

Realizing a Polite Society on Social Media: ASEAN and EU Perspectives

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ABSTRACT: Migration from the era of *citizens* to *netizens* is an impossible thing to avoid. During the migration, it also brings negative impact, such as hoax, hate speech, defamation and many more. This study aims to examine the relationship between the development of information technology in the digital era, especially on social media and Human Rights perspective in ASEAN and EU. Through normative legal research methods, this research tries to find ideal formulations and boundaries for *netizens* to become polite people interacting on social media. The results of this study show that the right on social media for *netizens* is a constitutional right that has been regulated in the 1945 Constitution, EU conventions and the UDHR. However, freedom of speech in social media, does not mean that there are no limits. The limitations of freedom of speech on social media are through the limitations of norms, especially norms of polite and decency whose values are universal.

KEYWORDS: Information Technology; Human Rights; Social Media; ASEAN; EU.



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I. INTRODUCTION

The development of technology forces humans to adapt very quickly. The migration from the era of *citizens* to *netizens*, became inevitable. Dozens of hours a day can be spent by humans in today's era to encounter technology, including information technology (especially social media and *online games*).¹ Based on a report from the social media management platform HootSuite and marketing agency We Are Social, in early 2021 it was stated that the number of internet users in Indonesia reached 202.6 million or 73.7 percent of the total population of 274.9 million people in January 2021. Of the total number, as many as 195.3 million people or 96.4 percent accessed the internet through *mobile* devices of the *smartphone* type and feature phones.² They use a cellular connection and WiFi to access the internet. The average mobile internet user in Indonesia is between 16-64 years old and spends about 5 hours and 4 minutes every day accessing the internet.³

The previous studies indicate that Indonesians love to access social media.⁴ The number reaches 170 million inhabitants. The average time spent accessing social media is 3 hours and 14 minutes every day.⁵ In addition to social media, Indonesians also access the internet to watch television, either streaming or broadcasting for 2 hours 50 minutes. They also read the news online for 1 hour and 38 minutes and listen to the streaming service for 1 hour and 30 minutes every day.⁶ The series of activities of the Indonesian people on the internet are also justified by data from the Ministry of

¹ ICT Institute, "Orang Indonesia Menghabiskan Waktunya Untuk Main Internet Hingga 8,5 Jam Sehari," *disway.id*, 2022, <https://pagaralampos.disway.id/read/638582/orang-indonesia-menghabiskan-waktunya-untuk-main-internet-hingga-85-jam-sehari>.

² Wahyunanda Kusuma Pertiwi, "Pengguna Internet Indonesia Tembus 200 Juta, Hampir Semua 'Online' Dari Ponsel," *Kompas*, 2021.

³ *Ibid.* Pertiwi.

⁴ Zaka Firma Aditya and Sholahuddin Al-Fatih, "Indonesian Constitutional Rights: Expressing and Purposing Opinions on the Internet," *International Journal of Human Rights* 0, no. 0 (2020): 1–25, <https://doi.org/10.1080/13642987.2020.1826450>.

⁵ *Op. Cit* Pertiwi, "Pengguna Internet Indonesia Tembus 200 Juta, Hampir Semua 'Online' Dari Ponsel."

⁶ *Ibid.* Pertiwi.

Communication and Information of the Republic of Indonesia which notes that as many as 167 million or 89% of Indonesians use smartphones in March 2021. Several factors, according to the author, are the main reasons for the high access and needs of the Indonesian people for gadgets, the development of information technology and the internet, such as: 1). The Covid-19 pandemic; 2). Needs; and 3). Lifestyle.⁷⁸

This study admits it or not, the Covid-19 pandemic has further increased people's interest in accessing the internet and owning gadgets.⁹ School-aged students, ranging from preschool to tertiary education, are forced to take part in online learning.¹⁰ Of course, inevitably, gadgets and the Internet are the main reasons for them. The Covid-19 pandemic has made the need for the internet and gadgets a primary need, perhaps even defeating the need for necessities. All feature that is discovered through gadgets and internet facilities, makes the "boredom" that hits due to the Covid-19 pandemic somewhat disguised. A lot of entertainment and convenience are offered through gadgets and the internet. In another hand, it also has side impact, such as the spread of hoaxes, hate speeches and another impolite activity in social media. Those fact, are the gap phenomena on using social media.

⁷ Dwi Julianingsih et al., "Utilization of Gadget Technology as a Learning Media," *IAIC Transactions on Sustainable Digital Innovation (ITSDI)* 3, no. 1 (2021): 43–45, <https://doi.org/10.34306/itsdi.v3i1.522>.

⁸ Ilga Maria and Ria Novianti, "Penggunaan Gadget Pada Anak: Tantangan Baru Orang Tua Milenial," *Jurnal Obsesi: Jurnal Pendidikan Anak Usia Dini* 4, no. 2 (March 2020): 1000–1010, <https://doi.org/10.31004/obsesi.v4i2.490>.

⁹ Mahmoud M Al-sakhnini, "The Impact of Covid-19 on The Information Technology Sector in Egypt and UAE (Challenges and Opportunities)," *Journal of Positive School Psychology* 6, no. 8 (2022): 7611–21, https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUK EwiQ1fjR2cj8AhUxFrcAHYXiCWsQFnoECA YQAQ&url=https%3A%2F%2Fwww.journalppw.com%2Findex.php%2Fjpsp%2Farticle%2Fdownload%2F11110%2F7166%2F13020&usg=AOvVaw0ScmT_-FPrAOc1d0qPIMje.

¹⁰ Mohamad Syahrul RA, Yusuf Hamdika, and Sholahuddin Al-Fatih, "The Impact of COVID-19 Through the Lens of Islamic Law : An Indonesian Case," *Lentera Hukum* 7, no. 3 (2020): 267–78, <https://doi.org/https://doi.org/10.19184/ejllh.v7i3.18983>. p. 272

The relationship between the two is expected to make people more polite in social media. Through legal research methods,¹¹ this article is expected to contribute to the field of legal science, especially in the context of Law and Human Rights and respond to the development of information technology and the riots of the Information and Electronic Transaction Law (hereinafter write down as IET Law). Some articles in IET Law, such as article 27 paragraph (3), article 28, and article 45 paragraph (1) are subject of judicial review by the citizen in accordance with the article 28 E paragraph (3) UUD NRI 1945. The approach used in this study is a conceptual approach and is analyzed using the prefix method to find new arguments against the current factual conditions.

Therefore, this research and article aims to find a relationship between the development of advances in information technology and human rights under the Association of South East Asia Nations (hereinafter write down as ASEAN) and European Union (hereinafter write down as EU) perspective. First section will discuss about social media trend: opportunities and challenges. Secondly, it discusses about the issues on internet threats in ASEAN countries. Thirdly, freedom of expression rights: a comparison of EU and ASEAN legal frameworks will be analyzed and compared. Finally, in the last section the authors concluded about unlimited but limited: legal norm on freedom of expression in social media.

II. METHOD

This study conducted legal research methods¹² to analyze which norm regarding freedom of expression in social media could be guaranteed and restricted. This article is expected to contribute to the field of legal science, especially in the context of the law and human rights and respond to the development of information technology and the riots of the Information and Electronic Transaction Law (from now on, write down as IET Law) under the perspective of ASEAN and EU. The approach used in this study

¹¹ Sholahuddin Al-Fatih and Ahmad Siboy, *Menulis Artikel Karya Ilmiah Hukum Di Jurnal Nasional Dan Internasional Bereputasi* (Malang: Inteligencia Media, 2021).

¹² Al-Fatih and Siboy.

is conceptual, statute approach, and comparative approach, then it is analyzed using the prefix method to find new arguments against the current factual conditions.

This research analyzes the statutes, especially UDHR, the European Convention on Human Rights, the IET Law of Indonesia, and UUD NRI 1945 of Indonesia. As a comparison, some ASEAN countries' regulations to threaten internet issues were analyzed and compared with practice in EU countries. Then, in prescriptive analysis,¹³ it described finding new ideas about socializing on social media with polite interaction models.

III. SOCIAL MEDIA TREND: OPPORTUNITIES AND CHALLENGES

The world community is faced with a very rapid development of information technology, including Indonesia. The 3G era, which was originally predicted to last quite a long time, it turns out that only briefly and is now starting to shift with the 5G era. Versions of Windows, Android, Mac OS, Linux and so on, almost every year undergo updates. However, this development, does not necessarily make the community as users, also develop and be more advanced. In fact, although the era of technology and social society has gone to the 4.0 era, many say that their society is still in the 0.4 era.¹⁴ An irony amid the rapid development of technology.

This is evident, with the increasing number of misuses of information technology, both intentionally and unintentionally. Cases of fraud, *hacking*, defamation and even murder can be done with the help of technological sophistication. Socio-media played a significant role in assisting these cases. Social media is an online media with users who can easily participate, share and create content, including blogs, social networks, wikis, forums, and

¹³ Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*, ed. Ahsan Yunus (Yogyakarta: Mirra Buana Media, 2020).

¹⁴ Kisno, "Berpikir (Masih) 0.4 Di Era 4.0," Qureta, 2020, <https://www.quireta.com/post/berpikir-masih-04-di-era-40>.

virtual worlds.¹⁵ Blogs, social networks, and wikis (Wikipedia and so forth) are the most common social media users worldwide. Another opinion says that social media is online media that supports social interaction, and social media uses web-based technology that turns communication into interactive dialogue.

Andreas Kaplan and Michael Haenlein define social media as "a group of internet-based applications that build on the ideological and technological foundations of Web 2.0, and which enable the creation and exchange of user-generated content." Social networks are sites where anyone can create personal web pages, then connect with friends to share information and communication. The largest social networks include Facebook, Instagram and Twitter.¹⁶

Nonetheless, as already mentioned in the introduction, the internet and social media also have a good impact on society. The positive impact of social media is that it makes it easier for us to interact with many people, expanding socialization, distance and time are no longer a problem, it is easier to express ourselves, the dissemination of information can take place quickly, costs less.¹⁷ Furthermore, social media also has an impact, especially for child or adults in their education process. The positive impacts of social media are:¹⁸ 1) Facilitate learning activities because they can be used as a means for discussion with school friends about assignments (looking for information). This benefits extremely used during restriction on Covid-19 pandemic, such as online platform Google Meets, Zoom, Microsoft Teams, etc.;¹⁹ 2) Find and add friends or reunite with old

¹⁵ Anang Sugeng Cahyono, "PENGARUH MEDIA SOSIAL TERHADAP PERUBAHAN SOSIAL MASYARAKAT DI INDONESIA," *Publiciana* 9, no. 1 (2016): 140–57, <https://doi.org/10.36563/PUBLICIANA.V9I1.79>.

¹⁶ *Ibid.* Cahyono.

¹⁷ Anang Sugeng Cahyono, "Pengaruh Media Sosial Terhadap Perubahan Sosial Masyarakat Di Indonesia," *Jurnal Publiciana* 9, no. 1 (2016): 140–57, <http://jurnal-unita.org/index.php/publiciana/article/view/79>.

¹⁸ Nisa Khairuni, "DAMPAK POSITIF DAN NEGATIF SOSIAL MEDIA TERHADAP PENDIDIKAN AKHLAK ANAK (Studi Kasus Di SMP Negeri 2 Kelas VIII Banda Aceh)," *JURNAL EDUKASI: Jurnal Bimbingan Konseling* 2, no. 1 (August 30, 2016): 91–106, <https://doi.org/10.22373/je.v2i1.693>.

¹⁹ RA, Hamdika, and Al-Fatih, "The Impact of COVID-19 Through the Lens of Islamic Law : An Indonesian Case."

friends. Be it friends, at school, in the play environment, or friends who meet through social networks other; and 3) Eliminate student fatigue; it can be a stress remedy after a day of struggling with lessons at school. For example: commenting on other people's statuses, sometimes funny and tickling, playing games, and so forth.

While the negative impact of social media is to keep people who are close and vice versa, face-to-face interactions tend to decrease, making people become addicted to the internet, causing conflicts, privacy problems, vulnerable to the bad influence of others.²⁰ In addition to the positive impact of social media also harms the education for child or adults. The negative impacts caused by social media are:²¹ 1) Reduced study time due to too much preoccupation with using social media long time when Facebooking and this will reduce the allotted study time; 2) Disturbing the concentration of learning at school, when students are getting bored with the way the teacher is learning, they will access social media at will; 3) Damaging student morale, because of the unstable nature of teenagers, they can access or easily view other people's pornographic images; 4) Spend pocket money to access the internet and to open Facebook affect the financial condition (especially if the access from the cafe) is the same as accessing Facebook from mobile phones; and 5) Disturbing health, too much staring at cellphone or computer screens or Laptops can interfere with eye health.

The existence of social media has affected social life in society. Changes in social relations (social relationships) or as changes to the equilibrium of social relations and all forms of changes in social institutions in a society, which affect its social system, including values, attitudes and behavior patterns among groups in society. Positive social changes such as the ease of obtaining and conveying information, obtaining social and economic benefits. Meanwhile, social changes that tend to be negative such as the

²⁰ Anna Yohanna, "The Influence of Social Media on Social Interactions among Students," *Indonesian Journal of Social Sciences* 12, no. 2 (2020): 34, <https://doi.org/10.20473/ijss.v12i2.22907>.

²¹ Khairuni, "DAMPAK POSITIF DAN NEGATIF SOSIAL MEDIA TERHADAP PENDIDIKAN AKHLAK ANAK (Studi Kasus Di SMP Negeri 2 Kelas VIII Banda Aceh)."

emergence of social groups in the name of religion, tribes and certain patterns of behavior that sometimes deviate from existing norms.²²

In February 2021, Microsoft²³ said that Indonesia is a country with a low index of decency on social media (not to mention it as the worst) among other countries surveyed. People easily rebuke insulting others on their social media, either through posts on timelines, statuses or replying to other people's comments.

The incident kept repeating itself. Even though the police have launch slogan turn back hoax, war against buzzer and so on²⁴ As if, the current development of information technology and the adverse impact of social media are two things that cannot be separated. Moreover, there are also those who think that writing tweets on Twitter, posting comments on Facebook, uploading pictures on Instagram and the like, there is part of the freedom of expression guaranteed by the constitution. Thus, what they are doing on social media, ostensibly a constitutional act protected by the positive laws of the state (in Indonesia it protected by the human rights norm on article 28A-J, especially in article 28E UUD NRI 1945 and in EU stated on European Convention on Human Rights).²⁵

IV. THE ISSUES ON INTERNET THREATS IN ASEAN MEMBER STATES

Countries in the world, including in ASEAN, respond in various ways to the development of social media. There are those who fully support the use

²² Tito Siswanto, "Optimalisasi Sosial Media Sebagai Media Pemasaran Usaha Kecil Menengah," *Jurnal Liquidity* 2, no. 1 (2013): 80–86, <http://www.ojs.itb-ad.ac.id/index.php/LQ/article/view/134>.

²³ CNN Indonesia, "Survei Microsoft: Netizen Makin Tidak Sopan," CNN Indonesia, 2021, <https://www.cnnindonesia.com/teknologi/20210727095528-185-672622/survei-microsoft-netizen-makin-tidak-sopan>.

²⁴ Bambang Arianto, "Salah Kaprah Ihwal Buzzer: Analisis Percakapan Warganet Di Media Sosial," *Jurnal Ilmiah Ilmu Pemerintahan* 5, no. 1 (2020): 1–20, <https://doi.org/10.14710/jiip.v5i1.7287>.

²⁵ Sholahuddin Al-Fatih and Zaka Aditya, "Hoax and The Principle of Legal Certainty in Indonesian Legal System," in *International Conference on Business, Law and Pedagogy* (Sidoarjo: EAI EUDL, 2020), 2286165, <https://doi.org/10.4108/eai.13-2-2019.2286165>.

of social media as a means for society to express themselves, but there are those who do the opposite. Based on previously research conducted by the authors, however freedom of expression is the subject that protected by the constitutional law and some act, most countries in ASEAN place restrictions on their community's activities on social media. Table 1 below indicate, how ASEAN countries threat on social media development in their country.

No.	Issues in ASEAN Member States
1.	Brunei Darussalam ²⁶
	The Broadcasting Act requires Internet service providers and Internet café operators to register with the Director of Broadcasting. Internet service providers are advised to monitor content.
2.	Cambodia ²⁷
	<ol style="list-style-type: none"> <li data-bbox="325 1048 1343 1245">1. The government cracked down heavily on independent radio in September, revoking the license of Mohan for Radio and its affiliates, which broadcast Voice of America (VOA) and Radio Free Asia (RFA), and closing the independent radio station Voice of Democracy (VOD). <li data-bbox="325 1267 1343 1552">2. Authorities also forced the closure of RFA's bureau, and a court charged two former RFA journalists with espionage in November. The journalists, who face up to 15 years in prison if convicted, remain in pretrial detention at time of writing. Other radio stations broadcasting VOA or RFA have come under pressure from the government and stopped broadcasting in August. Almost all domestic broadcast media is now under government control.
3.	Indonesia ²⁸
	<ol style="list-style-type: none"> <li data-bbox="325 1675 1343 1792">1. On July 12, President Jokowi issued a decree amending the law that regulates nongovernmental organizations, enabling the government to fast-track the banning of groups it considers "against

²⁶ *Ibid.* Internews Europe, p 55

²⁷ *Ibid.* Human Rights Watch, 2018, *Human Rights in South East Asia : Briefing Materials for the ASEAN-Australia Summit*, Sydney; Australia, p 9-10

²⁸ *Ibid.* Human Rights Watch, p 14-15

Pancasila or promoting communism or advocating separatism.” Pancasila, or “five principles,” is Indonesia’s official state philosophy. Days later the government used the decree to ban Hizbut ut-Tahrir/Hizbut Tahrir Indonesia (HTI), a conservative Islamist group that supports the creation of a Sharia-based Islamic caliphate.

2. The government issued the amendment of IET Act that punished some citizen in to prison with the reason of hate speech, spreading hoax and blasphemy.
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4. Lao PDR

1. Laos’ media is defined by a fully state-controlled press and broadcast sector, a high level of self-censorship among journalists who actively avoid covering controversial issues, and limited Internet penetration-conditions that earned Laos Freedom House’s 2013 press status as ‘Not Free’.²⁹
2. The country’s 32 television stations and 44 radio stations are government affiliated. Laos’ 24 newspapers are strictly controlled by the government, leaving Lao people with almost no choice of media providing independent or alternative viewpoints.³⁰

Currently, there are no media advocacies or human rights organizations in Laos to advance freedom of expression issues.³¹

5. Malaysia³²

1. The Communications and Multimedia Act (CMA) has been used repeatedly to investigate and arrest those who criticize government officials on social media. Section 233(1) of the CMA provides criminal penalties of up to one year in prison for a communication that “is obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person.”
 2. On February 20, graphic artist Fahmi Reza was sentenced to a month in prison and a fine of RM30,000 (US\$7,675) for posting an online caricature of Najib wearing clown makeup.
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²⁹ Freedom House, *Freedom of the Press 2013*, accessible at: <http://www.freedomhouse.org/report/freedom-press/2013/laos>

³⁰ SEAPA, 2013. *Stifling Media and Civil Society in Laos*.

³¹ Internews Europe, 2014, *Freedom of Expression and Right to Information in ASEAN Countries : a Regional Analysis of Challenges, Threats and Opportunities*, p 41

³² *Ibid.* Human Rights Watch, p 20-21

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3. In August, authorities used Malaysia's restrictive Film Censorship Act to require the deletion of scenes from a film by a Malaysian investigative journalist implicating Malaysian immigration officials in the trafficking of Rohingya girls. Authorities also banned in its entirety *Kakuma Can Dance*, a film by a Swedish filmmaker about refugees and hiphop dance in Kenya. Both films were scheduled to be shown during the annual Refugee Festival in Kuala Lumpur.
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6. Myanmar³³

1. Over 90 cases have been filed under section 66(d) of the 2013 Telecommunications Act, a vaguely worded law that criminalizes broad categories of online speech, with over 20 journalists among those charged
 2. In December, police detained Wa Lone, 31, and Kyaw Soe Oo, 27, who were reporting for Reuters on security force abuses against the Rohingya. The journalists were held for nearly two weeks incommunicado. After the government approved charges against the journalists under the outdated and overly broad 1923 Official Secrets Act, the two journalists were brought to court but were denied bail. They are currently facing charges for allegedly possessing leaked documents relating to security force operations in Rakhine State.
 3. Khaing Myo Htun, an environmental rights activist, was sentenced to 18 months in prison in October for violating sections 505(b) and (c) of the penal code, which criminalizes speech that is likely to cause fear or harm and incites classes or groups to commit offenses against each other. He had been detained since July 2016 for helping prepare a statement released by the Arakan Liberation Party, of which he was the deputy spokesperson, accusing the military of rights violations.
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7. Philippines³⁴

1. In March, unidentified gunmen killed newspaper columnist Joaquin Briones in the Masbate province town of Milagros. In August, an unidentified gunman killed radio journalists Rudy Alicaway and Leo Diaz in separate incidents on the southern island of Mindanao. The National Union of Journalists estimates that 177 Filipino reporters and media workers have been killed since 1986.
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³³ *Ibid.* Human Rights Watch, p 28-30

³⁴ *Ibid.* Human Rights Watch, p 37-38

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2. They are so many regulations issued by Duterte, President of the Philippines that restricted the newspaper, radio and other media and journalist activity.
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8. Singapore³⁵

The government maintains strict restrictions on the right to freedom of peaceful assembly through the Public Order Act, which requires police permit for any “cause-related” assembly if it is held in a public place, or if members of the general public are invited. Permits are routinely denied for events addressing political topics. The law was amended in 2017 to tighten the restrictions, and now provides the police commissioner with specific authorization to reject any permit application for an assembly or procession “directed towards a political end” if any foreigner is involved.

9. Thailand³⁶

1. Media outlets that refused to fully comply, including Voice TV, Spring News Radio, Peace TV, and TV24, were temporarily forced off the air in March, April, August, and November 2017 respectively. These stations were later allowed to resume broadcasting when they agreed to practice self-censorship, either by excluding outspoken commentators or avoiding political issues altogether.
 2. The junta continued to use sedition (article 116 of the criminal code) and the Computer Related Crime Act (CCA) to criminalize criticism and peaceful opposition to military rule. Since the 2014 coup, at least 66 people have been charged with sedition. In August, authorities charged veteran journalist Pravit Rojanaphruk and two prominent politicians Pichai Nariphaphan and Watana Muangsook—with sedition and violating the CCA for their Facebook commentaries about Thailand’s political and economic problems.
 3. Thailand’s revised CCA, which became effective in May 2017, provides the government with broad powers to restrict free speech and enforce censorship. The law uses vague and overbroad grounds for the government to prosecute any information online that it
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³⁵ *Ibid.* Human Rights Watch, p 42-43

³⁶ *Ibid.* Human Rights Watch, p 46-48

deems to be “false” or “distorted,” including allegations against government officials regarding human rights abuses. Even internet content that is not found to be illegal under the act can be banned if a government computer data screening committee finds the information is “against public order” or violates the “good morals of the people.”

4. Since the coup, authorities have arrested at least 105 people on lese majeste charges, mostly for posting or sharing critical commentary online. Some have been convicted and sentenced to decades of imprisonment, including a man sent to prison in June for 35 years (a 50 percent reduction of the original sentence because he confessed to the alleged crime) based on 10 critical Facebook posts.
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10. Vietnam³⁷

1. During 2017, authorities arrested at least 40 rights bloggers and activists, including former political prisoners Nguyen Bac Truyen, Truong Minh Duc, Nguyen Van Tuc, Nguyen Trung Ton, and Pham Van Troi, for exercising their civil and political rights in a way that the government views as threatening national security. At least 24 people were put on trial, convicted, and sentenced to between 3 and 14 years in prison.
 2. In June, a court in Khanh Hoa sentenced prominent blogger Nguyen Ngoc Nhu Quynh (also known as Mother Mushroom) to 10 years in prison for critical online posts and documents she published on the internet collected from public sources, including state-sanctioned media. In July, a court in Ha Nam province sentenced prominent activist Tran Thi Nga to nine years in prison for her internet posts.
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Table 1. *ASEAN Countries Response on Social Media Cases*³⁸

From the table above, this article indicate that ASEAN countries choose a strict way to prevent the civil expression on their social media. Some of punishment (including fine and jail), were given to someone who express their opinion on social media, which has different matters with the

³⁷ *Ibid.* Human Rights Watch, p 54-55

³⁸ Sholahuddin Al-Fatih et al., “ASEAN Civil Society In The Digital Era; Are We Moving Backwards?” 317, no. IConProCS (2019): 266–69, <https://doi.org/10.2991/iconprocs-19.2019.55>.

government. ASEAN countries have various instruments to limit the freedom of expression of their citizens on social media. For example, Indonesia with IET Law, Malaysia with The Communications and Multimedia Act, Myanmar with Telecommunications Act, Singapore with Public Order Act, Thailand with Computer Related Crime Act and Brunei Darussalam with Broadcasting Act. All these regulations have in common to limit activities, especially aspects of freedom of expression for their citizens. The forms of media that were also banned varied, ranging from social media, TV, and radio to magazines and newspapers.

V. FREEDOM OF EXPRESSION RIGHTS: A COMPARISON OF EU AND ASEAN LEGAL FRAMEWORKS

Protection of the right to freedom of expression is not only provided by the United Nations (hereinafter write down as UN) and national states. Regionally based organizations such as the Council of Europe, the European Union (EU) and the Association of Southeast Asian Nations (ASEAN) also provide such protection through legal instruments agreed upon by member states. Each regional organization has different mechanisms for recognizing and protecting human rights. The level of integration within the organization dramatically influences the recognition and protection of human rights, especially the right to freedom of expression. In this perspective, the European regional region is at the forefront of providing recognition and protection.³⁹

The existence of legal recognition and protection of human rights by regional organizations is a consequence of the emergence of regional citizenship. The presence of regional citizenship is a gradual evolutionary process and is an essential part of the process of regional integration.⁴⁰ The EU adopts the most powerful and rigid concept of regional citizenship,

³⁹ Amalie Ravn Weinrich, "Varieties of citizenship in regional organisations: A cross-regional comparison of rights, access, and belonging" (2021) 24:4 *Int Area Stud Rev* 255–273 at 256.

⁴⁰ Jo Shaw, "The Interpretation of European Union Citizenship" (1998) 61:3 *Mod Law Rev* 293–317 at 294.

while ASEAN regulates it otherwise.⁴¹ Nonetheless, the forms and powers of recognition and protection provided by the legal framework of regional organizations do not make the existence of the right to freedom of expression disappear. The growing digital world and social media have made protecting the right to freedom of expression relevant again for regional organizations.

The Council of Europe will be the subject of the first discussion on regional organizations' recognition and protection of human rights. The organization, founded in 1950, plays an essential role in recognizing and protecting human rights in the European region through the European Convention on Human Rights. It took quite a long time for European countries to identify the right to freedom of expression. The dictatorial rule that colored the course of the history of European countries became an obstacle to the recognition and protection of this right.⁴² Therefore, adopting the European Convention of Human Rights is a massive leap in recognizing the right to freedom of expression. This Convention recognizes freedom of expression as a human right that must be protected.⁴³ In principle, all member states of the Council of Europe must defend the exercise of the right to freedom of expression. Nonetheless, this right is not entirely absolute but can also be subject to restrictions exercised by the state on the grounds of national interest.⁴⁴ In addition to recognizing and guaranteeing the right to freedom of expression, the Council of Europe also provides judicial mechanisms for citizens who feel their rights are being harmed through the European Court of Human Rights.⁴⁵

The legal design of recognition and protection of the right to freedom of expression adopted by the Council of Europe can generally provide equal

⁴¹ Weinrich, *Supra* note 1 at 258.

⁴² Roger Kiska, "Hate speech: A comparison between the European court of human rights and the United States Supreme Court Jurisprudence" (2012) 25:48420 Regent Univ Law Rev 107–151 at 107.

⁴³ Art. 10 para 1 Council of Europe, "European Convention on Human Rights" (1950), <https://doi.org/10.1017/S0008197300013908>.

⁴⁴ Art. 10 para 2 Council of Europe.

⁴⁵ Oreste Pollicino & Marco Bassini, "Free speech, defamation and the limits to freedom of expression in the EU: a comparative analysis" (2014) Res Handb EU Internet Law 508–542 at 513.

space for citizens and their countries. The existence of the European Court of Human Rights also provides a precise mechanism for justice seekers. Nonetheless, the design presents a complexity of relationships between all elements involved in the recognition and protection of the right to freedom of expression.⁴⁶ Such complexity, on the one hand, is because, in substance, the right to freedom of expression is recognized and protected, but the state also has the right to restrict the exercise of that right. On the other hand, the European Court of Human Rights is obliged to render a fair judgment to protect the exercise of that right. Conditions become more complex because the European Court of Human Rights ruling does not apply directly but must go through the supervision of other institutions.⁴⁷

Another legal instrument on human rights in Europe is The Charter of Fundamental Rights of the European Union, which came into force in 2009 at the same time as the Lisbon Treaty came into force. This document became an essential part of the history of the recognition and protection of human rights in EU member states. The existence of the right to freedom of expression in EU member states is a logical consequence of the recognition of EU Citizenship in the Treaty Functioning of the EU. The ⁴⁸ concept of freedom of expression adopted by The Charter of Fundamental Rights of the European Union is quite different from its predecessor, the European Convention on Human Rights.

The difference is the absence of a provision stating that the state can restrict the exercise of such rights. The Charter of Fundamental Rights of the European Union even expressly states that public authorities cannot intervene in the right to freedom of expression.⁴⁹ The study argues that there has been a shift in democratic values in Europe over more than five

⁴⁶ Jean-Francois Flauss, "The European Court of Human Rights and Freedom of Expression" (2009) 84:809 *Indiana Law J* at 809–810.

⁴⁷ Art. 46 *European Convention on Human Rights*, *Supra* Note 5.

⁴⁸ Art. 20 European Union, "Consolidated Version of The Treaty on The Functioning of The European Union," *The Treaty on The Functioning of The European Union* § (1957).

⁴⁹ Art. 11 European Union, "The Charter of Fundamental Rights of the European Union" (2000), <https://doi.org/10.1515/9783110971965.518>.

decades since the adoption of the European Convention on Human Rights in 1950. In addition, the free movement of people and goods also triggered the adoption of a more liberal form of protection for the right to freedom of expression.

The internal EU free market, characterized by the existence of a free movement of people and goods, correlates with more unrestrained freedom of expression. This condition is expected to cause broad public participation in the internal market.⁵⁰ Thus EU citizens can express ideas and ideas freely without being haunted by the fear of state intervention. The rapid pace of the digital world is also a catalyst so that freedom of expression, especially on social media, is not limited by political interests.

Violations of the right to freedom of expression amid rapid technological development occur in at least three forms. The first is the violation of ownership due to using new technologies. The next is the rights conflict due to the use of new technologies and the emergence of new problems related to the human rights of using new technologies.⁵¹ Under the internal conditions of the free market in the EU, the interaction of the right to freedom of expression is very likely to be subject to violations or conflicts. Therefore, removing restrictions on these rights is the most appropriate way to minimize friction. There is a clear boundary in the right to freedom of expression, namely, the violation of the rights of others. Especially true after the adoption of the General Data Protection Regulation (GDPR) by the EU in 2016.

The GDPR is a legal instrument that provides solid legal protection for the security of EU personal data.⁵² Therefore, this legal instrument can be a firm boundary line to the right to freedom of expression in the EU region. Violations of protecting personal data are possible, especially with the rapid flow of information technology. Evolutive, the EU region's right to

⁵⁰ Deirde Golash, ed., *Freedom of Expression in a Diverse World* (Springer, n.d.), 5.

⁵¹ Bart Custers, "New digital rights: Imagining additional fundamental rights for the digital era" (2022) 44 *Comput Law Secur Rev* 105636, online: <<https://doi.org/10.1016/j.clsr.2021.105636>>.

⁵² Saru Arifin, "The Independence of the Data Protection Authority in Electronic Commerce in the EU: Relevances to Indonesian DPA Legislation?" (2021) *Essays Fac Law Univ Pecs Yearb* 2019-2020.

freedom of expression will meet its limits by providing personal data protection. This means that freedom of expression guaranteed by The Charter of Fundamental Rights of the European Union should not interfere with protecting personal data.

In addition to protecting personal data, the right to freedom of expression is also restricted from carrying out hate speech and defamation.⁵³ The same is true in cyberspace, especially social media. The existence of social media that penetrates national borders with an abundance of information from various unverified sources is a challenge to implementing the right to freedom of expression. This challenge has developed into a loophole for possible violations of the right to freedom of expression on social media without adequate legal protection.⁵⁴

The European region, with all the legal infrastructure regulating human rights, is still experiencing challenges in implementing the right to freedom of expression amid the rapid pace of information technology and social media. Then what about the Southeast Asia region with ASEAN as its regional organization. Before discussing further, the development of human rights, especially the right to freedom of expression, it is necessary to know the legal framework that applies in ASEAN as a regional organization with its perspective in creating its legal ecosystem.

On the one hand, ASEAN's legal design is problematic because it does not specify legal instruments and their binding force (although, both Indonesia and Malaysia have PDPA, in ASEAN level they don't have. It is different with EU policies, that amended by EU members).⁵⁵ On the other hand, the form of informality in ASEAN legal design encourages accountability

⁵³ Kiska, *Supra* note 4.

⁵⁴ Rikke Frank Jørgensen & Lumi Zuleta, "Private Governance of Freedom of Expression on Social Media Platforms EU content regulation through the lens of human rights standards" (2020) 41:1 Nord Rev 51–67 at 63.

⁵⁵ Kevin Y L Tan, "ASEAN Law: Content, applicability, and challenges" in Diane A Desierto & David Cohen, eds, *ASEAN Law Reg Integr Gov Rule Law Southeast Asia's Single Mark* (New York: Routledge, 2021) 39; Nattapat Limsiritong, "The Problems of Law Interpretation under ASEAN Instruments and ASEAN Legal Instruments" (2016) 5:2 MFU Connex 136–155.

and mutual trust among member states.⁵⁶ The ASEAN Charter adopted in 2008 also affirms that the decision-making principle is based on consultation and consensus.⁵⁷ Therefore, in many aspects, ASEAN member states agree on a substance in the form of an instrument that is not binding but has legal relevance.

In 2012 the leaders of ASEAN member states adopted the ASEAN Declaration of Human Rights, which also marked the institutionalization of human rights issues in the region.⁵⁸ This document represents a significant leap towards recognizing and protecting human rights at the Southeast Asian regional level.⁵⁹ Freedom of expression is contained in the ASEAN Declaration of Human Rights, which includes civil and political rights. There are differences in the formulation of these rights, which differ from the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union.

The ASEAN Declaration of Human Rights more clearly limits the form of expression orally, in writing, and in other media.⁶⁰ If interpreted broadly, social media is one of the platforms to channel the right to freedom of expression. This difference is very reasonable, considering that the values contained in the EU and ASEAN are different. Although it needs to be recognized as a global human rights promoter, it has influence to support ASEAN in promoting human rights in the region.⁶¹ In addition to differences, there are also similarities between the ASEAN Declaration of

⁵⁶ Winfried Huck, "Informal International Law-Making in the ASEAN: Consensus, Informality and Accountability" (2020) 80 *ZaöRV* 101–138, online: <<http://www.zaerv.de>> at 115.

⁵⁷ Art. 20 ASEAN, "The ASEAN Charter" (2008), https://doi.org/10.1142/9789813221147_0005.

⁵⁸ Yuyun Wahyuningrum, "A decade of institutionalizing human rights in ASEAN: Progress and challenges" (2021) 20:2 *J Hum Rights* 158–175, online: <<https://doi.org/10.1080/14754835.2021.1875811>>.

⁵⁹ Mathew Davies, "An Agreement to Disagree: The ASEAN Human Rights Declaration and the Absence of Regional Identity in Southeast Asia" (2014) 33:3 *J Curr Southeast Asian Aff* 107–129 at 124.

⁶⁰ ASEAN Secretariat, "ASEAN Human Rights Declaration and Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration," 2013.

⁶¹ Laura Allison-Reumann, "ASEAN and human rights: challenges to the EU's diffusion of human rights norms" (2017) 15:1 *Asia Eur J* 39–54 at 51.

Human Rights and The Charter of Fundamental Rights of the European Union. The equation is the absence of a form of restriction by the state. By understanding at the difference in the timing of the adoption of the two documents, ASEAN should have a more progressive human rights declaration document than the EU.

Comparing Europe and Southeast Asia's human rights legal framework to some would seem unworthy. However, this comparison will get its relevance during the rapid development of information technology, especially social media. The relevance is that the right to freedom of expression is challenged by the invasion of information whose validity has not been verified. In addition, it needs to be recognized that European values are different from Asian values. However, in social media, it seems that the values embraced by society interact and influence each other. Meanwhile, the legal infrastructure to guarantee the exercise of the right to freedom of expression available is quite different.

The Council of Europe and the EU have judicial mechanisms for the public to seek justice if violating the right to freedom of expression. Unfortunately, the ASEAN public does not yet have the exact mechanism as in the European region. In addition, ASEAN legal instruments that are only declarations also do not provide guarantees for implementing human rights because they are not legally binding.

VI. UNLIMITED BUT LIMITED: LEGAL NORM ON FREEDOM OF EXPRESSION IN SOCIAL MEDIA

One of the freedoms inherent in every individual is the freedom of expression and opinion. The course of democracy in a country is marked by the respect, protection, and fulfillment of human rights, which are the government's obligation and responsibility. In addition, of course, the role and participation of the community are also needed. Freedom of expression and opinion depends on the policies set by the competent government, especially on the issue of giving freedom to individuals to express themselves, and the state guarantees freedom of expression without

intervention.⁶² Toby Mendel explained that there are several reasons for freedom of expression to be important:⁶³ first, because this is the foundation of democracy; second, freedom of expression plays a role in eradicating corruption; third, freedom of expression promotes accountability; and the last, freedom of expression in society is believed to be the best way to find the truth.

Although freedom of expression is an essential point in a democratic country, it does not mean that freedom is without limits. Various regulations, both in national and international contexts, guarantee the fulfillment of freedom of expression and limit specific scopes and clauses.

In fact, this research examine and look at the existing positive legal norms, both in the UDHR, ICCPR, the 1945 NRI Constitution, the Human Rights Law and even the IET Law, freedom of expression is guaranteed if it does not conflict with the norms prevailing in society. The Universal Declaration of Human Rights (UDHR, also known internationally as the UDHR or Universal Declaration of Human Rights) stipulates that this freedom of expression does not mean absolute freedom of freedom.⁶⁴ Therefore, freedom of expression also has its limits. Article 19 of the Universal Declaration of Human Rights states: (1) Everyone has an obligation to a community in which only the free and full development of his personality is possible. (2) In the exercise of his rights and freedoms, every person is subject to the limitations prescribed by law solely for the purpose of guaranteeing recognition and respect for the rights and freedoms of others and to meet the requirements of just morality. public order, and welfare in a democratic society.⁶⁵

⁶² Kristian Megahputra Warong, Caecilia J J Waha, and Cornelius Tangkere, "KAJIAN HUKUM HAK ASASI MANUSIA TERHADAP KEBEBASAN BERPENDAPAT OLEH ORGANISASI KEMASYARAKATAN DI MEDIA SOSIAL," *LEX ADMINISTRATUM* 8, no. 5 (November 14, 2020): 44, <https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/31266>.

⁶³ *Ibid.* Megahputra Warong, Waha, and Tangkere.

⁶⁴ Iswandi Syahputra, "Demokrasi Virtual Dan Perang Siber Di Media Sosial: Perspektif Netizen Indonesia," *Jurnal ASPIKOM* 3, no. 3 (2017): 457, <https://doi.org/10.24329/aspikom.v3i3.141>.

⁶⁵ PBB, "Deklarasi Universal Hak-Hak Asasi Manusia," 1948.

Meanwhile, Article 20 of the ICCPR (International Covenant on Civil and Political Rights)⁶⁶ limitedly mentions two categories in which freedom of expression can be limited, namely: (1) any propaganda for war; (2) any act that encourages hatred because of nationality, race, or religion- that incites discrimination, hostility, or violence. This restriction is essential to ward off any form of expression (written, video or audio images) y angcalling for or spreading war.⁶⁷ The same provision is also justified in limiting the space for freedom of expression. There are differences in interpretation in the ICCPR on how to limit or reduce the right to expression and opinion in the context of hate speech.⁶⁸

In addition to the UDHR and ICCPR, there are also normative rules that are the result of discussions by international human rights experts that regulate restrictions on freedom of expression as outlined in The Johannesburg Principles on National Security, Freedom of Expression and Access to Information (Johannesburg Principles). The Johannesburg principle states that no one can be subject to restrictions, deductions, and sanctions, nor should he be harmed by his opinion or belief. Freedom of expression or new opinions may be restricted, or punishable if they threaten national security, and only if the state can demonstrate that the expression of such opinions/expressions is intended to motivate imminent violence. Or if it can motivate the occurrence of violence or if there is a direct and close relationship between the expression of opinions, and the possibility of violence occurring.⁶⁹

In the context of the Indonesian legal state, the norms prevailing in our society include 4 types, namely: legal norms, religious norms, norms of

⁶⁶ Aditya and Al-Fatih, "Indonesian Constitutional Rights: Expressing and Purposing Opinions on the Internet."

⁶⁷ Kikue Hamayotsu, "The Limits of Civil Society in Democratic Indonesia: Media Freedom and Religious Intolerance," *Journal of Contemporary Asia* 43, no. 4 (2013): 658–77, <https://doi.org/10.1080/00472336.2013.780471>.

⁶⁸ The Conversation, "UU ITE Dan Merosotnya Kebebasan Berekspresi Individu Di Indonesia," 2019, <https://theconversation.com/uu-ite-dan-merosotnya-kebebasan-berekspresi-individu-di-indonesia-126043>.

⁶⁹ Aditya and Al-Fatih, "Indonesian Constitutional Rights: Expressing and Purposing Opinions on the Internet."

polite and norms of decency.⁷⁰ Restrictions on freedom apply when freedom of expression on social media stimulates acts of violence that are harmful to the soul. The Indonesian Constitution also provides for restrictions, as stated in Article 28J of the 1945 Constitution. Other provisions regarding restrictions are also regulated in the provisions of Article 70 of Law Number 39 of 1999 concerning Human Rights, which reads: "... In carrying out their rights and obligations, everyone shall be subject to the restrictions provided for by law with the view of guaranteeing recognition and respect for the rights and freedoms of others and meeting just demands in accordance with considerations of morality, security and public order in a democratic society... ". Meanwhile, Article 73 states: "... The rights and freedoms provided for in this Act can only be limited by and under the Ordinance, solely to guarantee the recognition and respect for the human rights and fundamental freedoms of others, morals, public order and the interests of the nation ... ".^{71,72}

Restrictions on freedom of expression on social media are also contained in Law No. 10 of 2008 concerning Public Information Disclosure, especially regarding the existence of excluded information.⁷³ There are two important things regarding the limitation of information in this law. First, the law limits the types of public information that can be accessed. Second, the law uses the basis of "propriety and public interest" as the basic reason for the limitation of rights.⁷⁴ So, whether spreading hoaxes, harassing others, insulting, defaming others and so on, can be justified by these norms. The answer is and certainly not.

⁷⁰ Aditya and Al-Fatih.

⁷¹ Cahyono, "Pengaruh Media Sosial Terhadap Perubahan Sosial Masyarakat Di Indonesia."

⁷² Aditya and Al-Fatih, "Indonesian Constitutional Rights: Expressing and Purposing Opinions on the Internet."

⁷³ Nunuk Febriananingsih, "Keterbukaan Informasi Publik Dalam Pemerintahan Terbuka Menuju Tata Pemerintahan Yang Baik," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1, no. 1 (2012): 135–56, <https://doi.org/10.33331/rechtsvinding.v1i1.110>.

⁷⁴ Aditya and Al-Fatih, "Indonesian Constitutional Rights: Expressing and Purposing Opinions on the Internet."

Thus, it is true that freedom of expression on social media is a constitutional right that has been regulated and protected in the main legal norms, such as: 1). the 1945 NRI Constitution; and 2). General Declaration of Human Rights. That said, that doesn't mean free speech on social media is allowed to be free indefinitely. The boundaries that should be used as a reference are moral limits, regarding the value of right or wrong. The control exercised is returned to the conscience of each individual. Thus, freedom of expression on social media can be realized responsibly.⁷⁵ Apart from through internal and individual control, several strategic steps can be taken by the government and related stakeholders to be able to realize a polite society on social media.

First, restrictions on gadget ownership by age group. Whether realize it or not, the ownership of gadgets has triggered many adverse impacts on society. The increasing crime rate is triggered by easy access to spectacles that do not provide guidance. The spectacle can be very easily accessed through a gadget connected to the internet, either through personal data or wifi. Thus, the regulation of gadget ownership based on age groups, needs to be regulated more firmly and specifically. Second, restrictions on the use of social media accounts. The government is trying to include a minimum age limit of 17 years for users of social media accounts in the Personal Data Protection Act. The idea refers to the regulations provided for in the General Data Protection Regulation (GDPR) or the Personal Data Protection Act in the European Union. The GDPR sets a 16-year age limit for children to be able to consent, and be legally recognized, to enter the digital world. Under that age, under gdpr, there must be *consent* from parents. Explicitly, Indonesian legal norms also regulate the competence of children based on that age group. However, it does not specifically contain provisions containing prohibitions and conditions for the use of social media based on age groups. The policy seems complicated, but by involving

⁷⁵ Munir Fuady, *Teori-Teori Besar Dalam Hukum: Grand Theory*, 3rd Editio (Jakarta: Kencana Prenada Media Group, 2014), https://books.google.co.id/books?hl=id&lr=&id=nrJADwAAQBAJ&oi=fnd&pg=PR5&dq=paradigma+moral+dan+hukum+alam&ots=Ay_mipYkyc&sig=AL_fQhbMWFhZ6Q-dw6viRPJzd5I&redir_esc=y#v=onepage&q&f=false.

the active role of parents and good preventive education, it is not impossible that the policy will be successfully implemented in the future.

Third, blocking of social media accounts charged with SARA (*Suku* (ethnic group), *Agama* (religion), *Ras* (nations), and *Antar Golongan* (between groups)). Whether realize it or not, the politeness of the Indonesian people on social media is also influenced by the available content. Unfortunately, it is very difficult to track and report one by one those content providers. So, the government in this case may be cyber police, needs to open a *call center* or *helpdesk* aimed at receiving complaints from the public who report suspected misuse of social media. Content providers that contain SARA, including those that display pornography and pornography, can be actively reported by the public for cyber police action.

Fourth, positive content campaign. If negative content has been reported and blocked, then the virtual universe needs to be filled with good content, educational content, constructive content. Therefore, it is necessary to carry out a campaign, and it is necessary to cooperate with relevant stakeholders. The government needs to participate hand in hand to provide positive content and support several content providers that have the potential to produce good image and information for the public, such as the Good News From Indonesia (GNFI) account, Warung Sains dan Teknologi (Warstek) and so on. Educational content on social media is a booster for the creation of a polite social media ecosystem. This is a common task, not just one Ministry or Institution, but requires the role of the private sector and society in general.

Through this series of efforts, people are expected to be able to remain active in social media, realizing that social media is a basic right, but still polite and not exposed to negative viruses and the adverse effects of social media itself.

VII. CONCLUSION

There is a relationship between technological sophistication and Human Rights, namely in the context of guaranteeing the fulfillment of the right to free opinion and expression on social media. However, based on existing legal norms, such as in the UDHR, ICCPR, Johannesburg Principles, EU Convention on Human Rights, the 1945 NRI Constitution, the Human Rights Law, the IET Law and the KIP Law, freedom of opinion and expression on social media is not an absolutely free right, but can be limited. Based on these restrictions, to be able to realize a polite society on social media (both in ASEAN and EU perspective), several strategic steps are needed from the government and related stakeholders, such as: 1). Restrictions on gadget ownership based on age groups; 2). Restrictions on the use of social media accounts; 3). Blocking of social media accounts charged with SARA, pornography and pornography; 4). Positive content campaign. Moreover, the boundaries that should be used as a reference are moral limits, regarding the value of right or wrong. The control exercised is returned to the conscience of each individual. Thus, freedom of expression on social media can be realized responsibly.

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