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Legal Policy as A Legal Political Instrument in the Formation of Laws and Regulation

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Abstract

Laws and regulations are written legal norms formed by state institutions or authorized officials through procedures stipulated in laws and regulations. In its formation, laws and regulations cannot be separated from legal politics as the basic policy of the state in determining the direction, form, and content of the law to be enforced. Legal policy functions as an instrument to translate the political will of the state into binding legal norms. However, social and political dynamics often affect the legislative process so that the resulting legal products tend to reflect practical political interests and have the potential to cause legal uncertainty and low effectiveness in the implementation of laws and regulations. Based on these conditions, this study aims to analyze the role of legal policy as a political and legal instrument in the formation of laws and regulations and identify the factors that hinder the determination of legal policies in the legislation process. This study uses a descriptive normative legal research method with a legislative and conceptual approach through a literature study on primary and secondary legal materials, which are analyzed qualitatively. The results of the study show that legal policy has a strategic role in determining the substance and direction of the formation of laws and regulations to be in harmony with Pancasila and the 1945 Constitution of the Republic of Indonesia. Legal policy also serves as a guideline in the formulation of legal norms from the preparation of academic manuscripts to the establishment of regulations. However, the determination of legal policy still faces various obstacles, including the dominance of practical political interests, weak legislative planning, low quality of academic manuscripts, lack of public participation, lack of coordination between state institutions, and incompatibility with legal policies with sociological conditions of society. Therefore, it is necessary to strengthen legal policies that are oriented to the public interest in order to realize laws and regulations that are fair, with legal certainty, and responsive to the needs of the community.

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INTRODUCTION

In recent decades, the development of artificial intelligence (AI) has brought significant transformations across various dimensions of human life, ranging from the economic, educational, health, security, to governance sectors. In this regard, the existence of AI can no longer be viewed merely as a technological instrument designed to enhance efficiency and productivity. Rather, it has evolved into a system capable of influencing patterns of social interaction, shaping public opinion, and affecting decision-making processes across various domains of modern society.[1] Through its capacity for rapid data processing, predictive analysis, and machine learning, AI has enabled the development of various innovations that offer substantial benefits to human life. Nevertheless, alongside these advancements, increasingly complex legal and ethical challenges have emerged, particularly concerning the protection of citizens' fundamental rights within the digital sphere.[2]

From a human rights perspective, the development of AI is closely intertwined with the protection of freedom of speech, which constitutes one of the fundamental rights recognized and guaranteed under various national and international legal instruments. Within a democratic society, freedom of speech occupies a central position, as it enables individuals to express views, criticisms, ideas, and information without fear of intimidation or disproportionate restrictions.[3] This right is not only guaranteed under Article 19 of the Universal Declaration of Human Rights (UDHR), but also enjoys constitutional recognition within various national legal systems, including Indonesia through Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia. In the context of an increasingly digitalized society, freedom of speech has undergone a transformation in its sphere of expression, whereby social media, digital platforms, and online forums have become the primary spaces for the exchange of ideas, dissemination of information, and public participation.[4]

The utilization of AI technology within the digital sphere has expanded significantly and extensively, particularly in functions such as content moderation on social media platforms, big data analytics, information recommendation systems, and digital surveillance conducted by both state institutions and technology companies. In this regard, AI is increasingly employed by social media platforms to detect and remove content deemed to violate community standards, including hate speech, misinformation, violent propaganda, and discriminatory content. Complementing this function, AI is also utilized to analyze user behavior through the collection and processing of digital data in order to understand individual preferences, communication patterns, and broader social tendencies within society. Furthermore, within the context of contemporary governance, this technology has increasingly been integrated into facial recognition-based surveillance systems, the monitoring of digital activities, and the identification of potential threats to national security. Accordingly, the growing deployment of AI across these domains demonstrates its expanding role not merely as a technological instrument, but also as a mechanism that increasingly shapes the governance of digital spaces and the circulation of information within modern society.[5]

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[1] Isabella Banks and Leonore Ten Hulsen, "Human Rights Weekend: Artificial Intelligence, Big Data & Human Rights: Progress or Setback?", *Amsterdam Law Forum* 11, no.3 (Vrije Universiteit Amsterdam Faculty of Law, 2019): 70, ISSN 1876-8156, https://doi.org/10.37974/alf.340

[2] Agus Wibowo, 2025, Kecerdasan Buatan dalam Sistem Hukum :Menjembatani Ilmu Hukum dan teknologi lewat AI, Semarang: Yayasan Prima Agus Teknik, hlm 30

[3] Ruslan Renggong, 2021, Hak Asasi Manusia Dalam Perspektif Hukum Nasional, Jakarta Timur: Prenada Media Group, hlm. 32

[4] Pasal 28E ayat (3) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

[5] Renaldy Eka Putra, et.al, 2026, Ketika Konstitusi Bicara Ham: Dinamika Hukum Tata Negara Indonesia, Yogyakarta: CV. Edu Akademi, hlm. 80

Complementing this development, the growing integration of AI into digital spaces has also generated important concerns regarding the protection of fundamental rights, particularly freedom of speech. In this context, freedom of speech is guaranteed under Article 19 of the Universal Declaration of Human Rights (UDHR) and, within the Indonesian legal framework, is constitutionally protected under Article 28E of the 1945 Constitution of the Republic of Indonesia. In this regard, the right encompasses the freedom of individuals to express opinions, ideas, and information without fear of disproportionate or unjust restrictions and sanctions. Nevertheless, the increasing deployment of AI demonstrates that this technology may operate as a double-edged sword. On the one hand, AI contributes to the moderation of harmful and problematic content, including hate speech and misinformation, and in one breath, AI algorithms that are biased, insufficiently transparent, or excessively restrictive may result in unjust limitations on freedom of speech. At this point, such a phenomenon is commonly referred to as algorithmic censorship, whereby AI systems remove, suppress, or restrict content without fully understanding the context in which the expression is conveyed.[6]

Complementing these concerns, the utilization of AI technologies in mass surveillance practices presents an additional challenge to the protection of freedom of speech. In this regard, facial recognition systems and behavioral analytics adopted by a number of states have frequently generated a chilling effect, whereby individuals become reluctant to express their views, opinions, or criticisms due to concerns that their activities are being continuously monitored. At this point, the expansion of AI-driven surveillance mechanisms raises important questions regarding the balance between national security interests and the protection of fundamental freedoms within democratic societies. In many respects, this condition recalls the dystopian illustration portrayed by George Orwell in his novel 1984, in which pervasive surveillance operates not merely as a mechanism of control, but also as an instrument capable of shaping individual behavior and suppressing freedom of expression.[7] Accordingly, such a condition reflects a broader concern in which state practices may not only curtail individual rights, but also threaten the sustainability of democratic governance itself. Within the framework of sustainable development, freedom of speech occupies a central position, as it facilitates transparency, strengthens accountability, and enables meaningful public participation in decision-making processes. In this regard, the protection of freedom of speech cannot be separated from broader efforts to ensure inclusive and democratic governance in an increasingly digitalized society. Therefore, a more comprehensive legal assessment is required to examine and address the implications of AI for the protection of this fundamental right, particularly in ensuring that technological advancement remains compatible with democratic values, human rights principles, and the rule of law.

The development of AI is inextricably linked to the challenge of adequate regulation. As a continuously evolving technological product, AI has the potential to have impacts that transcend existing legal perspectives. In the context of freedom of expression, legal regulations based on constitutionalism are crucial to ensure that AI is utilized ethically and in accordance with human rights principles. Therefore, the constitution plays a strategic role as a foundation for

[6] Jennifer Cobbe, "Algorithmic Censorship by Social Platforms: Power and Resistance", *Philosophy & Technology* 34, no.4 (Springer Science and Business Media LLC, 2020): 739-766, ISSN 2210-5433, https://doi.org/10.1007/s13347-020-00429-0

[7] George Orwell's novel 1984 depicts a dystopian society under an authoritarian regime led by Big Brother. The state completely controls the thoughts and actions of its citizens through propaganda, mass surveillance, and language manipulation (Newspeak). Freedom of speech is completely suppressed, while human rights are violated through torture and brainwashing. The novel serves as a warning about how totalitarian power destroys individual freedom and stifles truth, relevant in the modern context where technology can be used for similar purposes. Orwell reminds us of the importance of protecting freedom and human rights from absolute state control. See Orwell, George. 1984. Yogyakarta. Bentang Pustaka, 2021.

protecting freedom of expression. However, technological developments, such as AI, often move faster than the legislative process, creating legal loopholes. For example, the lack of concrete and standardized rules regarding the transparency of AI algorithms can lead to misuse of the technology by corporations or governments. Furthermore, the imbalance between individual rights and public security agendas is becoming an increasingly complex issue in today's digital age.[8]

A comprehensive legal review is needed to address this challenge. The regulations designed must balance the protection of freedom of expression with the need to manage harmful content. Furthermore, regulations must establish accountability mechanisms for AI developers and users, including transparency in algorithmic decision-making. With this approach, AI will not only become a vehicle for innovation but also support inclusive, human rights-based sustainable development.[9]

Building on the foregoing discussion, this article seeks to examine the relationship between constitutionalism, freedom of speech, and the growing utilization of artificial intelligence within contemporary digital society. In this regard, the study is expected to contribute to both academic discourse and legal practice concerning the challenges and opportunities arising from the development of AI technologies. Accordingly, this article addresses two principal questions: first, how should the relationship between the constitution, freedom of speech, and the use of artificial intelligence in the digital era be understood? Second, what legal challenges and opportunities emerge from the implementation of artificial intelligence in relation to freedom of speech within the framework of sustainable development? To address these questions, the analysis draws upon the perspectives of Noam Chomsky and Francis Fukuyama, both of whom provide important insights into the interaction between power, freedom, and technological development. Complementing this approach, the utilization of these theoretical perspectives offers a more comprehensive analytical framework for understanding how AI, as a transformative technological force, may simultaneously create opportunities for social progress while also generating new challenges for the protection of freedom of speech and the realization of sustainable development objectives.

RESEARCH METHODS

This research aims to analyse the theoretical application of constitutional principles and human rights norms related to freedom of expression in the era of Artificial Intelligence (AI), as well as the harmonisation of legal regulations governing the use of AI within a democratic society. Therefore, this research employs normative legal research to examine legal certainty and constitutional protection concerning freedom of expression in the context of AI implementation. The research uses argumentative analysis to explain legal issues through qualitative methods. Considering that this study is a normative legal research, it focuses on analysing and processing legal materials based on the researcher interpretation of constitutional provisions, legislation, legal doctrines, and scholarly opinions relevant to freedom of expression, constitutionalism, and artificial intelligence. The analysed data are then systematically described to draw conclusions

[8] Lawrence Lessig, Protected Democracy, https://www.digitalistpapers.com/essays/protected-democracy, diakses pada 19 November 2024.

[9] Isabella Banks and Leonore Ten Hulsen, *Op.cit,* hlm. 72-73.

through inductive reasoning. The results of this research are prescriptive-analytical in nature, providing recommendations and guidance regarding the application of constitutional principles, human rights standards, and legal regulations as an effort to address legal challenges arising from the use of artificial intelligence in relation to freedom of expression and sustainable development.

ANALYSIS AND DISCUSSION

1. The Relationship Between Constitutionalism and Freedom of Speech in the Digital Era

The digital age has brought fundamental changes to the way people communicate, access information, and express ideas in public spaces. Developments in information and communication technology, particularly the internet and digital media, have created new spaces for the exercise of freedom of expression, a fundamental right in a democratic state. Freedom of expression is no longer confined to conventional physical spaces, such as public forums, print media, or academic institutions, but has expanded into the digital realm, enabling individuals to express their views quickly, broadly, and across national borders. This presents significant opportunities for strengthening public participation, increasing government transparency, and developing a more inclusive democratic discourse. However, at the same time, the digital transformation also presents new challenges to the protection of the right to freedom of expression, particularly when technological developments outpace the ability of the law to comprehensively anticipate their impacts.[10]

In this context, the constitution holds a central position as the highest normative foundation that guarantees the protection of freedom of expression and serves as a limiting instrument against actions by state and non-state actors that could potentially violate citizens' rights. In many modern democratic countries, freedom of expression is recognized as a constitutional right that not only reflects respect for human dignity but is also a primary prerequisite for the implementation of a healthy democratic system.[11] In the Indonesian context, the guarantee of freedom of expression is affirmed in Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which grants everyone the right to associate, assemble, and express opinions. This constitutional recognition indicates that the state has a legal obligation to create conditions that enable citizens to express their aspirations, criticisms, and ideas without intimidation or unlawful restrictions.[12]

However, the development of digital technology, particularly artificial intelligence (AI), has introduced new dynamics that are changing the relationship between freedom of speech and mechanisms for monitoring public expression. AI technology is currently widely used in content moderation on social media platforms, user behavior analysis, information personalization, and

[10] Chomski, Noam. *Problems of Knowledge and Freedom*: Collins, 1973. hlm. 53.

[11] Seri Mughni Sulubara, T. Saiful Basri, & Iskandar Iskandar. (2024). Analisis Konstitusional terhadap Perlindungan Hak Asasi Manusia dalam Sistem Hukum Indonesia. *Jurnal Kabar Masyarakat*, *2*(4), 198211. https://doi.org/10.54066/jkb.v2i4.2653

[12] Pasal 28E ayat (3) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

digital surveillance systems implemented by governments and global technology companies.[13] The presence of AI offers significant benefits in managing the vast flow of information, particularly in detecting hate speech, the spread of disinformation, extremist propaganda, and other forms of digital content deemed harmful to the public interest. However, the use of AI in managing digital public spaces also raises complex legal and ethical issues, particularly when algorithmic systems begin to automatically determine the boundaries of freedom of expression without direct human involvement.[14]

Within a theoretical framework, the thought of Noam Chomsky, as articulated in *Problems of Knowledge and Freedom*, provides a critical foundation for understanding the challenges facing freedom of speech in the digital era. In this regard, Chomsky emphasizes that intellectual freedom constitutes a fundamental pillar of democratic life that must be protected from various forms of domination and concentrations of power. According to Chomsky, a democratic society can only develop in a healthy manner when individuals possess the freedom to think independently, question established authority, and express criticism toward existing power structures without fear of repression. Complementing this perspective, intellectual freedom is not merely confined to the freedom to speak, but also encompasses the freedom to acquire knowledge, access information, and cultivate critical awareness of social and political realities. Accordingly, the protection of freedom of speech must be understood within a broader framework of intellectual autonomy, as restrictions on access to information and the circulation of ideas may ultimately undermine the democratic values upon which an open society depends.[15]

Chomsky further argues that freedom of expression is constantly threatened by external forces seeking to control the formation of public opinion. These threats come not only from repressive or authoritarian governments, but also from economic powers, large corporations, and the mass media, which have the ability to shape the dominant narrative in society.[16] In the contemporary context, Chomsky's argument becomes even more relevant as AI-based digital platforms wield immense power in determining what information internet users can see, promote, or even restrict. Social media algorithms serve not only as technical tools for filtering content, but also as instruments capable of shaping public preferences, influencing political behavior, and determining the direction of broader social discourse.[17]

Chomsky's perspective provides an understanding that threats to freedom of expression in the digital age do not always come in the form of direct censorship by the state, but can emerge through more subtle and invisible control mechanisms, such as algorithmic filtering or data-driven censorship. In many cases, AI systems are used to remove or restrict certain content based on technical parameters that are not always transparent to users. This situation raises serious

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[13] Mecca, A. S. P., Aznul Hidaya, W., & Tuasikal, H. (2025). Pemanfaatan Teknologi Kecerdasan Buatan (Artificial Intelligence) Dalam Sistem Peradilan Pidana di Indonesia. Jurnal Sosial Teknologi, 5(6), 17301746. https://doi.org/10.59188/jurnalsostech.v5i6.32207

[14] Kirana, et.al, Tantangan Regulasi Kecerdasan Buatan (AI) dalam Perspektif Hukum Perlindungan Data Pribadi di Indonesia, *Cerdika: Jurnal Ilmiah Indonesia*, 2025, v. 5, n. 6, p. 1807, doi. 10.59141/cerdika.v5i6.2711

[15] Noam Chomsky, Problems of Knowledge and Freedom, *Philosophy* 48.184 (1973).

[16] *Ibid.*

[17] Fatmawati, F., Alisyahbana , A. N. Q. A., & Nurbayani, S. U. (2025). Digital Monopoly: Unveiling The Dynamics Of Market Power And The New Era Of Economic Regulation. *Penerbit Tahta Media*. Retrieved from http://tahtamedia.co.id/index.php/issj/article/view/1773

accountability issues because the public is often unaware of the reasons behind the removal of content or the restriction of digital accounts. In a democratic state governed by the rule of law, any restrictions on the right to freedom of expression must comply with the principles of legality, proportionality, and be openly accountable.[18]

From the perspective of constitutionalism, these challenges demonstrate that the function of the constitution as a safeguard of freedom of speech must evolve in response to contemporary societal transformations. In this regard, the constitution can no longer be understood merely as an instrument for limiting the exercise of state power, but must also be capable of responding to emerging forms of power exercised by global technology corporations and algorithm-driven digital systems. Complementing this development, the increasing influence of digital platforms in shaping the circulation of information, public discourse, and individual behavior has generated new constitutional concerns regarding accountability, transparency, and the protection of fundamental rights. Accordingly, the contemporary relevance of constitutionalism lies not only in constraining governmental authority, but also in ensuring that new configurations of digital power operate in a manner consistent with democratic values, human rights principles, and the protection of freedom of speech.

Meanwhile, Francis Fukuyama, in *Liberalism and Its Discontents*, likewise emphasizes the importance of protecting freedom of speech within the framework of constitutional liberalism. In this regard, Fukuyama argues that liberal constitutional systems frequently confront a persistent tension between safeguarding individual liberty and preserving social stability. Complementing this perspective, the rapid expansion of digital technologies has further complicated this relationship, particularly as digital platforms have become the primary spaces for the dissemination of information, public deliberation, and political participation. At this point, constitutional frameworks are required not only to guarantee the protection of freedom of speech as a fundamental right, but also to provide a normative basis for addressing the adverse consequences of digital communication, including hate speech, disinformation, and online radicalization.[19] Accordingly, the challenge facing contemporary constitutionalism lies in maintaining a proportionate balance between the protection of individual freedoms and the pursuit of legitimate public interests, without undermining the democratic values that constitute the foundation of a liberal society.

Nevertheless, significant challenges emerge when constitutional interpretation is required to respond to novel circumstances created by the rapid development of digital technologies. In this regard, constitutional guarantees of freedom of speech are often formulated within a legal framework that predates the emergence of algorithm-driven digital environments. For instance, Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia explicitly guarantees freedom of expression as a fundamental constitutional right, yet provides limited guidance regarding its application to contemporary issues such as AI-assisted content moderation on digital platforms. Complementing this concern, the increasing role of AI systems in regulating the visibility, dissemination, and accessibility of information has generated new constitutional

[18] Muhammad Dimas Anugrah, Peran Teknologi AI dalam Mengembangkan Algoritma Media Sosial: Tantangan dan Peluangnya, Vol. 3 No. 2 (2024): Komunikan: Jurnal Komunikasi dan Dakwah https://doi.org/10.30993/jurnalkomunikan.v3i2.482

[19] Fukuyama, F. (2022). *Liberalism and its discontents*. Profile Books. hlm. 99-100.

questions that cannot be adequately addressed through conventional legal interpretations alone. Accordingly, this situation gives rise to a regulatory gap that necessitates the development of more specific legislative instruments and policy frameworks capable of ensuring that technological governance remains consistent with constitutional principles, democratic values, and the protection of fundamental rights.

Complementing Chomsky's perspective on intellectual freedom, the development of digital technologies, particularly AI, has created new avenues through which individuals may exercise and expand their freedom of expression. In this regard, AI may be understood as a technological instrument capable of broadening access to information, facilitating the exchange of ideas, and enabling participation in public discourse on a scale previously unimaginable. Such developments are broadly consistent with Chomsky's conception of a democratic society, in which individuals are afforded the opportunity to acquire knowledge, engage in critical reflection, and participate meaningfully in the formation of public opinion.

Nevertheless, Chomsky would also caution against the concentration of power embedded within technological systems, particularly when AI is utilized as a mechanism for controlling the flow of information. At this point, the use of AI to filter content, prioritize certain narratives, or restrict access to particular viewpoints raises significant concerns regarding the preservation of intellectual freedom and democratic deliberation. Accordingly, while AI possesses the potential to strengthen freedom of speech by expanding the circulation of information, it simultaneously creates new risks whereby technological infrastructures may be employed to shape, constrain, or even suppress the diversity of ideas available within the public sphere.

In contrast, Fukuyama highlights the risks that arise from unregulated freedom. In Liberalism and Its Discontents, he argues that technology, if left unchecked, can undermine liberal values themselves. AI algorithms designed to increase engagement on social media, for example, often prioritize sensational or controversial content. This can create extreme social polarization and endanger societal cohesion, a situation Fukuyama considers contrary to the principle of stability in liberalism.[20] For example, AI in social media is often used for content moderation. On the one hand, this technology can help remove content containing hate speech, violence, or pornography. However, on the other hand, algorithmic bias often results in the removal of legally valid but politically unpopular or controversial content. This creates "algorithmic censorship" that not only limits free speech but also reduces the diversity of views in public discourse.[21]

A relevant illustration of this concern can be found in the practice of content moderation on digital platforms such as Facebook, X (formerly Twitter), and YouTube. In this regard, AI-driven algorithms are increasingly utilized to detect, evaluate, and remove content deemed inconsistent with community standards and platform policies. On the one hand, such mechanisms have proven effective in limiting the dissemination of harmful content, including hate speech, terrorist propaganda, and other forms of expression that may threaten public safety or social cohesion. Nevertheless, the growing reliance on algorithmic decision-making has also generated significant concerns regarding the protection of freedom of speech. Numerous instances have

[20] *Ibid.*

[21] Jennifer Cobbe, *Op.cit*, hlm. 740.

demonstrated that legitimate content may be removed, restricted, or rendered less visible as a consequence of algorithmic errors, contextual misunderstandings, or biases embedded within AI training data.[22]

Chomsky might criticize this phenomenon as a form of hidden discourse control, where moderation decisions are made by a system that is opaque and unaccountable. He would emphasize that such moderation can silence voices critical of dominant powers, whether states or corporations.[23] Meanwhile, Fukuyama would approach this issue as a broader challenge of maintaining an appropriate balance between individual liberty and the need to preserve social order within democratic societies. In this regard, he emphasizes the importance of establishing clear and transparent regulatory frameworks to ensure that AI algorithms do not undermine fundamental liberal values, including inclusivity and pluralism. For instance, regulations requiring greater transparency in algorithmic design and providing effective appeal mechanisms for users whose content has been removed may serve as important safeguards in addressing these concerns.[24]

Taken together, the perspectives advanced by Noam Chomsky and Francis Fukuyama provide valuable insights for understanding the relationship between constitutionalism, freedom of speech, and the development of AI technologies. In this regard, Chomsky emphasizes the importance of safeguarding intellectual freedom from emerging forms of technological control that may restrict access to information and limit the diversity of ideas within the public sphere. Meanwhile, Fukuyama highlights the necessity of establishing appropriate regulatory mechanisms to maintain a balance between individual liberty and social stability within democratic societies. Accordingly, within the context of the digital era, the constitution continues to serve as a fundamental normative framework for protecting freedom of speech. Nevertheless, the increasing integration of AI into various aspects of social life requires the development of regulatory frameworks that are adaptive, transparent, and grounded in human rights principles in order to ensure that freedom of speech is not merely preserved, but also strengthened in a manner consistent with democratic values and the broader objectives of sustainable development.

2. The Legal Challenges of Artificial Intelligence in Protecting Freedom of Speech

The development of artificial intelligence (AI) has brought about major transformations in various aspects of life, including freedom of expression, a fundamental human right. However, this technology also poses significant legal challenges, particularly regarding the potential for AI abuse in the form of excessive censorship, algorithmic discrimination, and threats to user privacy and data security.[25] From a Lockean perspective, freedom of speech should be understood as a natural right that is indispensable to the development of a rational and civilized society. In this regard, John Locke maintained that the free exchange of ideas and opinions constitutes an essential condition for the pursuit of truth and the establishment of legitimate government. Within

[22] *Ibid.*
[23] Noam Chomsky, *Op.cit*, hlm. 54-60.
[24] Francis Fukuyama, *Op.cit*, hlm. 99-110.
[25] Lawrence Lessig, *Op.cit*.

the context of AI, however, Locke would likely argue that algorithmic censorship may undermine this principle, particularly because automated systems do not always possess the capacity to adequately comprehend the social, cultural, and political context in which a particular expression is conveyed.[26]

As discussed previously, Noam Chomsky has consistently adopted a skeptical stance toward concentrations of power that seek to restrict freedom of speech through the control of public discourse. In this regard, AI-driven content moderation systems frequently operate in a manner that lacks transparency, whereby content that is legally permissible may nevertheless be removed or restricted because it is deemed inconsistent with algorithmic standards. Chomsky would likely regard such practices as a form of control that threatens both intellectual freedom and pluralism within democratic society. Complementing this concern, algorithmic censorship often gives rise to systemic biases, particularly against minority groups that remain underrepresented within AI training datasets.[27]

Chomsky emphasizes that control over information constitutes a crucial element in the preservation of freedom. In this regard, privacy within the digital era may be understood as an essential safeguard against excessive forms of control and surveillance. Complementing this perspective, the utilization of AI for the large-scale collection and processing of user data, whether through surveillance systems or automated decision-making mechanisms, has the potential to generate a chilling effect. As a consequence, individuals may become reluctant to express their opinions freely due to concerns that their personal data are being monitored or potentially utilized for repressive purposes. Within Chomsky's framework, therefore, privacy constitutes a fundamental prerequisite for ensuring the effective protection of freedom of speech.[28]

The challenge of liberalism in the face of technology that magnifies inequality. Algorithmic discrimination generated by AI not only limits freedom of speech but also exacerbates inequalities in access to information and political influence. For example, social media algorithms tend to prioritize popular or economically advantageous content, thus limiting exposure to alternative opinions that are essential in a democratic society. Fukuyama would criticize the lack of regulation to ensure algorithmic fairness, which he views as a threat to the fundamental values of liberalism.[29]

Issues concerning user privacy and data security constitute a major concern in the utilization of AI, particularly in relation to the protection of freedom of speech. In this regard, Fukuyama's emphasis on the importance of individual rights, including rights associated with property and personal autonomy, suggests that personal data should be afforded robust legal protection against arbitrary interference. Accordingly, where user data are misused by digital platforms or accessed without proper authorization by state authorities, such practices may amount to a violation of fundamental individual rights that Fukuyama regards as indispensable and irreplaceable.[30]

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[26] Copleston, Frederick. (2021). Filsafat John Locke. Yogyakarta: Basabasi.

[27] Noam Chomsky, *Op.cit*, hlm. 54-55.

[28] *Ibid.*

[29] Francis Fukuyama, *Op.cit*, hlm. 99-110.

[30] *Ibid.*

Viewing this issue from a liberal perspective, which requires a balance between individual freedom and social stability, he criticized overly lax regulations on large technology companies, which often exploit user data for commercial gain without adequate accountability. However, he also warned that overly strict regulations could create state surveillance that threatens individual freedom. In this context, Fukuyama called for a legal perspective that places control of data in the hands of individuals and limits the power of both the state and corporations over personal information.[31]

The rapid development of generative AI has given rise to a range of legal challenges that directly affect the exercise of freedom of speech and the governance of digital technologies. In this regard, generative AI systems are capable of producing highly realistic texts, images, and videos, including deepfakes, thereby raising complex questions concerning the attribution of legal responsibility among algorithm developers, users, and digital platforms involved in the dissemination of such content. Complementing this concern, major technology companies increasingly rely on AI-driven systems to moderate content and prevent the spread of hate speech and other harmful forms of expression. Nevertheless, these systems frequently operate through algorithms that may be biased, insufficiently transparent, or excessively restrictive, creating the risk of unjustified censorship against lawful forms of expression and consequently undermining freedom of speech. Furthermore, the training of AI models often involves the use of copyrighted materials without explicit authorization, giving rise to ongoing legal debates concerning the appropriate balance between the protection of intellectual property rights and the use of data for expression, innovation, and technological development. At the same time, the absence of legal personality on the part of AI systems creates additional challenges in determining accountability for unlawful conduct, including defamation, the dissemination of false information, and acts of provocation, as AI itself cannot be held legally responsible for such violations.[32]

From the discussion above, there are several important lessons that can be learned to respond to legal challenges in the use of AI and freedom of expression. First, regarding censorship by AI, regulations are needed that ensure transparency and accountability in content moderation algorithms. Chomsky agrees that disproportionate censorship violates the natural human right to free speech and discussion; second, regarding algorithmic discrimination, it is important to adopt standards of inclusivity in algorithm design. From Fukuyama's perspective, this will help reduce inequality and ensure that all groups of society receive fair treatment in the digital space.[33]

Third, with regard to privacy and data security, robust regulatory frameworks are required to protect user data as an important component of individual rights and intellectual freedom. In this regard, such regulations must be carefully designed to ensure that mechanisms intended to protect personal data do not simultaneously evolve into instruments of state control that disproportionately restrict freedom of speech. Fourth, from the perspective of global governance, the transnational nature of AI technologies necessitates international cooperation in establishing

[31] *Ibid.*

[32] Mas'ud, F., Jeluhur, H., Negat, K., Tefa, A., Uly, M., & Amtiran, M. (2025). Etika Dalam Media Sosial Antara Kebebasan Ekspresi Dan Tanggung Jawab Digital. *Jimmi: Jurnal Ilmiah Mahasiswa Multidisiplin*, *2*(2), 235-246. https://doi.org/10.71153/jimmi.v2i2.289

[33] Jennifer Cobbe, *Op.cit*, hlm. 739-766

universal principles governing their development and utilization. Accordingly, such cooperation is essential to prevent the misuse of AI technologies by authoritarian governments or multinational corporations seeking to exploit regulatory gaps across different jurisdictions.[34]

Accordingly, the development of AI presents significant legal challenges to the protection of freedom of speech within contemporary digital society. In this regard, issues such as excessive censorship, algorithmic discrimination, and violations of privacy rights have emerged as some of the most pressing concerns requiring comprehensive and balanced legal responses. Building on the perspectives discussed above, it becomes evident that freedom of speech should not be understood merely as a technical issue arising from the operation of digital technologies, but rather as a deeply philosophical, political, and constitutional question concerning the distribution of power and the protection of individual liberty. Accordingly, regulatory frameworks governing AI must be designed in a manner that safeguards fundamental rights without disregarding legitimate interests in maintaining social stability and public order. Only through such an approach can AI function as a technological instrument that strengthens, rather than undermines, human freedom within an increasingly digitalized society.

CONCLUSION

The development of artificial intelligence (AI) has brought about significant changes in social and political life, including in how freedom of expression is practiced and protected. On the one hand, AI offers the potential to expand democratic space through broader access to information and more inclusive public discourse. However, on the other hand, this technology presents risks such as excessive censorship, algorithmic discrimination, and threats to privacy and data security. Therefore, it is crucial to integrate constitutionally based legal regulations with the development of AI technology. The Constitution, as the supreme foundation for human rights protection, must be the primary normative perspective in regulating the use of AI, ensuring that the right to freedom of expression is respected. A constitutionally based approach will help strike a balance between technological innovation and the protection of democratic values.

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