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5TH INTERNATIONAL CONFERENCE

# Hate Speech In Asia: Challenges and Solutions

7-9 OCTOBER 2020  
BANGKOK THAILAND



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## **Introduction**

Hate speech is a potent by-product of fake news that is used to mobilise support often with violent consequences which divides communities during periods of political and communal tensions. With the ever increasing internet penetration in the region and the use of social media over mobile devices, abuse and threatening remarks both in the form of sound, videos and text have become common and are spreading exponentially. Often these contents express intense prejudice against individuals or particular groups, on the basis of ethnicity, gender, nationality, political ideology, race, religion or sexual orientation which can rise up to a frenzy leading to violent outcomes.

Asia Centre's 5th International Conference titled "Hate Speech In Asia: Challenges and Solutions" was convened to identify issues of hate speech and propose recommendations. The event was held in partnership with the Faculty of Law, Thammasat University, Thai Media Fund, Taiwan Foundation for Democracy and Friedrich Naumann Foundation of Freedom, Thailand. The event was held on the 7th to 9th October 2020. Due to the COVID-19 travel and health advisory the event was convened in a hybrid format with participants joining in person as well as participants teleconferencing from locations worldwide. The first day of the conference was held at the Faculty of Law, Thammasat University where the opening ceremony was convened and a total of 40 people attended physically. Thereafter, from that evening onwards panels were hosted at Asia Centre premises and online. In total there were 47 speakers from an international and diverse background including from academia, civil society organisations and private corporations, of which 45% were female.

The presentations at this conference proceedings focused on the theme of hate speech in Asia including the topic of blasphemy, non-legal measures such as interfaith dialogues and social cohesion or social harmony initiatives, perspective from religion, race ethnicity and nationalities, role of media, social media and technology and the impact on democracy, freedom of expression, human rights and the rule of law.

Due to COVID-19, this conference centred more in presentations rather than paper submissions. The papers received and compiled in this conference proceedings are hence only a selection of all presentations at the conference. The papers included in this conference proceeding have been reviewed by the editors. The authors are responsible for the accuracy of facts, quotation, data, statements and the quality of the English language in their work. The papers are organised in the way it appeared in the conference program.

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# **Social Listening of Events Relating to Buddhist and Muslim Relationships between 2015 and 2019 : How does Online Hate Speech Emerge among Thai Internet Users?**

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## **Abstract**

This study examined online conversation that is indicated as hate speech about relationships between Buddhists and Muslims in Southern border provinces and other areas of Thailand among Thai social media users. This research focused on online social data concerning six events relating to Buddhist and Muslim relationships from 2015 to July 2019. Text-based online data from social media platforms such as Facebook, twitter, Pantip website, and 27 of Thai language-based Buddhist and Muslim community pages were collected and analyzed by social listening tools. The findings showed that most of the online hate speech on events relating to Buddhist and Muslim relationships was in a low level of hate speech intensity, which included creating stereotype (level 1) and blaming, condemning, and dehumanizing others (level 2). Meanwhile, making a denial of living together, which indicates a medium level of hate speech intensity (level 3), occurred less. In addition, after events relating to physical violence such as monk killings in Narathiwat Province and Christchurch mosque shootings, it was found that hate speech intensity on those social media platforms increased to a high level (level 4) or dangerous speech, which could incite people to break laws and annihilate other groups. The findings also pointed out that less interesting events usually had intense hate speech because a small number of people could create only a few different opinions; those opinions tend to be in the same direction and could lead to an echo chamber effect. We conclude that an informative approach is likely a better way to prevent people from passing on and sharing hatred to others than a law or legislative approach. Creating cultural norms to show that hate speech is not acceptable and should not be ignored both in the society and online; promoting digital literacy among online media users; and creating more awareness of human values such as solidarity, tolerance towards differences, diversity, and digital empathy might reduce online conversation inciting hatred to others.

## **Introduction**

Internet technology and social media have speeded up the emergence of humiliation and insults towards identity, cultures, and religions through terrorism, counterterrorism, and Islamophobia issues. Such circumstances have incurred online hate speech and also contributed to offline hatred and physical violence in countless situations. One of important examples was the Islamist demonstrations outside Denmark embassies around the globe in response to the editorial cartoons mocking the Islamic prophet Muhammad in a Danish newspaper during 2005-2006.

The Office of the High Commissioner for Human Rights (OHCHR) is aware of the significance of these global phenomena and has carried out the Plan of Action to Prevent Violent Extremism, in which the 7<sup>th</sup> proposal encourages the state party to conduct researches on abusive use of the internet and social media by the extremist group. At the regional level, ASEAN also launched a regional action plan on October 31, 2020 to urge its member countries to study and develop knowledge about offensive internet and social media use by the extremists.

Two major hate phenomena in Thailand that have had both online and offline impact in the present are the political conflict starting in 2006 and the violence in Southern border provinces starting in 2004. For the first incident, previous research found that hate speech in Thailand was mainly directed at people holding different political views. The problem has occurred for decades, especially the political unrest in 2006 when national and regional broadcasting media as well as online media were employed to propagate hatred to the opposite groups of people. For the second incident, violent conflicts in the Southern border provinces have later partly eased up, with Thai Muslim citizens getting more attention from the government and the society. However, new issues have arisen, especially that Buddhist Thai civilians in the areas feel they are neglected by the government and its counterinsurgency policies.

With the coming of online social media, the controversial relationships between Buddhists and Muslims in Thailand have spread widely throughout the country. The situation has gotten so worse that there was even a call from a Buddhist monk on social media for the government to burn down a mosque for every Buddhist monk killed in the Deep South. Other Islamophobia situations have become widespread in the South, the Central, the North and the Northeast of Thailand, which is a sign of fear and suspicion towards Muslims from people all over the country.

Particularly on Facebook, which is the first rank of most-used social media platforms of Thai social media users in January 2020 (Hootsuite & We Are Social, 2020), there are online community pages where the group members share their opinions about Buddhists, Muslims, and relationships between Buddhists and Muslims in the Southern border provinces and other parts of Thailand. The names of some of those Facebook pages even explicitly show segregation and discrimination such as an “Anti-Muslim Extremists in Three Southern Border Provinces” group and a “We are Confident that Buddhism is Forever the National Religion of Thailand” group.

Relationships between Buddhists and Muslims in offline and online spheres in Thailand have shown a growing trend of extremism and considerably declining tolerance towards different religious beliefs in the Thai society. Accordingly, it is vital to understand the causes and reasons behind the emerging and existing of these phenomena as well as their

supporting factors, in order to make strategic plans and policy measures to prevent the situations from getting worse and leading to physical violence between Buddhists and Muslims at the national level.

Therefore, this study aimed to examine language use, communication, and expression that are considered as hate speech in Thai social media in events relating to Buddhist and Muslim relationships in Southern border provinces and other areas. The data collected would also be used as fundamental information in making suggestions and devising policy measures to prevent hatred from escalating into violence and to instead transform such hatred into solidarity and respect for cultural diversity.

### **Objective of the Study**

- To examine online conversation that is indicated as hate speech about relationships between Buddhists and Muslims in Southern border provinces and other areas of Thailand among Thai social media users from 2015 to 2019.

### **Scope of Research**

Data were collected from texted-based online expressions on public Facebook pages, twitter, Instagram, YouTube, websites, blogs, webboards, and public community pages from 2015 to July 2019. The research focused on conversation relating to Buddhist and Muslim relationships in Southern border provinces and other areas of Thailand during the time frame to get enough volume of data.

### **Research Methodology and Design**

This study used the method of social media analytics to analyze big data on social media. The tool used for collecting data was a social listening tool of Zanroo Corporation, which is called Zanroo listening tools. The research process was the following:

#### **Step 1: Event and keyword selection**

This step included literature reviews and focus group discussion with seven experts on relationships between Buddhism and Islam in the Thai society, to brainstorm and select events to be the subjects of the study and to come up with related keywords that could appear in online conversation about such events.

After discussing, the experts selected six important events relating to Buddhist and Muslim relationships in Southern border provinces and other areas of Thailand, which had induced numerous controversial opinions online. Those six events can be categorized into three levels: local level, national level, and international level.

- Local level: 1) Killings of Buddhist monks and Islamic leaders in Southern border provinces (January 2018 to February 2019) and 2) a hijab ban at a school in Pattani Province (May 2018 to May 2019).
- National level: 1) An anti-mosque movement in the North and the Northeast of Thailand (January 2017 to June 2018) and 2) community protest against building of a halal food industrial estate in Chiang Mai Province and news that a hospital in Yala

Province provided only halal food to all patients regardless of that fact that the patients are Buddhists or Muslims (January 2016 to June 2018).

- International level: 1) Brunei's anti-LGBT Sharia law saying that gay sex and adultery can result in execution by stoning (January 2019 to June 2019) and 2) Christchurch mosque shootings in New Zealand (March 2015 to March 2019).

Meanwhile, the experts recommended 85 keywords that could possibly appear in online conversation relating to those events, which would be further executed in Step 2.

#### Step 2: Social media analytics

After determining the objective of the study and the scope of events relating to relationships between Buddhists and Muslims in Southern border provinces and other areas of Thailand in Step 1, the research team then selected social media platforms to collect text-based data from 2015 to July 2019.

The selected platforms included public Facebook pages, twitter, Instagram, YouTube, websites, blogs, webboards, and 27 public community Facebook pages where there was conversation about relationships of Buddhists and Muslims in Southern border provinces and other areas of Thailand.

This research defined hate speech as speech or any form of expression that attacks a collective identity of an individual or a group of people such as nationality, ethnicity, religion, gender, or other identity factors. The experts retrieved and screened data by optimizing keywords, building a keyword hierarchy, and creating categories and tags. As a result, 105 related keywords were chosen to categorize hate speech into four escalating levels of intensity.

Level 1: Intense dislike, stereotyping, presenting how 'they' intimidate 'us' (41 keywords)

Level 2: Blaming, condemning, devaluing, and dehumanizing others (33 keywords)

Level 3: Making a denial of living together (15 keywords)

Level 4: Inciting violation of laws, hate crime, and annihilation of other groups of people (16 keywords)

Zanroo social listening tool would retrieve data from the selected online social platforms. The data were then validated and categorized by the experts for analysis, which included 1) figuring the number and types of messages, 2) measuring an intensity level of each hate speech and figuring hate speech that can be categorized in more than one intensity levels, and 3) analyzing speakers and positioning of each page to see if the posts or comments of those community pages have positive, negative or neutral tone toward those controversial events in the local, national, and international levels.

## Findings and Discussion

1. Language use, communication, and expression that are considered as hate speech in Thai social media in events relating to Buddhist and Muslim relationships in Southern border provinces and other areas of Thailand.

### 1.1 Number of messages and hate speech from the six events



Considering the total number of messages relating to each event, it was found that each event had a different number of hate speech messages, as shown in Table 1.

Table 1 Number of Messages and Hate Speech from Six Events

Event	Number of Related Messages	Number of Hate Speech Messages	Percentage of Hate Speech to Total Messages
1. Hijab ban at Pattani school	5,446	746	13.7%
2. Monks and Islamic leader killings	4,647	1,057	22.7%
3. Anti-mosque movement	1,672	835	49.6%
4. Anti-halal issues			
1. Halal food protest	3,007	428	14.2%
2. Protest against building of halal industrial estate	247	193	78.1%
3. Protest against halal kitchen at Yala hospital	267	171	64.0%
5. Anti-LGBT Sharia law in Brunei	6,391	1,078	16.9%
6. Christchurch mosque shootings in New Zealand			
1. To Muslim victims	594	139	23.4%
2. To shooter		40	6.7%

According to the table, the events with more than 3,000 related messages (including Hijab ban at Pattani school, Monks and Islamic leader killings, Halal food protest, Anti-LGBT Sharia law in Brunei, and Christchurch mosque shootings in New Zealand) had 13 to 23 percent of hate speech messages, whereas the events with fewer than 3,000 related messages (including Anti-mosque movement, Protest against building of halal industrial estate, and Protest against halal kitchen at Yala hospital) had a higher percentage of hate speech messages at 30 to 78 percent.

This can be interpreted as a hypothesis that events that receive more attention from social media users tend to have a fewer number of hate speech messages than events that are less interested by social media users. In other words, less interesting events could be an online space for an intense group of people who are eager to express hate speech against the opposite group. This is because a small number of people could create only a few different opinions and those opinions also tend to be in the same direction. For example, conversation under posts in famous news pages usually contains diversified and rational opinions, while conversation in community pages with particular page objectives and particular groups of

members tends to be in the same direction and reinforce their own belief and behavior, which is known as an echo chamber effect. (Sunstein, 2009)

### 1.2 Four levels of hate speech intensity in language use, communication, and expression relating to six events

In terms of language use and expression, hate speech messages relating to the six events were categorized by their intensity into four levels. As seen in Table 2, hate speech messages relating to most of the events, except for event 4.2 Protest against building of halal industrial estate, were in a level 2 of hate speech intensity, which is blaming, condemning, and dehumanizing others. The level 2 hate speech messages accounted for 43-69 percent of total hate speech messages relating to those events. Meanwhile, 27-45 percent of total hate speech messages from the six events were in level 1 intensity, which is intense dislike and stereotyping.

Likewise, level 3 hate speech intensity, which is making a denial of living together, was found less from those events, except for the event 3. Anti-mosque movement in the North and the Northeast of Thailand, which had level 3 hate speech messages of 23 percent (835 messages out of 1,672 total hate speech messages) and the event 4.2 Protest against building of halal industrial estate, which had level 3 hate speech messages of 45 percent (193 messages out of 247 total hate speech messages). This was because most of the conversation relating to those two events involved disputes and argued whether or not to allow the existence of mosques or the building of a halal industrial estate in those specific areas.

Furthermore, level 4 hate speech, the highest intensity level of hate speech which involves inciting violation of laws, hate crime, and annihilation of other groups of people, was found in a low level in messages relating to those events, except for the events that included physical violence. For example, the event 2. Monk and Islamic leaders' killings had level 4 hate speech messages of 10 percent (104 messages out of 1,057 total hate speech messages) and the event 6. Christchurch mosque shootings in New Zealand had level 4 hate speech messages targeting Muslim victims of 12 percent (16 messages out of 139 total hate speech messages toward the Muslim victims) and level 4 hate speech messages targeting the shooter of 18 percent (7 messages out of 40 total hate speech messages toward the shooter).

Table 2 Comparison of Language Use and Expression from Six Events by Hate Speech Intensity

Events	Number of Hate Speech Messages	Hate Speech Intensity			
		Level 1	Level 2	Level 3	Level 4
1. Hijab ban at Pattani school	746	335 (45%)	352 (47%)	20 (3%)	39 (5%)

2. Monks and Islamic leader killings	1,057	396 (37%)	540 (51%)	17 (2%)	104 (10%)
3. Anti-mosque movement	835	233 (28%)	360 (43%)	191 (23%)	51 (6%)
4. Anti-halal issues					
4.1 Halal food protest	428	102 (24%)	294 (69%)	28 (7%)	4 (1%)
4.2 Protest against building of halal industrial estate	193	49 (25%)	53 (27%)	87 (45%)	4 (2%)
4.3 Protest against halal kitchen at Yala hospital	171	68 (40%)	90 (53%)	12 (7%)	1 (1%)
5. Anti-LGBT Sharia law in Brunei	1,078	289 (27%)	729 (68%)	5 (0.46%)	55 (5%)
6. Christchurch mosque shootings in New Zealand					
6.1 To Muslim victims	139	29 (21%)	94 (68%)	0 (0%)	16 (12%)
6.2 To shooter	40	3 (8%)	29 (73%)	1 (3%)	7 (18%)

Consequently, language use, communication, and expression of hate speech and counter speech in those six events can be concluded as follows

- Hate speech usually started with level 1 intensity (intense dislike and stereotyping) and level 2 intensity (blaming, condemning, and dehumanizing others).
- In cases relating to construction of buildings in specific areas, hate speech tended to escalate into level 3 intensity (making a denial of living together).
- In cases involving physical violence, hate speech after the occurrence of such events was very likely to intensify to level 4 intensity, which is considered as dangerous speech.

2. Analysis of positioning of Facebook pages in their communication and expression towards local, national, and international events

Regarding the positions of Facebook community pages that were chosen as the platforms of this study, it was found that most of those Facebook community pages had similar tone of expression toward local, national, and international events. The owner of the

top influencer page that has the biggest number of followers mostly posted positive topics. The administrator did not express opinions that could arouse hatred but on the other only gave facts and information. However, negative messages and hate speech usually came from comments of the followers of the page.

Nevertheless, for local level events, it was found that the administrator of the major Facebook page that has the biggest number of followers had posted more positive topics about the events than other Facebook pages and the followers also showed similar comments as the page administrator. But for community Facebook pages with a low number of followers, it was found that both the page administrators and the followers tended to post negative topics and comments.

In addition, famous news publishers' Facebook pages usually had diversified opinions and comments that were not as much inclined towards hate speech as community Facebook pages.

## **Conclusion and Recommendations**

From the study of online social media communication and hate speech in the six events relating to relationships between Buddhists and Muslims in Southern border provinces and other areas of Thailand, the findings showed that most of hate speech concerning those events were in level 2 intensity, which is blaming, condemning, devaluing, and dehumanizing others and level 1 intensity, which is intense dislike, stereotyping, presenting others as a threat to their own group.

The results are in line with a previous research of Regulation of Media that Disseminate Hate Speech Content (Pirongrong Ramasoota et al., 2014), which analyzed online content on webboards, Facebook pages, and YouTube between September 15 to November 15, 2012 and found that hate speech based on religious discrimination could induce hatred toward the targeted groups and result in blaming, condemning, insulting, mocking, devaluing, and dehumanizing of others. Those hate speech messages are in the same intensity level as major hate speech messages found in this study.

The findings can be implied that intolerance between different religious beliefs in Thailand and discrimination based on religions, especially between Buddhism and Islam, in online social media is in a low level that it could not incite violation of laws, hate crime against the opposite group, or eradication of the hated group. However, such hate speech communication also reflects that intolerance and discrimination issues have been in the Thai society since 2012 until present and the situations are still boiling in Thai societies, particularly with empirical evidences from online social platform. If some physical violence happens offline, online hate speech will be ready to be intensified by social media users after the event to level 4 hate speech intensity, which is dangerous speech. This will worsen the conflicts among Buddhist and Muslim in Thai Society.

In addition, the study also found that, not only did local events in Southern border provinces of Thailand receive attention and become the topics of conversation among Thai social media users, but national level events in other areas of Thailand and international level

events in other countries were also interesting topics for these groups of people. Especially with the popularity of social media communication in Thailand, visibility of news and spreadability of opinions toward national and international level events have widely increased, so has the distribution of hate speech.

Accordingly, it is important that appropriate measures are implemented to regulate online communication and prevent the damage of hate speech on society. The measures need to balance between monitoring and preventing approaches to avoid situations that could pose a security threat to the nation and at the same time take into account the basic right to free speech of the people.

The regulating measures should focus on regulation by liability of internet intermediaries as Laidlaw (2012) pointed out three different internet information gatekeepers, namely micro-gatekeeper, authority gatekeeper, and macro-gatekeeper. Based on this study, micro-gatekeepers can play an important role in mediating online conversation about events concerning relationships between Buddhists and Muslims in the Thai society, such as Facebook community page's administrators or YouTube channel's administrators, online influencers who have a significant number of followers and conversation and have neutral or positive tones of topic presentation, as well as online news publishers.

The approaches that page administrators, as the intermediaries, could employ to regulate conversation on their online platform include:

- 1) Monitoring conversation and opinions on the pages that could incite hatred;
- 2) Replying to comments on their pages with counter speech;
- 3) Allowing followers to monitor and report about hate speech that could incite hatred;
- 4) Establishing mutual code conducts regarding hate speech to apply among all page members.

Another important measure is to cultivate cultural norms in the society that hate speech is not acceptable and should not be tolerated as well as to encourage self-regulation among social media users. In doing this, it is suggested to engage those micro gatekeepers. Furthermore, It is crucial to promote digital and media literacy in the society and online community and to raise awareness about human values such as solidarity, tolerance toward differences, respect for diversity, and digital empathy among online user

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# Thai Silence: Conceptualising Hate Speech as a Relational Evil

Adam Lawrence

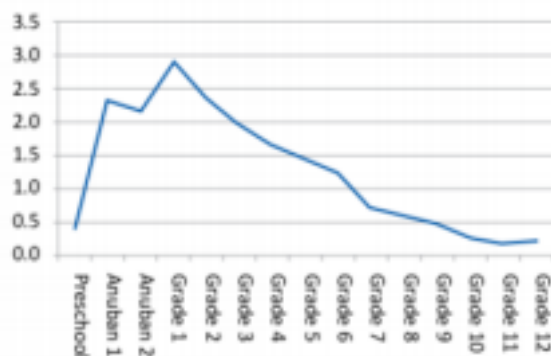
British Council

The disadvantaged are helped only as charity. We cannot continue like this anymore because excluded groups are also world citizens. This is the new frame of thought.

(p.342, HRH Princess Maha Chakri Sirindhorn, 2018)

## Purpose, scope and structure

Despite numerous government interventions, poorly educated migrant children in Thailand continue to fall victim to forced labour and sexual exploitation (DOL, 2017), making the improvement of migrants' living circumstances a matter of urgency. At present, an estimated 200,000 migrant children are out of school, which is over half of the estimated total number of migrant children in Thailand (Roman & Chuanprapun, 2019). As such, the central purpose of this paper is to further the discussion raised by Nawarat (2018) regarding the identification of transitional barriers hindering migrant enrolment into secondary education at Royal Thai Government (RTG) schools (see Figure I). Nawarat's study concludes that secondary education is an unrealistic prospect for migrants in Northern Thailand due to an RTG policy which effectively prohibits prospective learners from studying alongside peers of their own age.



Source: Ministry of Education.

Figure 1 - Percentage of children in Thai schools who are migrants, by year of schooling (p.51, UNICEF, 2014)

Here, the aim is not to refute Nawarat's research findings but rather to frame low secondary enrolment as part of a larger global issue by considering how indifference towards learner needs relates to hate speech. Perhaps in response to a widely held opinion amongst Thai parents that migrants should attend separate schools (Roman & Chuanprapun, 2019), Thai teachers stressed during interviews that migrant learners are welcome in Thai schools, that they are "seen as human" and, curiously, that their learning needs are essentially identical to those of other learners. Though an undifferentiated approach to teaching may owe itself to

the prioritisation of content over pedagogy in Thai teacher training (Shaeffer, 2018), it may also reflect a worldwide trend of passive indifference towards disadvantaged groups which has only recently begun to garner global media attention.

A prominent example of passive indifference in 2020 has been the resurgence of #alllivesmatter protests in the United States, which, in turn, have elicited further criticism from the #blacklivesmatter movement:

The "all lives matter" rebuttal is a brazen faux cry foul, in that it implies all lives are equally at risk, when they demonstrably are not. Hence its offence. It ignores, or worse, denies the disrespected and disadvantaged life experience of [blacks, indigenous people and people of colour], and silences their voices. It keeps white supremacy intact, white privilege invisible, and systemic racism in place (my emphases, Hiebert, 2020).

Just as Hiebert regards "all lives matter" as a systemic issue with the capacity to offend, silence and invisibilise, we might reasonably ask—more generally—whether statements of passive indifference can/should be interpreted as hate speech. Herein, the term 'passive hate speech' is conceptualised to bridge the gap between passive indifference, on the one hand, and hate speech, on the other. In turn, this nuanced conceptualisation of hate speech will be applied to a school case study in Thailand in order to propose a causal link between passive hate speech and a pervasive silence regarding the specific needs of Thailand's learners. While it is important to note that migrant learners do still experience open discrimination in Thailand's border areas (Sapphasuk & Nawarat, 2020), it should be stressed that this paper is strictly concerned with subtle forms of racist behaviour and how they might be addressed.

The advent of COVID-19 enables a brief closing discussion about how RTG schools responded during a time of crisis and what this could mean in terms of effecting systemic changes in the future. The pandemic can be seen as a catalyst for momentary change in the Thai education system: a rare glimpse into how RTG schooling operates when radically destabilised.

The argument below is set out in four parts. First, silence is problematised and conceptualised as a product of passive hate speech. Second, active and passive definitions of 'hate speech' are delineated for the purpose of identifying the latter in empirical research. Third, a case study is presented in which school directors and teachers—who devote considerable time and effort towards improving migrants' living circumstances—make liberal use of passive hate speech. After building a case for the hypothesis that passive hate speech limits educational opportunities by precluding the analysis of learner needs, the fourth part suggests ways in which passive hate speech can be interrupted in a non-invasive and respectful manner. Indeed, it would appear that some RTG employees have already begun to do so.

### **Conceptualising "Thai silence"**

Silence is often characterised as antithetical to justice. In academia, this is especially true in sociolinguistic and feminist analyses, which respectively tend towards treating silence either



as a social response to moral questions (i.e.: avoidance) or as a repression of certain social groups through ‘a failure or denial of communication’ (p.52, Ferguson, 2003). As a case in point, the concept of institutional racism was disregarded in academia for a period of over 10 years (leading up to the late 90s) due to its perceived lack of theoretical development (Phillips, 2011) and some prominent journals still refrain from using terms like 'systemic racism' directly (Hardeman et al., 2018; Castle et al., 2019). Whenever issues of racism are regarded as conceptually invalid, discussions regarding social justice are effectively stifled before they can begin.

Nowadays, the “breaking” of silences over social media (e.g.: #blacklivesmatter) has—by contrast—made institutional racism a mainstream topic of social debate (Murray & Durrheim, 2019). We would do well to remember, however, that there is still scant literature regarding the social mechanisms which produce silence or precisely how silences are “broken”.

As a point of departure, let us begin by considering why—unlike in many other countries—the killing of George Floyd in Minneapolis did not spark widespread condemnation in Thailand (Rojanaphruk, 2020). Though it is more than likely that public protests were held back by social distancing measures, there was also an ironic backlash against Thai celebrities who showed support for the Black Lives Matter movement on social media while disregarding domestic issues (Khaosod English, 2020). Shared over 61000 times, one Thai Twitter user posted:

“(...) when it comes to injustice in your own country, you’re completely silent. When it comes to injustice in a foreign country, you’re all pretentiously posting” (Khaosod English, 2020).

Whether in Thailand or elsewhere, silence presents a glaring challenge for social researchers. Ferguson (2003) argues that silence in and of itself may be too elusive to define due to its variability and thus potentially impossible to study. As well as being able to operate both as a form of social repression and as a tool for resisting domination, Ferguson also believes that silence plays a foundational role in the cultural codes and conventions by which all communities identify themselves. From this perspective, silence is everywhere and nowhere; is everything and nothing.

For the sake of argument, let us consider the four decades of silence which followed the Thammasat university massacre:

As Thongchai Winichakul has argued, the massacre at Thammasat University on the morning of 6 October 1976 is an event that continues to be characterized by silence and ambiguity for those who survived the event as well as present-day Thai society. Yet much of the 1973–76 period remains shrouded in silence because there is not even the minimal circulation of information needed to produce ambiguity (my emphasis, p.12, Haberkorn, 2011).

Though powerful political institutions are thought to have played a role, Winichakul (2020) attributes the silence surrounding the massacre mainly to the complex discursive, ideological and cultural conventions of Thai society. If silence in Thailand is hard-coded into the fabric of social life, this of course presents a rather bleak prospect for the righting of past injustices. However, we have seen in the case of #blacklivesmatter that long-persisting silences can, in fact, be broken; the "minimal circulation of information" can, in theory, be achieved. Unlike ideological and cultural conventions, discursive practices are comparatively mutable, making them a fitting area of empirical focus.

While silence may indeed be indefinable and therefore impossible to study directly, Ferguson's treatment of silence as a mechanism precludes the idea of silence as a product of social relations; there is still nothing preventing us from developing hypotheses about how societies maintain silence over time (i.e.: morphostasis) or adopt different patterns of behaviour, thereby "breaking" silence (i.e.: morphogenesis). This study's treatment of silence as an emergent property of social relations betrays the underlying theoretical framework upon which it is based: relational sociology. Derived from the philosophy of Critical Realism, relational sociology holds that social relations (i.e.: the interplay between agency and social structures) are the driving force of social change (i.e.: morphogenesis) and therefore the central object of social enquiry (Donati & Archer, 2015). This implies that discussions around silence can only really assess the potential that specific social phenomena might hold for producing silence; silence itself remains intangible, of course. As the current study hopes to show, a reasonable case can be made for passive hate speech as a producer of silence.

### **The case for a relational definition of 'passive hate speech'**

The opposite of love is not hate, it's indifference. (Wiesel, 1986)

As well as being understood in an active sense (i.e.: one or more people directly communicating their feelings of hatred towards another person or group), it is argued here that 'hate speech' can also be understood in a more passive sense. This does not suggest that 'hate speech' may refer to neutral events but rather that some speech acts may appear benign while still holding the potential to negatively impact marginalised groups, regardless of their intent. Amongst other characteristics, this "passive sense" of hate speech has been referred to as 'micro-level racialisation' (Phillips, 2011) and 'Racism 2.0' (Fleras, 2016), both of which emphasise how racist discourse may manifest in ambiguous or unintentional ways. Indeed, it is this fundamental ambiguity which makes hate speech at the interpersonal level difficult to concretely identify.

In an extremely detailed breakdown of 'hate speech', Brown (2017) delineates multiple ways of interpreting 'hate speech', some of which fall well outside legal definitions. As the current study overtly adopts a wide frame of comparative analysis, it also utilises a broad definition of 'hate speech' (derived from Brown's work) which accommodates the theme of silence. For current purposes, there are three important aspects of the term requiring consideration: its usage outside of strictly legal contexts, its potentiality for carrying multiple definitions and the embedded meaning of 'hate'.

First of all, it is understood that the concept of 'hate speech' spans both legal and social domains while pertaining exclusively neither to one nor the other. Having originated as a legal concept in the 1980s, 'hate speech' has always retained some legal connotation as a behaviour for which one should be held accountable. Herein, however, the idea that hate speech should always be treated as a crime is treated with strong scepticism. It is later argued that there are gentler, more diplomatic solutions to the problems caused (or exacerbated) by passive hate speech than holding wrongdoers to account.

Secondly, even if we accept that some manifestations of hate speech deserve no legal response, this need not imply that these same instances are somehow benign and therefore unworthy of discrete attention. "All Lives Matter", a prominent counter-slogan to the Black Lives Matter movement, is an apt example of potentially harmful speech which sits beyond the reach of legal definitions. On the one hand, one likely reason that calls for "All Lives Matter" to be recognised as hate speech have never been formally approved is that it is a blatantly non-discriminatory statement when decontextualized from American politics. On the other, "All Lives Matter" has become associated with attitudes of dismissiveness towards racial issues in contemporary American society (Hiebert, 2020). Furthermore, Atkins (2019) argues that the mere fact of there being a divide surrounding the interpretation of "Black Lives Matter" suggests that discussions regarding racial justice in the United States have not yet truly begun; that silence is still in the process of being broken. Either way (and regardless of one's position on this matter), there is no established word for "potentially disempowering speech acts" unless we accept that 'hate speech' is, in itself, an ambiguous term which incorporates both legal and non-legal meanings.

Thirdly, what does 'hate' mean when it is embedded within 'hate speech'? Does 'hate' refer to one speaker's feelings of hatred towards others or rather to one or more people feeling hated in reaction to offensive speech? Returning to the first point above, one might reasonably argue that the distinction between 'hater' and 'hated' itself derives from a legalistic bias (e.g.: defendant/defence versus victim/prosecution). Yet another possibility, however, is Gelber's (2012) position that the 'hate' in 'hate speech' has far more to do with negative social impacts than harmful intentions or wounded feelings. The negative causal potential of a phenomenon which originates from relations between social entities is what Donati and Archer (2015) refer to as a relational evil. As the following case study goes on to show, the apparent equal representation of disadvantaged groups tends to be a) indicative of an observable indifference towards the target group's specific needs and b) concurrent with the externalising of racial discrimination (which essentially implies non-involvement; discrimination always being elsewhere).

Henceforth, 'passive hate speech' will refer to discursive patterns which fulfil the twin criteria of indifference and externalisation.

### **Case study: passive hate speech in Northern Thai schools**

Nowadays, I see them as human and they are equal and so we have to develop our thinking. (Anonymous school director, 2020)

For this case study, a purposive theoretical sample was chosen: teachers and school directors from two schools in Chiang Rai, Thailand's northernmost border province neighbouring both Myanmar and Laos. This choice was made based on the reasonable assumption that these professionals have more experience working with migrants than anyone else and are therefore likely to have some awareness of their educational needs. The final research sample was four teachers and two school directors and data was collected through semi-structured interviews and questionnaires.

Empirical research began with the intention of developing a better understanding of RTG teachers' perspectives on a specific age policy (see Nawarat, 2018) though it became apparent during research that teachers generally considered low secondary enrolment to be more of a socioeconomic issue and so the focus of the study shifted to observe how Thai teachers relate to migrant learners and migrant communities. Here, findings are framed in light of two recent global events: the 'Black Lives Matter' protests and the COVID-19 pandemic.

### **Learner needs and the research imperative**

Though the scope of this paper does not allow for an in-depth discussion on the purpose of education itself, let us accept for the time being that—in a very general sense—the role of teachers is a) to establish what skills/knowledge learners may require and b) to prepare them to meet those needs in a pedagogically sound fashion. In short, the development of students' capacity to meet their own needs.

From a human rights perspective, Arjun Appadurai conceives of this "capacity to aspire" as bound up with the right to research:

'the capacity to aspire and the right to research are necessarily and intimately connected. (...) without systematic tools for gaining relevant new knowledge, aspiration degenerates into fantasy or despair. Thus, asserting the relevance of the right to research, as a human right, is not a metaphor. It is an argument for how we might revive an old idea, namely, that taking part in democratic society requires one to be informed. One can hardly be informed unless one has some ability to conduct research, however humble the question or however quotidian its inspiration' (p.176-7, Appadurai, 2006).

As primary learners may not have an acute sense of their own needs or aspirations, a necessary precondition for the establishment of their educational needs is simply that local RTG representatives and migrant communities are able to agree upon appropriate educational goals.

### **The "no differences" trend**

There is clearly some awareness amongst Thai teachers of migrants' wider social needs, especially those relating to citizenship status. Though Thai citizenship should legally be granted to all children born in Thailand, migrants often have trouble proving which side of the border they were born on and so school attendance histories become a factor in determining whether citizenship can legally be granted (Maber, 2016). Perhaps one of the

most surprising interview findings was that Thai teachers play a prominent role in helping migrant learners secure citizenship:

Perimeter School Teacher 1 (PT1): As a teacher, I call the migrant learners as my students just like equal just like Thai learners and I will do anything to support them to get citizenship (...) but it's depend on the rules... is depend on the times. If they live here not long enough then... like that [hand gesture suggests they go elsewhere]. (...) You know some of them are study here since nursery then to Prathom 6. They didn't get citizenship because their parents doesn't have a foreign licence.

Translator (T): So they were here for 6 or 7 years?

PT1: Yeah. Yes and they didn't get—

PT2: 8 years. A similar response was echoed the municipal school director (MD), who stressed the social equality of "Myanmar people":

MD: Thai people are open and welcome... like warm welcome Myanmar people and they can live together and be Thai people... live like Thai people. The right and equal.

Despite the apparent fact that some learners leave education after having waited years to attain citizenship status, it became apparent after the coding analysis of all four interviews that by far the most prominent interview trend was the common assertion that there are "no differences" between migrants and Thais (Figure 2). Superficially, this trend seems exceptionally peculiar when compared to other top interview trends in the chart, most of which are clear markers of difference (e.g.: rights, language, behaviour, etc). On the one hand, the perimeter school director

(PD) stressed his school's compliance with Thailand's commitment to providing equality opportunities through ASEAN:

PD: (...) now we are open ASEAN, they can cross, they can go back and they can work in here. They can get the right just like Thai people. (...) The kids in here are the migrant kids who are born here and are across the border (...) can study the same degree as yours [gestures towards translator].

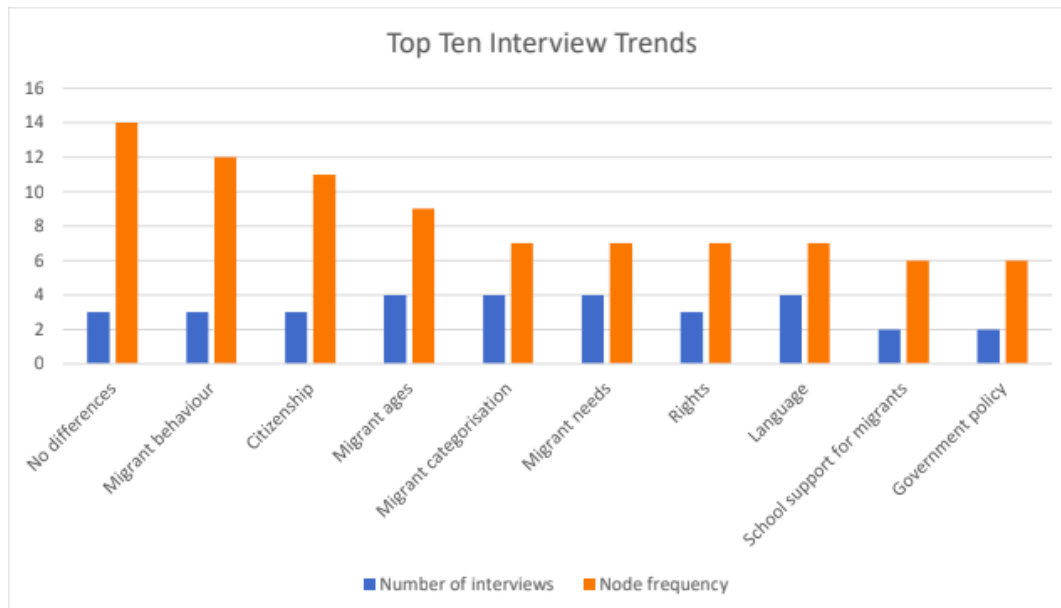


Figure 2 - Top Ten Interview Trends: Node Frequencies in NVivo 12 Coding Analysis

On the other hand, however, local professionals clearly understand that, in practical terms, there are major differences between the opportunities available to Thais and those available to migrants:

PT2: (...) some of them are poor and can't afford the fee of school, you know. Some high school are so expensive and they can't afford it and another reason is they can't work to, you know, the big company or the government or something. Like... that make them feel like study is waste, you know, waste of time, yeah. They dropped out and do work.

### "No differences" and learner needs

Rights and opportunities aside, a similar paradox of simultaneous difference and non-difference is found when discussing migrant student needs:

PD: They are come to study here when they are little just before primary so they able to speak and listen and know Thai language and there is nothing [else] they want to study... their needs is all the same. (...) Most of them are Tai Yai and Tai Yai is a people that able to speak Thai and understand Thai but some of them are have problem because they are... are like Akha like some like that... are unable to speak Thai (...) They have to study harder than Tai Yai and Thai people.

Though, at first, the perimeter director stressed the similarities between Thais and Tai Yai "siblings" (perhaps somewhat understating the difficulties faced by Akha "hill tribe" learners), teachers later disclosed—along with there being "no differences"—that the transition from Tai Yai to Thai-only education does present some challenges:

PT2: You know most of them are no differences between the migrants and Thai children but some of them are have little bit problems to understand Thai because Tai Yai are speak their language. But it's similar to Thai language. There's some little bit problems.

With dominant languages holding greater "communicative capital", language acquisition has recently been highlighted as a key factor for the successful integration of migrant learning (Evans & Liu, 2018), effectively obliging teachers to combine language learning into their regular curriculums (Sharkey, 2018). As language is cited by both school directors as a justification for their adherence to the age policy issue identified by Nawarat (2018), the language learning needs above are likely to have been understated.

Interestingly, the "no differences" phenomenon bears a striking resemblance to two unrelated case studies, suggesting that it is not unique to Thai schools. In the Czech Republic, one education system arguably designed to reinforce ethnic homogeneity not only produces similar language and age-difference issues but also a blindness towards learner differences amidst growing ethnic diversity (Jarkovská, Lišková & Obrovská, 2015). Similarly, Migliarini (2018), argues that Italian education workers "invisibilise" migrants by claiming to be unable to differentiate between them:

'(...)we tend to consider all of them as human beings, you know, we don't see the differences' ("Participant Z", p.445)

### **Solving general indifference in perennialist education**

The first issue with the "no differences" trend is that the myriad needs of ethnically diverse populations in many countries are being masked by narratives of global unity (Miller, 2016; Abo-Zena, 2018). Referring back to the sociolinguistic understanding of silence as avoidance, 'colour blindness', 'invisibilisation' and the common assertion of "no differences" can all be utilised as avoidance strategies: 'to consider race as immaterial, irrelevant and inexistent, therefore to be disregarded' (p.439, Migliarini, 2018).

As Thailand's education system follows a perennialist understanding of education which is both overtly hierarchical and openly concerned with the enculturation of respect for social hierarchies (Mounier & Tangchuang, 2018), the avoidance of uncomfortable truths regarding migrants may have less to do with racial prejudices and more to do with the difficulties teachers face in communicating learner difficulties while simultaneously protecting the credibility of the institutions they belong to. Clearly, Thai teachers are aware that migrants' opportunities outside of school are somewhat limited but Thai notions of hierarchy are inseparably linked to face-saving (Kanjaniyot & Chaitiamwong, 2018), making migrant performance within schools either difficult or impossible to discuss in any detail. By upholding the ideal of a unified community, any educational issues faced by migrant learners are likely either to go unnoticed inside the classroom, unreported outside of the classroom or both. Whether by accident or design, migrant learners have effectively been silenced.

As mentioned above, institutional silencing is not an issue unique to Thailand. Top down hierarchical structures with large power-distances are prevalent in most Asian education systems (Hofstede, 2001; Hiron & Dimmock, 2012) and a common feature of such systems is silence, especially with regards to the upwards flow of negative information (Bisel & Arterburn, 2012). The point is not that there is anything inherently wrong with face-saving

behaviours but rather that silences produced by avoidance are unacceptable in any educational system; in order for learner needs to be met, teachers must be able to exercise their right to assess their students' abilities and to communicate their findings when necessary; by rights, information must flow.

Again, by distancing ourselves from Ferguson's view of silence as somehow "baked into the culture", silence can be conceived of as an unwanted by-product of systems which may unwittingly promote indifference. Indeed, Gregory Tyrosvoutis (2016) points out that sustainable educational development initiatives often disregard the importance of top-down hierarchies altogether. Rather than conceiving of 'face-saving' as the strategic maintenance of silence, Greg Rusko (2011) usefully identifies 'face-saving' as a series of confrontational or cooperative strategies for maintaining standardised patterns of communication. Leaving aside the abrasiveness of confrontational strategies, an adapted list of cooperative face-saving strategies might include enabling teachers to: a) raise professional status by reporting specific classroom observations (as opposed to group generalisations), b) emphasise status by highlighting the application of specialist teaching skills (e.g.: braille instruction) and c) reinforcing the higher status of colleagues by acknowledging how they respond to various teaching incidences. As all three strategies are compatible with hierarchical systems, none are likely to be novel to Thai teachers and—based upon the current author's experience in training Thai language instructors—there is no apparent reason to believe that they cannot be employed.

### **Externalisation and criminal narratives**

The second issue pertaining to passive hate speech is that the line between 'passive hate speech' (i.e.: indifference) and 'active hate speech' (i.e: open prejudice) may become blurred in communication when racial discrimination is attributed to other citizens or community members.

At various interview points, the rights, opportunities and needs of migrant learners were all said to be similar to those of Thai students but, when alluding to behavioural differences between Thais citizens and migrants, participants either downplayed or explicitly distanced themselves from negative representations. When commenting on behavioural differences between learners, one school director stated:

MD: Myanmar children are a little bit different from Thai because their culture might be affected by them and that makes them very... umm... little... a little bit naughty, maybe.

As municipal school teachers mentioned that they are commonly exposed to news reports of crimes perpetrated by migrants, it is fair to assume that common representations of migrants as criminals in the media has had at least some impact on how local professionals interpret migrant student behaviour. In one instance, teachers told of "dirty hands" ways by which migrants purchase citizenship. Suamasit, apparently, refers to the phenomenon of wealthy migrants who pay corrupt officials to steal the identities of deceased Thai children whose deaths were never announced to local authorities. This, the teachers affirmed, is "the wrong way" (though it would appear that some migrants have a very strong incentive to break the



law if citizenship may take up to eight years to attain and suamasit is, indeed, a realistic option). However, despite numerous references of criminal behaviour amongst migrants, none were directly attributed to the participants' own experiences.

Narratives of demonization often explicitly target economically poor and/or transitory groups, whose needs may inevitably drive them towards illegal behaviour (Valentine & Harris, 2014). Contrary to understandings of the "free" educational entitlements of migrants amongst the international community (Harkins, 2014b), perimeter school teachers report that the presence of migrants places a financial burden on communities, amongst whom "a small number of parents" are resentful. Likewise, one municipal teacher said:

MT1: [local opinion] depends on their behaviour. You know... the Myanmar people. If they're good, they can get along with people. But if they're bad, the people might start to think that why they have to (...) spend the money for them? Things like that. (...) Like stole something from the teacher. Like... the criminals or that... on the news. That makes the villagers think they are really bad and they didn't support them. The migrants.

While it is generally understood that supplemental expenses can be prohibitively expensive for migrants (Nawarat, 2018), community support for school equipment and "activity money" was an unexpected research finding and there is no immediate way of knowing to what extent its withdrawal could affect migrants. It also became clear when asking about local opinions of migrants that some community members do resent having to provide compulsory support while they themselves receive none:

PT1: (...) this school, they (...) don't have money and they have to ask for government support and the villagers to support [migrants], like pay the money for them to get the equipment or the activity. You know, some of the parents who their children doing study here and they have to donate some money. They will think that why they have to support Myanmar students? Why they didn't get anything like benefits? Something like that.

Though questions directly regarding local Thai opinions on migrants were never intended to be provocative, participants tended to respond by sharing their views regarding what non-locals think: municipal teachers referenced the Thai media and directors spoke about the Thai government and ASEAN. When asked if there is a reason why there has been a change of opinions regarding the migrant presence in the North of Thailand, one school director politely declined to answer, the question being "too sensitive and difficult". However, under the "extra comments" section of his questionnaire, the director wrote: 'There should be an NGO budget to support migrant children'.

If there are any feelings of resentment towards migrants amongst Chiang Rai's education workers, we should not be too quick to pass judgement. While UN reports have pressured Thailand with sanctions if migrant conditions do not improve (Harkins, 2014a), rural areas tend not to be prioritised when Thailand's education budget is allocated (Shaeffer, 2018) and INGOs do not provide any direct support to struggling Thai communities. The World Bank has also called for Thailand's teachers to be held more accountable for educational performance (WB, 2015) but very little guidance has been

provided other than the general recommendation that teachers adopt more learner-centred approaches (Schweisfurth, 2015). If communities feel neglected, it may be because they are, in fact, neglected to some extent; an issue which may well deserve far more attention than it currently receives.

In summary, while it may not immediately be possible for the economic concerns of struggling communities to be addressed by INGOs or the RTG itself, it is perhaps possible for RTG workers (and partnered organisations) to address the subtler forms of passive hate speech by addressing it at an interpersonal level.

### **Discussion: RTG school reform in the age of COVID-19**

If it's good for our community, if it's good for our people, it's really good for us, also. (...) If the result will be not a good thing then we need to stop doing it.

(Anonymous school supervisor, 2020)

Returning to the conceptualisation of silence in Thailand as a product of discursive conventions, we may now venture into discussing the means by which silence might be broken. A case has been made for identifying passive hate speech as a causal mechanism which produces silence by perpetuating indifference towards specific learner needs. If passive hate speech ultimately displays as tacit indifference towards disadvantaged groups, the proposed remedial strategy is recognition of individual and social differences through the gathering of specific information (on learners and their performance, in this case). While it is difficult to establish the extent to which silence is culturally, ideologically or institutionally maintained, discursive analysis at the interpersonal level is comparatively tangible, enabling a modest but realistic suggestion as to how passive hate speech could be addressed through the endorsement of cooperative face-saving behaviours. Given the frequency with which RTG teachers interact with young migrant learners, they are ideally placed to gather specific data on all learners, thereby addressing the current lack of statistical data on migrants (Smith, Lim & Harkins, 2019). However, the question still remains as to how behavioural changes can be effected at the micro level with a view to disrupting discursive conventions and increasing the flow of information.

Since the start of the COVID-19 pandemic, the RTG Ministry of Education's Education Service Area Offices (ESAOs) have played a vital role in preparing Thai teachers with the skills and resources to provide online support to learners during the school closure period. As a hitherto under-researched network of decentralised units, little has been published about the relationships between ESAOs, school directors, teachers and learners. To help shed light on the impact which Thailand's recent social distancing measures have had on ESAO school access and support, two RTG school supervisors kindly gave permission for excerpts from our online discussions to be reproduced below.

While the role of secondary school supervisors during the pandemic largely appears to have been concerned with promoting the use of the RTG's online learning platform amongst teachers, primary supervisors—at least in some cases—were required to visit migrant communities and respond directly to their educational needs: Primary Supervisor

(PM): Yeah, the virus affected the education system. The ministry of education is offering online learning as a solution... but... look at school contexts in my area.



We have to work hard trying to find ways [to] fit with this kind of context. We as a supervisor try to promote Task Based Learning Approach, together with teachers design weekly tasks for each level. At least once a week each student will be visited by the teacher for assigning task that they have to finish within a week (or 5-7 days).

Likewise, following news of an international pandemic, secondary supervisors (SS), first responded by conducting a needs analysis:

SS: we sent out the questionnaire to get the information about the numbers of the students and about the support of the school that they need and then also we try to get the information about their online learning access. Like whether they have the televisions, how many televisions they have, how many mobile phones, how can they get access to the internet connections and then it goes to the number of the students in their families.

Despite the practical issues which limit supervisory access to remote schools (Shaeffer, 2018), evidence would suggest that a concerted effort has been made on the part of supervisors to ensure that the needs of learners living in remote areas are met, especially in terms of educational access. This sudden—albeit, temporary—shift towards decentralisation is welcomed by some supervisors:

SS: In different province like in Chiang Rai (...) we are in the mountain area but Rayong, Chonburi... they are in the seaside (...) so they have different environments, no? Geographies! So I think that we can let the governor to run their own management not only waiting for the policy from the central. I think that if we have freedoms to manage or to control what's going on in our province (...) that might be very easy for the school... for the community... to do their own tasks.

Though the supervisor above also made explicit reference to government policies which continue to delay RTG schools in their ability to respond to local concerns, there are, at least, indications that the necessities imposed by COVID-19 have enabled supervisors to lead educational initiatives designed in response to local needs. In effect, school closures

prompted direct community interventions of which learner needs analyses were a constituent part.

At the national level, this recent phenomenon has been referred to as 'distributed leadership'. To provide a cursory definition, '[d]istributed leadership is concerned with leadership interactions rather than actions which reflect the new reality facing all those who lead, not just school leaders. Distributed leadership practice is fundamentally about capacity building rather than control (...) (my emphases, p.4, Harris, 2020).

Referring back to passive hate speech as a relational evil, Harris' distinction between leadership actions and leadership interactions is especially relevant. It is notoriously difficult to effect behavioural change in institutions, the most notable example of which is Thailand's infamous shift towards Learner-centred Education (LCE) in 1999 (Phungphol, 2005). Twenty years on, the educational impact of learner-centred training appears to have been negligible (Phothongsunan, 2018) and the quality and effectiveness of ESAO themselves has been called into question (Shaeffer, 2018). Perhaps the most important lesson to be learned from the implementational failure of LCE is that leaders cannot force behavioural change directly. In the words of one school supervisor, "change will be from [teachers'] own desire but if the situation or somebody told them to change, it's very difficult".

To conclude, the pandemic has operated as a catalyst for educational change in Thailand. As in the case of passive hate speech, relational evils may be subtle: manifesting as indifference towards the needs of marginalised groups or as externalised representations of issues which lie "out there, somewhere". For the silence to be broken regarding the limited educational opportunities and consequent dangers which so many migrant children face, some important first steps may perhaps have already been taken: under-resourced areas have been visited, community household data has been gathered and data-informed courses have been designed. As well as acknowledging that migrant lives matter, Thailand's education workers—like many of us—are going through a period of transition which has arguably strengthened teachers' awareness of the diverse needs corresponding to different communities. When asked what greater professional freedom might look like after five years, one supervisor responded:

SS: I think that if it's depends if it's based on community respect, the public respect (...) these kinds of things its can be good after five year. As long as (...) we think about the effect to the community or the effect to other people (...). Once when we got the freedom, we cannot just follow by what I want to do, we have to think about the thing that we are going to do is affect to other people or not can make community better or can worse the community. So we have to think about this also. So as long as we think about this then we have the freedom to do anything.

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# The Direct Reference of Hate Speech and Its Emptiness

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## Abstract

The use of language in hate speech is understandably offensive. Though words do not kill, they convey the alarming message that harms the victim. However, how is it possible that words can harm? What is the reality of the meaning of pejoratives that are used in hate speech? A characterization of pejoratives is that it has the property of immediacy; that is, they refer directly to the object of speech. Based on a shared context, any descriptions are unnecessary for understanding the offensive message of pejoratives. In this sense, pejoratives have indexical content as it is context-sensitive. This paper focuses on some examples of hate speech in Thailand and argues for the idea that the kind of indexical content that pertains to pejoratives is action-oriented. However, its object of reference is empty.

## Introduction

The use of language in hate speech is understandably offensive. Though words do not kill, they convey the alarming message that harms the victim. Nevertheless, how is it possible that words can harm? The main question of this paper is: What is the reality of the meaning of pejoratives that are used in hate speech? How should we understand the offensiveness of slurs in hate speech? Answering this question might not directly lead to the practical solution of the problem of hate speech; but it can help us have a clearer understanding of the meaning aspect of hate speech. The most plausible theory being proposed in this paper is the direct reference theory. This paper is divided into four parts. The first part clears up the definition and the scope of hate speech study that is relevant to this paper, and also shows some examples of the use of Thai slurs in hate speech. The second part is a formulation of what is called the pejoratives-puzzle. Then the third part briefly shows some solutions to the puzzle and provides some brief objections to such solutions. The last part argues for the solution, that is, the direct reference theory but with a paradoxical claim that the reference of slurs in hate speech is empty. However, it has intentional content.

## 1. What is hate speech? Definition and scope with some examples of Thai slurs

Literally, hate speech is the language of hate. According to the United Nations (2019), there is no international legal definition of hate speech. However, in a legal context, such as in the US context, hate speech is characterized as linguistic or any form of expression (including other types of representation like pictures, films) that expresses hatred toward individuals or groups on the basis of race, ethnicity, gender, sexual orientation, religion, age, disability, or any other similar ground; in particular, it can instigate violence or harm target person or group.<sup>1</sup> According to Brown (2017), an origin of the terminology 'hate speech' was being initially employed in the US legal context concerning racial discrimination. The issue

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<sup>1</sup> See, e.g. American Library Association (2017), USLEGAL.COM (2020); see also Hornsby (2003) for a sufficient condition of hate speech

in the legal debate is mainly on whether hate speech should be banned or censored according to the liberal democracy ideology where free speech is protected. Although the citation about the legal definition here is not in the Thai legal context, the applicability is not much different.<sup>2</sup> According to Ramasutra (2015), 'hate speech' is a new terminology for Thai society as the term has been formally translated by the Office of the Royal Society of Thailand as 'speech that harms' (*Pratussa Vaja*) in around 2014. Moreover, hate speech is not regulated under the current constitution of the Kingdom of Thailand due to the protection of free speech.<sup>3</sup>

However, it is not necessary to think about the issue of hate speech within a legal context. An example is in the work of Hornsby who takes it as a study of a 'principle of political morality'. (Hornsby 2003, p. 1) ; in other words, a study of the moral dimension of hate speech in a political context. Some others like Brown (2017) have also remarked that the studies of hate speech mainly grounding their account on the legal concept may not help to see what lies behind such concepts. A study of the ordinary concept of hate speech is more promising than a legal one. It shows the myth behind speech that is used as a weapon against disapproval moral/political codes of conduct. One of the myths that Brown mentions is the myth of hatred as an emotional state.

Whatever approach is employed, the debate seems to rest on the fluid nature of hate speech that fluctuates between speech that simply expresses hatred toward disapproval moral/political codes of conduct and speech that harms or can provoke violence toward its target groups. But it is possible to express hate speech without a feeling of hatred. So, the reason why we care about hate speech seems to be concerned with the harm in hate speech rather than the hatred itself. If that is the case, it is reasonable to reduce the scope of the talk about hate speech into the talk about harm in hate speech instead. Grounding on this understanding, this paper focuses on the component of hate speech that can be an instigator of the harm, namely, the offensiveness of pejoratives or slurring terms that are used in hate speech.

Concerning examples of hate speech in Thailand, they are expressed in various forms including pictures and films<sup>4</sup>. However, this paper focuses on hate speech as being expressed in pejoratives or derogatory language. The hate speech phenomena in Thailand has been of much interest especially during the years of political turmoil (in around 2008) where hate speech was heavily employed by politicians and people from both of the opposite sides. Popular slurs in Thailand can be divided into three groups – political, gender and racial slurs. Though religious slurs are also controversial, it seems they are less noticeable compared with other types of slurs and can be in some cases incorporated with the racial slurs. However, within each group, there is also a difference between non-pejoratives used in hate speech and

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<sup>2</sup> See, e.g. Ramasutra (2015)

<sup>3</sup> See, e.g. Constitution Drafting Commission (2017) But please noted that the situation about the limitation of free speech in Thailand is somewhat controversial. The term 'hate speech', instead of being used to protect the lesser privileged groups, has been frequently used in the opposite. See Skunnawat (2020)

<sup>4</sup> A good example of hate speech against women through the medium like pictures and films is pornography. See, e.g. Langton 2000 for a philosophical study on pornography.

pejoratives used in hate speech. It is the type of pejoratives used that this paper is focusing on. The obvious example of such a difference can be seen in political slurs

## 1. Political slurs :

### 1.1. The non-pejoratives use in hate speech

The non-pejorative use can be in the form of poetic/metaphorical language.<sup>5</sup> A well-known example is "*nàk pàen din*" ("หนักแผ่นดิน"). This is the name of a controversial patriotic song which means useless/worst people of the land. The song was meant to blame the student movement in 1976 as being communists and has been believed to be the song that provoked brutal violence against the student movement on 6 October 1976 at Thammasat University. Once again, the song has been currently recited by the former Army Chief General Apirat Kongsompong in order to respond to the criticism of the Army budget spending by the Future Forward Party.

Another famous example is '*kwayy-dang*' (ควายแดง). The literal meaning is "red water buffalo" connoting ignorant poor people led or bribed by political tycoons. The word '*kwayy*' in Thai denotes buffalo but connotes the derogatory meaning of being stupid or an idiot. There are many pejoratives in the Thai language that use animal epithets or animal metaphors as an insult. The offensive sense of the word 'buffalo' might be equal to 'rat' in the English language.<sup>6</sup>

### 1.2. The pejoratives use in hate speech, e.g.

'*e-ngoh*' (อีโง่) or 'dumb bitch' : This slur was used by the former Thai male prime minister to blame the female prime minister during the political turmoil in 2013. (see Bangprapa 2013) The prefix '*e*' (อี) in Thai language is an impolite prefix for female, and '*ai*' (ไอ้) is for male. Though the term was uttered in a political context in order to discredit the female prime minister as a woman with low intelligence and undeserving of the position of the prime minister, it is criticized as the sexist slur being reproduced to subordinate women.

## 2. Gender or sexist slurs, e.g.

'*e-ka-ree*' (อีกะหรี่) or 'bitch/slut': The word '*ka-ree*' is believed to be from 'curry' which has a strong smell. Though there is no consensus on the origin of the term, the term is a pejorative as it is an insult to woman dignity.

'*ai-ka-toey*' (ไอ้กะเทย) or 'faggot/fag': The word denotes transgender people or homosexuality people, but connotes the abnormality of male/female sexuality which is offensive.

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<sup>5</sup> Another example is the phrase "Khae Pha Chet Toa" ("แค่ผ้าเช็ดเท้า") or 'just a foot rag'. This phrase though is not a well-known phrase; it is an excellent example of non-pejorative use or metaphorical use in hate speech. I found these terms from the right-leaning women's magazine Sakulthai. The full sentence is actually "The red shirt people are 'just a foot rag'." The phrase 'just a foot rag' is meant to humiliate the red shirt movement as being a worthless lower class. It is offensive as Thai consider feet as the dirtiest or demeaning part of a body.

<sup>6</sup> A similar example in English language is an offensive calling of the French as 'frog'.

3. Racial slurs, e.g.

'ai-jeak' (ไอ้เจ๊ก) or 'chink': The literal meaning denotes the Thai Chinese but connotes rude, inconsiderate manner. Though this term has been currently considered as less offensive, there is still the sense of an insult if it is used as name-calling.

'ai-lao' (ไอ้ลาว) : The literal meaning denotes the Laotian but connotes the humiliating sense of an inferior race to the Thai.

'ai-yun' (ไอ้ยูน) or 'Jap': The literal meaning denotes the interference or a nosy people; but the connotation is the Japanese with the satirical sense of being nosy on international affairs. Around the sixties or seventies in Thailand, it is one of familiar racial slurs. It was probably the time when there was a sentiment of protesting against Japanese merchandise and probably the anti-Japan sentiment inherited from the Second World War when the Japanese army invaded Thailand.

## 2. Pejoratives-Puzzle: the offensive power

As shown above, there are two main components of slurs: the literal/denotative or descriptive component and the connotative or derogatory/offensive component<sup>7</sup>. The phenomenon of pejoratives-use in hate speech is puzzling. The puzzle concerns the latter component. In order to understand the pejoratives-puzzle, it is necessary to understand the background idea of the puzzle, that is, the difference between the use and mention or the use-mention distinction thesis.

In the seminal work of Frege (1892), the use and the mention of a term is not the same thing.

An expression is used *if and only if (iff)* it is about the reference directly.

In ordinary reference, a proper name in general like Taro Mochizuki is used in the sentence --

(1) Taro Mochizuki is a Descartes scholar.

An expression is mentioned *iff* it is about the reference indirectly.

In the case of an indirect reference, a proper name is mentioned, say,

(2) "Taro Mochizuki" in the sentence (1) means Taro Mochizuki who is a Descartes scholar.

or

(3) Kanit said that Taro Mochizuki is a Descartes scholar.

It is clear that general proper names operate under the use-mention distinction thesis. However, in the case of pejoratives or slurring terms, they strangely act as they violate the thesis, and this is the pejoratives-puzzle. There are two ways of the breakdown of the use-

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<sup>7</sup> Noted here that the similarity of derogation and offensiveness is taken for granted. According to Hom&May (2018), there is a distinction between derogation and offensiveness – while the former is semantic, the latter is psychological which can be subjective. (Hom&May 2018, p. 118) However, this is not a substantial issue here for though the offensiveness seems to be subjective, there is a sense that it is context dependent. If we share the same context (same language), we share the sense of offensiveness in the use of slurring term.

mention distinction thesis. The first one is the offensive power preservation. The second one is the offensive power destruction.<sup>8</sup>

### 1. The Offensive Power Preservation

There are at least three contexts of slurs showing that the offensiveness of pejoratives is preserved.

1. Negative sentences: the offensiveness is still with the term, e.g.

‘She is not a slut.’

‘He is Afro American, but he does not behave like a nigger.’

‘She is poor, but she is not a slut.’

2. Indirect speech

‘He is a honkey.’ – ‘Kanit said that he is a honkey.’

3. Co-referential context

1. He is honkey.

2. honkey = Caucasian

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3. He is Caucasian.

### 2. The Offensive Power Destruction

This is the melting situation of the offensive power where ‘mentioning’ the slur can be used as a destruction of the offensive power. However, it is not an ordinary ‘mention’ or the use of the term in an indirect reference context. There are two cases falling into this type, that is, the appropriation case and the case of humour. In the appropriation case – slurs are ‘reused’/reclaimed by the victim’s group in order to fight back the offensive sense, e.g. the Boston Slut Walk in 2011. In the case of humour, slurs are often used in a context of making joke among trusted friends to express a sense of camaraderie.<sup>9</sup> In this case, the offensiveness is cancelled out, though there is a thin line in this case between humour and humiliation/disrespect. However, this case is rather complicated and needs to be treated separately, so it will not be considered in this paper.

### 3. Pejoratives-Puzzles Solutions: semantic theory vs pragmatic theory

Two types of theory suitable for solving the pejoratives-puzzles are the semantic theory and the pragmatic theory. The former treats meaning as truth-conditional bound, and the latter treats meaning as performatives. Concerning the semantic theory, there are two promising theories, i.e. the social externalist semantic theory and the indexical semantic theory. In the following, I briefly explain and criticize each theory and then propose an alternative for the solution.

#### 3.1. The Semantic Theory

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<sup>8</sup> In order to communicate with international audiences, the following examples of slurs are mainly slurs in English. See Sirichan & Lepore (2015)

<sup>9</sup> Also, in a game of playing with words or a pun.

### 3.1.1. The Social Externalist Semantic Theory

According to this theory (Hom 2008), the meaning of a slurring term in a sentence is determined by its context of use. The kind of context in question is the social context playing a causal role in determining the content of the term. For example, for a racial slur to be offensive, it is the external social context like "institutions of racism" which causally determines the derogatory/offensive content of the slur.

Although this theory seems to be intuitive, a major criticism of this theory is that it is too broad to explain the non-derogatory use situation, e.g. the case of appropriation. The reason is that there is nothing like an institution of appropriation to guarantee the non-offensive sense of the appropriation. So, this theory cannot explain the case of offensive power destruction.<sup>10</sup>

### 3.1.2. The Indexical Semantic Theory

The indexical semantic theory (Kaplan 2004; Scott & Stevens 2019) is the most promising semantic theory, but it still requires some revisions in order to fully grasp the nature of slurs.

According to this theory, the meaning of a slurring term in a sentence depends on the context of use in a similar way as the meaning of indexical terms, like, *I, this, here, now*. Such terms are called context-sensitive terms because the meaning is determined by the world or the context of reference. For example, the sentence like "I am here." refers directly to its object of reference. Understanding the meaning does not require a description like who am I or where is here. However, if someone else says the same sentence as what I said, 'I am here.', the truth condition of the sentence is varied to the reference, that is, the person who said that sentence and the place he is in. So, the truth condition of the sentence or its meaning is determined by the world or the context of use. This theory is sometimes known as the direct reference theory. Within the indexical semantic theory, two preliminary approaches should be in focus.

The first one is an influential work of Kaplan (2004). The paper considers pejoratives as expressives. An expressive term expresses /displays/shows whether something is the case. This is similar to how indexicals/ demonstratives, pejoratives work as well. It is to be contrasted with a descriptive term which describes/says what the case is. However, the main limitation of Kaplan's view is that – in saying that pejoratives are expressives, it entails that only the case of pejoratives that express contempt is in consideration. But pejoratives can be used either with contempt or without contempt. So, Kaplan's approach does not seem to be an appropriate solution to both puzzles.

The second approach is the (racial) pejoratives as indexicals written by Scott & Stevens (2019)<sup>11</sup>. According to this approach, racial pejoratives function like indexical

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<sup>10</sup> See some other criticism of Hom's theory, e.g. Scott & Stevens 2019, Corredor 2014

<sup>11</sup> Though Scott & Stevens main concern is racial pejoratives, it is applicable to other types of pejoratives as well.

terms; that is, they are context-dependent. A context is defined by an agent, world, time, location and target  $u$ .

Formally written as "A context  $c = \langle ac, wc, tc, lc, uc \rangle$ "

The meaning of pejoratives in a sentence is determined by truth-conditions, not by social facts surrounding the use of the term (like the social externalist semantic theory). The meaning of pejoratives is truth-conditional bound in the sense that (racial) pejoratives pick out/refer to a racial group. Racial pejoratives negatively represent the target agent just because of the target being a member of that group. For a racial pejorative like 'Ai-Jek', the reference of the term is the Thai-Chinese group; and the offensive sense of the term is caused by the negative representation of the group. As Scott&Stevens (2019) says, "...racial pejoratives always encode their derogatory meanings ...racist meanings. (p. 396-7) In other words, the fact that racial pejoratives are offensive or express racist judgements "...is a straightforward semantic (truth-conditional) fact" (Scott&Stevens 2019, p.396-7) The indexical semantic theory is thus able to account for the offensive preservation case.

As for the case of the offensiveness destruction like appropriation, this theory explains that in this situation, the racial pejoratives do not have standard truth-conditional content. It is the situation in which positive attitude of camaraderie or empowerment is expressed (Scott&Stevens 2019, p. 395) This is quite similar to what Ritchie (2017) said that the appropriation expresses the social identity of the indexical "we". Although the content of racial pejoratives in this context is non-standard truth-conditional, it is still truth-bound as it primarily refers to a racial group, but its offensiveness is melted by the identity of the speaker.

It seems the indexical theory provides a sufficient solution to the pejoratives-puzzles. Despite this, the theory overlooks a crucial aspect of indexical terms, that is, indexicals are action-oriented terms. This aspect can be called the 'performative' aspect of indexicals. A well-known example for elaborating this point is the trolley shopper's thought experiment from Perry (1979). The story is this. Suppose you are shopping in a supermarket with a trolley cart. Suddenly you see a trail of sugar on the floor, so you think someone has a leaky sugar bag, and you'd like to tell that person not to make a further mess; but then after you follow the trail for a while, you found that the trail is thicker and finally, you realized that it is you who made the mess. The moment you realize that it is you or 'I' who makes the mess, there is an immediate consequence, for instance, an act of trying to clear up the floor. The sense of 'I' is different from 'the person who makes the mess'. There is no action-oriented aspect of the latter.

In the case of pejoratives/slurs, if slurs have a similar nature as indexicals, then we cannot overlook this action-oriented component. In expressing a slur, there is an immediate effect, i.e. the offensive effect which can harm or instigate a violent response. As for the question of how the performative acts work requires an explanation based on pragmatic theory.

### 3.2. The Pragmatic Theory of Pejoratives

The pragmatic theory in consideration here is the view proposed by Hornsby (2001,2003); Hornsby&Langton (1998). According to the pragmatic theory based on Austin's theory of speech acts, language or speech is viewed as communicative where both speaker and hearer play an essential role. Pejoratives that are used in hate speech are considered to be the illocutionary acts, namely, the performative of an utterance like warning, promising. In saying, for example, 'I promise.', you are performing the act of promising. With regard to the pejoratives used, in saying '*e-ka-ree*' or 'slut', you are performing the act of insulting a woman.

A salient point that Hornsby and Langton emphasize is what is called the silencing thesis, that is, the idea that there is an asymmetry of power relation among speaker and hearer. The more privileged would have words that can silence the speech of the less privileged. Hence, this explains why there are no slurs of an equal offensive power like 'slut'. This phenomenon is also true in Thai hate speech.<sup>12</sup> However, a negative implication of the silencing thesis is that it seems to silence the possibility of the second puzzle or the offensiveness of destruction as well. That is because the presupposition of the thesis is the unavailability of the counter speech of equal offensiveness. In comparison, the case like appropriation suggests the availability of the counter speech, though with the same word but different sense. It is the situation where pejoratives can be used without being offensive. If that is the case, the pragmatic theory does not seem to offer the solution to the second puzzle. Hence, we need an alternative theory which is able to solve both puzzles, that is, the direct reference theory.

#### **4. The Direct Reference Theory**

The direct reference theory is a combination of the indexical semantic theory and the pragmatic theory but encounters no problems as both theories. It proposes two paradoxical claims, that is, first, the indexical component of pejoratives and second, the empty reference of hate speech.

The indexical component of pejoratives that are used in hate speech means that meaning of pejoratives is context-dependent and truth bound. For example, the truth-condition of the sentence containing a sexist slur like '*e-ka-ree*' is determined by the context in the Thai language, that is, it refers 'immediately' (or without descriptions) to a group of women who are prostitutes or a woman who is sexually promiscuous. The offensive sense of the term is already inherited in its content because it is an expressive term or the term which expresses offensive attitudes. The offensive attitudes are expressed or performed in uttering the slur, in this case, the act of insulting, humiliating a woman, which can be considered as an "attack on human dignity". (see Waldron 2012) This is the action-oriented aspect which can explain why the term harms the target.

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<sup>12</sup> In English, the terms like 'honkey' or 'womanizer' do not have a comparable offensive sense as 'slut'. An obvious example of the asymmetry in Thai hate speech is the political slur like 'kwai dang' is not equally offensive to the opposite slur 'Salim' which connotes the yellow shirt people or the royalist.



To support my point here, according to Potts (2007), one of the six characteristics of pejoratives or expressive terms is the immediacy. Potts says, "Immediacy: Like performatives, expressives achieve their intended act simply by being uttered; they do not offer content so much as inflict it." (p. 167) This feature shows that expressives or pejoratives can be treated like performatives. Once performed, there are consequences. This is the idea that expressives behave like indexicals and demonstratives. It is in line with the realization of 'I' who makes the mess in Perry's example of the trolley shopper.

The second claim is paradoxical. Though pejoratives are used in hate speech has a direct reference, the reference is empty. Primarily, this is supposed to be the solution to the second puzzle. The main reason is that the use of slurs in hate speech is a kind of generic use. It is a weak generalization of the property of a group, which does not exist. This can be said as what Hom&May (2018) suggests that the truth-conditions of a sentence containing slurs is a kind of fictional truth. For example, in ascribing the property of being a slut to a group of women, it refers to the property like casual or promiscuous sexual behaviour which is deemed by those who are morally conservative as the negative or disapproval property. But such behaviour is deemed as a negative property in the eyes of one group against another. Being a 'slut' is created to exist as the reference of the term; similarly, as 'unicorn' is created to exist as the reference of the term 'unicorn'. In this sense, the truth-condition of slurs is simply a fictional truth.

However, even though the reference of slurs is empty, this does not mean that such terms are meaningless. Under the condition of sharing the same language, the language users know what they mean when they express a slur. At least, there is what is called an 'intentional content'. (see Sirichan&Lepore 2015) The intentional content is the object of thought in the Meinongian sense, that is, being in an intentional state involves what the state is about. In thinking about a unicorn, the intentional content of your thought is the unicorn. Whether the unicorn exists outside your thought is not relevant because, in thinking, there is, necessarily, an object of thinking. Regards the semantics of pejoratives or slurs in hate speech, slurs can be expressed without hatred as an intentional state. However, they are intentionally created, slurs hence have at least intentional content, though without an existing object of reference. An upshot of the second claim is that it can be an explanation for the case like appropriation. In that situation, the offensive sense in the appropriated slur (in other words, the second-order slur) is destroyed, but still, the speaker who appropriates the slur is of course aware of the first-order meaning which is offensive. The empty reference of slurs allows the possibility of the use without the offensive sense to be fixed. Therefore, the direct reference theory is the most plausible solution to the pejorative's puzzles in both directions.

## **Conclusion**

As the main aim of this paper is to answer the question of what the reality of the meaning of pejoratives or slurs in hate speech is, the direct reference theory provides the analysis that can cope with both puzzles of pejoratives. The pejoratives-puzzle is puzzling in both directions, that is, the offensive power preservation and the offensive power destruction. Two main theories are suitable to solve the puzzle, namely, the semantic and the pragmatic theory. On the one hand, among the semantic theories on offer, the social externalist semantic theory can account for the former direction but not the latter; the indexical semantic theory, in

particular, the one which treats pejoratives as indexicals is more promising, but it is insensitive to the performative aspect of indexicals. On the other hand, the pragmatic theory is realistic in treating speech as performatives – in expressing a slur, one is doing harm to the target by attacking the human dignity of others. Another strong thesis of the pragmatic theory is the silencing thesis which can provide an account for different degrees of the offensiveness of slurs that are relative to the power status of the speaker. However, the silencing thesis rules out the appropriation case where an expression of a slur can be non-offensive. Accordingly, I propose the direct reference theory which can solve the puzzle in both directions, though its claim sounds paradoxical.

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# Is Hate Speech in Myanmar Related into Power Politics? (A Philosophical Perspective of Hate Speech in Asia)

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## Abstract

In November 2020, there will be a general election in Myanmar, so that most of Myanmar people are worried about hate speech by so-called nationalist groups to make violence a negative impact on ruling party National League for Democracy (NLD). They used the words “*lu myo cha* (different race, not-Myanmar Nationality) “*ba tha cha* (different religion, not-Buddhist)” for discrimination. For this reason, recently, some civil society and social institutions try to teach people how to avoid making and sharing hate speech. In 1990, a general election was held and it was the first multi-party election since 1962, after which the country had been ruled by a military dictatorship. The election was won by NLD, however, the military junta refused to recognize the results. After the election, since 1990, the so-called nationalist group attacked Aung San Suu Kyi, leader of NLD, for her husband is “*lu myo cha*” and NLD is made by “*ba tha cha*” to oppose NLD and to make violence. In 2014, (before general election 2015), there was a violence between Buddhists and Muslims in Mandalay, the second largest city in Myanmar, by using the words of hate speech “*lu myo cha*” and “*ba tha cha*” to dent the NLD’s popularity. Anyway, the election was won by NLD and NLD became the ruling party. In fact, before the 1990 general election, there was no hate speech and no conflict between different races and religions in Myanmar. This is why I raise the question “Is Hate Speech in Myanmar Related to Power Politics?”

### 1. Making Hate Speech and Philosophy of Self and the Other

Making hate speech is related to doing philosophy of self and the other. In the history of Western Philosophy, Georg Wilhelm Friedrich Hegel (1770–1831) introduced the concept of the other as a constituent part of self-consciousness and self-awareness. The concept of self needs the existence of the concept of the other as the counterpart entity. Jean Paul Sartre (1905–1980) applied the dialectic of intersubjectivity to describe how the world is altered by the appearance of the other, of how the world then appears to be oriented to the other person, and not to the self. Edmund Husserl (1859–1938) in his *Cartesian Meditations: An Introduction to Phenomenology* (1931) applied the concept of the other as the basis for intersubjectivity, the relations among people. For him, the other is constituted as an alter ego, as another self. The other is being a perception of the consciousness of the self.

Emmanuel Levinas (1906–1995), philosopher of ethics established the contemporary definitions, usages, and applications of the constitutive other, as the radical counterpart of the self. His work is based on the ethics of the other or, in Levinas's terms, on "ethics as first philosophy". For Levinas, the other is not knowable and cannot be made into an object of the self, as is done by ontology. Levinas prefers to think of philosophy as the "wisdom of love" rather than the "love of wisdom". In his view, responsibility toward the other precedes any "objective searching after truth". Levinas derives the primacy of his ethics from the experience of the encounter with the other. For Martin Heidegger (1889-1976), the “who” or “self” is not a substantial being. Man is not a permanent subject because he is never a

complete being and always “on the way”. Man is always defining his nature by means of his decisions that he is not a “self” made up of properties but a being constituted by possibilities. For these reasons, man as a social self and a political self, one needs understanding of the existence of others and their possibilities and to have love of wisdom that can make free from hate speech against the other.

In Chinese Philosophy, the self in Confucianism is a role-carrying and interrelated individual, who acts in accordance with *li* based on the understanding of the Way of Heaven. The difference between human nature and animal nature is that human beings have *ren*-humanity (benevolence) and sympathetic or “commiserating mind”. “All men have a mind which cannot bear to see the sufferings of others.” The commiserating mind (*ren*-mind) is the foundation of the social order of Confucian society. Confucius' social philosophy largely revolves around the concept of *ren*, “compassion” or “loving others.” For Confucius, such concern for others is demonstrated through the practice of forms of the Golden Rule: “Do to other, what you wish for yourself, and do not do to others, what you do not wish for yourself;” “Since you yourself desire standing then help others achieve it, since you yourself desire success then help others attain it”.

In Japanese Philosophy, the space in which the acts take place Tetsuro Watsuji (1889-1960) refers to as “betweenness” (*aidagara*). “Betweenness consists in the fact that self and others are divided from each other ... and at the same time that what is thus divided becomes unified”. In an intimate I-Thou relation, self and the other not only accept each other’s participation into the innermost depth of each other’s existence, but they also demand such participation, as is expressed in the idiom, reveal the ‘bottom of each other’s hearts’. Therefore, nothing is hidden between self and the other. So far as one is capable of awareness, one’s existence is through and through open to the participation of the other. It is the abandonment of the self as independent which paves the way for the nondual relation between the self and others that terminates in the activity of benevolence and compassion through a unification of minds. In this way, the ethics of humanity and benevolence is the development of the capacity to embrace others as oneself and then there will be free from hate speech against others.

In Myanmar Theravada Buddhist Philosophy, knowing self and the other which are made up of actions of mind and body led by *cetanā* (intention) is enlightenment and wisdom. With the help of the concept of *Jikaku* in Nishida Philosophy, *cetanā* may be translated into “to awaken”. Nishida regards activity as reality. Then, thinking, feeling and willing are activities of consciousness so that they also can be regarded as reality. For a Myanmar Buddhist Philosopher, thinking, feeling and willing are reality of mental phenomena constituted in consciousness with *cetanā* as the leading reality of mental phenomenon, to awaken good speech as well as hate speech.

For Nishida Kitaro (1870-1945), the experience of unification of consciousness of subject (self) and object (the other) is the experience of pure consciousness. It is pure experience and there are no independent, self-sufficient facts apart from our phenomena of consciousness; as Berkeley said, "*Esse est percipi*" (to be is to be perceived). Nishida holds that direct reality is not something passive. For him, to be is not only to be perceived but also to act for the development of personality. Hence, he says, "To be is to act." In Myanmar Philosophy, it can be said that "Know your *cetanā*, intention" and "To be is to know *cetanā*, intention to the

others”. It means that to know whether our intention to others is to express hate speech or not. We can say that knowing others is wisdom of mental cultivation through *cetanā*, intention associated with loving-kindness (*mettā*), compassion (*karunā*), empathetic joy (*muditā*), and equanimity (*upekkhā*). This is a way of living by *Cetanā* Ethics to be free from hate speech.

## 2. A Brief History of Myanmar Political Movements

Myanmar was earlier known as Burma and was a British colony and Aung San, Aung San Suu Kyi's father, was a leader during the strike by university students in 1936. He was the founder of Burma Independence Army. He is a national leader for Independent of Burma and before independence, he became a politician was assassinated in July 1947. He said Politics means phenomena of everyday life. He used Buddhist teaching of cause and effect and he claimed that if one relies on understanding of cause and effect in politics, then he or she will be successful. This can be called Myanmar Political Philosophy based on understanding of cause and effect. Burma became independent on 4 January 1948 and U Nu, a university student leader and politician, became its Prime Minister. In March 1962, General Ne Win, the head of the armed forces coup and seized power and his Revolutionary Council declared the Burmese Way to Socialism. Since 1962 there have been many strikes by university students and factory workers. Ne Win retaliated brutally the leaders of strike.

In 1987, Burma applied for the status of Least Developed Country to gain relief from its burden of foreign debt and there were strikes followed by student demonstrations against the government in March 1988. Aung San Suu Kyi, in her first public appearance on 26 August 1988, pledged support to the movement for democracy and termed it as the "second struggle for independence". This is where she first shared her ideals of philosophy of nonviolence. On 8 August 1988, the pro-democracy protests were held in Rangoon (now Yangon). This is well known in Burmese history as the Four-Eights Democracy Movement (8-8-88 based on the date 8 August 1988). However, the army, locally known as the Tatmadaw, retaliated brutally and there was a massacre. The military seized power on 18 September 1988. The military regime promised to hold multi-party elections and even allow political parties to be formed. Aung San Suu Kyi founded the National League for Democracy (NLD) on 27 September 1988.

In June 1989, she was put under house arrest. Elections were held in May 1990. The NLD won over eighty percent of the seats contested. These results were however declared null and void. After election, since 1990, the so-called nationalist group military regime-aligned base was making hate speech against Aung San Suu Kyi for her husband is “*lu myo cha*” (different race, not-Myanmar Nationality) and NLD is made by “*ba tha cha*” (different religion, not-Buddhist) to oppose NLD and to make violence and discrimination. In the newspaper controlled by the military regime, many hate speech articles against Aung San Suu Kyi and NLD are expressed. In fact, before the 1990 general election, there was no hate speech and no conflict between different races and religions in Myanmar. This is why I raise the question “Is Hate Speech in Myanmar related to Power Politics?”

In 1993, the military regime convened a National Convention with the help of a few hand-picked delegates. The year 2007 Buddhist monks joined the protests in large numbers, giving it the name, 'Saffron Revolution'. They march and chant the *mettā* (loving-kindness) *sutta* as non-violence nationalist movement for democracy. In Myanmar Buddhist culture, political participation is a kind of good action of social welfare. In May 2008 the new constitution was approved in a referendum. The military regime declared the holding of general elections on 7 November 2010 in accordance with the provisions of the new constitution. However, the NLD boycotted the elections.

The Union Solidarity and Development Party (USDP), a proxy of the military junta, won the elections. Aung San Suu Kyi was released from house arrest on 13 November, right after the elections. In 2011, the military junta was officially dissolved and a civilian government led by Thein Sein, who headed the USDP, came to power. He met her in August 2011 and tried to convince her and her party the NLD to rejoin the political process. As a result, the NLD was re-registered. It participated in the by-elections held recently on 1 April 2012. The NLD won the elections emphatically and Aung San Suu Kyi became the leader of the opposition. In the 2015 general election, the NLD won a landslide victory and she became State Counsellor of Myanmar.

### 3. Political Philosophy of Aung San Suu Kyi

Aung San Suu Kyi applied philosophy of non-violence in her struggle for democracy. David Hardiman says, "Like Gandhi, she adopts non-violent civil disobedience as a matter of principle. For her, it provides a most active form of resistance. She is prepared always to hold out the hand of forgiveness and reconciliation. In all of these respects, she is a leader truly in the Gandhian mould." From Buddhism, she practices meditation, especially *vipassana* meditation and uses it as a weapon in the struggle for freedom from fear. Meditation is a source of strength in striving towards self-improvement. In her speeches, interviews and essays, she explained the conceptions of non-violence, democracy, dialogue, freedom, peace and justice combining both - the western ideas and Buddhism. This synthesis outlook can be founded in her essay, "In Quest of Democracy" written in 1988, which she concluded with the following words: "in their quest of democracy the people of Burma explore not only the political theories and practices of the world outside their country, but also the spiritual and intellectual values that have given shape to their own environment." By the teachings of Buddhist precepts, she wrote that the concept of law was based on *dhamma*, righteousness or virtue, not on the power to impose harsh and inflexible rules on a defenseless people.

Non-violence is a way of engaging in conflict in a peaceful way and is directed forwards reconciliation and thereby strengthening the social fabric. It is based mainly on toleration, kindness and compassion. The concept of non-violence is not a restriction for it has certain essential values of love, forgiveness and compassion. The intention of Philosophy of Aung San Suu Kyi is to involve everyone with her aims to secure democracy and freedom from the military regime and to change the mind-set of the Myanmar people.

Political Philosophy of Aung San Suu Kyi based on two concepts; *mettā*(loving-kindness) and *thissa* (truth). Some critics attacked her conception of *mettā* and *thissa* that it is not practical politics. In 1996 when she met with a prominent monk named *Thamanya Sayadaw*,



famous for creating a zone of peace in the midst of conflict in Eastern Karen State by applying his *mettā* and *thissa*, she remarked that politics is about people and *Thamanya Sayadaw* proved that love and truth can move people more strongly any form of coercion. Then, she said in an interview that hate and fear go hand -in -hand, and then, truth and reconciliation go together. This means that hate speech comes out of fear-fear for losing political power. Saying the truth makes reconciliation and free from hate speech, fake news and misleading information.

### **Conclusion: Is Hate Speech in Myanmar Related to Power Politics?**

The hate speech and fake news in the case of Meiktila in Mandalay Region is an example. Before the 2015 election, hate speech and fake news were spreading between religious communities in the town, where there was an outbreak of communal violence in 2013, was credited with a rise in support for the USDP, which took a seat from the NLD in Meiktila in 2015.

Political analysts fear that the USDP may appeal to race and religion by making hate speech in an attempt to lure voters away from the NLD in 2020. For the aim and objective of USDP is to fire up its military-aligned base, which is prone to nationalism, there is hate speech against Aung San Suu Kyi for some members of NLD are Muslims. It is a kind of hate speech that NLD is called *kalar* (Muslims) Party which means man of *lu myo cha* (different race, not-Myanmar Nationality) and *ba tha cha* (different religion, not-Buddhist) party”. Aung San Suu Kyi is called *kalar ma* (female kalar) as a kind of hate speech.

In Myanmar, as elsewhere, fake news and hate speech can be transmitted down from the top through Facebook. There are eight million Facebook users in 2015, but now there are 18 million to 20 million. This can make for a much higher volume of fake news and hate speech in 2020. Frontier Myanmar, a community based on independent journalism in Myanmar expressed that “With widespread distrust of international media and hostility towards foreign interference, Myanmar has begun to resemble an information bubble. As it turns inward, fear and nationalism take hold, and can easily be exploited by electoral candidates. There is reason to fear that campaigning for the 2020 election will be especially noxious.”

In conclusion, for the philosophical perspective of hate speech, we should realize the principle of conditionality that every phenomenon is conditional. This is the principle of cause and effect called *Ye dhammā hetuppabhā* in Myanmar Philosophy. Making hate speech is the cause of bad *cetanā* (bad intention), so that it is called *cetanā* (intention) for making hate speech. This can be explained by a logical form of syllogism. Let p is “There is *cetanā* (intention) for making hate speech against Aung San Suu Kyi and NLD”. Let q is “There will be hate speech.”. Then we can construct a logical form of syllogism. (1) If there is *cetanā* (intention) for making hate speech against Aung San Suu Kyi and NLD, then. there will be hate speech. (major premise.) (2) It can be seen in the 2020 election campaign period that there is *cetanā* (intention) for making hate speech against Aung San Suu Kyi and NLD. (minor premise) (3) Therefore, there is hate speech. (conclusion) It can be symbolized as  $\{(p \text{ É } q. p) \text{ É } q\}$ . In this way the question is raised that “Is Hate Speech in Myanmar related to Power Politics?”

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# Blasphemy Emergency: Indonesia biggest crisis?

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## Abstract

Beginning in 2005, a lecturer from Muhammadiyah University was prosecuted with blasphemy law, Indonesia now facing the biggest problem. Blasphemy is one of the serious problems in Indonesia, it has so many victims, from a regular citizen to state officials. The Government of Indonesia is trying to fix this by amending the blasphemy law and strengthen the religious organizations to help caught the culprit, but according to data, 90% of blasphemy case are driven by political interest and the “riders” use the religious organization to amplify the case using mass media. Most blasphemy cases punish the minority of the group. In this case, Indonesia with more than 87% of Moslem, usually blasphemy cases happened toward other religions. The punishment starts from one up to five years in prison. It was only used in eight cases in its first four decades, but convictions spiked to 125 during the decade when President Susilo Bambang Yudhoyono was in power, from 2004 to 2014. Another 23 people have been sentenced since President Joko Widodo took office in 2014. The highest state official that is punished under the blasphemy law is former Jakarta Governor, Basuki Tjahaja Purnama (Ahok) in 2017 with punishment of 2 years of imprisonment. If we look closely at the case, it is an effective media for some Islamic militant groups to mobilize and agitate Moslem. Many of them are trying to expand their influence and political power with the support of local citizens. Their goals are to make Indonesia use Islamic Law. The blasphemy cases against religious minorities, as well as state-sponsored discrimination against women and lesbian, gay, bisexual, and transgender (LGBT) people, have contributed to the continuing decline in Indonesia’s reputation as a tolerant Muslim country. The Indonesian government should promptly revoke the Blasphemy Law and drop the cases against those charged under it because realizing it or not, it is used as a tool to manipulate the people.

Keyword: Blasphemy, Moslem, Manipulate

## A. Introduction

Blasphemy is one of the most serious crimes in human history. Many men have been persecuted from blasphemy law regardless their gender, nationality, religion, or race. It has been the worst nightmare toward the minorities group in a country<sup>13</sup>. According to Black’s Law Dictionary Blasphemy is defined as such

*“Blasphemy is the offense of speaking matter relating to God, Jesus Christ, the Bible, or the Book of Common Prayer, intended to wound the feelings of mankind or to excite contempt and hatred against the church by law established, or to promote immorality. Sweet. In*

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<sup>13</sup> Tyson, A. (2020) “Blasphemy and Judicial Legitimacy in Indonesia,” *Politics and Religion*. Cambridge University Press, pp. 1. doi: 10.1017/S1755048319000427.

*American law. Any oral or written reproach maliciously cast upon God, His name, attributes, or religion*<sup>14</sup>.“

Blasphemy is sometimes said as speaking evil towards sacred matter, because where organized religion exists, blasphemy is taboo<sup>15</sup>. Every religious society will punish the rejection of honoring the Gods because it came as intolerable crime in old civilization. Before discussing further about blasphemy law in Indonesia, it is better for us to know about blasphemy. Looking at the history of blasphemy, the Organization of Islamic Cooperation (OIC) is a coalition of Islamic nations in the United Nations (UN) decides to propose the Human Right Council to introduce anti-defamation toward religions. It is used to protect the holiness of religion that is sometimes violated. The Human Right Council then declined the request by giving The General Comment No. 34 towards the International Covenant on Civil and Political Rights (ICCPR). The General Comment No. 34 contains broad analysis aspects of freedom of speech and the human right. In Paragraph 48 it is stated that blasphemy is limiting the freedom of speech of people and incompatible

with the ICCPR. It is stated that in no condition that someone can be accused with blasphemy for applying their most sovereign right which is human right.<sup>16</sup>

“Prohibitions of displays of lack of respect for a religion or other belief system, including **blasphemy laws**, are **incompatible with the Covenant** ... Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.<sup>17</sup>”

It concludes that blasphemy law is inherently incompatible with the ICCPR. There are some reasons why the UNHRC declined the proposal of anti-defamation towards religion. Many scholars have found the UNHRC reason. The first one is blasphemy is a subjective crime which can be directed towards anyone that they do not like in the group. When states passed the blasphemy law it can be used as a tool to drive society for their interest it sometimes political or just pure hate toward that particular group of persons. The second reason is there is no strong foundation of blasphemy. It is sometimes unjust, socially damaging, or sometimes insufficient. Blasphemy is sometimes just based on moral judgement without clear and precise element. The third one is blasphemy law is sometimes violating individual freedom of speech and limiting free speech. It is directly affecting it causing people to afraid

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<sup>14</sup> “What Is BLASPHEMY? Definition of BLASPHEMY (Black's Law Dictionary).” The Law Dictionary. <https://thelawdictionary.org/blasphemy/>.

<sup>15</sup> Williams, Leonard. (1995) “Origins of the Offense.” in *Blasphemy: Verbal Offense Against the Sacred*, from Moses to Salman Rushdie. UNC Press Book, pp. 3

<sup>16</sup> UN Human Rights Committee (HRC), General comment no. 34, Article 19, Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34.

<sup>17</sup> *ibid*

to express their opinion because they are afraid to be prosecuted under blasphemy law. In practice, due process of law and human rights are sometimes inadequately protected.

The next question is why are some states still applying blasphemy law in its national legal system? In many secular states, blasphemy law is not that important because they have segregated religion from the political or government, but in religious states such as Indonesia, Iran, Iraq, Arab Saudi and many more, blasphemy is still becoming the key issue in the freedom of speech. This is so because they still mix up between politics and religion.

Religion is a key to unify Indonesia as it is shown on the first sila on the Pancasila that states “believe in one and only God”. All citizens are obliged to follow a state-sanctioned religion. Some scholars view that the existence of a blasphemy law in Indonesia is directed toward the protection of one’s interest and not the religion itself. The right blasphemy has the following objective (1) To protect the honor of one’s religion (2) To limit people’s freedom and (3) Free from any interest<sup>18</sup>. All of those 3 requirements are contradicting blasphemy law in Indonesia that we will discuss further on the paper.

In this paper we will discuss the role of blasphemy law in Indonesia that shapes the judicial bodies in Indonesia, the effect of blasphemy law in Indonesia, the case of blasphemy law, and the roles of mass and media in blasphemy.

## **B. Discussion**

Focusing on Indonesia, it is first becoming an issue because of Majelis Ulama Indonesia (MUI). MUI is an Indonesian Council consisting of many Islamic Scholars that works as advisory bodies in the government since 1998 or reformation era that has the ability to shape Islamic face in Indonesia, control Islamic finance, producing fatwa (Islamic Legal Opinion) some scholars said that MUI is monopolizing Islam in Indonesia.<sup>19</sup> MUI is forcing the government to enact laws on blasphemy to protect religion, religious figures, and scholars from getting tainted. Indonesia have the well-known weapon for anti-defamation towards religion in Article 156a of Indonesian Criminal Code that stated

*“By a maximum imprisonment of five years shall be punished any person who deliberately in public gives expression to feelings or commits an act:*

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<sup>18</sup> Cox, N. (2020) “Justifying Blasphemy Laws: Freedom of Expression, Public Morals, and International Human Rights Law,” *Journal of Law and Religion*. Cambridge University Press, 35(1), pp. 12. doi: 10.1017/jlr.2020.11.

<sup>19</sup> Lindsey, Tim. 2012. “Monopolizing Islam: The Indonesian Ulama Council and State Regulation of the “Islamic Economy”.” *Bulletin of Indonesian Economic Studies* 48 (2): 253–274.

*a. which principally have the character of being at enmity with, abusing or staining a religion, adhered to in Indonesia*

*b. with the intention to prevent a person to adhere to any religion based on the belief of the almighty God.<sup>20</sup>*

It is used to imprison many men in Indonesia. Blasphemy law in Indonesia leaves many controversial because it leaves discretion towards the prosecutor, judges, and other law enforcers who may be influenced by political or personal interest.<sup>21</sup> Blasphemy law in Indonesia started to emerge in the revolutionary era since President Soeharto stepped down from his office in 1998. The revolution era means freedom of speech is guaranteed toward every person in Indonesia. It has been a new era to Indonesia because in the President Soeharto era or known as New Order Era, there is no freedom of speech or expression.

Since the revolution era, the ministry of religious affairs has been concerned about blasphemy because it may trigger people to dishonor religions or religious figures. Backed up with MUI, they now have become the largest Indonesian Muslim Community that has big influence in the government. Producing the fatwa has become MUI's job to give legal opinion about government action including amplifying the blasphemy case in Indonesia.<sup>22</sup> Many legal scholars have given their legal opinion towards blasphemy cases in Indonesia and most of them make conclusions that blasphemy law in Indonesia is very subjective and can be used to drag down people that they do not like. In Dutch, we acknowledge *hatzai artikelen* or "hate law" that has the objective to protect the honor of the ruler but in Indonesia *hatzai artikelen* is used to defend religion.

Indonesia has faced many cases regarding blasphemy law, from citizens level toward government officials. The first case that we will discuss is about Meiliana, Indonesian citizen who is prosecuted by blasphemy law. The tragedy begins on 29 July 2016 when Meiliana asks one of the Moslems in the Mosque to lower the volume down because she is trying to sleep. The locals who heard the news feeling offended then come to Meiliana's house to ask for clarification. Meiliana and her husband had already apologized but the situation at that time was not supported. Meiliana and her husband are threatened to be killed by the locals. The Mayor of Tanjung Balai decided to bring Meiliana to the nearest police station to be secured. Unfortunately, the news about Meiliana is spreading fast towards Indonesian and many Moslems from other province stated that Meiliana needs to be prosecuted because she has done blasphemy towards Islam. In 2017, MUI has given an advisory opinion that stated Meiliana has dishonor Islam and needs to be prosecuted soon. In 2018, Meiliana was brought to the Tanjung Balai District Court. The prosecutor uses Article 156a of Indonesian Criminal Code to prosecute Meiliana. One of the considerations that is used to examine the case is the fatwa by MUI No 001/KF/MUI-SU/I/2017 dated 24 January 2017 about Blasphemy towards Islam. In the fatwa, MUI stated that they fully support Meiliana to be given punishment

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<sup>20</sup> Article 156a Indonesian Criminal Code (KUHP)

<sup>21</sup> Tyson, A, "Blasphemy and Judicial Legitimacy in Indonesia", pp 4

<sup>22</sup> *ibid*

because she has conducted an “ungraceful act”. Although many other experts has stated that Meiliana is not guilty because there is not enough evidence to build up or to fulfill the delict of blasphemy law in Indonesia, in the decision, Meiliana is still punished for 1 year and 6 months in prison.

The judges stated

*“Whereas the defendant MEILIANA has been proven legally and convincingly guilty of committing a criminal act on purpose publicly committing defamation of a religion adhered to in Indonesia as is in the Prosecutor's indictment.*

*Thus, the defendant MEILIANA is given a punishment of imprisonment for 1 (one) year and (6) months.<sup>23</sup>”*

There is something strange in Meiliana case, the first reason is many witnesses says different thing about Meiliana’s word and interpret that Meiliana is defaming Islam. It is really shown that blasphemy law in Indonesia is very multi interpretation therefore very subjective. It is left to the judges that decide on this case. The second reason is although other witnesses and experts has stated that Meiliana has done nothing wrong that can be constitute as defamation towards Islam, the court in the final verdict still give guilty verdict and imprison Meiliana. If we take a look back on the case, Meiliana is just asking to lower down the volume of the adzan because she is trying to sleep not trying to dishonor Islam. What makes Meiliana guilty is the mass and the media. There is no single blasphemy case without mass mobilization.<sup>24</sup> It is used to amplify the case to force the court to give a guilty verdict. The mass mobilization sometimes includes violence. In the Meiliana case, the mass destroys Meiliana's house and threatens to burn her alive.<sup>25</sup> The media also plays a crucial role for framing the perpetrator to make everyone think they are guilty and send hate to them. Institute of Criminal Justice Reform Indonesia (ICJR) has given commentary toward the guilty decision in the Meiliana case. They stated that according to a United Nations Report dated 20 April 2010, about The Promotion and Protection of the Right to Freedom of Opinion and Expression, **criminal law about defamation cannot be used to protect something that is subjective and abstract**. Therefore, they also acknowledge that mass and media play a big role to frame Meiliana, it is also shown political interest because in 2018, Indonesia is having their general election. Political interest also intervenes in the Meiliana case in order to gain votes or bring down other’s votes. ICJR also stated that Meiliana is a

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<sup>23</sup> Medan District Court Decision No. 1612/Pid.B/2018/PN Mdn

<sup>24</sup> Osman, Mohamad Nawab Mohamad, and Prashant Waikar. 2018. “Fear and Loathing: Uncivil Islam and Indonesia’s Anti-Ahok Movement.” *Indonesia* 106(October): 89.

<sup>25</sup> Gunawan, Apriadi, 2018. The Meiliana Case: How a noise complaint resulted in an 18-month jail sentence. *The Jakarta Post*. Available at: <https://www.thejakartapost.com/news/2018/08/23/the-meiliana-case-how-a-noise-complaint-resulted-in-an-18-month-jail-sentence.html>

victim of hatzai artikelen that is very multi interpretation and subjective and asked Meiliana to conduct an appeal toward higher court or even classification toward the Supreme Court.<sup>26</sup>

In the Medan High Court, Meiliana's appeal was rejected because the judges stated that the case was settled correctly in the district court therefore the appellate process must be dismissed.<sup>27</sup>

The Medan High Court Judge's stated that

“ Considering, that after the Panel of Appellate Judges studied all case files including indictments, minutes of proceedings, testimonies of witnesses, prosecutors as well as official copy of Medan District Court Decision No. 1612/Pid.B/2018/PN Mdn, on 21 August 2018, the Panel of Judges at the Appellate Level basically **agree with the legal considerations** of the District Court Judges stated that the **Defendant has been proven legally and convincingly guilty** because in accordance with the legal facts revealed in the trial at the district court as contained in the official report have fulfilled all element in the Public Prosecutor Indictment. **Therefore The considerations of The District Court Judge's was taken over and taken into consideration itself by the Judge at the Appellate Level in deciding this case on appeal rate**”<sup>28</sup>

ICJR as the society supporting system also gave comment to the high court decision that they dismissed the case. ICJR said that the high court does not apply the proof-process correctly because the court uses the fatwa MUI as their basis of evidence to prove the Blasphemy in it. According to Article 184 of Indonesian Criminal Procedural Law, there are 5 (five) legal evidence which is (1) Testimony of Witness (2) Testimony of Expert (3)

Letter (4) Indication (5) Testimony of Defendant.<sup>29</sup> Fatwa MUI does not fall under that category because fatwa only binds for certain people and not a law or regulations that are legally binding for everyone. It shows that fatwa cannot be used as legal evidence but there is pressure from the mass demonstration and media. Therefore, we can say that Meiliana's court proceeding is driven by the mass and the media.<sup>30</sup> Many scholars also said that it is very unfortunate for Meiliana to experience this.

Moving on to the next case of blasphemy in Indonesia, the most shocking case of blasphemy was experienced by the former Jakarta Governor, Basuki Tjahaja Purnama in 2016. Basuki Tjahaja Purnama or people would call him as “Ahok” was doing a campaign in the Pramuka

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<sup>26</sup> Dirga, Sustira. 2018. “Complaints are not Criminal Action”. Amicus Curiae, ICJR pp.12.

<sup>27</sup> Medan High Court Decision No. 784/Pid.B/2018/PT.MDN

<sup>28</sup> ibid

<sup>29</sup> Article 184(1) of Law No 8 of 1981 about Indonesian Criminal Procedural Law

<sup>30</sup> Admin ICJR, 2018. PT Medan Rejects the Meiliana Case Appeal, ICJR: The High Court Does Not Carefully Prove the Elements in the Case! Available at: <https://icjr.or.id/pt-medan-tolak-banding-kasus-meiliana-icjr-pengadilan-tinggi-tidak-cermat-buktikan-unsur-dalam-perkara/>



Island in Kepulauan Seribu. He was the candidate of the 2016 Governor election in Jakarta in the upcoming months. Ahok was then interviewed by the local citizens of Pramuka island and asked him what his opinion regarding black campaign was about himself, because he is one of the minority group (Ahok has Chinese descendants and a Christian). Ahok simply said “do not let people fool you using Al Maidah 51” As we know, Al Maidah 51 is one of the chapters in Al-Quran that stated

*“O you who have believed, do not take the Jews and the Christians as allies. They are [in fact] allies of one another. And whoever is an ally to them among you - then indeed, he is [one] of them. Indeed, Allah guides not the wrongdoing people.”*<sup>31</sup>

One of the locals named Buni Yani recorded it and posted it on facebook with the caption “Blasphemy towards religion?” and became controversial since. The pattern is the same, many people and media forced the police to do investigation and prosecute Ahok because of blasphemy toward Islam. Habib Novel Chaidir Hasan, one of the MUI’s scholar and religious figure decided to bring the case to police by reporting with the case of blasphemy toward Islam. Ahok then gave a clarification toward the public in the Jakarta Town Hall where masses are gathered and ready to do demonstration, unfortunately people’s wrath can no longer be restrained. They gather from all over Indonesia with one demand, punish Ahok because he had dishonor Islam in public.<sup>32</sup>

The police then process Ahok's case by inviting the locals in Pramuka Island and Habib Novel Chaidir Hasan as the person who reports Ahok to the police. After a few examinations, Ahok was then named as an accused for this case. Ahok undergo the first trial on 22 November 2016 with people also doing demonstration outside the court namely 212 Action for Defending Islam. For every Ahok trial, many people gathered to do demonstrations and forced the judges to give severe punishment. Several experts like linguistics experts, criminal law experts, political experts, and do not forget religious figures are also brought to the court. Witnesses like Buni Yani and other locals in the Pramuka island also came to the court to give testimony. Although many testimonies and explanation say that Ahok is not guilty because he did not fulfill the element to “intentionally” dishonor Islam by giving that statement. On the 9 May 2017, the judges give a verdict that says

*“The Defendant Ir. BASUKI TJAHAJA PURNAMA alias AHOK is proven legally and convincingly guilty of committing a crime of Blasphemy towards Religion and will be given criminal sanctions of 2 (two) years imprisonment;”*

The judge’s give guilty verdict to Ahok and imprisoned him for 2 years with the consideration

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<sup>31</sup> Al Maidah 51 Sahih International Version

<sup>32</sup> Osman, Mohamad Nawab Mohamad, and Prashant Waikar. “Fear and Loathing: Uncivil Islam and Indonesia’s Anti-Ahok Movement.” pp. 30.

“Considering, that from the facts above, the defendant's statement at the Pramuka Island had **abused and insulted the Holy Qur'an that constitutes as the Holy Book of Islam. According to judges opinion, the Defendant's speech is in essence contains blasphemy and hate toward Islam as one of the religions embraced in Indonesia**”<sup>33</sup>

What are the reasons behind the judge's decision? Judges said that Ahok's action caused harm toward solidarity and harmony between religions in Indonesia therefore violating Pancasila and Indonesian Constitution as our basic fundamental norms.<sup>34</sup> Not surprisingly MUI also give a fatwa that stated Ahok has conduct an “ungraceful” act toward Islam because has conduct blasphemy toward Islam in the form of insulting one of the Chapter in Al-Quran. MUI therefore asks the judges to give the most severe punishment because he has done something heinous.<sup>35</sup> After hearing the decision, the demonstrators are very happy because their demand has been fulfilled. The case just did not stop there, many scholars gave their opinion toward Ahok Case and stated that there are many unreasonable considerations from the judges. Starting from the missing element of crime that Ahok did. In Blasphemy Law, there are cumulative elements that need to be fulfilled. One of them is intention. Ahok is not proven to intentionally conduct blasphemy to Islam but in the end he is still given punishment. It is shown that there is something strange from the judge's decision. Many people said that mass demonstration works as extrajudicial measures. The demonstrations are said to heavily influence the judge's decision because the government is afraid of public disorder that will lead to chaos. In Indonesia and every other country, the judicial body must be independent and free from any intervention both direct and indirectly. What about the media? Data showed that more than hundreds of media are reporting about this case both mainstream media and other media. Many media uses provoking words in order to create hate toward Ahok. This shows that mass and media influences our judicial independent<sup>36,24</sup>. The second reason is after Ahok was given two-year punishment in 2017, Buni Yani, the one who reported Ahok to the police became suspect of editing a video causing disturbance in public. The video that is accused of him is the video that became the main evidence in the Ahok case. The public prosecutor demands Buni Yani to be given punishment of two-year imprisonment and a fine of a hundred million rupiah. The judges then grant the prosecutor demand because Buni Yani has fulfill the delict of Article 28(2) of Law No 11 of 2008 about Electronic Information and Technology that stated<sup>37</sup>

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<sup>33</sup> North Jakarta District Court Decision No. 1537/Pid.B/2016/PN.Jkt Utr.

<sup>34</sup> *ibid*

<sup>35</sup> Wiratama, H.F., 2018. Analysis on Blasphemy Case of Ahok under Criminal Law, Repository of Tulung Agung University, pp 66-67 doi: <http://repo.iain-tulungagung.ac.id/id/eprint/9886>

<sup>36</sup> Osman, Mohamad Nawab Mohamad, and Prashant Waikar. “Fear and Loathing: Uncivil Islam and Indonesia's Anti-Ahok Movement.” pp. 57.

<sup>37</sup> Bandung District Court Decision No 674/Pid.Sus/2017/PN. Bdg

*“Any Person who knowingly and without authority disseminates information aimed at inflicting hatred or dissension on individuals and/or certain groups of community based on ethnic groups, religions, races, and inter-groups (SARA).”*<sup>38</sup>

This comes a lot of question regarding Ahok case, do he really commit such action that is dishonor Islam? Or is it just an act of editing a video by Buni Yani ? Ahok then filed a judicial review as one of the extraordinary legal remedies after the decision was executed. Ahok's claim was rejected because the judges said that there is not enough novum (new evidence) and Ahok failed to prove that there is a judge's mistake in the case in order to conduct judicial review. Novum and judge's mistakes are the common requirement to conduct judicial review as stated on Article 263(2) of the Indonesian Criminal Procedural Law

*“Judicial Request requests are made based on:*

*a. if there is a novum that raises a strong suspicion, that if the condition is already known at the time the trial is still ongoing, the result will be a free verdict or a released from all lawsuit verdict or demands of the public prosecutor is not acceptable or against that case lighter criminal provisions are applied ;*

*b. if in various decisions there is a statement that something has been proven, but the thing or condition that has been proven is proven to have been in conflict with one another.*

*c. if the ruling clearly shows a judge's mistake”*<sup>39</sup>

In the Ahok case, it is clearly shown there is novum in the case and there is a clear judge's mistake, but the judges still refuse the judicial review claim for Ahok.

It is clearly shown that there is something greater that drives the interest of the court. What drives the Ahok case? Alongside the trial we can see many things that are suspected to drive the court. The first and the foremost is the demonstration. It is shown that after Ahok case, there were many demonstrations with the interest to “defend Islam” like 212, 411, and 112. The number came from the date when the demonstration first held (212 is in 2 December 2016, 411 is in 4 November 2016, 112 is in 11 February 2017) The biggest one is 212 when Muslim from all over Indonesia gather around in Jakarta to escort the trial proceeding.<sup>40</sup> It is suspected to have the interest to drive the court proceeding because the mass threatens the government that they will conduct a bigger and chaotic demonstration if the court gives a free verdict to Ahok. The second thing is the emergence of the national movement of fatwa – Majelis Ulama Indonesia (GNPF-MUI). GNPF-MUI is a movement that will force the

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<sup>38</sup> Article 28(2) of Law No 11 of 2008 about Electronic Information and Technology

<sup>39</sup> Article 263(2) of Law No 8 of 1981 about Indonesian Criminal Procedural Law

<sup>40</sup> Osman, Mohamad Nawab Mohamad, and Prashant Waikar. “Fear and Loathing: Uncivil Islam and Indonesia’s Anti-Ahok Movement.” pp. 83.

government to comply with fatwa that is given by MUI. It was first held in 2016 when Ahok was on the trial. GNPf-MUI is suspected to be a political movement because after the Ahok case was settled, they ceased to exist. One of the founders of GNPf-MUI is a close friend with the other candidates that ran in the election for governor in Jakarta as well.<sup>41</sup> The conviction of Ahok is an example of high profile politics that falls under the blasphemy law.

Looking at both cases of Meiliana and Ahok shows that Indonesia is in emergency regarding blasphemy law. It does not only show the intolerance of people but also the roles of other groups and also the media. Mass demonstration is a very effective extra-judicial method to drive the blasphemy case in Indonesia. Both Ahok and Meiliana have the same experience

### **C. Conclusion**

Blasphemy Law originated to protect the religions from any harm, but instead following its original purposes, it becomes a tool for some groups to oppress the minority to follow their interest. Blasphemy Law is subjective in nature, looking back at history where men usually use Blasphemy Law to prosecute people they do not like and causing mass confusion. Blasphemy Law is criticized by the United Nations on the International Convention on Civil and Political Rights (ICCPR) because it is limiting people's freedom of speech. It is clearly shown that Blasphemy Law is not compatible with Human Rights which is the most fundamental right that is given toward a person. The first reason why it is not compatible with Human Rights is because

Throughout Indonesian history, it is clearly shown that Indonesia is one of the countries that still applies Blasphemy Law. In Indonesia itself, Blasphemy Law is accommodated on Indonesian Criminal Code (KUHP). There are many notable cases about Blasphemy Law in Indonesia, but they share the same pattern. Two of which is about Meiliana and Ahok which have the exact same pattern. In Meiliana case, the majorities of the group can do anarchic action to defend Islam by burning down Meiliana's house and Vihara without getting any punishment. Meiliana is given 1 year and 6 months of punishment While Ahok was confronted by anarchic demonstration and other movements. Extra-judicial measures are conducted on both cases, Amplifying mass and media also take roles in this case. The existence of Muslim group such as Majelis Ulama Indonesia (MUI) can influence the trial proceeding by deploying mass demonstration in order to defend Islam even though they are using it with the base of political purposes. Blasphemy trials are further complicated by the existence of those Muslim group that use this as their opportunity to fulfill their interest such as electoral and power calculations. Mainstream Media are also commonly used to frame the perpetrator in the public's face. It has become emergency to do a reform because as long as the Blasphemy Law still exists, it will produce more victims day by day. The government should be aware with the existence of the Muslim group that only use the Blasphemy Law as their weapon.

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<sup>41</sup> ibid

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