

Freedom of Expression as a Constitutional Right in Indonesia and Madagascar

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Abstract

Freedom of expression is a fundamental human right that must be protected. Indonesia and Madagascar have integrated such right into their constitution. However, they still face challenges in implementing it effectively. This paper is a comparative study between Indonesia and Madagascar regarding the legal framework of the right to freedom of expression. The author uses a legal doctrinal method tailored through comparative analysis with secondary data. The study reveals that while both countries constitutionally and internationally commit to protecting freedom of expression, their lower-level legal frameworks such as Indonesia's ITE Law, and the New Criminal Code, and Madagascar's Cybercrime Law introduce limitations that may undermine constitutional guarantees. In practice, violations and restrictions persist in both countries, revealing a gap between legal norms and actual enforcement. Nevertheless, from a normative and institutional perspective, each legal system offers lessons for the other. Indonesia's institutions such as the Press Council, Kominfo, and the Virtual Police, and Madagascar's ANRCM, CIRGN, and OJM play crucial roles in monitoring and applying these laws, though improvements remain necessary. Notably, Madagascar's prohibition of government censorship and decriminalisation of press offences through its constitution provide valuable reform insights for Indonesia, whereas Indonesia's Law No. 39 of 1999 could serve as a model for Madagascar to strengthen the application of its constitutional protection of freedom of expression.

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Introduction

The right to freedom of expression is a fundamental pillar of democratic nations, serving as a cornerstone of individual liberties and the free exchange of ideas. Its historical evolution encompasses centuries and has been shaped by the search for the truth, the promotion of democracy, individual self-fulfilment, and the beginning of a broader vision of freedom of expression.¹ This notion acquired more traction during crucial moments such as the American and French Revolutions, leading to its inclusion in foundational documents like the U.S. Bill of Rights and the French Declaration of the Rights of Man and of the Citizen.²

The universality of the right to freedom of expression transcends borders and cultures, underscored by its recognition as a universal human right. It also transcends time and technology (e.g., Due to the advancement of technology, the right to internet access has become one aspect of freedom of expression).³ International instruments, notably the Universal Declaration of Human Rights (UDHR) adopted by the United Nations in 1948, explicitly affirm this universality; "Everyone has the right to freedom of thought, conscience, and expression."⁴ This concept has been solidified in legally binding treaties such as the International Covenant on Civil and Political Rights (ICCPR)⁵ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁶

Within this broader legal and historical context, the theory of constitutionalism provides the normative foundation through which freedom of expression is institutionalised and protected at the domestic level. Constitutionalism requires that state power be limited by law and exercised in accordance with fundamental rights, including freedom of expression as an essential element of democratic governance. Scholars have emphasised that constitutional guarantees of expression enable the formation of public opinion, facilitate political participation, and sustain democratic deliberation.⁷ In this sense, freedom of expression operates not only as an individual liberty but also as a structural component of democratic systems. Ronald Krotoszynski explained that constitutional systems across different jurisdictions have consistently treated freedom of expression as a foundational value, even though its interpretation varies according to historical and cultural contexts.⁸ This variation reflects the

¹ Andrew T. Kenyon, "Democratic Freedom of Expression and Disinformation," in *Disinformation, Misinformation, and Democracy: Legal Approaches in Comparative Context*, ed. András Koltay et al. (Cambridge University Press, 2025), <https://doi.org/10.1017/9781009373272.005>.

² For further understanding, see Ioanna Tourkochoriti, *Freedom of Expression: The Revolutionary Roots of American and French Legal Thought* (Cambridge University Press, 2021).

³ Andriy Voytsikhovskyy et al., "The Right of Access to the Internet as Fundamental Human Right Given the Development of Global Information Society," *State and Telecommunications Law Review* 13, no. 1 (2021): 1–19, <https://doi.org/10.26512/lstr.v13i1.30904>.

⁴ Article 19 of Universal Declaration of Human Rights, 1948.

⁵ Article 19 of International Covenant on Civil and Political Rights, 1966.

⁶ Article 15(3) of International Covenant on Economic, Social and Cultural Rights, 1966.

⁷ Francisco José Chaux Donado, "I Don't Believe in What They Say! But i Will Defend Their Right to Say It. A Reflection on the Constitutional and Human Rights Importance of Freedom of Expression," *Vniversitas* (Colombia) 68, no. 139 (2019): 1–20, <https://doi.org/10.11144/Javeriana.vj139.ncel>.

⁸ Ronald J. Krotoszynski, "Consensus, Conflict, and Complementarity: A Global Perspective on the Freedom of Expression," in *Comparative Constitutional Theory* (Edward Elgar Publishing, 2025), <https://doi.org/10.4337/9781035306411.00018>.

adaptability of constitutionalism, which allows states to respond to specific societal conditions while maintaining adherence to fundamental rights.⁹ At the same time, constitutionalism ensures that the protection of this right is not left to political discretion, but is secured through binding legal norms and institutional safeguards.¹⁰

Constitutionalism also provides the framework for balancing freedom of expression with other legitimate societal interests, recognising that this right is not absolute.¹¹ Courts play a central role in this process by interpreting constitutional provisions and applying principles such as proportionality and necessity when assessing restrictions on expression.¹² This balancing function has become increasingly important in contemporary contexts, where issues such as disinformation, hate speech, and digital communication raise complex regulatory challenges.¹³ Constitutional frameworks further allow for the evolution of freedom of expression in response to technological developments, including the recognition of digital rights and the regulation of online spaces.¹⁴ Judicial oversight strengthens this protection by ensuring that any limitations imposed by the state remain consistent with constitutional standards and are subject to review.¹⁵ Through these mechanisms, constitutionalism maintains a structured balance between the protection of expressive freedoms and the regulation of competing interests within the rule of law.¹⁶

⁹ Adrienne Stone et al., "The Comparative Constitutional Law of Freedom of Expression in Asia," in *Comparative Constitutional Law in Asia* (Edward Elgar Publishing, 2014), <https://doi.org/10.4337/9781781002704.00017>.

¹⁰ Novendri M. Nggilu et al., "Abusive Constitutional Court: Dysplasia and the Destructive Power of Constitutional Court Decisions," *Estudios Constitucionales: Revista Del Centro de Estudios Constitucionales*, *Estudios Constitucionales: Revista Del Centro de Estudios Constitucionales* 22, no. 2 (2024): 2; Novendri M. Nggilu et al., "Constitutional Crisis - Crisis Constitucional: Intensifying Disobedience to the Decisions of the Indonesian Constitutional Court," *Revista Chilena de Derecho* 50, no. 2 (2023): 115–32; Hendri Khuan et al., "Customary Law in Modern Legal Systems: Lessons from Indonesia and South Africa," *Novum Jus* 19, no. 2 (2025): 77–103, <https://doi.org/10.14718/NovumJus.2025.19.2.3>; Yovita Arie Mangesti et al., "Term Limitation of Indonesian Parliamentarians Seen from Constitutionalism," *Revista de Investigações Constitucionais* 11 (November 2024): e263, <https://doi.org/10.5380/rinc.v11i2.91104>.

¹¹ Ahmad Ahmad et al., "Antara Otoritas dan Otonomi : Pertautan Hak Asasi Manusia dalam Praktik Eksekusi Putusan PTUN: Perlindungan HAM dalam Eksekusi Upaya Paksa Terhadap Putusan Peradilan Tata Usaha Negara," *Jurnal Konstitusi* 21, no. 3 (2024): 3, <https://doi.org/10.31078/jk2133>.

¹² Theo Tsomidis, "Freedom of Expression in Turbulent Times – Comparative Approaches to Dangerous Speech: The ECtHR and the US Supreme Court," *The International Journal of Human Rights* (Europa Institute, Leiden University Law School, Leiden, Netherlands) 26, no. 3 (2022): 379–99, <https://doi.org/10.1080/13642987.2021.1928084>.

¹³ Ana Beatriz Venancio Alevi et al., "Fake News: Between Censorship and Freedom of Expression," *Sortuz: Oñati Journal of Emergent Socio-Legal Studies* (Graduanda do Curso de Direito da Fundação Educacional, SP, Fernandópolis, Brazil) 15, no. 1 (2025): 5–21, <https://doi.org/10.35295/sz.iisl/2267>.

¹⁴ Isabel Serrano Maíllo, "The Necessary Constitutional Guarantee of Digital Rights in the Information Age," *Teoría y Realidad Constitucional* (Universidad Complutense de Madrid), no. 56 (November 2025): 463–83, <https://doi.org/10.5944/trc.56.2025.47061>.

¹⁵ Devansh Kaushik and Vasu Aggarwal, "Internet Suspensions and Separation of Powers: Changing the Equation," *Commonwealth Law Bulletin* (National Law School of India University, Bangalore, India) 47, no. 2 (2021): 214–30, <https://doi.org/10.1080/03050718.2020.1834423>.

¹⁶ Ahmad Ahmad, "Analysis of Abuse of Authority by Government Apparatus in the State Administrative Legal System," *International Journal of Constitutional and Administrative Law* 1, no. 1 (2025): 69–83, <https://doi.org/10.66502/v2wdah74>.

As signatories of the above legally binding treaties, Indonesia and Madagascar are mandated to respect, uphold, and protect the right to freedom of expression. Indeed, both countries have established freedom of expression as a constitutional right, elevating it to the highest level of legal protection. On the one hand, Indonesia explicitly recognises the right to freedom of expression in Article 28E Paragraph (3) of the 1945 Constitution of the Republic of Indonesia ("1945 Constitution"); "Every person shall have the right to the freedom to associate, to assemble, and to express opinions."¹⁷ On the other hand, Madagascar recognises the right to freedom of expression in Article 11 of the 2010 Constitution of the Republic of Madagascar ("2010 Constitution"); "Freedoms of opinion and expression, communication, press, association, assembly, movement, conscience and religion are guaranteed to everyone (...)."¹⁸

It is essential to mention that this constitutional recognition of the right to freedom of expression safeguards individuals from government interference and ensures the free flow of information and ideas. However, such right is constitutionally delimited by restrictions and obligations, balancing freedom of expression and societal interests (e.g., conflict between the right to freedom of expression and right to reputation).¹⁹ This can be seen in Article 28J Paragraph (2) of the 1945 Constitution, "In exercising their rights and freedoms, every person shall be subject to any restrictions established by law solely for the purpose of ensuring the recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, religious values, security, and public order in a democratic society," and Article 11 of the 2010 Constitution, "(...) and can only be limited by respect for the freedoms and rights of others and by the imperative of safeguarding public order, national dignity and State security." Nevertheless, Indonesia and Madagascar still face challenges balancing the right to freedom of expression control since the government's restrictions can sometimes be excessive and arbitrary.

In Indonesia, the New Criminal Code has been strongly criticised by journalists as it contains criminal provisions deemed detrimental to freedom of expression, which may lead to arrests and prosecutions. This has raised concerns among Indonesian people, especially journalists, as it hindered free speech and democratic principles. Research conducted by Peiroll Gerard Notanubun has found that regulations related to freedom of expression in Indonesia are still inconsistent with the needs of Indonesian society as the law-making process uses the up-down system instead of the bottom-up system.²⁰ Moreover, research conducted by Adya Paramita Prabandari has emphasised that the factors of the imbalance of freedom of expression in Indonesia are the digital natives' lack of understanding of what is allowed and should not/is prohibited to be written,

¹⁷ Constitution of Republic of Indonesia 1945.

¹⁸ Constitution of Republic of Madagascar 2010.

¹⁹ Stijn Smet, "Freedom of Expression and the Right to Reputation: Human Rights in Conflict," *American University International Law Review* 26 (2011): 183-236.

²⁰ Peiroll Gerard Notanubun, "Tinjauan Yuridis Terhadap Kebebasan Berbicara Dalam Ketentuan Pasal 27 Ayat 3 Uu Nomor 11 Tahun 2008 Tentang ITE Dalam Hubungan Dengan Pasal 28 UUD 1945," *Mimbar Keadlian*, 2014, 111-20.

uploaded, or disclosed in cyberspace; and the lack of supervision by the Government of Indonesia on various content in cyberspace.²¹

In Madagascar, government authorities have censored independent media (e.g., MBS, IBC and Real TV in 2021)²² and prohibited outdoor political reunions for the opposition party while permitting the pro-government.²³ Such a phenomenon raises concerns about the country's legal protection of the right to freedom of expression. Research conducted by Princy Tsarah Razafimamonjy has found that there is an abuse of power in the law-making process of the regulations related to freedom of expression in Madagascar, as they tend to favour the government in power.²⁴ Furthermore, research conducted by Khesya Danielle Zinahasina has emphasised that there is great control of the Ministry of Communication, or even the government, in publishing information in public channels to avoid revealing the country's reality in broad daylight.²⁵ This situation strongly hindered the right to freedom of expression.

As a justification of the comparative study between Indonesia and Madagascar, an empirical observation of the Freedom House²⁶ from 2017 to 2025 shows that both Indonesia and Madagascar experienced noticeable fluctuations of their freedom score and being both labelled “partly free”, with an overall downward tendency in recent years (see Figure 1). Indonesia's score declined gradually from 65 in 2017 to 56 in 2025, indicating a consistent reduction in the level of civil liberties over time, without any significant recovery during the period observed. In contrast, Madagascar maintained a stable score of 56 between 2017 and 2019, followed by an increase to 61 in 2020 and again between 2022 and 2023, suggesting periods of relative improvement; however, this upward trend was not sustained, as the score dropped to 58 in 2024 and further to 55 in 2025. While Indonesia demonstrates a steady decline, Madagascar reflects a more volatile pattern, combining temporary improvements with subsequent regression. These developments suggest that both countries continue to face ongoing challenges in maintaining stable and effective protection of civil liberties, including freedom of expression, despite their constitutional recognition of such rights.²⁷ The data provides a useful empirical basis to examine how constitutional guarantees operate in practice and how different legal and institutional contexts may

²¹ Adya Prabandari, “Digital Natives and Freedom of Speech on Social Media in Indonesia,” *Proceedings of The International Conference on Environmental and Technology of Law, Business and Education on Post Covid 19, ICETLAWBE 2020, 26 September 2020, Bandar Lampung, Indonesia, 2020*, <https://doi.org/10.4108/eai.26-9-2020.2302572>.

²² Laure Verneau, “Le Gouvernement Malgache Interdit Neuf Émissions de Radio Pendant 15 Jours,” *RFI*, 2021.

²³ La Redaction, “Madagascar : L'Etat Interdit Les Réunions Politiques En Plein Air de Tous Les Partis,” *Linfo.Re*, n.d.

²⁴ Princy Tsarah Razafimamonjy, “La Liberté Des Médias à Madagascar: Entre Règlementation, Régulation et Autorégulation” (Master Thesis, Université d'Antananarivo, 2018).

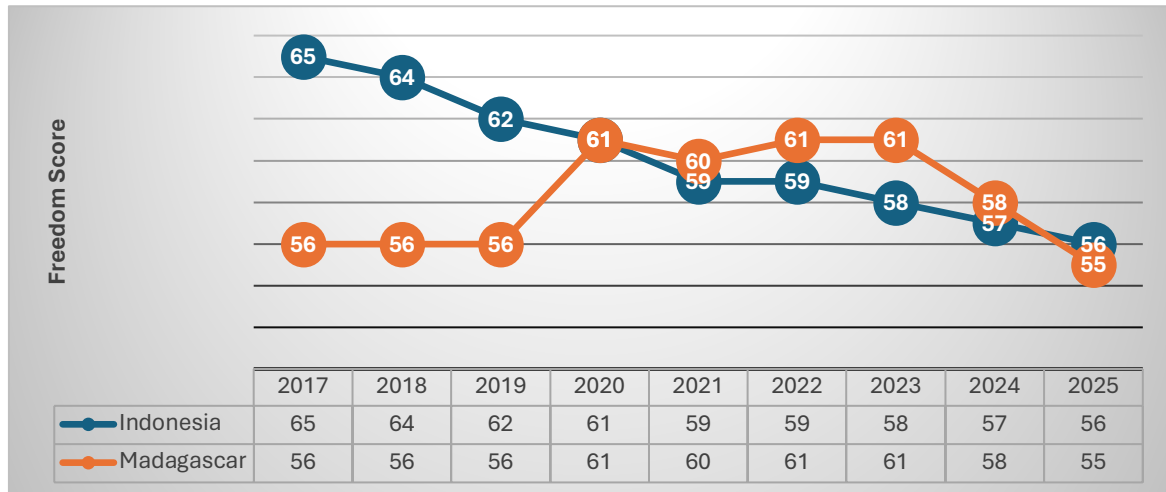
²⁵ Khesya Danielle Zinahasina, “La Liberté de Presse” (Master Thesis, Université d'Antananarivo, 2017).

²⁶ Freedom House is an independent, non-governmental organisation based in the United States that conducts research and advocacy on democracy, political freedom, and human rights worldwide. It was established in 1941 and is widely known for its annual reports, particularly the Freedom in the World report, which evaluates the level of political rights and civil liberties in countries across the globe.

²⁷ Apriyanto Nusa et al., “Ius Constituendum on the Doctrine of Unlawful Nature in the Law on the Eradication of Corruption After the Constitutional Court Decision Number 003/PUU-IV/2006,” *JURNAL LEGALITAS* 17, no. 2 (2024): 2, <https://doi.org/10.33756/jelta.v17i2.27960>.

influence the protection and limitation of freedom of expression in Indonesia and Madagascar.

Figure 1. Freedom Score of Indonesia and Madagascar (2017-2025)



Source: Processed data from Freedom House²⁸

Previous studies have analysed the protection of freedom of expression between Indonesia and other countries through a range of comparative approaches, primarily focusing on constitutional interpretation and human rights implementation. In 2021, Herlambang P. Wiratraman and Sébastien Lafrance compared Indonesia and Canada, demonstrating that despite differing legal traditions, both jurisdictions shared similarities in interpreting and applying freedom of expression, particularly in cases involving hate speech, artistic expression, and language rights. Their study further showed that multicultural contexts and adherence to the rule of law influenced how expressive freedoms were exercised and limited in practice.²⁹ Building on broader human rights comparisons, in 2024, Agus Suharsono examined Indonesia and Germany and found that Germany’s stronger institutional framework and legal culture enabled more effective protection of fundamental rights, whereas Indonesia continued to face structural and societal challenges. The study emphasised the need for legal reform and institutional strengthening in Indonesia to enhance the implementation of human rights protections.³⁰ Expanding the scope to specific forms of expression, in 2025, Nurul Aisahrani et al. compared Indonesia with Iran and the United States, revealing that Indonesia exhibited patterns of restriction similar to more controlled regimes due to vague legal provisions, while the United States provided stronger constitutional safeguards for artistic expression. Their findings highlighted the inconsistency of Indonesia’s legal framework and its vulnerability to restrictive

²⁸ Freedom House, “Freedom in the World Score,” 2025, <https://freedomhouse.org/country/scores?type=fofn>.

²⁹ Herlambang Perdana Wiratraman and Sébastien Lafrance, “Protecting Freedom of Expression in Multicultural Societies: Comparing Constitutionalism in Indonesia and Canada,” *Yuridika* 36, no. 1 (2021): 75–120, <https://doi.org/10.20473/ydk.v36i1.24032>.

³⁰ Agus Suharsono, “Comparative Study of Human Rights Protection: An Analysis between Germany and Indonesia,” *Indonesian Comparative Law Review* 7, no. 1 (2024): 26–45, <https://doi.org/10.18196/iclr.v7i1.24224>.

interpretation.³¹ Similarly focusing on a specific dimension of expressive freedom, in 2026, Ramalina Ranaivo Mikea Manitra et al. analysed Indonesia's regulation of online defamation and argued that its piecemeal legal reforms had led to disproportionate reliance on criminal sanctions, recommending a shift towards civil remedies in line with international human rights standards such as the ICCPR.³² These studies demonstrated a growing scholarly concern with the limitations and inconsistencies in Indonesia's protection of freedom of expression, yet none has examined the constitutional protection and limitation of freedom of expression in Indonesia in comparison with African jurisdictions, particularly Madagascar, nor has it systematically analysed such protection through a constitutional lens.³³ The present research therefore addresses that gap by offering a comparative constitutional novelty through the Indonesia–Madagascar comparison and a theoretical novelty by integrating constitutionalism and proportionality to assess the legitimacy of restrictions on freedom of expression.

Problem Statement

Considering that Indonesia and Madagascar face similar challenges, it becomes evident that a comparative study is imperative to shed light on their similarities and differences in the right to freedom of expression. This research can contribute significantly to identifying both countries' respective legal framework of the right to freedom of expression, offering practical guidance on potential legal reform in their respective system. Based on the background above, the research questions are: (1) What is the legal framework of the right to freedom of expression? (2) What are the differences and similarities regarding the legal framework of the right to freedom of expression between Indonesia and Madagascar?

Methods

This research adopts a doctrinal legal method combined with a structured comparative constitutional approach to examine the protection of freedom of expression in Indonesia and Madagascar. The doctrinal method is used to analyse law as a normative system consisting of principles, rules, and legal doctrines derived from international, regional, and national legal instruments. The selection of Indonesia and Madagascar is based on both shared and contrasting characteristics that make them suitable for comparison. Both countries are parties to major international human rights instruments and constitutionally recognise freedom of expression, yet they differ in legal traditions, regional contexts, and institutional development. This combination allows for a meaningful comparison between two jurisdictions that are similarly situated in terms of formal commitments to human rights, while differing in their

³¹ Nurul Aisahrani et al., "The Constitutional Protection of Freedom of Artistic Expression: A Comparison between Indonesia, Iran and the United States," *Journal of Indonesian Constitutional Law* 2, no. 2 (2025): 227–48, <https://doi.org/10.71239/jicl.v2i2.125>.

³² Ramalina Ranaivo Mikea Manitra et al., "A Proposal for Decriminilisation of Online Defamation in Indonesia: Towards a Human Rights-Based Approach," *Cogent Social Sciences* 12, no. 1 (2026): 1–28, <https://doi.org/10.1080/23311886.2026.2613959>.

³³ Sarmila Radjak et al., "Analysis of the Constitutional Court Decision on Election Campaigns at Educational Institutions from the Perspective of the Purpose of Law," *Estudiante Law Journal* 7, no. 3 (2025): 890–905, <https://doi.org/10.33756/eslaj.v7i3.34243>.

constitutional design and practical implementation. The study applies a functional comparative model, focusing not merely on the formal wording of legal provisions but on how constitutional guarantees operate in practice, particularly in addressing the balance between freedom of expression and competing societal interests.

The research employs normative, conceptual, and comparative approaches, relying exclusively on secondary data. These include: (1) primary legal materials such as international instruments including the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, and General Comment No. 34, as well as national legal frameworks such as the 1945 Constitution of the Republic of Indonesia, the Electronic Information and Transactions Law, the Criminal Code, the 2010 Constitution of the Republic of Madagascar and Cybercrime Law; (2) secondary legal materials including scholarly books, peer-reviewed journal articles, and reports from organisations such as Freedom House and Amnesty International, as well as expert commentaries on constitutional law and freedom of expression; and (3) tertiary materials such as legal dictionaries and encyclopaedias. Data is collected through library-based research and analysed using qualitative juridical techniques. The comparative analysis is structured around several key analytical variables, namely: (i) the constitutional recognition and scope of freedom of expression; (ii) the legal grounds and justifications for limiting this right; (iii) the application of principles such as proportionality and necessity in restricting expression; and (iv) the role of state institutions in interpreting and enforcing these norms. Through these variables, the study seeks to move beyond descriptive comparison by critically assessing the coherence, consistency, and legitimacy of the legal frameworks governing freedom of expression in Indonesia and Madagascar.

Legal Framework of the Right to Freedom of Expression

1. The Right to Freedom of Expression Under International Law

Freedom of expression has long been understood as a fundamental value closely linked to human dignity and individual autonomy, forming the basis for personal identity and self-development within society.³⁴ It allows individuals to articulate their thoughts, exchange ideas, and engage with differing perspectives, which are essential elements in shaping both personal and collective understanding. In a legal context, this right is not merely procedural but substantive, as it directly influences how individuals interact with the state and with one another. Its recognition in international human rights law reflects a broader commitment to protecting individuals from undue interference while enabling meaningful participation in public life.³⁵

From a philosophical perspective, freedom of expression is justified by both its intrinsic and instrumental value, making it one of the most extensively debated rights

³⁴ Francisco José Chaux Donado, "I Don't Believe in What They Say! But i Will Defend Their Right to Say It. A Reflection on the Constitutional and Human Rights Importance of Freedom of Expression," *Vniversitas* 68, no. 139 (2019), <https://doi.org/10.11144/Javeriana.vj139.ncel>.

³⁵ Emily Howie, "Protecting the Human Right to Freedom of Expression in International Law," *International Journal of Speech-Language Pathology* 20, no. 1 (2018): 12–15, <https://doi.org/10.1080/17549507.2018.1392612>.

in legal theory.³⁶ Intrinsically, it reflects respect for individual autonomy and the inherent worth of human beings as rational agents capable of forming and expressing opinions. Instrumentally, it functions as a mechanism for discovering truth, fostering public debate, and ensuring accountability in governance by allowing criticism and scrutiny of authority. These dual justifications have significantly shaped how international legal frameworks conceptualise the right, particularly in balancing individual liberties with collective interests.³⁷

The development of international human rights law strengthened the recognition of freedom of expression as a universal and inalienable right that applies across different legal systems and cultural contexts.³⁸ This universality is reflected in the incorporation of the right into major international instruments, which establish minimum standards that states are expected to follow regardless of their domestic legal traditions. Such recognition imposes both negative obligations, requiring states to refrain from interference, and positive obligations, requiring them to create an enabling environment for the exercise of the right. As a result, freedom of expression has evolved from a philosophical concept into a binding legal norm within the international system.³⁹

A key principle underlying the protection of freedom of expression is the *pro homine* principle, which requires that human rights norms be interpreted in the manner most favourable to the individual.⁴⁰ This principle plays a crucial role in limiting the scope of restrictive state action by ensuring that any ambiguity in legal provisions is resolved in favour of broader protection. It also reinforces the idea that restrictions on freedom of expression must be exceptional rather than routine, and must be justified through strict legal reasoning. In practice, this principle has influenced both treaty interpretation and judicial decision-making at the international level, particularly in cases involving competing rights.⁴¹

³⁶ Michael Hamilton, "Freedom of Speech in International Law," in *The Oxford Handbook of Freedom of Speech* (Oxford University Press, 2021), <https://doi.org/10.1093/oxfordhb/9780198827580.013.12>.

³⁷ Dirk Voorhoof and Hannes Cannie, "Freedom of Expression and Information in a Democratic Society," *International Communication Gazette* 72, nos. 4–5 (2010): 407–23, <https://doi.org/10.1177/1748048510362711>.

³⁸ Hsiu-Chin Yang, "Freedom of the press in international human rights instruments in the cold war era," *Mass Communication Research* (General Education Center, National Taipei University of Technology, Taiwan) 120 (2014): 167–96.

³⁹ Kiyoteru Tsutsui, "International Human Rights Law," in *The Wiley-Blackwell Encyclopedia of Globalization* (Wiley, 2012), <https://doi.org/10.1002/9780470670590.wbeog316>.

⁴⁰ Valerio de Oliveira Mazzuoli and Dilton Ribeiro, "The Japanese Legal System and the Pro Homine Principle in Human Rights Treaties," *Anuario Mexicano de Derecho Internacional* (Federal University of Mato Grosso, Brazil) 15, no. 1 (2015): 239–82, <https://doi.org/10.1016/j.amdi.2014.09.004>.

⁴¹ Ignatius Yordan Nugraha, "From 'Margin of Discretion' to the Principles of Universality and Non-Discrimination: A Critical Assessment of the 'Public Morals' Jurisprudence of the Human Rights Committee," *Nordic Journal of Human Rights* (Centre for Government and Law (CORe), Faculty of Law, Hasselt University, Hasselt, Belgium) 39, no. 3 (2021): 243–58, <https://doi.org/10.1080/18918131.2021.2004685>.

Freedom of expression plays an essential role in democratic governance by enabling open public debate, political participation, and the exchange of ideas among citizens.⁴² It allows individuals to question authority, express dissent, and contribute to decision-making processes, thereby strengthening democratic legitimacy. Moreover, it supports governmental accountability by providing a platform for criticism and oversight, particularly through media and civil society. This function explains its close relationship with other civil and political rights, as restrictions on expression often have a direct impact on broader democratic freedoms.⁴³

International law recognises that freedom of expression is not absolute and may be subject to certain restrictions, particularly where it conflicts with the rights of others or important public interests.⁴⁴ However, such restrictions are not left to the discretion of states without limits, as they must comply with strict legal criteria. These include the requirement that restrictions be clearly prescribed by law, pursue a legitimate aim, and be necessary in a democratic society. The principle of proportionality is particularly important in this context, as it requires that any limitation must be appropriate and not excessive in relation to the objective pursued.⁴⁵

Contemporary developments, particularly in the digital environment, have introduced new challenges to the protection of freedom of expression, raising complex legal and regulatory issues.⁴⁶ The rise of online platforms, digital surveillance, and content regulation has expanded the scope of state intervention, often blurring the line between legitimate regulation and censorship. These developments demonstrate that the protection of freedom of expression is not static but continues to evolve in response to technological and social changes. As a result, legal frameworks must adapt to ensure that the right remains effective in both traditional and digital contexts.⁴⁷

The Universal Declaration of Human Rights marked a significant development by formally recognising freedom of expression as a universal human right under Article 19. This provision affirms that everyone has the right to hold opinions without interference and to seek, receive, and impart information and ideas through any media, regardless of frontiers. Its broad formulation reflects an intention to provide comprehensive protection that applies across different forms of expression and communication. As a foundational document, it has influenced the development of subsequent binding treaties and continues to serve as a key reference point in international human rights law.

⁴² Guilherme Canela et al., "UNESCO'S Judges' Initiative," *Max Planck Yearbook of United Nations Law Online* (unesco's Communication and Information Sector) 25, no. 1 (2022): 54–76, https://doi.org/10.1163/18757413_02501005.

⁴³ Voorhoof and Cannie, "Freedom of Expression and Information in a Democratic Society."

⁴⁴ Hamilton, "Freedom of Speech in International Law."

⁴⁵ A. S. Slavko et al., "Freedom Of Expression under Martial Law," *International Journal of Media and Information Literacy* (Sumy State University, Ukraine) 8, no. 1 (2023): 218–27, <https://doi.org/10.13187/ijmil.2023.1.218>.

⁴⁶ Howie, "Protecting the Human Right to Freedom of Expression in International Law."

⁴⁷ Canela et al., "UNESCO'S Judges' Initiative."

The International Covenant on Civil and Political Rights further developed this framework by establishing legally binding obligations for states under Article 19.⁴⁸ Article 19(2) guarantees the right to seek, receive, and impart information and ideas of all kinds, while Article 19(3) permits restrictions only when they are provided by law and necessary for the protection of the rights of others, national security, public order, public health, or morals. This structured limitation clause reflects a balance between individual freedom and collective interests, while also constraining state discretion through legal standards.⁴⁹

The interpretation of these provisions has been clarified by General Comment No. 34, which provides authoritative guidance on the scope and application of freedom of expression.⁵⁰ It emphasises that restrictions must be interpreted narrowly and must not undermine the essence of the right, particularly in relation to political discourse and public debate. The Human Rights Committee also stresses that vague or overly broad laws are incompatible with Article 19, as they create a risk of arbitrary enforcement. This interpretative framework has become central in assessing the legitimacy of state measures affecting expression.⁵¹

Other international instruments further reinforce the protection of freedom of expression by addressing specific contexts and groups while maintaining consistency with general human rights principles.⁵² For instance, Article 15 of the International Covenant on Economic, Social and Cultural Rights protects the freedom indispensable for scientific research and creative activity, Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination addresses hate speech while requiring respect for fundamental rights, Article 13 of the Convention on the Rights of the Child guarantees children's freedom of expression, and Article 13 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ensures access to information and expression for migrant workers. These provisions illustrate that freedom of expression is embedded across different branches of international law and adapted to specific regulatory needs.

Specialised and regional frameworks also extend the protection of freedom of expression by adapting general principles to different legal systems and cultural

⁴⁸ Hamilton, "Freedom of Speech in International Law."

⁴⁹ Michael O'Flaherty, "Freedom of Expression: Article 19 of the International Covenant on Civil and Political Rights and the Human Rights Committee's General Comment No 34," *Human Rights Law Review* 12, no. 4 (2012): 627–54, <https://doi.org/10.1093/hrlr/ngs030>.

⁵⁰ Michael O'Flaherty, "International Covenant on Civil and Political Rights: Interpreting Freedom of Expression and Information Standards for the Present and the Future," in *The United Nations and Freedom of Expression and Information*, ed. Tarlach Mcgonagle and Yvonne Donders (Cambridge University Press, 2015).

⁵¹ Kriangsak Kittichaisaree, "Application of the Law of Armed Conflict, Including International Humanitarian Law, In Cyberspace," in *Law, Governance and Technology Series*, vol. 32 (Springer Science and Business Media B.V., 2017), https://doi.org/10.1007/978-3-319-54657-5_5.

⁵² Alla Tymofeyeva, "Freedom of Expression of Legal Entities on the Internet from the Point of View of the European Court of Human Rights [Svoboda Projevu Právnických Osob Na Internetu z Pohledu Evropského Soudu pro Lidská Práva]," *Pravnik* 161, no. 2 (2022): 140–55.

contexts.⁵³ For example, Article 10 of the European Convention on Human Rights and Article 13 of the American Convention on Human Rights provide detailed standards on permissible restrictions while reinforcing the importance of free expression in democratic societies.⁵⁴ These instruments often include more developed jurisprudence, which contributes to a deeper understanding of how the right should be applied in practice. This broader framework demonstrates that freedom of expression is both universally recognised and contextually interpreted within international law.⁵⁵

2. Legal Framework of The Right to Freedom of Expression under Indonesian Law

Indonesia's legal framework regarding the right to freedom of expression is deeply rooted in its adherence to international and regional treaties. Indonesia has enshrined the fundamental principles of freedom of expression into its legal system by becoming a party to key international agreements such as UDHR and ICCPR. Furthermore, Indonesia's participation in regional organisations like the Association of Southeast Asian Nations (ASEAN) and its ratification of instruments such as the ASEAN Human Rights Declaration (AHRD)⁵⁶ and the ASEAN Charter⁵⁷ have reinforced the country's commitment to upholding the right to freedom of expression in accordance with regional standards. These references underscore the fundamental nature of the right to freedom of expression and establish a basis for international accountability, as Indonesia must uphold these agreements.

The legal framework of the right to freedom of expression in Indonesia is established through a series of laws and regulations that protect and regulate this fundamental right. According to Tony Yuri Rahmanto, the right to freedom of expression is essential to democracy and public participation in every policy-making in Indonesia. Citizens cannot exercise their rights effectively to vote or participate in making public policies if they do not have the freedom to obtain information and express their opinions and are unable to express their views freely.⁵⁸ Moreover, even though the right to freedom of expression is considered 'not' as fundamental as the right to life, the right to religion

⁵³ See generally Tarlach McGonagle and Yvonne Donders, eds., *The United Nations and Freedom of Expression and Information* (Cambridge University Press, 2015), <https://doi.org/10.1017/CBO9781316018552>.

⁵⁴ See generally Toby Mendel, "American Convention on Human Rights," in *The International Encyclopedia of Communication* (Wiley, 2008), <https://doi.org/10.1002/9781405186407.wbieca041>.

⁵⁵ See, e.g., Omar Almahzoumi et al., "Insulting Religions Between International Law and Islamic Sharia," *Review of International Geographical Education Online* (Faculty of Law - Zarqa University) 11, no. 4 (2021): 1517–30, <https://doi.org/10.33403/rigeo.8006862>.

⁵⁶ Article 23(1) of ASEAN Human Rights Declaration, 2012.

⁵⁷ Article 1(7) of ASEAN Charter, 2007.

⁵⁸ Tony Yuri Rahmanto, "Kebebasan Berekspresi Dalam Perspektif Hak Asasi Manusia: Perlindungan, Permasalahan Dan Implementasinya Di Provinsi Jawa Barat," *Jurnal HAM* 7, no. 1 (2016): 45, <https://doi.org/10.30641/ham.2016.7.70>.

and belief, and the right to be free from torture, and it is still possible to derogate it, this right has always been the primary guardian of fundamental human rights.⁵⁹

The right to freedom of expression is guaranteed in Article 28 of the 1945 Constitution. The aspect of this formulation related to freedom of speech is the portion of the sentence that reads "expressing thoughts verbally." Article 28E Paragraph (3) of the 1945 Constitution states that everyone has the right to freedom of association, assembly, and expression. In addition, Article 28F states that everyone has the right to communicate and obtain information to develop their personal and social environments and pursue, acquire, own, store, process, and transmit information through all available channels.⁶⁰

While the right to freedom of expression does not imply the liberty to speak without regard for others or to act in accordance with one's whims, this right must still adhere to applicable norms and be exercised with complete accountability. Indeed, Indonesia upholds the right to freedom of expression as a fundamental human right; however, it also recognises the need to exercise this right responsibly. Individuals expressing their opinions are obliged to respect the rights of others and adhere to applicable laws and regulations. This is clearly stated in Article 28J paragraph (2) of the 1945 Constitution, which emphasises that the exercise of rights and freedoms should be subject to legal restrictions aimed at ensuring the recognition and respect for the rights and freedoms of others, as well as maintaining moral considerations, religious values, security, and public order in a democratic society.

Moreover, Law Number 39 of 1999 concerning Human Rights⁶¹ reaffirms the significance of freedom of expression as a fundamental human right. Article 23 Paragraph 2 of this law grants individuals the freedom to have, express, and disseminate opinions according to their conscience. These opinions can be conveyed orally and in writing through various media. However, this freedom is subject to specific considerations, such as respecting religious beliefs, moral values, public interests, and national integrity. Additionally, Article 25 of the same law confirms that everyone has the right to express opinions in public, including the right to strike, provided it aligns with statutory provisions.

To delve into the specifics of public expression, Law Number 9 of 1998 concerning Freedom to Express Opinions in Public⁶² is instrumental. This law explicitly defines freedom to express opinions as the right of every citizen to express their thoughts freely and responsibly, adhering to applicable laws and regulations.⁶³ Various forms of

⁵⁹ Della Luysky Selian and Cairin Melina, "Kebebasan Berekspresi Di Era Demokrasi: Catatan Penegakan Hak Asasi Manusia," *Lex Scientia Law Review* 2, no. 2 (2018): 189–98, <https://doi.org/10.15294/lesrev.v2i2.27589>.

⁶⁰ Hendra Mawan et al., "Hubungan Tingkat Pemahaman Pasal 28 UUD 1945 Terhadap Kebebasan Berbicara Dengan Etika Berkomunikasi Peserta Didik," *Jurnal Kultur Demokrasi* 5, no. 13 (2018).

⁶¹ Law No. 39 of 1999 Concerning Human Rights (Hereinafter Referred as "Human Rights Law") (1999).

⁶² Law No. 9 of 1998 Concerning Freedom to Express Opinions in Public (1998).

⁶³ Article 1 of Law No. 9 of 1998

expressing opinions in public are outlined within this law, including demonstrations, parades, general meetings, and free pulpits.⁶⁴ However, restrictions exist regarding the locations where public expression is allowed. Notably, expression is prohibited at specific sites, such as the presidential palace, places of worship, military installations, hospitals, transportation terminals, and vital national objects. Additionally, public expression is restricted on national holidays.⁶⁵

Law Number 9 of 1998 sets forth limitations to ensure the responsible exercise of the right to freedom of expression. Citizens have both rights and responsibilities in this regard. They have the right to express their thoughts freely and are entitled to legal protection. However, they must also respect the rights and freedoms of others, adhere to moral rules, obey the law, maintain public security and order, and uphold national unity and integrity.⁶⁶ To organise public expressions of opinion, individuals or groups must notify a letter to the Indonesian National Police (KAPOLRI) at least 3 x 24 hours before the activity begins, with exceptions made for scientific and religious activities.⁶⁷ The KAPOLRI are crucial in coordinating and ensuring public expression activities' safety, security, and orderliness.

In Indonesia, the Virtual Police, as the primary supervisory body of freedom of expression, established in Indonesia in February 2021, is a specialised unit initiated by the National Police Chief, General Listyo Sigit Prabowo. Its primary purpose is to respond to President Joko Widodo's directive concerning certain articles in Law Number 19 of 2016⁶⁸ juncto Law Number 11 of 2008⁶⁹ juncto Law No. 1 of 2024⁷⁰ concerning Information and Electronic Transactions (ITE Law). The Virtual Police strongly emphasises proactive measures, prioritising virtual warnings as a preventive strategy to combat the spread of hoaxes and hate speech in digital spaces, aligning with the National Police Chief's circular letter promoting ethical behaviour in the digital realm. The Virtual Police's role involves seeking expert opinions from criminal, language, and ITE experts to assess reports or content suspected of violating the ITE Law. They conduct cyber patrols on social media platforms like Facebook, Twitter, and Instagram to monitor and identify potentially harmful content. Subsequently, the unit issues warning messages through direct communication channels, such as WhatsApp, advising content creators to refrain from rewriting or deleting questionable material. If the initial warning goes unanswered, a second warning is issued within 24 hours.⁷¹ Moreover, the Virtual Police strongly emphasises restorative justice and mediation

⁶⁴ Article 9 Paragraph (1) of Law No. 9 of 1998

⁶⁵ Article 9 Paragraph (2) of Law No. 9 of 1998

⁶⁶ Article 5 to Article 8 of Law No. 9 of 1998

⁶⁷ Article 10 of Law No. 9 of 1998

⁶⁸ Law No. 19 of 2016 Concerning Amendment to Law No. 11 of 2008 Concerning Information and Electronic Transaction, 2016.

⁶⁹ Law No. 11 of 2008 Concerning Information and Electronic Transaction, 2008.

⁷⁰ Law No. 1 of 2024 Concerning the Second Amendment to Law Number 11 of 2008, 2024.

⁷¹ Utin Indah Permata Sari, "Kebijakan Penegakan Hukum Dalam Upaya Penanganan Cyber Crime Yang Dilakukan Oleh Virtual Police Di Indonesia," *Jurnal Studia Legalia* 2, no. 01 (2022): 58-77, <https://doi.org/10.61084/jsl.v2i01.7>.

efforts when addressing violations, striving to create a clean, ethical, and diverse digital environment. While constructive criticism is encouraged, hate speech and false information are subject to corrective measures. The Virtual Police aims to reduce the prevalence of hoaxes and misinformation in cyberspace, fostering a more responsible and informed online community. According to Prabandari et al., the Virtual Police are immensely crucial in preventing hate speech on social media, especially given that restorative justice is the method of resolution employed.⁷²

Furthermore, the Press Council (Dewan Pers) is a secondary supervisory body responsible for safeguarding and promoting the right to freedom of expression, focusing on journalism and media ethics, monitoring media practices, and conducting press dispute settlement.⁷³ Besides, the Ministry of Communication and Information (Kominfo) operates within the framework of the ITE Law⁷⁴ and is primarily tasked with monitoring and regulating digital content. Kominfo ensures that digital content adheres to legal standards, particularly addressing issues like pornography and copyright violations. While the Press Council's role encompasses the broader media landscape, including ethical journalism, the Press Council and Kominfo contribute to maintaining a balanced and responsible media environment in Indonesia, upholding the right to free expression while regulating digital content to prevent the spread of harmful or illegal materials online.

Nevertheless, a major concern in Indonesia is the criminalisation of certain acts related to freedom of expression. For instance, 2024 ITE Law addresses the act of defamation and insults in Article 27A. Sanctions for such offences are regulated under Article 45 Paragraph (4) puts a maximum penalty of two years' imprisonment and a fine of up to 400 million Rupiah. However, these provisions acknowledge and reference the corresponding sections in the Criminal Code, which delineate various forms and circumstances of insults and defamation. The formulation of these offences in the Criminal Code adheres to principles of legal certainty, clarity, and justice.

Coming to a concrete example, the enactment of the New Criminal Code has stirred more concerns within the country's press community and among defenders of freedom of expression. The press community and the Press Council have identified a set of articles in the New Criminal Code that raise alarms regarding press freedom and freedom of expression (e.g., among others Article 188, 240 and 241 of the New Criminal Code). These identified articles have sparked concern due to their potential impact on

⁷² Adya Prabandari et al., "The Role of Indonesia Virtual Police in Countering Hate Speech on Social Media," *Proceedings of the 2nd International Conference on Law, Economic, Governance, ICOLEG 2021, 29-30 June 2021, Semarang, Indonesia*, 2021, <https://doi.org/10.4108/eai.29-6-2021.2312584>.

⁷³ Herman et al., "Pemeriksaan Ahli Kominfo Dan Ahli Akademisi Dalam Perkara Pembuktian Tindak Pidana ITE," *Halu Olea Legal Research* 5, no. 1 (2023): 46–61.

⁷⁴ Ernis Hutabarat et al., "Tinjauan Yuridis Pasal 15 Undang-Undang Pers Terhadap Fungsi Dan Kewenangan Dewan Pers Dalam Mencegah Berita Bohong," *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 26, no. 1 (2023): 57–70, <https://doi.org/10.15642/alqanun.2023.26.1.57-70>.

the press's ability to function as a pillar of democracy and a source of meaningful information for the public.⁷⁵

The analysis of the legal framework governing the protection of freedom of expression in Indonesia, as outlined above, remains largely normative and institutional, reflecting the country's formal commitments and constitutional guarantees. However, to present a more realistic and comprehensive view of the actual situation on the ground, it is essential to consider documented instances of violations. Accordingly, Table 1 below provides an overview of cases of freedom of expression violations in Indonesia, as reported by Amnesty International from 2020 to 2023.

Table 1. *Cases of Violations and Arbitrary Limitations on Freedom of Expression in Indonesia (2020-2023)*

Date	Case Description	Explanation
April 2020	57 people arrested for spreading "false news" and insulting the President following a directive to monitor criticism of the government's COVID-19 response.	Arresting individuals for online criticism of government policies represents a significant breach of freedom of expression.
May 2020	Independent media outlet Konde.com lost control of its Twitter account during a discussion on sexual abuse allegations; the journalist was harassed online.	Targeting media outlets and journalists reporting on sensitive social issues violates press freedom and endangers freedom of expression.
October 2020	The website of Project Multatuli, an independent journalist collective, was hit by a DDoS attack after publishing an article on child sexual abuse in East Luwu.	Cyberattacks aimed at silencing investigative journalism undermine the freedom of the press and public access to information.
March 2021	Journalist Nurhadi from Tempo.co was assaulted and detained by police for reporting on a bribery case involving a high-level official.	Physical intimidation of journalists restricts investigative journalism and freedom of expression.
April 2021	Senior journalist Victor Mambor was physically attacked and his car vandalised after critical reporting on human rights issues in Papua.	Violence against journalists limits freedom of the press and fosters a climate of fear, leading to self-censorship.

⁷⁵ Rofiq Hidayat, "Dewan Pers: UU KUHP Mengancam Kemerdekaan Pers Dan Demokrasi," HukumOnline, 2022, <https://www.hukumonline.com/berita/a/dewan-pers--kuhp-baru-berpotensi-ancam-kemerdekaan-pers-dan-demokrasi-lt6392b31febd5f/?page=2#!>

September 2021	Seven students from Universitas Sebelas Maret arrested for displaying posters critical of the government during a visit by President Widodo.	Restriction of peaceful protest and political expression infringes on freedom of speech and assembly.
September 2021	Haris Azhar and Fatia Maulidiyanti faced criminal investigation for allegedly spreading false information in a YouTube video accusing the military of corruption in Papua.	Suppressing public discussion on corruption threatens freedom of expression and press freedom.
October 2022	Lecturer Saiful Mahdi faced criminal defamation charges under the EIT Law after criticizing a hiring process in a private WhatsApp group.	Misuse of the EIT Law to silence academic criticism, violating the right to freedom of expression in private communications.
November 2022	Journalist Muhamad Asrul sentenced to three months in prison for writing about alleged corruption in Palopo under the EIT Law.	The prosecution of journalists under defamation laws restricts press freedom and stifles investigative journalism.
August 2022	Human rights defenders Haris Azhar and Fatia Maulidiyanti criminally investigated for defamation under the EIT Law after discussing military involvement in mining operations in Papua.	The use of defamation laws against those reporting on government activities violates freedom of speech and accountability.
August 2023	Three Papuan activists, Yoseph Ernesto Matuan, Devio Tekege, and Ambrosius Fransiskus Elopere, imprisoned for 10 months for treason after raising the Morning Star flag during a vigil at Jayapura University of Technology and Science.	The activists were prosecuted for expressing their political views, undermining the right to freedom of expression, especially peaceful political expression.

Source: processed data from amnesty international report 2020 – 2023⁷⁶

Table 1 highlights a persistent pattern of violations against freedom of expression in Indonesia from 2020 to 2023. It reveals the use of both legal instruments, such as the

⁷⁶ See Report on Indonesia's case in *Amnesty International Report: The State of the World's Human Rights 2020, 2021, 2022, and 2023*

EIT Law and criminal defamation provisions, and physical intimidation to silence dissenting voices. Journalists, human rights defenders, academics, and activists have been targeted for expressing legitimate criticism or reporting on sensitive issues like corruption, human rights abuses, and the government's handling of the COVID-19 pandemic. The criminalisation of peaceful political expression, as seen in the imprisonment of Papuan activists, further demonstrates how restrictive laws are being used to suppress freedom of speech and assembly. This not only hampers public discourse but also erodes the democratic values Indonesia is committed to uphold.

The analysis of Indonesia's legal framework on freedom of expression reveals a clear tension between the ideals of constitutionalism and the extensive system of legal limitations imposed on the exercise of this right. On the one hand, the post-reform constitutional order, particularly following the amendments to the 1945 Constitution between 1999 and 2002, reflects a significant shift towards constitutionalism understood as the limitation of state power through the recognition of fundamental rights and the establishment of institutional safeguards.⁷⁷ This transformation formally positions freedom of expression as a core democratic right, reinforced by constitutional provisions and Indonesia's commitment to international human rights instruments. However, the analysis in this section demonstrates that the practical operation of this right remains deeply conditioned by a broad and often indeterminate set of limitations grounded in public order, morality, religious values, and national security, as reflected in Article 28J of the Constitution and further elaborated in statutory frameworks. Martitah et al. stated that constitutionalism in Indonesia was designed to limit governmental power, yet its effectiveness depends on how consistently these limitations are applied in practice.⁷⁸ In this regard, the extensive regulatory framework, including the ITE Law and the New Criminal Code, illustrates how legal instruments may function not only as mechanisms of protection but also as tools of restriction, particularly when vague provisions enable expansive interpretation. Edmon Makarim et al. explained that limitations on freedom of expression in Indonesia are often justified as part of legal duties and responsibilities, yet such justifications risk undermining the core substance of the right when applied disproportionately.⁷⁹ The empirical examples presented, including the criminalisation of criticism, arrests of activists, and intimidation of journalists, further indicate that the constitutional guarantee of freedom of expression is not always effectively realised in practice.

⁷⁷ See generally Melissa Crouch, *Constitutional Democracy in Indonesia* (Oxford University Press, 2023), <https://doi.org/10.1093/oso/9780192870681>.

⁷⁸ Matitah et al., "Constitutionalism as A Design For Limiting Power in The Era of Post-Truth Democracy," *Indonesian State Law Review* (Universitas Negeri Semarang, Semarang, Indonesia) 8, no. 2 (2025): 205–22, <https://doi.org/10.15294/islrev.v8i2.30529>.

⁷⁹ Edmon Makarim et al., "Limitation of Rights as A Manifestation of Duties and Responsibilities Pertaining to The Freedom Expression in Digital Communications," *Indonesia Law Review* 9, no. 3 (2019): 278–95, <https://doi.org/10.15742/ilrev.v9n3.586>.

This tension becomes even more pronounced in the digital era, where the expansion of expressive platforms has been accompanied by increased regulatory intervention. While institutions such as the Virtual Police and Kominfo are formally established to maintain order and prevent harm, their practices raise concerns regarding the potential overreach of state authority into the domain of individual expression. Hesti Armiwulan noted that during periods of crisis, such as the COVID-19 pandemic, state authorities in Indonesia increasingly relied on criminal law mechanisms to restrict expression, particularly in relation to dissenting opinions.⁸⁰ Similarly, Laksanto Utomo observed that the use of criminal sanctions under the ITE Law contributed to the suppression of public discourse, especially when directed at criticism of government policies.⁸¹ These developments suggest that the balance envisaged by constitutionalism, which requires that restrictions on rights remain necessary, proportionate, and legally certain, is not always maintained in practice. Eka Wisanjaya and Rosy Widodo further highlighted that limitations on digital expression in Indonesia are often justified on broad grounds, yet their implementation frequently lacks clear boundaries, leading to uncertainty and potential misuse.⁸² In this context, constitutionalism in Indonesia can be understood as an evolving framework, where formal guarantees coexist with structural and practical challenges in implementation. The findings of this section therefore indicate that while Indonesia has established a comprehensive normative and institutional framework for the protection of freedom of expression, the prevailing pattern of legal restrictions and enforcement practices raises critical questions regarding the extent to which constitutionalism effectively constrains state power and safeguards this fundamental right in practice.

3. Legal Framework of The Right to Freedom of Expression under Malagasy Law

In Madagascar, the legal framework underpinning the right to freedom of expression is deeply rooted in international and regional treaties. Madagascar's commitment to upholding this fundamental right is evident through its adherence to key international agreements, such as the UDHR and the ICCPR. These treaties have integrated the core principles of freedom of expression into Madagascar's legal system, affirming the right of its citizens to seek, receive, and share information freely. Furthermore, Madagascar's engagement with regional bodies like the African Union (AU) and its ratification of the African Charter on Human and Peoples' Rights (ACHPR)⁸³ reinforces its dedication to promoting this right. These references reinforce the importance of freedom of

⁸⁰ Hesti Armiwulan, "The Limitation of Freedom of Expression by State as a Crime during Pandemic Covid-19 in Indonesia," *International Journal of Criminal Justice Sciences* (Universitas Surabaya, Indonesia) 17, no. 2 (2022): 101–13, <https://doi.org/10.5281/zenodo.4756113>.

⁸¹ Laksanto Utomo, "Criminalizing the Freedom of Expression by State during COVID-19 Pandemic in Indonesia," *International Journal of Criminal Justice Sciences* 16, no. 2 (2021): 415–25, <https://doi.org/10.5281/zenodo.4756085>.

⁸² I. Gede Pasek Eka Wisanjaya and Putri Bella Rosy Widodo, "Freedom of Expression on Social Media in Indonesia: Why Are the Limitations Imposed?," *Udayana Journal of Law and Culture* 8, no. 1 (2024): 109–28, <https://doi.org/10.24843/UJLC.2024.v08.i01.p06>.

⁸³ Article 9 of African Charter on Human and Peoples' Rights, 1982.

expression as a fundamental right and create a foundation for accountability on the international stage, as Madagascar is bound to uphold these agreements.

The right to freedom of expression in Madagascar, as enshrined in Article 10 of the 2010 Constitution, is a fundamental human right with a broad scope. This right encompasses the freedom to seek, receive, and convey information and ideas through various mediums such as speech, writing, art, and communication. It is pivotal in facilitating open dialogue and informed participation in a democratic society. Article 11 of the 2010 Constitution underscores the paramount importance of the right to freedom of expression in the context of information. It unequivocally affirms that every individual possesses the fundamental right to access information in all its forms, highlighting the critical role of freedom of expression as a cornerstone of a democratic society. Moreover, Article 11 of 2010 Constitution goes a step further by emphasising that this freedom of information is a fundamental right, regardless of the platform used for communication. It firmly prohibits any form of censorship, thereby serving as a robust safeguard against arbitrary suppression of information by governmental authorities.⁸⁴

Delving into a more specific regulation, Law No. 2016-029⁸⁵ juncto Law No. 2020-006⁸⁶ concerning the Code of Mediated Communication (“Law No. 2016-029”) is primordial in obtaining a narrower understanding of the right to freedom of expression in Madagascar. This Law forms the cornerstone for regulating media and exercising free speech in the country. One crucial feature of Law No. 2016-029 is its emphasis on the decriminalisation of press offences. Malagasy journalists cannot be imprisoned for their work, including reporting, writing, or broadcasting. Instead, the law prescribes fines as penalties for press offences. The rationale behind this approach is in line with international human rights principles that assert that imprisoning journalists for their work can be a form of intimidation aimed at silencing them.⁸⁷ This legal provision marks significant progress in Madagascar's commitment to safeguarding media freedom. Law No. 2016-029 additionally addresses the rights and benefits of professional journalists by integrating principles from the labour code and service contracts, thereby providing a legal framework for the employment and protection of journalists. This legal recognition acknowledges journalists' crucial role in providing information to the public and underscores the need to protect their rights and working conditions under the law.⁸⁸

⁸⁴ Anatole Herimanana Ralison, “Liberté d'Expression et Liberté de La Presse” (Master Thesis, Université d'Antananarivo, 2005).

⁸⁵ Law No. 2016-029 Concerning Code of Mediated Communication, 2016.

⁸⁶ Law No. 2020-006 Concerning Amendment to Law No. 2016-029 Concerning Code of Mediated Communication, 2020.

⁸⁷ Ulla Carlsson and Reeta Pöyhtäri, eds., *The Assault on Journalism: Building Knowledge to Protect Freedom of Expression*, in *Communication Research Trends*, vol. 37, no. 4 (Nordicom, 2017).

⁸⁸ Razafimamonjy, “La Liberté Des Médias à Madagascar: Entre Règlementation, Régulation et Autorégulation.”

While the right to freedom of expression is protected, there are defined limitations to ensure its responsible exercise. These limitations are rooted in the need to respect the rights of others, preserve public order, and safeguard the state's security. Freedom of expression can be restricted when it infringes upon the rights and freedoms of others or poses a direct threat to public order.⁸⁹ Additionally, limitations are allowed to protect national dignity and state security, provided they are clearly defined and proportionate to the threats they aim to address. Judicial oversight is crucial to ensure that these rights and limitations are upheld following democratic principles and international human rights standards, ensuring a balanced approach to this essential freedom.⁹⁰

In regard to monitoring, controlling and balancing the right to freedom of expression, the Malagasy Government has the means to restrict such right. This reflects the reality that governments can use legal instruments to limit the exercise of this right, particularly when faced with dissenting voices or investigative journalism that challenges societal interests and public order, such as spreading fake news and hate speech. Madagascar has the "Gendarmerie Nationale" as the primary supervisory body of freedom of expression in online platforms, focusing on cybercrime. Moreover, it has also established independent supervisory bodies, such as the National Communication Regulatory Authority Mediatized (ANRCM) and the Order of Journalists of Madagascar (OJM).

The "Gendarmerie Nationale" has established a specialized division known as "CIRGN (*Circonscription Gendamerie Nationale*)" in response to the need for the enforcement of Law No. 2014-006⁹¹ juncto Law No. 2016-031 concerning Cybercrime ("Cybercrime Law")⁹² in Madagascar. This division's primary focus is supervising activities on Facebook, the most widely used platform among Malagasy people. CIRGN operates through a reporting mechanism, allowing victims of cybercrime to contact them via private chat on their official Facebook account or through a designated telephone number. Additionally, the division proactively monitors and comments on illegal Facebook posts, such as extortion, hacking, defamation, and hoaxes, issuing warnings as initial measures. If warnings go unheeded, expedient investigations and arrests may follow. Notably, the division adapts its efforts based on the virality of specific cases, working swiftly and intensively when a case gains significant public attention, contributing to a safer and more responsible digital environment in Madagascar.

ANRCM is an independent supervisory body responsible for overseeing mediated communication. It ensures diverse perspectives, promotes quality and diversity in

⁸⁹ Article 10 of the 2010 Constitution

⁹⁰ Yannick Sandra Rabearisoa, "« Ethique et Déontologie Dans La Presse Quotidienne Malgache Malgache: Regard Particulier à Travers Les Pages Pages Une Des Trois Journaux »" (Master Thesis, Université d'Antananarivo, 2012).

⁹¹ Law No. 2014-006 Concerning the Fight against Cybercrime, 2014.

⁹² Law No. 2016-031 Concerning Amendment to Law No. 2014-006 Concerning the Fight against Cybercrime, 2016.

audiovisual content, supports national production and creative content, enforces broadcasting rights, and prevents media concentration to maintain a vibrant, democratic media environment in Madagascar.⁹³

OJM, a private entity with a public service mission, plays a crucial role in journalism in Madagascar. It regulates the industry, sets ethical standards, and safeguards journalists by issuing professional identity cards and providing assistance. OJM also promotes journalism and press freedom, influences media policies, and acts as a Disciplinary Council to address ethical violations. In essence, OJM ensures high journalistic standards, protects journalists' rights, and serves the public interest in Madagascar.⁹⁴

It is important to mention that press offences are indeed not criminalised under Law No. 2016-029, however, the Cybercrime Law provides criminal sanctions towards offences related to cybercrime such as hate speech, defamation and disinformation. Nevertheless, Malagasy people tend to confound those two laws, they are different in nature as the decriminalisation of press offences is guaranteed under Law No. 2016-029 while the cybercrime is clearly sanctioned by fines and imprisonments under the Cybercrime Law. That being said, the views regarding the extent of those two laws still raises concern. Holders of the right to freedom of expression, mainly journalists, claim that the Government is misusing those laws, especially the Cybercrime Law to protect their interests. Such a situation underwent significant public debate and tension among journalists and media professionals. For instance, the term “public order” mentioned in two laws, and even the 2010 Constitution, remains ambiguous as to its real interpretation since the Government tends to manipulate its meaning to justify the arbitrary restriction.

The preceding analysis of Madagascar’s legal framework for safeguarding freedom of expression primarily reflects a normative and institutional perspective, based on its formal commitments and constitutional provisions. Nevertheless, to gain a more accurate and complete understanding of the situation in practice, it is important to examine documented violations. Therefore, Table 2 below presents a summary of reported cases of freedom of expression violations in Indonesia, as recorded by Amnesty International between 2020 and 2023.

Table 2. *Cases of Violations and Arbitrary Limitations on Freedom of Expression in Madagascar (2020-2023)*

Date	Case Description	Explanation
28 May 2020	Arrest of Professor Stéphane Ralandison	Ralandison was arrested and interrogated for criticising the government's COVID-19 response on LinkedIn. He was accused of

⁹³ Ny Aina Rahagalala, “Politique Nationale de La Communication: Une Liberté Timide et Si Bien Déguisé,” Refesimandidy, refesimandidy.org/politique-nationale-de-la-communication/.

⁹⁴ OJM, “Présentation de l’ OJM,” Ordre Des Journalistes de Madagascar (OJM), ojm.mg/presentation-de-lojm/.

			murder but ultimately not charged, highlighting the crackdown on freedom of speech regarding the pandemic.
16 2020	July	Arrest of former minister Harry Laurent Rahajason	Rahajason was arrested and sentenced to 44 months in prison for organising protests during a state of emergency. The charges were seen as politically motivated and part of the broader suppression of dissenting voices.
4 2020	April	Arrest of journalist Arphine Helisoa	Helisoa, affiliated with the opposition, was arrested for allegedly spreading fake news and inciting hatred against the President. This was part of a broader campaign against media critical of the government's handling of COVID-19.
22 2021	April	Banning of radio and audiovisual broadcasts in multiple regions	The government banned broadcasts in five regions for allegedly threatening public order. The decision was reversed after backlash, but it demonstrated the misuse of exceptional laws to limit media freedom during the COVID-19 pandemic.
February 2022		Conviction of whistleblower Jeannot Randriamanana	Randriamanana, a teacher and human rights defender, was convicted of defamation for exposing corruption in humanitarian aid distribution. He was sentenced to a two-year suspended prison term for defaming public officials and remained in detention for two months.
26 2022	May	Sentencing of Ravo Ramasomanana for defamation	Ramasomanana was sentenced to a six-month suspended prison term and fined for defamation against public servants via anonymous SMS, raising concerns about the use of defamation laws to limit freedom of expression.
5 2023	July	Death threats to environmental defender Angélique Decampe	Angélique Decampe, an environmental defender safeguarding the Vohibola forest, received death threats from another community member. Authorities failed to protect her from these threats, violating her right to peaceful assembly and expression.

July 2023	Arrest of over 80 protesters in Anosy region	Over 80 protesters from the Association for the Struggle of the South (LUSUD) were arrested while blocking a road to prevent mining company Rio Tinto from continuing its extraction activities. Although released by August, arrest warrants against leaders remained.
23 March 2023	Arrest of newspaper owner Lôla Rasoamaharo	Lôla Rasoamaharo, owner of La Gazette de la Grande Ile, was arrested after a raid on his office. He was charged with extortion, defamation, and insults in a dispute with the mayor of Antananarivo, raising concerns over media freedom.
4 April 2023	Ministry of Interior's restrictions on opposition parties' campaigns	The Ministry of Interior limited opposition electoral campaigns to indoor venues and required public demonstrations to be authorised under an outdated law. This restricted the right to peaceful assembly and freedom of expression for opposition parties.
10 Oct - 16 Nov 2023	Repeated violations during the presidential election campaign	During the election campaign, the Prefecture of Antananarivo banned opposition protesters from several key areas. Journalists were arrested, candidates injured, and political activists and bystanders were arbitrarily detained by authorities.

Source: Processed Data from Amnesty International Report 2020 – 2023⁹⁵

Table 2 highlights the ongoing challenges to freedom of expression in Madagascar from 2020 to 2023, revealing a pattern of governmental actions that suppress dissent and restrict media freedoms. Despite constitutional guarantees and international commitments like the ICCPR, these cases show how authorities misuse legal provisions, such as defamation laws or state security measures, to silence journalists, political activists, and environmental defenders. The violations range from arbitrary arrests, detention of opposition figures and media personnel, to restrictions on peaceful assembly, particularly during politically sensitive periods like elections. These incidents underscore a troubling erosion of democratic principles and raise concerns about the state's commitment to upholding freedom of expression as a fundamental right. Without reforms to strengthen legal protections and limit state interference, the right to free speech in Madagascar remains vulnerable.

⁹⁵ See Report on Madagascar's case in *Amnesty International Report: The State of the World's Human Rights 2020, 2021, 2022, and 2023*

The analysis of Madagascar's legal framework demonstrates a clear alignment with the theoretical foundations of constitutionalism, particularly through its constitutional recognition of freedom of expression and its incorporation of international and regional human rights instruments. In theory, constitutionalism requires that state power be limited by law and exercised in accordance with fundamental rights, including freedom of expression as a cornerstone of democratic participation. Nsongurua Udombana stated that constitutionalism in African contexts was designed to ensure that political authority remains subject to legal constraints and human rights guarantees.⁹⁶ This theoretical model is reflected in Madagascar's constitutional provisions, particularly Articles 10 and 11 of the 2010 Constitution, which explicitly protect both expression and access to information, as well as prohibit censorship. Similarly, Van Der Bank explained that freedom of expression was essential for enabling accountability and public deliberation in democratic systems.⁹⁷ However, the broader historical and institutional context of Madagascar complicates this theoretical framework, as constitutionalism has developed within a system marked by strong executive dominance and recurring political instability. Francesco Tamburini and Giovanna Spanò observed that Malagasy constitutionalism evolved through hybrid and transitional processes shaped by political crises rather than stable institutional consolidation.⁹⁸ This condition affects how constitutional guarantees operate in practice, particularly when institutions tasked with enforcing rights, such as the judiciary, face challenges related to independence and effectiveness. Manitra and Prabandari noted that judicial bodies in Madagascar experienced pressure in politically sensitive cases, raising concerns about their ability to function as neutral arbiters of constitutional rights.⁹⁹ As a result, while the normative framework reflects the ideals of constitutionalism, its practical application remains dependent on institutional strength and political context.

The tension between constitutionalism and limitations on freedom of expression becomes more apparent when examining how legal restrictions are formulated and implemented in practice. Although international human rights law permits limitations on freedom of expression under strict conditions of legality, necessity, and proportionality, the analysis indicates that these criteria are not always consistently applied. Yohannes Eneyew Ayalew stated that in many African jurisdictions, restrictions on expression were frequently justified on broad grounds such as national

⁹⁶ Nsongurua Udombana, "Reflections on Constitutionalism and Democratic Governance in Africa," *Journal of African Law* (Human Rights Institute, National Human Rights Commission, Abuja, Nigeria) 68, no. 2 (2024): 137–56, <https://doi.org/10.1017/S0021855324000019>.

⁹⁷ C. M. Van Der Bank, "The International Human Right to Freedom of Expression: A South African Constitutional Perspective," in *International Human Rights and Justice* (Nova Science Publishers, Inc., 2016).

⁹⁸ Francesco Tamburini and Giovanna Spanò, "The (Unfinished?) Processes of Malagasy Constitutionalism: between Transitions, Hybridization and Autochthonous models," *Federalismi.it* (Università di Pisa, Italy) 2022, no. 21 (2022): 1–27.

⁹⁹ Ramalina Ranaivo Mikea Manitra and Adya Paramita Prabandari, "Judicial Independence Under Political Pressure: The High Constitutional Court and Electoral Justice in Madagascar (2009–2023)," *Constitutional Review* 11, no. 2 (2025): 393–421, <https://doi.org/10.31078/consrev1125>.

security or public order, often leading to excessive limitations.¹⁰⁰ This pattern is reflected in Madagascar through the ambiguous use of terms such as “public order” and the application of the Cybercrime Law, which introduces criminal sanctions despite the formal decriminalisation of press offences under Law No. 2016-029. Ilori explained that postcolonial legal systems in Africa often retained regulatory frameworks that enabled governments to control dissent, particularly in digital spaces.¹⁰¹ The empirical cases presented in Table 2 further illustrate how these legal tools have been used to target journalists, activists, and political opponents, especially during periods of political sensitivity such as elections or public emergencies. Richard R. Marcus stated that institutional weaknesses in Madagascar allowed political actors to utilise legal mechanisms to serve narrow interests, undermining accountability and the rule of law.¹⁰² This situation reflects a broader divergence between the theoretical promise of constitutionalism and its operational reality, where the existence of formal guarantees does not necessarily prevent arbitrary interference. Consequently, the Malagasy framework demonstrates that while constitutionalism provides a normative foundation for protecting freedom of expression, its effectiveness remains constrained by structural limitations, interpretative ambiguities, and patterns of enforcement that allow the expansion of state control over public discourse.

Differences and similarities regarding the constitutional guarantee of the right to freedom of expression between Indonesia and Madagascar

For the purpose of this analysis, the comparison between Indonesia and Madagascar is limited to the normative and institutional dimensions of the protection of freedom of expression, without delving into the practical realities or implementation of these frameworks. This approach allows for a clearer assessment of each country’s formal legal commitments and institutional structures as enshrined in their respective constitutions, laws, and regulatory mechanisms. Table 3 below outlines the key similarities and differences in the normative and institutional frameworks of Indonesia and Madagascar, focusing on international and regional commitments, constitutional protections, the decriminalisation of press offences, legal restrictions, and supervisory bodies.

Table 3. Normative and Institutional Comparison of the Protection of Freedom of Expression in Indonesia and Madagascar

Aspect	Similarities	Differences
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¹⁰⁰ Yohannes Eneyew Ayalew, *Assessing the Limitations to Freedom of Expression on the Internet in Ethiopia against the African Charter on Human and Peoples’ Rights*, 2020, 315–45.

¹⁰¹ Tomiwa Ilori, “A Postcolonial Legal Critique of Online Expression in Africa,” *Journal of African Law* (Centre for Human Rights, Faculty of Law, University of Pretoria, Pretoria, South Africa) 68, no. 3 (2024): 283–300, <https://doi.org/10.1017/S0021855324000111>.

¹⁰² See generally Richard R. Marcus, *The Politics of Institutional Failure in Madagascar’s Third Republic* (Bloomsbury Publishing Plc., 2016).

International and Regional Commitments	Both Indonesia and Madagascar are committed to international treaties such as the UDHR and ICCPR. Both countries also engage with regional human rights frameworks (ASEAN for Indonesia and AU for Madagascar).	Indonesia is part of ASEAN, while Madagascar is a member of the African Union, influencing their regional commitments and priorities.
Constitutional Protections	Both countries protect freedom of expression in their constitutions, reflecting a constitutional commitment to this right.	Indonesia's Constitution lacks a clear prohibition on censorship, while Madagascar's Constitution explicitly prohibits it (Article 11). However, Indonesia has the Law No. 39 of 1999 to strengthen the application of its constitutional protection of freedom of expression, a point in which Madagascar is lacking.
Decriminalization of Press Offenses	Both countries aim to protect the right to freedom of expression for journalists.	Madagascar has decriminalized press offenses, while Indonesia still criminalizes defamation and insults under the ITE Law.
Legal Restrictions	Both countries recognize the need for legal restrictions on freedom of expression, primarily for reasons of public order, national security, and protection of others' rights.	Indonesia has specific laws regulating expression in public spaces (Law No. 9 of 1998), whereas Madagascar does not have specific regulations regarding public expression.
Supervisory Bodies	Both countries have supervisory bodies responsible for regulating media and digital content to ensure responsible exercise of freedom of expression.	Indonesia has the Virtual Police, Press Council, and Kominfo, while Madagascar has the CIRGN, ANRCM, and OJM.

Source: Author's analysis

Based on the similarities and differences identified in Table 3, it is possible to draw valuable lessons that could inform potential legal reforms in both Indonesia and Madagascar as presented in Table 4. Each country's approach to the protection of

freedom of expression offers insights that may guide improvements in the other’s legal and institutional frameworks. The following section outlines areas where mutual learning and reform could be pursued to strengthen the protection of this fundamental right.

Table 4. *Legal Reform based Mutual Lessons from Indonesia and Madagascar*

Aspect	Indonesia	Madagascar
Decriminalization of Press Offenses	Indonesia could follow Madagascar’s lead by decriminalizing press offenses, ensuring journalists cannot be imprisoned for their work.	N/A
Lower-Level Laws on the Protection of Freedom of Expression	N/A	Madagascar should enact laws such Law No. 39 of 1999 concerning Human Rights to ensure a stronger application of the constitutional protection of freedom of expression.
Legal Restrictions	Indonesia and Madagascar could refine legal restrictions to ensure limitations on freedom of expression are clearly defined, proportionate, and in line with human rights standards.	
Controversies and Ambiguities	Indonesia should clarify provisions in the New Criminal Code to avoid unduly restricting freedom of the press and investigative journalism.	Madagascar should provide clearer definitions for terms like "public order" to prevent misuse of laws restricting expression.
Supervisory Bodies	Indonesia could consider adopting independent bodies like ANRCM to ensure responsible media regulation.	Madagascar might explore Indonesia’s Virtual Police and Kominfo mechanisms to regulate media and digital content more effectively.

Source: Author’s analysis

Conclusion

Both Indonesia and Madagascar constitutionally guarantee the right to freedom of expression, enshrining it as a fundamental right within the highest legal authority of their respective legal systems the Constitution. However, the implementation and

extension of this constitutional right through laws and regulations at lower hierarchical levels are complex and, at times, risk contradicting the spirit of the Constitution itself. In Indonesia, laws such as the ITE Law and the New Criminal Code introduce restrictions that may undermine the constitutional guarantee found in Article 28E(3) and Article 28F of the 1945 Constitution. Similarly, in Madagascar, despite the clear protection under Articles 10 and 11 of the 2010 Constitution and the decriminalisation of press offences through Law No. 2016-029, the application of the Cybercrime Law raises concerns regarding overreach and potential infringement on constitutional rights. In this context, institutional frameworks play a vital role in safeguarding the constitutional commitment to freedom of expression. Bodies such as Indonesia's Press Council, Kominfo, and the Virtual Police, alongside Madagascar's ANRCM, CIRGN, and OJM, are essential in monitoring, enforcing, and potentially harmonising the application of laws to ensure they remain aligned with constitutional norms.

Comparatively, while both Indonesia and Madagascar share fundamental similarities in their constitutional and international commitments to the right to freedom of expression, they continue to face significant practical challenges in ensuring its protection. As demonstrated in Table 1 and Table 2, both countries have recorded numerous violations and restrictions in practice, highlighting the gap between normative guarantees and real-world implementation. Nevertheless, when examined from a normative and institutional perspective, both legal frameworks present valuable lessons for one another. Notably, Madagascar's explicit constitutional prohibition of censorship and its legal decriminalisation of press offences offer important insights for Indonesia; whereas a similar law to Indonesia's Law No. 39 of 1999 should be enacted in Madagascar for a stronger application of constitutional protection of freedom of expression.

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