context, the traditional three-part test must be extended to assess not only state-imposed restrictions but also the indirect limitations imposed by digital platforms. From a Pancasila perspective, this

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<sup>71</sup> Fitria Esfandiari and Aan Eko Widiyanto, "Pancasila Legal System: Balancing The Fulfillment Of National Moral Values And Law Enforcement In Indonesia," *Indonesian Journal of Law and Economics Review* 19, no. 1 (2024), <https://doi.org/10.21070/ijler.v19i1.999>.

<sup>72</sup> Yuniar Prehatini and Linda Noviana Devi, "Digital Constitutionalism: Resistensi Kebebasan Berpendapat di Indonesia Dalam Hegemoni Algoritma Ruang Digital," *Jurnal Hukum & Pembangunan* 55, no. 4 (2025), <https://scholarhub.ui.ac.id/jhp/vol55/iss4/4>.

development raises new challenges regarding accountability and the protection of human dignity in digital spaces. While the state may justify intervention to prevent harm such as disinformation or hate speech, excessive control—whether by state or platform—risks undermining democratic participation and freedom of expression. Therefore, the integrative model proposed in this article must also be applied to digital governance, ensuring that both state regulation and platform policies are subject to standards of legality, legitimate aim, and proportionality. In this regard, Pancasila should function as a guiding principle to promote a balanced digital public sphere that respects both individual rights and collective values, without enabling arbitrary control.

### **3. The Constitutionality of Restrictions on Freedom of Expression in Pancasila Democracy**

The central issue in assessing the constitutionality of restrictions on freedom of expression in Pancasila democracy lies not in the existence of limitations themselves, but in the standards used to justify them. While Indonesian law formally recognizes both constitutional guarantees and permissible restrictions, the absence of a clear and operational framework often results in inconsistent and potentially excessive limitations. Therefore, the key question is not whether freedom of expression can be restricted, but under what conditions such restrictions can be considered constitutionally legitimate. It is within this context that the integrative model proposed in this article seeks to provide a structured and testable framework for evaluating such limitations.

The constitutionality of restrictions on freedom of expression in a state governed by the rule of law is essentially determined not only by the existence of norms that regulate them, but also by the quality of the justification and the way they are implemented in practice.<sup>73</sup>In the

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<sup>73</sup> Blayne Haggart and Clara Iglesias Keller, “Democratic Legitimacy in Global Platform Governance,” *Telecommunications Policy* 45, no. 6 (2021): 102152, <https://doi.org/10.1016/j.telpol.2021.102152>.

framework of human rights, freedom of expression is not absolute, but is included in the category of derogable rights, which can be limited.<sup>74</sup> However, these restrictions should not be carried out arbitrarily, but must meet strict standards as formulated in international human rights law, particularly through the three-part test, namely the principle of legality, legitimate aim, as well as necessity and proportionality.<sup>75</sup> These principles are not merely formalities, but rather serve as a control mechanism on state power, ensuring that it does not use the law to impose excessive restrictions on civil liberties.

In Indonesia, testing the constitutionality of restrictions on freedom of expression must be placed within the relationship between the 1945 Constitution and Pancasila. The 1945 Constitution, through Articles 28E and 28F, guarantees freedom of expression, while Article 28J provides the basis for restrictions on grounds of respect for the rights of others, moral values, religion, security, and public order.<sup>76</sup> Normatively, this construction demonstrates a balance between freedom and restriction. However, in practice, this balance is not always achieved proportionally, particularly when restrictive norms are formulated in general terms and lack clear operational parameters. Under these conditions, the scope for interpretation becomes extremely broad, potentially opening the door to abuse of authority to restrict freedom of expression.

The first issue that arises relates to the principle of legality. Within the international human rights framework, restrictions on freedom of expression must be based on clear, accessible, and non-

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<sup>74</sup> Rini Fidiyani, Dewi Sulistianingsih, and Pujiono Pujiono, "Law and Ethics of Communication in Social Media," *Jurnal Dinamika Hukum* 17, no. 3 (2017): 258–65, <https://doi.org/10.20884/1.jdh.2017.17.3.1665>.

<sup>75</sup> Daragh Murray and Pete Fussey, "Bulk Surveillance in the Digital Age: Rethinking the Human Rights Law Approach to Bulk Monitoring of Communications Data," *Israel Law Review* 52, no. 1 (2019): 31–60, <https://doi.org/10.1017/S0021223718000304>.

<sup>76</sup> Bertus De Villiers, Saldi Isra, and Pan Mohamad Faiz, *Courts and Diversity: Twenty Years of the Constitutional Court of Indonesia* (Leiden: Brill, 2024), <https://doi.org/10.1163/9789004691698>.

transparent laws.<sup>77</sup> However, in practice in Indonesia, a number of legal provisions governing expression, both in the Electronic Information and Transactions Law and in the Criminal Code, still contain flexible formulations, such as the terms “insult”, “defamation”, or “attack on honor”.<sup>78</sup> This ambiguity raises serious constitutional issues, as individuals cannot definitively determine the boundaries of permissible behavior. Consequently, the law loses its predictive function and instead creates uncertainty, leading to indirect restrictions on freedom. In such situations, the principle of legality is not substantively fulfilled, despite the formal legal basis for its application.

Furthermore, issues arise regarding the purpose of restrictions. In human rights theory, restrictions are only justifiable if they have a legitimate purpose, such as protecting the rights of others or maintaining public order. However, in practice, these purposes are often widely used without adequate scrutiny. Restrictions on critical expression of the government, for example, are often justified on the grounds of maintaining stability or order, even though criticism is an inherent part of democracy. There is a shift from a legitimate aim to a convenient justification, in which the reason for restrictions no longer serves to protect the public interest but rather to avoid accountability for power. This demonstrates that the legitimacy of restrictions cannot be seen solely from their normative formulation, but also from the context and impact of their implementation. More complex problems arise in the application of the principles of necessity and proportionality.<sup>79</sup> Within this framework, restrictions must be strictly necessary to achieve a legitimate objective and must not be excessive compared to the intended benefit. However, in Indonesian legal practice, the use of criminal instruments to restrict freedom of expression has shown a tendency towards

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<sup>77</sup> Neiloy R. Sircar et al., “Human Rights Limitations in Global Health Law Reforms,” *Public Health* 250 (2026), <https://doi.org/10.1016/j.puhe.2025.106081>.

<sup>78</sup> Syahwal and Muhammad, “Asian Values Discourses and Its Impact on Freedom of Expression in Social Media.”

<sup>79</sup> Haydeé Ceballos et al., “How Collaborative Problem Solving Promotes Higher-Order Thinking Skills: A Systematic Review of Design Features and Processes,” *Thinking Skills and Creativity* 59 (2026): 102001, <https://doi.org/10.1016/j.tsc.2025.102001>.

overcriminalization.<sup>80</sup> Criminal law, which should be a last resort, is often used as the main instrument in responding to expressions that are considered problematic.<sup>81</sup> In fact, in many cases, there are other, more proportional alternatives, such as clarification mechanisms, the right of reply, or civil settlement. When the state immediately adopts a penal approach without considering these alternatives, the restrictions imposed no longer meet the principles of necessity and proportionality. The impact is a chilling effect, where people become reluctant to express themselves for fear of disproportionate legal consequences.<sup>82</sup>

Within the framework of Pancasila democracy, restrictions on freedom of expression often gain additional legitimacy through reference to Pancasila values.<sup>83</sup> Values such as divinity, humanity, unity, and social justice are often used as normative bases to limit expressions deemed contrary to morality or social harmony. Conceptually, this can be understood as an attempt to balance individual freedom and collective interests. However, the fundamental problem lies in the philosophical nature of Pancasila, which lacks rigid operational parameters. Unlike the three-part test, which provides clear, measurable criteria, Pancasila is often used in an abstract form, thereby opening a wide scope for interpretation. To clarify the position of Pancasila in limiting freedom of

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<sup>80</sup> Zaka Firma Aditya and Sholahuddin Al-Fatih, "Freedom of Expression vs Political Stability: Legal Interpretation of Commotion in Social Media After the Issuing of a Constitutional Court Decision," *Journal of Jurisprudence* 15, no. 2 (2025): 60–77, <https://doi.org/10.23917/jurisprudence.v15i2.10648>.

<sup>81</sup> Fiona Mae Gallagher, "Revisiting the Principle of Ultimum Remedium in Criminal Law Reform: A Human Rights Perspective on the Indonesian New Penal Code," *Vifada Assumption Journal of Law* 3, no. 1 (2025): 29–39, <https://doi.org/10.70184/fgh25n48>.

<sup>82</sup> Emi Puasa Handayani, Zainal Arifin, and Zico Junius Fernando, "Criminal Penalties in Cyberspace: Between the Development of Digital Democracy and Authoritarianism," *Indonesian Journal of Criminal Law Studies* 10, no. 1 (2025): 45–82, <https://doi.org/10.15294/ijcls.v10i1.19652>.

<sup>83</sup> Fatimatuz Zahrah and Siti Maizul Habibah, "Freedom of Speech and Human Rights: What Can Civic Education Do?," *Jurnal HAM* 13, no. 3 (2022): 495, <https://doi.org/10.30641/ham.2022.13.495-508>.

expression, the following is an analysis table showing the relationship between Pancasila values and potential restrictions:

**Table 2. The Relationship between Pancasila Values and Restrictions on Freedom of Expression**

| <b>Pancasila Principles</b>                          | <b>Core Values</b>                       | <b>Potential Grounds for Limitation</b>                                              | <b>Risks in Practice</b>                                                |
|------------------------------------------------------|------------------------------------------|--------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Belief in the One and Only God                       | Morality and religiosity                 | Restrictions on expressions considered blasphemous or offensive to religious beliefs | Overbroad limitations that suppress legitimate discourse on religion    |
| Just and Civilized Humanity                          | Human dignity                            | Restrictions on hate speech and degrading expression                                 | Subjective interpretation of “dignity” leading to arbitrary enforcement |
| The Unity of Indonesia                               | Social cohesion and national unity       | Restrictions on expressions deemed divisive or threatening national unity            | Potential misuse to silence dissent and political criticism             |
| Democracy Guided by the Inner Wisdom of Deliberation | Deliberation and participatory democracy | Regulation of expression in public and political discourse                           | Risk of majoritarian dominance undermining minority voices              |

|                                          |                                               |                                                                                        |                                                                                  |
|------------------------------------------|-----------------------------------------------|----------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|
| Social Justice<br>for All<br>Indonesians | Collective<br>welfare and<br>social<br>equity | Restrictions<br>justified in the<br>name of social<br>stability and<br>public interest | Disproportionate<br>sacrifice of<br>individual rights<br>for collective<br>goals |
|------------------------------------------|-----------------------------------------------|----------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|

Source: Personally processed.

The table above shows that each principle of Pancasila can serve as a basis for restricting freedom of expression because each contains values related to collective interests and social order. However, the table also reveals an inherent risk in its application: the tendency to subjectively expand the meaning of these values. For example, the first principle can be used to protect religious life, but it can also limit legitimate criticism or discourse on religious issues. Similarly, the third principle on unity can be interpreted as an effort to maintain social cohesion, but in practice can be used to silence expressions deemed dissenting or critical of the government. The table demonstrates the tension between the collective dimension represented by Pancasila and the individual dimension that is at the heart of freedom of expression. When collective values are interpreted broadly without clear boundaries, there is a risk that individual interests will be sacrificed in the name of social stability or harmony. From a constitutional and human rights perspective, this situation is problematic, as legitimate restrictions should not diminish the essence of the right itself.

Furthermore, to deepen the analysis of the constitutionality of restrictions on freedom of expression, a comparative approach is essential to examine how various countries formulate and restrict this right within their legal systems. This is relevant because, although freedom of expression is universally recognized, the practice of restricting it is strongly influenced by the country's core values, constitutional structure, and the orientation between individual and collective interests. In this regard, restrictions cannot be separated from the underlying normative framework.

**Table 3. Comparison of Restrictions on Freedom of Expression  
in Various Countries and Their Relation to Basic Values**

| Country                  | Basis of Restriction                    | Legal Instruments                         | Restrictive Approach              | Dominant Core Values |
|--------------------------|-----------------------------------------|-------------------------------------------|-----------------------------------|----------------------|
| United States of America | Real & immediate danger                 | Supreme Court decision (Brandenburg test) | Very strict (minimal restriction) | Individual liberty   |
| German                   | Constitutional order & human dignity    | Grundgesetz, FCC Decision                 | Proportional (balancing test)     | Human dignity        |
| English                  | Public interest & security              | Human Rights Act, ECHR                    | Moderate (qualified rights)       | Rule of law          |
| Singapore                | Social stability & security             | POFMA, Public Order Act                   | Restrictive                       | Social order         |
| Indonesia                | Morality, religion, order (Article 28J) | 1945 Constitution, ITE Law, Criminal Code | Flexible, not yet measurable      | Pancasila            |

Source: personally processed.

The table shows that restrictions on freedom of expression across countries differ, depending on the underlying values they uphold. The United States, for example, places individual liberty as a primary value, allowing restrictions only in extreme circumstances, such as a direct threat to public safety. In contrast, Germany has developed a more balanced approach through the principle of proportionality, placing human dignity as the supreme value that allows for restrictions on certain forms of expression.

The UK shows a more moderate model, where freedom of expression is recognized as a qualified right, which can be limited from the start as long as it meets certain standards.<sup>84</sup> Meanwhile, Singapore has adopted a more restrictive approach, prioritizing social stability and security. In this context, restrictions are not merely reactive but also preventive.

Indonesia is in a unique position because restrictions on freedom of expression are grounded not only in positive legal norms but also in the values of Pancasila. Article 28J of the 1945 Constitution explicitly reflects these values, emphasizing morality, religion, security, and public order as the basis for restrictions. Conceptually, this aligns with the democratic character of Pancasila, which emphasizes a balance between individual freedom and collective interests.

However, compared to other countries, Indonesia faces a major challenge in the lack of operational and measurable parameters. While the

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<sup>84</sup> In the United Kingdom, freedom of expression is recognized as a qualified right under Article 10 of the European Convention on Human Rights, as incorporated through the Human Rights Act 1998. This framework allows for restrictions on expression provided they are prescribed by law, pursue a legitimate aim, and are necessary in a democratic society. The qualified nature of this right reflects a structured balancing approach, where courts assess the proportionality of limitations in light of competing interests such as national security, public order, and the protection of reputation. See Eric Barendt, "Freedom of Expression in the United Kingdom Under the Human Rights Act 1998," 84 *Indiana Law Journal* 851 (2009) 84, no. 3 (2009), <https://www.repository.law.indiana.edu/ilj/vol84/iss3/4>.

United States has a clear and present danger doctrine,<sup>85</sup> and Germany has a proportionality test.<sup>86</sup> Therefore, Indonesia does not yet have consistent testing standards in practice. Under these conditions, Pancasila is often used as a basis for legitimacy, but without a clear evaluation framework.

Herein lies the fundamental constitutional issue. Pancasila, as a fundamental value, can indeed impose restrictions, but it cannot stand alone without being translated into concrete legal parameters. Without these parameters, restrictions can become elastic and subject to subjective interpretation, ultimately shifting the function of law from a protector of rights to a tool for controlling power.

In this case, the issue is no longer simply the legitimacy of the restrictions, but rather the testing architecture used to assess them. Compared with other countries, it is clear that the system's strength lies not only in its core values but also in its ability to translate those values

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<sup>85</sup> The “clear and present danger” doctrine, originating from *Schenck v. United States*, was developed as a judicial standard to determine when speech may be restricted, requiring that the expression pose a serious and imminent threat to a legitimate state interest. Contemporary scholarship highlights that this doctrine reflects an effort to balance robust protection of speech with the need to prevent substantive harm, although its application has been criticized for conceptual ambiguity and susceptibility to judicial manipulation. Moreover, while it historically served as a foundational test in U.S. free speech jurisprudence, it has largely been refined or replaced by more stringent standards, such as the “imminent lawless action” test established in *Brandenburg v. Ohio*, indicating an evolution toward stronger protection of expression. See Cass Sunstein, “Does the Clear and Present Danger Test Survive Cost-Benefit Analysis?,” *Cornell Law Review* 104, no. 7 (2019): 1775–97.

<sup>86</sup> The proportionality test in German constitutional law serves as a central doctrinal framework for assessing the legitimacy of restrictions on fundamental rights, including freedom of expression. It requires that any limitation pursue a legitimate aim, be suitable to achieve that aim, necessary in the sense that no less restrictive alternative is available, and proportionate in the strict sense, meaning that the benefits of the restriction must outweigh its impact on the right. This structured analysis reflects a rights-balancing approach deeply embedded in the jurisprudence of the Federal Constitutional Court, emphasizing rational justification and constitutional coherence. Nonetheless, some scholars have noted that the flexibility of proportionality may also grant courts significant interpretive discretion, raising concerns about indeterminacy in its application. See Alec Stone Sweet and Jud Mathews, *Proportionality Balancing and Global Constitutionalism*, 47, no. 1 (2008), <http://hub.hku.hk/handle/10722/300158>.

into operational, consistently testable legal parameters. In other words, the primary problem in Indonesia is not the absence of values, but rather the lack of a mechanism for transforming them into precise legal standards.

Within this framework, Pancasila has strong normative potential to serve as a basis for restrictions on freedom of expression, as each of its principles aligns with the objectives of restrictions in international human rights law, such as protecting human dignity, social order, and the public interest. However, unlike concepts such as proportionality in Germany or clear and present danger in the United States, Pancasila does not serve as a test but rather as a source of values. Consequently, when Pancasila is used directly as a basis for restrictions without undergoing operationalization, a shift occurs from an evaluative norm to a normative justification. This situation has serious implications for state practice. Without a clear standard of review, restrictions on freedom of expression become highly dependent on the interpretation of law enforcement officials or state authorities. In such a situation, the law no longer functions as a limitation on power, but can become an instrument of power itself. This is contrary to the principle of the rule of law, which requires that any restrictions on rights must be able to be tested objectively and rationally.<sup>87</sup>

The lack of clear parameters also impacts the consistency of legal decisions and law enforcement practices. In some cases, similar expressions can be treated differently, depending on the political, social, or even public pressure context. This suggests that without measurable standards, restrictions on freedom of expression risk fragmentation in application, ultimately undermining the principle of legal certainty<sup>88</sup> and equality before the law.

In Pancasila democracy, this becomes even more problematic

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<sup>87</sup> Dana Burchardt, "The Functions of Law and Their Challenges: The Differentiated Functionality of International Law," *German Law Journal* 20, no. 4 (2019): 409–29, <https://doi.org/10.1017/glj.2019.29>.

<sup>88</sup> Martitah Martitah et al., "Legal Certainty and Social Security: Two Main Pillars of the LLAJ Bill for the Future of Online Motorcycle Taxi Drivers," *The Indonesian Journal of International Clinical Legal Education* 7, no. 4 (2025): 563–94, <https://doi.org/10.15294/ijicle.v7i4.38645>.

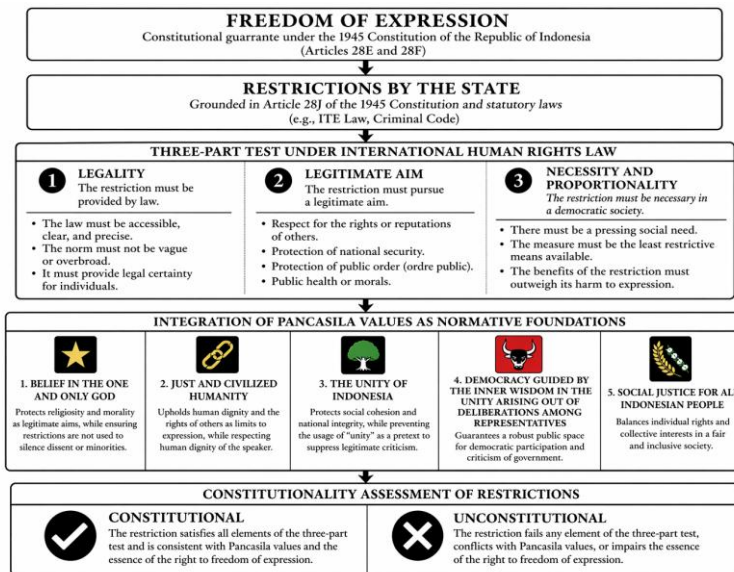
because a healthy democracy requires a free and open space for expression, including for harsh criticism of the government. When restrictions lack clear parameters, the line between protecting the public interest and silencing criticism becomes blurred. In this situation, protective restrictions can instead become repressive.

In this regard, the need for a systematic analytical framework becomes increasingly urgent. The previous discussion demonstrates that restrictions on freedom of expression in Pancasila democracy cannot rely solely on normative legitimacy; they must be subjected to an objective, measurable testing mechanism. On the one hand, the three-part test standard provides universal parameters for assessing the legitimacy of restrictions under international human rights law. On the other hand, Pancasila, as the state's ideological foundation, provides a foundation of values that reflect the social and philosophical character of the Indonesian nation. Therefore, the primary challenge is not choosing between the two, but rather formulating a model capable of operationally integrating these universal standards with Pancasila values.

This integration is crucial to prevent restrictions on freedom of expression from falling into two extremes: on the one hand, being too "free" without considering the social context, and on the other, being too restrictive under the guise of immeasurable collective values. With an integrated framework, restrictions are examined not only for their formal legality but also for their rationality, necessity, and alignment with the nation's fundamental values. This requires a conceptual model capable of mapping the relationships among freedom of expression, state restrictions, international human rights standards, and Pancasila values within a coherent analysis.

To visualize this construction more systematically and comprehensively, the following chart illustrates an integrative model for testing the constitutionality of restrictions on freedom of expression in Pancasila democracy.

### **Diagram 1. Model for Assessing the Constitutionality of Restrictions on Freedom of Expression in Pancasila Democracy**



Source: personally processed.

The diagram represents an analytical construct that positions freedom of expression as a constitutional right that does not stand alone but is always in relation to the possibility of state restrictions. The presented flow demonstrates that any restriction cannot be deemed immediately legitimate simply because it has a legal basis or normative legitimacy; rather, it must undergo a series of interconnected, layered testing stages. Therefore, the diagram is not only descriptive but also normative, as it illustrates how restrictions on freedom of expression should be assessed within the framework of a democratic state governed by law.

The first stage in the diagram emphasizes freedom of expression as a constitutional right guaranteed by the 1945 Constitution of the Republic of Indonesia. This placement demonstrates that any restrictions should be understood as exceptions, not as the general norm. Thus, the starting point of analysis is always the protection of rights, not their restrictions. From there, the diagram moves to the next stage: the existence of restrictive state actions, whether through legal norms or policies. This stage marks the state's entry as an actor with the authority to regulate, but must also be limited by legal principles. Next, the chart places a three-part test as the primary instrument for testing the

legitimacy of restrictions. The three elements—legality, legitimate purpose, and necessity and proportionality—are arranged sequentially to demonstrate that the test is not partial, but cumulative. This means that the failure of a single element is sufficient to declare the restriction unlawful. This structure emphasizes that restrictions on freedom of expression cannot be justified solely on legal grounds, but must also meet certain requirements of purpose and proportionality. The main difference between the model in this diagram and the conventional approach lies in the additional layer of Pancasila value integration. In this diagram, Pancasila is not positioned as a stand-alone basis for limitations, but rather as a framework of values that is operationalized at each stage of testing. This demonstrates that Pancasila functions as a normative lens which provides context for the application of the three-part test. For example, humanitarian values are relevant in assessing the purpose of restrictions, while the values of unity and social justice play a role in assessing proportionality. Thus, Pancasila does not replace international human rights standards, but rather enriches and contextualizes them.

This integration has important practical implications. First, it prevents the use of Pancasila as an abstract and immeasurable justification. Second, it ensures that Pancasila's values remain relevant within the modern rule-of-law framework by translating them into testable parameters. Third, it bridges the gap between the universality of human rights and the particularity of national values, preventing a dichotomy between the two. In this regard, the chart demonstrates that the constitutionality of restrictions depends not only on their conformity with positive law but also on their compliance with universally recognized standards of rationality and proportionality.

At the end, the chart displays two possible outcomes: constitutional and unconstitutional restrictions. This dichotomy emphasizes that the review's results are definitive, not relative. A restriction can only be considered constitutional if it meets all the test criteria, including its compliance with the operationalized values of Pancasila. Conversely, if any of these criteria are not met, the restriction must be deemed unconstitutional, even if it may have political or social legitimacy.

Thus, the chart serves not only as a visualization tool but also as an analytical model that offers a more systematic approach to assessing restrictions on freedom of expression in Indonesia. This model emphasizes that Pancasila democracy does not conflict with international human rights standards but can instead serve as a normative framework that strengthens their implementation. Through this approach, restrictions on freedom of expression can be placed in a more proportional, measurable, and constitutional manner within the Indonesian legal system.

To move beyond an abstract formulation, the proposed integrative model must be operationalized within a concrete analytical framework. Consider a scenario in which a citizen expresses sharp criticism of government policies on social media and is subsequently prosecuted under the Electronic Information and Transactions Law. Under a conventional three-part test approach grounded in international human rights law, the analysis would assess whether the restriction is prescribed by law, pursues a legitimate aim—such as the protection of public order or reputation—and is necessary and proportionate in a democratic society. However, the integrative model developed in this article introduces an additional layer of scrutiny by positioning Pancasila as a normative lens within each stage of the test. At the level of legitimate aim, for instance, state claims regarding “public order” or “morality” must be interpreted in light of the second principle of Pancasila, namely just and civilized humanity, which requires respect for human dignity and the protection of dissenting voices. Similarly, at the stage of necessity and proportionality, the third and fourth principles—national unity and deliberative democracy—demand that restrictions must not suppress legitimate criticism or undermine democratic participation. As a result, expressions that merely offend, criticize, or challenge authority cannot be restricted unless they produce concrete and demonstrable harm that satisfies strict proportionality requirements. In this sense, the model does not expand the scope of restriction but rather narrows it by imposing additional normative constraints on state action. Nevertheless, the integration of Pancasila into the three-part test raises a fundamental concern: the risk that Pancasila may be used as an open-ended

justification for limiting freedom of expression. Given its open-textured and abstract nature, Pancasila can potentially be interpreted in ways that broaden state discretion and weaken human rights protection. To address this concern, the model proposed in this article deliberately repositions Pancasila not as an independent ground for restriction, but as a constitutional constraint that operates within the framework of legality, legitimate aim, and proportionality. This means that Pancasila cannot be invoked to bypass or dilute the requirements of international human rights law, but must instead function as a standard that disciplines and limits state power. This issue becomes particularly evident when examined through the lens of the void for vagueness doctrine. International human rights law requires that any restriction on freedom of expression be formulated with sufficient clarity, accessibility, and foreseeability. However, in practice, many restrictions in Indonesia rely on broad and indeterminate concepts such as “public morality,” “decency,” or “national unity,” often justified through references to Pancasila. The direct use of abstract principles—such as “Belief in the One and Only God” or “Unity of Indonesia”—as legal grounds for restriction risks undermining the principle of legality by creating uncertainty and enabling arbitrary enforcement. Therefore, within the integrative model, Pancasila-based justifications must be translated into clear and objectively verifiable criteria. Without such operationalization, there is a real danger of what may be described as the securitization of Pancasila, where ideological values are transformed into instruments of control rather than protection. The Indonesian experience must also be situated within a broader global context. The tension between universal human rights standards and national constitutional identity is not unique to Indonesia. In the European system, the doctrine of margin of appreciation allows states a degree of interpretive flexibility, while still subjecting them to supranational human rights review. Similarly, countries with strong religio-political identities, such as Turkey and Pakistan, have grappled with balancing freedom of expression against moral and religious values. These experiences illustrate a wider global trend often described as illiberal constitutionalism, in which states seek to reinterpret human rights through local values. Within this context,

Indonesia's reliance on Pancasila can be understood as part of a broader attempt to localize universal norms. However, the critical challenge remains ensuring that such localization does not erode the core guarantees of human rights. In light of the above analysis, this article takes a clear normative position. The integration of Pancasila into the three-part test represents both a potential advancement and a significant risk. It offers a meaningful opportunity to align constitutional adjudication with Indonesia's philosophical identity while maintaining engagement with international human rights standards. At the same time, if applied without clear operational safeguards, it may legitimize excessive restrictions and reinforce tendencies toward overregulation of expression. Therefore, the integrative model should not be understood as a definitive solution, but as a conditional framework whose legitimacy depends on its consistent, critical, and rights-oriented application. Only under such conditions can the model contribute to strengthening, rather than undermining, the constitutional protection of freedom of expression in Pancasila democracy. This article takes a clear normative position regarding the integrative model proposed. The integration of Pancasila into the three-part test should not be understood as a neutral or purely technical development, but as a constitutional choice that carries both promise and risk. On the one hand, it represents a meaningful advancement, as it allows Indonesia to contextualize universal human rights standards within its own philosophical and constitutional framework. By incorporating Pancasila as a normative lens, the model has the potential to strengthen the protection of human dignity, social justice, and democratic participation in a manner that resonates with the Indonesian constitutional identity.

However, this integration also constitutes a potentially dangerous compromise if not carefully constrained. The abstract and open-textured nature of Pancasila creates the risk that it may be invoked as a flexible justification for restricting freedom of expression, thereby weakening the rigor of the three-part test. In such circumstances, the model could inadvertently legitimize excessive state intervention and contribute to what may be described as a subtle form of illiberal constitutionalism. Therefore, the value of this integrative model does not

lie merely in its conceptual formulation, but in how it is applied. It can function either as a mechanism for strengthening constitutional protection or as a tool for expanding state control.

Accordingly, this article argues that the integrative model should be understood as a conditional advancement—one that enhances constitutional reasoning only if it is anchored in strict adherence to legality, legitimate aim, and proportionality. Without such safeguards, the integration of Pancasila risks transforming from a constitutional asset into a justificatory device for limiting fundamental freedoms. In this sense, the ultimate test of the model lies not in theory, but in its ability to constrain power and protect rights in practice.

## **D. Conclusion**

This discussion shows that the constitutionality of restrictions on freedom of expression in Pancasila democracy cannot be determined solely on the basis of legal norms or ideological legitimacy, but must be tested against objective, measurable, and consistent parameters. Freedom of expression as a derogable right does open up room for restrictions, but these restrictions can only be justified if they meet the three-part test: legality, a legitimate purpose, and necessity and proportionality. In the Indonesian context, Pancasila holds a crucial position as a foundation of values, but it cannot be used directly as justification without operationalizing it within concrete legal parameters. Therefore, the constitutionality of restrictions is ultimately determined by the legal system's ability to rationally and verifiably integrate Pancasila values with international human rights standards. The implications of these findings underscore the need to strengthen the testing framework in constitutional practice and law enforcement in Indonesia. First, lawmakers need to formulate restrictive norms more clearly, without multiple interpretations, to comply with the principle of legality. Second, law enforcement and judicial officials must consistently apply the three-part test when assessing any restrictions on freedom of expression to prevent deviations in practice. Third, the values of Pancasila need to be operationalized in a more concrete legal doctrine so they can serve as evaluative standards rather than merely as a source of normative

legitimacy. With this step, restrictions on freedom of expression in Pancasila democracy will not only be ideologically legitimate, but also constitutionally, proportionally, and in line with human rights principles.

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