

# ACADEMIC FREEDOM OF EXPRESSION IN INDONESIA: A Maqashid Sharia Notes

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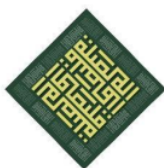
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## ACADEMIC FREEDOM OF EXPRESSION IN INDONESIA: A Maqashid Sharia Notes

**Sholahuddin Al-Fatih, Zaka Firma Aditya, Abdul Basid Fuadi, Muhammad Nur**

Universitas Muhammadiyah Malang, Indonesia  
Constitutional Court, Republic of Indonesia, Indonesia  
Constitutional Court, Republic of Indonesia, Indonesia  
Lancaster University, United Kingdom  
salfatih@umm.ac.id

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### ABSTRACT

This article intended to examine academic freedom in Indonesia, especially in the last decade (2014-2022). As a country that upholds human rights and Islamic values, academic freedom in Indonesia is in chaos, especially on *hifz al-nafs* and *hifz al-'aql* fulfillment. Many forms of thought expression and criticism conveyed by scholars to the government in academic forums are responded to with various terror, threats, and criminalization on the grounds of state stability. Scholars who are critical of government policies fall victim to criminalization, go to prison, and are dismissed from college due to being considered to violate college ethics. The many cases of academic freedom infringement indicate a severe problem where the thought of scientists in an academic forum is being 'undermined' by authoritarian government regimes. This paper examines cases relating to the curbs on academic freedom, especially in the Joko Widodo regime 2014-2022, with an overview of Islamic law (maqashid sharia). The research employed a normative legal method using conceptual, regulatory, and historical approaches. As a result, academic freedom in Indonesia can be restored through amendments to Article 207 of the Criminal Code and Articles 27-28 of the EIT Law to eliminate the restriction of academic freedom of expression and fulfill the *hifz al-nafs* and *hifz al-'aql* for every scholar and citizens.

**Keywords:** Academic Freedom; Islamic Law; Maqashid Sharia;

### ABSTRAK

Artikel ini mengkaji tentang kebebasan akademik di Indonesia khususnya dalam satu dekade terakhir (2014-2022). Sebagai negara yang menjunjung tinggi hak asasi manusia dan nilai-nilai Islam, kebebasan akademik di Indonesia sedang kacau, terutama dalam pemenuhan jaminan perlindungan atas jiwa dan pikiran. Berbagai bentuk pemikiran, dan kritik yang disampaikan oleh akademisi kepada pemerintah di forum akademik ditanggapi dengan berbagai teror, ancaman, dan kriminalisasi dengan alasan stabilitas negara. Cendekiawan yang kritis terhadap kebijakan pemerintah menjadi korban kriminalisasi dan masuk penjara, serta dikeluarkan dari perguruan tinggi karena dianggap melanggar etika perguruan tinggi. Banyaknya kasus pelanggaran kebebasan akademik

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menandakan sedang terjadi permasalahan berat, dimana pemikiran para ilmuwan dalam forum akademik 'dirusak' oleh rezim pemerintahan yang otoriter. Penelitian ini bertujuan untuk menganalisis kasus-kasus yang berkaitan dengan pembatasan kebebasan akademik, terutama di rezim Joko Widodo 2014-2022, dengan tinjauan dari hukum Islam (maqashid syariah). Penelitian ini menggunakan metode penelitian hukum normatif, dimana penulis menggunakan pendekatan konseptual, perundang-undangan dan sejarah. Hasil dari penelitian ini menunjukkan, kebebasan akademik di Indonesia dapat dipulihkan melalui perubahan/amendemen terhadap Pasal 207 KUHP dan Pasal 27-28 UU ITE, untuk menghilangkan pembatasan terhadap kebebasan akademik dan menjamin pemenuhan perlindungan atas jiwa dan pikiran bagi seluruh akademisi dan masyarakat.

**Kata Kunci:** Kebebasan Akademik; Hukum Islam; Maqashid Syariah;

## Introduction

Academic freedom of expression is the freedom of the academic community in higher education intended to explore and develop science and technology through the implementation of Tridharma, namely research, service, and education.<sup>1</sup> Academic freedom is the core of the university since academic freedom is a factor for the success of a university, especially in supporting and criticizing government policies.<sup>23</sup> The United Nations Educational, Scientific and Cultural Organization (UNESCO) defines it as the right, without being constricted by prescribed doctrine, to freedom of teaching and discussion, freedom to carry out research, disseminate and publish the results thereof, freedom to freely express their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies.<sup>4</sup> Those taught are related to the maqashid sharia in Islam that states *al-ahkam al-khamsah*,<sup>5</sup> namely; protection of religion (*hifz al-din*), protection of the soul (*hifz al-nafs*), protection of descendants (*hifz al-nasl*), protection of idea/mind (*hifz al-'aql*), and protection of property/treasure (*hifz al-mal*).<sup>6</sup>

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<sup>1</sup>Herlambang Perdana Wiratraman, "Kebebasan Akademik, Neo-Feodalisme Dan Penindasan HAM," in *Hak Asasi Manusia: Politik, Hukum Dan Agama Di Indonesia* (Jember: LKIS, 2018), 53–67.

<sup>2</sup>John M. Herbert, "Academic Free Speech or Right-Wing Grievance?," *Digital Discovery* 2, no. 2 (April 2023): 260–97, <https://doi.org/10.1039/D2DD00111J>.

<sup>3</sup>Katrin Kinzelbach et al., "Academic Freedom Index 2023," *FAU Erlangen-Nürnberg and V-Dem Institute Journal* 90, no. 1 (2023): 1–11, <https://doi.org/10.25593/opus4-fau-21630>.

<sup>4</sup>UNESCO, "Protecting Academic Freedom Is as Relevant as Ever," 2017.

<sup>5</sup>Asrizal Saiin Muhammad April, "Perfection of Sex for the Intersex (Khunsa) to Get Married: Maqashid Syariah Perspective on Corrective Surgery," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 2 (2021): 173–84, <https://doi.org/10.14421/ahwal.2021.14205>.

<sup>6</sup>Fathor Rahman and Muhammad Saiful Anam, "Hak Asasi Manusia Mantan Narapidana Korupsi Dalam Peraturan Komisi Pemilihan Umum Nomor 20 Tahun 2018 Perspektif Maqashid Syariah Jasser Auda," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 3, no. 2 (2020): 65–80, <https://doi.org/10.24090/volksgeist.v3i2.3905>.

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Academic freedom in its journey does not only lead to suggestions and criticisms of tertiary policies, but also used by academics, professors, lecturers, and students to voice their thoughts on state policies.<sup>7</sup> Human Rights Watch<sup>8</sup> said that the restraints of the academic world, especially in Indonesia, have existed since the Soeharto regime. Students, professors, and lecturers were under the rule of government policy. Students took massive actions, ranging from the white group campaign in the 1971 election to the Malari incident in 1974.<sup>9</sup> The restriction of academic freedom of expression spread mainly during the Soeharto era and did not move on to ideal conditions during the reform era. But even so, the protection of academic freedom in Indonesia by law, rules, and implementation is still considered minimal.<sup>10</sup> It is indicated by a large number of academics who were subjected to criminalization when expressing their opinions, as well as the academics of the Indonesian college who are still under political pressure and financiers in making policies and problem formulation.<sup>11</sup>

Under the regime of Joko Widodo, academic freedom seemed to return to the bleak period of the New Order era. Lots of academics, both lecturers and professors, have to deal with the police due to the accusation of attacking the government policy. Previous research indicates that Suteki, Philosophy of Pancasila Expert from Diponegoro University, was fired from his position as the Chairperson of the Law Study Program, Head of the Law Faculty Senate, and Members of the Diponegoro University Academic Senate. He was accused of supporting the Hizbut Tahrir Indonesia (HTI) movement,

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<sup>7</sup>Zaka Firma Aditya and Sholahuddin Al-Fatih, "Indonesian Constitutional Rights: Expressing and Purposing Opinions on the Internet," *The International Journal of Human Rights* 25, no. 9 (2021): 1395–1419, <https://doi.org/10.1080/13642987.2020.1826450>.

<sup>8</sup>Human Right Watch, "Academic Freedom In Indonesia: Dismantling Soeharto-Era Barriers" (New York-Washington-London-Brussels, 1998).

<sup>9</sup>Herd Sahrasad and Muhammad Ridwan, "The Malari 1974, Press and the Soeharto's New Order: A Historical Reflection on Student Movement in the Authoritarian Era," *Budapest International Research and Critics Institute (BIRCI-Journal): Humanities and Social Sciences* 3, no. 4 (2020): 2796–2806, <https://doi.org/10.33258/birci.v3i4.1289>.

<sup>10</sup>Idhamsyah Eka Putra et al., "Denying the Accusation of Plagiarism: Power Relations at Play in Dictating Plagiarism as Academic Misconduct," *Higher Education* 85, no. 5 (2023): 979–97, <https://doi.org/10.1007/s10734-022-00875-z>.

<sup>11</sup>Ija Suntana and Tedi Priatna, "Four Obstacles to the Quality of Constitutional Law Learning in Indonesia," *Heliyon* 9, no. 1 (2023): e12824, <https://doi.org/10.1016/j.heliyon.2023.e12824>.

<sup>1</sup><https://e-journal.iain-palangkaraya.ac.id/index.php/maslahah/index>

which at that time was at odds with the government. Suteki indeed often posted his opinions and thoughts on social media on Facebook related to HTI and the government.<sup>12</sup>

Similarly, Sucipto Hadi Purnomo, a lecturer at Semarang State University (Unnes), was discharged from the college because he was accused of insulting the children and grandchildren of President Joko Widodo on Facebook. In his Facebook, he wrote, “My children's income has dropped dramatically this year. Is this the Jokowi effect that is too engrossed in Jan Ethes?” The Unnes rector stated that his institution did not tolerate any irresponsible remarks on social media posted by lecturers, education staff, or students who insulted the coat of arms of the Republic of Indonesia and the head of the state. Although, if closely observed, his Facebook status did not suggest any humiliation against President Joko Widodo and his children.

The most recent case occurred to Ni'matul Huda, a lecturer in the study program of constitutional law at Indonesian Islamic University (UII). She was intimidated and threatened to be killed, following her plan to speak in an online discussion entitled “Straightening the Issue of the Termination of the President Judging from the State Administration System” on 29 May 2020. The discussion held by the Constitutional Law Society of the Faculty of Law, Gadjah Mada University, was allegedly an attempted plot against the state.<sup>13</sup> Thongchai Winichakul,<sup>14</sup> a professor from the University of Wisconsin, in the Global Congress Scholars at Risk (SAR), described what happened in Southeast Asia that the colleges experiencing 'constant fear' as a result of various forms of intimidation which are not always in the form of imprisonment or murder of academics. Political-economic pressure, especially in the form of curbing academic freedom, ranging from college corporate affairs, the subject of the college to military pressure or hardliners who often threaten tertiary institutions to disperse discussion events, book review, and film screenings on colleges, clearly increasingly paralyzing criticism, must become a university tradition.

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<sup>12</sup>Kisno Hadi and May Linda Sari, “Fundamentalisme Radikal Dalam Pemikiran Dan Gerakan Politik Keagamaan Di Indonesia,” *Jurnal Ledalero* 20, no. 2 (2021): 159–73, <https://doi.org/10.31385/jl.v20i2.233.159-173>.

<sup>13</sup>Delpedro Marhaen Rismansyah and Tundjung Herning Sitabuana, “Kebebasan Akademik Dan Otonomi Keilmuan Dalam Sistem Pemerintahan Demokrasi Pancasila (Studi Kasus Webinar Constitutional Law Society Fakultas Hukum Universitas Gadjah Mada Yogyakarta),” *Jurnal Hukum Adigama* 5, no. 1 (2022): 1123–42, <https://journal.untar.ac.id/index.php/adigama/article/view/20081>.

<sup>14</sup>T. Winichakul, “Trends in Southeast Asia” (Singapore, 2016).

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Moreover, Zico Junius Fernando generally discusses the evolution of freedom of expression in Indonesia.<sup>15</sup> Another author, Roberth Kurniawan Ruslak Hammar, talked about freedom of speech from the common law and Indonesian criminal law perspective.<sup>16</sup> There are not many comparable resources because the study of academic freedom of expression in Indonesia is a recent one. This means that this article differs from topics written and researched by previous scholars. On another hand, this paper aimed to examine cases relating to the curbs of academic freedom, especially in the Joko Widodo regime 2014-2022, with the overview from Islamic law (maqashid sharia).

### Method

The research employed a normative legal method,<sup>17</sup> where it used the conceptual, regulatory, and historical approach.<sup>18</sup> The statutory approach refers to the provisions of the laws and regulations of Constitution of NRI 1945, UDHR, Criminal Code, and EIT Law. Conceptual approach is used to understand related theories and concepts that serve as the basis of current research, such as academic freedom definition and Islamic law values (Maqashid Sharia).<sup>19</sup> Then, the historical approach is intended to analyze the history of academic freedom in Indonesia. The data used in this study constituted secondary data obtained by conducting library research.<sup>20</sup> Data analysis involved a comprehensive qualitative analysis<sup>21</sup> that aimed to produce descriptive data in a written form to give the answer to the problem and reach conclusions.

<sup>15</sup>Zico Junius Fernando et al., "The Freedom of Expression in Indonesia," [Http://www.editorialmanager.com/cogentsocsci](http://www.editorialmanager.com/cogentsocsci) 8, no. 1 (July 2022), <https://doi.org/10.1080/23311886.2022.2103944>.

<sup>16</sup>Roberth Kurniawan and Ruslak Hammar, "Exploring the Intersection of Common Law and Criminal Justice System: Implications for Protecting Freedom of Speech in Indonesia," *International Journal of Criminal Justice Sciences* 17, no. 2 (2022): 299–311–299–311, <https://doi.org/10.5281/zenodo.4756126/IJCJS>.

<sup>17</sup>Tunggul Ansari and Setia Negara, "Normative Legal Research in Indonesia: Its Originis and Approaches," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (February 2023): 1–9, <https://doi.org/10.22219/ACLJ.V4I1.24855>.

<sup>18</sup>Suteki and Galang Taufani, *Metodologi Penelitian Hukum (Filasafat, Teori Dan Praktik)* (Depok: Rajagrafindo Persada, 2018).

<sup>19</sup>Nofiardi and Fahmil Samiran, "Living Under the Same Roof Before the Date of Separation: The Relevance of Maqāshid Al-Sharī'ah and Minangkabau Custom in a New Direction for Families," *Juris: Jurnal Ilmiah Syariah* 22, no. 2 (2023): 305–16, <https://doi.org/10.31958/juris.v22i2.9014>.

<sup>20</sup>Sholahuddin Al-Fatih, *Perkembangan Metode Penelitian Hukum Di Indonesia*, 1st ed. (Malang: UMM Press, 2023).

<sup>21</sup>Sholahuddin Al-Fatih and Ahmad Siboy, *Menulis Artikel Karya Ilmiah Hukum Di Jurnal Nasional Dan Internasional Bereputasi* (Malang: Inteligencia Media, 2021).

<sup>1</sup><https://e-journal.iain-palangkaraya.ac.id/index.php/maslahah/index>

## Findings and Discussion

### The History of Academic Freedom in Indonesia: From Soeharto Era to Early Reform

The discussion about academic freedom in Indonesia indeed cannot be separated from the “new order” or Soeharto era.<sup>22</sup> At that time, academic freedom was at its lowest peak because of the repressive Soeharto’s regime in suppressing criticism and political opponents to maintain the stability of the country. In the Human Rights Watch report entitled *Academic Freedom in Indonesia: Dismantling Suharto Barrier*, states that the restraints and restriction of the academic world are the most chronic legacy of the New Order era. Limitations were in place in various forms where each student was carefully regulated by government policy. The reason for this was that when less than ten years Suharto was in power, students took massive actions, starting from the white group campaign in the 1971 election to the Malari action on 15 January 1974. Those tragedy was shocked and violated *the hifz al-nafs* and *hifz al-‘aql*.

As a result of the actions often carried out by students, the government gave responses by referring to the Normalization rules for Campus Life Student Affairs Coordinating Board (Normalisasi Kehidupan Kampus Badan Koordinasi Kampus/NKK BKK) issued by the Ministry of Education and Culture. The New Order government enforced the regulation banning more than 2,000 books. Under the law, all works which in the view of the Attorney General, could spoil public order are subject to censorship. As a result, *hifz al-‘aql* is interrupted, caused hundreds of novels, historical studies, religious tracts, and books on political and social controversies have been banned, including scholarly works on the subjects from early twentieth-century social movements to liberation theology, to the rise of Asia as a centre of global capitalism.

In the Reformation era, the intensity of suppression of academic freedom is relaxed. Government regimes in the reform era are well aware that academic freedom is part of human rights,<sup>23</sup> and therefore access to education for the community must be ensured.

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<sup>22</sup>Tonye Clinton Jaja and Zaka Firma Aditya, “Promoting the Good Governance by Advancing the Role of Parliamentarians and the Term Offices Limitation (Comparing Nigeria and Indonesia),” *Journal of Indonesian Legal Studies* 7, no. 1 (June 2022): 265–98, <https://doi.org/10.15294/jils.v7i1.54776>.

<sup>23</sup>Nehru Asyikin, “Legal Politics of Bureaucratic Reform in Really Good Governance According to Prophetic Law,” *Legality: Jurnal Ilmiah Hukum* 28, no. 1 (2020): 81–95, <https://doi.org/10.22219/ljih.v28i1.10393>.

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President B.J. Habibie captured the anxiety of the people during the New Order regime by issuing Law Number 9 of 1998 on Freedom of Expressing Public Opinion. There are four objectives of this law. First, realizing responsibility freedom as one of the implementations of human rights under Pancasila and the 1945 Constitution. Second, realizing consistent and continuous legal protection in guaranteeing freedom of expression. Third, creating a climate conducive to the development of participation and creativity of every citizen as a manifestation of rights and responsibilities in democratic life. Fourth, placing social responsibility in the life of society, nation, and state without ignoring the interests of individuals or groups. By those regulations, the Indonesian government already committed to fulfilling *hifz al- 'aql*.

Later, during Abdurrahman Wahid's era, academic freedom was regulated in the amendments to the Constitution, especially in Article 28, Article 28C, Article 28E paragraph (3), and Article 28F of the 1945 Constitution. Although the Articles do not explicitly mention 'academic freedom' but use the phrase 'freedom of speech', this provision has the same meaning. Furthermore, during the era of President Megawati, academic freedom also received protection under Law Number 20 of 2003 concerning the National Education System. Article 24, paragraph (1) of the Law states that the provision of education and the development of science in higher education apply academic freedom, freedom of academic forum, and scientific autonomy. This article emphasizes the importance of academic freedom in the tertiary environment of both state and private tertiary institutions, which are important ways to guarantee the *hifz al- 'aql* for scholars in Indonesia.

The existence of the National Education System Law was then followed up by President Susilo Bambang Yudhoyono (SBY) by issuing Law Number 14 of 2005 concerning Teachers and Lecturers. This law was fundamental due to concerns from many lecturers and professors about the number of universities that were considered 'not' autonomous. Most believed if the university was not independent, the academic freedom would die. Article 51, paragraph (1) letters c, e, and g of the Teacher and Lecturer Law state that lecturers have the right to performing their duties. First, obtain protection in performing the duties and intellectual property rights. Second, enjoy academic freedom, academic pulpit, and scientific autonomy. Third, enjoy the freedom to associate with professional organizations/scientific profession organizations.

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President SBY also issued Law Number 12 of 2012 concerning Higher Education, which provides academic freedom. The law applies not only to lecturers but also students. It is essential because one of the national education standards is to pay attention to academic freedom, freedom of academic pulpit, and scientific autonomy to achieve the goals of Higher Education. It means the continuity of the commitment of Indonesian government to fulfill the *hifz al'-aql*. Thus, the question arises, can many rules giving academic freedom reduce violations to zero?

In fact, during the reform period, there were still many infringements of academic freedom that were dominated by the dissolution of discussions by the police and social organizations. In 2011, the dissolution of a discussion with the theme "Century Scandal and the Involvement of SBY-Boediono" by the Rector of the Christian University of Indonesia (Universitas Kristen Indonesia/UKI) took place. The event was held by students of UKI and attended by several political figures and House of Representatives members such as Bambang Soesatyo, Yusril Ihza Mahendra, and Fuad Bawazir. As a result of the dissolution, two students from UKI were threatened to drop out to initiate the discussion. It is clear that the repressive action from the government breaks *the hifz al'-aql* and *hifz an-nafs* principles.

Throughout 2009-2014, internal meetings of victims of 1965-1966 always received intimidation and terror. KontraS, an Indonesian NGO founded in 1998 that focused on Human Rights issue, released a paper entitled *Human Rights Recognized but Not Protected: Human Rights Notes during the Government of President Susilo Bambang Yudhoyono (2004-2014)*, reported that at least 55 political prisoners (2004-2012) were charged under treason article related to freedom of expression.<sup>24</sup>

However, the fact that the role of civil society, including academics, civil society groups, and journalists was key to fostering the atmosphere of academic freedom in Indonesia in the early reform era was inevitable. According to Muladi,<sup>25</sup> the reform era has generated widespread awareness that scientific issues, with all its complexity, are also directly and indirectly in contact with large aspects, namely fundamental values or

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<sup>24</sup>KontraS, "Menemukan Pola Pembatasan Terhadap Kebebasan Berkumpul Di Indonesia: Studi Terhadap Kasus-Kasus Pelanggaran Kebebasan Berkumpul 2015-2018." (Jakarta, 2019).

<sup>25</sup>Muladi, "Pengadilan Pidana Bagi Pelanggar HAM Berat Di Era Demokrasi," *Jurnal Demokrasi Dan HAM* 1, no. 1 (2000): 43-44.

democratic indices.<sup>26</sup> In other words, it would state that universities, acting as providers of educational activities<sup>27</sup> and scientific development, also play a role in the process of democratization and the realization of the fundamental values of democracy.<sup>28</sup> Furthermore, during that era, the author noted that the most dominant cases were about violating the *hifz al-nafs* and *hifz al-‘aql*, who occur to scholars and activists.

### Academic Freedom in Indonesia at the Last Decade

After the reform, academic freedom in Indonesia started to be guaranteed and implemented although not entirely. It was obvious in the lack of cases of silencing on political opponents or the abduction of campus activists who stood against government policies. At that time, in the first ten years of reform, Indonesia was heaven for academic freedom. Discussions were getting more common without fear of being dispersed by the authorities (although in some cases during the SBY regime, there was a dissolution of the discussion) and the emergence of press institutions in both printed and electronic form, and without abductions of activists or press bans. Massive demonstrations that attacked government policy and demanded an impeachment of the president was still facilitated by the government.<sup>29</sup> Unfortunately, the efforts to improve the academic freedom have been built since the reform began to decline dramatically in the last five years. The worries are proved by the data of increasing cases of violations of academic freedom. It is not not only targeting students but also lecturers and professors at the university.

In 2014, there was a forced dissolution of the film screening entitled ‘The Look of Silent’ in several areas.<sup>30</sup> This film describes the reconciliation of Adi Rukun, whose family was killed during the PKI incident in 1965.<sup>31</sup> The dissolution is caused by the

<sup>26</sup>Aulia Rosa Nasution, “Penyelesaian Kasus Pelanggaran HAM Berat Melalui Pengadilan Nasional Dan Internasional Serta Komisi Kebenaran Dan Rekonsiliasi,” *Jurnal Mercatoria* 11, no. 1 (2018): 90, <https://doi.org/10.31289/mercatoria.v11i1.1509>.

<sup>27</sup>Z Firma Aditya and Sholahuddin Al-Fatih, “Democracy and Human Rights As A Solution To Resolve The Humanitarian Crisis In Muslim Countries,” in *Conference On Islamic Studies (ICIS)* (Yogyakarta, 2017).

<sup>28</sup>Nanang Hasan Susanto, “Politicization of Religion and the Future of Democracy in Indonesia in Populism Theory,” *Journal for the Study of Religions and Ideologies* 18, no. 54 (2019): 139–58.

<sup>29</sup>Litya Surisdani Anggraeniko, Nurul Isnina SAN, and Efendi Simanjuntak, “Menakar Realitas Makar Dan Hak Konstitusional Pada Kegiatan Akademik,” *Jurnal Hukum In Concreto* 2, no. 1 (February 2023): 12–30, <https://doi.org/10.35960/INCONCRETO.V2I1.995>.

<sup>30</sup>Syaiful Halim, “Dekonstruksi Mitos Film Dokumenter The Look of Silence (Senyap) Karya Joshua Oppenheimer,” *Ideology Journal* 2, no. 2 (2017): 53–82, <https://doi.org/10.24191/idealogy.v2i2.25>.

<sup>31</sup>Budi Wibawa, “Problem Etika Dalam Kasus Dokumenter Jagal (2012) Dan Senyap (2014),” *IMAJI: Film, Fotografi, Televisi, & Media Baru* 11, no. 2 (2020): 38–50, <https://imaji.ikj.ac.id/index.php/IMAJI/article/view/12>.

factor of the film bringing up something sensitive and could threaten the unity of Indonesia. In December 2014, the planned discussion and screening of this film, organized by students of the Faculty of Social and Political Sciences, Gadjah Mada University in Yogyakarta, forcibly dispersed by the public. Still, in the same month, this film screening plan in Malang also failed because it was disbanded by two soldiers personnel. In April 2015, the screening and discussion of this Film at the Faculty of Law Airlangga University cafe was also disbanded. Not until the dialogue with the 1965 historical figures was found to have been used to play the film was this dialogue dissolved. The act of dissolution was seen as hampering the efforts of the National Commission on Human Rights in communicating past human rights violations.<sup>32</sup>

In 2015, Rosnida Sari, a lecturer at UIN Ar-Raniry Banda Aceh, received threats of harshness and intimidation because of the teaching methods of gender class. She invited her students to visit the church and discuss with religious leaders to gain an understanding of male and female relationships in Christianity as well as an effort to build harmony among religious people. She wrote her activities and posted them on Australia Plus on 5 January. The article was later quoted by several online media in Aceh and provoked reactions after several Acehnese spread the article through social media of Facebook. The day after the article was posted, she was bullied in her social media and with her family. Also, she faced terrors and murder threats. Surprisingly, her institution did not provide a defense for his creation of the teaching methods and even, in the matter of suspension threats.

Meanwhile, at a university in Malang, screening and discussion film entitled “Samin vs Semen” was forbidden as it was deemed provocative.<sup>33</sup> The film tells the story of the religion of Samin, called *Sedulur Sikep*, who lives in the vicinity of the Karts Kendeng mountains in Central Java.<sup>34</sup> The film revolves around the mothers and peasants

<sup>32</sup>Novita Maria Ticoalu, Cornelis Dj. Massie, and Josepus J. Pinori, “Analisis Yuridis Terhadap Transparansi Pemerintah Dalam Penyelesaian Kasus Hak Asasi Manusia (HAM) Di Indonesia,” *Lex Administratum* 11, no. 4 (2023), <https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/48550>.

<sup>33</sup>Hasna Bararah et al., “Gerakan Masyarakat Samin Terhadap Rencana Pembangunan Pabrik Semen (Analisis Semiotik John Fiske Dalam Film ‘Samin Vs Semen’),” *Jurnal Ilmu Komunikasi Acta Diurna* 18, no. 1 (April 2022), <https://doi.org/10.20884/1.ACTADIURNA.2022.18.1.5152>.

<sup>34</sup>Amelia Sumardi Indah Suryawati, “Representasi Ketidakadilan Dalam Film Samin vs Semen,” *Pantarei* 5, no. 3 (September 2021): 1–10, <https://jom.fikom.budiluhur.ac.id/index.php/Pantarei/article/view/780>.

of Samin who retain paddy fields from several cement companies. The coordinator of this film production was a student of DIANNS Press Institute, Faculty of Administrative Sciences, Universitas Brawijaya. The prohibition led to a report to the Ombudsman of East Java representatives and the Indonesian National Human Rights Commission. Nevertheless, the prohibition decommissioned students' academic freedom.

Still, in 2015, The violation of academic freedom was experienced by two lecturers of the University of Gajah Mada, Eko Haryono and Heru Hendrayana, as expert witnesses in the State Administrative Council at PTUN Semarang with a case Number 064/G/2014/PTUN.Smg. Heru Hendrayana is a hydrogeologist and a lecturer in the Faculty of Engineering. Meanwhile, Eko Haryono is a karst geomorphologist and a lecturer in the Faculty of Geography. They became expert witnesses in a lawsuit against the Environmental Permit for Mining and Cement Plant Construction Activities by PT. Semen Gresik in Rembang Regency, Central Java. They said the Rembang area was a young karst area and could be mined. The testimony was protested by residents supporting the lawsuit and they demonstrated at the UGM campus in Yogyakarta on Friday, 20 March 2015. The local residents believed that the statements betrayed the people. The vice-rector of cooperation and Alumni said that the testimony of the members given by both indicated that they were eligible to be an expert witness. UGM imposed the prevailing administrative sanctions.

In 2016, Police officers and community organizations from the Putra-Purnawirawan Communication Forum TNI-Polri (Forum Komunikasi Putra Putri Purnawirawan/FKPPPI) broke up the 2016 World Press Freedom Day commemoration event and the film screening of 'Pulau Buru Tanah Air Beta' at the Office of the Alliance of Independent Journalists (Aliansi Jurnalis Indonesia/AJI) Yogyakarta. The same threat also addressed to the Justicia Student Council of Gajah Mada University (Dewan Mahasiswa/Dema Justicia UGM). Dema Justicia was initially determined to explore, develop, and practice science to train social sensitivity and critical power of the students towards change through the screening of that film. The dissolution was sparked by fear that it would arouse the Indonesian Communist Party movement.

In the same year, Citra Andrayani, one of the lecturers in the Department of Ethnomusicology, Indonesian Institute of the Arts (ISI) Yogyakarta, was not assigned to any classes for teaching in the study of Entomusicology in the even semester 2015/2016.

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She was alleged to have taught materials not complying with the vision and mission of the Faculty of Performing Arts of ISI Jogja. This situation reveals that she had to deal with this treatment simply because she taught material that tended to be postmodern stream, not traditional. Citra was adamant that what she taught was of international standards and aiming to increase the students' knowledge. She further reveals that scholarly issues should be discussed in open discussion, forum, or debate.

In 2017, Suteki, a professor of law at the University of Diponegoro (UNDIP), was removed from the position of the Head of the Master of Law Study Program and the Head of the Law Faculty Senate on November 28, 2018. The reason was Suteki's willingness to be an expert witness in the trial of HTI's (Hizbut Tahrir Indonesia) lawsuit at the Administrative Court (PTUN) of Jakarta and the Judicial Review at the Constitutional Court in October 2017. Undip Chancellor, through the Ethics Council Honorary Council (Dewan Kehormatan Kode Etik/DKKE) at a session, assessed Suteki's decision as an expert witness in the HTI lawsuit hearing at PTUN Jakarta, and it was concerning disciplinary behavior because his presence as a witness was without permission and did not represent the campus.

He was believed to spread and support the forbidden HTI due to his posting on social media. In addition, his whereabouts when conducting a judicial review lawsuit against the Ormas Law at the Constitutional Court in October 2017 were considered against the regulatory products of the government. Suteki allegedly violated the discipline of the State Civil Apparatus (Aparatur Sipil Negara/ASN) in accordance with Government Regulation No. 53 of 2010. The Chancellor dismissed Suteki from his position under Decree Number 586/UN7.P/KP/2018 regarding the dismissal of two important positions and several other positions outside the campus. In the same year, Himma Dewiyana Lubis, a lecturer at North Sumatra University (Universitas Sumatera Utara/USU), was arrested by the police due to her posted remarks involving suicide bombings in three churches in Surabaya. Himma posted on her Facebook account confirming that the three church bombs were merely a diversion. She was charged violating Article 28 paragraph (2) jo Article 45A paragraph (2) of Law Number 11 of 2008 concerning Electronic Information and Transactions (EIT Law):

Any person who intentionally and without the right to disseminate information intended to incite hatred or hostility of certain individuals and/or groups of people

based on ethnicity, religion, race, and intergroup (SARA) as referred to in Article 28 paragraph (2) is sentenced to a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1 billion.<sup>35</sup>

The panel of judges declared Himma to have been proven legally and convincingly guilty of committing a criminal act intentionally and without the right to spread information intended to incite hatred or hostility of certain individuals and/or groups of people based on ethnicity, religion, race, and intergroup (SARA). Through the Medan High Court decision, Decision Number 3168/Pid.sus/2018/PN.Mdn, she was jailed for 1 year and fined IDR 10 million to replace 3-month imprisonment.

In 2018, Basuki Wasis, an environmental damage estimator from Bogor Agricultural University (Institut Pertanian Bogor/IPB) was presented by the Corruption Eradication Commission to testify as an expert witness in the court on 14 February, 2018. He conveyed the calculation of state losses of Rp 2.7 trillion due to nickel mining activities carried out by PT. Anugrah Harisma Barakah on Kabaena Island, Southeast Sulawesi Province where this loss calculation refers to his research. Based on his research, he testified that there were three types of calculations. *first*, the total loss due to ecological damage; *second*, environmental economic losses; and *third*, the cost of environmental recovery. A civil suit Number 47/Pdr.G/LH/2018/PN.Cbi at Cibinong District Court, Class IA was filed by Nur Alam, a corruption suspect and former Southeast Sulawesi Governor, against Basuki. However, the lawsuit was declared 'not acceptable'.

Still, in 2018, Rocky Gerung, a Philosophy lecturer at the University of Indonesia was reported by Abu Janda under a police report Number TBL/2001/IV/2018/PMJ/Dit.Reskrimsus, dated April 11, 2018, and Jack Boyd Lopian with report number LP/512/IV/2018/Bareskrim, dated April 16, 2018, because Rocky was considered to have violated Article 156a of the Criminal Code. This report begins with Rocky's statement in a dialogue program 'Indonesia Lawyer Club' on television saying that the scriptures are fictional. He believed the word fiction was negative because it was laden with lies. He considered doing Hate speech as stipulated in Article 28 paragraph (2) and Article 45A paragraph (2) of the EIT Law.

Not only lecturers but also the President of the University of Indonesia's Student Executive Board (Badan Eksekutif Mahasiswa UI), Muhammad Zaadit Taqwa, had to be

<sup>35</sup>Law Number 11 of 2008 concerning Electronic Information and Transactions (EIT Law)

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arrested for giving a yellow card to President Joko Widodo when he gave a speech at the UI Anniversary and the inauguration of the UI Nationality Forum at the UI Hall of Depok. At the same time, Zaadit stood up and blew the whistle when the participants clapped and gave a yellow card from the choir book when the participants stopped clapping. His motivation for giving a yellow card was triggered by the government's failure to deal with several issues, such as measles and malnutrition in Asmat. Also, the proposal for acting governor came from the high-ranking army and police officers who could revive the dual functions of ABRI (Indonesian Armed Forces) and a new regulatory draft on the Student Organization which is being compiled from the regulatory draft of the Minister of Research, Technology, and Higher Education. He also mentioned that it was a form of warning over various problems in Indonesia since the 4 years of Joko Widodo's reign. Moreover, Zaadit stated before taking the yellow card, his team had previously held a demonstration outside the hall. He was interrogated by the Jakarta Police but was finally released.

In 2019, Robertus Robet, a Lecturer at the Jakarta State University and human rights activist, was arrested on charges of insulting Indonesia National Army (Tentara Nasional Indonesia/TNI) institutions. The crime was allegedly committed Robet while giving speeches at the Kamisan Action on February 28, 2019, regarding dual ABRI functions. In his speech, Robet sang songs that were often sung by 1998 students to insult ABRI institutions. Robertus was named a suspect because he was considered to have conducted a hate speech as stipulated in Article 45 A paragraph (2) Jo Article 28 paragraph (2) of the EIT Law and/or Article 14 paragraph (2) Jo Article 15 of Law Number 1 of 1946 concerning Criminal Law and/or Article 207 of the Criminal Code. Robertus then went to Australia because he was worried about his family's safety after being threatened online.

Still, in the same year, Saiful Mahdi, a lecturer at Syiah Kuala University, was also arrested by the police for alleged defamation after criticism written on two internal WhatsApp groups that were sued by his colleagues. He was reported by the Dean of the Faculty of Engineering for criticizing the test results of the recruitment of teaching staff (Calon Pegawai Negeri Sipil/CPNS) for Faculty of Engineering Lecturers at the end of 2018. In the Whatsapp group, he wrote that the results of tests were not transparent and tend to have 'nepotism.' His statement in court mentioned that he did not intend to defame

<sup>1</sup>  
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someone but instead gave critical thinking regarding the public interest. Following this allegation, Shaiful Mahdi was sentenced to 3 months in prison and was subject to an Rp. 10 million fines to replace a 1-month jail sentence over the violation of Article 27 Paragraph (3) of the EIT Law.

Meanwhile, up to mid-2020, three cases of infringement of academic freedom occurred, which caused a stir in the media. The case of Mohammad Hisbun Payu was an example of the case, where a student activist at the Muhammadiyah University of Surakarta was arrested by the Directorate of Criminal Investigation of Central Java Police for allegedly committing hate speech against President Joko Widodo for criticizing his policies that he considered more concerned with investment than the people's condition. Interestingly, he received a Notice of Commencement of Investigation (Surat Pemberitahuan Dimulainya Penyidikan/SPDP), an Arrest, and a Determination of the Suspect after they examined the suspect. He was suspected of having conducted a <sup>12</sup> hate speech as stipulated in Article 28 paragraph (2) and Article 45A paragraph (2) of the EIT Law.

Another case involved Sucipto Hadi Purnomo, a Lecturer at Semarang State University (UNNES), who was discharged from his position as a lecturer on 12 February 2020 under Unnes Rector's Decree Number B/167/UN37/HK/2020 due to his post regarding Jokowi's grandchildren that was considered an insult to the president. In his Facebook status, he wrote, "*My children's income has dropped dramatically this year. Is this the Jokowi effect that is too engrossed in Jan Ethes?*" The rector of Unnes stated that his institution did not tolerate any inappropriate remarks posted on social media by lecturers, education staff, or students insulting the coat of arms of the Republic of Indonesia and the head of state. Although<sup>7</sup>, there seemed to be no phrases indicating contempt for children and President Joko Widodo.

The third case, the most recent case, involved a professor of constitutional law at the Indonesian Islamic University, Ni'matul Huda who was intimidated and threatened to be murdered following her plan to be a speaker in an online discussion entitled "*Straightening the Issue of the Termination of the President Judging from the State Administration System*" on May 29, 2020. The discussion held by <sup>2</sup> the Constitutional Law Society of the Faculty of Law, Gadjah Mada University, was accused of being an attempted plot against the state. Even worse, terror and verbal intimidation not only

<sup>1</sup> <https://e-journal.iain-palangkaraya.ac.id/index.php/maslahah/index>

occurred to her but also to the committee of this discussion activity. To this day, the police have not been able to reveal who should be responsible for this terror and intimidation.

Interestingly, the cases that occurred in the Joko Widodo regime were more dominated by cases related to coup accusations, insults to the president, and criticism of dissatisfaction with government policies. It is undoubtedly very different from the ten years of the SBY era, where more cases of violations of academic freedom were cases of forcible dissolution of discussion triggered by the phobia of the issue of communism-marxism and the rise of the Indonesian Communist Party. In general, the data shows that the situation of academic freedom in Indonesia is actually in a condition that is not much better than the SBY era and even the New Order era.

A lot of cases of violations of academic freedom in Indonesia indirectly affect the index of the freedom of expression during the President Joko Widodo regime. In the Freedom House report entitled *Freedom on The Net 2019: The Crisis of Social Media*, Indonesia only scored 51 for freedom of expression online on social media and remains in the yellow zone (partly free) consisting of obstacles to access (score 14), Limits on content (score 19), and violation of User Rights (score 14).<sup>36</sup> Even worse, cases of freedom of expression outside of academic freedom apparently increased from 74 cases during the reign of President SBY (2009-2014) to 241 cases in the Jokowi era (2014-2019).<sup>37</sup>

Freedom of expression scores in 2019 dropped dramatically compared to 2018 and 2017, which were 46 and 47 (the higher the value, the worse the score). According to Freedom House in a report entitled *Freedom on the Net 2017: Manipulating Social Media to Undermine Democracy*, Indonesia scored 47 for freedom of expression online in social media in Southeast Asia, leaving Indonesia in a yellow zone consisting of (1) Obstacles to Access (10), (2) Limits on Content (15), and Violations of User Rights (22) <sup>38</sup>. Meanwhile, in a report entitled *Freedom on the Net 2018: The Rise of Digital Authoritarianism*, Indonesia received Obstacles to Access (14), Limits on Content (19),

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<sup>36</sup>Freedom House, *Freedom on The Net 2019: The Crisis of Social Media* (Washington: Freedom House, 2019).

<sup>37</sup>The Conversation, "UU ITE Dan Merosotnya Kebebasan Berekspresi Individu Di Indonesia," 2019.

<sup>38</sup>Freedom House, *Freedom on the Net 2017: Manipulating Social Media to Undermine Democracy*. (Washington: Freedom House, 2017).

<sup>1</sup><https://e-journal.iain-palangkaraya.ac.id/index.php/maslahah/index>

and Violations of User Rights (13).<sup>39</sup> Compared to 2019 data, the limits in content and violations of user rights score remain constant. It is understandable because of the strengthening of the repressive role of the police and the excessive use of authority in maintaining the reputation of government institutions, especially ahead of the 2019 presidential elections.

Overall, from 2011-2019, scores obtained by Indonesia were stagnant in the range of 41-47. The lowest score was reported in 2013, which was 41 (the higher the value, the worse the score). But in the following years the index of freedom of expression in Indonesia worsened. Consequently, Indonesia's internet freedom index fell to 42 in 2014 and 2015, 44 in 2016, and 47 in 2017. The low index of freedom of expression, including academic freedom in Indonesia in the past five years, was motivated by poor coordination between the government and the police and government supporters (coalition and sympathizers). When juxtaposed with the table above, most of the reports were reported by government sympathizers and the rest by the police (in the case of treason and humiliation by the president). This report will increase each ahead of the political momentum of the presidential election.

There are two legal issues regarding the number of reports. Article 207 of the Indonesian Criminal Code is still in effect, whoever intentionally publicly verbally, or in writing insults a ruler or public body in Indonesia is threatened with a maximum imprisonment of one year and six months or a maximum fine of four thousand and five hundred rupiah. This article is often used as a basis by the police to arrest people who are critical to the government even though there is no clear interpretation and boundary on the subject of 'insulting the president'. Article 27 and 28 of the EIT Law are deemed dubious since they condemned people over insults, defamation, and hate speech, breaking the unity of the people of different ethnicity, race, and religion on social media. These articles are often used as references by government sympathizers to criminalize political opponents. During the pandemic, the Chief of the Indonesian National Police on behalf of the Government issued a Police Telegram Number ST/1100/IV/HUK.7.1/2020 signed by the Head of Criminal Investigation Unit, Komjen Listyo Sigit Prabowo on 4 April

<sup>39</sup>Freedom House, *Freedom on The Net 2018 : The Rise of Digital Authoritarianism*. (Washington: Freedom House, 2018).

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2020, aiming to impose strict punishment on those violating Article 207 of Criminal Code concerning Contempt for the President.

The telegram was made in the context of handling cases and guiding the implementation of duties during the period of preventing the spread of Covid-19, in the implementation of the Criminal Investigation functions related to the development of the situation, as well as opinions in the cyber space<sup>40</sup> and the implementation of cyber-criminal law.<sup>41</sup> As a result of this telegram, the public could not issue their opinions and critical attitude regarding government policies enforced during this pandemic.<sup>42</sup>

According to the number cases of violations of freedom of expression and academic freedom in Indonesia, the article recommends that the government take into account the following measures to raise the index of freedom of expression and academic freedom. First, re-coordinating with the police so that they do not easily arrest the community because of their critical attitude with the accusations of insulting the president, especially the government's political opponents. Because the president is the head of state directly elected by the people, he must be willing to accept criticism from the public, even if it is painful. Second, removing Article 207 of the Criminal Code related to insults to the authorities because the article is no longer appropriate for the conditions of the Indonesian people in the current era of openness. In addition, historically, the article is a legacy from the Dutch colonial, which is sociologically irrelevant to the times. Third, the President must actively appeal to his supporters (sympathizers, volunteers, and coalitions) not to easily report those who criticize the government. At present time, there are enough reports from government supporters to political opponents referring to articles 27 and 28 of the EIT Law. Fourth, revising Article 27 and 28 of the EIT Law because the article is the source cause of the violations of freedom of expression and academic freedom in Indonesia. These articles are "dubious articles" whose interpretation is contingent on the will of the authorities. Fifth, educating the police and the public, especially on

<sup>40</sup>Sarah Safira Aulianisa and Indirwan Indirwan, "Critical Review of the Urgency of Strengthening the Implementation of Cyber Security and Resilience in Indonesia," *Lex Scientia Law Review* 4, no. 1 (2020): 33–48, <https://doi.org/10.15294/lesrev.v4i1.38197>.

<sup>41</sup>Mohammad Syahrul RA, Yusuf Hamdika, and Sholahuddin Al-Fatih, "The Impact of COVID-19 Through the Lens of Islamic Law: An Indonesian Case," *Lentera Hukum* 7, no. 3 (November 2020): 267–78, <https://doi.org/10.19184/EJLH.V7I3.18983>.

<sup>42</sup>Sholahuddin Al-Fatih and Felinda Istighfararisna Aulia, "Tanggung Jawab Negara Dalam Kasus COVID-19 Sebagai Perwujudan Perlindungan HAM," *Jurnal HAM* 12, no. 3 (December 2021): 349–66, <https://doi.org/10.30641/ham.2021.12.349-366>.

<sup>1</sup><https://e-journal.iain-palangkaraya.ac.id/index.php/maslahah/index>

government supporters, emphasizing that Article 27 and 28 of the EIT Law contain offense complaints. It is the mandate of the Constitutional Court Decision Number 50/PUU-VI/2008 and Number 2/PUU-VII/2009 that the offense of defamation and defamation in the field of Electronic Information and Electronic Transactions is not merely a general crime but as complaint offense. The affirmation regarding complaint offense is intended to follow the principles of legal certainty and a sense of community justice.

### Conclusion

Based on the discussion, in the 2014-2022 period, in Indonesia, there were already quite a lot of cases of restrictions on academic freedom of expression, related to the violating of *hifz al-nafs* and *hifz al-'aql*. The cases that occurred in the Joko Widodo era were more dominated by cases related to coup accusations, insults to the president, and criticism of dissatisfaction with government policies. It is undoubtedly very different from the ten years of the SBY era, where more cases of violations of academic freedom were cases of forcible dissolution of discussion which were triggered by the phobia of the issue of communism-marxism and the rise of the Indonesian Communist Party. In general, it shows that the situation of academic freedom in Indonesia is actually in a condition that is not much better than the SBY era and even the New Order era. Moreover, Article 207 of the Criminal Code and Articles 27-28 of the EIT Law seem to have stimulated the cases of violation of academic freedom. Some of these articles served as references for the government to punish academics standing against government policies. If the issue of academic freedom in the era of Joko Widodo is not addressed, it can be a bad precedent for his leadership in the 2014-2022 period. Subsequently, it will reduce the index of freedom in Indonesia.

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### ACADEMIC FREEDOM OF EXPRESSION IN INDONESIA: A Maqashid Sharia Notes

Sholahuddin Al-Fatih, Zaka Firna Aditya, Abdul Basid Fuadi, Muhammad Nur  
Universitas Muhammadiyah Malang, Indonesia  
Constitutional Court, Republic of Indonesia, Indonesia  
Constitutional Court, Republic of Indonesia, Indonesia  
Lancaster University, United Kingdom  
safatih@uwm.ac.id

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#### ABSTRACT

This article intended to examine academic freedom in Indonesia, especially in the last decade (2014-2022). As a country that upholds human rights and Islamic values, academic freedom in Indonesia is in chaos, especially on *hifz al-mafis* and *hifz al-'aql* fulfillment. Many forms of thought expression and criticism conveyed by scholars to the government in academic forums are responded to with various terror, threats, and criminalization on the grounds of state stability. Scholars who are critical of government policies fall victim to criminalization, go to prison, and are dismissed from college due to being considered to violate college ethics. The many cases of academic freedom infringement indicate a severe problem where the thought of scientists in an academic forum is being 'undermined' by authoritarian government regimes. This paper examines cases relating to the curbs on academic freedom, especially in the Joko Widodo regime 2014-2022, with an overview of Islamic law (maqashid sharia). The research employed a normative legal method using conceptual, regulatory, and historical approaches. As a result, academic freedom in Indonesia can be restored through amendments to Article 207 of the Criminal Code and Articles 27-28 of the EIT Law to eliminate the restriction of academic freedom of expression and fulfill the *hifz al-mafis* and *hifz al-'aql* for every scholar and citizens.

**Keywords:** Academic Freedom; Islamic Law; Maqashid Sharia;

#### ABSTRAK

Artikel ini mengkaji tentang kebebasan akademik di Indonesia khususnya dalam satu dekade terakhir (2014-2022). Sebagai negara yang menjunjung tinggi hak asasi manusia dan nilai-nilai Islam, kebebasan akademik di Indonesia sedang kacau, terutama dalam pemenuhan jaminan perlindungan atas jiwa dan pikiran. Berbagai bentuk pemikiran, dan kritik yang disampaikan oleh akademisi kepada pemerintah di forum akademik ditanggapi dengan berbagai teror, ancaman, dan kriminalisasi dengan alasan stabilitas negara. Cendekiawan yang kritis terhadap kebijakan pemerintah menjadi korban kriminalisasi dan masuk penjara, serta dikeluarkan dari perguruan tinggi karena dianggap melanggar etika perguruan tinggi. Banyaknya kasus pelanggaran kebebasan akademik

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