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**THE LEGALITY OF THE REPRESSION OF FREEDOM OF SPEECH BY
THE RUSSIAN GOVERNMENT**

BY

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ABSTRACT

A basic human right, freedom of expression is upheld and safeguarded by several international and domestic legal systems. It is an essential component of a democratic society and promotes the free interchange of ideas, encourages candid discussion, and safeguards personal freedom. To balance it with other significant interests like national security, public order, public health, other people's rights and reputations, and the preservation of moral values, it may, nevertheless, be subject to some restrictions. However, a rising number of constraints and restrictions have damaged the Russian government's approach to the media, raising questions about the country's press freedom and freedom of speech. Despite constitutional guarantees and international obligations to protect these rights, the Russian government has implemented various measures that curtail the independence and diversity of the mass media landscape. Due to ambiguous extremism laws in the Criminal Code of the Russian Federation that specifically target journalists and the mass media critical of the Russian government, the Russian government has a significant amount of power to censor any form of speech. As a result, the Russian government does not have the freedom to freely disseminate information. However, the Russian government's actions are justified to uphold strict control over the country's political environment, censor the media due to concerns about national security, defend the nation against terrorism and extremism, preserve political stability, and uphold social cohesion and stability within the nation. Even though there are international organizations and international human rights legal instruments protecting the right to free speech and the safety of journalists and other media organizations, Russia cannot be sanctioned by them due to Russia having a seat in the UN Security Council and no longer a part of the European council whilst these international instruments does not have legally binding power, making it difficult for journalists and other media organizations to carry out their jobs. Journalists frequently face censorship, and their content is suppressed or outlawed.

Keywords: International Human Rights Legal Instruments, Freedom of Speech, Mass Media, Russian Government, Russia

PREFACE

This undergraduate thesis was created to fulfill the requirements for the Law bachelor's degree at Parahyangan Catholic University. Writing this undergraduate thesis has been a great adventure for the writer because he has gone through many different emotional phases. There are many people in the writer's circle who provided both technical help and emotional support in the creation of this undergraduate thesis.

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The writer realized that this undergraduate thesis has many potential flaws and is far from perfect. Therefore, the writer would value any critiques and recommendations for improving this undergraduate thesis. The writer hopes that the studies in this undergraduate thesis can be continued for further contrivance and can be helpful to all readers.

Bandung, 21st of July 2023

Hendrik Widodo

6051901302

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CHAPTER I

INTRODUCTION

I.I Background

All rights inherent in human beings are human rights regardless of things such as race, gender, religion, and status.¹ Human Rights such as the right to life, the right to have freedom from slavery and torture, the right to freedom of opinion and expression, the right to work, the right to education, and other things are the rights of all human beings to be owned without any discrimination.²

With this, Human Rights are attached to all human beings, in which case every human being has the freedom to express opinions and criticize which is a right that cannot be dismissed by anyone. Human Rights clearly and concretely protect Human Rights. The International Covenant on Civil and Political Rights (ICCPR) hereby has rules which protect the right of everyone to have freedom of opinion and criticism Article 19 of the ICCPR states that:

“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art, or through any other media of his choice.”³

Where this requires that everyone is allowed to voice opinions and criticize the Government. Furthermore, there is also Article 9 of the ICCPR which states:

“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and by such procedure as are established by law.”⁴

And:

¹ “Human Rights”, United Nations, Accessed on August 14, 2022.

² *Ibid.*

³ The Core International Human Rights Treaties, Accessed on August 12, 2022, <https://www.ohchr.org/sites/default/files/documents/publications/coretreatiesen.pdf>

⁴ *Ibid.*

“Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”⁵

With this, it can be seen that the above provisions cover several ICCPR party countries, one of which is Russia. Apart from the Russian Government's provisions on free speech, the authorities have significant discretion to clamp down on any speech, organization, or activity that has no official endorsement due to ambiguous extremism laws. The Russian government dominates the media by controlling the majority of the national television network, radio, and print media, as well as the media advertising market, either directly or indirectly.⁶ With this in mind, it can be said that the freedom to express opinions and/or criticize the Russian government in the mass media is very limited so the media, press, journalists, and broadcasting companies in Russia do not have a large scope to publish the information obtained. Furthermore, there are no derogative rights as such in the ICCPR. However, the ICCPR does provide for some limitations on certain rights in certain circumstances such as in Article 19 of the ICCPR. However, this right is not an absolute one and may be subject to certain limitations as provided for under Article 19(3) of the ICCPR.

Article 19 (3) of the ICCPR states that the exercise of the right to freedom of expression may be subject to certain restrictions, which are provided by law and are necessary:

- a. For respect of the rights or reputations of others;
- b. For the protection of national security or public order, or public health or morals.⁷

In addition, the Human Rights Committee, which monitors state parties' compliance with the ICCPR, has guided the interpretation of these limitations. The Committee has emphasized that any restrictions on freedom of expression must be

⁵ *Ibid.*

⁶ “Russia: Freedom in the World 2023 Country Report.” Freedom House, Freedom House, 2023, <https://freedomhouse.org/country/russia/freedom-world/2023>.

⁷ The Core International Human Rights Treaties, Accessed on August 12, 2022, <https://www.ohchr.org/sites/default/files/documents/publications/coretreatiesen.pdf>

strictly necessary and proportionate to the specific legitimate aim being pursued.⁸ It has also stated that the restrictions should not be used as a pretext to suppress or limit the right to freedom of expression in a manner inconsistent with the ICCPR and while freedom of expression is protected under the ICCPR, it may be subject to certain limitations under Article 19(3) of the Covenant.⁹

The law regarding freedom of speech exists in Russia, as it is a fundamental human right and is recognized as such in international human rights legal instruments. In addition to its international obligations, Russia also has its legal framework that protects freedom of speech. However, the Russian government has been criticized for its restrictions on freedom of the press, the internet, and the ability of individuals and civil society organizations to express their views without fear of reprisals.

Regulations such as this aim to protect Russian citizens, whether it is to ensure the safety of Russian citizens or to also protect their respective rights where these rights cannot be taken away by anyone, be it the Government itself. However, despite the existence of regulations like this, there are various kinds of threats in the mass media that want to bring down the Russian Government by spreading fake news.¹⁰ With this, the Russian Government continues to try to close itself from information that is considered to have the potential to interfere with the government's agenda. Furthermore, the phenomenon of strict control of information that occurs in Russia is not new.¹¹ A decade ago, the Russian government designed policies to control the flow of information on the internet. The initial step taken in 2012 was to authorize the Federal Service for Supervision of Communications, Information, Technology, and Mass Media (*Roskomnadzor*) to become the center

⁸ Equality and Human Rights Commission. "Article 10: Freedom of Expression." *Article 10: Freedom of Expression | Equality and Human Rights Commission*, 3 June 2021, www.equalityhumanrights.com/en/human-rights-act/article-10-freedom-expression#:~:text=Article%2010%20of%20the%20Human%20Rights%20Act%3A%20Freedom%20of%20expression&text=This%20right%20shall%20include%20freedom,authority%20and%20regardless%20of%20frontiers.

⁹ The Core International Human Rights Treaties, Accessed on August 12, 2022, <https://www.ohchr.org/sites/default/files/documents/publications/coretreatiesen.pdf>

¹⁰ OECD. "Disinformation and Russia's War of Aggression against Ukraine." *POLICY RESPONSES: UKRAINE TACKLING THE POLICY CHALLENGES*, 3 Nov. 2022, www.oecd.org/ukraine-hub/policy-responses/disinformation-and-russia-s-war-of-aggression-against-Ukraine-37186bde/.

¹¹ *Ibid.*

for Internet censorship in Russia.¹² What is happening in Russia can be seen from at least two aspects, namely repression of freedom of information and threats to human rights in the form of repressive policies that pose a threat to freedom of information and freedom of the press.¹³ This happened because the Russian Government was subjected to a wave of mass protests throughout Russia regarding false information about police violence being spread through mass media platforms such as TikTok, Twitter, and Instagram.¹⁴ Having the Russian Government carry out repressive measures like this is to reduce the spread of false information.¹⁵

Furthermore, with the conflict, Russia's invasion of Ukraine started on February 24, 2022, when Russian President Vladimir Putin announced a "special military operation" to "demilitarize and *denazify*" Ukraine.¹⁶ With this conflict, there are global impacts such as food crises, limited energy, and world inflation.¹⁷

Furthermore, Russia has placed 164th out of the 180 countries surveyed in the ranking regarding media freedom as of 2023 which is worse than it was in 2022 where Russia's index regarding freedom of the media was placed in the 155th spot out of the 180 countries surveyed. In addition, the Russian state has limited freedom to do activities on the Internet, whether it is for browsing, research, work, entertainment, and gaining knowledge and information. Apart from that, Russia is also a member of the UN Security Council along with other countries such as the United States, China, Britain, and France, where the 5 (five) countries have the function of maintaining international peace and security.¹⁸

¹² DBpedia. "Roskomnadzor." *About: Roskomnadzor*, 3 Dec. 2009, dbpedia.org/page/Roskomnadzor.

¹³ Krisdamarjati, Yohanes Advent. "Tirai Besi Kebijakan Rusia Terhadap Kebebasan Media." Kompas.id, *Harian Kompas*, 18 Mar. 2022, <https://www.kompas.id/baca/telaah/2022/03/17/tirai-besi-kebijakan-rusia-terhadap-kebebasan-media>.

¹⁴ "Russia: Social Media Pressured to Censor Posts." Human Rights Watch, 8 Feb. 2021, <https://www.hrw.org/news/2021/02/05/russia-social-media-pressured-censor-posts>.

¹⁵ *Ibid.*

¹⁶ Center for Preventive Action. "Conflict in Ukraine | Global Conflict Tracker." Council on Foreign Relations, Council on Foreign Relations, 20 Oct. 2022, <https://www.cfr.org/global-conflict-tracker/conflict/conflict-ukraine>. Accessed on October 30, 2022.

¹⁷ *Ibid.*

¹⁸ United Nations Security Council. "Current Members Security Council." United Nations, [www.un.org/securitycouncil/content/current-members#:~:text=The%20Council%20is%20composed%20of,Albania%20\(2023\)](http://www.un.org/securitycouncil/content/current-members#:~:text=The%20Council%20is%20composed%20of,Albania%20(2023)). Accessed 21 June 2023.

Furthermore, the situation of media freedom in Russia continues to be of concern.¹⁹ While Russian law provides for regulations regarding freedom of speech and freedom of the press, the Russian media does not consider itself free and is heavily pressured by the authorities, harassed, and punished for practicing the profession of a press.²⁰ In Russia, journalists still cannot cover news freely, especially those related to topics of public concern, such as:

- a. Government corruption
- b. Election falsification
- c. Human rights violations
- d. Public protest²¹

The Constitution of the Russian Federation prohibits propaganda or campaigning intended to incite social, racial, national, or religious hatred and discord.²² This prohibition has been codified in Russian criminal law, citing bills supposedly intended to combat extremism, but used more in practice to prosecute political opponents or unwanted remarks towards the government.²³

Furthermore, in Russia, there are several legal provisions regarding freedom of speech but their strength is not guaranteed especially to the Russian people themselves.²⁴ Later, authorities continued to abuse the country's broad definition of extremism, under which citizens can be punished for certain types of peaceful protest, affiliation with certain religious denominations, and even certain social media posts, as tools to stifle dissent.²⁵ In March 2019, a Russian law introducing

¹⁹ Reporters Sans Frontieres. "A Human Security Doctrine for Europe - European Parliament." PRESS FREEDOM IN RUSSIA, www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/human_security_report_/human_security_report_en.pdf. Accessed 20 June 2023.

²⁰ *Ibid.*

²¹ Amnesty International. "Russian Journalists Are Being Silenced to Stifle Reporting of Protests." Amnesty International, 26 Jan. 2023, www.amnesty.org/en/latest/news/2022/11/russia-journalists-and-independent-monitors-being-silenced-to-stifle-reporting-of-protests-new-report/.

²² United Nations High Commissioner for Refugees, Refworld. "Constitution of the Russian Federation." Refworld, 25 Dec. 1993, www.refworld.org/docid/3ae6b59f4.html#:~:text=Article%2029&text=thought%20and%20speech.-,2.,or%20language%20superiority%20is%20forbidden.

²³ *Ibid.*

²⁴ "Russia's Crackdown on Independent Media and Access to Information Online." CSIS, 5 Feb. 2021, <https://www.csis.org/analysis/russias-crackdown-independent-media-and-access-information-online>.

²⁵ *Ibid.*

finances for those deemed by the government to spread fake news and show flagrant disrespect for state authorities was signed into law.²⁶

In September 2019, *Roskomnadzor* (The Federal Service for Supervision of Communications, Information Technology and Mass Media) began installing equipment to isolate Russians from the rest of the world, as required by a bill that went into effect in November 2019.²⁷ The Russian government's justification is to ward off potential cyberattacks from the United States, but some fear it might create an "iron curtain" online.²⁸

In 2021 the government imposed new restrictions on shareable content on the internet. In December 2020, President Putin signed a statutory amendment to the communications law that allows *Roskomnadzor* (The Federal Service for Supervision of Communications, Information Technology and Mass Media) to block websites that infringe upon (Russian citizens') rights, including by limiting the spread of socially important information. Experts classify the new law as "*Russophobic*" content restrictions.²⁹ In December 2020, President Putin also signed a bill banning journalists and websites from publishing the personal data of law enforcement officers and certain other state employees affiliated with the state security services. Expanding the definition of sensitive data, the FSB (The Federal Security Service of the Russian Federation) published a list in mid-2020 of topics that could be used against Russian security, including information and assessments of the Russian military, security sector, and space agency, *Roscosmos* (The State Space Corporation).³⁰

With the things that have been discussed before, freedom of opinion within the mass media is emphasized because there are various kinds of regulations ranging from the use and or restriction of the Internet to the publication of journalists in Russia who are subject to threats when they criticize the government, government officials, and the way the Russian government runs the country.

²⁶ "Russia's Crackdown on Independent Media and Access to Information Online." CSIS, 5 Feb. 2021, <https://www.csis.org/analysis/russias-crackdown-independent-media-and-access-information-online>.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

I.II Statement of The Problem

Based on the background above, the formulation of the problem is as follows:

- a. How do the actions of the Russian Government limit the freedom of expression towards Russian society in the mass media?
- b. How do the Russian laws restrict the freedom of speech towards the mass media according to the international human rights legal instruments?

I.III Purpose and Benefits of Writing

I.III.I Writing Purpose

The purpose of this research is divided into two (2), which are as below:

- a. To find out and analyze the legality of restrictions on freedom of expression by the Russian Government on the mass media against Russian society.
- b. To study and analyze the restrictions on freedom of expression by the Russian Government on the mass media according to the international human rights legal instruments.

I.III.II The Benefits of Writing

Based on the objectives of this study, there are theoretical and practical benefits contained in this study, as follows:

- a. For the Writer

The author has deepened and developed knowledge of Human Rights, especially in the field of freedom of opinion and criticism, and also as a requirement for completing the Bachelor's education program and obtaining a Bachelor of law degree.

- b. For Society

Become a forum for the community to expand the development of science, so that people can realize the importance of having freedom of opinion and criticism, especially by the Russian government bodies

I.IV Research Method

I.IV.I Approach

In this study, the authors have used the normative juridical research method (doctrinal research). The normative juridical research method is a method of examining library materials or secondary data as the basic material for research by searching for regulations related to the issues that have been discussed. The approach taken by the author in this study is a multilateral agreement approach by examining regulations related to human rights, especially in the field of freedom of expression and criticism, as well as the conceptual basis in the form of legal theory and opinions from experts regarding the concept of human rights.

I.IV.II Data Collection Method

In this study, the author has used data collection techniques by studying documents that have data sources, as follows:

I.IV.II.I Primary Legal Materials

Primary legal materials are legal materials that have binding power as the main basis used in a study, which consists of The Criminal Code of The Russian Federation, and The Constitution of The Russian Federation.

I.IV.II.II Secondary Legal Materials

Secondary legal materials are legal materials in the form of all legal publications which are not official documents including textbooks, law journals, and comments on court decisions.

In this study, the primary legal materials used consisted of all references in written form that had a close relationship with the issues examined in this study, namely textbooks in the legal domain, legal journals, and legal literature related to human rights.

I.IV.II.III Tertiary Legal Materials

Tertiary legal materials are legal materials that provide additional information and explanations regarding primary and secondary legal materials.

In this study, the tertiary legal materials used consisted of articles as well as the news contained on the internet.

I.IV.III Tertiary Analysis Methods

The data/legal material that has been obtained has been analyzed to explain the violation of human rights committed by the Russian Government against Russian citizens whose freedom to express opinions and criticism was restricted by the Russian Government in terms of the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), The European Convention of Human Rights (ECHR), The Declaration on Mass Communication Media and Human Rights, Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights, and Countering Racialism, Apartheid, and Incitement to War (1978), The International Declaration on The Protection of Journalists, The Criminal Code Of The Russian Federation, and The Constitution of the Russian Federation.

Afterward, the results of the analysis have been discussed qualitatively. Qualitative research is a research method that produces descriptive data in the form of written or spoken words from things observed. In qualitative research, it is very necessary to have the theoretical sensitivity of the researcher which refers to scientific quality for the researcher personally. The quality in question is the existence of data and its function for qualitative research, this is influenced by background knowledge and experience in research, whether related or not in a particular field. This analysis technique aims to obtain specific conclusions by describing and interpreting general legal materials.

I.V Systematics of the Writing of the Thesis

CHAPTER I: INTRODUCTION

The author has discussed the background, problem formulation, research objectives, research methods, and writing systematics.

CHAPTER II: RIGHT TO FREEDOM OF SPEECH IN THE MASS MEDIA

The author has discussed the explanation regarding freedom of speech in the mass media and explained the theoretical basis, characteristics, scope, and opinions of legal experts that are relevant to freedom of expression.

CHAPTER III: RESTRICTIONS ON FREEDOM OF SPEECH IN THE MASS MEDIA IMPLEMENTED BY THE RUSSIAN GOVERNMENT

The author has discussed the restrictions on freedom of expression carried out by the Russian Government Agency against Russian Society in the mass media based on The Criminal Code of The Russian Federation and The Constitution of the Russian Federation.

CHAPTER IV: ANALYSIS REGARDING THE RESTRICTIONS ON FREEDOM OF SPEECH IN THE MASS MEDIA BY THE RUSSIAN GOVERNMENT AND INTERNATIONAL HUMAN RIGHTS LEGAL INSTRUMENTS

The author has conducted an analysis of the restrictions on freedom of expression by the Russian Government in the mass media based on the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), The European Convention of Human Rights (ECHR), The Declaration on Mass Communication Media and Human Rights, Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights, and Countering Racism, Apartheid, and Incitement to War (1978), The International Declaration on The Protection of Journalists, The Criminal Code Of The Russian Federation, and The Constitution of the Russian Federation.

CHAPTER V: CONCLUSION

The author has drawn a conclusion and also provided suggestions, the conclusions drawn are based on the material and discussion listed in the previous chapters.