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Legal Protection of Public Freedom of Speech from the Perspective of Legal Certainty

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Abstract
This study examines legal certainty in fulfilling citizens' rights to legal protection in exercising freedom of expression in public within a democratic state governed by the rule of law. The issue arises from the ambiguity of the normative provisions in Law No. 9 of 1998 and the limited implementation of National Police Chief Regulation No. 7 of 2012, which have not yet ensured comprehensive legal protection in practice. This research aims to analyze the extent to which legal certainty supports the fulfillment of legal protection for freedom of expression and to evaluate the effectiveness of the existing regulatory framework in safeguarding this constitutional right. Using normative legal (doctrinal) research, the study applies statutory, conceptual, and case approaches, with legal materials collected through literature review and analyzed using grammatical and systematic interpretation. The findings reveal a gap between legal norms and their implementation, resulting in inadequate legal certainty and insufficient protection of citizens' rights, particularly during public demonstrations involving law enforcement authorities. This discrepancy weakens the realization of constitutional guarantees and increases the risk of inconsistent law enforcement practices. The study's novelty lies in highlighting legal certainty as the principal framework for assessing the effectiveness of legal protection for freedom of expression while emphasizing the need to strengthen regulatory provisions and accountability mechanisms for law enforcement officials. Such reforms are essential to ensure that legal protection is implemented consistently, proportionally, and in accordance with democratic values and human rights principles.

Introduction

Indonesia, as a democratic country guided by the principles of the rule of law, recognizes and protects human rights as an essential element of its

constitutional system.[1] One of the fundamental rights guaranteed under the national legal system is the right of citizens to express their opinions in public as a form of freedom of expression and participation in the democratic process.[2] These rights include the freedom to express views, aspirations, criticism, and ideas through various public spaces, academic forums, and other means of communication recognized by law. In this context, the state has an obligation to guarantee, protect, and ensure legal certainty so that the exercise of freedom of expression is not subject to restrictions that conflict with the principles of democracy and human rights.[3] Thus, freedom of public expression is one of the key indicators in realizing a constitutional, participatory, and just democracy.

The constitutional guarantee of freedom of expression is enshrined in Article 28E, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that:

"Everyone has the right to form associations, assemble, and express their opinions."

This provision reflects the fact that freedom of expression is a fundamental right of citizens that is constitutionally protected under Indonesia's democratic system.[4] As a state governed by the rule of law (rechtstaat), the government has an obligation to ensure legal certainty by enacting laws and regulations that comprehensively govern the exercise of these rights.[5] Consequently, Law No. 9 of 1998 on Freedom of Expression in Public was enacted as the legal basis for guaranteeing the exercise of freedom of expression in public spaces. The purpose of these regulations is to strike a balance between the protection of citizens' human rights and the interests of public order and legal certainty in social and civic life.

The issue of freedom of expression in Indonesia continues to be a topic that frequently draws public attention, particularly in the context of demonstrations. One of the events that drew attention occurred during a

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[1] Ojang Oo Muptiah, "Sistem Demokrasi Dan Hak Asasi Manusia Sebagai Bentuk Kedaulatan Rakyat Indonesia," *JOCER: Journal of Civic Education Research* 3, no. 1 (Juni 2025): 9, https://doi.org/https://doi.org/10.60153/jocer.v3i1.102.

[2] Muhammad Wahyu Andriansyah dan Sekaring Ayumeida Kusnadi, "Hak Kebebasan Berpendapat Di Era Digital Dalam Perspektif Hak Asasi Manusia," *Gorontalo Law Review* 7, no. 2 (Oktober 2024): 434, https://doi.org/https://doi.org/10.32662/golrev.v7i2.3727.

[3] Rudi Natamiharja, "Peran Negara dalam Menjamin Kebebasan Berekspresi Menurut Konstitusi dan Hukum HAM," *Kajian Ilmiah Hukum dan Kenegaraan* 4, no. 1 (Juni 2025): 3, https://doi.org/10.35912/kihan.v4i1.4574.

[4] Sri Oktaviani, "Konstitusi Dan Kebebasan Berpendapat Di Indonesia: Analisis Keterbatasan Dan Perlindungan," *Jurnal Ilmiah Ekonomi Dan Manajemen* 2, no. 7 (Juni 2024): 180, https://doi.org/https://doi.org/10.61722/jiem.v2i7.1864.

[5] Abdul Hijar Anwar dkk., "Peran Negara Hukum Dan Tanggung Jawabnya Dalam Masyarakat Untuk Menjamin Kesejahteraan Dan Keadilan Di Indonesia," *Journal of Global Law Review* 2, no. 2 (Oktober 2024): 84, https://doi.org/https://doi.org/10.59963/jglegar.v2i2.365.

series of demonstrations in various regions of Indonesia on August 25–31, 2025, which raised allegations of violations of citizens' civil rights.[6] According to a report by the Indonesian Legal Aid Foundation and the Legal Aid Institute, 3,337 people were arrested by police during the demonstrations. In addition to the mass arrests, 1,042 people sustained injuries that required medical treatment, and 10 people were reported dead.[7] This incident reflects that legal protection of the right to freedom of expression in public still faces various challenges, making it necessary to enforce the law in a manner guided by the principles of legal certainty, proportionality, and respect for human rights.[8]

Various expert opinions indicate that the protection of human rights in Indonesia remains vulnerable to neglect in law enforcement practices.[9] One right that is often the focus of attention is the right to freedom of expression in public, as part of the fundamental rights of citizens guaranteed by the Constitution.[10] Provisions regarding the guarantee of this right are set forth in Article 5 of Law No. 9 of 1998, which states that citizens have the right to freely express their thoughts and are entitled to legal protection in exercising that right. Nevertheless, the exercise of freedom of expression in practice still frequently faces various obstacles that can lead to a lack of legal certainty and potential violations of citizens' rights.[11] Therefore, the state needs to strengthen the implementation of the principles of legal certainty and legal protection so that freedom of expression can be fully realized in accordance with democratic values and human rights.

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[6] Faisal Irfani, "Ketika negara menangkap anak-anak muda setelah demonstrasi Agustus 2025 – 'Pemburuan terbesar sejak Reformasi 1998,'" *bbc.com*, 12 Maret 2026, https://www.bbc.com/indonesia/articles/ckgzzg08899o.

[7] Ady Thea DA, "YLBHI Kecam Brutalitas Aparat Pasca Pidato Presiden, Ribuan Ditangkap dan 10 Orang Tewas," *hukumonline.com*, 3 September 2025, https://www.hukumonline.com/berita/a/ylbhi-kecam-brutalitas-aparat-pasca-pidato-presiden--ribuan-ditangkap-dan-10-orang-tewas-lt68b7b46814119/.

[8] Kurnia Illahi, "Haris Azhar Cium Aroma Politis Penangkapan Delpedro dan Sejumlah Aktivis terkait Demo Agustus," *regional.inews.id*, 17 September 2025, https://regional.inews.id/berita/haris-azhar-cium-aroma-politis-penangkapan-delpedro-dan-sejumlah-aktivis-terkait-demo-agustus.

[9] Abdul Fatah Lukum dan Syahrul Hukumu, "Perlindungan Hak Asasi Manusia dalam Penegakan Hukum: Studi Empiris terhadap Kasus Kriminalisasi Aktivis," *Perkara : Jurnal Ilmu Hukum dan Politik* 3, no. 1 (Maret 2025): 720, https://doi.org/10.51903/perkara.v3i1.2342.

[10] Violeta Elenabella dan Friderikus Nopeli Giawa, "PERAN KONSTITUSI DALAM MENJAMIN HAK DAN KEWAJIBAN WARGA NEGARA DI INDONESIA," *Jurnal Media Akademik (JMA)* 3, no. 6 (Juni 2025): 6, https://doi.org/https://doi.org/10.62281/v3i6.2421.

[11] Resa Silvia Dwi Putri, Cindy Wahyuni, dan Yuliani Finaly Putri, "Analisis Perlakuan Aparat Terhadap Hak Asasi Demonstran Dalam Perspektif Hukum Nasional," *Causa: Jurnal Hukum dan Kewarganegaraan* 15, no. 11 (September 2025): 7, https://doi.org/https://doi.org/10.6679/tnhkp551.

The novelty of this study lies in its discussion of the legal framework governing freedom of public expression, examined from the perspective of legal certainty. This study differs from the research conducted by Lisda Ariany and Sandi P. Perdana, which focuses more on restrictions on freedom of expression from a human rights perspective[12]. In addition, a study conducted by Ahmidi, Rizky Hairiana, Ahmad, Alvianur, and Muhammad Luthfi Setiarno Putera[13] focuses more on a comparative study of freedom of expression in the legal systems of Indonesia and Singapore. Meanwhile, a study by Dhika Tabrozi[14] examining the guarantee of freedom of expression in the context of a modern rule-of-law state through a study of the dissolution of a diaspora discussion in South Jakarta. Therefore, this study presents a different approach by emphasizing a normative legal analysis of legal certainty as an instrument for protecting citizens' rights to express their opinions in public in accordance with the principles of democracy and the rule of law.

This study aims to examine the legal protection of the right to freedom of expression in public as one of the constitutional rights enjoyed by citizens in a democratic state governed by the rule of law. In addition, this study also aims to analyze the application of the principle of legal certainty in ensuring the right to legal protection for citizens who exercise their freedom of expression in public spaces. This research study focuses on the legal framework governing freedom of expression and its implementation in law enforcement practices in Indonesia. This study also examines the extent to which legal protections for freedom of expression are consistent with the principles of human rights, democracy, and the rule of law as applied in the national legal system. Therefore, the findings of this study are expected to make a theoretical contribution to the development of legal scholarship, particularly in the fields of constitutional law and human rights, and to serve as a basis for consideration in efforts to strengthen the protection of citizens' rights.

Methods

[12] Lisda Ariany dan Sandi P. Perdana, "Batasan Kebebasan Berpendapat di Indonesia Perspektif Hak Asasi Manusia," *Jurnal Hukum Lex Generalis* 5, no. 12 (Mei 2025): 1–27, https://doi.org/https://doi.org/10.56370/jhlg.v5i12.988.

[13] Ahmidi dkk., "Komparasi Yuridis Kebebasan Berpendapat dalam Perspektif Hukum di Indonesia dan Singapura," *INNOVATIVE: Journal Of Social Science Research* 4, no. 6 (Desember 2024): 5353–70, https://doi.org/https://doi.org/10.31004/innovative.v4i6.16657.

[14] Dhika Tabrozi, "Jaminan Kebebasan Berpendapat dalam Negara Hukum Modern: Studi atas Pembubaran Diskusi Diaspora di Kemang Jakarta Selatan," *Inright: Jurnal Agama dan Hak Asasi Manusia* 14, no. 1 (Mei 2025): 1–27, https://doi.org/https://doi.org/10.14421/inright.v14i1.4040.

This study is a legal study[15] which employs a doctrinal research method focused on examining legal norms, legal principles, and statutory provisions related to freedom of public expression. This study utilizes a historical approach, a conceptual approach, and case studies to analyze the development of regulations and the application of law in constitutional practice. The primary legal sources used include Law No. 9 of 1998 on Freedom of Public Expression and Regulation of the National Police Chief No. 7 of 2012 on Procedures for Providing Services, Ensuring Security, and Handling Cases Involving Public Expression, which remain in effect to this day and serve as legal guidelines. In addition to primary legal sources, this study also draws on secondary legal sources, such as accredited scientific journals and academic literature, as well as non-legal sources, such as reliable data and information relevant to the study.[16] Legal materials were collected through library research, while the analysis of these materials employed grammatical and systematic interpretation methods to produce a comprehensive and systematic legal analysis.[17]

Results and Discussion

Legal Protection of the Right to Freedom of Expression in Public

In the development of Indonesia's political system both during the New Order era and in the post-reform era there have been substantial changes in the system of government and democratic practices.[18] One significant change was the transformation of the People's Consultative Assembly (MPR) which had previously served as the highest state institution into a state institution with a status equal to that of other institutions within the constitutional system.[19] This change reflects a shift from a model dominated by a particular institution toward a more balanced separation of powers among state institutions.

These constitutional amendments also have an impact on the process of electing and removing the President.[20] Previously, the President could be

[15] Peter Mahmud Marzuki, *Penelitian Hukum*, Revisi (Jakarta: Prenada Media, 2017), h. 35.

[16] Iman Jalaludin Rifa'i dkk., *Metodologi Penelitian Hukum* (Serang: Sada Kurnia Pustaka, 2023), h. 54.

[17] Sudikno Mertokusumo, *Penemuan Hukum Sebuah Pengantar* (Yogyakarta: Maha Karya Pustaka, 2020), h. 49.

[18] Siti Nurhayati, "Dinamika Perkembangan Demokrasi serta Problematikanya Pasca Reformasi," *As-Shahifah : Journal of Constitutional Law and Governance* 3, no. 1 (Maret 2023): 4, https://doi.org/10.19105/asshahifah.v3i1.8282.

[19] Firdaus Arifin, "Pembentukan Kabinet dalam Sistem Pemerintahan Presidensil di Indonesia: Studi Komparasi UUD 1945 Sebelum Dan Setelah Perubahan," *Lex Renaissance* 9, no. 2 (Desember 2024): 341, https://doi.org/10.20885/JLR.vol9.iss2.art5.

[20] Ahmad Syaifudin Anwar dan Lilik Agus Saputro, "Kemandirian Kekuasaan Kehakiman dalam Mekanisme Pengangkatan dan Pemberhentian Hakim Konstitusi,"

elected and removed from office by the MPR through a more political process; however, following the amendment of the 1945 Constitution of the Republic of Indonesia, the impeachment procedure is now governed more strictly through more formal legal and constitutional mechanisms.[21] This reflects the strengthening of the rule of law, accountability in government, and a deeper commitment to democracy within Indonesia's system of government.

During the reform era, Indonesia witnessed major changes in freedom of expression, which is now more open and unhindered by unlawful restrictions.[22] Current policies provide the public with more opportunities to voice their opinions, both in person and in writing, without fear of repression. This freedom plays a vital role in strengthening democracy, which provides opportunities for the public to participate in political and social processes. Thus, freedom of expression is key to achieving transparency and accountability in government. This is in line with the goals of reform, which emphasize the values of freedom and justice.[23]

Protection of the right to freedom of expression must be ensured so that the rule of law, which safeguards human rights, can be properly upheld.[24] Every individual has the right to express their opinion without threats or intimidation from any party. Therefore, it is important for Indonesia's legal system to provide full protection for this freedom. Restrictions may be imposed only if necessary to protect public order, public morals, and the rights of others, in accordance with applicable law.[25] Such restrictions must be clear and in accordance with existing regulations.

It is crucial to understand freedom of expression not only as a right belonging to individuals, but also as a responsibility. The imposition of reasonable restrictions is necessary to ensure that this freedom does not interfere with the public interest. Freedom of expression, when not abused,

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Staatsrecht: Jurnal Hukum Kenegaraan dan Politik Islam 2, no. 2 (Desember 2022): 263–82, https://doi.org/10.14421/staatsrecht.v2i2.2877.

[21] Fakhris Lutfianto Hapsoro, Ismail Ismail, dan Moh. Hasbi Rofiqi, "Refleksi Kedudukan MPR Dalam Sistem Pemerintahan Indonesia Pasca Perubahan UUD 1945," *IBLAM LAW REVIEW* 4, no. 3 (September 2024): 204, https://doi.org/10.52249/ilr.v4i3.411.

[22] Ihwan Sugiarto dan Dudi Badruzaman, "Dinamika Hukum Dan Kebebasan Berpendapat Di Media Sosial: Studi Komparasi Antara Indonesia Dan Malaysia," *Masalah-Masalah Hukum* 53, no. 2 (Desember 2024): 156, https://doi.org/10.14710/mmh.53.2.2024.155-166.

[23] Ridwan Syaidi Tarigan, *Reformasi Hukum Tata Negara: Menuju Keadilan dan Keseimbangan*, Pertama (Banjar: Ruang Karya, 2024), h. 72.

[24] Rizki Wahyuni dan Yati Sharfina Desiandri, "Hak Asasi Manusia (HAM) Pada Kebebasan Berpendapat/Bereksperesi dalam Negara Demokrasi di Indonesia," *Jurnal Sains dan Teknologi* 5, no. 3 (April 2024): 962, https://doi.org/10.55338/saintek.v5i3.2422.

[25] Febrian Widyaardana, "Problematika Pembatasan Kebebasan Berpendapat di Indonesia Sesuai Instrumen Hak Asasi Manusia Internasional: Perspektif Pemidanaan," *Jurnal Locus Penelitian dan Pengabdian* 5, no. 1 (Januari 2026): 64, https://doi.org/https://doi.org/10.58344/locus.v5i1.5289.

will foster a more critical and open society. Careful regulation in this area is necessary to ensure that freedom of expression is upheld without instilling fear in the public. Ensuring adequate protection of freedom of expression will strengthen Indonesia's democracy.

Article 5 of Law No. 9 of 1998 stipulates that the state is obligated to provide legal protection to citizens who express their opinions in public. However, it is important to clearly understand what form this legal protection takes and how it is applied. Police Chief Regulation No. 7 of 2012 governs the technical procedures for holding demonstrations, but does not yet cover the rights granted to demonstrators, particularly when law enforcement officials act in an anarchic manner. Therefore, more comprehensive regulations are needed to provide legal certainty for demonstrators.

One of the shortcomings of the regulation is the lack of provisions regarding rights guaranteed by the state in the event of violations, particularly those committed by law enforcement officers securing demonstrations. This creates uncertainty that risks infringing on individual rights.[26] Therefore, it is important to promptly update existing regulations so that protections for demonstrators are more clearly defined. This protection must encompass the fundamental rights that must be upheld, including in situations involving potential abuse of authority by law enforcement officials. Although Law No. 9 of 1998 provides a legal basis for freedom of expression, there are still no clear regulations governing the rights of individuals in the event of violations by officials who are supposed to ensure the safety of demonstrations.[27] Without clearer regulations, legal uncertainty will persist, hindering citizens' right to express their opinions freely without fear.[28] Therefore, existing regulations need to be updated to provide more concrete protection for demonstrators. For legal protections to be effective, it is important to clearly define the rights of demonstrators in the law and to impose sanctions on officials who violate those rights. Clearer regulations and strict oversight will ensure that demonstrations can take place safely and in accordance with human rights principles.

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[26] Lili Halimah dan Yayuk Hidayah, "Problematika Hukum Dalam Kebebasan Berpendapat Pada Bidang Politik: Perspektif Pendidikan Kewarganegaraan Dan Keterlibatan Masyarakat Terhadap Penerapan Undang-Undang Informasi Dan Transaksi Elektronik (UU ITE) di Indonesia," *LITIGASI* 25, no. 2 (Oktober 2024): 260, https://doi.org/10.23969/litigasi.v25i2.18489.

[27] Ni Made Queena Amora Putri Suardana, Ida Ayu Putu Widiati, dan I. Nyoman Sutama, "Pelanggaran Hak Asasi Manusia Tindakan Represif Aparat Kepolisian kepada Massa Aksi Demonstrasi," *RIGGS: Journal of Artificial Intelligence and Digital Business* 5, no. 1 (Maret 2026): 7412, https://doi.org/10.31004/riggs.v5i1.7148.

[28] Asep Imroni, "Perlindungan Hak Konstitusional Atas Privasi di Tengah Arus Kebebasan Berpendapat," *Al-Zayn : Jurnal Ilmu Sosial & Hukum* 4, no. 2 (Maret 2026): 1779, https://doi.org/https://doi.org/10.61104/alz.v4i2.4556.

Law No. 16 of 2011 on Legal Aid provides the basis for legal aid for indigent individuals, but does not explicitly provide for legal protection for victims of repressive actions by law enforcement officials. Although legal assistance is available to victims of human rights violations, this law does not provide specific protections for those who are subjected to violence or arbitrary actions by law enforcement officials. More detailed legal protections are needed to ensure a sense of security for members of the public who are victims of repression by law enforcement officials.[29] Without clear regulations on this matter, the public may become vulnerable to abuse of power. Therefore, updates to existing laws are urgently needed to protect the rights of these victims.

Legal Certainty in Ensuring Citizens' Right to Legal Protection

Legal certainty is one of the fundamental elements of the purpose of law and is inseparable from the legal system itself.[30] In legal doctrine, legal certainty is defined as a condition that provides clarity, and that clarity is embodied in written and binding legal norms.[31] Legal certainty ensures that every legal rule can be known, understood, and applied consistently by the public. In practice, legal certainty serves as an important foundation for creating order in society. Therefore, legal certainty is crucial to the overall achievement of legal objectives.

In the criminal justice system, legal certainty is closely linked to the principle of legality as a fundamental principle. This principle is known by the maxim "Nullum delictum, nulla poena sine praevia lege poenali," which means there is no criminal offense and no punishment without a prior law providing for it.[32] This principle states that an act is punishable only if it has been previously provided for by law. Through the principle of legality, the public is guaranteed legal certainty in every legal action taken. Therefore, the principle of legality serves as the primary instrument for achieving fair and measurable legal certainty.

Under the principle of legality the primary foundation of criminal law there are three fundamental principles that must be upheld to ensure legal

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[29] Yudha Bayhaqi, "Perlindungan Hukum Terhadap Hak Tersangka Korban Penganiayaan Oleh Oknum Polisi Di Kepolisian Resor Bener Meriah," *Jurnal Imiah Mahasiswa Fakultas Hukum (JIMFH)* 8, no. 3 (Agustus 2025): 5, https://doi.org/https://doi.org/10.29103/jimfh.v8i3.22287.

[30] Cahya Palsari, "Kajian Pengantar Ilmu Hukum : Tujuan Dan Fungsi Ilmu Hukum Sebagai Dasar Fundamental Dalam Penjatuhan Putusan Pengadilan," *Jurnal Komunitas Yustisia* 4, no. 3 (Januari 2022): 942, https://doi.org/10.23887/jatayu.v4i3.43191.

[31] Deandra Tiffany dkk., "Makna Kepastian Hukum dalam Perspektif Filsafat Hukum dan Implementasinya di Indonesia," *JURAGAN: Jurnal Ragam Pengabdian* 3, no. 1 (April 2026): 5229, https://doi.org/https://doi.org/10.62710/2wkrxg23.

[32] Mia Amalia dkk., *Hukum Pidana: Dalam Dinamika Asas, Teori, dan Pendapat Ahli Pidana* (Jambi: Sonpedia Publishing Indonesia, 2023), h. 28.

certainty.[33] The first principle is lex scripta, which requires that every legal provision be set forth in writing in applicable laws and regulations.[34] Furthermore, lex certa requires that legal norms be formulated clearly and unambiguously, leaving no room for differing interpretations.[35] The third principle is lex stricta, which requires that the law be applied strictly without expanding its meaning beyond the established rules.[36] Taken together, these three principles aim to limit power and provide the public with certain legal protections.

The right to legal protection when expressing opinions in public is part of the fundamental rights enjoyed by every citizen. The provisions regarding this matter are explicitly set forth in Article 5(b), which states that the public has the right to legal protection. This right guarantees that everyone can freely express their opinions without threats, pressure, or harmful actions from others. In a state governed by the rule of law (rechtstaat), the state has an obligation to ensure that these rights can be exercised safely and in accordance with applicable laws.[37] Thus, this regulation aims to ensure that freedom of expression remains within the bounds of the law and responsibility.

Legal protection (legal security) in the context of expressing opinions in public also serves as a mechanism for maintaining a balance between individual freedom and public order.[38] The state has an obligation to provide protection to ensure that the exercise of these rights does not infringe upon the rights of others or disrupt social stability. This must be supported by clear regulations and officials who carry out their duties professionally and proportionately. This is important to prevent the abuse of authority and repressive actions. Therefore, legal protection is a vital instrument in ensuring the implementation of a just and law-based democracy.

Philipus M. Hadjon, a professor of public administration law at Airlangga University, stated that legal protection for the public can be divided into two

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[33] Rani Oslina Nainggolan, Alvi Syahrin, dan Mahmud Mulyadi, "The Position of the Principle of Legality in Law No. 1 of 2023 for the Development of Criminal Law in Indonesia," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam* 16, no. 2 (Agustus 2024): 414, https://doi.org/10.32505/jurisprudensi.v16i2.8765.

[34] *Ibid.*

[35] *Ibid.*

[36] *Ibid.*

[37] M. Alfi Syahri Subakti dan Diki Zukriadi, "Kepastian Hukum Kepemilikan Senjata Api Bagi Masyarakat Sipil Dalam Konteks Negara Hukum (Rechtsstaat)," *Scientia Journal: Jurnal Ilmiah Mahasiswa* 6, no. 5 (September 2024): 134.

[38] Muhammad Arafat dan Rizki Mulyaningsih, "JAMINAN KONSTITUSIONAL DEMONSTRAN DAN UJI PROPORSIONALITAS TINDAKAN APARAT PENEGAK HUKUM," *Jurnal Nomokrasi* 3, no. 2 (Oktober 2025): 196.

forms.[39] These two forms are preventive legal protection and repressive legal protection. Preventive legal protection is intended to prevent disputes from arising before a government decision or action is enacted. Meanwhile, repressive legal protection is provided after a violation or dispute has occurred that requires resolution through legal mechanisms. This distinction demonstrates that legal protection serves a comprehensive function within the state administrative system.

Preventive legal protection plays a crucial role in providing opportunities for public participation before government decisions are finalized. The aim is to minimize the potential for errors or abuse of authority from the outset. Repressive protection, on the other hand, serves as a means of dispute resolution through the judicial system or other legal mechanisms. These two forms of protection complement each other in safeguarding the rights of the people. Thus, the concept put forward by Philipus M. Hadjon serves as an important foundation for ensuring effective and fair legal protection.

Moch. Isnaeni, Professor of Civil Law at Airlangga University[40], states that legal protection can be divided into two main categories. These two categories are internal legal protection and external legal protection. Domestic legal protection is protection that stems from the legal system itself through legal norms established by the state. External legal protection, on the other hand, is protection that originates from outside the legal system and serves as a mechanism for oversight and correction of the application of the law. This distinction demonstrates that legal protection has a broad scope in ensuring legal certainty and justice for legal subjects.

Domestic legal protection provides certainty through legal rules that have been formally established in legislation. These rules serve as the basis for regulating the rights and obligations of every legal entity in society. Meanwhile, external legal safeguards serve as a mechanism to prevent potential abuses in the enforcement of the law. Such mechanisms can be implemented through regulatory agencies or dispute resolution forums outside the main law enforcement structure. Thus, the concept put forward by Moch. Isnaeni emphasizes that legal protection must be comprehensive, multi-layered, and mutually reinforcing.

The provisions of Article 5, which govern the right to legal protection, still do not provide a sufficiently clear description of the specific form of legal protection in question. This has led to a wide margin of interpretation in its application, resulting in the effectiveness of legal protection in practice falling

[39] Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia* (Surabaya: Bina Ilmu, 1987), h. 25.

[40] Moch. Isnaeni, *Pengantar Hukum Jaminan Kebendaan* (Surabaya: Revka Petra Media, 2016), h. 30.

short of its full potential. This situation is reflected in the continued occurrence of human rights violations, including the disappearance of a number of activists without adequate legal certainty. This fact points to a disconnect between written legal norms and the reality of the implementation of legal protections.[41] Therefore, it is necessary to strengthen regulations and implementation mechanisms so that legal protection can be realized in practice and more effectively.

The implementation of Presidential Instruction No. 2 of 2023 on the Non-Judicial Resolution of Gross Human Rights Violations is a state policy that provides a framework for resolving various cases of gross human rights violations through mechanisms outside the court system. This policy is viewed as a step toward national reconciliation that recognizes approximately ten incidents of human rights violations as part of efforts to provide redress for the victims. Through this approach, the government seeks to foster social stability by focusing on the victims' recovery rather than solely on the punishment process. In addition, the involvement of the victims' families is a crucial part of the state's process of recognition and social rehabilitation. Thus, this instrument can be understood as an administrative measure for the non-litigious resolution of human rights issues.

However, from a legal perspective, the implementation of this policy still raises issues regarding legal certainty, particularly with regard to the criminal liability of the perpetrators. Hingga kini, belum terdapat kejelasan yang pasti mengenai proses the imposition of sanctions against those suspected of being responsible for these gross human rights violations. This situation has given rise to the view that non-judicial approaches have the potential to undermine accountability within the criminal justice system. In addition, the role of law enforcement officials is considered not yet fully effective in ensuring a balance between victim recovery and the enforcement of justice. Therefore, coordination between non-judicial mechanisms and judicial proceedings is necessary to ensure that the principles of legal certainty and justice are upheld.

Table 1. Incidents Addressed by the Government Through Presidential Instruction No. 2 of 2023 on the Implementation of Recommendations for the Non-Judicial Resolution of Serious Human Rights Violations

Description Year	**Year**

[41] Andi Muh Ikram Alqivari, "KASUS PEMBUNUHAN AKTIVIS HAM MASA LALU YANG BELUM MENEMUKAN TITIK TERANG," *law.uad.ac.id* (Yogyakarta), 10 November 2023, https://law.uad.ac.id/kasus-pembunuhan-aktivis-ham-masa-lalu-yang-belum-menemukan-titik-terang/.

The 1965 Massacre	1965-1970
The "Petrus" Mysterious Shootings	1982-1985
Cases in East Timor Prior to the Referendum	1974-1999
Cases in Papua	1966
Cases in Aceh Prior to the State of Emergency	1976-1989
The Marsinah Case	1995
The Trisakti Student Shootings	1998
The 1998 Activist Abductions	1998
Semanggi I	1998
Semanggi II	1999

Source: taken from the journal[42]

Based on the data on events listed in Presidential Instruction No. 2 of 2023 regarding the non-judicial resolution of gross human rights violations, there are various cases that the state has recognized as part of the process of legal historical redress. These events include the 1965 mass killings, the "Petrus" mysterious shootings, and a number of incidents in East Timor, Papua, and Aceh prior to the imposition of martial law. In addition, there were also the Marsinah case, the shooting of Trisakti students, the 1998 kidnappings of activists, and the Semanggi I and II tragedies. Recognition of these events demonstrates the state's efforts to achieve reconciliation regarding past gross human rights violations. Thus, this policy forms part of the non-judicial redress mechanism within the national legal system.

However, when analyzed from the perspective of legal certainty, the provisions regarding legal protection in Article 5(b) of Law No. 9 of 1998 still exhibit normative ambiguity. The wording of this provision does not provide a clear definition of the form of legal protection in question, which could potentially lead to inconsistent interpretations. This situation indicates a weakness in legal certainty, which should serve as the foundation for the protection of citizens. As a result, the implementation of legal protections in practice often fails to provide guarantees that are entirely predictable.

[42] Ni Nyoman Putri Purnama Santhi dan Fanny Priscyllia, "Aspek Yuridis Penyelesaian Pelanggaran HAM Berat Masa Lalu di Indonesia," *Jurnal Hukum dan HAM Wara Sains* 3, no. 2 (Juni 2024): 258–66, https://doi.org/10.58812/jhhws.v3i02.1249.

Therefore, regulatory reforms are needed to ensure that the principle of legal certainty is fully realized.

Meanwhile, National Police Chief Regulation No. 7 of 2012 has established repressive legal protection mechanisms regarding the exercise of the right to express opinions in public. These provisions provide operational guidelines for law enforcement officers in securing and managing demonstrations. However, in practice, there are still challenges in ensuring maximum protection of the rights of protest participants. This can be seen from various incidents that have occurred in the field involving security forces. Therefore, ongoing evaluation is necessary to ensure that the implementation of legal protections remains consistent with the principles of human rights and legal certainty.

Conclusions

This study reveals that the normative framework regarding legal protection of the right to freedom of expression in public in Indonesia is set forth in Law No. 9 of 1998; however, it still does not provide a clear elaboration on the specific form of such legal protection. The vagueness of this provision has led to a lack of legal certainty in the implementation of protections for citizens, particularly with regard to the exercise of the right to freedom of expression in public spaces. On the other hand, the technical provisions set forth in National Police Chief Regulation No. 7 of 2012 have not yet been fully effective in ensuring comprehensive protection of the rights of protesters, particularly in situations involving potential violations by law enforcement officials. This indicates a gap between normative legal standards and their implementation in practice. Therefore, regulations need to be strengthened to ensure legal certainty and more effective and tangible protection of human rights. In terms of implementation, the government urgently needs to refine regulations by clarifying the concepts, scope, and legal protection mechanisms for citizens exercising their right to freedom of expression. In addition, accountability mechanisms for law enforcement officials must be strengthened to ensure that security measures for freedom of expression activities remain within the bounds of applicable law. The integration of legislation and technical policies should also be aimed at ensuring legal certainty that is understandable and predictable to the public. In practical terms, improving monitoring systems and implementing human rights-based operational standards are crucial steps in preventing violations. Thus, legal protection does not merely remain at the normative level, but can also be effectively implemented in a democratic society.

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