

INTERNATIONAL CONFERENCE

FAKE NEWS & ELECTIONS IN ASIA

10-12 July 2019
Bangkok, Thailand



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INTERNATIONAL CONFERENCE ON **FAKE NEWS AND ELECTIONS IN ASIA**

CONFERENCE PROCEEDINGS

BANGKOK, THAILAND
10-12 JULY 2019



ASIACENTRE

PREFACE

Information manipulation has become an issue of growing political and human rights concern. In Asia, fake news has been increasingly used as an instrument to influence public behaviors, polarise societies, exacerbate ethnic conflicts, draw support of religious ideologies, manipulate election results and incite public fear, hatred and violence. In the age of social media, the easy production of user-generated contents, the anonymity of social media accounts, the rapid distribution of online information and the many-to-many communication structure of the Internet made social media platforms breeding grounds of fake news.

According to We Are Social report 2019, 2.2 billion people in East, Southeast and South Asia use the Internet with penetration rates at 60%, 63% and 42%, respectively. Among the Internet users, social media use by those aged 13 or above is 82% in East Asia, 78% in Southeast Asia and 31% in South Asia. Even though internet penetration and social media usage in South Asia is much lower than East and Southeast Asia, it is rising fast making the three regions as host to the largest number of social media users worldwide. With such massive use of social media, fake news has become a significant challenge and is being prioritised as a problem to be solved. Apart from revising or enacting new laws, governments, civil society groups, technology companies and private entities are looking at fact-checking, media literacy programs and algorithm adjustments as possible solutions to fake news. However, these measures to date have largely been seen as ineffective and on many occasions infringing on freedom of expression.

To navigate fake news in Asia and seek sustainable solutions to combating disinformation, Asia Centre, in collaboration with 12 partners, namely Faculty of Communication Arts, Chulalongkorn University; the Thai Media Fund; School of Media, Languages and Cultures, University of Nottingham, Malaysia; NSHM Knowledge Campus-Kolkata; Media Studies and Journalism Department, University of Liberal Arts Bangladesh; The Council of Asian Liberals and Democrats; International Center for Not-for-Profit Law; Law Faculty, University of Jember; International Republican Institute; HIVOS; the Friedrich Naumann Foundation; the Taiwan Foundation for Democracy; as well as individual researchers and interested parties, convened the International Conference on Fake News and Elections in Asia in Bangkok, Thailand on July 10-12, 2019.

In these two days, a total of 13 panels, 46 presenters and over 80 participants discussed historical backgrounds of ethnic, political and religious violence, as well as the current phenomena of digital disinformation in Australia, Bangladesh, Cambodia, Estonia, India, Indonesia, Malaysia, Myanmar, Pakistan, Philippines, Sri Lanka, Singapore, Thailand, United Kingdom and the United States. The discussion highlighted the role and effectiveness of fake news legislation and if it empowers the governments to silence critics and induces media self-censorship. Non-legal measures such as media literacy and fact-checking were also touched upon in the conference.

The papers in the volume examined the phenomenon of fake news and its use and abuse by governments, private entities and social media during general elections, the work of media literacy programme and fact-checking projects and the role of disinformation in religious or ethnic conflicts in the above-mentioned countries. All papers have been subjected to review administered by the Editors. The Editors have taken all reasonable steps to ensure the adequate feedback was given to authors to improve the quality of their papers. Following which the papers are published as received. The authors are responsible for the accuracy of facts, quotations, data, statements and the English language quality of their work. The papers are organised in the order in which they appeared in the Conference Programme.

The Conference on Fake News and Elections was the first in the series of Asia Centre's project entitled 'Freedom of Expression in Asia.' The project aims at assessing the legal restrictions on freedom of expression in Southeast Asia and the wider region. From 2019 to 2022, the project examines developments related to disinformation, fake news, hate speech and propaganda, and the challenges these phenomena pose to academia, civil society, independent media, INGOs and the UN agencies in the region and beyond. A conference on Hate Speech in Asia will be the second conference on 8-10 July 2020, the third will focus on Authoritarian Disinformation and Propaganda in Asia on 14-16 July 2021. The project will culminate with a final conference on Freedom of Expression in Asia on 13-15 July 2022.

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Hate Speech, Disinformation and Political Violence in Myanmar

Draft: Not for Distribution or Citation

Jeremy Liebowitz
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Abstract

Inter-ethnic and sectarian violence has been a consistent feature of Burma's colonial-era and post-independence politics. Long-standing conflict between the Burmese military and ethnic armed organizations representing the country's ethnic minorities has caused numerous deaths, widespread displacement, and a deep scar on national unity that is unlikely to heal in the short run. Violence across religious lines has also been widespread, with the most recent conflict involving the Rohingya minority in Rakhine State the most dramatic example. Since political liberalization picked up speed in 2012, social media usage has skyrocketed, with increasing access to social media through mobile phones. An array of groups, including both state actors and non-state groups, has increasingly used social media as a channel to spread rumors that promote discrimination and attacks against ethnic and religious minorities. With over 18 million internet users in Burma in 2018, most of them accessing the internet through Facebook, it is likely that social media will continue to be a channel for groups seeking to promote ethnic or religious discrimination and strife.

The rise of social media usage in Burma has, as in many other countries, led to an increase in disinformation, propaganda, and hate speech with serious consequences. This paper argues that coordinated efforts to inflame hatred and anger across ethnic and religious divides in Burma have created a trajectory in which: 1) Increased expression of ethnic and religious discrimination, through disinformation, propaganda, and hate speech on social media have created a fertile ground for ethnic and sectarian violence; 2) Attempts to limit such discriminatory social media content have led to greater constraints on free expression without significantly reducing the discriminatory content; 3) The vacuum of information and public space for discussion resulting from controls on social media has led to an even more fertile ground for further disinformation, propaganda and hate speech. In the 2015 elections, social media-based attacks on ethnic and religious minorities led to politicians distancing themselves from positions that could cause them to be perceived as sympathetic to those minorities, especially religious minorities.

Attempts by government to control the spread of disinformation, propaganda and hate speech over Facebook (the primary channel for social media and internet use in Burma), have met with limited success. The 2013 Telecommunications Act, which prohibits a range of behavior using a telecommunication network, has had more of a chilling effect on public discussion and debate than it has had on inflammatory and discriminatory social media content. The Telecommunications Act continues to be used to punish political dissent and public criticism of the military and government leaders. Facebook has also recently taken several actions to attempt to control the spread of hate speech and disinformation, including shutting down the accounts of key figures responsible for disinformation, with many of those accounts connected to Burma's military, and also shutting down the Facebook pages for four armed ethnic organizations.

Understanding the spread of hate speech, propaganda and disinformation through social media, and the trajectory of government responses to its spread, can provide us with useful analytical tools to counter these harmful practices and reduce the discrimination and violence they provoke.

Introduction

Inter-ethnic and sectarian violence has been a recurring feature of Myanmar's colonial-era and post-independence politics. Long-standing conflict between the Myanmar military and ethnic armed organizations representing the country's ethnic minorities has caused numerous deaths, widespread displacement, and a deep scar on national unity that is unlikely to heal in the short run. Violence across religious lines has also been widespread, with the most recent conflict involving the Rohingya minority in Rakhine State the most dramatic example. Since political liberalization picked up speed in 2012, and telecommunications were deregulated in 2013, social media usage has skyrocketed, with increasing access to social media through mobile phones. An array of groups, including both state actors and non-state groups, has increasingly used social media as a channel to spread rumors that promote discrimination and attacks against ethnic and religious minorities. With over 18 million internet users in Myanmar in 2018, most of them accessing the internet through Facebook on their phones, it is likely that social media will continue to be a channel for groups seeking to promote ethnic or religious discrimination and strife (Callahan, 2019).

The rise of social media usage in Myanmar has, as in many other countries, led to an increase in disinformation, propaganda, and hate speech with serious consequences. This paper argues that coordinated efforts to inflame hatred and anger across ethnic and religious divides in Myanmar have created a trajectory in which: 1) Increased expression of ethnic and religious discrimination, through disinformation, propaganda, and hate speech on social media have created a fertile ground for ethnic and sectarian violence; 2) Attempts by government to limit such discriminatory social media content have led to greater constraints on free expression without significantly reducing the discriminatory content; 3) The vacuum of information and public space for discussion resulting from controls on social media has led to an even more fertile ground for further disinformation, propaganda and hate speech.

Understanding the spread of hate speech, propaganda and disinformation through social media, and the trajectory of government responses to its spread, can provide us with useful analytical tools to make more effective responses to these harmful practices and reduce the discrimination and violence they provoke. The pervasiveness of hate speech, propaganda and disinformation in contemporary global politics is one of the major challenges to democracy at present, and requires attention to insure that it does not precipitate a “downward spiral” in democracy and usher in a new age of “digital authoritarianism” (Freedom House, 2018; 2019).

Countering Hate Speech and Disinformation in Politics and Elections: Global Trends

The rise of hate speech and disinformation fueled by social media has featured in recent elections across a wide range of countries, including the United States, Denmark, India, Kenya, Indonesia, and Sri Lanka. Political elites, hate groups, and foreign governments have all played a role in fostering a divisive and hate-filled campaign period for a range of political ends. In Denmark, fake Islamist propaganda from cloaked Facebook pages led to a rise in anti-immigrant sentiments (Farkas, Schou and Neumayer, 2017), while the success of the anti-immigrant Danish People’s Party pressured leading political parties into more strident anti-immigrant positions in the 2019 elections (Haugbolle, 2019). In India, Hindu nationalist parties capitalized on anti-Muslim and anti-minority hate speech and disinformation on social media to register their most resounding victory (Goel and Rahman, 2019; Goel and Frankel, 2019). Recent Sri Lankan political developments include a rise in anti-Muslim and anti-Christian hate speech and disinformation, as well as hate speech coming from those involved in the April 2019 Easter bombings (Vignaraja, 2019). The recent bombings there and the rise of anti-minority sentiment will likely lead to a change through the ballot box, with ethnonationalist parties likely to increase their influence. In the Kenyan presidential elections of 2017, groups connected with incumbent President Uhuru Kenyatta used extensive disinformation campaigns such as “Uhuru for Us” and “The Real Raila” to connect Kenyatta’s opponent Raila Odinga with the spectre of ethnic violence, discouraging voters from supporting the long-time opposition candidate (Privacy International, 2017).

In recognition of the rise of hate speech and disinformation in elections and its detrimental impact on elections and democracy, governments, civic leaders, the media, and other

concerned groups have attempted to combat these phenomena. Attempts to counter hate speech and disinformation, however, have often failed to reach their goals.

In some cases, hate speech and disinformation have proved difficult to regulate or control, as those promoting hate speech and disinformation on social media have proven adept in avoiding regulations and controls through migration to other social media networks, use of coded language that avoids detection by social media platform algorithms to track hate speech, and developing a range of tactics to promote hate speech and disinformation without violating the standards established by social media platforms (Farkas, Schou and Neumayer, 2019; Alkiviadou, 2019). Likewise, government attempts to block social media at the state level have led to people accessing social media through virtual proxy networks (VPNs), as in the recent case of Sri Lanka, where government blocking of Whatsapp and Facebook merely led to their use through VPNs (Vignaraja, 2019), or in the case of Uganda, where a tax on social media intended to make it more difficult for opposition groups to use instead led to widespread use of VPNs (Daily Monitor, 2018).

In other cases, government attempts to regulate hate speech and disinformation have led to restrictions on the freedom of speech. The Network Enforcement Law in Germany, for example, which requires social media services with over two million members to remove “evidently unlawful content” within 24 hours, has led to the social media companies removing content that was satire (Spencer-Smith, 2018). The Cameroonian government shut down the internet for much of 2018 in response to protests against discrimination by the Anglophone minority in the country (Freedom in the World, 2019).

There is also evidence that government regulation of hate speech and disinformation continues to be extremely partisan in many cases, where government either deliberately engages in partisan attacks on social media, or where regulations are enforced in a way such as to give significant advantages to the incumbent (Privacy International, 2017; Goel and Rahman, 2019).

On the positive side, a less heavy-handed approach seems to have led to modest progress in combating hate speech and disinformation in some instances, such as the European Commission’s Code of Conduct on Countering Illegal Hate Speech Online, under which social media companies pledged to “review the majority of valid notifications for removal of illegal

hate speech in less than 24 hours and remove or disable access to such content, if necessary.” According to the Commission, this has resulted in significant progress in removing hate speech and reviewing reports of hate speech promptly (Spencer-Smith, 2018). Coordinated efforts by the European Commission through its Action Plan against Disinformation and its Elections Package have helped to counteract some of the most dangerous disinformation and hate speech in the recent European Parliament campaigns. These efforts including Google, Facebook, Twitter and Mozilla agreeing to an EU Code of Practice (a voluntary code) and establishing a “rapid alert system” to catch and highlight disinformation in a timely fashion (Polyakova and Fried, 2019; European Commission, 2019).

Social media companies have also engaged in a range of self regulation efforts to counter bad publicity, government pressure, and public demands. Cooperation with government institutions and civil society in recent European Parliament elections demonstrates that such self-regulatory mechanisms can be effective (European Commission, 2019). Cooperation between state bodies and other groups including civil society and technology initiatives, as in 2017 Kenyan elections where there was cooperation between Kenya’s National Cohesion and Integration Commission and various civil society groups focused on hate speech monitoring, has helped to counter hate speech and disinformation (Boti-Phiri, 2017). In the run-up to the 2019 elections in Indonesia, a platform supported by election watchdog the Association for Elections and Democracy, Google Indonesia, the General Elections Commission, and the Elections Supervisory Agency, among other groups, provided a mechanism for users to report hate speech and disinformation (Jakarta Post, 2019).

The Spread of Hate Speech and Disinformation in Myanmar

Political opening in Myanmar was marked by the end of the house arrest of Aung San Suu Kyi in 2010, the participation (and success) of NLD and other opposition parties in the 2012 by elections, political liberalization that allowed for relative media freedom, digital media openness, and a range of other reforms. These reforms opened the door for increasing democratic freedoms, robust public discussions on democracy, and a dramatic, rapid increase in connectivity to the outside world.

With these reforms also came the rapid growth of social media, and in particular Facebook. In 2012, only one percent of the population used the internet; with the deregulation of the telecommunications sector in 2013, the number of Facebook users jumped to over seven million in 2015 and 18 million by 2018. Its rapid spread was hastened by its free provision by mobile service providers and went viral because of its unique ability to offer all services in one package (messages, news, videos, and entertainment) (Reuters, 2018). As the primary method by which users connect, Facebook in Myanmar has an unusual position of serving as the internet, giving it a uniquely dominant position within Myanmar's internet and social media landscape.¹ With an estimated 20 million users at the time of writing, Facebook's rapid growth has made it incredibly influential within a short time (Freedom House, 2018; Lwin and Brown, 2019).

A group of technology experts, analysts, and activists were quick to detect that certain groups began using Facebook to spread disinformation and hate speech as early as 2013 and warned Facebook. In the wake of conflicts between Buddhists and Rohingya Muslims in Rakhine State in 2012, hate speech against Rohingya appeared on Facebook, threatening violence against Rohingya and other Muslims. Other posts attacked aid workers in Rakhine State who were providing assistance to displaced Rohingya, calling them "traitors to the nation" (Reuters, 2018).

Another early incident of social media being employed to incite hatred against minorities was July 2014 violence in Mandalay, in which a false news report that two Muslim teashop owners had raped a Buddhist woman was widely shared on Facebook. This included a post by firebrand monk Wirathu that "[the] Mafia flame [of the Muslims] is spreading... all Burmans must be ready." The day after this post, violence in Mandalay led to two deaths, many injuries, and widespread property damage. Eventually the government blocked access to Facebook in Mandalay, in recognition of the incendiary role it played in the conflict (Callahan, 2019).

In the 2015 elections, social media-based attacks (and offline attacks as well) on ethnic and religious minorities led to politicians distancing themselves from positions that could cause them to be perceived as sympathetic to those minorities, especially religious minorities.² Aung

¹ Viber is also widely used, with a population penetration rate of 35, followed by Facebook with 27 percent penetration rate. Of social media platforms, Facebook is by far the biggest source of news and information.

² Callahan, *Myanmar's 2020 Elections*.

San Suu Kyi and the NLD were depicted on Facebook as pro-Muslim by posts including doctored pictures showing her wearing a Muslim head scarf (Reuters, 2018), and in the 2018 elections these attacks expanded to include Shan Nationalities League for Democracy (Callahan, 2019). Evidence that this strategy was at least partially effective includes the NLD's and USDP's decisions not to field a single Muslim candidate in the 2015 elections. It is worth noting, however, that despite the attacks, the NLD still overwhelmingly won an electoral victory similar to its victory in 1990, indicating that the attacks were not successful enough to undermine NLD's political strength.

On the side of the state, reports have documented a “systematic campaign” by the military using Facebook to attack minorities, especially Myanmar's Muslims, through a series of fake accounts that spread incendiary content through “lurid photos, false news, and inflammatory posts.” The posts also allegedly spread false rumors about Aung San Suu Kyi, trying to undermine her credibility and reputation in the country. The accounts also spread rumors targeting both Buddhist and Muslim groups that both sides were about to carry out attacks against the other. Overall, the effect was to turn Facebook into “a tool for ethnic cleansing,” including inciting the population against the Rohingya (Mozur, 2018). A 2018 UN fact-finding mission report highlighted how Facebook had been a “useful instrument” for promoting hate and violence (UNHRC, 2018). Freedom House has detailed how military and government sources have used propaganda on social media to promote their narrative on the crisis in Rakhine, while disinformation from a range of national and international sources have created further anger and hatred between anti- and pro-Rohingya groups (Freedom House, 2018).

Despite widespread recognition of the dangers of hate speech and disinformation against vulnerable minorities in Myanmar, in August 2018 Reuters discovered at least 1,000 examples of Facebook posts, comments, images and videos attacking Myanmar Muslims or Rohingya still visible on the application. The posts often called for violence against Rohingya or Muslims and described them in obscene or dehumanizing ways (Reuters, 2018).

Government Responses to Hate Speech and Disinformation on Social Media in Myanmar

Attempts by government to control the spread of disinformation, propaganda and hate speech over Facebook have met with limited success. The 2013 Telecommunications Act, which prohibits a range of behavior using a telecommunication network, has had more of a chilling effect on public discussion and debate than it has had on inflammatory and discriminatory social media content. The Telecommunications Act continues to be used to punish political dissent and public criticism of the military and government leaders.³ According to a 2017 report by Free Expression Myanmar, of the 107 cases brought under section 66(d) of the Telecommunications Act, 96 were brought under the NLD, and most of the cases were initiated by government, military, or senior party/business leaders against journalists, human rights activists, and artists for exposing wrongdoing or engaging in public criticism. (Free Expression Myanmar, 2017). This has had the effect, according to Callahan (2019), of causing significant self-censorship among the press and activists, who fear being sued and imprisoned for expressing public criticism of leaders and powerful elites.

Covering controversial topics such as the incitement of hate speech and discrimination against religious minorities has also been threatened by Article 66(d) of the Telecommunications Act, as in the case of the editor of Myanmar Now, who was accused of defamation for sharing an article on his Facebook account. The article argued that monk Wirathu, who praised the killer of Muslim lawyer Ko Ni, a prominent NLD legal adviser, had committed sinful behavior in doing so, and was no longer worthy of his status as a monk. In response, a Mandalay resident and Wirathu supporter filed a defamation case against Swe Win, the editor, in a Mandalay court in 2017. The case, which was still ongoing in January 2019, “underscores the hostility of the environment that Myanmar journalists now operate in.... Less often talked about is the use of the law by ultranationalist monks and their supporters to silence journalists. Few cases illustrate that effort better than Ko Swe Win’s” (Moe Myint, 2019a).

The NLD government, upon coming to power in 2016, also took the crucial step of banning the Ma Ba Tha organization, a Buddhist group that had been instrumental in spreading hate speech and discrimination against religious minorities and particularly against Muslims. The government also took other measures including banning Wirathu, a monk noted for inciting hate

³ Callahan, *Myanmar's 2020 Elections*.

and discrimination during his sermons, for giving sermons for a year. The government steps demonstrated clear intent to tackle sources of hate offline and limit their ability to incite hatred, although a 2016 hate speech bill was shelved and has yet to be introduced in Parliament (Nyi Nyi Kyaw, 2019).

The President's Office also established a Social Media Monitoring Team in 2018 to "protect the interests of the state and the people", but the emphasis of this team seems more to protect the state than the people. It is unclear what the team has done, but overall its impact seems to have been negligible to this point. The government also discussed their intention to prepare a cyber law, but the law has yet to be tabled in Parliament (Nyi Nyi Kyaw, 2019).

While the NLD has made some significant responses offline, with some impact, their responses on-line have been limited. In some cases, this is due to the fact that hate speech and disinformation are emerging from government- or military-controlled accounts. In other cases, it may be that their capacity and political will to do so are limited. In 2014, the previous government had taken steps to report inflammatory content to Facebook in the wake of the Mandalay violence, only to discover that Facebook would remove content specifically highlighted by the Myanmar government, but had no ability themselves to review Burmese-language content (Reuters, 2018). There are other responses that have attempted to limit hate speech and disinformation, however, including those from Facebook itself.

Facebook's Responses to Hate Speech and Disinformation in Myanmar

It is now generally recognized that Facebook was slow to respond to initial reports of its platform being used for hate speech and disinformation. Reuters reported that researchers and journalists were reporting incidents of hate speech to Facebook as early as 2013, including several detailed presentations in 2015 at Facebook headquarters on how Facebook was used as a platform for fomenting hate against Muslims. By 2014, however, Facebook had only one content reviewer who spoke Burmese and was based in Dublin. Facebook slowly added other content reviewers in Dublin and Manila (who later shifted to Malaysia), but fluency in Burmese and the sheer volumes of posts continued to be a problem, according to media reports (Reuters, 2018).

In response, six Myanmar-based advocacy groups wrote an open letter to Mark Zuckerberg in April 2018, complaining about the shortage of moderators and lack of investment in moderation in a Facebook-dependent country like Myanmar where social media has become a major channel for hate speech and disinformation. In the letter, the authors wrote “this case exemplifies the very opposite of effective moderation: it reveals an overreliance on third parties, a lack of a proper mechanism for emergency escalation, a reticence to engage local stakeholders around systemic solutions, and a lack of transparency.” (UNHRC, 2018) As Lwin and Brown (2019) write, even with an increased team of 99 Myanmar reviewers, “these individuals, who screen user-generated content for violations of Facebook’s policies, will not be enough to cover the vast volume of daily posts generated by the country’s nearly 20 million users.”

Under pressure for its inaction on hate speech during the crisis in Rakhine State, Facebook moved to take a number of steps to restrict hate speech and disinformation related to Myanmar on its platform. In August 2018, Facebook took the relatively unprecedented step of removing the account of Commander in Chief Min Aung Hlaing, as well as 52 other military-linked pages and 18 military-linked accounts, which had been linked with anti-Rohingya and anti-Muslim propaganda, and which had over 12 million followers. A range of groups had highlighted the inflammatory posts coming from these accounts as contributing to anti-Rohingya and anti-Muslim sentiment in Myanmar. In October 2018, Facebook removed more Myanmar-military linked accounts, claiming that the accounts were “engaging in coordinated inauthentic behavior on Facebook in Myanmar” (Frontier, 2018). Min Aung Hlaing retreated to the Russian social media site VKontakte, which subsequently also removed his account. Recent reports also indicate that an account linked to the Commander in Chief on Twitter (which is not widely used in Myanmar) was shut down in May 2019 (Moe Myint, 2019b).

By the middle of 2018, Facebook officials claimed that they had “proactively identified 63 percent of the hate speech we removed in Myanmar” and had 99 Myanmar-language speakers reviewing content in several locations. Some observers expressed skepticism, however, over a lack of moderators, and continued moderator errors by moderators who may not be closely familiar with the Myanmar context. Other observers indicated more concerns about Facebook’s ability to combat hate speech and disinformation, indicating Facebook’s reliance on a small

number of reviewers to identify this content, and the small number of reviewers relative to number of Facebook users (Kyaw Ye Lynn and Su Myat Mon, 2018).

There is, however, a clear attempt by Facebook to increase its role in reviewing and removing hate speech and disinformation, and also to recognize that its ability to review content in more languages (especially ones like Myanmar that have complicated issues related to multiple fonts) is essential. Whether Facebook is willing to engage more consistently offline with relevant stakeholders, give enforcement powers to its independent review board, and bring on enough personnel to review and monitor the huge amount of content it generates daily will determine how committed it is to combating hate speech and disinformation (Lwin and Brown, 2019). At this stage, however, it looks like Facebook is more likely to be an effective check on online hate speech and disinformation than the Myanmar government, if they implement some of the recommendations coming from technology activists and social media observers.

In February 2019, Facebook also took the controversial step of eliminating the Facebook pages of ethnic armed organizations linked to four ethnic minorities in Northern Myanmar. Facebook identified the reason for the ban as “There is clear evidence that the organizations we’re banning today have been responsible for attacks against civilians and have engaged in violence in Myanmar, and we want to prevent them from using our services to further inflame tensions on the ground.” (Hammond, 2019). It is unclear what the intention behind the ban was, but anecdotal evidence suggests that the pages were useful sources of news on the peace process and other related topics for some audiences. Eliminating the organizations’ Facebook pages demonstrates the risk of undue restrictions on freedom of speech and the risk of promoting partisan aims even in cases where the mechanism is a self-regulating one.

A Vacuum of Information? Regulating Speech and Limiting Discussion

Although the increasing efforts to limit hate speech and disinformation by Facebook present the possibility that a safer social media space may be on the horizon, in the interim the Myanmar case demonstrates that attempts by government to regulate or control speech have led to constraints on free expression without having a significant impact on reducing hate speech and

disinformation. As the Freedom House report on Freedom on the Net 2018 details, Myanmar internet freedom declined as the country witnessed a decline in the diversity of content, increases in intimidation and violence against journalists, and greater restrictions through the creation of a government social media monitoring team (which is largely targeting activists and foreign media that do not agree with government narratives) (Freedom House, 2018). While press freedom is under threat, violence against ethnic and religious minorities by hate groups continues, as in the case of the recent attack on a mosque in South Dagon, Yangon, where a group of so-called “nationalists” shut down Ramadan prayer meetings at factories and homes (Chan Thar, 2019).

The vacuum of information is partly due to the heavy role of the state, both of the civilian government and the military, in traditional media and their social media affiliates. It is also due to the fact that Myanmar’s particular state actors have at times been at the forefront of promoting hate speech and disinformation, rather than trying to counter it. Another factor is the global nature of hate speech and disinformation, especially on a visible issue like the Rohingya crisis in Rakhine, which makes it very difficult to control social media presence outside the country that may contribute to greater levels of polarization.

Overall, the rise in hate speech and disinformation, combined with government initiatives to regulate it, has led to a situation where there is little opportunity to hold anyone responsible for spreading hate speech and disinformation. Pointing out instances of hate speech and disinformation (or acts of violence against ethnic and religious minorities) can lead to suits and imprisonment on defamation charges, as in the case of Myanmar Now editor Swe Win referred to above, scaring away those who might otherwise seek to hold leaders accountable for these offenses. The arrest and imprisonment of Reuters journalists Wa Lone and Kyaw Soe Oo for violating Myanmar’s Official Secrets Act, after they had documented a massacre of Rohingya villagers by the Myanmar military, also sent a warning to journalists seeking to expose violence against ethnic and religious minorities. As the UN Human Rights Council’s Fact Finding Mission to Myanmar reported, “Violence and human rights violations, including in Kachin, Rakhine and Shan States, are fueled by the silencing of critical voices by the Myanmar

authorities, who at the same time amplify a hateful rhetoric that emboldens perpetrators” (UN HRC, 2018).

At the same time, state-sponsored narratives (from both the military and civilian government) have sought to limit discussions of hate speech and discrimination that contradict official perspectives. This has resulted in a vacuum of information and limited space for constructive discussion of contentious identity issues. It has also meant that Facebook is increasingly being used for partisan political communication, especially by the NLD and its allies (on one side) and the USDP and its allies (on the other) (Nyi Nyi Kyaw, 2019).

The current social media environment in Myanmar, in which partisan political communication is taking an increasingly larger share of the discursive space and in which most participants are reluctant to criticize powerful individuals or groups for fear of defamation suits has led to a lack of forums where constructive discussion of how to counter discrimination and hate speech can take place. The threat of sanctions for defamation and related offenses has also had a dampening effect on public forums where more general policy topics can be discussed critically and constructively. As the Venice Commission has noted, “the application of hate legislation must be measured in order to avoid an outcome where restrictions, which aim at protecting minorities against abuses, extremism, or racism, have the perverse effect of muzzling opposition and dissenting voices, silencing minorities, and reinforcing the dominant ideology and political, social and moral discourse” (Venice Commission, 2008).

This lack of space for constructive discussion has meant that hate speech and discrimination continue to spread throughout social media channels and offline means, often manifesting in incendiary ways that threaten a serious risk of violence. With 2020 elections around the corner, this risk is particularly evident as different parties in the election may seek to use hate speech and disinformation around identity politics to boost political support for their positions. In the recent Indian elections, Hindu nationalists used on-line hate speech and disinformation against Rohingya refugees in West Bengal to bolster Hindu nationalist agendas, leading to threats and attacks on Rohingya refugees (Goel and Rahman, 2019). While the level of

social media use in Myanmar is not yet comparable to that in India, its rapid growth will mean that political actors may increasingly incorporate similar tactics to those used in India.

Countering Hate Speech and Disinformation: Reflections and Recommendations

The challenge of hate speech and disinformation is a global one, but it has clearly impacted countries such as Myanmar more severely. Initiatives to counter hate speech and disinformation effectively will have to involve a range of actors who may have limited experience in working together. For a case like Myanmar, the involvement of the Myanmar government, Facebook, Myanmar-based observer groups, media and social media practitioners, anthropologists and human rights activists, ethnic rights organizations, religious leaders, and political leaders will all be essential for any effective effort to combat or mitigate hate speech and disinformation.

A questionable assumption is that all of the groups identified will have the political will and the resources to combat hate speech and disinformation, which may not always be the case, especially as the elections approach and the temptation to use disinformation and hate speech to boost one's political support rises. Given these partisan dimensions of hate speech and disinformation, and the limited capacity of government institutions to combat hate speech and disinformation, self regulation efforts by Facebook and other social media companies, in cooperation with civil society activists and technology entrepreneurs, may be the most practical and meaningful initiatives for the coming electoral period.

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Mobilising Mass Anxieties: Fake News and the Amplification of Socio-Political Conflict in Pakistan

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Abstract

In this paper we analyse the successful ‘fake news’ campaign around the allegations of wide-scale rigging in the 2013 Pakistani general elections, allegations which played a key role in destabilising the elected government and shaping the outcome of the 2018 general elections. Drawing on the literatures of the public sphere, behavioural economics, populism studies, and frame analysis we argue that effective fake news is designed to trigger or capitalise on what we call ‘mass anxieties’ in order to create/tap into a larger diagnostic framing narrative of moral panic. The purpose of these narratives was to create and mobilise a coalition of structurally privileged but insecure segments of the polity. In doing so we aim to move the conversation away from underlying assumptions that treat fake news consumers as otherwise rational decision-makers swayed by bad information. We call instead for an approach that regards all mass politics as the mobilisation of sentiment within the public sphere, and fake news as a populist approach built around mass anxieties, enabled by either deregulation or highly selective regulation of the public sphere. We go on to discuss some of the implications for academics, journalists, civil society activists and development professionals attempting to tackle the fake news blight and to call for additional development and testing of these emerging models.

Introduction

The Economist’s post-Brexit, pre-Trump cover story on the ‘post-truth’ world in September 2016 indicated a wider recognition that the rules of business in the political space were changing globally: “Once, the purpose of political lying was to create a false view of the world. The lies of men like Mr Trump do not work like that. They are not intended to convince the elites, whom their target voters neither trust nor like, but to reinforce prejudices. Feelings, not facts, are what matter in this sort of campaigning.” Trump surrogate Scottie Nell Hughes was even more explicit on *The Diane Rehm Show* when speaking candidly regarding President Trump’s unfounded

claim that his defeat in the popular vote in 2016 was due to millions of illegal immigrants: “There’s no such thing, unfortunately, anymore of facts...Mr. Trump’s tweet amongst a certain crowd, a large — a large part of the population, are truth” (Center for Strategic & International Studies 2016). In other words, it is popular sentiments rather than elite or expert endorsements that are now the key battleground in political contests.

Pakistan’s experience in the aftermath of the 2013 general election is very much in line with this global phenomenon. Political and social movements in Pakistan feature an extremely diverse group of political, ethnic, and sectarian actors competitively messaging to their target constituencies. Two key developments have amplified the use of disinformation and fake news in Pakistan: an increase in political competition and polarisation, and the rapid proliferation of mobile Internet leading to increased active participation in the public sphere. However, while these structural conditions enable the use of disinformation as an effective strategy, they are an insufficient explanation for its impact. In other words, why does fake news succeed in triggering supportive responses amongst so many people?

This paper examines disinformation campaigns in Pakistan since 2013 and uses frame theory to describe how effective disinformation is crafted to trigger what we describe as ‘mass anxieties’ within the competitive landscape of Pakistan’s public sphere.¹

Our larger approach is to reject the notion that social phenomena are the result of the interaction of rational actors. In the realm of fake news this also means rejecting the notion that fake news is merely bad information that alters the decision-making of otherwise rational individuals. Instead, our model attributes the effectiveness of these campaigns to the use of identity-based narratives that have been crafted to activate the mass anxieties of the majority in order to de-legitimise their rivals (Chacko, Cheema 2017), and to aggregate a coalition by weaving different anxieties together through the strategic use of framing techniques.

¹ The Mass Anxieties Project is an on-going initiative through which the authors are examining how public campaigns by social movements, political actors, and public campaign construct discourse to influence public opinion. The analytical framework of “mass anxieties” has been applied in this paper

Sentiment and the Public Sphere

In introducing the theory of mass anxieties as a function of the public sphere we treat them as (a) the product of a highly agonistic public sphere and (b) a set of strategies to capture that same public sphere.

Habermas (1962) introduced the concept of the public sphere as a semi-virtual space where public opinion is formed, although heavily privileging the role of rational debate and the bourgeoisie in this production process. However, the scholarship of the public sphere has increasingly recognised that discursive dynamics in the public sphere are often *affective*, i.e. driven by sentiment (not ‘rationality’ in a conventional sense) and occurring in a set of intersecting but segmented public spheres. Crucially, in our framework the local narratives around these segmented spheres are understood as functions of larger collective fears and shared values. As the distilled expression of current attitudes and determinants of subsequent behaviour, these shared values and collective anxieties offer the most resonant entry points within communities for the wide range of actors engaged in public messaging. Therefore, in this highly competitive environment winners and losers will be determined by how successfully their messaging strategies resonate with collective values and fears.

Laclau’s (1984) seminal work treated populism as a form of discursive striving-for-hegemony within society; this was part of Laclau’s introduction of the idea of ‘agonistic’ politics, i.e. settlements that emerge from the collision of passionate camps. The congruence of these two bodies of work is clear once we understand the ‘public sphere’ as crucial in the development and aggregation of public opinion/sentiment and, then, ‘populism’ as an (often ‘affective’) politics that mines and amplifies particular strands of public sentiment, especially those that have emerged out of disagreement with current trends. This understanding shapes our approach to populism, which in turn is vital to making sense of the relationship between political actors, the state and the larger population.

Theorising Mass Anxieties

Historiographical, anthropological and educational processes yield formidable collective narratives in every modern polity’s public sphere; the process of

developing, disseminating and entrenching them can be consciously accelerated during periods of collective mobilisation and struggle, or top-down ‘nation-building.’ These narratives yield patterns of beliefs, which define a polity’s identity in ways that explain, support and sustain the role of dominant groups and the power structures they operate.

Firstly, we contend that these collective perceptions of identity and values are persistent; social and political change is likely to generate anxieties about how to defend values and identities. Secondly campaigns and messages can be constructed to provoke mass anxieties or inspire mass confidence through a process of ‘frame alignment’ (discussed below). Finally, we believe that the impact of fake news depends on the extent to which it triggers mass anxieties and mass confidences.

Mass anxieties represent collective perceptions of threat to identities and values of dominant groups. The decision to treat “mass anxieties” as a distinct phenomenon is based on three realities:

- Mass anxieties are pervasive and resilient in any given population, serving as the predispositions through which events are interpreted and opinions are formed.
- They provide the basis for not only passive resistance in defence of the status quo, but for conflict entrepreneurs who can summon public sentiment in support of conflicts that the public would not otherwise support.
- They also potentially provide a framework for the State, political actors, and civil society groups to challenge established harmful narratives, counter emergent narratives and offer compelling new narratives.

Frame Analysis

Given that these are discursive processes, systematic analysis requires tools for discourse analysis. Our chief methodological tool is frame analysis, first identified in Goffman’s seminal 1974 work. The framing process shapes both value judgments (‘valence framing’) and wider conceptual associations (‘frame alignment’) through the particular ways in which words, ideas and symbols are deployed. In the case of social movements frames are diagnostic (explaining current conditions and assigning

blame), prognostic (laying out the solution to said conditions), or motivational (inspiring individuals to action).

Theorists argue that while these framing processes draw on ideology as a tool and a source (along with culture, experience, etc.), it is not limited to it - rather frames are the way that meaning (identity) is socially constructed. Frames are more observable than 'ideology' (with its implications of abstract, static purity), and can be organically tied to collective actions because of the focus on construction and deployment, and the allowance for change and multi-dimensionality (Snow & Benford 2000; Gamson 1992; Koenig 2006). This is why frame analysis has come to be recognised as a particularly useful set of both qualitative and quantitative methods for empirical discourse analysis, and has come to be heavily used in media studies. This is particularly true of nationalism studies in light of Michael Billig's (1995) ground-breaking analysis of 'banal nationalism', which addressed the ways in which insider-outsider distinctions are drawn in the background, for example in the ways that collective pronouns such as 'us' and 'them' are defined and employed. Empirical work on frame analysis has identified 'identity' as a key type of frame, and indeed some have argued that ethno-nationalism, like conflict is in fact a 'master-frame', which other frames defer and refer to. This is in part because the process of successful frame alignment allows movements to tap in to national identity and feeling and use it as a mobilising force for other purposes - at once co-opting and redefining national identity (Maiz 2003; Koenig 2006).

Snow et al. (1986) identified four core frame alignment processes:

- *Frame bridging* demonstrates to the target population that they share goals and values with those speaking to them. As a vital step in recruitment coalition-building that may involve implicit or explicit references to shared identity.
- *Frame amplification* intensifies values and beliefs already held by the target audience, often done through the use of appeals to sources of authority as well as anecdotes. When used by conflict promoters it can involve the creation of binaries and manichean conflicts.

- *Frame extension* links an existing frame to include new issues in order to broaden membership; e.g. local conflict prevention approach may link opposing sectarianism to improving the quality of public services like government schools or alternative land dispute resolution mechanisms.
- *Frame transformation*. Redefining the values associated with a movement or an act- e.g. describing minority religious practice as ‘hate speech’ or a public disturbance as a ‘threat’ to law and order.

Pakistan’s Structural Conditions

Electoral democracy was introduced on the basis of limited franchise in British India a century ago in 1919. The Pakistan Movement emerged in 1940, based on a mass anxiety that Islam and Muslims in South Asia were in both physical and political danger from Hindu majoritarianism. Pakistan was established as a multi-ethnic Muslim majority state in 1947 during the violent and traumatic Partition; a state of near-constant rivalry and confrontation has existed with India since then. The military emerged as the hegemonic domestic actor in the 1950s, with frequent periods of outright dictatorship, and periods of military-led oversight over democratically elected governments. The civil war of 1971 and the secession of Bangladesh (with the assistance of Indian intervention) reinforced existing mass anxieties that Pakistan’s enemies from within and without would use its diversity to dismantle it at the first opportunity.

At higher levels, power in Pakistan is shared between the military, business and rural land-owning elites, the civil bureaucracy, and more recently, the judiciary. The role of formal government institutions versus ‘traditional’ social structures on a given community depends on the level of development in the locality. In ‘core’ urban settings state authority is directly exercised, while away from these centres it is either diluted or entirely replaced by that of local notables.

With an overall literacy rate of 54%, a history of coercive and undemocratic state behavior, and severe socioeconomic inequality, the poor and marginalised have relied instead on the support of local elite patrons to have their interests met, especially of state investment in local physical and social infrastructure. On the other

hand a growing middle class, and literate urban working class have aspirations of exercising direct influence on the state through governance reform. This informal and mediated form of politics means that the workings of government are highly opaque to the average citizen, encouraging mass anxieties regarding who actually pulls the levers of government, and in whose favour.

The process of rapid urbanisation, a huge youth bulge, economic growth and internal migration has meant that the ethnic and class character of many constituencies has often changed enormously. When combined with a weak state and a shortage of reliable data, the result is often intense political uncertainty. This has produced a steady increase in movements for social and political change, particularly those that advocate for human rights, democracy, and religious tolerance, as well as an increased sense of threat among dominant groups.

The result is a state that is simultaneously authoritarian, but also weak in terms of its formal presence and the ability to consistently enforce the writ of law at the level of the neighbourhood and the village or collect revenue. Three areas where the federal government consistently held an overwhelming advantage was its ability to maintain a superiority (rather than monopoly) in force, surveillance, and finally, in the active management of mass media. The simultaneous arrival of affordable Internet connectivity and social media in Pakistan in 2014 via the rollout of 3G/4G mobile phone service created a new challenge for the state for which it has developed new tools.

The Online Public Sphere and State Regulation

As of May 2019, the Pakistan Telecommunication Authority PTA reports 70 million broadband subscribers and 68 million 3G/4G subscribers (Pakistan Telecommunication Authority 2019). Active internet users in Pakistan are estimated to be 44 million and active social media users are an estimated 35 million (AlphaPro 2018). Moreover, there are 32 million mobile social media users, including WhatsApp; 92% of social media users in Pakistan are Facebook users (ibid). However, with the penetration of WhatsApp cross-platform sharing of content has increased.

Under such circumstances, it is not surprising that the Pakistani state, which has paid close attention to content circulated in the broadcast and print media now increasingly seeks to impose its will on social media. As in traditional media and the offline world, state interest in blocking and/or punishing blasphemous speech appears to significantly outweigh the concern over sectarian speech. Most instances of judicial, regulatory, or ministerially imposed bans on social media platforms since February 2008 have been justified on the basis of blasphemy, not on the basis of sectarianism or violent extremism. The longest of these bans was on YouTube, lasting from September 2012 until September of 2016. Unable to either keep these platforms banned, or exercise control over its content, the state has now resorted to calling on the public to assist in policing social media space for blasphemous content (Freedom House 2018).

While sectarian content has not produced such sharp reactions from the state, there have been increased efforts to place limits on the most provocative kinds of sectarian speech. In November 2013 sectarian clashes over *muharram* processions in Rawalpindi for the first time led to a national government push led by the Federal Investigative Agency (FIA), and Ministry of Information Technology to pursue individuals whose speech acts on social media might provoke public disturbances; what is particularly noteworthy is that this was in concert with an army-enforced curfew and a block on mobile phone service in the area. This recognition appears to have also been embedded in the National Action Plan of January 2015, formulated in the aftermath of the Army Public School massacre. Although dynamics significantly vary from province to province in Pakistan, in Punjab and Khyber Pakhtunkhwa the state in more metropolitan areas has succeeded in discouraging open direct calls for violence, *takfiri* denunciations, and speech directed at Sunni and Shia practices or central theological figures.

The legal instruments for such regulation arguably already existed through the Anti Terrorism Act, 1997 (which provided authority to act against sectarian hate speech, while the Maintenance of Public Order Act also provides broad discretionary powers over speech likely to lead to public disorder. The Pakistan Telecommunication (Re-organization) Act, 1996 provided for action against any kind of speech acts the state deems to be “false, fabricated, indecent or obscene,” or an act

of mischief.” Despite this, the National Assembly in August 2016 passed the Prevention of Electronic Crimes Act (PECA), which tackled the jurisdictional ambiguity of cyberspace by expanding the state’s claimed jurisdiction to all Pakistanis, anywhere in the world, to anyone in Pakistan, and anyone anywhere in the world whose speech acts violated the law.

Significantly, PECA also aims to better equip the national security state with the authority to delete and punish discourse that it finds problematic. Section 34 spells out the key areas of concern which include “the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign states, public order, decency or morality.” In October of 2016 it was reported that the Ministry of Defence’s Inter-Services Intelligence Directorate had in principle been granted enforcement powers under PECA, regularising their role in policing online speech (Gishkori 2016).

These powers may have been exercised when in early January of 2017 a number of progressive left-wing activists were covertly arrested and detained by what was widely believed to be intelligence agencies. Three members in this group were Facebook bloggers with growing followings, and three of them had been asked to appear in front of the FIA’s “Cyber Wing” shortly before their disappearances. It was widely reported that their criticisms of ‘sensitive’ state policies and institutions to an expanding audience was regarded as a threat. While some journalists have received similar treatment for similar reasons, it was widely regarded as a first for social media activists; the Pakistani and global press went on to extend the kind of solidarity often shown when journalists have previously come under state attack. Meanwhile conservatives in the Pakistani television networks and social media had launched a campaign to label the activists Facebook pages as blasphemous. The Interior Ministry denied the charges of blasphemy, and called for the bloggers release, which was eventually secured. Just over a month later the Islamabad High Court went on to declare their blogs blasphemous, and the Islamabad Police lodged an official complaint. The episode showcased how the long-standing state sensitivity to public criticism now applies to social media as much as the mainstream media. Secondly, the overlapping and competing centres of authority when it came to enforcement

presents a challenge not only to the state but also to those attempting to avoid repression.

In a rather comedic move, the PTI government's Federal Minister for Information and Broadcasting, Fawad Chaudhry, created an official Twitter handle for the ministry to expressly counter fake news. The handle @FakeNews_Buster has fallen into dormancy (since the Minister's dismissal as the result of a major Cabinet reshuffle) but remains active. On July 3, 2019 during a meeting of the Senate Standing Committee on Information, Broadcasting and National Heritage at Parliament House Special Assistant to Prime Minister on Information and Broadcasting Dr Firdous Ashiq Awan said a committee of Ministry of Information was formed to propose changes in laws to tackle the issue of fake news and character assassination of individuals on different media platforms.

Framing Strategies in Pakistan: Mass Anxiety vs. Mass Confidence

Evidence from Pakistan's recent experience suggests both anti-status quo populism and religious populism have been mobilised in the public sphere using fears regarding 'national', 'cultural' and 'religious' identities of the majority. Narratives constructed to promote identity-based fears have been used by the State (both civilian and military establishments), political parties, religious parties, ethno-nationalist actors as well as individual actors. In order to capture the public sphere, actors have deployed "collective action frames" which contain diagnostic, prognostic, and motivational narratives. Diagnostic frames represent a group's particular definition of a conflict or a problem and lay the basis for prognostic frames describing what the movement is striving for. Motivational narratives are used to mobilise current and potential members to achieve the objectives of the prognostic narrative. Our analysis draws conclusions by using a framework that connects constituency concerns (mass anxieties) with the messaging strategies (frame alignment) of their champions.

For resonance the architecture of the message is more important than either the veracity or the medium. Therefore a message, fake or true, is more likely to succeed in shaping public opinion and political behaviour if it is well constructed and complete. By 'well constructed' we mean the message is connected to a specific identity, founded in core values and goals of the majority. By 'complete' we mean

that the message includes not just identity, value, and authority frames but also goal frames and action frames.

To summarise the dominant pattern, instrumentalising fake news through either social or electronic media in Pakistan requires a key message anchored in one or more of the following pervasive anxieties:

- A fear that the sovereignty of the nation - particularly the religious, national and cultural identity of its polity - has been compromised. Typically this manifests as a rejection of ideas (such as secularism), institutions, and practices considered foreign. Behaviour ranges from widespread support to the State in its regulation of INGOs, rejection of vaccines and violence against vaccine providers such as polio workers, etc. Violent behaviour in the public sphere is most often the outcome of invoking this set of anxieties.
- A belief that there is a perpetual and serious threat to the survival of the nation. Behaviourally this results in the consolidation of the security state, where the Army retains a high degree of both material and moral salience. IRI surveys among others have regularly captured public opinion where the Army remains the most trusted institution in the country.
- Economic anxiety attributed to the belief that the State, particularly the political class are corrupt and their interests are not aligned with the well being of the general public.

In our schematic below we illustrate some of the key classes of frames used in the construction of narratives in Pakistan; primary, secondary and tertiary identities, values, goals, sources of authority, and actions. These frames are linked to one another, and to other issues and groups using the techniques of *frame alignment* described above.

FRAMING MASS DISCOURSE IN PAKISTAN	
Identity Master-Frames	RELIGION (generic/sectarian)
	NATION (generic/religious/sectarian/regional)
	CULTURE (generic/ethno-linguistic)

Secondary Identity Frames	Humanity	Community		
Tertiary Identity Frames	Gender	<i>Biradari</i>	Age group	Class
Value Frames	Purity	Autonomy/ agency	<i>Khandaniyat</i>	Tolerance
	Piety	Patriotism	Masculinity	Fairness
	Femininity	Reasonableness	Honour/ <i>Anna</i>	Respectfulness
Authority Frames	Traditions/ Customs	Rights/ <i>Huqooq</i>	Interests/ <i>Mufaad</i>	Shariah
	Duties/ <i>Faraaiz</i>	Law/ <i>Qanoon</i>	Power/ <i>Iqtedar</i>	Needs
Goal Frames	Respect/ <i>Izzat</i>	Justice/ <i>Insaaf</i>	Peace/ <i>Aman</i>	Progress/ <i>Taraqqee</i>
	Equality/ <i>Bara barri</i>	Health/ <i>Sehat</i>	Order	Power
	Authenticity	Education/ <i>Taleem</i>		Agency
Action Frames	Outreach	Dialogue	Debate	Solidarity
	Protest	Violence	Vigilance	Volunteerism
	Voting	Cooperation	Non-cooperation	Condemnation
	Shunning	Praise	Reporting	Rejection

More accurate reporting cannot combat fake news desired to inspire mass anxieties. If an intervention is to generate engagement and deliver peaceful outcomes in the face of amplified mass anxieties, it must employ a messaging strategy that inspires “mass confidence.”

As our diagram above indicates, the potential for frames that build on inclusive identities and values held by the public, aimed at positive goals is also possible. As Snow & Benford (2000) pointed out the production of meaning cannot be solely aimed at constituents, but is also intended for antagonists, and bystanders or observers. Therefore political communications strategies aimed at influencing public behaviour and attitudes must acknowledge a contentious and competitive landscape with substantial local variation, focusing on the behavioural and messaging patterns of actors.

This involves acknowledging hegemonic identities and the existence of their anxieties, while pivoting attention to shared identities, shared values and goals, of win-win outcomes as opposed to zero-sum conflict. Such messaging campaigns must be produced through processes that are bottom-up (i.e. deliberative and research driven), localized (to account for diversity) and iterative (to respond to the dynamism of Pakistani society) if they are to connect with their target audiences and effect behavioural change.

Fake News and Socio-Political Conflict

Frame amplification is perhaps the most common strategy in the toolbox, particularly as it applies to the phenomenon of ‘blasphemy’. This has been used as an organised method in the electoral space to attack political opponents and has also dangerously mobilised individual vigilantes to violent action. In January of 2011 the Governor of Punjab, Salmaan Taseer was famously assassinated by one of his own guards for his defence of a Christian woman, Asia Bibi, accused of blasphemy. In October of 2011, the Governor’s assassin was convicted by the court and sentenced to death, which was upheld by the Supreme Court. The killer in his confession had accused the slain Governor of blasphemy suggesting that by referring to Pakistan’s blasphemy law as a ‘black law’ the Governor was guilty of the same crime and it was incumbent on him [the guard] to take his life. In part this act was fuelled by the nature of discourse in the mainstream media, where a TV anchor person suggested the Governor could be “*wajib ul qatl*”. In the aftermath of the assassination posts on social media continued to insist the Governor had in fact committed blasphemy. The Supreme Court’s

carefully worded verdict focused specifically on correcting the popular narrative of Taseer's guilt (Iqbal 2015).

Frame alignment is used effectively and frequently to connect anxieties and reinforce prevalent fears. The acquittal of Asia Bibi, for instance, also saw a deluge of conspiracies hashtagged '5th Generation Warfare' claiming an India-led plan to destabilize Pakistan by subverting ideologies, creating chaos, provincial disharmony etc. The hashtag has since been used for many events deemed to be against Pakistan's interests by the social media vigilantes.

The political manipulation of mass anxieties about blasphemy and the collective duty to 'defend Islam' through fake news (especially on social media) has now extended far beyond Islamist parties, as illustrated by the case of Mashal Khan. The entire situation, from his activism, to his framing, to his murder and the calls for justice played out in the online public sphere.

Mashal Khan was a 23-year old journalism student and progressive campus activist at Abdul Wali Khan University (AKWU) in Mardan, Khyber-Pakhtunkhwa Province. Abdul Wali Khan, it should be noted was a secular progressive activist, and the student union was dominated by the political party he founded. Mashal Khan described himself as a humanist; posters of Che Guevara and Karl Marx hung in his dorm room (BBC News 2018).

On December 23rd 2016, months before his brutal killing, Mashal used his Facebook account to state that a fake Facebook account was being used to make false allegations regarding his character (Farooq 2017). On 13 April 2017 he was stripped, beaten and shot, before finally being thrown from his second floor student residence (The Guardian 2018). On the day of his murder, rumours of blasphemous posts online incited hundreds of students and members of the staff into participating in his murder (BBC News 2018). The trigger in this specific case was the fake Facebook account containing abuse towards the Prophet and Islam, which automatically brought Sec.295-C of the Pakistan Penal Code into play (Nasir 2017). The dates on the fake account posts show that they were published in February of 2016. Mashal's authentic Facebook account instead contained Pashto and Urdu poetry, support for women and support for the transgender and LGBTQ community. His violent death was captured

on camera and widely circulated on Facebook and WhatsApp prompting mass outrage.

The public attention prompted a Joint Investigation Team (JIT) report, which concluded that there was no evidence of blasphemy, and that the murder had been premeditated. The Pakhtoon Students Federation (PSF) President Sabir Mayar, was among those who conspired to incite mob violence against Mashal Khan (Samaa 2018). The JIT concluded that Sabir and Ajmal Mayar, the president of the employee union at AWKU, developed the plan in response to Mashal's increasingly vocal activism about the corrupt and exploitative practices of the university administration. After his death, multiple testimonies came forward alleging that he had criticized university management and policies, giving an interview to Khyber News days before his death (BBC News 2018). 57 people were arrested for the murder. The shooter, Imran Sultan Muhammad was sentenced to death. 25 accused were given three-year jail terms while 26 were acquitted (Dawn 2018).

The sensitive nature of the blasphemy law, along with the hysteria caused by the harrowing video of Mashal Khan's murder led many individuals, including government servants to comment anonymously on the problematic nature of Facebook and the ease with which a fake Facebook account can be created. Nighat Dad, activist and creator of the Digital Rights Forum (DRF) stated that fake Facebook profiles are the most common complaints received by her foundation (Farooq 2017). She suggested reporting all such profiles to Facebook and Pakistan's Ministry of Information and Broadcasting's Cyber Crime Wing. Dad also recommended regularly checking Google for new profiles and using Facebook's search engine to locate fake profiles; this can be done using one's email address or phone number.

While groups use frame amplification of anxieties for identity (religion), values (honour) and authority (law, honour and power) to suppress vulnerable groups, this case stands as an example of such abuse on the individual scale. While Mashal Khan is considered a martyr and a victim today, it is important to note that local clerics refused to lead prayers upon his death (Samaa 2017). The fear and anxiety created by the allegations of blasphemy were such that several persons accosted a technician who led the prayers in the aftermath. Upon reading the fake account

messages and posts, one can see the visible tailoring of commentary created to target audiences. The messages provoke the mass anxieties of the dominant group (Sunni, Muslim men) while also simultaneously creating a false personal narrative.

Fake News and Conflict Over the State

The general election of May 2013 marked the first peaceful democratic transition in Pakistan's history. Nine months later in February 2014, the leader of the second runner-up political party, the Pakistan Tehreek-e-Insaf (PTI), alleged the elections had been rigged. The party leader, Mr Imran Khan had expected to triumph (and has since come to power as Prime Minister following the 2018 general election). Mr Khan's claim, popularized as the "35 punctures" story, alleged that 35 constituencies of the federal legislature had been rigged to create a landslide victory for the Pakistan Muslim League-Nawaz (PML-N), and its leader, Mr Nawaz Sharif (Ghumman 2014). This episode represents one of the most successful uses of disinformation to capture the public sphere and reshape the electoral landscape in Pakistan in recent history. The allegations, rejected by international election observers, served as the basis for a yearlong mobilisation of (occasionally violent) protests and civil disorder that destabilised parliamentary politics in Pakistan. Although the PML-N government managed to see out its full term, the allegations were vital not only to Imran Khan's efforts to delegitimise the rival PML-N, but to allow himself and the PTI to sidestep the crushing disappointment of the 2013 results and prepare to increase their share of the 2018 elections.

Much like Mr. Trump in the United States, Imran Khan built a constituency in Pakistan as a populist anti-status quo candidate challenging a faulty system. Prior to the elections his party, the PTI, ran a popular campaign introducing the idea of "Naya Pakistan" ie "New Pakistan" promising to end corruption and terrorism in 90 days (The Express Tribune 2012). The "35 punctures" claim was based entirely on hearsay - a fabricated case of 'Chinese whisper' - yet without any evidence the claim resonated as it was entrenched in the popular perception that the political class in Pakistan are corrupt. The claim heavily amplified through Twitter, Facebook, and WhatsApp (Khan 2014), initiated a country-wide mobilisation campaign conducted between March and August to encourage mass political agitation and a shut-down of government to force a re-election. The PTI, with Khan at the helm, conducted

successful rallies across most major cities of the country, culminating with a march on the capital on 14th August 2014.

Estimates suggest anywhere from 50,000 to 100,000 protesters marched to the capital to stage a marathon sit-in that lasted 126 days and ended in the ‘national interest’ after the tragic terrorist attack on an Army-run school in Peshawar in which 142 students and teachers lost their lives. During the protest, Khan endorsed a forceful takeover of the state broadcaster Pakistan Television Corporation headquarters, vandalism of the Parliament grounds and gates, and violence against police officials. Protestors clashed with the police leading to the deaths of 3 individuals (Nelson 2014). In the wake of the violence crowds dwindled and to add to Khan’s troubles the *dharna* or sit-in was also punctuated with instances of rebellion from within his own party. A senior party leader accused Khan of colluding with the Army to oust the legitimately elected Prime Minister on false allegations of election rigging. The horrifying attack on the Army Public School provided a much-needed moment of sober reflection for the public leading to a demand for refocusing priorities away from failed political agitation – the attack also provided Khan and PTI with an excuse to withdraw.

Months later in July of 2015, the PTI President Arif Alvi used twitter to deliver the following apology: “It is time to apologise for 35 punctures. Many rumours regarding source of information & content were afloat and I believed some of them” (The Express Tribune 2015). While the agitation itself failed to achieve its stated goal, it galvanised the use of disinformation and fake news as an instrument for mainstream political parties and set the precedent for PML-N’s tumultuous term in office.

When the Supreme Court of Pakistan found former Prime Minister Nawaz Sharif guilty on corruption charges in July 2017 his National Assembly constituency in the commercially vibrant PMLN stronghold Lahore fell vacant. The party decided that his wife Ms. Kulsoom Nawaz Sharif would compete on the PML-N ticket (at that time the ruling party both in the centre and the Punjab province. Lahore is the seat of government for the province) It was a unique contest, in that the main opposition party (PTI) also fielded a female candidate, Dr. Yasmin Rashid. As expected, PML-N

went for a campaign focussed on denying the corruption charges and portraying the party and its leaders as the victims of injustice. Although the PTI campaign was primarily rooted in an anti-corruption narrative, it also attacked the PML-N on their anti-blasphemy credentials. Specifically, PTI campaign posters used the funeral image of the Punjab Governor's assassin, hailed him as a martyr and warned constituents "do not vote for those who murdered the man who loved the Prophet."

Although the narrative around blasphemy did not deliver PTI a victory in the by-election, the momentum of "blasphemy" vs. anti-blasphemy influenced the larger framing of the PML-N government and its opposition, ultimately resulting in the November 2017 resignation of the then law minister amidst 'pressure from the public.' This pressure began with an announcement by a private news channel's unsourced reporting of changes to the electoral nomination form that deliberately weakened the letter and spirit of tests to exclude members of heretical sects from elected office. The opposition swiftly joined the bandwagon. With the election six months away, the timing boded well for an anti-government campaign by the opposition. The PML-N government had, after all, become the first to actually carry out a death sentence against high-profile anti-blasphemy vigilante.

The situation escalated further when the, Tehreek-e-Labbaik Pakistan, a religio-political group blockaded the main artery between Rawalpindi and Islamabad, grinding travel between the twin cities to a virtual halt. More significantly the movement staging the sit-in expertly crafted a message "*Labbaik Ya Rasool Allah*" amplifying a reductive religious identity and promising to act as a watchdog to ensure that all public offices, and legislators conformed to basic Islamic dogma.

The government as well as independent and experts repeatedly asserted that the only change was to replace the term 'I swear' with a formal oath more in line with legal standards. This was disregarded, and the sit-in paralysed traffic between the twin cities of Islamabad and Rawalpindi while threatening an escalation of violence if their demands were not met. The PML-N's eventual climb-down on this matter reflected not only their inability of this civilian government to marshal the physically coercive elements of the state, but it's inability to combat fake news deployed against it and police the public sphere by multiple competing actors united in opposition against it.

Conclusion

Our paper has described the increasing use of fake news in conflicts in Pakistan between competing political actors in an era where the public sphere is experiencing massive digitisation, and where mass communications is increasingly interactive. The state has no monopoly in this area; ambitious political entrepreneurs frequently take the lead. Fake news has seen employment in very different conflicts between political actors and the civil state, and between political actors and the security state in startlingly similar ways.

These similarities are less surprising when we conceive of these conflicts as competitions to mobilise public sentiment, and the power of particular kinds of discourse over the Pakistani public. We have attempted to sketch out the ways in which the use of fake news is embedded the hybridised discourses of Islamic piety, national identity, national security and good government that have long been hegemonic within the Pakistani public sphere.

Although the state has played a leading role in crafting some of these discourses, and has increased its capacity for surveillance and regulation in the increasingly digital public sphere, the State response is complicated by several factors. These include (a) its tendency to focus primarily on perceived threats to the security state, and thus to only reluctantly and reactively engage in conflicts between third parties, and (b) the divisions caused by conflicts and competition within the state, often between civil and military authority, (c) The limits of state power in controlling the dissemination of content on social media.

The result is that there remains at this time much room for political actors to use fake news in the online public sphere, regardless of their relationship with the state. Fake news has been employed online from the level of grassroots level political conflict all the way to the national stage. However, to inject and sustain fake news in the traditional media requires at least the sympathy of the security state.

Finally, we would encourage other researchers and practitioners to contribute to the development of the mass anxieties framework, which we believe offers a tool that can offer insight into the nature and dynamics of political communications in politics not just in South Asia, but also across the entire globe.

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The Master or the University: The Drivers of Fake News in the West and East

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Abstract

This article aims to use Lacanian psychoanalysis to uncover insights into the phenomena of fake news. The explanation through psychoanalysis for the existence of fake news can be found in the antagonisms, hidden disavowals and the constitutive structures of political life. 'Fake news' as a news story itself is a symptom of these underlying anxieties exposed to the World: the imputed beliefs, the displaced Fantasies, the traumatic covering over.

The central premise of Lacanian psychoanalysis in regard to politics is the inherent disjointedness of all societies and the need for a (feigned) unicity. This disjointed nature is reflected in the acts of the media and political life. For most of the time life goes on but at certain points the very question of society itself arises. The moment of elections are this moment: the potential irruption that leads society to question itself, and to change its nature.

Methodologically, this is not an examination of the empirical reality but rather a consideration of the logic of the structural (not discursive) mechanisms of a mediated society. This logic ensures inherent structural inconsistencies, gaps and displacements in how each society understands itself. These inconsistencies are employed by politicians and are found within the media. Lacanian theory, properly understood, is a sophisticated theory of rhetoric which is able to examine the rhetoric of fake news in politics in terms of structure and the drivers behind it.

Democracy, the place of elections, is a way to formalize the impossibility of the Symbolic Order (the rules, the norms) fully capturing the reality of the society (a formal feigned unicity). Despite this, the theories of 'deliberative democracy', the most prominent democracy theories today, cover over the necessarily divisive nature of politics. This inherent flaw is displaced in specific ways in different structures of politics.

A speculative examination of differences in structure in Asia are considered, especially through comparison with the West. These differences create different demands on the media. Despite this, there are underlying similarities and scope for change in the media to better deal with the phenomena of fake news. The article offers suggestions for change in the media.

Introduction

'The truth is the error that escapes delusion and is reached from a misunderstanding.' - Lacan

This article offers an introduction to Lacanian insights¹ on 'Fake News' by considering the unquestioned background assumptions in the expression itself. With psychoanalysis, the

¹ All Lacanian terms are capitalized. The following are particularly important in this article: the Real, Enjoyment, Desire, Symbolic Order, the Imaginary, the Symbolic, The Thing. See (Evans, 2006) for details.

structure of reality can be laid out as an antagonistic intertwining of the social and personal. Determination of a Truth of a story, implicit in the notion of Fake News, depends on location of belief; a Lacanian insight is that human belief is always split, mediated and displaced. Efforts to freeze matters into a certain Truth always fail. Asia and the West are different configurations in relating to Truth, indeed even the ideas of ‘Asia’ and ‘the West’ are failed attempts to freeze Truth². Elections are Truth-Events, the results are the formal emergence of the inconsistencies and excess of the moment.

The idea that news could be neutral is fairly recent. Yellow journalism was part of life in the nineteenth century. The news of press wires such as AFP and Reuters attempted to offer up neutrality but their framing as neutral is the ultimate act of ideology (an ideology denying ideology). The mercantilist Bloomberg news, which will cover share price movements but not (typically) cover union strikes, is simply a return to the news of one hundred and fifty years ago. Fake News is more than yellow journalism (clickbait relying on prejudice). It is a necessity in the human condition.

The awareness of the incompleteness of the news as Truth-in-itself started to emerge in the 1950s with the rapid contraction of time and space in communication. This change in communication dynamics actually altered the very sources of the news. The presidential press conference emerged in response to a temporal demand (Boorstin, 2012). Ironically, it was denounced as fake news in its day. Attempts to abandon the conference under Pres. Donald Trump were then denounced as a threat to real news. The construction of the news is necessarily constructed on contrived foundations, it is *media*-tised. An awareness of its fundamental lack is the position of Truth, rather than the belief that the news is fake and that ‘True News’ is somewhere out there.

Modern-style fake news was incubated in Russia during the 1990s (Yurchak, 2006). This was only able to arise because of the groundwork of postmodernity (Heidegger’s ‘destruction’). Postmodernity was a natural response of modernity reflecting upon itself. In Russia this was weaponized. Proto-fascist Alexander Dugin, ‘Putin’s intellectual’, wrote: ‘...let the buffoonery of Postmodernity take its course, let it dilute the definite paradigms, ego, superego, logos, let the rhizome, schizomasses and divided consciousness enter, let nothing carry along with it all of the world content so then the secret doors will be opened and

² This article uses ‘The Orient’ and ‘The Occident’ to highlight the hubris of a feigned unicity. This is discussed later.

ancient, eternal ontological archetypes will come to the surface and terribly finish off the game' (Dugin, 2017: 135). This rightwing co-option of postmodern 'tropes', risks any sense of stability and Truth.

Dugin is imploring for the 'unconcealing' of disunity ('divided unconsciousness'). The nihilism of postmodernism is in its insistence on aggressively undermining all big concepts, and naively believing there are those naïve enough to not be postmodernists (Pfaller, 2014). This belief of the Other (not 'us', but 'them') as naïve is central to the understanding of Fake News in the Occident. Indeed, the central premise of 'liberal' American TV comedy news shows is the belief in the naïve Other.

1. Fake and Truth: the Symbolic Order

Reality, for Lacanians³, is never simply that Thing out there. It is 'always-already symbolized, constituted, structured by symbolic mechanisms' (Žižek, 2012: 21). An unquestioned symbolic background in the framing, in the mood, does a lot of work. It always fails to capture all of reality, and there is always some inconsistency that is papered over. This is the Lacanian Symbolic Order. This covers over all of reality, covering up contradictions, and providing an impression of a feigned unicity.

The Symbolic Order relies on flaws in language. The tropes of language (e.g. irony, hyperbole and metonymy) allow the ambiguity (the 'flow') of language to emerge⁴. An excess beyond the apparent surface communication appears. This excess is not controlled by the speaker nor by the listener. The movement of this excess is mediated as 'an economy of trope and Enjoyment'.

The formal structuring of the Symbolic Order (law, language, society), which keeps the world together just enough, is then utilized at the Imaginary level (hearing, gaze etc.) to generate identifications, narratives, and investments. Persuasion⁵ for anyone, and hence for a

³ Lacan was not always clear on his position. Where he was unclear, the Slovenian School has generally been followed. See (Irwin, 2014) for the history of the school's thoughts.

⁴the trope serves as the primary organizing principle for the subject's relationship to and comportment of the world... the trope is the precondition for the appearance of the subject, the relation between subjects, and the imagined (or fantasized) commitments that sustain the discourse between subjects.' (Lundberg, 2018: 182)

⁵'Persuasion, at least as commonly understood and theorized, stems from rhetorical situations and hence operates in the Imaginary; that is, it is mired in the how of the sign, in how subjects embody signs with meaning, feeling, and motive. Persuasion warrants study, but rhetoric should also examine how the Symbolic brings a rhetorical situation into being, how it necessarily works alongside of the Imaginary.' (Rickert, 2014: Vol. 100-Issue 4, p. 183)

politician, rests on manipulating the Imaginary, through meanings, feelings and motives. The Symbolic Order is the set-up in the World ‘out there’ which allows the Imaginary to operate.

Since this set-up guarantees inherent disjointedness, it puts into question, the premises of democracy, the expectations in human behaviour and the optimistic expectations for the media as an educational tool. The media is part of the package that provides compensatory identities to our flawed selves, but which also reduces others in our eyes, serving up objects for our motivated aggressive identity games built around Enjoyment⁶. This is not a world where pleas for consideration, for reasonableness, or calls for more knowledge or education on a subject, make much sense. This Lacanian public sphere is a place for ‘lambasting others as stupid, casting them as threatening, scapegoating them as abject’ (Rickert, 2014: Vol. 100- Issue 4, p. 505). This is a world distant from the utopian dream of the ‘public square’.

These background conditions should change the way we perceive Fake News as the problem. All news is, in a sense, fake, but the determination to limit fake-ness still emerges. As a priority, *we do not want to know*⁷. The background conditions lead to maladaptive compromises. Consequently, Lacanian psychoanalysis, which foregrounds these issues, is ‘radically anti-Platonic’: our everyday lives are to be swept up in the banal untruth, until a contingent detail brings about the shock/trauma of realisation.

The issue is not rhetoric, the sophistry of the politician, or the lies of the tabloid journalists. The *belief that we can separate truth from rhetoric is the issue*. Truth cannot be separated off from the games of rhetoric. Hence, Lacan’s theory is ultimately a theory of rhetoric (Lundberg, 2018). The world we live is set up with the employment of rhetoric.

Every encounter is a missed encounter⁸. Every understanding is a misunderstanding. The world moves on in disjointed efforts of aggressions, of narcissism, of prejudice. Hence Lacan’s quote that ‘the universe is the flower of rhetoric’ (Lacan, 2011). Mankind is constantly on the edge of their seat: that people, as Kenneth Burke famously put it, ‘build

⁶Failed unicity is exactly the necessary component of a political move, a rhetorical move by definition. This is the Lacanian insight into rhetoric: *the very efficiency of the communication depends on its failure to communicate*. Parties seek affective investments in the social language, and they can only get this by missed communication. Fake news is necessary for effective politics.

⁷‘The body refuses to yield to natural knowledge and serve the purpose of life.’, ‘The bodily event, *jouissance* and the (post)modern subject’. (Canellopoulos, 2010: 10(2), 321a-328a)

⁸‘The Real does many things to rhetoric. The Real pushes, pulls, exceeds, agitates, antagonizes, offends, irritates, repels, empties, haunts, returns, shatters, radicalizes, de-territorializes, and much more.’ (Johnson, 2013: Vol. 43)

their cultures by huddling together, nervously loquacious, at the edge of the abyss'. This 'huddling together', covering over of reality, is the work of Fantasy.

Enjoyment, organizes the subject's relation to the World, and from this creates an identity and 'a set of predicable habituated relationships' (Lundberg, 2018: 113). Unity is obtained through 'habitual capture of affect' (Lundberg, 2018: 114). This is done by investing in objects, which stand in for the greater existential concerns of the Subject (What do you want from me? Who am I?). The Enjoyment is in the impossible task of trying to find identity in language, in trying to find an image of herself in language (Lundberg, 2018: 116). The subjectivity is in the constant failure: the distinction between the 'image of the reality' and the 'reality of the image': 'the signifier [their image, persona, role] represents a subject for another subject' (Lundberg, 2018: 117).

Lacan's 'person' is shot through with division. A person suffers self-deception, through mischief and through drives generated by the perverse fallen state of humans. The human-with-language is very different to the human-animal; it is the Lacanian 'castrated' subject (Lacan, 1988: 262). The human-with-language lives in a world already there before she arrives: the giant net of language. Even the words coming out of her mouth already control her before they do anything to others. She is richly trapped in a network of ideas, distortions and cavernous, abyssal cracks of meaning.

This thick network of ideas, these symbolic fictions, are various particular attempts to deal with a universal impossibility in the human project. In times of momentous change, when the Symbolic Order looks close to collapse, people, rather than embracing change, display great levels of anxiety (Stavrakakis, 2005: 73). People want to feel they live in a community which has escaped social antagonisms and the torments of life. This is 'achieved' by variations in their access to the Enjoyment of ways of life. To put another way, the human condition is a reactive attempt to respond to the existential state of life through stories, narratives, rituals, which provide symbols to ward off doubts.

While The Orient has to deal with fake news, and it will respond in its own particular way, this will be shared in the universal negative of an inevitable background anxiety. Humans must tread a difficult path between trying to enjoy life the best they can ('Symbolic Desire') and be wary of coming too close to its cruel truth ('The Thing', *das ding*) (Žižek, 2007: 43). Asian Fake News will neither be unique to Asia (the Orientalist fantasy) nor positively identical to the Rest/West (the anti-Orientalist fantasy).

The language of psychoanalysis coaxes theorists away from the vocabulary of a narrow science of political science, the flattened world of sociology and into a rich ‘trans-subjective’ (Hook, 2018: Ch.3) world of Lacan: ‘Lacan goes to great lengths to undermine... the apparent clarity and firmness sometimes attributed to the distinction between individual and collective levels of human existence’⁹. A person is utterly intertwined and captured by the social matrix¹⁰. The Other, those all around us, never quite make sense despite our best efforts to understand their motives and ideas¹¹. We don’t know what the Other wants from us¹². Their Desire is a mystery. But they are not the truly other of Levinas¹³, since the structure is not dyadic, the social matrix is also always there watching.

Today, we have the American media heading for quick 2 or 3 day trips into the daunting ‘flyover states’, or writing pseudo-anthropological reports - ‘what’s the matter with Kansas?’ - on this other America, in order to, in fact, *find themselves*. They go to ask the mysterious Other - ‘the hick’ - why they do not trust the news, conveniently forgetting, that that is the coastal person’s position too. The division *within themselves* is displaced to the outsider. What concerns us of the Other is they remind us of the antagonism within ourselves. This internal antagonism that seems so hostile to us is the ‘Extimate’ (external-intimate) (Miller, 2008, Fall).

The desire for full knowledge is a path which would remove love and hatred (Freud’s character analysis of Leonardo de vinci) and few would wish such an anodyne life. Many claim and appear to crave to want to know. But Enjoyment inheres to the failure to know. The passions are dimmed in the realization, if it was possible, of knowing (MacGowan,

⁹‘Lacan goes to great lengths to undermine... the apparent clarity and firmness sometimes attributed to the distinction between individual and collective levels of human existence... [F]rom a Lacanian perspective, there is no such thing as strictly individual psychology per se. The singular person scrutinized by psychoanalysis, in all the richness of his/her memories, identifications, fantasies, and patterns of comportment, is inherently inter-twined with larger, enveloping matrices of mediation. That is to say, the individual is always trans-individual... Lacan maintain[s] that each individual... is a bundle of numerous inter-subjective relations (i.e. bonds with ‘little o’ others) and trans-subjective structures (i.e. ties to the ‘big O’ Other).’ (Johnston, 2004: Vol. 9, Issue 3, p. 260)

¹⁰‘Why is it that even in my most private moments – say of frustration or anger – I nonetheless utilize ‘public language’ (or signs, or gestures)? Why would some ‘private’ word, some made-up term or gesture all of my own not suffice?’ (Hook, 2018: 22)

¹¹Nobus writes ‘ “the Other entails the recognized, yet never fully ascertained aspect of [one’s]... addressee” (Nobus, 2000)’ in (Hook, 2018: 23)

¹² ‘We are under compulsion to do our Duty, but forever prevented from clearly knowing what this Duty is’ (Zizek, Spring - Fall 1997)

¹³ See for example: *Totality and Infinity: An Essay on Exteriority* (1961)

2013). To recognise that subjectivity is produced in the *Enjoyment of failing to know* is to see the Truth of the subject.

On Freud's couch, Freud did not in his later efforts, attempt to feed his clients (analysands) with knowledge of their condition, because this did not 'cure' them. Similarly, a politician in the role of an educator feeding knowledge to the 'hoi polloi', is doomed to fail to satisfy. Knowledge is not sought despite protestations at the rhetorical level. Indeed, the support for a politician is exactly because the politician appears to be the one who knows on our behalf so that we do not need to know: 'The-Subject-Supposed-to-Know'¹⁴.

The desperate efforts by humans-with-language to make sense of the world, even if this means distorting it, even if this means undermining themselves in the process, is the stuff of politics. Politics are the games played out under the effort to signify social identity in that 'only by relating to this representation/signification of identity can people relate to the space in which they live as a coherent ensemble' (Marchart, 2008: 93).

2. The Shared Upset: 'the Real'

When the coating of the Symbolic Order is worn away, the Lacanian 'Real' (always) makes its appearance: the Freud's 'return of the repressed'. It is always there in that it represents the crack of the 'ideality of the symbolic'. That is, societies never fully contain their antagonisms, although much effort is spent in not only denying any inconsistencies, but in denying efforts to deny inconsistencies: the 'bone in the throat'.

The voter is deeply embedded in the social world. She has her thesis of the World around her: 'The Lacanian Imaginary', the World's 'reaction' to this, its antithesis: 'The Lacanian Real', which can be traumatic close up or can appear charming from a distance; and the synthesis, the resolution as the 'The Lacanian Symbolic'. The attempt at covering over the trauma of the Real is Ideology itself in the form of Fantasies. The synthesis always never quite succeeds, the World is never quite as we need it be. This creates anxiety and the voter in modern times conventionally uses cynicism¹⁵ to paper over the cracks. Fake News as a notion actually covers several of these efforts at dealing with the World.

3. The Occident's Fate: the Fall of the Symbolic Order

¹⁴See Lacan's Seminar Book VII, but more broadly: (Dean, 2002).

¹⁵See (Sloterdijk, 2013).

People need to believe they are part of a bigger thing, a community. They represent society through a virtual apparition; that is, they behave as though it were real: the Big Other. The Big Other¹⁶, which is not a mere aggregation of all others, allows humans to escape the dyadic narcissism of power relations and aggressivity between people¹⁷. They interact reflexively as part of society. The Big Other provides psychic space, generates public space, and allows interactions to emerge without a sense of stolen opportunity, of ‘stolen Enjoyment’, of harassment. The decline of the Big Other in the West has led to increased demands for contractual relations and growing claims of harassment.

A failure to generate a Big Other has not induced a celebration of independence, but instead a panic¹⁸ manifested in doubling down in fantasy narratives (political nationalism) or violent upheaval (riots without any apparent demands). Like Belief, Lacanian Fantasy is rather mysterious; it is ‘objectively subjective’ because it exists out there even though it is part of our innermost imagination. *We know the myths of our countries are not true but they operate anyway*. Those less able to deal with this inconclusive position fall back on conspiracy theories (‘The Other of the Other’)¹⁹.

For years, commentators, from a satirical perch, pointed to fake news. But what has changed is the effect on the media’s efficiency, in its ability to render news. The fakeness was not the true concern; that the media is not taken seriously by the masses is the real concern. With a saturation of facts, the Symbolic Order- by definition, a façade of convenient untruths- starts to fail.

The internet was seen in the late 1990s as the elixir of knowledge that would cure the ignorance of the people. It failed because the people, ironically, need the impression of a ‘secret knowledge’ so as to keep open the dream of the end of antagonisms (Dean, 2002: 9).

¹⁶‘([A]) language as a structure (as in structural linguistics); (b) the symbolic order as the legal fabric of human culture (in accordance with Levi-Strauss’s anthropology); (c) the Freudian unconscious as reformulated by Lacan in his . . . return to its original, subversive signification.’ (Chiesa, 2007: 35)

¹⁷‘[T]he issue of agreed upon rules – that proves a sticking point in the co-operative games of young children. The big Other has not yet adequately taken root in such situations, and as such rule-structured games often fail, because children prefer to make their own rules rather than following the rules of the Other.’ (Hook, 2018: 20)

¹⁸‘The fact that “the big Other doesn’t exist” (as the efficient symbolic fiction) has two interconnected, although opposed, consequences: on the one hand, the failure of symbolic fiction induces the subject to cling more and more to imaginary simulacra, to sensual spectacles which bombard us today from all sides; while on the other, it triggers the need for violence in the Real of the body itself (cutting and piercing the flesh, or inserting prosthetic objects into the body).’ (Žižek, Spring - Fall 1997)

¹⁹‘[F]antasy is objectively subjective (it designates an innermost subjective content, a product of fantasizing, which, paradoxically, is “desubjectivized”... ‘inextricably mixed material/phantasmatic nature of our lived experience. Brute reality cannot escape our subjective conceptualization.’ (Žižek, 1997: 121)

They wish to transfer the anxiety of knowing onto others. In times gone by, the 18th Century coffee shop in civil society provided groups who ‘knew better’, those who were ‘presumed-to-know’. In contrast, the internet, with this provisioning of all knowledge, offers no reassurance. The Other is so excessively present, constantly bombarding with their shameless Enjoyment, that the distancing needed to find meaning and relieve anxiety through the construction of the (false) Symbolic is no longer possible (Dean, 2011: 8). The internet reveals divisions within.

Since the Occident and Orient have in common the negative universality (the Lacanian Real), an understanding of the Orient in regards to Fake News can be understood *by the changes in the Occident*. The Orient seems to have escaped the Uncanny aspects of Fake News. Clearly, it has Fake News, routine reports of lynch mobs relying on media apps in India testify to this, but the reports do not disturb expectations. In contrast, the Occident directly faces the lack of the Symbolic Order, it assumes ‘spin’.

The ‘common sense’ solution in the Occident in recent times, to our ‘Society of Spectacle’²⁰, is to believe the Truth is found in the *immediate*, in reality TV (‘Big Brother’)²¹, in raw footage, avoiding narratives of old (Lacanian Fantasies), throwing away old traditions. But this very move obfuscates reality again. Simply pointing out the mechanism does not stop it working²². It mystifies it further. Pointing to the way media operates (‘It’s fake news!’) has not stopped people advocating for news. Modern Media achieves its strength not by awe but by banality; it binds in its everydayness²³. The form of even objective revelation - think of handheld camera documentaries of everyday life - still produce a something extra: ‘[a] certain surplus effect is thus generated which cannot simply be cancelled through “demystification”... every “world”... is always-already enframed’ (Žižek, 2006: 29). The object always has an extra to it, an appearance. As Freud observed, humans can lie by telling the truth; the *appearance of reality* can hide reality.

²⁰Think of ‘*Simulacra & Simulation*’ by Jean Baudrillard and Debord’s ‘Society of the Spectacle’.

²¹‘Intelligent viewers may be deeply cynical about reality TV’s claims to realism, but nevertheless we allow its qualities of excessive personalization and emotionality to symbolically decaffeinate traditionally more substantial discourses.’ (Taylor, 2011: 88)

²²‘The same gap is at work in our most intimate relationship to our neighbors: we behave AS IF we do not know that they also smell badly, secrete excrement, etc. - a minimum of idealization, of fetishizing disavowal, is the basis of our co-existence.’ (Boucher, 2005: 238)

²³‘Rather than inspiring irrational awe, the media system achieves its ideological effects by acting as the cultural wallpaper to our lives, a process of desublimation.’ (Taylor, 2011: 97)

This ‘something extra’ is where Enjoyment (*Jouissance*) and identity construction are to be found. To just live in this world, we have to deny it some truth even if simple ‘polite fictions’. We need ideology, we need fake news, properly understood. The brute reality is never enough. Reality is always engaged via the mediating forces of the abstraction of it²⁴. The claim of ‘fake news’ alters the reality. The reality has been changed with the media itself²⁵.

Despite changes in belief, the loss of religious belief, a growing cynicism towards life, the Westerner continues to believe even in an oddly inverted way. They cynically distance themselves from their own belief. And although this may appear to mean they lack belief, this is to misunderstand the location of belief. Despite these moves, ultimately, the Westerner is locked back into ideology; cynically buying an iPad and cynically owning a Ford is the same as buying an iPad and owning a Ford. These dialectical flip-flops have placed the hidden mediating forces of news into the spotlight.

In the Occident, symbolic authority - the Big Other - is notably on the wane, but the Orient has, at the risk of a charge of Occidentalism, in a variety of forms, sustained authority, allowing ‘Symbolic Efficacy’²⁶ to continue. As a replacement for the Big Other, in the West, the old anchors of partial substitutes such as race and gender, are replaced by the partial substitute of individualism (Dean, 2006: 41). These calls for more ‘creative’ selves - more individualistic- become embodied into the education systems and the language of the press.

In the Orient, a mix of old style authority with the new profanity of Western consumerism offers up a mix. In Lacanian speak, the Orient is still, at least partly, in the register of ‘The Master Discourse’, *the leader knows best*. The Occident is dominated by ‘The University Discourse’ (Lacan & Grigg, 2007), knowledge is imparted to maximise utility and rational calculation. In the University Discourse, an apparently ‘neutral’ tact is taken to impart knowledge, but what is hidden is the domination in the imparting of knowledge. This different relation to knowledge, creates a different mediating of reality by

²⁴ “...truth is structured like fiction”. Reality is only accessible through our subjectivized fictional and fantastical engagements with it.’ (Taylor, 2011: 58)

²⁵ ‘In the context of the relationship between appearance and truth, a common misunderstanding of Baudrillard’s notion of simulation is that it refers to the false, the non-real. The precise meaning of the concept refers to a state of being in which the relationship between the real and the representation has broken down to produce an inextricable mixture in which it no longer makes any sense to distinguish between what is real and what is fake.’ (Taylor, 2011: 51)

²⁶ From Claude Lévi-Strauss’ theory in his anthropological work.

the media. Nevertheless, caution in jumping to a judgment is needed owing to the risk of Orientalism, an older version of Fake News.

Some initial insights appear with the simple target of ‘Asia’ as a theme. Asia, called ‘the Orient’ in this essay, and the West, called ‘the Occident’, can be described as a Lacanian ‘non-rapport’²⁷, a false polarity, ultimately both are ways of ‘failing’ as an identity: both are impossible attempts to describe and ‘capture’ the alien Other; using ‘the Orient’ reminds us of these hubristic underpinnings. There is an anticipated ‘harmony’, a yin and yang, an effort to create a totalizing relation. They are ‘expected’ to contrast. Simply mentioning them has an effect. They are crucial elements of failing Symbolic Order.

The process to uncover the distinction from the Occident to the Orient is parallel with the distinctions in structures of Fake News, of the ways that false beliefs of commonalities/differences occlude the reality, since that same process of mediating the World is also the displacement of belief onto the ‘naïve Other’. These are various strategies of ultimately avoiding the disturbing reality of the Other.

4. The Drivers: Anxiety, Enjoyment, Fantasies

The public appearance of people (even in a dull everyday life) is their opportunity to ‘make themselves’. But they are alienated in their very effort. They live out their time in the gaze of Others, questioning their own potency, their own self-sufficiency. They both seek to find common ground (unicity) with those around them but also seek it as a stage for producing themselves. We desire unicity. But must content ourselves with a feigned unicity.

In the same way, society itself is fighting to create a unicity. The explanation after the (Real) shock of the American election was that ‘Russia is behind it’. This plays towards efforts to re-Quilt reality (and hide the Truth of an impossible unicity). A Quilting Point is the empty point to bind an order (of knowledge) for it to make sense. No matter what efforts are made to explain a Nation-State, a community, a large belief, ultimately it must rely on some rather ridiculous mystification. No matter how carefully a market economy is explained it ultimately relies on a claim that ‘a baht just is a baht’.

The traditional Quilting point was in the nation or the monarchy, the ‘Discourse of the Master’, but no longer. Several factors explain this change. Firstly, over centuries there has been the ‘Death of God’, (i) a crisis in meaning. Christians experienced this with the

²⁷In the same way of Lacan’s analysis of the relationship of Man and Woman (Irwin, 2014: 177).

discovery of the Other, not simply an enemy, but someone not even of the same metaphysical World-System (e.g. the Inca). The colliding set-in-stone senses of meaning, from their little metaphysical globes (Sloterdijk, 2013), create (ii) a fragmentation of narratives (Fantasies), displaying their inconsistencies (exhibiting Symptoms of Trauma). Nevertheless, since knowledge is not the driver for these narratives they have proven resistant to collapse.

The dominance of the Western notion of individualism and its spread as a ‘negative ideology’ through the processes of market forces, ensuring ‘all that is solid melts into air’, created (iii) an atomization at unprecedented levels. Yet, a community of a vast number of people relies on an Imaginary sense of togetherness. Without it, the proximity of others in our lives feels like harassment (Žižek, 2016). Finally, technology has not been a mere innocent instrument in our lives: Web 2.0 increases the use of decision-making algorithms (Noble, 2018) and manipulative techniques that can, at their worst, usurp normal human ways of flourishing, accelerating fragmentation, atomization and existential crisis.

As an Asian example, Thailand relies on the Quilting Point of Thainess. General Prayuth is the patrician who knows best. Disorder, or corruption or other antagonisms, instead of seen as inherent to the system, are scapegoated away. It is but ‘a few bad apples’. In fact, arguably, the system relies on corruption to work, it is the oil in the system. The lack of each person in their inherent sense of Splitting (we are all good and bad) is alleviated through seeking reassurance in ‘The Subject-Supposed-To-Know’ (Evans, 2006), the holy monk or the military general. This is the Lacanian Master-Signifier, the Master speaking The Truth²⁸.

The Master Signifier is the empty ideological stitching point that maintains the edifice of traditional society. The notion of a nation-state, a magical royalty, the value of the dollar, all are ultimately an illusion that can only be sustained by a fictional supplement of Ideology. Press reports assist in this propping up exercise so that the message is always ‘reality plus’.

It is possible to imagine a pre-Symbolic, genuine belief at the Imaginary level where people truly believe (think of the wonderment of children) in the power of the regalia but there is too much knowledge in the media to sustain this. The key for symbolic authority is that it is not damaged by knowledge, since it depends on a belief, a disavowal of reality. The

²⁸But its vulnerability to deep probing makes it also the Empty Signifier: hence Lacan’s claim that ultimately there is ‘No Other of the Other’. The Other of the Other is the imagined Father-Figure who reassures us of the inevitable and eternal stability of the order of life.

mask of reality develops a power as people put their emotional lives into it. People scream for their country, its volleyball team and its flag. People will do this despite their own knowledge of the absurdity of the whole event²⁹.

5. Politics: the Ultimate Fantasy

In Lacanian theory, people know what they are doing but they do it anyway; they are not fools, or ‘captive minds’, they see their society’s ideology. Lacan can then claim those who are not duped by the symbolic ‘fiction’ of ideologies (‘les non-dupes errent’) are the ones who err; the cynic who only looks at the brute reality is the fool (Žižek, 2007). The news is fake and we know it but still it works, still we follow it, still we comment on it and make it, and still we believe; this puts a very different picture on the notion of ‘Fake News’.

There is not, for Lacan, a ‘false consciousness’; there is an Enjoyment in the way we do things. We can know otherwise and still believe something; we read our horoscopes and know they are not true but still smile a little when it suggests good fortune for the day (Mannoni, 2003). We enjoy the gaze of the Big Other, the sense of the Nation-State watching us, we enjoy the choice we made (‘interpellation’) in the leap of faith to be a loyal citizen (Dean, 2006: 10-11). Our Fantasy, is how we understand what we mean to all others in our society. Enjoyment is found in the particular structure of shameless excess that goes beyond the rules ‘agreed upon’ in entering society, in that particular society. The media will play towards this excess. This shared enjoyment is the Thing-Nation. We often enjoy through the Other (as detailed in lurid media stories) to ensure a psychic distance.

Democratic Politics is the formation of the (Hegelian) ‘bad infinity’ of displacements of failed Fantasies³⁰ in the void of the democratic centre. Each political Fantasy is given airtime and legitimacy and power for a time until its ability to hold sway on the public fades away. This apparent need for Fantasies to cover over the fundamental rupture (or Cut) in the human condition is only escapable in a radical confrontation or traversal with the Fantasies.

The inherent antagonism of The Real, the gap, the Rancierian miscount (Rancière, 2008), makes it impossible for equality to emerge; democracy is the formalization of this

²⁹Indeed, *because of* the absurdity; the willingness to engage in the silly theatricality of rituals reinforces the sense of social solidarity (Pfaller, 2014), and this re-generates the dark, secret grounds of common belief. Belief is decentred, it is out there.

³⁰ See (Marchart, 2008) for details on this insight. It is shared by the ‘Radical Democracy’ advocates and Post-Foundational ‘members’.

inherent antagonism. The irruptions against Politics is ‘the Political’. The media is the mediation mechanism captured by these antagonisms. Each ‘society’ is a Fantasy construction to disguise underlying antagonisms from an inherent universal negative.

The distinction of ‘politics’ from ‘the political’ (in, for example, the work of Claude LeFort, Jacques Ranciere, or Chantal Mouffe) *is* the difference between the covering over, that is, offering up a Lacanian Fantasy to appease the crowds, and the shocking reveal of a lack of truth of the objective world, the revolutionary change. Typically, the former is a rightwing move and the latter is the revolutionary left.

There are several variants of disavowed democracy (in its widest sense). The ‘ultra-politics’ (the resolution of conflict by a ‘militarisation’) of the Philippines, the para-politics (from Aristotle and referring to the docilization of democracy with the Blairite ‘third way’) of Japan, the metapolitics (politics is mere theatre) of North Korea and China, or the turn to metapolitics of conspiratorial (hence its origin as modern fake news) paleo-conservative Russia from para-politics (Morozov, 2015: 150), and the ‘arche-politics’ (from Plato and referring to political communitarianism) of Thailand. Finally, ‘post-politics’ denies the need for any antagonism. All of these variants have a different relation to the existential despair of the Real, of the impossibility of a society free of antagonism. All will need a slightly different form of Fake News in order to domesticate ‘The Political’.

Politics is the drama of resolving conflicts. These conflicts attempt at defining the Symbolic Order. This Symbolic Order is patched together as a Compromise Formation from the ideas within our Imaginary. Without a widely held Fantasy, the fantastical Imaginary illusion of togetherness is stripped away, and then, proximity of others is sensed as an impingement.

Politics is the art of obtaining a feigned unicity (Rickert, 2014: Vol. 100- Issue 4, p. 506). For a brief moment, generally for an election, a politician must pull together a disparate crowd of ‘masses’ into one ‘public’³¹. What drives people to accept is not a lust for power, despite the claims of Foucault and others, but the lust for Enjoyment; the human animal is a desiring animal (MacGowan, 2013), and even at the social level its primary concern is to Enjoy.

The ‘Truth-giver’ must fail in the political world. Their insistence on fidelity to the truth - i.e. their recognition of a necessary absence of fullness in the Symbolic Order - will

³¹ See Walter Lippmann and John Dewey for the broad structure of this argument.

easily be bulldozed away by a trained politician. Media debate whirls around this impossible desire of a feigned unicity.

Yet this demand for authenticity, for this Truth-Giver, led to a staged authenticity (MacCannell, 2013), since the *very image of* authenticity proved more important than the message itself. Putin rides his horse and celebrities pay companies to help them choose a charity to support which will most assist their image. This effort at projecting sincerity, which had always outperformed actual sincerity, has finally met its match in the grotesque clownery of direct identification in 2016; the honesty of the buffoon enables trust and an identification that he is just as bad as us and is enjoying life as much as we wish we were.

6. The Election: the Trauma

Politics is so complex, and the public are so politically ignorant, indeed, ‘rationally ignorant’ (Caplan, 2008), that they substitute an actual ability to do the job with a fetish object (overdetermination of their social value) as a representation of the ability. In a country still captured by the Lacanian Master’s Discourse (i.e. there is still blunt symbolic efficacy), the election is to determine which Master. The figure is picked on the assumption they know the answer. The leader must not simply act as a leader but must act in a way to be understood as acting as a leader: a belief in the subject-supposed-to-know.

The theory of ‘deliberative democracy’ (Dean, 2009: 13) has gained dominance in the academy but it really only captures the logic of the Discourse of the University, hiding away the Real. In doing so, the media, which largely follows this ‘version’ of democracy, struggles to keep up with the variations of the underlying logics, fantasies and imaginaries of the discourses across the Orient, since these are alternate efforts to hide the Real.

As an example, Thailand can claim after an election to be a democracy but protestors can hit back in a position of the Hysteric- the one who seeks the answers from the Master figure- that Thailand is not a democracy (Dean, 2009: 83). The Hysterics reveal the Master to be a fraud. The Thai dictator’s claim to simply be acting for the best of Thailand is the Pervert’s position, to *make himself the object of power itself*, to be simply an instrument for what is best for the Nation-State. This is a distorted Discourse of the Master, not the University Discourse.

The election is when all things come to a head. At this moment a ‘public opinion’ must be formed. The disruptive antagonisms between people are pushed aside for a briefest

moment of a unity of a plural majority. This ‘public opinion’ is a momentary ‘pulling together’ of the various ‘partial drives’ something like a couple ‘finding love despite their differences’; that is, there is no universal formula for love, but only the undignified Fantasies to cover over the antagonisms. These Fantasies are often brutally blunt in this desire for unicity: ‘take back control’ or ‘make America great again’ or ‘the change needed’, the rallying cry of Pres. Rodrigo Duterte of the Philippines (Duterte in 2016). The masses become, briefly, ‘the public’. The excessive demands are briefly unified.

Christopher Hitchens, the polemicist, in describing the devotion to the Dear Leader in North Korea, wrote, ‘mass delusion is the only thing that keeps people sane’. The public opinion is not the same as the private belief. The public opinion, which could technically exist and yet be believed by nobody, is acted upon as if it is the opinion of all. This allows the public to be psychically distanced from the ‘public opinion’. Crucially, it generates a belief that some Other out there does believe in it: belief is in the Other. This is the triadic structure of the trans-subjective.

The Politics’ audience think they are ‘in on it’: they are sharper than most and don’t believe the spectacle. The political circus responds by playing to the audience’s identification of being in on it. The popular American satirical show, ‘The Daily Show’, works because its viewers really believe there is a naïve other³² with a poor grasp of politics. The show is relied upon³³ more than the standard news reports. It is a staged authenticity appearing to break through the media lies but sewing them back in place for its own ends.

The Lacanian Master politicians in the rude immediacy of the modern media appear to possess the hidden ‘Agalma’, that hidden object that drives our desires. They - Duterte or Trump - in their frivolous rudeness, in their improprieties and indiscretions, appear to possess the secret of how to enjoy. In a world of political correctness, they seem to hold the mystical key, and we, the voter, *can enjoy the way they enjoy*, we enjoy vicariously. The news plays to our desires for them to enjoy, than as to its truth.

The knave is the politician who simply accepts, quite honestly, the inauthenticity, the void, the lack of foundations, but seeks to change nothing. President Duterte’s arguments, his

³² ‘For professional wrestling audiences, however, as well as enjoying the athleticism, showmanship and storytelling of a good wrestling match, the text, live or televised, is examined for pockets of authenticity or moments where kayfabe and its own internal logic bends or breaks’ (Litherland, 2014: Vol. 5)

³³ ‘We want to be smart, but we also look to “mark out” as the fans say, to believe that what we are seeing is real conflict, real blood on the mat, real valor.’ (Mazer, 2018: 62(2))

style of discussion, has a ‘gish gallop’ quality to it. It is not meant to be followed, each remark moves onto another at such a tangent that argument with it is simply no longer possible. This mischief is fake news. The dignity of the office has been abandoned, and manipulations are mixed with menace and absurdity³⁴. With the knave, the dignity of office is replaced by a total cynicism of openly holding the office for the negotiations of the elite. Enjoyment for the public is identifying with Duterte’s resistance to those seeking to end his Enjoyment: e.g. the detention of De Lima.

The Italian Prime Minister, Berlusconi, mixed the neo-liberal instrumentalism with the populism of excessive Enjoyment, sleeping around with young women with a big goofy grin but also explaining his policies in the cold hard ruthless realism of Weberian rationalism³⁵. His absurd and blatant self-Enjoyment implies honesty to the voters as proof against charges of Fake News. At every opportunity when interrogated on a tough economic or corruption issue he turns the topic back to his debased exploits, reversing the normal move to cover over the obscene brute reality of politics.

The vulgar undermining of the official orthodoxy of civil behaviour in the rarefied world of civil society and politics of liberal democracy actually strengthens the efficacy since it allows a person to displace their beliefs onto others, a direct contact with belief can be troubling and anxious. We assume democracy works even though we don’t believe in it. The Showman can overwhelm even the cynical observation that the Emperor has no clothes. The Showman inverts; it is *because* the Emperor has no clothes that we must conform all the harder so that we can achieve our ends, our goals (Žižek, 2008: 252).

7. Oriental moves: the Trace of the Symbolic

In the Philippines, Duterte and his cynical denunciation of the State Institutions and the rule of Law³⁶, is the Schmittian Us versus Them. Duterte, following the logic of this structure (Žižek, 1999), needs to project a sense of radical change without any actual change³⁷,

³⁴ ‘[T]hey are a politician without the accustomed dignity of public office – the “base bourgeois” in contrast to the “ideal sphere of the citizen”’ (Žižek, n.d.: 49)

³⁵ Lacan points out that an important element of the knave’s ideological mode of operating is the way in which he presents himself: ‘...to play the role of what he is in fact, namely, a “knave”. In other words, he doesn’t retreat from the consequences of what is called realism; that is, when required he admits he’s a crook’ (Lacan cited in (Žižek, 1997: 45)), LACAN Sem VII: 183.

³⁶ ‘The funeral parlors will be packed... I’ll supply the dead bodies’. Duterte quoted in (Heydarian, 2018: 94)

³⁷ Notably, Heydarian, in his book length treatment of Duterte, approvingly agrees with Žižek’s use of Walter Benjamin: ‘Behind every fascism, there is a failed revolution.’ (Heydarian, 2018: 110)

although the underlying claim of a problem of capture of state institutions by narrow interests was legitimate (Heydarian, 2018, p. 24). The old signifiers are attacked using a new vocabulary taken from warfare, a deep division must be asserted of an ‘us’ and ‘them’. *Depoliticize by bringing it to a head*: ‘Duterte casts himself early on as an enemy of liberal values and civil language’ (Heydarian, 2018, p. 115). The media will be under pressure to deny the old Symbolic Order (there is no compromise, just an Us versus Them) and will be creating/searching for the establishment of a fresh arche-politics.

Thailand follows the pattern of ‘arche-politics’, through the assertion of ‘Thainess’, unity is given a communitarian angle. Political struggle itself is seen as opposed to the organically³⁸ structured reality (Žižek, et al., 2006: 991). Any political moment that emerges appears as an invasive aberration: ‘It is a city in which the citizen is won over by a story rather than restrained by a law’ (Rancière, 2008: 68). Hence narratives of harmony dominate. And politicians are, *as politicians*, despised. Even Prayuth resisted the brand ‘politician’, preferring to be known as a coup leader. The media concerns itself with ‘harmony’ narratives.

Japan follows closely the parapolitics disavowal, which seeks to depoliticize³⁹ politics without eliminating the polemics of politics: ‘democracy divided from itself’⁴⁰. Politics is arranged as a mere competition, an amusement. Japan’s rather unique patience with dealing with civil protests, such as the building of Narita airport (Apter, 1984), epitomizes the effort to enclose politics into stifling rules. The media is attentive to technicalities as vying policies are mulled.

North Korea and China are metapolitical examples, but China is a doubling up of the politics of metapolitics⁴¹. With a metapolitical disavowal, the political conflict is avowedly a mere theatre or drama away from where the real arena is found; that is, the main ideology is to believe the injustice of the social order is so excessive that politics must be false. With China, its ‘secret’ disavowal of its official ideological posture of disavowal (!) transfers the

³⁸Organically suggests a naturalness without a foreign element: ‘...replacing the democratic configuration of politics with nothing left over’ (Rancière, 2008: 65)

³⁹‘The good regime is one that takes on the appearance of an oligarchy for the oligarchs and democracy for the demos.’ (Rancière, 2008: 74)

⁴⁰‘If Plato’s archipolitics is transposed in the modern age into the sociology of the social bond and common beliefs correcting democracy’s sloppiness and giving coherence to the republican body, parapolitics gleefully transforms itself into another brand of “sociology”; the representation of a democracy divided from itself’ (Rancière, 2008: 75)

⁴¹‘Metapolitics is the discourse on the falseness of politics that splits every political manifestation of dispute, in order to prove its ignorance of its own truth by marking, every time, the gap between names and things...’ (Rancière, 2008: 82)

real arena to more informal networks; ironically, this leads opponents of the Chinese State to protest by reference to the official Maoist ideology. China has returned to its old Confucian values. Internal Chinese intellectual discourse even views Maoism as a continuation of Confucianism by (distorted) means (Wu, 2014).

Confucianism is a pure metapolitical ideology (Wu, 2014, p. 135), concerned not with vague metaphysics but of the practical question of keeping order; rituals (i.e. rule-bound life) are useful because of their form in ensuring order, not because they link to a higher transcendent belief (hence, ‘a father is a father’). The Big Other was the Confucian Heaven (Ti’an). The Party Central Committee is the new Big Other (Žižek, 2011). Mao’s act of revolution is The Political *par excellence*: ‘There is great disorder under heaven, and the situation is excellent’. The disorder was the collapse of the old Symbolic Order. Confucius understood the dangerous sliding of the signifiers (i.e the rhetorically malleable meanings of words), of ‘naming’, hence his ‘rectification of names’.

The modern Chinese State’s main threat to its harmony - and eventual communist utopia via the road of success in capitalism- is the workers’ unrest. Since it cannot claim legitimacy by (true) election it has a harder problem of proving legitimacy by deeds alone (Žižek, 2011: 720). The media repeats the message of ‘rectification’, that is, staying with The Project. The danger to the regime is not the speaking of the deeper truth of the dominance of the economy over the political, but rather the danger is the inner truth argument itself becoming the official truth, since this exposes the regime to demands to reform⁴². The level of sanctioned displacement of official Public Belief is paramount. The media must tread warily: it must imply deeper state forces but not make them official.

Asia has largely not fallen into ‘post-politics’, with the glaring exception of Singapore: capitalism with ‘Asian values’. In post-politics, the attempt is made for politics to be entirely removed from politics, to be ‘foreclosed’, rather than merely repressed as in the case of ‘para-politics’. This is a world where technocrats stifle through celebrations of multiplicity and pluralism. The rise of populism elsewhere (France?) indicate the difficulty in this covering over of the necessary ‘miscount’ of the political.

8. Conclusion

⁴²See by way of analogy: (Morozov, 2015: 151)

For Lacan, the repressed always returns. Efforts to lockdown symptoms of disharmony are unravelling with a rise of racism, populism, and nationalism, and their Enjoyment is sustained in media content. The danger is the electorate that believes it does not believe, that it believes itself past primitive religions, or simplistic explanations, not recognising a continued belief through ‘The Market’ or through ‘Science’.

When the electorate knows it cannot know, when it knows the Other does not know for them, when the immediate is recognised as not unmediated, when the populist charlatan loses their sheen, when the dictator is not relied upon to save the people, then the factually-challenging current brew of politics and the media would change.

Can the media ‘traverse the fantasy’, find a satisfying end, resolve the desire? The political economy of media creation and readership suggests not. Clicks depend too much on identification through rage, an intense Enjoyment. Unless this model changes then a traversing is not possible. This is because a traversing would require, firstly, in the acceptance that there is no way to resolve the antagonism in the Real and, secondly, nor is there a final subjective freedom (Wells, 2014: 141), a satisfying ‘oceanic feeling’. A recognition will be needed from those in power that Fake News is not the problem, since that prioritises the importance of knowledge. People use the media that feeds their desire. Enjoyment is the driver of human desire⁴³. An analysis of the ways to induce ‘healthy’ politics via Enjoyment is the key to a new way of politics, a politics that would not rely on a false notion of ‘Fake News’, but instead an awareness that an effective media depends on generating (shameless) Enjoyment in the provision of knowledge.

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Recherches en psychanalyse.

⁴³ ‘...conservatism permits people a way of organizing their enjoyment in a way that today’s emancipatory politics does not. Emancipatory politics may offer a truer vision of the world, but the Right offers a superior way of enjoying.’ (MacGowan, 2013: 173)

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Fact Checking Process in Social Media among the Elderly in Thailand

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Abstract

This research aims to study Thai elderly's fact checking process in using social media in order to protect them from fake news. This study is qualitative research, conducted by multi-methodology research using cyber online observation in a Line application group that contain 47 male and female elderly people aged above 60 years old, and in-depth interview with 8 elderly informants aged above 60 years old from Bangkok. The result shows that 1) The elderly, who has basic fact checking skills, use both internal and external source of information to verify information they received from social media. Internal source are used in the initial encounter of message from the social media. The elderly relies on three internal framings which are *self source* and *message*. Self, which are used the most, means that they usually use their own knowledge, wisdom, experience and instinct as a tool to verify news that they encounter. However, external source, interpersonal and institutional, will be used if after the informants are still unconvinced. 2) It was found that the elderly' backgrounds including occupation and health encourage elderly to realize that fact checking is vital (3) Offline activities, for example, academic seminar and elderly club' activity is the way that could improve elderly' fact checking skills.

Keyword: Fact-checking, Social Media, Elderly, Fake News, Social Media Literacy, Misinformation.

Introduction

Thailand set its foot into being an Aging society in 2015 and with a steady increase of the elderly, Thailand will reach the Complete Aged Society in 2021 with 20% of the population being more than 69 years old. (Office of the National Economic and Social Development Board, 2016)

External and internal factors change when you grow older and various family behaviors cause the elderly to stray away further from their children. From moving away from home to moving out to study elsewhere, traveling became easier and smaller families have pushed the elderly to change their way of communication to using social media. The elderly currently have to open up to the new channels of communication in order to communicate with their children, grandchildren, and relatives, it's also an easier channel for them to follow

the news.(Buntudthong, 2014) This objective has made the elderly, especially in big cities to change their behavior in using social media.

Behavioral change in using social media doesn't have only a good side in which the elderly uses it to communicate and send information, but in contrast, the other side of social media is "Fake News" (Fake News). In social media, the most risked group is the elderly which is a new group of users that fall to be victims that are affected socially and in health because the elder has a habit of sharing information online without checking whether is fake news. (Vanwynsberghe, Boudry & Verde gem, 2011)

As for the elderly in Thailand, even with many efforts of many sectors such as the government sector or private sector in enhancing media literacy skills in order to build critical thinking skills and checking the news that they receive through workshops and special classrooms for older people but there has been no evidence of any academic study in which evaluates the skill or the process of fact-checking of the elderly in Thailand before.

From the problem above has pushed the researcher to study the procedures in Fact-checking of the elderly. The results of the research on fact-checking process can be a guideline for organizations to use and develop to enhance Fact-checking skills of information on social media for the elderly in the future.

The objective of the Study

To explain the procedures of Fact-checking online information in the elderly.

Scope of Research

This research aims to study the process of verifying facts of information on social media of seniors from 60 years and over, not limited to gender and education, as users of social media, such as the LINE application and Facebook, for a period of 6 months or more, living in Bangkok and the metropolitan area with a test subject group of at least 8 members and one group for online observations of 47 members.

Research Methodology and Design

This research is qualitative research using mixed method and is divided into 2 steps:

Step 1: Selection of the sample group, selecting through 3 processes

1.1 Online observation: The researcher revealingly joins in the line application group (Line group) of the elderly club that provides knowledge on the use of social media and/or the knowledge of the fact-checking is the Line group of “Social Welfare Development Center for the Elderly Ban Bang Khae”. The data collection period will last at least 4 weeks to collect data on the behavior of fact-checking online information of the elderly.

1.2 Activity Observation: The researcher joins the official activities of the Elderly Club at Ban Pan Rak, both as an observer and an activist.

1.3 Snowball Technique: The selection criteria are to select only those who have an expression of behavior in fact-checking information. From the concept of checking the information of Peerapol Anutasoth and Jessada Salathong (2019) both in social media according to the topic (1.1) and between the activities of the club according to the topic (1.2). Such as when there is inaccurate or unverified information the sample will show countermeasure behavior, for example, asking where the news came from or whether this information is false.

Step 2: In-depth interview with the Elderly

Concept and Theory used in the Research

Fact-Checking Process Peerapol Anutasoth and Jessada Salathong (2019) has proposed guidelines for fact-checking, consisting of distinguishing facts and comments including the process called "three pillars" for investigation summarized as follows:

2.1) Investigate Source Look for the source of the content, where are its origins? The source of the data can be further distinguished by the subject of videos, a person, raw data place of origin and agenda context.

2.2) Analyze Source Who is the publisher? Is such content reliable? For example, it is information that is forwarded via LINE or Facebook. Who is the publisher? Has the content been verified or not?

2.3) Check Content is the dataset correct according to the facts? Can it be checked by identifying the examined issues or check with reliable sources such as scientific principles or expert opinions?

After passing through the 3 pillars, there is evidence to support that the information is likely to be true. But if checked and found that there is no confirmed information, including having clear evidence it would be considered that the information is false

Audiences' acts of authentication conceptual model

Tandoc Jr (2018) conducted a study on the facts of information in social media in Singapore and proposed a conceptual framework on "Audiences' acts of authentication conceptual model" to describe the process of fact-checking that the verification will consist of two main groups which is 1) Internal Information is that the fact-checking by one's self which consists of the **person checking the information** (which is based on the knowledge and personal experience), **the source of the information, the text and the popularity of the message.** 2) External Information is (Incidental fact-checking from personal information sources or the 3rd source with intentional and unintentional forms (Incidental).

Research Results

Fact-Checking Procedures of the Elderly

Research indicates that the sample group of elderly people which has the behavior of the fact-checking information received from social media and initially had a process to investigate facts in a variety of ways. The researcher used the results to group into 2 categories as an internal source and external source which can be separated as follows.

1. Internal Source The elderly sample group verified the information that they received by evaluating the accuracy by themselves through 3 types of evaluation:

1.1) Check and Evaluate from Experience and Personal Knowledge (Self) This is an evaluation referred from past experiences and how they received the information to evaluate if the news or information received is fake or not, what level can it be true by using personal experiences from **life experience** and personal knowledge gained from **work experience** and knowledge gained from **seminars**.

***Example 1** "I read books and studied health issues quite deeply so when there is fake news about health shared online, I can tell my friends that it's not true because I have sufficient knowledge on health".*

***Example 2** "I once mistakenly shared fake news and it made me miss out on treatment because it wasn't true. After that incident, I researched hard and now when I see that kind of news, I can easily evaluate it on my own".*

1.2) Evaluation from Source Credibility The elderly sample group gives high importance to the information's source and the researcher found that elders who fact-check their information will believe information that comes from reliable sources such as information that comes directly from the speaker, hospitals, doctors or experts. But it is also found that even if there is a reliable source in the information or news "the sample group will not believe that information immediately" especially if the information comes in a form of "messages" and to increase their beliefs there should be information with "pictures" or "videos" with an expert in it too will increase the credibility.

Example "First off I would check where the information is coming from, is it from a doctor or expert? But even if the information says who is the speaker I still don't believe it because they can fake these kinds of things, especially if it comes in a text form I'll only half believe it but if there is a picture or clip I would trust to believe that it might be real."

1.3) Evaluation from Intuition In this kind of evaluation, the elderly sample group will not refer to knowledgeable principles or experiences that have been received like **fact-checking and assessment based on experience and personal knowledge (Self)** as above (1.) but using common sense to decide if the information received is fake or not.

Example 1 "For example, the news shared in online groups, the one that I think is fake I'll just skip it and not share it because I just skim it and know that it's fake."

2.External Source If the elderly can't evaluate "themselves" if the received is fake or not, they will fact-check with external sources which are the second step. The elderly will fact-check the received information through 2 factors, "Interpersonal" and "Institutional"

2.1 Interpersonal When the sample groups are unsure in evaluating the information themselves, third parties come in to play an important role as the "Informant" or the "Questioned". The sample group will start the conversation to examine the information received by "asking directly" by **sending a private message, phone calls or forwarding such unsure information to that person**. The researcher found that the nature of the person who is the source of the sample has many characteristics.

Peers Group is A group that the elderly chooses to ask is peers and family members that consist of these following traits, **"Expertise" "Trustworthy" and "convenient"**.

***Example 1** “I have a lot of friends who are lawyers because I majored in Jurisprudence and when there is news about the law, I send it to my friends to ask if it’s true or not.”*

***Example 2** “If it’s about health I always ask my daughter because she is a doctor at Siriraj Hospital, and I trust her because she studied it.”*

***Example 3** “I ask my friends that go to the seminar with me because he is very active, he immediately answers me when I ask, and I don’t want to ask the teachers because I’m worried that I’m bothering them.”*

Experts are different from the peer group because this group of elderly people will only ask for information when necessary and there is no close relation. In the event that they cannot ask other people, their close friends, there is no one who is an expert in this area. The important factor that the elderly chooses that person is having "expertise" on the matter.

***Example 1** “I’m not sure about a health issue and I had the line of the doctor from the seminar so sometimes I just ask the doctor if the information is true or can I eat something.”*

2.2 Institutional sources in addition to personal information sources, the elderly will ask for information from "organizations and institutions" that are reliable and have specialized expertise. The study indicates that institutions that are the source of information for fact-checking can be classified into two types: 1) Specialized Institutions and 2) Mass Media Institutions 3) Institutions or organizations that monitor data

Specialized Institutions such as hospitals, The Mirror Foundation, banks or government sectors. The elderly gives high values to these information sources because they believe that the information is truly obtained from specialists, not manipulated or have bad intentions.

***Example 1** “If it’s about health I call to ask a nurse if I have their number or if I went to the doctor before.”*

***Example 2** “The other day there was something about the law that I wasn’t sure if it was true or not or if there was an accident, I would call the police station and ask if it really happened.”*

Mass Media Institutions, for example, television channels, programs, radio programs have high accountability to the elderly who are quite convinced that televised information or radio broadcasted information has been thoroughly checked. Therefore, such information can be used to compare accuracy. The elderly will use this method to wait to watch the news program from the main media channel or their regular radio program and send a message or phone to inquire about the information as well.

***Example** “When there is news that I’m unsure I will wait to watch it on TV if there is news that I saw in LINE and they’ll say if it’s true or not such as “ข่าวก่อนแฮร์” program in channel 9 they will have news on what is true or false every day”*

Data Monitoring Institutions or Organizations is an organization that monitors information and provides information to the public about which information is true or false. It is found that "ศูนย์ข่าวก่อนแฮร์" is an organization that the elderly frequently uses for fact-checking because it's easy to access and often seen from television and social media such as LINE and YouTube

***Example** “If I’m unsure about the information, I ask the “ข่าวก่อนแฮร์” because they have a LINE and you can ask them or see on YouTube if anyone has asked them before because they’ll have a video explaining the issue”*

From the research result above concludes the research’s question that elders have a system for fact-checking the information they receive from social media.

What made them begin to fact-check the information they received?

The elderly who have the skills to primarily fact-check information all say that the reason they fact-check come from “their own self” which is the most important factor but what makes them realize the importance of fact-checking has many factors as follows:

1) Availability and Convenience The elderly gave the researcher information that after retirement, "time" becomes something that they had after a lifetime of work, hastening to check the information received is not possible but when there is more time on their hands, they can take time to think about the information received may not be true.

2) Past Occupation Older people who have the skills to use social media and almost all modern communication devices have had work experience that often requires them to use those devices. This encourages the process of thinking and analytical skills such as "Internal

Audit Officer", "Head of the Audit Department", "Statistics Expert" which provides information on the process of fact-checking the information received from social media on a profound level.

3) Health Problems of Oneself and Loved Ones The elderly gave information that the reason they are interested in fact-checking information, especially on health information because it has the greatest impact on everyone, from their own health problems, family members and surrounding people. From serious illnesses such as cancer causes the elderly to take care of themselves more. "In the past when anyone told me to try and eat something I would but now can't do that, before eating something I must research if it's really helpful for my health". In addition, when a family member has health problems, the elderly must be the person who takes care of their loved one. Therefore, the health information received must be fact-checked whether or it's true or false in order to not harm the elderly

4) Participation in Training and Seminars for Knowledge Some elders provide information that they see the importance of fact-checking and monitoring information received from social media by attending training and seminars for knowledge from experts of various fields and it is found that training always gives knowledge in a particular subject in detail and examples of wrong information which causes the elderly to realize that inaccurate information still exists and it is crucial to fact-check information.

Enhancing Future Knowledge from the Perspectives of the Elderly

The group of elderly all gave the same information that in order to promote knowledge of fact-checking there should be knowledge provided in the manner of offline education training where the elderly can talk directly to the educator because when teaching the elderly, the class must be taught slowly and when the elderly have doubts they can ask questions in the class. By the nature of the content that the elderly suggests providing information as following **"Reminding to realize that delivering false information can be harmful to both yourself and others"** **"Official information"** and **"Making it clear which data sources are not reliable "**

Moreover, seniors have also introduced some features that are expected of their educators, who should look **"sincere"** with no hidden purposes in teaching. **"High tolerance"** The elderly recommend that educating the elderly is not an easy task so patience

is an important key for those who educate them because sometimes the elderly have a lot of questions and the teaching would have to be at a slow pace.

Summary and Results Discussion

From the study results of the fact-checking process in social media of the elderly, it was found that the sample group possess a review process based on data. This information can be summarized into 2 types: Internal data, which means information from the elderly as the recipient of such information and External data, which means information from third parties. In addition, research has shown that elderly sample group consists of many different internal and external factors, including family characteristics, career, and physical health. The researcher analyzed and found that the factors that make the fact-checking process different are caused by the following:

Family Most elders have a complete family, that is, living together and single families. These elderly groups have good interaction with their family members which is a factor that makes fact-checking information received is mostly done by their loved ones because of high intimacy and trust. In addition, there are additional factors caused by the family, including the **expertise of family members**, such as having a child as a doctor or having a husband as a lawyer, etc.

The difference of the elderly who lived alone or widower would have a fact-checking process that does not ask for information from people near them as a first priority but does self-examination and from accessible outside experts.

Past Occupation Occupational factors demonstrate the presence of additional techniques in the fact-checking process and the ability to access resources, namely the different past occupations of the elderly makes the fact-checking process different in some details such as **Some seniors are former internal auditors of government organizations** so the fact-checking process is based on reliable information that is documented and reasonably confirmed with the name of the information provider. While **former educators** have a process of fact-checking **from “textbooks and books”**

Health Health factors is a factor that the researcher is very interested in, due to the information that the elderly often receive is health information (Finn, 2010) and health issues

are a direct concern for the elderly, From the analysis it is found that elderly people who are healthy or have a disease that is not serious often have uncomplicated procedures for fact-checking and provide information that they find only a small amount of news on health about which they don't really trust, while the elderly who are physically weak or have serious diseases such as cancer, heart disease, have high levels of fact-checking and the information must come from experts like doctors, which on such issues point out different awareness of the importance and impact on oneself. People with health problems have high concerns about receiving information resulting in a process that is different from those who are healthy

From the findings and analysis above, the difference in the process of examining the information of the elderly only differs in certain factors. Factors such as gender, marital status, and education do not affect the process fact-checking in any way but only the characteristics and details of different techniques

According to the research above, Ubonrat Pheangsathith (2000) has proposed factors that make the elderly have different social changes which are a demographic on characteristic and the background of the elderly, including **marital status, having a warm family, financial conditions, sex, and physical health**. From this proposal which is the same as the findings above in some respects, including having a **warm family and physical health**.

In the process of fact-checking information, the research found that the elderly has a process to examine data from two sources: internal data, which means data from the elderly as receivers and external data, which means information from third parties. The researcher adopted the conceptual framework “**Audiences’ acts of authentication conceptual model**” of Tandoc Jr (2018) As a model for the analysis and grouping of initial research results, which found that the process of verifying the facts of the elderly consists of many processes that follow the proposed framework, but in the process of using external data, it is found that all seniors have the characteristics of intention to find information (intentional) The elderly do not mention the incidental investigation as proposed by the Tandoc Jr (2018) framework. Probably because of in-depth interviews with researchers with questions of the fact-checking process that the elderly use for findings in the manner of **Incidental investigations** was not mentioned in this research. Finally, the researchers found that the conceptual model of **Audiences’ acts of authentication conceptual model**, Tandoc Jr (2018) could explain the validation of the elderly’s fact-checking process.

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A Case Study of Bagus Bawana Putra's Language Causing Him to Be in Legal Proceedings

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Abstract

Approaching the general election on 17 April 2019 in Indonesia, on 2 January 2019 the Indonesian people, especially the commissioners of KPU (General Election Commission) and Bawaslu (General Election Supervisory Body), were shocked by the news of the seven containers storing the voted ballots from such social medias as WhatsApp and Facebook a day after Bagus Bawana Putra (BBP) created and shared it in his twitter account on 1 January 2019. Due to this news, both KPU and Bawaslu, who checked the news at Tanjung Priok Port, North Jakarta on Wednesday night at 23.00 on 2 January 2019, found out no containers as reported in the news, so they confirmed that it was fake news. They immediately urged the Police of the Republic of Indonesia to pursue every account spreading the issue on Facebook and Twitter since both social medias were where the fake news first came up. Finally on 7 January 2019 BBP was arrested by the Police at Sragen, Central Java. For these facts, this paper analyses BBP's case of how his language can lead him to undergoing his legal proceedings. To meet this analysis, the paper firstly overviews the term fake news and explores the linguistic features used by BBP in the news of seven containers storing the voted ballots. Secondly, it looks at the legal provisions that BBP may have violated. As a result, the paper shows that because of this fake news case, the Police and Prosecutor ensnared BBP with Article 14 paragraphs (1) and (2) and Article 15 of Law Number 1 Year 1946 about Criminal Law Regulation and/or Article 45A paragraph (2) jo. Article 28 paragraph (2) and/or Article 45 paragraph (3) jo. Article 27 paragraph (3) of Law Number 19 Year 2016 about Amendment to Law Number 11 Year 2008 concerning Information and Electronic Transactions.

Keywords: fake news, legal proceedings, legal provision, Law No. 1/1946

Introduction

Up to the present time fake news has become an interesting topic that many scholars have devoted their attention to this topic for their studies. Although there are many studies on fake news, this current study only highlights some of them. For example, MacGonagle in his article *Fake news: False fears or real concerns?* concludes that this article is an attempt to dismiss fake news as a fake concept.¹ Edson, et al in the article *Defining "Fake News"*, address their discussion on the definition of fake news based on two dimensions: levels of

¹MacGonagle, Tarlach (2017) 'Fake news: False fears or real concerns?', *Netherlands Quarterly of Human Rights*, 2017, Vol. 35(4) 203–209.

facticity and deception.² In her book *DECEPTION: Real or Fake News?* Rice teaches the readers how to make different between real and fake news.³ In addition, Robinson and Venzontake a little look at the case of Bagus Bawana Putra (BBP) as an example of his dicussions in his article *Bots and the ballot box: Is Facebook prepared for Asia's elections?*⁴ Though fake news has been discussed in such studies, it still becomes a seminal topic for another further study.

This current study is certainly different from the previous ones although the formers and the latter have the same topic, namely fake news. The formers more focus on the term fake news viewed from the concept, definition, difference between real and fake news, and fake news in facebook. However, the later specifically focuses its analysis on the case of BBP viewed from linguistic and legal aspects. In this analysis it certainly becomes different from Robinson and Venzon's article that only highlights BBP case as an example of their discussions. As a result this latter study can be considered as interdisciplinary study of language and law.

Lately the interdisciplinary study of language and law focused on fake news is still in a small number and becomes under-researched. For this reason, concerning fake news and election in Asia this current study is analysing the linguistic features that lead BPP to undergoing his legal proceedings. This analysis certainly gives a solid understanding of how the language can make its users to be in legal proceedings. To meet the analysis, the study is looking at the following points.

- Overview of Fake News
- Bagus Bawana Putra and the fake news of seven voted ballot containers
- Language used by Bagus Bawana Putra in the fake news of seven voted ballot containers
- Legal provisions regulating the fake news
- Other legal provisions relating to the case of Bagus Bawana Putra

²Tandoc, E.C., Lim, Zheng Wei & Ling, R. (2018) Defining "Fake News", *Digital Journalism*, 6:2,137-153,DOI: 10.1080/21670811.2017.1360143

³Rice, Dona Herweck (2019) *DECEPTION: Real or Fake News?*, Huntington Beach, CA: Teacher Created Materials, Inc.

⁴Robinson, G. & Venzon, C. (2019) Bots and the ballot box: Is Facebook prepared for Asia's elections?, *Nikkei Asian Review*, at <https://asia.nikkei.com/Spotlight/Cover-Story/Bots-and-the-ballot-box-Is-Facebook-prepared-for-Asia-s-elections>

Overview of Fake News

Although the term “fake news” has been in use in newspapers since 1890s,⁵ it really blew up during the home stretch of the 2016 US presidential election.⁶ Since then, in the Post-Truth era we live in nowadays, fake news has become an inescapable part of our everyday lives.⁷ Because of the rise of Internet, fake news spreads so fast through e-mail and social media.⁸ As a result, these facts lead to such questions of what fake news is and why people create it.

Scholars define fake news in a different way. It is a phrase used to describe a news story that has been released through media and has information that is either greatly exaggerated or completely untrue.⁹ In different words, it applies to news stories and social media posts posing, falsely, as genuine news items.¹⁰ Though fake news is defined differently, the two definitions of it lead to the same understanding that fake news refers to untrue or false news story.

In addition, in terms of the reason of fake news creation, Mara¹¹ and Miller¹² have the same opinion. According to them, the purpose of fake news is to mislead the public either as the readers or as the viewers. Furthermore, in terms of the aim at creating fake news, both of them have the same arguments that fake news is created for such aims as making profit (for money), winning political favor (influencing voters), damaging the reputation of a person, group of people, or organization. Paying attention to the purpose and aim of fake news creation, fake news certainly has its impact on the real world.

Concerning the impact of fake news on the real world, in terms of winning political favour, Chong Lip Teck states that fake news had an impact on the US presidential election in 2016, and so did in Malaysia.¹³ Nevertheless, Ferraro and Chipman argue that fake news does not only influence the political world, but also the businesses practice.¹⁴ In addition, in the

⁵Mara, Wil (2019) *Fake News: Global Citizens: Modern Media*. United States of America: Cherry Lake Publishing.

⁶Barkclay, Donald A. (2018) *Fake News, Propaganda, Plain Old Lies: How to Find Trustworthy Information in the Digital Age*. London: The Rowman & Littlefield Publishing Group, Inc.

⁷Haskins, Mike and Dixon-Milhouse, Nicolai (2017) *Fake News*. London: Carlton Books, Limited.

⁸Currie, Stephen. (2017) *Sharing Posts: The Spread of Fake News*. San Diego: ReferencePoint Press, Inc.

⁹ Mara, Ibid.

¹⁰Miller, Michael (2019) *Fake News: Separating Truth from Fiction*. United States of America: Twenty-First Century Books.

¹¹ Mara, Ibid.

¹² Miller, Ibid.

¹³Chong Lip Teck (2017) The negative impact of fake news, *The Daily Stars*, (May, 06) at <https://www.thedailystar.net/op-ed/the-negative-impact-fake-news-1401223>

¹⁴Ferraro, Matthew F. and Chipman, Jason C. (2019) Fake news threatens our businesses, not just our politics, *The Washington Post*, (8 February), at

business context, it is explained that trolls and profiteers use fake news to affect the market.¹⁵ For these facts, the creation and spread of fake news on social medias constitute politically-oriented and money-oriented agendas.

Bagus Bawana Putra and Fake News of Seven Voted Ballot Containers

Bagus Bawana Putra (BBP) and the news of seven voted ballots containers were two main points that could not be separated since they had become a trending topic in the media ahead of the 2019 Presidential Election in Indonesia. For this fact, this section firstly explores who BBP is.

BBP is a man who lives at Sukamahi Village, Central Cikarang Subdistrict, Bekasi Regency. He has a fairly advanced business. According to the people around him, he is a figure who is trusted by his boss in managing the restaurant business and other businesses. Neighbors around his residence know him as a good and sociable figure, even active in village activities.

His name suddenly became well-known after the fake news of seven voted ballot containers in Tanjung Priok, which he distributed initially through his twitter. BBP was then thought to be a supporter of one of the 2019 presidential candidates namely Prabowo-Sandi and became Chairman of the National Coordinator Council of Prabowo-Sandi. However, this was denied by Ferry Juliantono as Deputy Director of Volunteers of the Prabowo-Sandi National Winning Body. According to Ferry, BBP is not to be part of official volunteers from Prabowo-Sandi presidential candidate.

Ahead of the 2019 Presidential Election in Indonesia, many political issues are milling about and the latest news is fake news about seven containers containing voted ballots at Tanjung Priok port in Jakarta. Due to this fake news, BBP was then identified as the person who created and disseminated the news.

After KPU (General Election Commission) and Bawaslu (General Election Supervisory Body) checked this news at Tanjung Priok port and found out that no seven voted ballot containers were at the port. For this fact, both KPU and Bawaslu urged the Police of the Republic of Indonesia to pursue every account spreading the issue on Facebook and Twitter

https://www.washingtonpost.com/outlook/fake-news-threatens-our-businesses-not-just-our-politics/2019/02/08/f669b62c-2b1f-11e9-984d-9b8fba003e81_story.html?noredirect=on&utm_term=.75f6ec761bd5

¹⁵ Ibid.

since both social media were where the fake news first came up. As a result of this news, BBP was arrested by the Police at Sragen, Central Java.

As an example of his discussion in their article, Robinson and Venzon¹⁶ take a little look at the case of BBP as follows.

A couple of days into the new year, a mysterious voice recording started doing the rounds on Indonesian social media, including Facebook and WhatsApp. In the recording, a man claimed he had found evidence of vote-rigging for the upcoming presidential election. He said seven ballot containers were found in Jakarta at Tanjung Priok, the country's busiest port, each containing 10 million voting papers for the April election. The ballot paper was already punctured next to "1" -- the candidate number for the incumbent President Joko Widodo and his Muslim cleric running mate Ma'ruf Amin.

"The ... cards were punched in number 1, punched by Jokowi," the recording said.

"There is a possibility [these are] from China."

Indonesia's General Election Commission, KPU, denied these claims, and the police swiftly arrested the man who made the recording, along with three other people who disseminated it. The man was identified as Bagus Bawana Putra, chairperson for a support group for Prabowo Subianto and Sadiaga Uno, the opposition camp. The Prabowo-Sandi camp denies any knowledge of the man.

The fact, that BBP was arrested and decided as the suspect by the police, means that it is the beginning time for him to undergo his legal proceedings.

BBP's Language in the Fake News of Seven Voted Ballot Containers

In the previous section it is discussed that BBP was arrested by the Police of the Republic of Indonesia because of the language he used in the fake news about the seven voted ballot containers. His language in this fake news was sent into two ways. At the first time he sent it through voice note or voice message to WA group called *Prabowiseso* and to his friend Titi Setiawati and it can be seen in the following table.

Table 1: BBP's Voice Note on Seven Voted Ballot Containers

Indonesian Version	English Version
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¹⁶ Robinson and Venzon, Ibid.

<p>"Assalamualaikum Mbak Titi e saya posisi saya di Bogor, saya ditelepon temen orang Tanjung Priok seorang marinir katanya di sekarang ini lagi geger lagi heboh ditemukan satu kontainer surat suara ya surat suara yang sudah dicoblos nomor satu isinya itu 1 kontainer 10 juta berarti ada 70 juta suratsuara tolong sam kalau ada akses tolong sampaikan ke Pak Joksan ya Mbak Titi ada akses sampeyan ke Pak Joksan atau ke Pak Prabowo untuk segera ngirim orang yang punya power untuk ngecek itu sekarang masih dibuka lagi geger katanya lagi diamankan marinir gitu coba karena aku lagi di Bogor."</p>	<p>"Assalamualaikum Mbak Titi, I am in my position in Bogor, I was called by a friend of Tanjung Priok, a marine, who said that at this time there was a commotion with a container of ballots ya the ballots voted by number one, 1 container of 10 million, so there were 70 million ballots please sam if there is access please tell Pak Joksan ya Mbak Titi has access to Mr. Joksan or to Pak Prabowo to immediately send someone who has power to check it now it is still opened again the commotion, said it was guarded by the marines so try because I'm in Bogor."</p>
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Source: Umasugi, KOMPAS.com (4/4/2019)¹⁷

At the second time, BBP also tweeted the information about the seven voted ballot containers through his Twitter account @bagnatara1. It can be seen in the table below.

Table 2: BBP's Tweet on Seven Voted Ballot Containers

Indonesian Version	English Version
<p>Ada info, katanya di tanjung priuk ditemukan 7 kontainer berisi surat suara yg sdh tercoblos gbr salah satu paslon. Saya tdk tahu ini hoax atau tdk, mari kita cek sama2 ke Tanjung Priok s ekarang cc. @fadlizon, @AkunTofa, @AndiArief ... @Fahrihamzah,"</p>	<p>"There is information, it said that in Tanjung Priok it was found 7 containers containing ballot papers which were voted for one of the candidate pairs ... I don't know, this is a hoax or not, let's check together at Tanjung Priok now ... Cc @fadlizon, @AkunTofa, @AndiArief_ @Fahrihamzah "</p>

Source: Bernie, tirto.id (4/4/2019)¹⁸

Legal Provisions Regulating Fake News

Indonesia as a constitutional state is certainly a country where law is the basis of power or the source of all power to regulate and hold the country. In term of fake news, it is regulated in Article 14 paragraph (1) and paragraph (2) of Law Number 1 Year 1946 about Criminal Law Regulations. Each of these paragraphs reads as follows.

Paragraph 1

¹⁷Umasugi, R. A. (2019) Rekaman Suara Penyebar Hoaks 7 Kontainer Surat Suara Tercoblos Diputar dalam Sidang, KOMPAS.com, 11 (4), at: <https://megapolitan.kompas.com/read/2019/04/11/22265371/rekaman-suara-penyebar-hoaks-7-kontainer-surat-suara-tercoblos-diputar>.

¹⁸Bernie, M (2019) Jaksa Bacakan Kronologi Hoaks 7 Kontainer Surat Suara Sebut Prabowo, tirto.id , 4 (4), at: <https://tirto.id/jaksa-bacakan-kronologi-hoaks-7-kontainer-surat-suara-sebut-prabowo-dk4c>

Whoever, by broadcasting news or false notices, intentionally issues confusion among the people, is punished with a maximum prison sentence of ten years.

Paragraph 2

Whoever broadcasts a news or issues a notification, who can publish confusion among the people, while he should be able to think that the news or notification is a lie, is punished with a maximum of three years in prison.

As well as Article 14 paragraph 1 and paragraph 2, fake news is also regulated in Article 15 of Law Number 1 Year 1946 about Criminal Law Regulations. It reads as follows.

Whoever broadcasts uncertain news or news that is excessive or incomplete, while he understands at least it is reasonable to suppose that such news will or will be easy to issue confusion among the people, sentenced to a maximum sentence of two years in prison.

Other legal provisions relating to the case of Bagus Bawana Putra

Due to being viral of the fake news of the seven voted ballot containers, as well as Law Number 1 Year 1946 about Criminal Law Regulations, there are some other legal provisions relating to this case. They are Article 45A paragraph (2) jo. Article 28 paragraph (2) and/or Article 45 paragraph (2) jo. Article 27 paragraph (3) of Law Number 19 Year 2016 about Amendment to Law Number 11 Year 2008 concerning Information and Electronic Transactions. Each of these articles and paragraphs reads as follows.

Article 45A paragraph (2)

Everyone who intentionally and without rights disseminating information intended for Article 45 paragraph (3) religion, race, and intergroup (SARA) as referred to in Article 28 paragraph (2) is punished by imprisonment no later than 6 (six) years and / or the most fine of Rp1,000,000,000.00 (one billion rupiah).

Article 28 paragraph (2)

Every person intentionally and without the right to disseminate information intended to cause hatred or hostility of certain individuals and / or groups based on ethnicity, religion, race, and between groups (SARA).

Article 45 paragraph (2)

Every person who fulfills the elements referred to in Article 28 paragraph (1) or paragraph (2) shall be sentenced to imprisonment for a maximum of 6 (six) years and / or a fine of a maximum of Rp1,000,000,000.00 (one billion rupiah).

Article 27 paragraph (3)

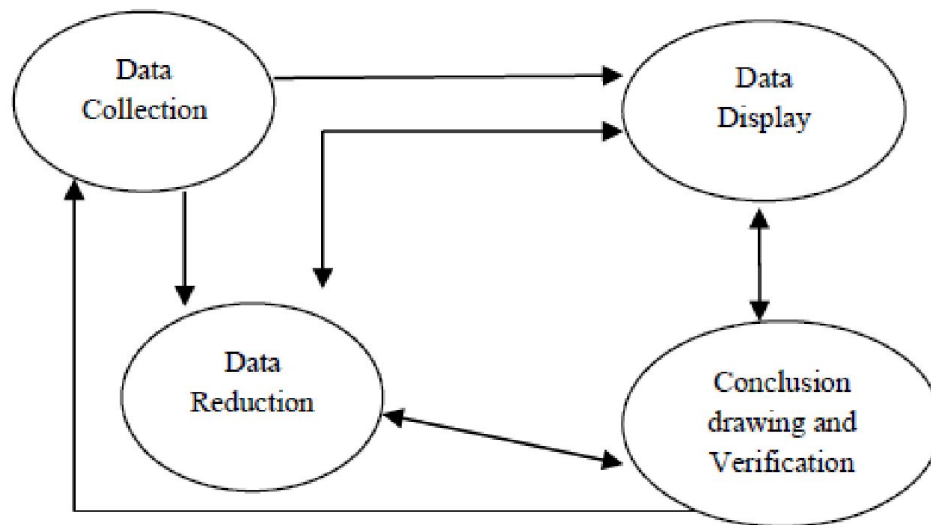
Everyone intentionally and without the right to distribute and / or transmit and / or make access to Electronic Information and / or Electronic Documents that have content humiliation and / or defamation.

Research Methodology

This paper belongs to a descriptive research because it aims at describing the language used by BBP in his fake news of the seven voted ballot containers. To meet the description, the paper is then focused on two questions, namely “which linguistic features does BBP use in the news of the seven voted ballot containers considered as fake?” and “are there any legal provisions of fake news he violated?”

In the framework of answering the two questions, this paper is presented qualitatively so that it belongs to a qualitative research because of its data constituting words, phrases, and sentences, not numbers. According to Bogdan and Biklen, the research with such data is one characteristic of the descriptive research.¹⁹ With the document study technique, the data of this reserach were collected from the text of short message and voice notes concerning the news of the seven voted ballot containers spread out through social media by BBP. From this text, the collected data constituting words, phrases, and sentences were then reduced, simplified and transformed into the data display by identifying which data representing the fake news and leading BBP to be in legal proceedings. The data display concerning BPP’s linguistic features (language) can be seen in Table 1 and Table 2 above. These procedures of data analysis are adapted from the data analysis model developed by Mile and Huberman as described in the following figure.

¹⁹ Bogdan, R. C. & Biklen, S. K. (1992) *Qualitative research for education: An introduction to theory and methods*. Boston: Allyn and Bacon.



Source: Mile and Huberman (1994)²⁰

Finding and Discussion

Linguistic Features Causing BBP to Undergo Legal Proceedings

Both Table 1 and Table 2 in the previous section show that there are the essential linguistic features that lead BBP to undergo his legal proceedings. In Table 1 they are reflected in such phrases or sentences as *ditemukan satu kontainer surat suaranya surat suara yang sudah dicoblos nomor satu* (it was found a container of ballots ya the voted ballots for number one) and *isinya itu 1 kontainer 10 juta berarti ada 70 juta surat suara* (one container consists of 10 million, it means that 70 million ballots). Such similar words as *ditemukan 7 kontainer berisi surat suara yg sdh tercoblos gbr salah satu paslon* (it was found 7 containers which contain the voted ballots for the picture one of the candidate pairs) are also shown in Table 2. These sentences in both Table 1 and Table 2 have the same form, the passive voice because of the verb *ditemukan* (was found) as it is recognised from the prefix *di* which in Indonesian language is used to form the passive voice.

With the use of passive sentence in this context, it indicates that Bagus Bawana Putra wanted to emphasize that the phrase *surat suara yang sudah tercoblos* (the ballots which have been voted) in both Table 1 and Table 2 are the most essential linguistic features because it is the subject of the sentence, which receives the action of the verb *ditemukan*. As the subject of the sentence, it then certainly becomes the topic of the message either in voice note or in the message tweeted in Twitter account @bagnatara1. Finally it became viral after it was shared by Bagus Bawana Putra through such social media as Whatsapp and Twitter.

²⁰ Miles, M. B. & Huberman, A. M. (1994). *Qualitative data analysis* (2nd ed.). Newbury Park, CA: Sage.

Because of being viral on 2 January 2019, these linguistic features, *surat suara yang sudah tercoblos* (the voted ballot) made a commotion among Indonesian people, especially those directly related to this news such as the commissioners of KPU (General Election Commission) and Bawaslu (General Election Supervisory Body). As the institutions are responsible for the realisation of General Election in Indonesia, both KPU and Bawaslu then checked the truth of these linguistic features (*the voted ballots*) at Tanjung Priuk, the place considered as the place where they were found, but they did not find *the voted ballots*. For this fact, they declared this news as the fake news. Due to this fake news, they immediately urged the Police of the Republic of Indonesia to pursue every account spreading the issue on Facebook and Twitter since both social medias were where the fake news first came up. Finally Bagus Bawana Putra was arrested by the Police at Sragen, Central Java on 7 January 2019. After this arrest he was then interviewed for investigation process concerning the fake news of the seven voted ballots containers. On 4 April 2019 this fake news case was tried at District Court, Central Jakarta and this trial was Bagus Bawana Putra's first trial he had to undergo. .

On the basis of the fact that since he was arrested by the Police and that he underwent his trial, it was found out that up to this time of writing this article Bagus Bawana Putra has undergone such two phases of legal proceedings. On the one hand he became the suspect and on the other hand he became the defendant.

As the Suspect

Being the suspect is the first phase of legal proceedings for BBP. Concerning this fact, Siddiq, a reporter of TEMPO.CO, reported that BBP was arrested by the Police of the Republic of Indonesia on 7 January 2019 at Sragen and he was then determined as the suspect of the creator of the seven voted ballot containers at Tanjung Priok port.²¹ In addition, the reporter added that the arrest and the determination of being the suspect were based on the result of the investigation that BBP admitted that the idea of making, uploading, and spreading the content of the fake news for seven voted ballot containers at Tanjung Priok was

²¹Siddiq, Taufiq. (2019) Eks Kolega di Kornas Sebut Bagus Bawana Putra Mengaku Dijebak. *TEMPO.COM*. 12 (1), at: <https://nasional.tempo.co/read/1164069/eks-kolega-di-kornas-sebut-bagus-bawana-putra-mengaku-dijebak/full&view=ok>.

purely from his own thoughts.²² From this point, it shows that the intentional element by BBP is fulfilled.

As the Defendant (the Accused)

On 4 April 2019 BBP underwent a hearing with the agenda of reading the charges in the Central Jakarta District Court. For this point, his status moved from being the suspect to being the defendant. In this trial he was accused that he was the creator of the fake news of the seven voted ballot containers. To be concerned with this trial, Lazuardi,²³ a reporter for Tribunnews.com, reported as in the followings.

The Public Prosecutor (JPU), Mangontan, said that Bagus Bawana Putra was the creator of false information on the seven voted ballot containers in the TanjungPriok, North Jakarta.

According to him, Bagus Bawana Putra was indeed not the first person to convey information about the 7 ballot containers being broken.

According to Hidayat,²⁴ a reporter of *detikNews*, it is reported that BBP dismissed the accusation as the creator of the 7 container hoax ballot numbered 01. However, he did not deny that he had spread the false information. BBP said as in the followings.

"Obviously (not as a fake news creator). (However) I admit to spreading. I am indeed careless not to cross-check (the truth of information)"

However the Prosecutor, Mangontan, who read the indictment, dismissed Bagus' refutation that he was not a creator. The Prosecutor called Bagus as the creator who compiled a series of words for the fake news. It is reported as follows.²⁵

"Bagus Bawana Putra is a creator in making a series of words to spread this fake news.

Because after he gets the news, the news is actually not widespread yet, only personally. Well, after he got it, he took the initiative to do a series of words for directing to false news or hoaxes,"said the prosecutor after the trial.

²² Ibid.

²³ Lazuardy, Gery. (2019) Jaksa Sebut Bagus Bawana Putra Sebagai Kreator Informasi Hoaks 7 Kontainer Surat Suara Tercoblos. *Tibunnews.com*, 4 (4), at: <http://www.tribunnews.com/pilpres-2019/2019/04/04/jaksa-sebut-bagus-bawana-putra-sebagai-kreator-infor-masi-hoaks-7-kontainer-surat-suara-tercoblos> on 9 April 2019

²⁴ Hidayat, Faiq. (2019). Bagus Bawana Akui Sebarkan Hoax, Jaksa Yakini sebagai Kreator. *detikNews*, 4 (4), at : <https://news.detik.com/berita/d-4497051/bagus-bawana-akui-sebarkan-hoax-jaksa-yakini-sebagai-kreator>

²⁵ Ibid

According to the Prosecutor it is clear enough that he has the initiative to make a series of words to spread the fake news through social media and WhatsApp. This is the first trial undergone by BBP and it will continued on the second trial on 11 April 2019.

The agenda of the second trial of BBP case was hearing the testimony of witnesses. Suci,²⁶ a reporter of Tribunnews.co, reported that there were six witnesses who were presented by the Prosecutor at the Central Jakarta District Court. They are from the General Election Commission (KPU), the Police of the Republic of Indonesia, and the Customs.

In term of proof by the Prosecutor at the trial, Umasugi,²⁷ a reporter of KOMPAS.com, reported that the Prosecutor played the recorded voice of the defendant who said that there were seven voted ballot containers as presented in Table 1 above.

The reporter²⁸ also reported that at the trial Head of the Legal Bureau of the Indonesian General Election Commission (KPU), Sigit Joyo Wardono said, after receiving this recording, his party namely KPU, Bawaslu, and Customs checked the location in Tanjung Priok, North Jakarta. However, they did not find the seven voted ballot containers as claimed by BBP. For this fact, KPU then made the recorded voice as the evidence for reporting this fake news.

The Rules Violated by Bagus Bawana Putra (BBP)

To describe the rules violated by BBP, this article explores the result of the Police investigation and the Prosecutor's indictment. In term of the Police investigation, Rahma, a reporter of Tempo.co, reported that in analyzing BBP's voice the Police used two test methods, automatically and manually. These two methods indicated that the sample voice was identical to BBP's voice.²⁹ From this point, the reporter³⁰ then reported that BBP has met the intentional element, preparing, spreading the news, and making it personally. For his

²⁶ Suci, Dionisius A.B. (2019) JPU Hadirkan 6 Saksi di PN Pusat dalam Persidangan Dugaan Hoaks 7 Kontainer, *TRIBUNNEWS.COM*, 4 (4), at: <http://www.tribunnews.com/nasional/2019/04/11/jpu-hadirkan-6-saksi-di-pn-pusat-dalam-persidangan-dugaan-hoaks-7-kontainer>.

²⁷ Umasugi, Ibid.

²⁸ Umasugi, Ibid.

²⁹ Rahma, Andita (2019) Polisi Gunakan Metode Audio Forensik Jerat Bagus Bawana Putra, *Tempo.co* (09/01/2019) at <https://www.msn.com/id-id/berita/nasional/polisi-gunakan-metode-audio-forensik-jerat-bagus-bawana-putra/ar-BBRZWcO>

³⁰ Ibid.

deed, the reporter³¹ added that the suspect (BBP) was charged with violating Article 14 paragraph (1) and paragraph (2) of Law Number 1 of 1946 concerning Criminal Regulation.

Moreover, on 4 April 2019 the trial of the reading of the indictment was held at the Central Jakarta District Court. Based on the voice note as mentioned in Table 1 and short message in Table 1, the prosecutor accused BBP as the spreader of the fake news of seven voted ballot containers. In line with this indictment, Saubani,³² a reporter of REPUBLIKA.CO.ID, reported that according to Mangontan, the Prosecutor, Bagus was the creator of a series of words to spread the fake news.

On the basis of the indictment, it is reported that according to the Prosecutor, BBP violated Article 14 paragraph (1) and paragraph (2) of Law Number 1 of 1946 concerning Criminal Regulation.³³ From this point, the legal ground used by the Prosecutor to accuse BBP is the same as that by the Police.

As well as Article 14 paragraph (1) and paragraph (2) of Law Number 1 of 1946 concerning Criminal Regulation, BBP was accused of violating Article 45A paragraph (2) juncto Article 28 paragraph 2 of Law Number 19 Year 2016 concerning Amendment to Law Number 11 Year 2008 concerning Information and Electronic Transaction, or Article 45 Paragraph (3) juncto Article 27 Paragraph 3 of Law Number 19 Year 2016 concerning Amendment to Law Number 11 Year 2008 concerning Information and Electronic Transaction.

Conclusion

On the basis of the discussion and analysis on the case of Bagus Bawana Putra above, this paper concludes that there are at least two main points concerning the language use viewed from legal discourse. On the one hand it deals with language as evidence (linguistic evidence) in legal proceedings and on the other hand it relates to legal influence on fake news (the maker or the person who disseminates fake news). These two essential matters finally become interesting topics for interdisciplinary legal studies.

³¹ Ibid.

³² Saubani, Andri (2019) Pria Ini Didakwa Selaku Kreator *Hoaks* Surat Suara Tercoblos, *REPUBLIKA.CO.ID* (5 April) at <https://nasional.republika.co.id/berita/nasional/hukum/ppg1xx409/pria-ini-didakwa-selaku-kreator-emhoaks-emsurat-suara-tercoblos>

³³ Sutiawan, Iwan (2019) Bagus Bawana Terancam Pidana 10 Tahun Penjara, *Gatra.com* (4 April), at <https://www.gatra.com/detail/news/407158-Bagus-Bawana-Terancam-Pidana-10-Tahun-Penjara>

In term of language as evidence, it has become the main concern of forensic linguists. For this fact, there are times when linguists are asked to give evidence on special vocabulary.³⁴ For example, they are called upon by the courts, or by the police or solicitors.³⁵ In addition, in various criminal and civil cases, Shuy looks at such cases as trademarks, threats and blackmail, plagiarism and authorship, document complexity, voice identification, clarity of warning labels.^{36, 37} Because language can be evidence in legal proceedings, BBP finally was charged of violating Article 14 paragraph (1) and paragraph (2) of Law Number 1 of 1946 concerning Criminal Regulation, BBP was accused of violating Article 45A paragraph (2) juncto Article 28 paragraph(2) of Law Number 19 Year 2016 concerning Amendement to Law Number 11 Year 2008 concerning Information and Electronic Transaction, or Article 45 paragraph (3) juncto Article 27 paragraph (3) of Law Number 19 Year 2016 concerning Amendement to Law Number 11 Year 2008 concerning Information and Electronic Transaction. These are therefore the facts of language as evidence which have made many scholars devote their attention to language as evidence as the topic in their interdisciplinary legal studies.

Moreover, in term of legal influence on fake news, many scholars have also devoted their attention to this topic. Klein and Wueller,³⁸ for example, in the article *Fake News: A Legal Perspective*, evaluate examples of fake news publications to present a workable definition of “fake news” for purposes of legal analysis and explore many of the legal and regulatory hurdles facing online fake news publishers. Different from Klein and Wueller, Björnstjern Baade³⁹ argues that false news can be subject to repressive regulation in a sensible manner. In addition, Agatha⁴⁰ states that in Indonesian legal context there are three categories of fake news that can be convicted based on Law No. 19 of 2016 about Amendement of Law No. 11 of 2008 concerning Electronic Information and Transaction,

³⁴ Coulthard, M.v & Alison J. (2007) *An Introduction to Forensic Linguistics: Language in Evidence*. Abingdon and New York: Routledge.

³⁵ Johnson, A.J (2014) Legal discourse: processes of making evidence in specialised legal corpora. In: Schneider, KP and Barron, A, (eds.) *Pragmatics of Discourse*. Handbooks of Pragmatics, 3 . De Gruyter Mouton, Berlin, pp. 525-554. ISBN 978-3-11-021440-6.

³⁶ Shuy, Roger W. (2006) *Linguistics in the courtroom: A practical guide*. New York: Oxford University Press

³⁷ Shuy, Roger W. (2008) *Fighting over words: Language and civil law cases*. Oxford: Oxford University Press

³⁸ Klein, D. & Wueller, J., Fake News: A Legal Perspective (March 8, 2017). *Journal of Internet Law* (Apr. 2017). Available at SSRN: <https://ssrn.com/abstract=2958790>

³⁹ Björnstjern Baade, Fake News and International Law, *European Journal of International Law*, Volume 29, Issue 4, November 2018, Pages 1357–1376, <https://doi.org/10.1093/ejil/chy071>

⁴⁰ Agatha, Leonardus, (2018) Legal Consequences of Hoax, *ANR Law Firm*, at <https://www.anr-lawfirm.com/article/8/legal-consequences-of-hoax>

namely content that contains affronts or defamation; fake and misleading news resulting in consumer loss; and content that contains provocation about discrimination of Ethnic Group, Religion, Race, and Inter-group.

Because language can become evidence in legal process and there is a legal consequence of fake news, it is suggested that everyone must be careful of using language through social media.

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Biography

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Study of Fake News Dissemination Articles on Criminal Code Regulations, Law of Information and Electronic Technology, and also Law of Terrorism Criminal Act Eradication

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Abstract

There is an interesting discussion, about the limits of criminalizing fake news dissemination. Fake news can fall under the jurisdiction of Law of Terrorism Criminal Act Eradication. Meanwhile, the law of anti-terrorism does not mention explicitly the precise meaning of fake news. Yet, fake news dissemination has already been regulated by Criminal Code Regulations and Law of Information and Electronic Transaction. This research finds that the Law of Anti Terrorism has not given adequately specified fake news, and thus those guilty of fake news dissemination cannot be sanctioned by terrorism criminal act. However the law many include fake news that has mens rea or malicious intention, to spread real threat by doing fake narrative dissemination. There is also preventive action in tackling the fake news dissemination especially about terrorism.

Keywords: Fake news, terrorism, counter-narrative

Background

Discussion about criminal act development in Indonesia is complicated, especially criminal act of fake news dissemination. Fake news is considered as a global issue, conceptually, fake news can be divided into six types, such as:¹

- 1) Accidental mistake;
- 2) Rumors;
- 3) Theory of conception;
- 4) Satire news;
- 5) Politician error statement, and;

¹ Hoax dan Fake News dalam UU-ITE (*Business Law*), at:
<http://business-law.binus.ac.id/2018/08/09/hoax-dan-fake-news-dalam-uu-ite/>

6) Error or misleading report.

It is more precise to call fake news “disinformation” because it is negative information propagated through media. Nevertheless, some of Indonesian Laws still use ‘fake news dissemination’. And, Used in Law No. 1 of 1946 about Criminal Law Regulations, and Law No. 19 of 2016 About Amendment of Law No. 11 of 2008 About Information and Electronic Transaction. The emergence of ‘fake news dissemination’ phrase in Indonesia classifies it as a criminal act. Then, every act in fake news dissemination can lead to someone being convicted.

The regulation formula begins with Law No. 1 of 1946 about Criminal Code Regulations, Article 14 (1) and (2), i.e.:

Article 14

- (1) Whoever, that does news broadcast or fake notification, and purposively creating riot in society, will be jailed for ten years (maximum).

Thus, whoever broadcasts some news or publishes notification that makes a riot in society with fake news can be sentenced to jail for 3 years (maximum). Based on that Article 14, it can be used as a source or law foundation for law enforcer to punish the proven person who did fake news dissemination. But, it needs to be described the purpose and definition or the meaning of ‘fake news broadcasting’ element itself, based on that law. Law only gives explanation about this classification about qualification of this Article 14, it is same with ‘Verordening No. 18 van het Militair Gezag.’² That formulation is: ‘Whoever is deliberately making riot and anxiety caused by fake news dissemination will be sentenced, and also interpreted, ‘riot’ is greater than anxiety and shaking countless people’s heart. Meanwhile, ‘broadcasting’ has the same meaning as ‘verspreiden’ in Article 171 of KUHP.

Another development is the emergence of two Article element nomenclatures, i.e.: two Articles in Law No. 11 of 2008 about Information and Electronic Transaction, that is about the prohibition of ‘propagating and misleading the fake news without any rights,’ in Article 28 (1), and prohibition of ‘propagating information which is targeted to create hatred

² *Verordeningen van het Militair Gezag* is all of criminal code regulations issued by Supreme Commander of Dutch East-Indies, and removed as long as the announcement of Law No. 1 of 1946 about Regulations of Criminal Code.

or individual and/or particular society group hostility based on their Tribes, Religions, Race, and between Groups (Indonesian: SARA)' in Article 28 (2).

Because Law No. 5 of 2008 is promulgated about Amendment of Law No. 15 of 2003 about Terrorism Criminal Act Eradication, there is a question, about who specifically propagates the fake news containing violence threat or causing the deployment of terrifying and/or horrible atmosphere able to be convicted. At the same time, this Law does specify the exact definition of 'fake news dissemination,' so, it causes some points or opinion speculations from jurists or law enforcer institutions in Indonesia. 'Fake news' norm must be written, clear, and with singular interpretation, noted in article formulation in law regulations, so, it can be said that this act is criminal act. Relatedly, there is a legality principle that mentions 'No act shall be punished unless by virtue of a prior statutory penal provision.'³

This principle is the main measurement that human rights is fundamental and must be defended on its existence, especially towards the existence of a person that can be convicted or not based on his/her act.⁴ Understanding a equality principle must be correctly completed, because this understanding will cause all of criminal law enforcement process is well and right, and also it can avoid arbitrary law enforcement process. Elements of fake news dissemination is crucial, especially if it is related to the content of this writing, because in forming a law, it must have articles and also the prohibited acts must be completed inside. So, it can be said that, he or she is really criminal. A law regulation must be confirmed to have rule of enforceability. The writer interprets it in that way because law regulation is a long-term process and it has methods in the making of it.

In line with the points of D'Anjaouin forming the law, it needs a strong connection between the maker and the social habitat. Laws are not made in isolation but are rather long-term processes that are started from deep and far away from people's daily life and reality. A 'Long March' occurs, where the needs and personal desire grows to group desire, and is finally caught by political powers. This results in government intervention and then

³ Penal Code of Indonesia (1999) 'Penal Code of Indonesia', Directorate General of Law and Legislation Ministry of Justice.

⁴ Crisan, Lulia (2010) 'The Principles of Legality "Nullum Crimen, Nulla Poena Sine Lege" and Their Role', 5, *Effectius Newsletter*, 2010, p. 1-3.

finally it will be a regulation establishment agenda.⁵ On the other hand, according to Lawrence M. Friedman, in an effort of establishing the law regulation needs harmonious step between law regulation in order to fit with applicable legal order, such as legal substance, legal structure, and legal culture.⁶

In a study of legal studies, there are at least three factors that stand as parameters towards a law regulation in order to make it runs well, and it has juridical, sociological, and philosophical enforceability.⁷ This writing is reviewing the aspect of juridical, such as: that legal rule becomes binding, if it shows the ‘must’ relationship or compelling relationship, between one condition and its outcome. In sociological aspect or empirical, that legal rule is binding and it is valid to make the law has power. Lastly, philosophical aspect, a hope of law formed, specifically in making the justice, expediency, order, and welfare (dream of law).⁸

This research uses a legislative approach, where the writers do not only view the form of law regulation but also examine the containing materials, the emergence of law, law philosophical foundation, and ratio legis of law provisions. Then, these topics also use conceptual approach, where the researchers do not move from any law regulation, while the law has already been made or has not been made yet against the problem ahead. The writers must build a concept as the reference during the research.⁹

Study of ‘Fake News Dissemination’ Article in Law No. 1 of 1946 about Criminal Code Regulations

Some cases are convicted because of fake news dissemination and tried by using Article 14 of the Law of Criminal Code Regulations. One case involves Bagus Bawana Putra, who was convicted because he propagated fake news related to the voted ballot for President and Vice President general election. Since this writing had been finished, that case has not got

⁵ See at Sirajuddin, Fatkhurrohman, Zulkarnain (2015) *Legislative Drafting: Pelembagaan Metode Partisipatif dalam Pembentukan Peraturan Perundang-Undangan*, Malang: Setara Press, p. 21.

⁶ See at Soegiyono (2015) ‘Pentingnya Harmonisasi Pembentukan Peraturan Perundang-Undangan’, *Pusat Pengkajian dan Informasi Kedirgantaraan*.

⁷ Sirajudin, *Ibid*, p.22.

⁸ *Ibid*, p.24-25.

⁹ Peter Mahmud Marzuki (2013) ‘*Penelitian Hukum: Edisi Revisi*’, Jakarta: Kencana Prenada Media Group, p. 136-177.

permanent legal power (in kracht).¹⁰ A similar outcome occurred in the case with Ratna Sarumpaet, who got convicted for two years in jail by Pengadilan Negeri Jakarta Selatan on Wednesday, July 16, 2019, because she was intentionally propagating fake news and created riots in the public. She published news about bruises on her face and her body because she was beaten by strangers.¹¹

Apart from those two cases, there is no extant conclusions related to fake news dissemination. This study uses the normative approach such as law historical study and element ratio in the articles and also expert doctrine, i.e. the meaning of 'fake news dissemination' by that law. Law about Criminal Code Regulation(s) formed and run because it needs to adapt with post independence criminal code, and situation based on conditions at that time. This law is valid based on the agreement of Badan Pekerja Komite Nasional Pusat (Central Indonesian National Committee), as described in Article 2, all of the criminal code regulations issued by Commander in Chief of Dutch East Indies Army (Verordeningen van het Militair Gezag) were revoked.

After the independence of Indonesia on August 17, 1945, there were some impediments related to the criminal code regulation which would be used by the Indonesian. The code was simplified so that the regulations were only regulations of criminal code. The purpose of Article 14 (1) of Law No. 1 of 1946 about Criminal Code Regulation is, to avoid demonstration which would make public anxiety at that time, because Indonesia had just gained their independence. Behind the meaning of standardized offense, that Article is material offense, where the prohibited norm is deliberately broadcasting and telling about fake things and it causes public riot.¹² Although, this offense is considered as formal offense, because 'the act of broadcasting or telling about lies,' there is a standpoint which has the shape of action that must be done and redacted on the article formulation.

But, the act of broadcasting, notifying about lies are not enough to end the crime until public riot happens. Intentional element is required as personal indicator in broadcasting or

¹⁰ At:

https://news.detik.com/berita/d-4506135/kpu-sebut-hoax-7-kontainer-surat-suara-tercoblos-bentuk-provokasi?_ga=2.55390511.507369702.1566343203-2143534613.1565577415.

¹¹ At: <https://metro.tempo.co/read/1225667/vonis-ratna-sarumpaet-ringan-jpu-ajukan-banding/full&view=ok>

¹² At:

<https://www.tribunnews.com/nasional/2019/04/25/ahli-pidana-ungkap-sejarah-dibuatnya-pasal-yang-didakwakan-ke-ratna-sarumpaet>

promulgating some fake news in order to create public riot. Therefore, behind word ‘intentionally’ element, why does the maker not use ‘should be suspected or at least to be suspected’ element?. Perhaps because it meets the understanding formulation of ‘criminal act,’ if there is human action which is included in *delict* scope formulation or criminal act, and then its quality is contrary against the law (*wederrechtelijk*) and it can be denounced upon the act.¹³ A criminal act or criminal deed is different from bad actions or crimes where the criminal act is the basic meaning of criminal code.¹⁴ Therefore, someone who does criminal act must be responsible about his guilt.¹⁵

Intentional in this article refers to the definition of “intentional as aim’ (*dolus als oogmerk*), meaning a situation where something happens because perpetrator’s desires.¹⁶ Meaning of ‘intentional as aim’ behind the element of that article is ‘it has to be specified and emphasized by the maker that the ‘aim’ is established in the maker’s mind. The maker’s mind or usually called as *Mens Rea* is always related to inner condition of the maker. Criminal responsibility towards the maker can be rated from his intentional act, based on personal and his action viewed from his mental condition. Therefore, the final purpose of this article that prohibits about fake news dissemination in this law is preventing public riot and anxiety.

Study towards Article of Fake News Dissemination Regulated in *Undang-Undang Informasi dan Transaksi Elektronik* (UU ITE) (Law of Information and Electronic Transaction)

The origin of this study came out when the government ratified the amendment of law about law of terrorism criminal act eradication. This study is trying to approach a term to describe when someone can be convicted because of fake news dissemination containing a terror threat. But, it needs to analyze the formulation of ‘fake news dissemination’ phrase through Law of Information and Electronic Transaction (UU ITE). Then, there will be description

¹³ J.E. Sahetapy (ed.) (2011) *Hukum Pidana*, Bandung: PT. Citra Aditya Bakti, p.26.

¹⁴ P.A.F. Lamintang (1996) *Dasar-Dasar Hukum Pidana Indonesia*, Bandung: PT. Citra Aditya Bakti, p. 7.

¹⁵ Andi Hamzah (2001) *Bunga Rampai Hukum Pidana dan Acara Pidana*, Jakarta: Ghalia Indonesia, p. 22.

¹⁶ Amiruddin (2015) *Hukum Pidana Indonesia*, Yogyakarta: Genta Publishing, p. 81.

about is there any offense form especially about fake news dissemination in Law of Terrorism Criminal Act Eradication?

Article 28 (1) and (2) of *Undang-Undang Informasi and Transaksi Elektronik/UU ITE* (Law of Information and Electronic Transaction) mention that:

- (1) Any person who is intentionally and without authority disseminating fake and misleading news resulting consumer loss in Electronic Transaction.
- (2) Any person who is intentionally and without authority disseminating information aimed to create hatred or individual and/or particular group dissension based on their ethnic groups, religions, races, and inter-groups (SARA).

Not only Article 28 (1) and (2) of UU ITE, but Indonesia also has regulation to deal with fake news, that is executive regulation from UU ITE, specifically Government Regulation No. 82 of 2012 about Implementation of System and Electronic Transaction (PP PSTE) and Regulation of Communication and Information Minister No. 19 of 2014 about Controlling the Internet with Negative Content. But, this writing only focuses in Article 28 (1) element, i.e., ‘anyone’ element, ‘intentionally’ element, and without authority disseminating fake and misleading news,’ and also (2) Any person who is intentionally and without authority disseminating information aimed to create hatred or individual and/or particular group dissension based on their ethnic groups, religions, races, and inter-groups (SARA).

In the Article element, ‘anyone’ is listed in the general provision on Article 1 number 21. Everyone is personal, whether Indonesian, foreigner, or legal entity. Then, definition of Business Entity in Article 1 No. 22, is personal company or alliance company, with or without legal entity. According to Hanafi Amrani and Mahrus Ali, if it is viewed from its characteristics, legal entity and personal have their own differences, such as actions and deeds, human has mind, desire, and hands, so he/she can kill, rape, and dishonor someone’s reputation and dignity, but not with legal entity or corporation. Criminal Act done by Legal Entity or Corporation is functional act and its form is inclusion offense.¹⁷

¹⁷ Hanafi Amrani, Mahrus Ali (2015) *Sistem Pertanggungjawaban Pidana: Perkembangan dan Penerapan*, Jakarta: PT. Rajagrafindo Persada, p. 145.

Also Article 2 of ITE Law clearly states that any person who does criminal act on information and electronic transaction in ITE Law, in or out of the jurisdiction of Indonesia, and it has a law effect in jurisdiction of Indonesia, and/or out of jurisdiction of Indonesia and damaging the interest of Indonesia. Furthermore, intentional element is theoretically similar to ‘intentional with purpose’, as well as intentional element in Article 14 of the Law of Criminal Code Regulation. But, in the ‘intentional’ article brings consequences that, criminal in Information and Electronic Transaction (ITE) ‘knows’ and/or ‘will’ upon what he/she did is suitable with the characteristics of criminal act in Information and Electronic Transaction sector.

Law of ITE is Certain Law for Certain Criminal Act in Information and Electronic Transaction.¹⁸ The element of ‘without authority’ which is referred by ITE Law is not explicitly explained, in order to answer that question, this study uses doctrine in criminal code, that is lawlessness in criminal code and it consists of two forms such as:

- a. Lawlessness in formal meaning, that act has quality of lawlessness if that act is formulated and threatened with crime in such law or the other written regulations.
- b. Lawlessness in material meaning, that an act is against the law or not, not only listed in the law (written), but also based on unwritten law principles or against the propriety, and public norm.

Element of ‘disseminating fake and misleading news resulting consumer loss in electronic transaction,’ can be interpreted in Law of ITE, where the regulation of ‘fake news dissemination’ is formulated differently than ‘information dissemination.’ There is an effect or constitutive outcome from the element of fake news dissemination, that is real consumer loss. Consumer of this element is not grammatically mentioned, so it needs systematic interpretation referred to Law No. 8 of 1998 about Consumer Protection, and specifically explains about Consumer, that each goods consumer and/or services that are available in society, as well as for personal interest, family, society, the other living things and it cannot be traded. Therefore, by viewing the elements on Article 28 (1) above, that Article cannot be related to the indication of ‘fake news dissemination on terrorism.’

¹⁸ Didik Endro Purwoleksono (2017), *Tindak Pidana di Bidang Media Sosial*, Surabaya: Universitas Airlangga.

On the other hand, how about the element of ‘without authority disseminating information that aimed to create hatred or individual and/or particular group dissension based on their ethnic groups, religions, races, and inter-groups (SARA),’ which is written in Article 28 (2) Law of ITE. It needs to be underlined that, the article focus is generally targeting to prevent hate speech dissemination to the ethnic groups, religions, races, and ethnicity. For example, the trial case of Sandy Hartono was convicted for six years because he made a fake Facebook account and uploaded pictures and published disrespectful sentences concerning Muslims. Same thing happened to I Wayan Hery Christian’s case, he was sentenced to jail because he made status related to takbeer of Eid Adha which disturbed him.¹⁹

How about information dissemination especially about terror with threat? Is that information dissemination classified as terrorism act?. According to Wawan Purwanto, a terrorism observer reported by Gatra.com, terrorism law has criminal articles that can be used to convict the terrorist, terrorist with hoax also included. Hoax itself has its own article in Law of ITE, but if that hoax contains terror, it can be sanctioned by Terrorism Law according to the violated articles. He stated that, hoax disseminator and terror threat cannot be equated with terrorist which is equipped with a bomb.²⁰ That point contrasts with Mahfud MD’s opinion, as constitution jurist, he says that the proposition of terrorist criminal act or fake news disseminator criminal act has his own definition. Therefore, it must be proven that there is a threat which causes fear in the public. For example, there is a threat towards locals and they are warned not to come to the General Election Place. This is considered as a threat and a as terrorism.²¹

Study of Terrorism Criminal Act Eradication Law against Fake News Disseminator

False information dissemination, spreading threat, and fake news that happened especially related to the general election. This case has become a priority for the government of

¹⁹ At:

<https://icjr.or.id/tren-penggunaan-pasal-28-ayat-2-ite-terkait-penyebar-kebencian-berbasis-sara-akan-meningkat/>

²⁰ At:

<https://www.gatra.com/detail/news/402088-hoaks-disamakan-dengan-terorisme-pengamat-di-persidangan-pembuktiannya>

²¹ At:

<https://www.merdeka.com/peristiwa/mahfud-md-tak-temukan-dalil-pelaku-hoaks-bisa-dijerat-uu-terorisme.html>

Indonesia in political year of 2018 until 2019. According to the surveillance of International Association for Counter-Terrorism and Security Professionals (IACSP), said that definition of terrorism in Law No. 5 of 2018 regulates many variables, so that that criminal act is considered as terrorism criminal act.²²

According to Head of Public Information Bureau of Public Relation Division of Indonesian National Police (*Polri*) Dedi Prasetyo, in handles fake news dissemination and ensnares it by Law No 5 of 2018 about Terrorism Criminal Act Eradication, *Polri* does some actions such as, based on Article 1 No. 2 it must have violence threat element or creates terror atmosphere and expanding the fear, and then, indicating terrorism network which is affiliated by the actor. After that, it must be proven by *Mens rea* or element of intentional to create anxious feelings, fear, and of course psychological intimidation.²³

This study extensively discusses tArticle 6 of Law No. 5 of 2018 about Terrorism Criminal Act Eradication. The formulation elements are: “Anyone who is deliberately using violence or violence threat that creating terror atmosphere or expanding fear on each person, and causing mass victims by robbing their freedom or life loss and the other properties, or resulting damage or destruction on Strategic Vital Objects, living spaces or Public Facilities or international facilities is convicted in jail minimum 5 (five) years and a maximum 20 years of jail, life sentence, or death sentence.”

Through that article formulation, this study underlines the element of “...deliberately using violence that widely creates terror atmosphere or sense of fear on the person.” This study is limiting this discussion specifically.. ‘Intentional’ element has already been mentioned in the sub chapter of the explanation of Criminal Code Regulation and Law of ITE above. But, behind that ‘intentional’ element, it must be interpreted by *dolus specialis* or specific intentional. Mentioned as specific because this form only appears in particular offenses such as genocide and terrorism criminal act. If this specific intention does not appear

²² At:
<https://www.cnnindonesia.com/nasional/20190325084451-12-380311/menakar-jeratan-uu-teroris-untuk-pelaku-hoaks>

²³ At:
https://www.liputan6.com/news/read/3922711/penyebar-hoaks-bisa-dijerat-uu-terorisme-jika-pelaku-terkait-jaringan-teroris?utm_expid=9Z4i5ypGQeGiS7w9arwTvQ.0&utm_referrer=https%3A%2F%2Fwww.google.com%2F

in the actor, the genocide and terrorism criminal act must be stated that it cannot be evidenced.²⁴

Phrase of “intentionally” and “creating terror atmosphere or sense of fear widely...” is indicator from *dolus specialis* in terrorism criminal act. It means, in order to prove the act of someone is a terrorism there must be evidence of his purpose (intention) to create terror or sense of fear widely...”.²⁵ Then, Is fake news dissemination with a violent threat that causes fear considered as part of that offense formulation?. In order to make it easier to observe the actor, it is recommended to use an approach about intentional theory as knowledge. This method is faster to prove, and only needs to prove the elements of action which had done by the actor. There is no causal relationship between motive and action.

According to C. Bulai as cited by Cosmin Peonasu, “circumstance” is a condition, situation, event, or another information from realities outside the capacity of criminal act, but still related with criminal act which had done or with the criminal, that will aggravate or decrease the seriousness level and criminal act or dangerous level of the actor. Peonasu also added, without directly related to the criminal act, an individual may still draw the level of seriousness from the criminal act or the dangerous level of the actor.²⁶ Therefore, the dangerous situation of the actor, must be involved as part of particular indicator meant to be empirical consideration. Also, it must be supported by historical personal background, said by Ali Imron, convicted of 1st Bali Bomb in 2002, he said that terrorist has two intentions. At that time he joined in Darul Islam (DI) as the successor of Negara Islam Indonesia (NII) but in 2002 they separated each other and changed their name into Jamaah Islamiyah (JI).

The Existence of Counter-Narrative in Indonesia in Post Amendment of Electronic Information Law and Anti Terrorism Law

Commitment in terrorism eradication is a collaboration between Police (The Indonesian National Police), TNI (The Army of Indonesia), BIN (The National Intelligence Agency of Indonesia), BNPT (The National Counter-Terrorism Agency), . Aa challenge that must be

²⁴ Hanfi Amrani, Mahrus Ali, *Ibid*, p. 38.

²⁵ *Ibid*, p.40-41.

²⁶ See at Dwi Hananta (2018) Pertimbangan Keadaan-Keadaan Meringankan dan Memberatkan dalam Penjatuhan Pidana, *Jurnal Hukum dan Peradilan*, 7(1), 87-108.

read by the government in the narratives of terrorism actions cannot be inseparable from the following;²⁷

1. Process of 'delivering benefits' from the leader to the member, in order to keep their loyalty, and integrity of organization. The emergence of new group or changing their affiliation to the other groups are understandable based on the imbalance of that delivering benefits process.
2. The emergence of competition This is the cause of claims from many terror groups for one action.
3. Member searching process or affiliation. One these actions' purposes is to gain attention from some people who have radical tendency to join the actor's organization.
4. Two way communication process. A terror is considered as a calling, so it will be followed by other groups. This is called as first communication way. Then followed by a claim which is usually citing and enclosing religion language. In all conscience, this citation is a keyword to communicate through indirect way between them and people with radical tendency, they expect that those radical tendency persons will support, or even copy, in the shape of organization or solo (lone wolf terrorist). This is considered as second communication way.

Related to the existence of resistance, there are some works that need identification of explicit or implicit brutal extremist narrative which needs to be qualified, what narratives are used by the extremist or terrorist. Firstly is religious narrative or ideology, that is a kind of narrative which uses religious elements or concepts as justification for that the terrorist organization and the use of violence in achieving that purpose. For example, the emergence of moral narrative which says that Westerners are corrupt and the only correct way is Islam way.²⁸

Secondly, this narrative contains political purpose-elements such as government revolution, new state structure, or reforming a new law system. For example, Jemaah

²⁷ See at Reza Bakhtiar Ramadhan, Irham Shofwan (2017) 'Terorisme Di Mesir: Analisis Terhadap Narasi Terorisme Pasca Arab Spring', *Jurnal ICMES*, 1, 125-130.

²⁸ Sara Zeiger, *Ibid*, p.7.

Islamiah (JI) makes an argument that a Moslem must be a part of a group (Al Jamaah) as ‘the requirement of Islamic state establishment.’²⁹ In Indonesia, this political narrative was found after there was an attack plan during the President Election 2019 on May 22, 2019 by General Election Commissions (KPU), there was a bomb threat, and it resulted in 29 people arrested which were affiliated to JAD group. They propagated ‘amaliyah’ video which said that the result of General Election 2019 was the product of shirk democracation and part of evil.³⁰

Thirdly, social narrative or heroic, this type of narrative focuses on the cult of violence, including terrorism, and the actors.. It means that, this narrative wants to be involved in bigger battle or wider purpose.³¹ This heroic narrative action still through an offering to defend the religion, ISIS offers heroism by shouldered weapons to defend the religion. At the beginning, they have certain attitude such as being intolerant and then easily judging someone as infidel, they say Moslems who are not the same with them are infidel.³² And the last is economic narrative, they believe that if someone is directly or indirectly joining or affiliating with their group, the freedom of economy will be achieved.³³ The research report from International Crisis Group/ICG (2011) and Center for Religious and Cross-Cultural Studies/CRCs (2011) showed the achievement of terrorist group in establishing new pattern and continuing their existence. Terrorist network reproduction uses permissive attitude from the society toward radical ideology moreover there are some structural problems (poverty, unemployment, and backwardness) squeezing their lives.³⁴

Revision of Anti Terrorism Law of 2018 has showed the will to establish the law to eradicate the terrorism, especially by including counter-narrative as preventive norm which is part of counter-radicalization. In counter-radicalization mentions that it is formed to give a

²⁹ Ibid, p.9.

³⁰ Tim detikcom, ‘Polisi Ungkap Potensi Teror Di Aksi 22 Mei, BPN: Narasi Teroris Politik’ (*detiknews*), At: <https://news.detik.com/berita/d-4554512/polisi-ungkap-potensi-teror-di-aksi-22-mei-bpn-narasi-teroris-politik>

³¹ Sara Zeiger (2016) ‘*Melemahkan Narasi Ekstremis Brutal Di Asia Tenggara "Sebuah Panduan Praktis"*’, Hedayah: Countering Violent Extremism, p.11.

³² Kuku S Wibowo Surabaya, ‘Ali Imron: Teroris Bisa Ubah Pola Pikir Hanya Dalam 2 Jam’ (*Tempo*, 25 April 2016), At: <https://nasional.tempo.co/read/765753/ali-imron-teroris-bisa-ubah-pola-pikir-hanya-dalam-2-jam>

³³ Sara Zeiger, *Ibid*, p.11.

³⁴ Iman Fadhilah, Syaifuddin Syaifuddin and Retno Mawarini, (2016) ‘NARASI DAN POLITIK IDENTITAS: POLA PENYEBARAN DAN PENERIMAAN RADIKALISME DAN TERORISME DIJAWA TENGAH Narration And Politic Of Identity: The Pattern Of Prevalance And Acceptance Of Radicalism And Terrorism In Central Java’, *Jurnal SMART (Studi Masyarakat, Religi, dan Tradisi)*, 2 (15), 17

legitimacy on planned process, integrated, systematic, and continuous which is done to such a person or group of persons that susceptible to be exposed by terrorism and radical way of thinking, it means to stop the spreading of radical-terrorism concept.³⁵ On the other hand, counter-narrative becomes important to be noted, because narrative construction is more than just an ideology, narrative is an early stage of recruitment process which is potentially in ideologization process. Moreover, narrative also means communication strategy to convince the audience to accept particular ideology in an easy way.³⁶ Hence, the Law explicitly entrusts that counter-radicalization needs to be done by the government and they need to collaborate with BNPT/The National Counter-Terrorism Agency. In this law, the related ministry/department can be interpreted in grammatical way, if it is prevention, so it is going to be counter-narrative, and it must be done by the Ministry of Communication and Information.³⁷ Strategy used by BNPT to eradicate the spread of radicalism in the society especially in social media is by using deployment strategy, spreading positive content contains nationalism, this counter-narrative effort is synergized with Pusat Media Damai (PMD) BNPT website, and teams up with peace website such as www.aku.dutadamai.id, www.bhinneka.dutadamai.id, www.saung.dutadamai.id, www.cahaya.dutadamai.id, and www.hajuang.dutadamai.id.³⁸

The Ministry of Communication and Information (Kemenkominfo) is needed to block radical sites, in 2015, BNPT had issued complaint letter to Kominfo, there were 24 radical sites which were previously blocked by letter number 149/K.BNPT/3/2015 about Sites/Radical Website in filtering system of Kemenkominfo.³⁹ The efforts in terrorism eradication via blocking the radical sites by the Ministry of Communication and Information

³⁵ Article 43C Verse (1) Law Number. 5 of 2018 about Anti Terrorism.

³⁶ Fadhilah, Syaifuddin dan Mawarini, *Ibid*, p.21.

³⁷ See at Bilqis Rihadatul Aisy and others (2019) 'Penegakan Kontra Radikalisasi Melalui Media Sosial Oleh Pemerintah Dalam Menangkal Radikalisme', *Jurnal Hukum Magnum Opus*, 2 (1), 4.

³⁸ *Ibid*, p.43.

³⁹ PDSI KOMINFO, 'BNPT Minta Kominfo Blokir 22 Situs Radikal' (*Website Resmi Kementerian Komunikasi dan Informatika RI*), at: https://kominfo.go.id:443/index.php/content/detail/4627/BNPT+Minta+Kominfo+Blokir+22+Situs+Radikal/0/b_rita_satker. Those sites were: 1) arrahmah.com; 2) voa-islam.com; 3) ghur4ba.blogspot.com; 4) panjimas.com; 5) thoriquna.com; 6) dakwatuna.com; 7) kjalifahmujahid.com; 8) an-najah.net; 9) muslimdaily.net; 10) hidayatullah.com; 11) salam-online.com; 12) aqlislamiccenter.com; 13) kiblat.net; 14) dakwahmedia.com; 15) muqawamah.com; 16) lasdipo.com; 17) gemaislam.com; 18) eramuslim.com; 19) daulahislam.com; 20) shoutussalam.com; 21) azzammedia.com; 22) indonesiasupportislamicatate.blogspot.com

was fit according to the Law No. 11 of 2008 about Information and Electronic Transaction (ITE), Article 27 (1) and (2), Article 28 (1) and (2), and Article 40 (2).⁴⁰ And Law of ITE had been changed in 2016 with Law No. 19 of 2016. In the Amendment of ITE Law there was an amendment in Article 40, and there were insertions of two paragraph amendments on Paragraph (2a) and Paragraph (2b), i.e.:

“(2a) Government must do a prevention about propagation and the use of Electronic Information and/or Electronic Document with forbidden content according to the Law.”

“(2b) In doing the preventive action as intended in paragraph (2a), the government is competent to cut the access and/or instruct the Electronic System Administrator to do an access termination on Electronic Information and/or Electronic Document that contains a content that violates the law.”

Conclusion

Based on this writing, law of Indonesia gives limitations on criminal actions especially in fake news or fake information dissemination context that is causing riots and anxiety on the public. Criminal Code Regulation is aimed to regulate the fake news dissemination that creates public anxiety, and then in Law of ITE, it regulates about the forbidden action in using information technology related to news and information dissemination, and in Law of Terrorism has been specially packed to regulate the preventive action against the expanding of terrorism through fake news and/or information which needs to be evidenced, the intention in doing the fakes. Therefore, through Terrorism Law, there are some ways to prevent and eradicate full of lies narratives by terrorist, that is through counter-narrative. So that, suggestion from this study, it needs to identify and qualify the elements of those actions in that fake news, is it included in terrorism code or not.

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Indonesia's Digital Democracy: Memes and Hoax Campaigns in the 2019 Presidential Election

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Abstract

Hoaxes have returned to accompany the 4th Presidential election in Indonesia. Recently, media more strongly influences citizens' perspectives about candidates, rather than their personal missions. The term "memes" became more surfaced in this election year. Memes are commonly used by each party to promote their candidate easily and with humor, but on this 2019's presidential election, most of memes were created to spread hoaxes and hate speech addressed to oppoding candidates or particular groups. The 2019 Indonesian presidential election presented two candidates each for the positions of president and vice president, dividing Indonesian people into two strongholds; in such a politically divided atmosphere, the presence of hoax memes can endanger national unity. The spreading of hoax memes can be limited by the Electronic Information and Transactions (ITE) Law No. 11 of 2008, which is amended as the new ITE Law No. 19 of 2016. Hoax memes consisting of hate speech can also be categorized as a "black campaign" which is banned by Election Law No. 7 of 2007. This paper finds that this rule can be effective to penalize the spreader of hoaxes; however, extant laws alone cannot fully eradicate hoax memes and black campaigns. This paper argues that reforming the political culture and strengthening a sense of unity within Indonesian society is the most powerful method to combat hoax campaigns and, in the end, cultivate a better future and digital democracy in Indonesia.

Keywords: digital democracy, memes, hoax and black campaign.

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Introduction

Until recently, the discourse about hoaxes was not a major issue in Indonesian political life. Hoaxes were first disseminated in 2004, coinciding with the first Indonesian presidential election and spread widely after the 2009 presidential election. Hoax memes combining political memes and hate speech not only became a method to gain votes, but also to overthrow an opposing candidate. General elections in democratic countries are the most important process to determine who leads and governs the country. In Indonesia, elections determine both the life of the government and the people for the next five years.

After the Proclamation of Indonesian Independence on August 17, 1945, Indonesia had its first president and vice president; however, the first democratic presidential election was actualized in 2004. The first president and vice president of Indonesia were appointed in acclamation by a preparatory committee for Indonesian independence or PPKI, at its first meeting on August 18, 1945.¹ The installation of Indonesia's first president and vice president was the consequence of a complete lack of government equipment or state institutions.

The inception of the idea to directly elect the president and vice president was the demands of political reform after the end of the Orde Baru regime. Reformers argued that the fight over presidential candidates and vice presidential candidates should take place in an equal and quiet democratic process. During the first general election in 2004, the Indonesian people must choose one of the presidential and vice presidential candidates out of six candidate pairs registered at the Komisi Pemilihan Umum/KPU (the Indonesian General Election Commission).² Since this moment—this new era of presidential election—a digital democracy began in Indonesia.

In Indonesia, the digital world of social network sites and social media is seemingly inseparable from the general election. The concept of democracy, which requires citizen

¹ Mahkamah Konstitusi Republik Indonesia (2010) *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Buku V*, Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, p. 27.

² J.A., Denny (2006). *Jejak-Jejak Pemilu 2004* (Talk Show Denny J.A dalam “*Dialog Aktual*” Radio Delta FM)., Yogyakarta: LKIS, p. 3.

participation, makes the digital and electronic world a convenient tool for citizen engagement. Article 28 (F) of the Constitution of the Republic of Indonesia (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945) ensures the protection of every citizen's right to communicate and obtain information to develop their personal and social environment, and also the right to seek, obtain, possess, hold, manage, and convey information by using all types of available lines.

The use of technology and digital media in general elections flourished in 2004 when SMS (Short Message Service) became a common media form that was widely used to send satirical or slanderous messages, including fake news about presidential candidates. Black campaigns began to be arranged in such a way as to impose the opponents by a each partisan that was packed and spreaded via SMS and mailing lists (the internet began to be mass used and affordable) in sequence. Indeed, for people who still fall for hoaxes or are enticed by hate speech, this information was swallowed whole. After a while, black campaigns invaded social media platforms where nearly everyone has an account, such as Facebook, Twitter, and Instagram. Indonesia's era of digital democracy began with the first democratic presidential and vice-presidential election in 2004 and intensified by the time of the 2019 presidential election.

Contrastingly, today's digital campaign trends no longer utilize intrusive text messages; but rather, they make use of "memes" that can easily and significantly persuade the public opinion about presidential and vice presidential candidates. The term "meme" was first introduced by Richard Dawkins in 1976 in Shifman (2014, 2) to describe small units of culture that spread from person to person by copying or imitating.³ Memes are a very effective form of campaign media, because people are more interested in receiving brief, visual information that is funny and entertaining. In fact, people often do not realize that memes distributed through social media are political memes used for campaigns.

Many people who campaigned through memes relied upon creativity which neither solely belonged to nor was exclusively used by partisan actors. In reality, digital meme campaigns are currently being produced to incite hatred and even discordance within a community. Currently, the Indonesian public is regularly presented with various memes attacking the presidential and vice-presidential candidates, challenging the community's ability to distinguish between facts,

³ Shifman, Limor (2014) *Memes In Digital Culture*, Cambridge: The MIT Press.

slander, or blatant deception. Facing such uncertainty, the first question that arises is how to distinguish between a black campaign or just ordinary meme. The second question is how the government controls deceptive campaigns without violating society's freedom of expression. Furthermore, many political memes address sensitive issues, such as ethnicity and religion, and are made for expressly political purposes. To answer these questions, this paper will dissect (1) the characteristics and limitations of ordinary memes and hoax memes as black campaigns (the terminological approach); (2) regulation of contra-hoax and black campaigns in Indonesia; (3) contents of controversial political memes during the 2014 and 2019 presidential election; and (4) the influence of political culture on Indonesian society. This paper will conclude with a recommendation about government effort in eradicating hoaxes and black campaigns in Indonesia.

Research Methodology

Type of Research

This paper employs a qualitative research approach. As Sheman and Webb (1988) assumed, qualitative research is concerned with meaning as it appears to, or is achieved by, persons in social situations. Bogdan and Biklen (1982) similarly state that qualitative research is descriptive analysis in which data is collected in the form of words and pictures rather than numbers. The purpose of using qualitative research in this paper is to develop an in-depth understanding of regulations against hoaxes in Indonesia. Qualitative research is doubly meaningful, insofar as this research examines the visual rhetoric of hoax meme images. Furthermore, qualitative research enables this paper to examine the relationship between behavioral patterns of hoaxes propagation and social conditioning, which shapes the political culture of a society. In this research, a descriptive method was used to describe and interpret objects, such as memes, in accordance with fact. This research attempts to analyze a selection of hoax memes in order to explore types of hoax utilized during election campaigns.

Data and Data Source

The data examined in this paper are words, sentences, pictures and utterances containing hoaxes and black campaigns. The researcher specifically examines four selected hoax memes

from the Indonesian presidential election and analyzes the number of political hoaxes circulating before the election, sourced primarily through the Kominfo's (Ministry of Communication and Information) official hoax surveys.

The main visual data was itself collected through social media, such as Whatsapp and Facebook, where it was shared extensively before election. The same data can also be accessed on Indonesian news websites, which themselves produce hoax memes about candidates. Data analysis was further enriched with secondary data, such as regulations and pertinent literature.

Data Collection

The technique for collecting data can be seen use through documentation, interview, observation, etc. The method of data collection in this research is documentation, which is intended to obtain the data directly from relevant books, articles found through library research, exploring websites and social media, and also another relevant processes. Selecting collected data can support the analysis and conclusion related to the topic of this research.

Defining “Hoax,” “Memes,” and “Black Campaign”

Some of the basic concepts and theories reviewed in this paper include: (1) social media and digital democracy; (2) the definition of “hoax” and “meme;” and (3) black campaigns.

(1) Social Media and Digital Democracy

There are at least three media roles in realizing democracy in a country according to Curran (2010), specifically a watchdog role, an information and debate role, and the media as a voice of the people role. Therefore, media is a dialogical channel for the audience and communicators, which in this case are the government, political parties, voters and other

institutions.⁴

The delivery of messages and community aspirations has developed, not limited

through print and electronic media, but including the current trend of political communication

through social media. Social media is one of the products of technological development that

⁴ The media as Curran suggest, mainly has three functions in democratic; to inform (information role), to provide a forum to debate (debate role) and to represent the public (watchdog role). Sometimes this three function is subdivided. Thus, the information role for example, can specify reporting the news and also investigating (as a watchdog) an abuse of power or corruption. See James Curran (ed.)(2010) *Media and Society*, London: Bloomsbury.

utilizes the internet as a wide and open network. Social media, nowadays, is not only used in two-way personal communication but also in multiple directions.

The appearance of various petitions⁵ and advocacy movements that use social media proves that social media can have a real, fast impact compared to direct communication media. This model of delivering public participation by utilizing media technology is what Hague and

Loader (1999; 6) call a digital democracy.⁶

Hacker and Van Dijk (2000;1) define digital

democracy as the use of information and communication technology in all kinds of media (for example internet, interactive broadcasting and digital telephone) for the purpose of enhancing political democracy.⁷

(2) Meme and Hoax

As a form of mass communication, memes are very vulnerable to becoming fake news or even hate speech. The term “meme” was first introduced by British biologist named Richard Dawkins. Meme comes from Greek term "mimesis" which means "imitation." Memes, as avowed by Dawkins in Chesterman (2002; 5), are units of cultural transmission in the form of tunes, ideas, catch-phrases, or even fashion. In the Indonesian Dictionary (KBBI), “meme” is defined as an idea, behavior, or style that spreads from one person to another in a culture. More specifically, memes can also be categorized as footage from television shows, films, or homemade images that are modified by adding words or writings to be amusing and entertaining. “Hoax” in Indonesia is known as *berita palsu* or *berita bohong* (fake news). Jon Huer (1990; 76) states that hoaxes are a deliberate deception game, which presents lies as facts, unreality as reality, bad as good, nonexistence as existence.⁸ In Indonesia, the term hoax appears

⁵ For example, an online petition launched by La Repubblica (Italian Newspaper) in July 2008, while the centre-right majority in Parliament was passing “lodo Alfano”, called for a law which suspended criminal trials for the Prime Minister and The Presidents of the Republic, House and Senate until completion their terms, La Repubblica collect signatures that denounced the law as a threat to the constitution and demanded its withdrawal. This petition was signed about 150,000 Italian peoples before the law was passed. See Brian O. Loader and Dan Mercea (2012) *Social Media and Democracy: Innovations in Partisipatory Politics*, Oxon: Routledge.

⁶ Barry N. Hague and Brian D. Loader (ed.) (1999) [2005] *Digital Democracy; Discourse and Decision Making In The Information Age*, London and New York: Routledge.

⁷ Kenneth L. Hacker, and Jan Van Dijk (ed.) (2000) *Digital Democracy; Issues and Theory of Practices*, London: SAGE Publisher.

⁸ Jon Huer (1990) *The Great Art Hoax*, Ohio: Bowling Green State University Popular Press.

in the ITE Law (Law No. 19 of 2016) where hoaxes aim to deceive or generate hatred or hostility for certain individuals or groups on the basis of ethnicity, religion, race, and other group identities. Thus, the existence of hoaxes is very close to hate speech even though hate speech is not necessarily a hoax. It could be a statement of hate speech in the form of facts but intended to incite someone. In this digital democracy era, memes and hoaxes become more related. Most hoax memes are political memes addressed to a political opponent. Political memes can be colored by crucial issues like religion, race, political faction and communism that intended to attack one person or group, not an entire community.

(3) Black Campaign

Theoretically, Larson (2012) argued that the type of black campaign can be observed from the motivation of campaigners.⁹ There are two different terms regarding campaigns that have negative connotations in Indonesia, namely negative campaign and black campaign, but the one closest to the hoax issue is black campaign. Negative campaign is the implementation of a campaign by expressing the negative sides/factual weakness about political opponents. Negative campaign is not prohibited in Indonesia, because what is revealed in the campaign is fact. Negative campaigns are also a campaigning strategy widely used in democratic countries. In the United States, the practice of negative campaigns has been famous since 1984, where one senatorial candidate, Jesse Helms, displayed negative advertisements about his political opponents. Even David Mark (2006; 1-2) states that negative campaign is an art in campaign tactics. He argues that what constitutes negative campaigning is a matter of perspective, tactics that one voter seems to be misleading, mean-spirited, and immoral can positively impact another by conveying important factual information about how a candidate would perform under the pressures of the public office.¹⁰

Contrary to the negative campaign, black campaigns are campaigns prohibited in Indonesian electoral law. Black campaigns are not based on facts, tending to be slanderous,

⁹ Charles U Larson (2012) *Persuasion: Reception and Responsibility*, Belmont: Wadsworth Publishing.

¹⁰ Mark, David, (2006) *Going Dirty; The Art of Negative Campaigning*, United States: Rowman & Littlefield Publishers.

which has the potential to constitute criminal acts. In election law, black campaign is considered a campaign action which insults a person, religion, ethnicity, race, class, candidate, and/or other election participants with the intention of inciting disunity and pitting individuals or the public against each other. Special arrangements in Law No. 8 of 2015 (about local elections) explicitly stated that conducting campaigns in the form of inciting, defaming, pitting political parties, individuals, and/or groups of society against each other is a form of black campaign. So, the differences between the ordinary memes for entertaining and hoax memes created as a part of a black campaign lie within the validity of information and intent.

Anti-Hoax and Black Campaign Regulation In Indonesia

The era of digital democracy requires the government to be wary in creating policies to prevent social media hoaxes. Freedom in democracy is a human right that guaranteed by the government, but the implementation of these freedoms is not without limits. We can analyze memes as a form of freedom of expression on the one hand; on the other hand, they can be considered a black campaign. Uncontrolled digital democracy will undermine the quality of democracy itself. Peoples' freedom in accessing and utilizing social media has makes the spread of hoaxes both easier and faster. After reformation in 1998, the Indonesian government has sought to fight hoaxes through various strategic regulations and policies.

The ITE Law is one of the mainstay regulations for the government in combating the spread of hoaxes in online media. This rule began the ratification process in 2008 through Law No. 11 of 2008 about Information and Electronic Transactions (ITE Law). This law was later revised in 2016 through Law No. 19 of 2016 (New ITE Law). The New ITE Law re-affirms the article that can be used to penalize the hoax spreaders. Article 45 (A) of the New ITE Law states that everyone who, intentionally and without rights, spreads false and misleading news that involving consumer losses in electronics technology, and also everyone who intentionally and without the right to disseminate information aimed at arousing hatred or hostility of certain individuals or groups based on ethnicity, religion, race and intergroup relations, can be sentenced to a maximum of six years' imprisonment and a maximum fine of one billion.

The New ITE Law not only regulates several sanctions for spreaders of hoaxes and hate speech, but also strengthens efforts to eradicate hoaxes through preventing the spread of hoaxes, which was not previously regulated. Article 40 paragraph (2a) and (2b) of the New ITE Law regulates the government's obligation to prevent the circulation of fake news and hate speeches. The government has the authority to terminate access or instruct electronic system providers to terminate access to electronic information or electronic documents that contain prohibited content. Thus, the content which transgresses against the extant laws, including hoaxes in any form, can be blocked by the government to stop further spread and prevent negative community impacts.

Before the ITE Law was passed, law enforcement against hoaxes and hate speech could be ensnared by several articles in Indonesia 's Penal Code (KUHP). Even the Criminal Code mentions a number of images and writings that aim to insult someone, which is currently known as memes. These restrictions are regulated in Articles 310-321. Collectively, these articles regulate the penalty for anyone who intentionally attacks someone's honor or good name by accusing them of something with the intention of being known to the public (maximum nine months' imprisonment), and anyone who makes such an accusation through inscription or images that are spread and displayed in public (maximum sixteen months' imprisonment).

Although not explicitly using the term hoax, the word "accusation" in the formulation of the article can refer to things that are not necessarily true but not fully hoaxes. Whereas the hoax is actually regulated in Law No. 1 of 1946 concerning Criminal Law Rules Articles 14 and 15, which stipulate that anyone who broadcasts news or false notices intentionally to spread information among the people, is punished with a maximum sentence of ten years imprisonment. Today, anyone who spreads news or issues which can confuse the public, knowing that the news is a lie, can be punished with a maximum of three years imprisonment. Criminal sanctions under Law No. 1 of 1946 is stricter than criminal sanctions imposed on hoax spreaders as stated in Indonesian Penal Code and ITE Law.

Associated with campaigning, Indonesia has also banned the existence of black campaigns which defame and insult someone as stipulated in Election Law No. 7 of 2017 Article

280 which dictates that the executor, partisans and election campaign teams are prohibited from:

- a. questioning the basic state of Pancasila, the Preamble of Indonesian Constitution 1945, and NKRI (The Unitary State of the Republic of Indonesia);
- b. all activities that can endanger the unity of the Republic of Indonesia;
- c. insulting a person, religion, ethnicity, race, class, candidate or other election participants and candidates; and
- d. inciting and pitting individuals or communities against each other.

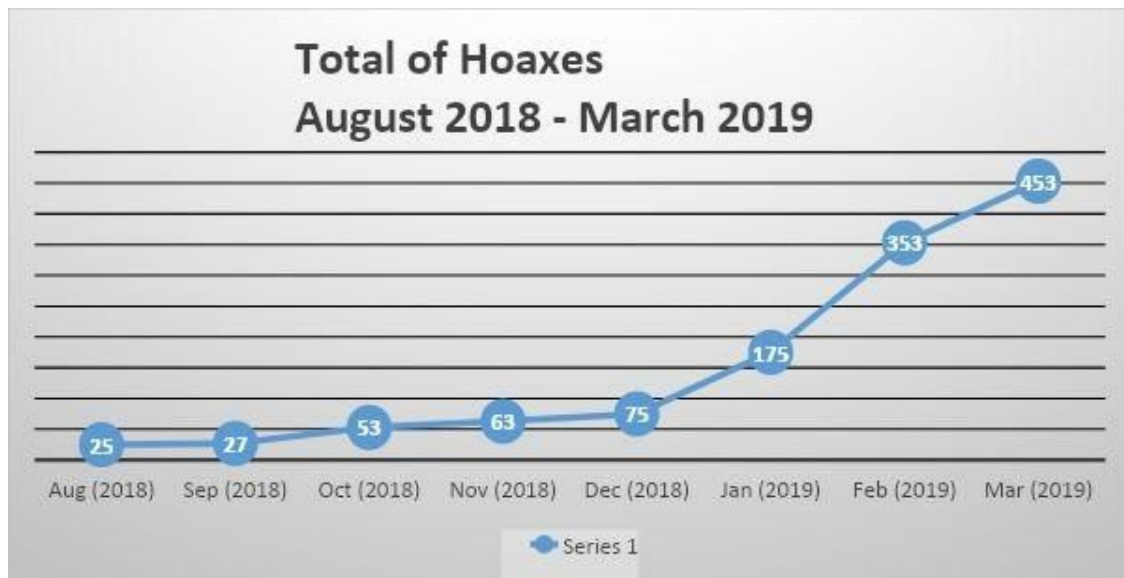
Thus, juridically, Indonesia has quite a lot of regulations to fight hoaxes and black campaigns. The problem then is that it is difficult to determine whether a political meme is a hoax or not. Another problem, in the ITE Law, is that hoaxes remain limited to the people who use electronic transactions. In addition, the ITE Law only restricts meme spreaders, not producers. Therefore the complete anti-hoax regulation is not enough to eradicate hoaxes and black campaigns in Indonesia. Efforts to prevent and enforce against hoax makers and spreaders are needed to protect digital democracy in Indonesia.

The Hoax Phenomenon in Indonesia Towards the 2019 Presidential Election

The spreading of hoaxes and political memes about presidential and vice-presidential candidates are increasing ahead of the presidential election in April 2019. In fact, memes began to appear after each candidate declared himself as presidential and vice presidential candidate. The Ministry of Technology and Information or Kominfo (2019) has identifies 62 hoax content related to the 2019 election ranging from August to December 2018, 11 political hoaxes in August, 8 hoaxes in September, 12 in October, 13 in November, and 18 hoaxes in December 2018. The number of political hoaxes increased in early 2019. Kominfo noted that the increase in hoax content was very significant in January and February 2019. In January 2019, Kominfo identified 175 hoax contents with various issues. This number rose to 353 hoax contents in February and 453 hoaxes in March 2019. The total number of hoaxes recorded by Kominfo from August 2018 to March 2019 were 1,124 hoax-containing news pieces, with the highest percentage (26 percent) being political in nature. The increase in hoax news can be seen in the graph below:

Graph 1.

Number of Hoaxes Identified During August 2018 - March 2019

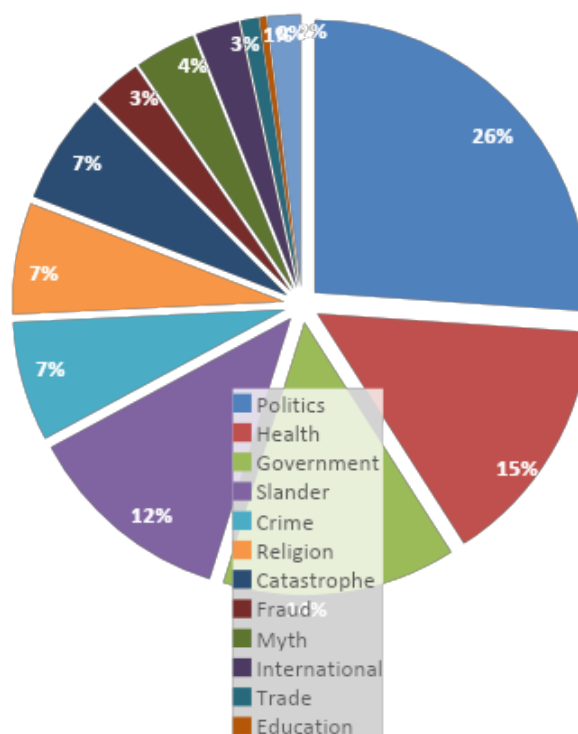


Processed from website sources

https://kominfo.go.id/content/detail/17071/kominfo-jaring-771-konten-hoax-mayoritas-te-rkait-politik/0/sorotan_media.

Graph 2

Percentage of Hoaxes Types in August 2018 - March 2019

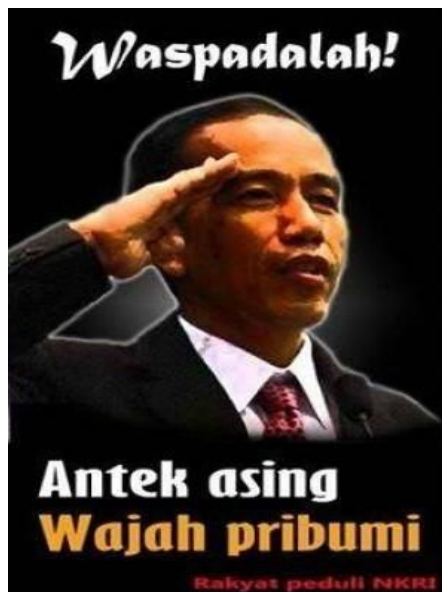


Processed from website
sources

https://kominfo.go.id/content/detail/17071/kominfo-jaring-771-konten-hoax-mayoritas-te-rkait-politik/0/sorotan_media.

Many of hoaxes that was successfully verified and handled by Kominfo are formed as political memes. Unlike hoaxes on social media and in chain messages that are easily identified, memes are difficult to identify as hoaxes and black campaigns. The shape, format and substance of hoaxes are more sophisticated than what Hartley originally formulated. Hoaxes are now also spread through videos, music, advertisements and, of course, memes that have a stronger appeal than written news. Memes, which were originally intended for entertainment only, are now widely used as a means of disseminating hoaxes, slander, and black campaigns that aim to ruin candidate reputations. This phenomenon became popular in the 2014 elections, at which time, Indonesian President Joko Widodo was made the subject of many hoax memes, as seen below:

Content 1



The meme says, "Beware: Foreign Henchman - Native Face." Surely the short message in the meme was not accompanied by proof of why Joko Widodo may be called a foreign stooge,

therefore the meme certainly caused misinformation. In the following years, after Joko Widodo was elected president, political memes targeting him remain scattered. For example, one meme was created by manipulating the Times magazine cover entitled "A New Hope" to be "A New Hopeless" with a same background picture of President Widodo.

Content 2



Hoax memes are now a new trend of black campaigns. Practically, it can be disconcerting for the police or judges to handle hoax or black campaign cases because perspectives on the truth and ills of these memes vary. Memes can seem ordinary without any false attacks on candidates, according to the perspective or defense from the executant. Yet according to the perspective of another person, especially the candidates and their partisans, certain memes can easily be considered slander or black campaigns. Moreover, some memes address sensitive issues of SARA (Tribe, Religion, Race and Inter-Group conflict). The content of the following meme showcases the duality of meme interpretation:

Content



This meme illustrates the difficulty of labelling a meme as a black campaign, largely because it contains jokes and intends to entertain. Furthermore, the meme discusses the issue of religion, which is very sensitive among the general public. In addition to the meme above, there are also memes created and distributed online or through social media regarding the statements of the candidates in presidential and vice presidential debates, as seen below:

Content 4



This meme has been reported by one candidate's party because they it manipulates the statements of both vice-presidential candidates. On the left side, this meme raises the issue of legalized adultery. The other meme discusses the personal mission of vice presidential candidates about education that ultimately relates to religion issues. Both of the issues are incredibly sensitive in the eyes of the Indonesian population at large, easily classifying this meme as hoax nes. This meme was blocked by the government on the basis of the ITE Law and Electoral Law.

Flourish of hoax and Indonesian Political Culture

Through his legal system concept, Friedman (1975; 1-4) identifies three components in order, they are legal substance (regulations), legal structure (bureaucratic institution and law

enforcers), and legal culture.¹¹ source of

These three components may sometimes be the

problems, as well as the solution. Embracing this concept, the imperishable issue of hoaxes can be addressed by the inexplicit and unstrict law, the omission of disseminator by officers (police and judges), and the political culture of the people. Political culture can be the main factor that enables hoaxes to repeatedly flourish in each election cycle.

Our governance structure is oriented as a *patron-client* relationship. It can be described as the unequal relationship between a *patron* (a leader or government) and the *clients* (followers or people). In this culture, as Budiatri (2018; 29) said, *patron* is a person or people that have a higher socioeconomic status in society and use their influence to protect their community and its interests. In contrast, the *clients* are people that have lower socioeconomic status that can give a promotion and attendance to their *patron*.¹² In this case, clients have an imbalance in political education and knowledge with their patron. This political orientation can greatly govern political culture. This analysis was also supported by the civic culture concept of Gabriel Almond and Sidney Verba. Almond and Verba (1989; 16) believe that variation in political orientation produces three types of political culture: (1) Parochial Political Culture, (2) Subject Political Culture and (3) Participant Political Culture. These three types of political culture are categorized within four aspects: (1) system, (2) input, (3) output and (4) active participant.¹³ The characteristic of this civic culture can be shown on this table:

Table 1.
Types of Political Culture

	System as general object	Input object	Output object	Self as active participant
Parochial	0	0	0	0
Subject	1	0	1	0
Participant	1	1	1	1

¹¹ Lawrence M. Friedman (1975) *The Legal System: A Social Science Perspective*, New York: Russel Sage Foundation.

¹² Aisah Putri Budiatri (2018) *Personalisasi Partai Politik di Indonesia Pasca Reformasi*, Jakarta: Pustaka Obor.

Based on the table above (Table 1), in *parochial political culture*, people cannot be oriented towards a differentiated political system. The people in this culture are inclined to be passive and apathetic within the political system. It contrasts with subject political culture, which makes people more active within political systems, especially regarding political output. But, this *subject political culture* still does not have an input orientation for this system. As a result, the public cannot be active participants. In the *participant political culture*, people can easily be responsible for a differentiated political system, having both output and input orientation, and also being active participants. Active participants are characterized by enthusiasm to follow and guard the political process completely.

Indonesian people are still trapped in parochial and subject political culture. They still play their role as *clients* with minimum knowledge about political system or its history, rules, enforcement, or even their perceptions of themselves as a member of the political system. They cannot be more selective about the input object that can impact the political process. As a result, hoaxes and hate speech can easily flourish in society with parochial and subjective character. In addition, the culture of *patron-clients* enables society as a followers to be affected and persuaded easily through negative campaigns and black campaign that are handled by influential people (*patrons*).

¹³ Gabriel Almond and Sidney Verba (1989) *The Civic Culture, Political Attitudes and Democracy in five nations*, California: Sage Publication

Conclusion

As a phenomenon in the era of digital democracy, the propagation of hoax memes must be understood in postmodern corridors and frames. Digital democracy lives through individual use of online media and internet, but uncontrolled digital democracy will undermine the quality of democracy itself. At this stage the community is not only obligated to manifest democracy through elections, but also to carry out elections with democratic campaigns. Awakening minds to minimize meme hoaxes and stop their spread without relying fully upon authorities, is the responsibility of the community. Still, implementing law enforcement that is fair and strict towards perpetrators of hoaxes (makers and spreaders) is a big responsibility of the government. In campaigning, it is permissible to carry out negative campaigns only to convey negative sides of opponents; however, the use of hoaxes and memes for black campaign purposes are not allowed. It can be concluded that regulations alone will not be able to resolve the hugely inflamed hoax problem in Indonesian society. Therefore, consistency from legal structures is required to enforce the law in ensnaring hoaxes and black campaigns, as well as a strong legal culture and political culture among the people to prevent and infiltrate hoax news. Political memes inciting conflict through important issues of religion, culture, and race must be fought with strong political culture and a stronger sense of unity throughout the diverse Indonesian society

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Slogans as A Way of Marketing on The Presidential Election and Its Correlation to Fake News (A Perspective from Intellectual Property Rights)

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Abstract

The presidential candidates use slogans to express and reflect their candidates' character, ideas, work programs and point of view. Presidential candidates campaign team use slogans as a media to convey the candidates' philosophy, purposes and to promote their image and personal branding. It got to the point, where a slogan, is only a catch phrase to promote and to make a good branding. It is only a group of words, after all. It does not have any power such as an Act or a Treaty. A slogan did not come with the responsibility to make the candidate's work plan and programs worked and to be done, at the end. Moreover, when this condition happened, a slogan is only a tool to manipulate the voters to vote for the presidential candidates. And when the work plans and work programs did not work and have not done yet, it is the citizen that will get the biggest disadvantages. This paper analyses how a slogan could be a way of marketing on presidential election, especially in Indonesia from Intellectual Property perspective and its correlation to fake news. To meet this analysis, the paper firstly overviews the definition of trademark and its regulation in Indonesia. Secondly, it looks at the legal provisions that connects trade marks and fake news. As a result, the paper shows that because of fake news, many voters could made wrong decision which will establish the fate of a nation for five years in the future.

Keywords: Slogan, Marketing, Election, Trade marks, Fake News.

Introduction

Advertising, according to the experts, is a cornerstone of the success of a company. A good advertising will ensure the passage of a successful business. Currently, advertising is a powerful method on promoting a product. Advertising has the important role for a successful business, because what does it mean when a product that was created so perfectly and had a great quality but not marketed very well that the product is still not recognized by many people.

In today's world of mass communication and increased competition, advertising is constantly meeting new challenges. It becomes more and more sophisticated. But this is not only in the sense of developing new techniques to draw

consumer's attention to a particular product. The public awareness and sensitivity to social problems and human rights issues enormously influence business strategies. Businesses are more sensitive to social and human rights issues. Complying with good commercial standards and human rights has obtained an important commercial dimension. More and more often the producers will not try to attract us to a particular product but to the company itself. They sell us an image. Due to all these reasons, advertisements brake existing standards and go beyond definitions that legal systems used to ascribe to them.

In the midst of rapid technological development, we could say that the development of information technology is one of the fastest growing in almost every country, particularly with the development of internet-speed and social media. The circulation of information nowadays could be done with only one-click-away and takes less than a minute to disseminate throughout the world.

Nonetheless, not all the news that circulating is good news which contains correct information, unfortunately there is bad news which contains false information, as well. Generally, the bad news that contains false information known as hoax or fake news. Hoax or fake news usually made to form a particular opinion, to make people do something or to spread misleading information. This could be a challenge for the government which is that should also be amplified by international connectivity of social media users.

During the election period, the circulating of fake news is increasing, especially the ones that circulate through social media. The type of fake news that circulate around the election period are usually about the candidates involved in the election. The news usually contains misleading information aim to take down another candidate by spreading misleading information about their rival, and the other side the candidates made up a good personal branding for their own advantages to gain respect and sympathy from the voters.

The development of the current market conditions of presidential election have had an impact on the strategy which had to be implemented by the campaign team to

build a good personal branding of their candidate. As time goes by, the voters are more strictly in selecting which candidate they will give their vote for through the information that has been available which circulate on the television, the press or in the internet. Therefore, campaign team should be wisely smart in choosing the right method to build a good personal branding of the candidates. Otherwise, if the campaign team choose a wrong method of promoting their candidate, it would be a boomerang to their candidate, and they will lose some of the voters, in result. This is not what a candidate wishes to happen, especially when they already choose the right people from their political party to be joined their campaign team.

The marketing methods on presidential election that usually used by the candidate's campaign team are slogan or tagline, poster, internet meme and jingle. These kinds of marketing and promoting methods using catchphrases, graphic drawing, photos even music, therefore it falls under intellectual property rights, under trademark, to be exact.

Definitions of Slogan

Evyne Grover (Evyne Grover, 1991) stated that:

“Commentators define the term “slogan” as a group of words or a catch phrase used mainly in advertising and promotion. Manufacturers or their advertising agencies design a slogan to coax consumers to purchase goods. A trademark, by comparison, is a name or symbol used to identify and distinguish goods and to indicate the source of the goods. Since advertising slogans are not intentionally created to function as trade marks, manufacturers or their advertising agencies have inherent difficulty getting trademark protection for slogans.”¹

Then, Chris Newton gave (Chris Newton, 2019) another definition of slogans:

“An advertising slogan is a catchy phrase or series of words used to help consumers remember a company, brand or product. Companies create slogans to use in various

¹ The Trademark Protection of Advertising Slogans: A Modern Perspective by Evyne Grover
<http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1009&context=iplj>

marketing efforts in hopes that the phrases will stick in people's minds. That way, when a consumer needs a product or service offered by a variety of companies, that consumer will choose the product or service that is top-of-mind from slogan recognition.”²

Another definition of slogan by Sudeep Chatterjee and Jaya Mandelia (Sudeep Chatterjee and Jaya Mandelia, 2004) stated that:

“Slogans and taglines are considered to be essential parts of a brand’s identity and contributors to a brand’s equity. Apart from creating brand awareness, slogans also promote brand differentiation in the consumer’s mind. In today’s media-saturated environment, in which consumers are viewing and hearing hundreds, if not thousands, of advertisements every day, advertising slogans and taglines are becoming an increasingly important element of a brand’s advertising strategy as they aid in creating a brand’s recognition and recall.”³

Moreover, Sudeep Chatterjee and Jaya Mandelia on the same journal as mentioned above stated that:

“The Oxford English Dictionary defines a slogan as “a short, memorable phrase used in advertising or associated with a political party or group”. It is usually a combination of words that aims to describe the attributes or advantages of the specific product it is used to advertise. Popular slogans/taglines create an immediate and exclusive association with the specific product they are used to advertise.”⁴

Definition of Trademark

According to World Intellectual Property Organization (WIPO) website, it gives an insight about trademark which is:

“A trade mark provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services, or to authorize another to use it in return

² Chris Newton, Demand Media, <http://smallbusiness.chron.com/slogan-advertising-mean-21024.html>

³ Slogans as protected trade marks by Sudeep Chatterjee and Jaya Mandelia, 2014, <http://www.worldipreview.com/article/slogans-as-protected-trade-marks>.

⁴ Ibid.

*for payment. The period of protection varies, but a trade mark can be renewed indefinitely beyond the time limit on payment of additional fees. Trade mark protection is enforced by the courts, which in most systems have the authority to block trade mark infringement.”*⁵

Moreover, WIPO stated that:

*“In a larger sense, trade marks promote initiative and enterprise worldwide by rewarding the owners of trade marks with recognition and financial profit. Trade mark protection also hinders the efforts of unfair competitors, such as counterfeiters, to use similar distinctive signs to market inferior or different products or services. The system enables people with skill and enterprise to produce and market goods and services in the fairest possible conditions, thereby facilitating international trade.”*⁶

Likewise, Annette Kur and Thomas Dreier (Annette Kur and Thomas Dreier, 2013) stated that:

*“It is undisputed that trade marks occupy a special place within the spectrum of Intellectual Property. Unlike inventions or original works, distinctive signs are not considered to be achievements that are worthy of protection as such; the ground for protection rather lies in their capacity to convey information enabling consumers to make informed choices. This in turn provides an incentive for entrepreneurs to invest in the quality of goods and service offered, and to develop a larger variety of commodities so as to comply with the preferences of specific target groups. For those reasons, the conflict between the exclusive right and free competition is less acute in trade mark law than in other areas of IP: rather than restraining competition, trade marks are an enabling tool without which meaningful competition would hardly be possible.”*⁷

“However, the positive picture needs to be qualified in several regards. First, economic reality will only function as indicated if the acquisition of trade marks remains competition-neutral, in the sense that appropriation of the mark as such does

⁵ http://www.wipo.int/trade_marks/en/about_trade_marks.html

⁶ Ibid

⁷ European Intellectual Property Law – Text, Cases & Materials, Annette Kur & Thomas Dreier, Edward Elgar Publishing, 2013, page 157.

*not confer on its holder a competitive advantage from which others are excluded. It complies indeed with conventional wisdom that the trade marks are in infinite supply, so that new market entrants are not hindered from choosing a suitable sign for themselves. However, while that assumption is based on long-standing experience with traditional forms of signs which were included into the catalogue of protectable marks in more recent times, such as colours per se or the shape of products. Where such signs are only available in limited stock, their protection entails (more or less aggravating) obstacles for competition, to which the law must respond.”*⁸

Still from Annette Kur and Thomas Dreier (Annette Kur and Thomas Dreier, 2013) they define that:

*“It is common knowledge that trade marks can be much more than just tools for conveying information about the origin of goods and services. Supported by sophisticated marketing efforts, marks can turn into much coveted symbols of lifestyle, prestige or attitude. Once a mark has attained that force of attraction, it becomes a business asset whose value is basically independent from the goods and services for which it is, or was originally, used. Trade mark law has adapted to these developments by offering protection, under certain conditions, for the value of marks as such against abuse or detriment.”*⁹

In addition, (Franfurter, J., in *Mishawaka Rubber & Woolen Mfg. Co. v. S. S. Kresge. Co*, 1945) said that:

“The protection of trade marks is the law’s recognition of the psychological function of symbols. If it is true that we live by symbols, it is no less true that we purchase goods by them. A trademark is a merchandising short-cut which induces a purchaser to select what we want, or what he has been led to believe he wants. The owner of a mark exploits this human propensity by making every effort to impregnate the atmosphere of the market with the drawing power of a congenial symbol. Whatever the means employed, the end is the same – to convey through the mark, in the minds of potential customers, the desirability of the commodity upon which it appears. Once this is attained, the trade mark owner has something of value. If another poaches

⁸ Ibid, page 157-158

⁹ Ibid, page 158

upon the commercial magnetism of the symbol he has created, the owner can obtain legal redress.”¹⁰

Another perspective stated by Annette Kur and Thomas Dreier (Annette Kur & Thomas Dreier, 2013):

“From the perspective of competition and consumer policy, the phenomenon is not without risks. Due to their capacity to symbolise and communicate extra-objective qualities such as status or lifestyle, the psychological dimension of trade marks and hence their market power can be enormous. This may impair market transparency and can lead to high entry barriers, as well as, in their wake, to high consumer prices. Although that is a psycho-sociological phenomenon rather than resulting from legal dispositions, such considerations tend to support a critical view of those elements of trade mark law by which protection is extended beyond the core aspect of indicating origin, without completely denying the appropriateness of protecting the specific ‘aura’ of trade marks against deterioration or misappropriation. In particular, care must be taken to avoid that the communication channel provided by trade marks is fully ‘monopolised’ in the sense that it is foreclosed for competitors or other market actors who want to convey messages of commercial relevance, such as comparative advertisement, or otherwise engage in activities covered by the right to free speech.”

11

The Importance of Slogan on Presidential Campaign

Slogan or tagline playing the most important role on the presidential campaign. It quite helpful to draw people’s attention to vote for the presidential candidates. Slogan or tagline usually represent candidates’ value and point of view. Based on this idea, presidential candidates campaign team vying to create the most iconic and catchy slogans or taglines. It also happened in Indonesia’s presidential election 2019.

Indonesia held the presidential and legislative elections on April 17th, 2019. The campaign for both elections started from around the 4th quarter of 2018. There are

¹⁰ 316 U.S. 203, 205 (1942). Short titles to be used in this article are : BORDEN, for N. H. Borden, The Economic Effect of Advertising (1942), Callmann, for Callmann, Law of Unfair Competition and Trade Marks (1945).

¹¹ Ibid, Annette Kur & Thomas Dreier, page 158.

two candidates that will race for presidency in this year's election which is Jokowi-Ma'aruf and Prabowo-Sandi.

Since the time they got the number for presidential election 2019, on September 23rd, 2018, the pair of Jokowi-Ma'aruf was already have their slogan or tagline which is "Advancing Indonesia". On the other hand, Prabowo-Sandi have had change their slogan in the middle of campaign era. At first, the pair uses "Just and Prosperous Indonesia" as their slogan. But on January 15th, 2019, Prabowo-Sandi decided to change their slogan, from "Just and Prosperous Indonesia" to "Indonesia Triumphs".

Prabowo-Sandi campaign team decided to change their slogan because the results of the survey they held, said Andi Arief, Vice General Secretary of Democratic Party, a part of Prabowo-Sandi coalition parties. As they changed their slogan in the middle of the road shows their instability and inconsistency of the pair and it may bring an effect to the voter's choice and to the pair downfall.

As slogans are tools for gaining people's attention, involving creative, financial and commercial investment, choosing the most appropriate method of protection is key. A slogan plays a quite big role to the voter's choice on presidential election, as presidential candidates hope that the voters will associate the slogan with their value, vision and mission. It is quite important to registering the slogan under trademark. It is because a great slogan can be trademarked for use on products (for campaign), such as clothing, mug, etc. Also, to prevent the slogan that has been used by former candidate, copied by another candidate in the future.

In order to be registered as a trademark, the phrase or slogan will have to fulfil the usual criteria for trademark registration, in that it must:

- Be available for registration in your chosen class, i.e. the same or a similar slogan must not have been already registered in your class or jurisdiction for the same or similar group of services;

- Not be too ‘descriptive’: if the trademark is too descriptive of the goods or services or any characteristics of them, then the trademark office will likely object to your mark.
- Be ‘distinctive’: the more distinctive the wording you use, the more likely it will be that your trademark will be awarded protection by the relevant register.

Trademark’s Registering in Indonesia

As written in the website of Directorate General of Intellectual Property Rights–Ministry of Law and Human Rights Republic of Indonesia, it gives a brief description about mark, trademark and service mark, which are:

“Mark is “any signs in the form of drawings, names, words, letters, numerals, colour arrangement or combination thereof that is distinctive and used in the course of trading goods and services; Trademark is any Marks used on the goods being traded by a person or several persons collectively or legal entity to distinguish other similar goods; Service Mark is any Marks used on the services being traded by a person or several persons collectively or legal entity to distinguish other similar services.”¹²

In Indonesia, Trade marks are regulated by the Trademark Act Number 20 of 2016 (formerly the Trademark Act Number 15 of 2001) under the Directorate General of Intellectual Property Rights (DGIP), and according to the Act, the mark (trademark and service mark) is a sign in the form of words, numbers, letters, figures, colors, composition, symbols or a combination of all those used to distinguish the goods or services of one person or legal entity from those of others.

Due to a high rate of intellectual property piracy in Indonesia, it is advisable to registering a trademark, as well as a presidential campaign slogan. As written in an article in Cekindo website (Cekindo, 2015), it stated that:

“You may derive some advantages from registering your trademark, such as:

¹² <http://en.dgip.go.id/pengenalan-merek> on April 13th, 2019.

- *Constitutional priority right as first to file. The person or legal entity who is the first to file the trademark generally has priority to use the registered trademark*
- *Exclusive protection of the product (goods and services) from infringement claims by others in commerce activities*
- *Legal reinforcement of the position of trademark owners in court if there is litigation*
- *As a value added of goods or services in quality and reputation to the public.*”¹³

Then, still from Cekindo websites (Cekindo, 2017), it written that:

“Registering the trademark, you will get some significant advantages as following:

- *The Company enjoys the exclusive protection of goods and services against claims of infringement by other parties.*
- *When the owner of the trademark is in legal battles, the owner can get legal reinforcement in instances.*
- *Based on Trademark Act No 15 of 2001, a person or legal entity who first filed the trademark application will get the priority to use the trademark.*
- *Having a solid and reputable trademark adds value to the products or services. The company can use this trademark to bring their brand closer to their prospects.*”¹⁴

Based on the new Trademark Act the application workflow that has been summarized in Global Business Guide Indonesia (Global Business Guide Indonesia, 2017), as follows:

Application

- *Formality check within 15 working days;*
- *The application needs to be made in writing in the Indonesian language;*
- *Complete name, address and nationality of the applicant;*
- *Description and explanation of the design and colours of the trademark;*
- *Payment of fees to the Directorate General;*
- *Minimum requirements to obtain filling date.*

¹³ Trademark Registration in Indonesia. Cekindo.

<https://www.cekindo.com/group1/trademark-registration-in-indonesia> on April 13th, 2019.

¹⁴ Trademark Registration in Indonesia Simplified. Cekindo.

<https://www.cekindo.com/blog/trademark-registration-indonesia-simplified> on April 13th, 2019.

Substantive Examination

- *If there is no opposition within the publication period, the application will enter an examination stage for 150 working days. The DGIP allows for outsourcing for examinations to experts if necessary. If any opposition occurs, the application will be examined simultaneously;*
- *The substantive examination is conducted by an examiner who is appointed by the Minister of Law and Human Rights;*
- *The substantive examination lasts no longer than 9 (nine) months;*
- *For an application containing elements that can mislead as to the type, quality, intended use of the goods/service, or is already trademark protected; the application is deemed as not registrable;*
- *If the description of the goods/service is not in-line with the quality or efficacy of the goods/service, the application is not registrable.*

Certification

- *If the application passes the examination, the DGIP will issue a certificate of registration and publish the trademark in the official Trademark Gazette;*
- *During the period of publication, any person or legal entity may submit a written objection to the Directorate General;*
- *In the case of a rebuttal of a trademark, a re-examination period of 2 (two) months shall be imposed and an investigation is conducted.*

Law No. 20 of 2016 introduces new forms of trade marks that can be protected under the law. This includes:

- *3-dimensional forms;*
- *Sound;*
- *Holograms.*

International Trademark Registration

Law No. 20 of 2016 provides provisions for the registration of international trade marks. This will provide for international filing based on the Madrid Protocol – an

*international treaty that allows the trademark owner to seek registration in any country that has joined the Madrid Protocol.*¹⁵

For countries that are already members of Madrid Agreement and Protocol, trademark registration will be conducted through a single application to the national or regional intellectual property office. Countries that are not yet members of the Madrid system will register trade marks based on trademark laws.

In brief summary, the Madrid system allows a trademark owner who already has an existing trademark application or registration (known as the 'basic application' or 'basic registration') in a member jurisdiction may obtain an 'international registration' for their trademark from the WIPO. The trademark owner may then extend the protection afforded to the international registration to one or more member jurisdictions, a process known as 'designation'. The Madrid system also provides a protection that may generally be extended to additional jurisdictions at any time, such that international trademark protection can be extended to new jurisdictions which subsequently join Madrid, or to such other jurisdictions as the trademark owner may choose.

In basic terms, the primary advantage of the Madrid system is that it allows a trademark owner to obtain trademark protection in any or all member states by registering one application in one jurisdiction with one set of fees, and make any changes (e.g. changes of name or address) and renew registration across all applicable jurisdictions through a single administrative process.

According to WIPO website, the term of trademark registration may vary, but it is usually 10 (ten) years. It can be renewed indefinitely on payment of additional fees for consecutive 10 (ten) year periods an unlimited number of times. If a trademark is not used for 3 (three) consecutive years, the trademark registration can be cancelled at the request of a third party or on the initiative of the Directorate General of Intellectual Property Rights.

¹⁵ Registering a trademark in Indonesia. Global Business Guide Indonesia. http://www.gbguideindonesia.com/en/main/business_guide/2017/registering_a_trademark_in_indonesia_11737.php on April 13th, 2019.

Moreover, on WIPO website, it defines what kinds of trade marks can be registered, which is:

*“A word or a combination of words, letters, and numerals can perfectly constitute a trademark. But trade marks may also consist of drawings, symbols, three-dimensional features such as the shape and packaging of goods, non-visible signs such as sounds or fragrances, or color shades used as distinguishing features – the possibilities are almost limitless.”*¹⁶

Also, still from WIPO website, it stated what rights does trade marks registration provide, which is:

*“In principle, a trademark registration will confer an exclusive right to the use of the registered trademark. This implies that the trademark can be exclusively used by its owner, or licensed to another party for use in return for payment. Registration provides legal certainty and reinforces the position of the right holder, for example, in case of litigation.”*¹⁷

Trademarking Presidential Candidates’ Slogans

In today’s world of mass communication and increased competition, advertising and marketing on the presidential election are constantly meeting new challenges. It becomes more and more sophisticated. But this is not only in the sense of developing new techniques to draw the voters’ attention to a particular candidate. The public awareness and sensitivity to social problems and human rights issues enormously influence political strategies. Politics are more sensitive to social and human rights issues. Complying with good political standards and human rights has obtained an important political dimension. More and more often the candidate’s campaign team will not try to attract us to a particular candidate but to the political party itself. They sell us an image. Due to all these reasons, advertisements brake existing standards and go beyond definitions that legal systems used to ascribe to them.

¹⁶ Trade marks. https://www.wipo.int/trade_marks/en/ on April 13th, 2019.

¹⁷ Ibid.

In the fierce market of competition, the presidential candidates campaign team tend to promote their purposes and values by adopting unique slogans. Slogan as one of many ways of advertising and market the presidential candidates on election, plays an important role to draw the voter's attention and their vote. The more convincing a slogan could get; the more vote one candidate could get. Slogan could become a symbolic sign of which represent the candidates and thereby attain an intangible value just like trade marks. As written by Jiang Ling on a journal titled *Legal Protection for Advertising Slogan* (Jiang Ling, 2010):

*“Under the existing legislation and its practice, advertising slogans could become the protected object of the trademark law through trademark registration, as long as it is original and could function as source indicators.... In addition, original advertising slogans may also become the protected objects under the copyright law. Yet trademark registration will be the best way of protection among the above, in terms of either its effectiveness or infinity.”*¹⁸

Then, Franck Soutoul and Jean-Philippe Bresson stated on a journal titled *Slogans as Trade marks – European and French Practice*, that:

*“As slogans are tools for gaining market share, involving creative, financial and commercial investment, choosing the most appropriate method of protection is key. Trademark and copyright protection can make a slogan an IP asset, and legislation against unfair competition may be used as a defensive approach. However, each of these means of protection involves a certain risk.”*¹⁹

Moreover, Jiang Ling stated on a journal (Jiang Ling, 2010) as mentioned earlier that:

“The term "works" used and protected under the copyright law refers to original intellectual creations in the literary, artistic and scientific domain, in so far as they are capable of being reproduced in a certain tangible form. As to literal works, it refers to the works manifested in text form, no matter how long it is or what type or

¹⁸ Legal Protection for Advertising Slogan by Jiang Ling, 2010, <http://www.kingandwood.com/article.aspx?id=Legal-Protection-for-Advertising-Slogan&>

¹⁹ Slogans as Trade marks – European and French Practice by Franck Soutoul and Jean-Philippe Bresson http://www.wipo.int/wipo_magazine/en/2010/02/article_0007.html

format of literature it uses. As long as it is original, it should be within the scope of protection by the copyright law. Therefore, it can be concluded that advertising slogans is in principle not excluded from copyright protection on condition that it is original. However, the copyright law does not define what is "original". Judging by the judicial practice, the expression of the original works may not necessarily be unprecedented, and re-creation based on the previous intellectual works of others are not forbidden either. In general, the works shall possess originality as long as it is created by the author independently rather than plagiarizing others' works and bears some personalized characteristics.”²⁰

As written by Vaibhavi Pandey on Mondaq websites (Vaibhavi Pandey, 2014), stated that:

*“Slogans are commonly used in marketing and promotion. Slogans or catch phrases or taglines, composed by words in the form of phrases or sentences, formally possess both the characteristics of both literal works and trade marks. Slogans are used in advertising campaigns to persuade you to buy certain products and services. Therefore, the presidential candidates’ campaign team use slogans as well, in order to promote their candidates.”*²¹

In addition, Upcounsel on their website defines more about how to trademark a slogan and its requirements, which are:

“When you trademark a slogan, you have the exclusive rights to use it to make money. You can defend your slogan from infringement. You can also sue infringers for damages. Many businesses register advertising campaigns as trademarked slogans.

To trademark a slogan, it has to meet one of the following definitions:

- *It's fundamentally creative and distinctive. Think of Nike's "Just Do It"*
- *It has another meaning that immediately calls a product or service to mind.*

This secondary meaning goes beyond the literal meaning. This type of slogan is most common when it's been used in commerce or advertising for at least five consecutive years. Think of Wendy's "Where's the Beef?"

²⁰ Legal Protection for Advertising Slogan by Jiang Ling

²¹ Vaibhavi Pandey, India : An Overview Of Rights Involved With The IP Assets Of Political Parties [http://www.mondaq.com/india/x/325870/Trademark/AN+OVERVIEW+OF on April 13th 2019](http://www.mondaq.com/india/x/325870/Trademark/AN+OVERVIEW+OF+on+April+13th+2019)

Not every slogan can be trademarked. Most applications for the following types of trade marks will not be approved:

- *Common phrases that do not have another meaning. Example: a supermarket's "Why Pay More?"*
- *Informational or entertaining phrases not intended for profit. Example: an environmental group's "Think Green!"*

In addition to a slogan, a trademark can also apply to a:

- *Business name*
- *Phrase*
- *Symbol*
- *Logo*
- *Combination of several elements*

In every case, the trademarked intellectual property must be unique and distinctive.”²²

Trademark and Fake News

Joshua Humprey wrote on the Law Reviews and Journals at Mitchell Hamline Open Access, 2017:

An additional purpose of the trademark system is “protecting the goodwill developed by the trademark holder.” Closely aligned with this is the need to prevent consumer confusion. If a consumer is confused, the consumer can be deceived, therefore resulting in the consumer buying something they did not intend to buy. Trade marks are also the domain of unfair competition laws - the trademark system is intended “to require entities to compete fairly.” That is, while the costs for new entrants in the market is kept low, trademark law is also intended to prevent those new market entrants from “passing off” their goods as if they were the goods of the trademark owner.²³

²² <https://www.upcounsel.com/trademark-a-slogan>, on April 13th, 2019

²³ Humprey, Joshua (2017) "The Plague of Fake News and the Intersection with Trademark," Cybaris®: Vol. 8: Iss. 1, Article 6.

From the article above we could say that fake news has made an unfair competition between the candidates. It made the voters confused and they intend to make decision by choosing the candidate they did not want to choose, at first. From a grand perspective, it could bring the result which will establish the fate of a nation five years in the future.

Fake news linked to the trademark infringement when the fake news itself contains misleading information about one candidate on the presidential election as well as it contains the slogan or catch phrases or taglines, the candidate's photos or the logo which party that affiliated with the candidates.

Conclusion

Slogans are commonly used in marketing and promotion. Slogans or catch phrases or taglines, composed by words in the form of phrases or sentences, formally possess both the characteristics of both literal works and trade marks. Slogans are used in advertising campaigns to persuade you to buy certain products and services. Therefore, the presidential candidates' campaign team use slogans as well, in order to promote their candidates.

The presidential candidates use slogans to express and reflect their candidates' character, ideas, work programs and point of view. Presidential candidates campaign team use slogans as a media to convey the candidates' philosophy, purposes and to promote their image and personal branding. Slogan as a form of advertising campaign could be registered under trademark, as long as it complies with the requirements that the Intellectual Property Office in candidate's country required. Especially here in Indonesia, the trademark registering process should be in accordance with the Trademark Act Number 20 of 2016 under Directorate General of Intellect Property Rights – Ministry of Law and Human Rights Republic of Indonesia.

But, since a slogan only consist of a few words that, it would be difficult to describe the candidate's work plan and their work program in details. Therefore, when

one candidate of the presidential election got elected and won the election then became the president, most of the time there were protesters who protest and ask the chosen candidate to immediately implement their work plan and programs that had been promised first.

It got to the point, where a slogan, is only a catch phrase to promote and to make a good branding. It is only a group of words, after all. It does not have any power such as an Act or a Treaty. A slogan did not come with the responsibility to make the candidate's work plan and programs worked and to be done, at the end. Moreover, when this condition happened, a slogan is only a tool to manipulate the voters to vote for the presidential candidates. And when the work plans and work programs did not work and have not done yet, it is the citizen that will get the biggest disadvantages.

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FactWatch: Towards a Sustainable Model for Fact-Checking in Bangladesh

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Abstract

Although fact-checking initiatives have been functional for more than a decade, very few of them could sustain without external supports. Either they are run by the journalism houses, or received funding from various donors for a limited period of time. In this regard, FactWatch (fact-watch.org), which is the only university-based fact-checking initiative in Bangladesh run by the Media Studies and Journalism Department of University of Liberal Arts Bangladesh (ULAB), has devised a particular model of fact-checking initiative which could grow as an academic project and sustain without external support. Although the FactWatch initiative received a small seed grant from the American Center Dhaka for its initial operation, it has an objective and commitment to become self-sustainable. This paper will discuss how the FactWatch project at ULAB – by effectively using the department’s co-curricular apprenticeship program model – has been functional after the initial funding period is over and has shown commitment of continuation for years to come.

Keywords: Fact-checking; FactWatch; Apprenticeship Program; ULAB

Introduction

One of the systematic responses against fake news is the fact-check industry, which is web-based, and operated within or outside the journalism outlets. Although the earliest of such initiatives can refer back to as early as 2003, but the rise of the global fact-check industry is by and large a phenomenon of the current decade. Bangladesh has joined the caravan only in 2017, and has 3 active fact-checking sites so far. Although fact-checking in Europe has been a feature of more than a decade, this venture is yet to survive as an independent business venture. Either they are run by the journalism houses, or received funding from various donors for a limited period of time. In this regard, FactWatch (fact-watch.org), which is the only university-based fact-checking initiative in Bangladesh run by the Media Studies and Journalism Department of University of Liberal Arts Bangladesh (ULAB), has devised a particular model of fact-checking organization which could grow as an academic project and sustain without external support.

The general objective of this paper is to discuss the standing of Bangladeshi fact-checking sites, and to critically explore the FactWatch model of fact-checking in particular. In what follows, the paper discusses the current status of fact-checking at the global level then explores the standing of Bangladeshi fact-checking sites, before critically reviewing the FactWatch model in terms of examining its viability as a sustainable fact-checking project.

The standard definitions of fact-checking have always been conscious about its political dimension, even when the topic is not strictly political. Uscinski & Butler (2013) define fact-checking as an activity in which “one can compare about politics, policy, society, economics, history and so on—the subject matter of political debate – to ‘the facts’ so as to determine whether a statement about these topics is a lie (Uscinski & Butler, 2013: 163). American Press Institute is even more assertive about the political instrumentality of fact-checking by saying that the objective of fact-checking is to “increase knowledge by re-reporting and researching the purported facts in published/recorded statements made by politicians and anyone whose words impact others’ lives and livelihoods” (Elizabeth 2014). Although most of the definitions are grossly concerned about the political aspects of fact-checking, it would be reductionist as an approach to consider fact-checking solely as a political work. A few scholars endeavor to define fact-checking as an epistemological task. To them, fact-checkers are a species of “practical epistemologists”, who seek to reform and thus to preserve the objectivity norm in American journalism, even as their daily work runs up against the limits of objective factual analysis (Graves, 2012).

One of the most disputed issues around fact-checking is probably its definition of fact in hard sense. Several critics argue that fact has not always been something “out there” in tangible terms, rather it is embedded in contexts and having dimensions which the act of fact-checking cannot simply recognize. Uscinski and Butler (2013) argue that fact-checkers’ use of “binary terms” to understand the fact is adequate because it reduces the world between fact and lie (Uscinsky & Butler, 2013: 162). However, this is also a partial criticism of fact-checking because most of the fact-checking sites are using “meters” instead of stamping something simply as “true” or “false”. PolitiFact uses a six-category meter between absolute “true” and “false”. The contextual dimensions of any fact or incident therefore can effectively be understood and

presented by the six-point meter. Some fact-checkers do not give ratings, rather underline the disputed text and leave the matter to the readers.

As an industry, fact-checking has just stepped into the second decade. In 2016, there were 34 fact-checking initiatives operated in 20 European countries (Graves & Cheruvini, 2016). But the more contemporary tally by Duke Reporters Lab says that the number of fact-checkers surges to more than 188 in more than 60 countries (Poynter, 2019). The actual statistics would even be higher than this estimation, as many of the fact-checkers are seasonal and becomes active during elections.

Among all the fact-checking initiatives operating worldwide, Graves (2016) divides them into two fairly overlapped categories, such as (1) The Newsroom Model and (2) The NGO Model. Individual fact-checkers are identified as *reporters, reformers and independent experts* (Graves 2016). The Newsroom model of fact-checking is an initiative undertaken by major Western newspapers, such as the *Guadian*, *Washington Post*, *Channel 4 News* and so on, where the job of fact-checking gets a tremendous natural advantage in terms of (a) the resources and (b) the circulation and outreach. But, as Graves (2016) points it out, most of the fact-checking organizations work outside the newsroom and operate in a framework which he terms as the NGO Model. This model typically employs reporters for the fact-checking job, but take its funding largely from organizations those are working towards strengthening democratic institutions. PolitiFact, FullFact, AfricaCheck, VoxCheck are examples of major fact-checkers of this type.

Graves (2016) recognizes the academic endeavor in the fact-checking business, but categorizes it with the NGO model. Some fact-checkers have loose and informal ties with academia, while a few have more formal connections. Australia-based *The Conversation*, US based *Fact-check.org* are instances where fact-checking is undertaken by the universities within its formal structure (Graves 2016). Self-identification of fact-checkers is more interesting in this regard. In their study, Graves (2016) has the findings where most of the fact-checkers *strongly* identifies themselves as journalists (73%), as activists (40%), as policy experts (40%), as academics (30%) and as technologists (20%), where the categories are not mutually exclusive

(Graves, 2016). It can clearly show the growing significance of academic grounding in the fact-checking endeavor.

However, economic sustainability of an independent fact-checking unit is still a question as none of the models could work as a profiteering business venture. Extension of donor-funding works for some, while crowd-funding is still a myth as none claims that they are operating solely or mostly on crowd-funding. In this regard, while we thought of forming a fact-checking center which would be based in a university, we were concerned of its sustainability and had to provide a continuation plan to the donor. Before putting a detailed account on it, I will now briefly discuss about the methodology of the present paper which will follow and overview of the fact-checking initiatives operating in Bangladesh.

Methodology

The core part of the paper has been constituted through a literature review and content analysis of a purposively selected web documents. Namely, three fact-checking sites and their Facebook pages have been selected for content analysis, of which the present author is the main responsible person for one such site. Netnography (Kozinets, 2002) has been employed to observe the social media pages of these sites. As Kozinets (2002) defines it, netnography is a combination of Internet and ethnography to study fan behavior and mobility on a certain issue (Kozinets, 2002). The definitive distinction of netnography from ethnography, which is also the advantage this study has taken advantage of, is that the fan-content can be studied retroactively in the netnographic method. Hence, scrolling back social media pages of these fact-checking sites have enriched this paper with important insights. Along with, face-to-face in-depth interviews and online chats were used to collect data from the operators of two other fact-checking services. To learn about the effectiveness of FactWatch as a co-curricular program, participant observation at the University of Liberal Arts Bangladesh was used for a period of one year.

Fact-checking in Bangladesh

Bangladesh joined the caravan of fact-checking very lately, by the end of 2017. Until now, there are at least three dedicated initiatives, along with a few other attempts which are no longer active. FactWatch (fact-watch.org) was officially launched on 5 June 2018, has been one of the three active fact-checking sites in Bangladesh. This is initiated by the department of Media Studies and Journalism of University of Liberal Arts Bangladesh and funded by The American Center Dhaka for its one-year operation. Before its official inauguration, FactWatch started its activities on November 2017 and developed its website in the third month of its operation. As a matter of fact, FactWatch is one of the very few fact-checking initiatives in the world even run by a university. The main objective behind such initiative was to bring journalism back to academia in order to nourish its research potential under the venture of fact-checking. The present article is an ethnographic and critical exploration of the operation of a fact-checking site by a university, and in a country that has been battling for democracy and freedom of speech.

At the time of launching of FactWatch, there were two other fact-checking sites in Bangladesh, namely, Bdfactcheck and *Jachai*. Of them, Bdfactcheck is an initiative of a few journalists which partially runs a Newsroom Model. At least a few of their fact-checking content managed to get wider circulation. However, Bdfactcheck seemed not to have put any serious thought in the presentation and formation of their content, therefore none of their reports was presented in an orthodox fact-checking format. Rather they prefer the traditional investigative journalism style in their presentations.

Jaachai, another fact-checking website from Bangladesh, follows an NGO Model and appears to be well-informed about the functions of contemporary fact-check business. They focus more on activism and responsible behavior towards online sharing. Until now, they have the largest following among all the fact-checking sites in Bangladesh. As a matter of fact, *Jaachai* comes out of the orthodox journalistic model of fact-checking and adopts a research-based reporting instead. Along with, the activism of *Jaachai* has another curious demonstration: at the bottom of every reporting content, this site put options where the readers can pick up and share the “right news”, or stop spreading “fake news”, provided they did it

earlier. *Jaachai* also produces a number of posts on the processes of identifying fake news and rumors in social media.

Except BDFactcheck, the rest of the Bangladeshi sites follow a wider rating system to verify a fact. FactWatch uses the Politifact-introduced 6-points rating where the indicators are “true”, “false”, “mostly true”, “mostly false” “half-true” and “unverified”. The definitions of these terms are quite self-explanatory, and FactWatch has been consistent with the Politifact definitions in their stamping.¹ *Jaachai* uses almost the same parameters, and found some Bengali equivalent of these words. However, BDFactcheck has a binary true/false parameter and is still not introducing any rating system other than this.

As said, FactWatch has started with a seed-funding from the American Center, Dhaka, for its one-year operation during 2017-18. The funding was awarded by the annual grant program of the American Center, and was monitored by them on a regular basis. However, BDFactcheck, as they mention in the website, does not accept funding from a particular organization, rather runs their activities with a crowd-funding from their readers and followers. This sounds like a tall claim on their behalf. However, the operational cost of this site is extremely minimal, as they do not have any dedicated office. They also have a strong reservation against getting a fund from a particular organization which, they believe, might have a vested interest in funding and therefore may interfere in the process of objective fact-checking. *Jaachai* does not have any disclosure on its funding procedure, other than briefly mentioning that this is a privately-funded initiative.

Different patterns can be seen in terms of maintaining the transparency of the fact-checking sites of Bangladesh. BDFactcheck does not have any institutional affiliation, but its administrators are affiliated with academic institutions and reputed news websites. FactWatch is directly affiliated with a reputed university, and employed a few journalists from mainstream newspapers. In addition, they were also held accountable to the funding authority for at least the funding period. *Jaachai* appears to be less transparent, as none of their operators can be

¹ For detail, please see

<https://www.politifact.com/truth-o-meter/article/2018/feb/12/principles-truth-o-meter-politifacts-methodology-i/#Truth-O-Meter%20ratings>

identified in public. They have been in favor of concealing their identifications because they believe in this way they can avoid any repressive measure against them (FB communication). However, this creates a kind of uneasiness among the followers of *Jaachai* as they find none of the fact-finding outputs can be defended by this concealed organization.

As discussed before, sustainability is a global problem with all the fact-checking organizations. All the fact-checking sites of the world, with probably no exceptions, are dependent either on external resources or on their parent organizations for their operation and maintenance. Fact-checking sites related to newspapers are maintained by the news agency, whereas the independent houses seek grants from a handful of donors who work on the effective functioning of democracy and electoral politics. Traditionally, the funding is provided for a limited time-span, and often with a condition that the initiative would be financially sustainable within the funding period. However, it has not happened until now to most of the funded sites, if not entirely. And most of the agencies remain willing to further funding to them, considering the urgency of fact-checking.

Bangladesh is no exception in this regard. None of the fact-checking sites have viable means of financial sustainability. Except FactWatch, none of the fact-checking sites sought for funding from a particular donor. Rather, they consider it to be detrimental to the fact-checking business, as the funding would make them biased towards a particular point of view. Instead, BDfactcheck opts for a crowd funding and gets a little from online adverts. *Jaachai* has been running on personal finance from an undisclosed group or individual. It, too gets adverts from Google AdSense. BDfactcheck does not have a dedicated office and staff. It is basically an initiative of two friends who volunteer for the site. *Jaachai*, assumably, does the same, although the concealed *modus operandi* of *Jaachai* does not provide us with enough room to confirm it.

As we see, none of the two sites have provided ample evidences of their sustainability, both in terms of financial and operational. The last post we saw in *Jaachai* was on September 2018. BDfactcheck is even more inactive in comparison, although they have a recent post on their site which was posted just in April 2019. But this was done after a long break and the site again went into hibernation after that posting.

The FactWatch model

As Graves (2016) categorizes fact-checking initiatives into two broad models, academic initiatives go mostly, but not entirely, with the NGO model. There have been a couple of academic initiatives for fact-checking, such as the factcheck.org, which has been hosted by the Annenberg School of Public Policy, University of Pennsylvania. FactWatch, which is an initiative of the department of Media Studies and Journalism of University of Liberal Arts Bangladesh, partially followed this model. The FactWatch team comprised teachers and students of the journalism, along with two journalists from outside. But FactWatch soon differentiated itself from the practiced academic model and added a few things which might be proved worth for the sustainability of a fact-checking initiative which are solely dependent on external fund.

Until 2010, Factcheck.org depended on three sources for their funding: Annenberg Public Policy Center Foundation, The Annenberg Foundation, and the Flora Family Foundation. Since 2010, it made a public appeal for donation, with a reservation of getting support from unions, partisan organizations and advocacy groups (Factcheck.org). However, factcheck.org receives a good amount of money from Facebook, since Facebook gets the service of factcheck.org in debunking the fake news. The individual donors provided only a little portion of their annual expenditure; hence this initiative remains largely dependent on the endowment fund created by the Annenberg family.

In comparison, FactWatch started with a small support from the American Center, Dhaka, for its one-year operation. This fund covered the initial set up cost and salaries of the project personnel, two editors and a web administrator, who were recruited for the project. One of the project objectives was its continuation after the funding period which we committed even without having a detailed plan on it. Vaguely, we thought we would incorporate this project into our pedagogical procedure, but no roadmap was sorted out during its inception. So, when the funding period was ended, we started seeking out ways to continue this project. The department of Media Studies and Journalism of ULAB has been following a particular pedagogical style which helped us in this pursuit. The next part of the essay will elaborate on this.

The department of Media Studies and Journalism of ULAB has been following a particular apprenticeship program model since 2009. The objective of this non-credit apprenticeship program is to provide hands-on knowledge on different media tools. As described in the department's web page:

By definition, an apprentice is a person who learns the skills of a specific craft or trade by receiving hands-on training from someone who is already an expert. By working with an expert in the field, the apprentice will learn the necessary techniques and theoretical knowledge to work independently in the future. The apprenticeship programme covers the fields of film, photography, journalism (print, electronic and online), public relations and animation.
[<https://sss.ulab.edu.bd/msj/apprenticeship-programs/>]

Hence the department runs a campus-based newspaper, a campus-based cable television, a public relations club, and a campus radio etc. where separate executive bodies are formed from the students to run the program for a semester. Students have been very enthusiastic about the co-curricular programs despite the fact that these are non-credit programs. But the department made a simple trick by allowing students working with these programs an exposure in a public event where the guardians and friends of students can experience the output of the programs. At the same time, performances in those co-curricular are allowed to make entries in students' portfolio, which essentially make their portfolios much impressive. This formation works really well for ULAB students who eventually find co-curricular programs exciting and rewarding as well. The instructors are paid from the department budget, and the advisors, chosen from the full-time teaching faculty, work with clubs as part of their extra-teaching commitment. This particular model puts minimum financial and logistic pressure to the university to run the co-curricular program, but can create enough incentive among students.

As the funding period of FactWatch approached to the end, the department decided to adopt FactWatch as one of its co-curricular. In this regard, several workshops were organized to

introduce the program to the students and to groom students with fact-checking tools. The department assigned a few teaching staff to get further trainings on data journalism, rumorology and infography. One of them was provided the key role to run the program as the facilitator with active participation of students. Over the time of six months, by dint of several workshops and sessions, at least 10-12 students grew expertise and commitment about fact-checking, and they were recruited in the executive body of the program. Like all other co-curricular programs in the department, this is also a non-payable executive committee where students work for one or two semesters and then are replaced by the new ones.

The faculty who works as the instructor of FactWatch has been exempted from one teaching load, whereas the two student editors, who have relatively greater responsibility in the program, have been provided regular TA allowances from the department. As said, others involved with this program are not paid, but receiving academic rewards based on their performances. In this way it puts minimal financial pressure to the department and runs on a reward-based co-curricular model at the university level.

Concluding observations

As we observed, the apprenticeship program model of the department of Media Studies and Journalism of ULAB has become very effective for FactWatch after its funding period. When two other fact checking sites of Bangladesh become irregular, invisible and almost a friends-and-family venture, FactWatch still breathes with its full potential. This model allows a regular flow of volunteers from students who run the site, create fact-checking content, and make the Facebook page of FactWatch vibrant. At the same time, this model allows a breathing space between the forms of mainstream journalism and fact-checking. Along with, students and prospective volunteers of this project could prepare themselves by attending workshops and seminars organized by the FactWatch team throughout the year.

However, this model also restricts FactWatch from certain privileges. Since no regular journalists are on board, the newsroom somewhat lacks professionalism and promptness of a

regular newsroom. This becomes evident during political turmoil when plenty of fake news items float around the social media. More investigations are required with more evidences, in order to produce a fact-checking content which may influence a greater body of public during politically instable situations. At that times, the university cannot rely on student projects or on apprentices as this might seriously damage its reputation if the fact-checking is not properly done. Even the faculty advisors cannot overcome their hesitations when they find the fact-checking content might go against the government or the bureaucracy who appear to be much intolerant during turmoil.

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Understanding of Fake News by University Students in Dhaka City

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Abstract

This paper takes a holistic look into fake news and its understanding by the university students' population in Dhaka, Bangladesh. With 3G mobile internet having reached masses in all corners of Bangladesh in recent years, there has been a rise in the spread of propaganda through the production of fake news by various medias and political spin-doctors. The usage of Facebook has been key in spreading fake news very fast in Bangladesh. This paper is an empirical research and it first looks at the general definition of fake news and then attempts to find the definition of fake news as is understood by young voters in Dhaka city, by studying their general understanding of fake news. Focus groups discussions were conducted and students were divided into separate groups of public and private university and non-journalism students and journalism students. Our research adds value through thematic analysis of what is understood by fake news in Dhaka city, primarily by young voters.

Keywords: Fake news, social media, propaganda, agenda

An empirical research into the understanding of fake news by young voters in Dhaka city

Fake news is nothing new. It has only recently gained momentum due to the advent of technology making information sharing easier. It has drawn attention in a political context lately and it is drawing great attention by mass people. Notable media such as First Draft and Facebook favor the term false news because of the use of fake news as a political weapon (Lazar et al., 2018).

During the first World War, journalistic norms of objectivity and balance emerged as a strong negative reaction among journalists against the widespread use of propaganda and twentieth century technologies of print and broadcast media sustained these norms. Trust in the mass media fell apart in 2016 on the political right in the United States of America (Lazar et al., 2018).

Fake news as a phenomenon has however grown across the globe owing largely to the advent of technology, especially in lower-income and lower-middle income societies where internet penetration has been on the rise and inexpensive cellular devices such as smartphones and tablets have enabled the people within those societies to be exposed to social media platforms such as Facebook and Twitter where the intensity of fake news is great.

One country where fake news has been on the rise, especially when it comes to politics, more so during the time of election, is Bangladesh – a small country with over one hundred and sixty-one million people, making it the eighth largest population in the world (census.gov, June 2019). Dhaka, the capital of the country is where the most influential people live and usually where all major political decisions are made. The big city dwellers are thus the most vocal in terms of political criticism and the reason why we have decided to conduct our study in Dhaka city.

Through the course of this paper, we will attempt to find the definition of fake news as it is perceived by the young first-time voters in Dhaka, Bangladesh by studying their understanding of fake news.

Literature Review

Fake news is complex and multidimensional. There are some debate surrounding fake news, especially on what constitutes as fake news, how it is perceived, its influence and what to do about it. One of the most pressing questions that alter the understanding of fake news is the moment in which an individual perceives a news to be fake (how much inaccuracy is too much inaccuracy?). It is inherent that there is some falsehood included in fake news, but how much is need to be considered fake news: 20 percent false and 80 percent true or 45 percent false and 55 percent true? This characteristic or component is yet to be clearly defined. Fake news could be seen as a two-dimensional phenomenon of public communication. Where fake news is broken down as fake news genre, and fake news label. Fake news genre is described as “the deliberate creation of pseudo journalistic disinformation” and fake news label is described as “the political instrumentalization of the term to delegitimize news media” (Egelhofer and Lecheler, 2019).

According to Egelhofer and Lecheler (2019), there are 3 components which determine whether news falls into the fake news genre. These three components are referred to as the three pillars of fake news. These pillars consist of low in facticity, journalistic format, and intention to deceive. To understand what falls under the fake news genre, we need to explore these three pillars and its implications. Low in facticity means that the message in fake news can be partially true or not true at all. Fake news is not only the spread of false information, but the mimicking the format of “real news”. The authors of the article argue that fake news is presented in journalistic format, meaning that fake news follows a similar structure (headline, lead, etc.) to that of real news. By presenting information in this manner, at first glance the information in a fake news piece may appear to be credible. There is usually some intention behind a piece of literature. It could be the intent to inform, provoke, to entertain, etc. In the case of fake news, the intent is to deceive.

The definition of fake news varies depending on who one asks. However, these definitions do have some key points which are present in each of these definitions. Sometimes however, there is a lack of clarification of the criteria of what constitutes as fake news, which causes a major problem in how fake news is understood and consumed through Facebook in Bangladesh as neither Facebook nor the government of Bangladesh provide a clear-cut definition of fake news; still, they do list what the punishments are for pushing or posting fake news and their action plans against fake news. In the Community Standards, Facebook acknowledges that fake news or as they call it ‘false news’, is a “challenging and sensitive issue”, and that there is “a fine line between false news and satire or opinion.”. However, fake news/false news has not been defined in the Community Standards. The Community Standards does however list what actions Facebook will take to reduce the spread of fake news/false news. According to Facebook Community Standards, fake news is not removed instead, they take the following actions to deter and stop the spread of fake news:

- Disrupting economic incentives for people, Pages, and domains that propagate misinformation
- Using various signals, including feedback from our community, to inform a machine learning model that predicts which stories may be false

- Reducing the distribution of content rated as false by independent third-party fact-checkers
- Empowering people to decide for themselves what to read, trust, and share by informing them with more context and promoting news literacy
- Collaborating with academics and other organizations to help solve this challenging issue

As for the government of Bangladesh, when it comes to the definition of fake news, there is no clear definition. Although punishments and action plans are stated in the Digital Security Act 2018 under Chapter Six, Crime and Punishment, Section 25, Publishing, sending of offensive, false or fear inducing data-information, etc., states that:

- (1) If any person in any website or through any digital medium-
 - a. Intentionally or knowingly sends such information which is offensive or fear inducing, or which despite knowing it as false is sent, published or propagated with the intention to annoy, insult, humiliate or denigrate a person or
 - b. Publishes or propagates or assists in publishing or propagating any information with the intention of tarnishing the image of the nation or spread confusion or despite knowing it as false, publishes or propagates or assists in publishing or propagates information in its full or in a distorted form for the same intentions, then the activity of that person will be an offense under the Act.
- (2) If any person commits any offense mentioned within sub section (1), the person will be penalized with imprisonment for a term not exceeding 3 (three) years or fine not exceeding 3 (three) lacs taka or with both.
- (3) If any person commits the offense mentioned in sub-section (1) for the second time or recurrently commits it then, he will be punished with imprisonment for a term not exceeding 5 (five) years or with fine not exceeding 10 (ten) lacs taka or with both

Bangladesh

It is important to understand the impact of fake news in the context of Bangladesh. The environment of Bangladesh has changed drastically over time. Bangladesh has made many

strides and has reached lower middle-income status (data.worldbank.org, 2019). Bangladesh has a goal of becoming a more technologically advanced country by 2021 and it looks like it is on its way to accomplishing that goal. Bangladesh has seen growth in “internet connectivity, mobile phone usage, IT export earnings and use of ICT in education and accessibility of public services, driven by widespread digitization in the public and private sectors and policy support (Islam, 2018)”.

This increase in active internet connectivity has been documented by the Bangladesh Telecommunication Regulatory Commission. This regulatory commission records subscription/subscribers to internet as well the operator such as mobile internet, worldwide interoperability for microwave access (WiMAX), and internet service provider (ISP) and public switched telephone network (PSTN). In March 2013, there were 31,801.345 thousand internet subscribers and in March 2019 there was a total of 93.102 million internet subscribers (Btrc.gov.bd, 2019). Out of the 93.102 million internet subscription, 87.310 million was through mobile internet.

In terms of social media usage, it is hard to take account of the exact number of active social media users in Bangladesh at any given time. In an article titled, “Dhaka ranked second in number of active Facebook users” published by Bangladesh’s largest news provider, bdnews24.com, in April of 2017, Dhaka had 22 million active Facebook users alone and countrywide there were 26 million social media users in 2017. bdnews24.com collected this data from DataReportal – Global Digital Insights, a website where global overviews, local insights and special reports and data on digital media can be obtained. Following bdnews24.com, we were able to get data that they obtained from DataReportal on the year 2019. This data was on the social media usage, internet usage, demographic information and other information about Bangladesh. In 2019, there were 34 million active social media users and 33 million active Facebook users (DataReportal – Global Digital Insights, 2019). Based on that data alone, it is evident that Facebook is the most used social media network in the country compared to all other social media platforms.

While many may see this as advancement, which in a sense it truly is, this data also highlights a problem for Bangladesh. There are more people with access to the internet and

social media now than there was even five years ago. With the introduction of fake news on social media platforms, an environment exists where fake news reaches people at a rapid pace. Although policing the internet and social media to stop this from happening has begun, and laws have been put in place to discourage the spread of fake news, it still remains a daunting tasking to undertake for the government of the country.

During the 2018 election fake news gained attention through media in Bangladesh. Headlines like “Fake news hit Bangladeshi news site before polls” began to appear. Fake news ran rampant on Facebook pages and websites. These pages and sites mimicked the appearance of legitimate news outlets. Fortunately, there were organizations who took many of them down as was the case on December 20 when Facebook shut down pages for “engaging in coordinated inauthentic behavior” (The Daily Star, 2018). This coordinated inauthentic behavior was spreading false information. The reach of these pages was not large by Facebook's standards, but one of such pages had 11,900 followers (The Daily Star, 2018). There has also been the cloning of major news sites, such as the Bangla Tribune, Prothom Alo and BBC Bangla (Alam et al., 2018). These cloned news sites had some slight alterations made to the name of sites. These cloned news sites have been involved with the spread of fake news and because of this, fake news presents such a problem because people believe that the information presented in fake news sites is real and share the information with others. Unfortunately, it is relatively simple to make sites like these (Alam et al., 2018).

With this scenario playing out in Bangladesh, many questions arise such as, what do people think about fake news and how do they define it? The focus of the study is predominantly to find out what the young voters in Dhaka think it means. We examined young voters' perception and definition of fake news, their attitude towards fake news and the impact fake news has on them and society.

Theoretical Context

Many people have had their own interaction with fake news. Whether it was by reading it, sharing it, reacting to it or discussing about it. Fake news has become something that everyone

experiences every so often. Encounters with fake news seems to occur more during the election time in Bangladesh since it has the ability to sway opinions and decisions.

It is recognized that understanding generally includes a process of interpretation. This process takes place when we give meaning to the world around us, then we act according to these meanings. These meanings are made through the process of social interactions and may change “through an interpretive process that involves self-reflective individuals symbolically interacting with one another” (Fortner and Fackler, 2014). We then develop “worlds of experience” based on interaction, which are meaningful to us. The meaning of these “world of experience” develops through a process of self-reflection (Fortner and Fackler, 2014). This self-reflection is brought to their situations, influences their interaction and future interactions. This means the symbolic interaction is the “merger of self and social interaction” (Willis, Jost and Nilakanta, 2007) and it is through this that people are able to form social acts. These social or joint acts are constantly being formed, broken down, combined or collided with one another to form our “social life of human society” (Willis et al., 2007). Essentially, interaction is based on interpretation or how we interpret the world around us. This process of interpretation is ongoing and complex. It is also the root assumption made by symbolic interactionism (Fortner and Fackler, 2014).

Symbolic interactionism is a micro level theory that is used to understand a phenomenon. This theory emerged from “the concern of language and meaning” (Giddens and Griffiths, 2006). George Herbert Mead had a great influence on this sociological theory. Mead believed that it was through language, that we “become aware of our individuality and are able to see how others view us” (Giddens and Griffiths, 2006). The term symbol is important to this process and is used to represent something else. A symbol can be in the form of a word, gesture, or object. Mead believed that we live in a “rich symbolic universe” where people “rely on shared symbols and understanding in their interactions with one another” (Giddens and Griffiths, 2006). This means that symbols are defined by contexts such as cultural context. One symbol might mean one thing in one culture and that same symbol may mean another thing in another culture. Over time the meaning of these symbols may change or evolve and new symbols may be developed. It is through our interactions with the world around us, that we reinforce, or reevaluate our understanding of our world.

Methodology

For this study we employed interpretive phenomenological analysis, which is a contemporary qualitative approach. In general, this approach is used to understand our subjects' or participants' perspective of an experience, object or event (Miller, Chan and Farmer, 2018; Pietkiewicz and Smith, 2014). In our case, we wanted to examine how fake news is experienced by the university students (young first-time voters) and how their understanding of fake news derived from the experiences. Everyone experiences the same phenomenon differently, thus develop slightly different definitions of that phenomenon which is unique to that individual due their experience. However, these definitions do have some similarities or overlaps. The students who have taken part in our study had an encounter or multiple encounters of fake news or political fake news that have influenced their understanding of the definition of fake news through their experiences.

By employing interpretive phenomenological analysis, the collection of data is richer. We had forty students for our study. Data was collected through four focus group discussions. These four focus groups discussion consisted of ten young voters in each group. Since we define young voter as a person between the ages of eighteen to twenty-five, we focused on university students. The students were gathered through snowball sampling because we needed students who had encountered fake news before and who were also first-time voters. These groups were mainly comprised of students from both private and public universities. All the students were in their second to fourth year of studies.

The reason we had separated journalism and non-journalism students were mainly because of the knowledge that each group generally possesses about fake news as journalism students, even on a fundamental level, have a better understanding of fake news and yellow journalism which in a way is closely aligned to modern fake news.

The reason we had separated private university and public university students were because of the way the educational system in Bangladesh has traditionally operated. To understand our reasoning, a little bit of the history must be discussed.

Public universities are universities that are government owned whereas private universities are those owned by private entities. The Public University Ordinance of 1973 setup the guidelines on how a public university should operate, however, because the government had

deemed public universities as not adequate to meet the ever increasing demand of higher education of the 21st century, they had enacted the Private University Act, 1992 (amended in 1998) to establish private universities in the country. Currently, there are 49 UGC approved registered public universities in the country of which 45 are functioning and 103 UGC approved registered private universities in the country that are functioning (old.ugc.gov.bd, 2019).

Additionally, in 1973, the government's Ministry of Education commissioned the University Grants Commission (UGC), "the oversight apex body for all public and private universities, as the intermediary between the Government and the universities for regulating the affairs of the universities." The Higher Education Quality Enhancement Project (HEQEP) under the UGC ensures that quality and relevance, enrollment, research, strategic capacity and financing of all universities are met (heqep-ugc.gov.bd, 2019).

That said, public universities are attended by students from all socio-economic background as the tuition fee is low, quality of education is good, on-campus housing is available, they are generally reputed, have large campuses and has the capacity to hold substantially large number of courses every semester, offering doctorate degrees and government funding for research. Their drawbacks are that teachers usually do not have counselling hours, semesters are generally plagued with session jams (unscheduled closure due to student politics and political unrest), political unrest, irregularity of teachers to take classes and governing issues. Public university students are believed to have better awareness of the life of the general population of the country.

Private universities are attended by students who are usually from the middle-income strata of society, the education quality ranges from good to superior, general facilities for students are better there is no session jams, in case of any social unrest, make-up classes are usually conducted so no class sessions are lost, they have qualified teachers who have counseling hours and career counselling is always available. The drawbacks of these universities are the high tuition fee, unavailability of courses every semester and lack of ability to offer of doctorate degrees, lack of government funding for research. Private university students are perceived to have less awareness of the life of the general population of the country who exist outside of their middle-income society.

Moving on to our methodology, private university student groups were labelled as 1A for journalism students and 1B for non-journalism students and public university student groups were labelled as 2A for journalism students and 2B for non-journalism students.

Focus group 1A consisted of students from Green University, Independent University, Bangladesh, State University Bangladesh and the University of Liberal Arts Bangladesh. Focus group 2A consisted of students from Dhaka University, Jagannath University and Jahangirnagar University. Focus group 1B consisted of students from Green University, North South University, and the University of Liberal Arts Bangladesh. Focus group 2B consisted of students from Jagannath University, Jahangirnagar University and Dhaka University.

By choosing students from different fields of studies, we wanted to see if there were any difference in definition and what factors they look at when making their decision. We also wanted to see if understanding varied between public and private university students.

These focus group discussions were conducted with one moderator for each session in an open environment conducive of discussion, with no notetaking and only audio recording with consent under the agreement that students' identities remain anonymous. Each discussion ran between an hour and a half to two hours and they were conducted over a period of two weeks. Our findings are presented in detail below.

Findings

When transcribing the focus group discussions, there were many words and phrases which kept reappearing. We developed codes for these recurring words and phrases. These words and phrases are grouped into different categories, namely audience manipulation, impact, personal effects, political gain, poor journalism, headline, source, and content. Themes created from these categories are definition, experience, and factors.

Keywords	Categories	Theme
Agenda, appearance, catchy headline, clickbait headline and content disconnection, doctored,	Audience Manipulation	Definition

doubtable content, exaggerated, fear, hyped up, intention, made-up, misinformation, misrepresentation, misunderstanding, wrong paraphrasing, purpose of fake news, untrustworthy source, false information	Political Gain Poor Journalism	
Confusion, creating division, conflict, doubt, embarrassment, emotional, family, fear, identity, misrepresentation, psychology, rumor, safety, social movement, unrest, voting	Personal effect Impact	Experience
About important personalities, appearance, catchy headline, doctored, doubtable content, headline and content disconnection, hyped up, misleading, wrong paraphrasing, purpose of fake news, religion, untrustworthy source	Headline Content Source	Factors

1. What do you understand by fake news fake news?

FGD 1A: Private University Journalism Students

Their understanding: Fake news is something that takes on the appearance of real news to deceive people into thinking it is real. It contains false or doubtable information/content which is used to further an agenda. It has a catchy headline and is sometimes used as clickbait.

Key words: Agenda, attention, appearance, catchy headline, clickbait, doctored, false information

FGD 2A: Public University Journalism Students

Their understanding: Fake news is intentionally fabricated news which can be exaggerated with the purpose of drawing people's attention. It reports wrong information to the audience.

Key words: Attention, clickbait, exaggerated, made-up, wrong information

FGD 1B: Private University Non-Journalism Students

Their understanding: Fake news is something that is made-up to divert attention or persuade people to change their opinion on something. This is done by manipulating or twisting facts. A fact can be misconstrued and exaggerated intentionally to create a clickbait. It can cause fear and panic. There can be a disconnect between the content and headline.

Key words: Agenda, attention, clickbait, headline and content disconnection, doctored, exaggerated, hyped up, misrepresentation, opinion, false information

FGD 2B: Public University Non-Journalism Students

Their understanding: Fake news is news that is misunderstood and misrepresented. It is hyped up. It is used for diverting attention or furthering an agenda. It is intentionally created to create fear among people.

Key words: Agenda, attention, clickbait, fear, hyped up, misrepresentation, misunderstood

General Understanding

Fake news is something that is fabricated and made to deceive, to further an agenda and/or to divert people's attention away from something.

2. What factors do you think defines fake news?

FGD 1A: Private University Journalism Students

Their understanding: Fake news is defined by catchy headline, contains edited picture or edited information, it has misquotation and wrong paraphrasing, can have manipulated content, does not have verifiable sources or information comes from a doubtful source and the most important factor is the source.

Key words: Catchy headline, doctored, wrong paraphrasing, untrustworthy source

FGD 2A: Public University Journalism Students

Their understanding: Fake news is defined by catchy headline, there is a disconnect between the headline and the content, it does not have proper quotations, the goal is to create rumors, the writing style is improper and the information comes from untrustworthy sources.

Key words: Appearance, headline and content disconnection, wrong paraphrasing, rumors, untrustworthy source

FGD 1B: Private University Non-Journalism Students

Their understanding: Fake news is defined by its flashiness, sudden hype, comes from non-credible sources, they are heavily opinionated, have misleading headline, misleading content and contains aggressive language.

Key words: Appearance, Hype up, Misleading, Opinion, untrustworthy source

FGD 2B: Public University Non-Journalism Students

Their understanding: Fake news is defined by news that contains doubtful information from untrustworthy source, the information is misleading and attacks personalities with past issue that were resolved.

Key words: Deals with important personalities, doubtful content, misleading, support, untrustworthy source

General Understanding

They look at the content, headline, and source. For them, source was one of the biggest factors that defines if a news is fake or not. If something comes from an untrustworthy source, then it is highly likely to be fake news.

3. Your understanding of fake news, is it through your own experience or did your family, friends, or other media play a part in influencing it?

FGD 1A: Private University Journalism Students

Their understanding: Experience through mistakes made in the past, verification by peers and family and lastly, by understanding sources on social media.

Key words: Family, friends, peers, self-learned through experience (experience by themselves, but for one it was through reading), social media, other media

FGD 2A: Public University Journalism Students

Their understanding: Half of the students gained their understanding through their own experience, and the other half gained their understanding by themselves through the help

of media. These students went out to do find out information about fake news through the use of media.

Key words: Self-learned through experience, self-learned through media, social media

FGD 1B: Private University Non-Journalism Students

Their understanding: This group gained its understanding of fake news from a variety of sources. Some of them reported that they gained their understanding through their community, family, friends, media, self-learned through experience, from teachers and by comparative assessment.

Key words: Community, media, experience, self-learned through experience, self-identified and verified by family and friends

FGD 2B: Public University Non-Journalism Students

Their understanding: Their understanding of fake news was gained through experience, self-learned through media, meaning they went in search of information about fake news on their own through the use of media. Some of them said they gained their understanding of fake news through social media.

Key words: Self-learned through experience, self-learned through media, social media

General Understanding

The majority of the students reported that their understanding of fake news was influenced by their experiences or they themselves went in search of information about fake news. They consulted with family, friends, peers or community to further develop their understanding of fake news.

4. How do you think fake news has an impact on your personal life?

FGD 1A: Private University Journalism Students

Their understanding: For many of them, it caused them to not go out during social movements because fake news led them to believe that there would be great turmoil. It has caused them to get into agreements with family members. Six of them were not sure whether to go to vote or not because they were told that their votes had already been cast.

Key words: Creating division, family, social movement, social movements, safety, voting

FGD 2A: Public University Journalism Students

Their understanding: For them, fake news has caused them to feel confusion, doubt, and fear in many situations. For some, it causes embarrassment because they often shared fake news without realizing that it was fake. It caused panic, chaos and divide within the community the live in.

Key words: Confusion, creating division/conflict, doubt, embarrassment, fear, unrest

FGD 1B: Private University Non-Journalism Students

Their understanding: For them, fake news has hurt them emotionally, financially, and psychologically. It has even affected their relationships due to difference in opinion.

Key words: Creating division, conflict, family, social movement, voting

FGD 2B: Public University Non-Journalism Students

Their understanding: For them, it impacted them primarily in three ways. They were worried about their safety during the social movements they were a part of. They were worried about their safety and having a legitimate vote during the student elections at their universities.

Key words: Fear, social movement, voting

General understanding

Interaction with fake news has impacted the students emotionally and mentally and has caused conflict or disagreements with others (friends, family members) to occur. They said they feared for their safety and others during social movements due to the spread of misinformation and fake news through social media.

5. What do you understand by political fake news?

FGD 1A: Private University Journalism Students

Their understanding: Political fake news is something that has an agenda. This agenda could be to spread misinformation to gain support or spread fear. It can sway votes and effect voter turnout. It is thereby done as a propaganda and often contains doctored information.

Key words: Agenda, fear, doctored, power, propaganda, support, voting

FGD 2A: Public University Journalism Students

Their understanding: Political fake news is something involving lying about the opposition or faking a greater image to gain support. It involves creating false labels for others in order to win.

Key words: Image control, support, false labeling

FGD 1B: Private University Non-Journalism Students

Their understanding: Political fake news is something that has an agenda to further. It is usually done to push back or intentionally to distract people from a pressing issue or matter. It occurs during political campaigns to gain votes. It attacks the opposition through propaganda.

Key words: Agenda, power, propaganda. Political campaigns, voting

FGD 2B: Public University Non-Journalism Students

Their understanding: Political fake news is something that spreads misinformation against the opposition. It is based on an agenda. It spreads fear during voting time and comes from untrustworthy sources. It is usually spread through word of mouth. It can be done to make a positive person to be seen as a negative person and a negative person to be seen as a positive person.

Key words: Agenda, fear, image control, misinformation, untrustworthy source, voting

General Understanding

Political fake news is something that has an agenda attached to it. It mostly occurs during voting time. It is used to spread fear and propaganda as well as trying to control how someone's image is presented to the mass people.

Summary of Overall Understanding of Fake News by the Students

When it comes to the definition of fake news intent is very important. It is something that came across all four focus discussion groups. The students see fake news as having the intent to deceive, or mislead people on purpose. However, sometimes they would attribute the label of fake news to things that would be considered as poor journalism. Any information provided wrongly due to unintentional misunderstanding would be labeled as fake news by them.

Their understanding of fake news is primarily developed from their experience and not influence of educational background. Non-journalism students however mentioned that fake news was usually more hyped up and is a recurring theme of fake news whereas journalism students mentioned it as a factor but not something that was recurring. Another point to note was that naturally, journalism students understood terminologies better whereas non-journalism students sometimes failed to distinguish difference between terms that they were using during the discussions.

The distinction made by the university students between fake news and political fake news is fear, image control, and power, meaning that they believe political fake news is used to create fear, to control how a leader, party or a personality is seen and it is used to silence others or push back on something important, such as policy.

Conclusion and Recommendations

In conclusion, as Egelhofer and Lecheler (2019) had stated the 3 determinant components of fake news to be low in facticity, journalistic format and intention to deceive, the students understanding of the fake news has been observed to be overall the same. They divulged more specifics into each category which helped bring out the only lacking in their understanding to be their confusion between fake news and poor journalism. The findings also reveal that the perceived dichotomy that is supposed to exist between students of private universities and public universities is blurred when it comes to their understanding on the issue of fake news and this is mainly due to their experience with fake news, which in the context of Dhaka, has generally been the same and it has affected the students equally.

This research was a preliminary fact-finding study that observed to understand the meaning of fake news by university students in Dhaka, Bangladesh. This serves as a platform for further research through our findings of the recurring keywords, categories and themes which can lead to more inclusive qualitative and even quantitative questionnaire formulation for a larger research to be undertaken for finding out the understanding of fake news by the higher education student population of Bangladesh.

Having a better understanding of how fake news is conceptualized will help in future studies, policy making and addressing this topic in the future. One of the key observations made during our research is how the higher education student population's participation in understanding fake news and its impact on our society is discounted. This generation is the population who has grown up with social media's introduction and growth in the country throughout the 2010s. Their inclusion in understanding and policy making is critical. It is important that our study be taken forward with a mixed method approach on a grander scale since it can help the government and the mainstream media to have a concrete definition of fake news in Bangladesh which when published would help the general population understand fake news much better; it is this understanding which in turn will help slow down the spread of fake news in Bangladesh.

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Special thanks to Muhammad Aminuzzaman, Senior Lecturer, Department of Media Studies and Journalism for his help in conducting the focus group discussions.

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Data Journalism in Combating Misinformation During Bangladesh National Election 2018

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Abstract

We are living in an age of “datafication”. With the advancement of Information and Communication Technologies (ICT), all aspects of human life, interactions and productions are going through rapid changes and often being redefined; the field of journalism is not an exception to this. Few recent phenomena like proliferation of falsehood and/or misinformation during the US Presidential Election 2016 and Bangladesh National Election 2018 have set an alarm to the news organizations around the globe about the value of data driven story-telling. This, on one hand, provides the readers opportunities to make informed decisions, and allows the journalists to present the facts in a more accurate, credible, attractive and engaging way on the other. The practice of data journalism is not a very old phenomenon globally; the same applies to the academic discussions regarding this. In developing countries like Bangladesh, it’s even a newer concept. To be more precise, practice of data journalism is still nascent in the country, and little has been explored regarding its dynamics from an academic point of view. As such, this paper explores the followings: (1) Use of data by Bangladeshi dailies in terms of statistics and/or infographics in covering National Election 2018; (2) The role data journalism played in combating spread of misinformation during the said event. The study is an exploratory and descriptive in design. To conduct the study, a mixed method approach has been adopted. Data have been gathered through quantitative and qualitative content analysis of news content published during the election (15 days before and after the elections day) in two most widely reached dailies (Prothom Alo, a Bangla daily and The Daily Star, an English daily). Alongside, two in-depth interviews of journalists having experience of covering the elections have been conducted. The quantitative data were analysed using SPSS and the qualitative data were dealt through thematic analysis and discourse analysis.

Keywords: Data Journalism, Misinformation, Fake News, Elections, Bangladesh

1. Introduction

We are living in an age of “datafication” (Arsenault, 2017; Lycett, 2013). With the advancement of Information and Communication Technologies (ICTs), all aspects of human life, interactions and productions are going through massive and rapid changes and often being redefined; data is being used to describe almost everything in the world we are living today (Bounegru, Chambers

and Gray, 2012), and the field of journalism is not an exception to this (Loosen, 2018; Baack, 2015). ICTs intervention has transformed the profession by digitalizing the work process (Veglis, 2009) which lead to the emergence of new genres of journalism, for example, multimedia journalism (Bull 2010), mobile journalism (Martyn, 2009), data journalism (Bounegru, Chambers and Gray, 2012; Felle, Mair and Radcliffe, 2015) and computational journalism (Diakopoulos, 2011; Gynnild, 2014; Hamilton and Turner, 2009). All these have added new dimensions to journalism and require the newsmen specialized ICT skills to practice these. In last several years, as more information has been added to digital databases, use of quantitative data in journalism kept increasing which Petre (2013) noted as “a quantitative turn” of journalism.

In recent years, data journalism attracted a lot of attention both in the digital news production sector and academic discussions (Appelgren and Nygren, 2014; Bradshaw, 2011a; Bradshaw 2011b; Fink and Anderson, 2015; Mair and Keeble 2014). Data journalism has basically developed in last one decade or so driven by abundance of digital data triggered by the rapid development of ICTs since early 1990s. This is a specialized area that reflects the rapidly increasing stake of statistical data in today’s digital world in production and distribution of information (Thibodeaux, 2011). Data journalism has been widely considered as the “future of journalism (Knight, 2015). And, the future, noted by William Gibson as the “post-industrial future of journalism,” is already here (cited in Andersen, Bell and Shirky, n.d.).

As an academic discipline, data journalism is still developing globally; it is relatively less explored as far as academic research is concerned. In Bangladesh even the practice of data journalism is quite nascent. The top-ranked media outlets are doing data-driven stories for last few years; however, it’s still not a common practice to see among journalists or media outlets as Islam (2018) noted, “Data journalism is still uncommon in Bangladesh, so is computational journalistic field in the country. Data journalism is at an early stage. Bangladeshi media occasionally, now more frequently, does stories based on data.” This work focusing on analysing the practice of data journalism during Bangladesh National Election 2018 would be one of the very firsts of its kind. The study focuses on achieving the following objectives:

1. To investigate the use of data by Bangladeshi dailies in terms of statistics and/or infographics in covering National Election 2018; and
2. To understand the role data journalism played in combating spread of misinformation during the said event.

The research questions may be phrased as below:

1. What are formal characteristics of data-driven stories on Bangladesh National Election 2018 published in Bangladeshi dailies?
2. In what manners visualisations are employed as a graphical representation of data?
3. To what extent do data sources shape stories?
4. What are forms and contents of data-driven stories
5. What role such data-driven stories played in combating misinformation during the said event?

2. Definition and Emergence of Data Journalism

Though only recently the term “data journalism” attracted attention globally and it is more of a 21st century construction, the concept is not new; Parasie and Dagiral (2013) noted that data journalism has been in practice since the beginning of the digitalization and US newspapers have been utilizing digital data in news production since late 1960s. However, there is even earlier example of data journalism. Bounegru, Chambers and Gray (2012) stated mentioning Simon Rogers that the earliest example of data journalism is a Guardian report in 1821 which was concerned the number of students who attended school and the costs per school in Manchester. According to Knight (2015 cited in Veglis and Bratsas, 2017b), the term data journalism is attributed to Twitter’s first data editor Simon Rogers who mentioned this first in a Guardian Insider Blog post. However, according to Howard (2014), Rogers (2012) mentioned Adrian Holovaty’s name from whom he heard the term first which Harst (2014) confirmed referring to Ingram (2009).

Lorenz (2010) views data journalism as a process that begins with analysing and continues by filtering and visualizing data in a form that links to a narrative. Knight (2015) defined it as “a story whose primary source or “peg” is numeric (rather than anecdotal), or a

story which contains a substantial element of data or visualisation”. Rogers (2008) noted that it combines spreadsheets, graphics data analysis and the biggest news stories. Deuze (2001), looking at the interactive nature of online journalism as an added value, sees opening of new possibilities of users-content interaction in data journalism when done online. Veglis and Bratsas (2017a), addressing the power of visualisation and interactivity, presented data journalism as:

“...the process of extracting useful information from data, writing articles based on the information and embedding visualisations (interacting in some cases) in the articles that help readers to understand the significant of the story or allow them to pinpoint data that relate to them.”

Bounegru, Chambers and Gray (2012) have rightly put that data can be used both as the source and tool that can be used for story-telling. Digitization of data and rapid advancement in ICTs, especially interactive web and web-based data analysis and visualisation tools, contributed to the emergence and growth of data journalism. Parasied and Dagiral (2012) noted that using large amounts of data for writing an article was a difficult task for journalists even at the end of last century for it requires specialize skills which were beyond the capabilities of average journalists (which is still the reality for countries like Bangladesh as mentioned by Islam (2018) in his article “Making Sense of Data Journalism from Bangladesh Perspective”. Some of the major media/news organizations in the USA and UK hired programmers for this job. Back then, journalists used to rely on information given by governments, officials, research studies, etc. Exceptionally, some investigative reports were produced wherein journalists could manage on their own to find resources to gather and analyse their own data. However, with the growing amount of digital data and introduction of smart tools which anyone could use for analysing and visualizing and publishing huge amount of data the scenario rapidly changed (Bradshaw and Rohumaa, 2011; Sirkkunen, 2011).

3. Types of Data Journalism Projects

Multiple taxonomies of data journalism have been suggested by different academicians and professionals. Veglis and Bratsas (2017b) presented a table (shown as table 1 below) that includes three such taxonomies created using different parameters:

Table 1. Types of data journalism projects/stories proposed by different professionals/academics (from: Veglis and Bratsas, 2017b)

Simon Rogers	Marth Kang	Martin Rosenbaum
by just the facts data-based	narrate change over time start big	Measurement
news stories	and drill down	Proportion
local data telling stories	start small and zoom out	Internal comparison
analysis and background		
deep dive investigations	highlight contrasts	external comparisons
	explore the intersection	change over time
	dissect the factors	league tables analysis by
	profile the outliers	categories association

Veglis and Bratsas (2017b) noted in this regard that visualisations supplement the narrative in most of the data journalism stories. However, “in some cases the visualisation is constructed in such a manner so as to include the narrative of the news story. Thus, the visualisation becomes the centre of the data journalism story and the text (which is usually quite limited) supplements or explains the visualisation”- they added. Alberto Cairo refers this as structuring the info-graphics as a story (Bradshaw et al., 2015). Based on their analysis of the previous taxonomies Veglis and Bratsas (2017b) proposed a new taxonomy which addresses both static and interactive data journalism projects. Figure 1 below presents the graphical view of the taxonomy:



Figure 1. Taxonomy proposed by Veglis and Bratsas (2017b)

4. Methodology

The study is descriptive, using a mixed method (quantitative and qualitative) design. It consists of a content analysis and in-depth interviews. Two most widely reached dailies in Bangladesh, the Prothom Alo (Bangla) and The Daily Star (English) have been selected. The Daily Star tops the circulation list of English Dailies with a circulation of 44,814 (DFP, 2018). The Prothom Alo (05,01,800) comes second after the Bangladesh Pratidin (5,53,300) in the circulation list (DFP, 2018). However, it reaches a wider Bangladeshi community through its two online platforms (e-paper and news portal). Issues of the two abovementioned dailies published between December 15, 2018 and January 14, 2019 (from 15 days before to 15 days after the election; election held on December 30, 2018) were analysed. For ease of access, e-paper (online version with the exact same view of print version) of the two selected dailies (<https://epaper.prothomalo.com/> and <http://epaper.thedailystar.net>) were used for content analysis. A coding sheet was developed and used for this purpose that followed the framework below which has been developed based on the taxonomy shown in Figure 1:

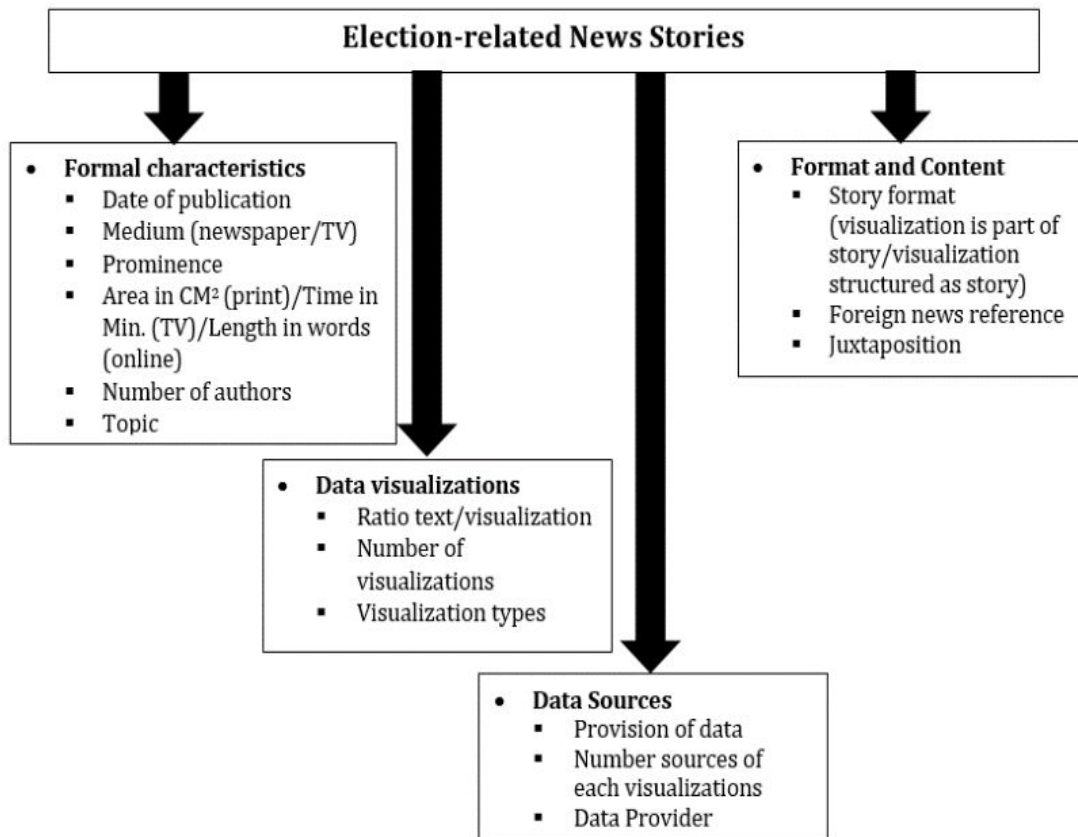


Figure 2. Conceptual framework adopted from Stalph (2017) and Veglis & Bratsas (2017b)

Both the authors participated in the content analysis; hence, before start coding, they ensured inter-coder reliability of 90 percent using the following formula suggested by Holsti (1969: 138-141): $C.R = \frac{2M}{N1+N2}$ where “M is the number of coding decisions on which the two coders are in agreement, and N1 and N2 refer to the number of coding decisions made by coder 1 and 2, respectively” (p. 140). SPSS was used for analysing the quantitative data gathered from content analysis.

Two journalists working in the selected dailies were purposively selected for in-depth interviews following two criteria- (1) must have experience of at least 10 years’ active journalism; (2) must have covered national election 2018, and (3) must have experience of doing data-driven stories. The interviews were conducted face to face using a semi-structured interview schedule which were recorded using digital audio recorder and smart phone (as a back-up).

Afterwards, those were transcribed in a summarized form. A third person went through the transcriptions to ensure consistency.

5. Findings and Discussion

5.1 Attention and prominence given to Election Stories

In general, political news get good coverage in Bangladeshi media be it print, broadcast or online. Election news get even better treatment. During the recently held National Election 2018, election news in two major dailies, the Prothom Alo and The Daily Star received good treatment as usual. However, coverage of election in terms of number of news items published, Prothom Alo was far ahead. During the study period, 958 out of 3606 news items (26.6%) in the Prothom Alo was related to election which is over one-fourth (26.6%) of the total news. On the other hand, 9.6% of 3417 news items published in The Daily Star was related to election. However, though use of data was not that significant in terms of number of data-driven stories published, The daily Star was a bit ahead of the Prothom Alo in this regard. Only about 3% (29 out of 958) of election stories in the Prothom Alo was data-driven while this rate was 6% (19 out of 298) in Daily Star.

5.2 Formal Characteristics of data-driven election stories

In this section formal characteristics of the election stories used data have been discussed that include date, prominence, number of authors and topic of election stories those used data.

5.2.1 Frequency and prominence of data-driven election stories

Figure 3 below presents the frequency of data-driven election stories before and after the election:

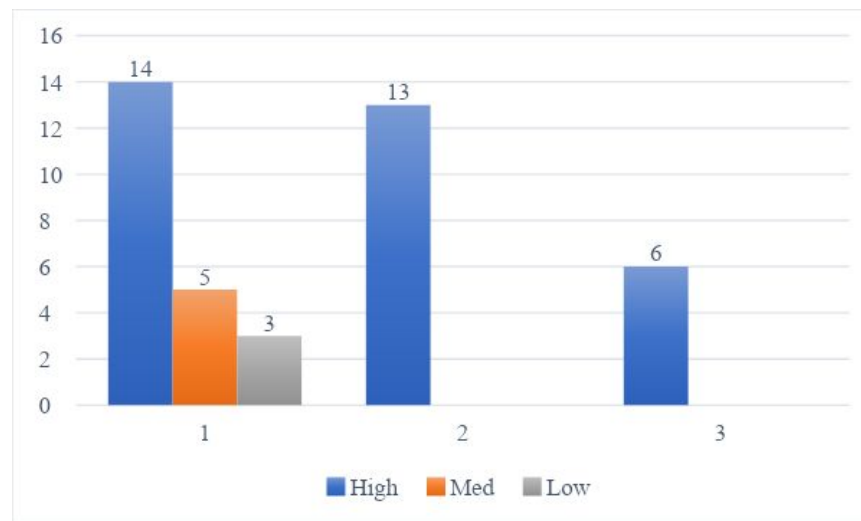


Figure 3. Frequency of Data-driven Election Stories and Prominence given to those

It can be seen from Figure 3 that use of data in election stories, in terms of number of stories produced, was not that significant. Only 48 election stories were found in two dailies analysed. It's only 3.82% of total number of election stories published during the study period. Also, it can be gleaned that the Prothom Alo used data in more stories than The Daily Star. However, the low number of data-driven stories during the election is probably a reflection of the status of organizational readiness in Bangladeshi media outlets. Both the journalists interviewed in the study informed that there isn't any dedicated desk for data journalism in their outlets nor there is any comprehensive arrangement for training to make the reporters equip with the skills. Those who are using data need to do everything by themselves including learning how to do it, practically the only help they get is from graphic designers who make visualisation part publicizable (Interview: Quarmal and Islam, 2019).

It can also be seen gleaned from the table above that Bangladeshi dailies treated data-driven election stories with high prominence given that 83% (40 out of 48) of the data-driven election stories published during the study period was tread with high prominence. The Daily Star made it even more significant by putting all their stories in high prominence area.

These stories were given such good treatment because usually the readers have interest in election stories and (probably) the visuals make them more suitable for such treatment.

5.2.2 Number Author(s) in Data-driven Election Stories

As can be seen in Figure 4 below, more than half (56%) the data driven election stories published in Prothom and The Daily Star were not by-lines; those were published with “Staff Reporter” or “Staff Correspondent” as the author. Among the by-lines, only about one-third (38%) were collaborative project which is a mere 16% of total data-driven election stories. This is probably a reflection of lack of strategic vision about seeing data as primary source or “peg” (Knight, 2015). Responses from the interviews regarding availability/access to data supports this assumption as well. One of the interviewees said:

“access to data is sometimes difficult (even practically impossible) to get, however, generally Right to Information Act helps in getting data from government entities though sometimes the process is too lengthy, and we try to get the data from alternative sources in such cases. Also, a lot of publicly available data are out-dated and some are not well-structured and ‘realistic’. Still, there are a lot of publicly available data which can be source of good investigative reports. But, most of the journalists are not even aware of it let alone knowing how to use the data” (Interview: Quarmal and Islam, 2019).

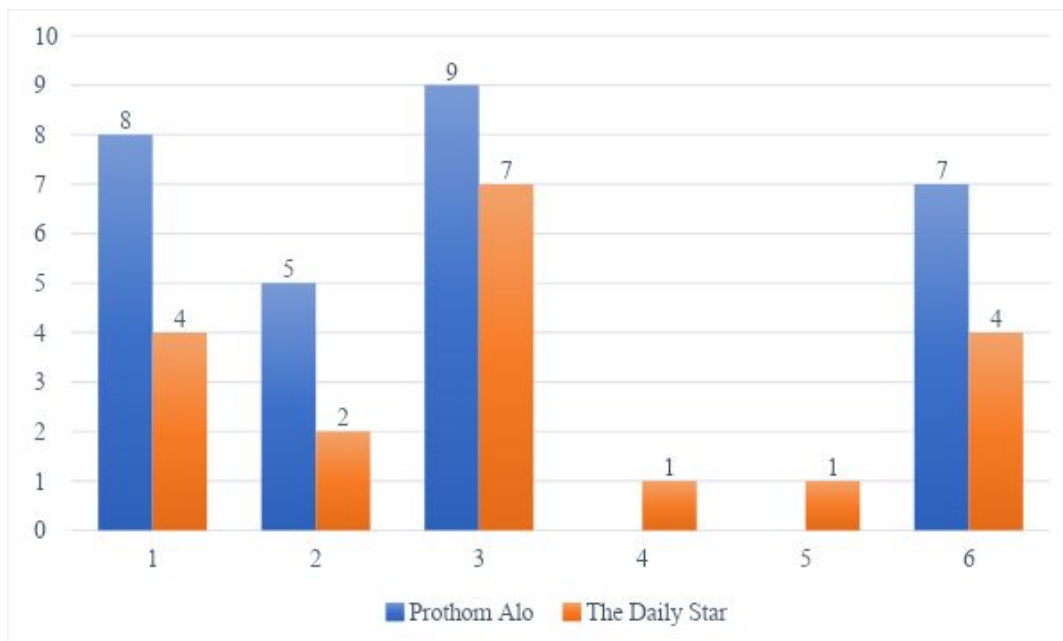


Figure 4. Number of Authors in Data-driven Election Stories

5.2.3 Topics in Data-driven Election Stories

Topics covered in data-driven election stories are presented in Figure 5 below:

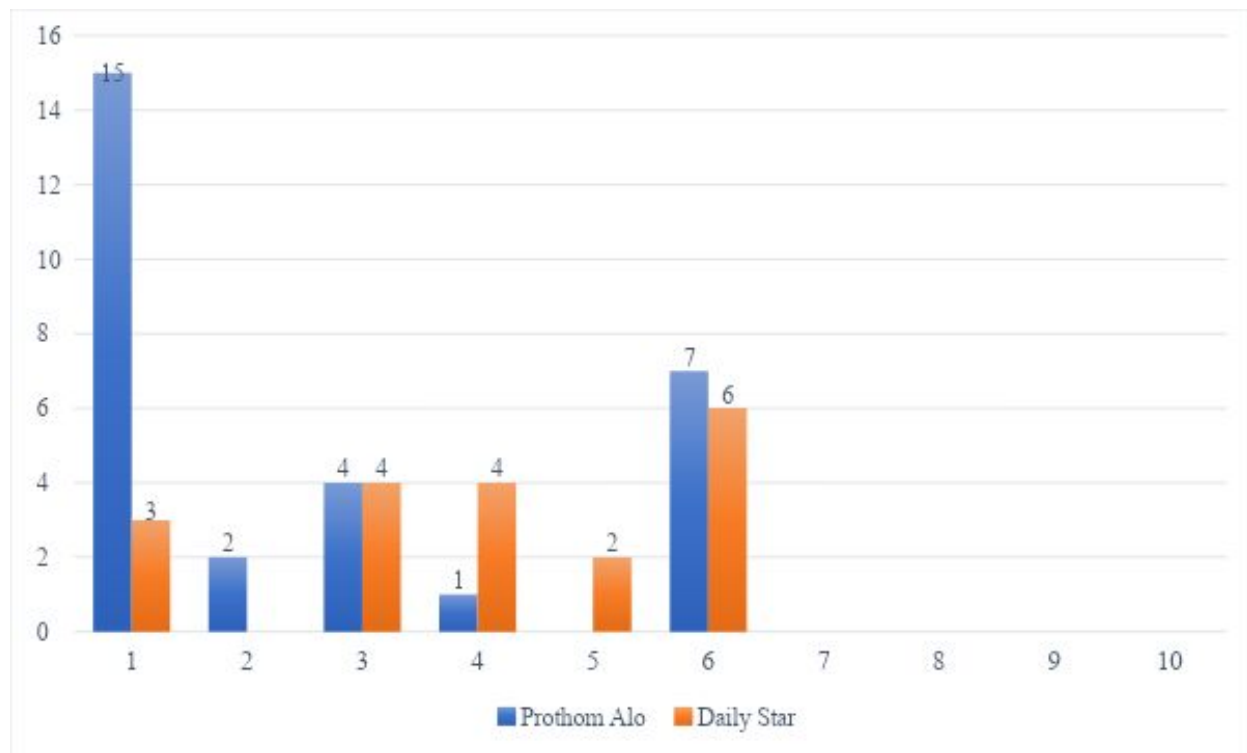


Figure 5. Topics in Data-driven Election Stories

As can be seen from Figure 5, about two-third (64.5%) of the data-driven election stories were devoted to providing general election updates like information about constituencies, candidates, campaigns of political parties, clashes and conflicts among rival political groups etc. This trend can be seen both before and after the election; however, this is striking that all such stories after the election were devoted for providing general election updates though there are often mishaps following the election. Also, there is always a huge room for analysing the election by comparing/contrasting in many ways with the previous elections. It is also noteworthy here that all kind of election stories were stopped about a week after the election. When asked during the interviews about this, none of the interviewees could shade light on this issue except saying “we (reporters) do not have control over this” (*Interview: Quarmal and Islam, 2019*).

5.3 Visualisations in data-driven election stories

Figure 6 and 7 below present the analysis of visuals, namely- number of visualisations and types of visualisations, used in data-driven election stories.

It can be seen from Figure 6 that limited number of visuals were used in the data-driven election stories that three-fourth of the stories used just one visual each. The Daily Star used more visuals on average compared to Prothom Alo; 7 out of their 19 stories used two visuals each and two stories used three visuals each.

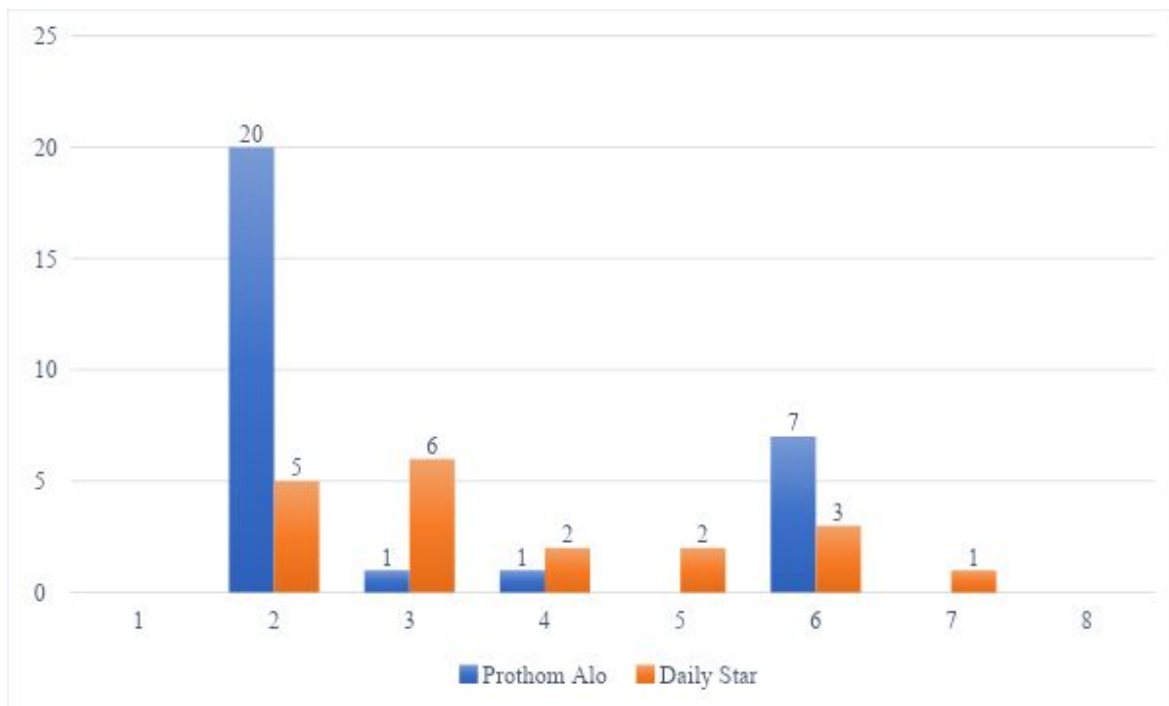


Figure 6. Number of Visualisations in Data-driven Election Stories

Types of visualisations used Prothom Alo and The Daily Star were not that diverse as well. As can be gleaned from Figure 7, mostly infographics (56%) were used as visualisation. Also, 12.5% stories used more than one visualisation each. However, though Roam's (2009) visual frameworks say charts, for example bar charts, pie charts, area charts, line charts, radar charts, are more effective form of visualisations for those can easily show comparative quantitative values and Kirk (2016) mentioned bar charts as the most reliable and useful visualisation as they can provide "categorical comparisons," use of charts were significantly low in numbers; only 12.5%- all used by Prothom Alo. This is again, probably, the reflection of lack

of readiness among the journalists which is quite understandable as they don't almost have any sort of training facilities.

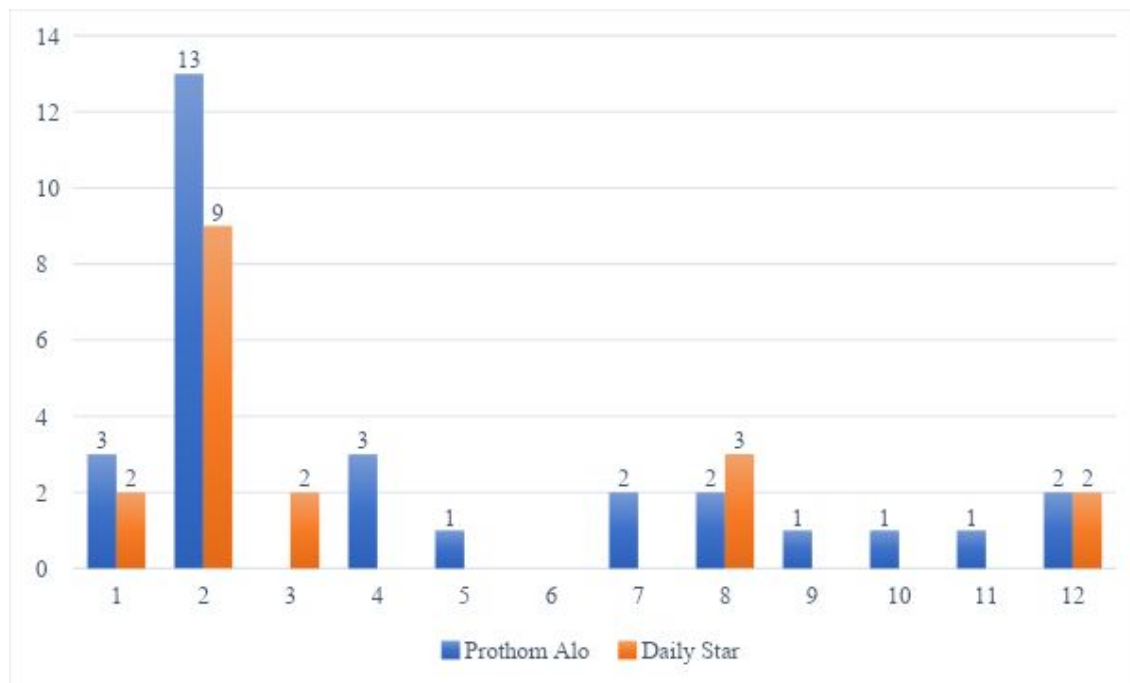


Figure 7. Types of visualisations in Data-driven Election Stories (Never used: Timeline, Pictogram, Area chart, Bubble chart, Scatter plot, Radar chart, Flow chart)

Providing data-sets to the readers is very important and cannot be ignored in any way as Stalph (2017, p. 11) rightly reflected from Weinacht and Ralf (2014) that “providing used data-sets to readers as defined by open data is an essential characteristic of data journalism.” Hence, providing just a textual reference is not enough; instead, providing a link to the source should be a general practice among data journalists that the readers can have direct access to the data sets and can view/download it. However, Bangladeshi print media is not yet in that practice as can be seen from Figure 8 below which presents the facts regarding provision of data in the data-driven stories during Bangladesh National Election 2018 in Prothom Alo and The Daily Star, nation’s two most widely reached (and most credible) dailies. From their observation of print media in Bangladesh, the authors cannot assume any different scenario in other dailies or news industry as whole. However, this could be an exploration point for the future studies.

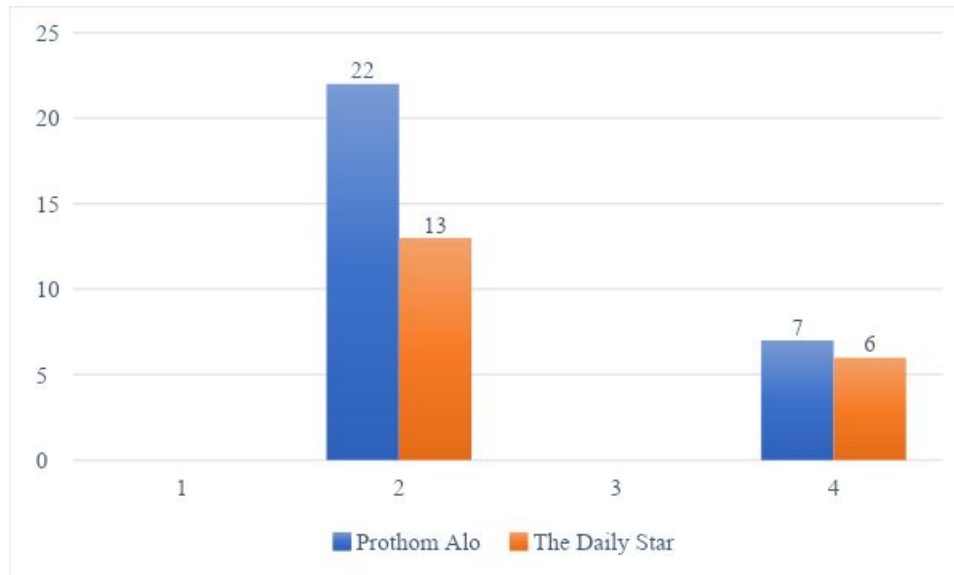


Figure 8. Provision of Data in Election Stories

Except for few infographics, source was mentioned in the visualisations. However, all visualisations were produced by using data from single sources. Also, a few visualisations (7 of 48) didn't mention any source in it. As for the number of sources in each story, most stories indicated only one source. Figure 9 below presents the facts.

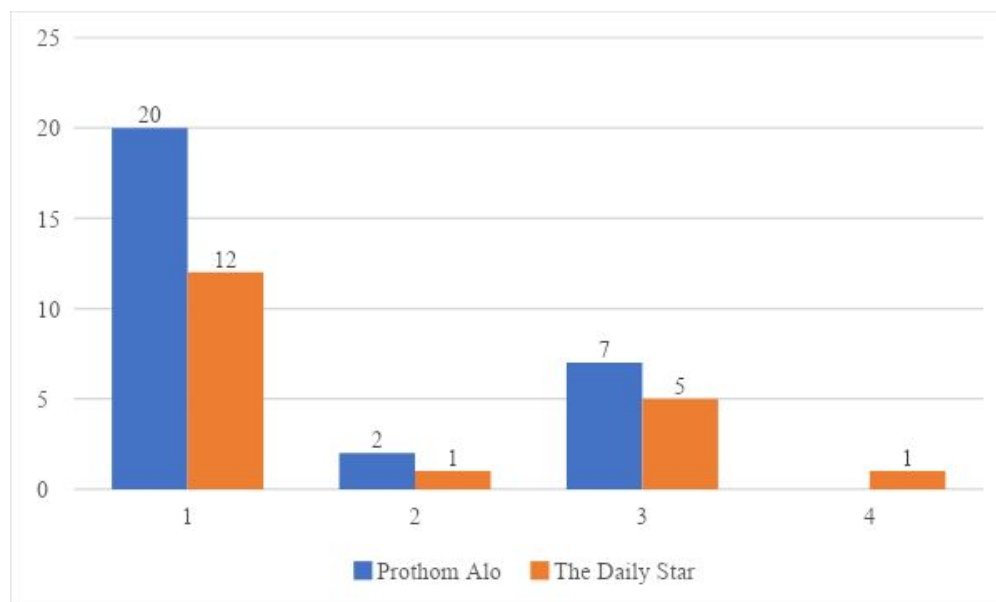


Figure 9. Number of sources mentioned in each Visualisation in Data-driven Election Stories

It was found that government agencies, e.g. Election Commission (EC), Bangladesh Bureau of Statistics (BBS) etc., are the major data provider of the election stories. This was

learned from the interviews of journalists as well. Both journalists opined that none other can provide data as much as EC can. The EC provides updates regarding election procedure on a regular basis. Also, EC makes open the documents submitted by the candidates containing all kind of information about them including wealth which are a great source of data driven stories. Alongside, local NGOs also do some research and data-driven stories are done using their data. Figure 10 presents the scenario found in the content analysis:

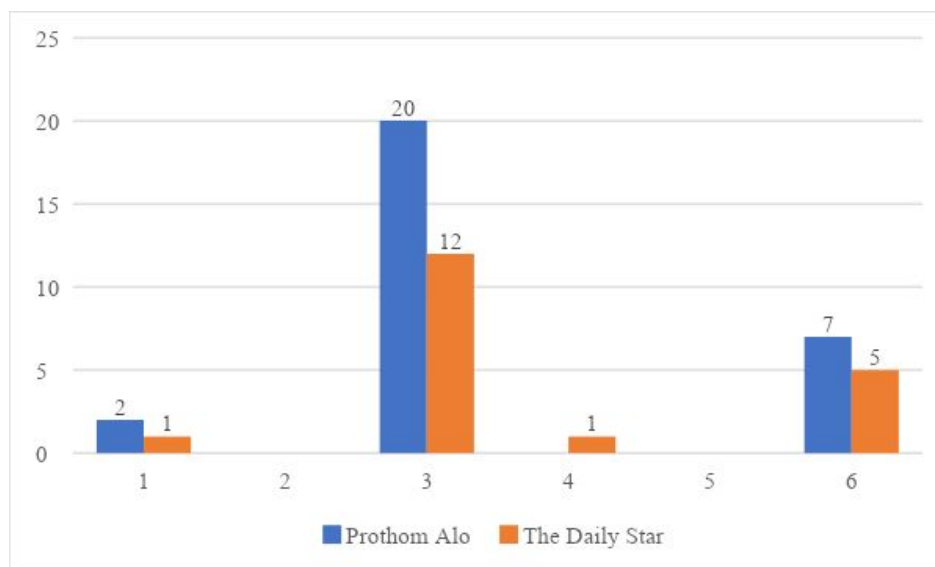


Figure 10. Provider of Data used in Election Stories

5.4 Form and content of data-driven election stories

When looking at form and content, three aspects of the data-driven election stories, namely format, reference of foreign news and juxtaposition, were analysed. As can be gleaned from Figure 11 below, almost all the stories were presented in combination of text and visuals. In 71% stories, visualisation was part of the story; on the other hand, visualisation was structured as story in 25% (12 of 48) stories. However, no visualisation was used in two stories - both published in The Daily Star. Though visualisation is often thought to be an integral part of data-driven stories, such absence of visualisation doesn't impact the story as Weinacht and Spiller (2014) argued that data-driven stories are not bound to graphically represent the data. Also, the journalist interviewed from Prothom Alo opined the same. He stated,

We try to use visualisations as that can provide the reader with ease of summarizing the main facts and information regarding the subject matter, and it helps to attract the reader as well. However, content is the key, not the visualisations (Interview: Quarmal and Islam, 2019).

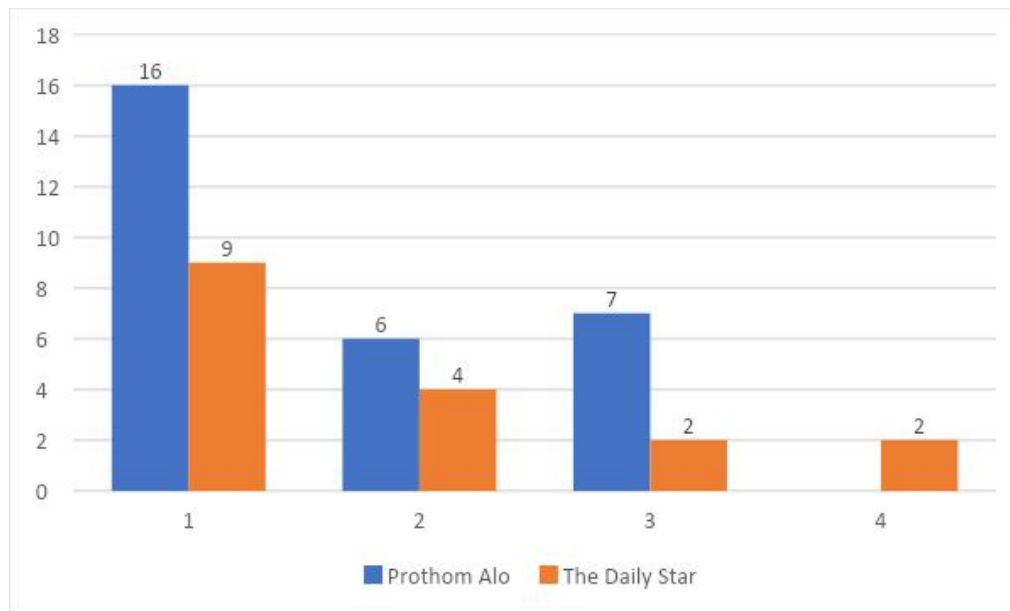


Figure 11. Structure of the Data-driven Election Stories (two stories didn't use any data, hence weren't categorically presented in the chart)

It was also seen in the analysis that none but one story, published in Prothom Alo, did refer to foreign news. This is quite understandable that National Election is a domestic event, hence, not much related to issues external to the country.

The researchers also tried to see whether there is any “perceived recognizable conflict” (Stalphy, 2017) by examining if any contrasting juxtaposition of ‘protagonists’ and ‘antagonists’ was put into action. No such juxtaposition was found.

5.5 Journalists on journalism and its role in combating misinformation during election

As mentioned earlier, two journalists having wide experience of covering election and doing data-driven stories were interviewed; one working in the daily Prothom Alo and the other in The Daily Star- two leading dailies in the country. The journalist from Prothom Alo not only covered number of elections in Bangladesh (including National Election, Upozilla Election, City Corporation Election etc.) but also covered the recent National Election in India. Both the

interviewees agreed on the importance of data in telling stories, in establishing truth. The one from Prothom Alo said:

Readers want quality news, quality story. Numbers do matter in quality storytelling, to tell the truth, to interpret the truth, to describe the social, political or economic process... Number is a determinant of a good news story, whether we put it in the headline or in story, as part of texts only or in the form of charts, tables or infographics.

Journalist from The Daily Star said:

The practice of data journalism in Bangladesh is at very early level. Both print and electronic media are trying to tell stories by using data. We at the Daily Star are trying to practice data journalism for past few years. We try to use data in story and present visually. To make them more communicative, we emphasize on info-graphics so that stories are interactive and readers feel more connected to the story or issue.

Both the interviewees mentioned of data provided by the EC, specially the Affidavits submitted by candidates to EC, as the main source of data of data-driven election stories. The Prothom Alo Journalist stated:

“We tried to use the information by putting in context, by digging out their embedded meaning. Data can help in challenging the official claims which are not true. We made stories by using the data on wealth of candidates from their “HOLOFNAMA” (affidavits) and showed the comparison between official claim and reality” (Interview: Quarmal and Islam, 2019)

The Daily Star Journalist made similar point stating, “We used all “HOLOFNAMA” (affidavits). We analysed them, tried to crunch data and presented using graphs, tables, charts their wealth before the previous election and before the recent one.”

Regarding the role of data journalism in combating misinformation during the elections, both interviewees made positive notes that data journalism can do this not only in the case of election but other issues too. However, they both stressed on the credibility of the media outlet doing data-driven stories as well as the credibility of the data provider mentioning that people in Bangladesh often don’t tend to rely on data provided by the government entities; they perceive them to be “cooked”. However, credibility of the media outlet adds a layer of trust- “that’s what our newspapers has earned in these many years” said the journalist from Prothom Alo; “people think if Prothom Alo is saying something then there must be some point”- he added. The

Journalist from The Daily Star stated, “...we used data against false claims during Shahbag movement, Hafejat movement, Ramu incident. The blending of data and word can be really a great tool to tell the truth.” However, none of the interviewees reflected much on the electoral issues except for those already mentioned about using data from “HOLOFNAMA”.

As mentioned earlier also, both the interviewees reflected on the current state of data journalism in Bangladesh. Both agreed that data journalism is in its early days in Bangladesh. Few media outlets are trying to practice it but there are still a lot of challenges to overcome among which the first is the readiness of journalists and the media outlets. Journalists need training and the organizations need to provide facilities required for data journalism- for example a dedicated desk that would work in gathering/mining, analysing, interpreting and visualizing data and regular training programs for journalists to make them skilled in these processes. Another important issue they mentioned was data archiving. According to them data archiving is poor in Bangladesh, especially in case of government entities; a lot of publicly available data are outdated, and worse- sometimes the respective office doesn't have the data. The journalist from Prothom Alo mentioned one such incident off the record.

6. Conclusion

The practice of data journalism is still in early stage in Bangladesh. The sampled widely reached and largest circulated dailies produce very little number of data driven stories. Even they are not yet equipped with appropriate facilities and manpower, and they don't have mechanisms to produce/develop such manpower. Though the number of data-driven election stories was not that significant in both the dailies analysed, those received good treatment in terms of prominence. Data visualisations were found to be less diverse- mostly infographics which reflects the lack of readiness again. Journalists rely on mainly the government entities for data, including during elections. However, data archiving and access to data can be seen as a significant challenge for practice of data journalism in Bangladesh at this point of time. Results of in-depth interviews indicate that data-driven stories can play important role in combating misinformation.

The main limitation of the study is the sample size. Because it used only two top reached news outlets of the country where thousands of newspapers and magazines are published regularly. Moreover, it used only Dhaka-based newspapers and conducted interviews with Dhaka-based journalists. So, the conclusions may not be representative to national context.

The authors suggest for more researches on the topic with larger sample size to get a broader perspective of the issue, deeper insight of the phenomenon and to draw an authoritative conclusion.

Funding: The authors received no fund from any funding agency to conduct this research.

Conflict of Interest: The authors declare that there is no conflict of interest.

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The impact of Digital Security Act 2018 on freedom of the Press in Bangladesh: A perception study

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Abstract

Though the Bangladesh constitution guarantees freedom of speech and expression, such freedom is subject to restrictions. Since its independence in 1971, successive Bangladesh governments have enacted different laws, allowing them to limit the capacity of the press for criticizing the government actions. The purpose of those laws was to prevent journalists from publishing anything against the government -- mainly in the offline media -- compelling the journalists to practise self-censorship in one form or another. Digital Security Act (DSA), which has been approved by the parliament in 2018 and which is the upgraded version of infamous Information and Communication Technology Act (2006), is apparently the recent law that aims to prevent crimes through digital devices and provide security in the digital sphere. But leading editors of the country have said some sections of the law will hamper people's freedom of speech and independent journalism. Why do the journalists worry about the DSA when there have been anti-press laws in place for years? This paper will study how the journalists used to perceive freedom of the press before the DSA was enacted and see the qualitative differences in their perceptions after the law has been enacted. In addition, this paper examines if the newly introduced DSA will hinder or facilitate journalists' ability to reveal the truth and practise journalism independently.

Two journalists were sued and one of them was later arrested in January this year soon after the national elections in a case filed under the Digital Security Act over their reports that the number of votes cast exceeded that of voters in a constituency in Khulna. (bdnews24.com, 2019) The case was filed against Hedayet Hossain Mollah, local correspondent of a national English daily the Dhaka Tribune and Rashidul Islam, staff reporter of a Bangla daily the Manab Zamin. (The Daily Star, 2019a). Regarding the case, Khulna Superintendent of Police SM Shafiullah said that the Dhaka Tribune and the Manab Zamin published the news that 22,000 more votes than the total number of voters were cast at Khulna-1 constituency in the December 30th elections. "This false and baseless information was published intentionally to make the election questionable," he added. (bdnews24.com, 2019)

However, a few days later a video emerged showing that the two journalists in fact filed their reports based on the announcement of the returning officer of Khulna-1 constituency. Announcing the results around 9:00pm on 30 December 2018, Khulna Deputy Commissioner Helal Hossain, also the RO, said 2,53,669 votes went to “boat” and 28,170 votes to “sheaf of paddy,” according to the footage obtained by Germany's public international broadcaster Deutsche Welle. Khulna-1 constituency had 2,59,420 votes in total. But the votes obtained by the AL and BNP candidates, as announced by the RO, stood at 2,81,839, which is 22,419 higher than the total votes. When journalists pointed out the mismatch, the RO looked confused. He then went on to announce results of other constituencies. The RO made a second announcement around an hour later when he gave revised numbers for Khulna-1. According to the revised tally, 1,72,059 votes went to “boat” and 28,637 votes to “sheaf of paddy,” shows the DW video. By that time, however, Dhaka Tribune published the report based on the first announcement, but later took the news down. Manab Zamin published the report in the print version of its second edition on December 31. On January 1, the paper published the corrected results. Then on the night of January 1, the assistant returning officer of the constituency filed a case against two journalists of the publications for publishing “false” reports. Dhaka Tribune's Khulna correspondent Hedait Hossain Molla was arrested the following day and was placed on three days' remand. He was released on bail after he fell sick during interrogation. (The Daily Star, 2019b)

The case as well as the arrest drew flak from various quarters including journalists and rights groups. Human Rights Organisation Ain o Salish Kendra (ASK) in a press statement published on 2 January 2019 said cases and arrests against journalists for unintentionally publishing incorrect information could not be reasonable. (Dhaka Tribune, 2019). Terming it an overreaction, The Daily Star on 4 January 2019 published an editorial saying “The error in question is a minor one that could easily be corrected or even retracted. Therefore, that the government officials have resorted to a draconian law to punish two journalists for an allegedly erroneous report whose source were the electoral officers is disturbing. The heavy-handed and overreaction betrays a complete lack of understanding as to how journalism works. The actions,

moreover, seemed to be more about infusing fear rather than meting out justice. We resent the way the journalist was treated as if he was a dangerous criminal.” (The Daily Star, 2019c)

In another incident on 21 February 2019, a reporter of a Bangla daily Jugantor was arrested in Keraniganj, an upazila of Dhaka district, hours after a case was filed against him and four other reporters of the newspaper under the Digital Security Act. The arrestee named Abu Zafar was the Keraniganj correspondent of the newspaper. He was arrested in connection with a case filed by a leader of an associate body of the ruling Awami League following a report in the newspaper on “the luxurious house of Nawabganj Police Station OC Mostafa Kamal”. (The Daily Star, 2019d)

Under these circumstances, this paper discusses whether or not the newly enacted Digital Security Act that apparently aims to prevent crimes through digital devices and provide security in the digital sphere, curb people’s freedom of speech and independent journalism, which is guaranteed by the Bangladesh constitution. It analyses different laws enacted by successive Bangladesh governments since its independence in 1971, allowing them to limit the capacity of the press for criticizing the government actions. This paper also studies how journalists used to perceive freedom of the press before the Digital Security Act (DSA) was enacted and sees the qualitative differences in their perceptions after the law came into force. In addition, this paper examines if the newly introduced DSA will hinder or facilitate journalists’ ability to reveal the truth and practise journalism independently.

Freedom of the Press in Bangladesh

Bangladesh has slipped 4 steps in the 2019 World Press Freedom Index and become the lowest among the South Asian countries in the ranking. The country has been ranked at 150th place among 180 countries in the freedom of the press Index, compiled by Reporters Sans Frontiers. The report of the Paris-based press advocacy group says that “tougher politics” coupled with “more press freedom violations” resulted in Bangladesh’s decline in the index. It said, Bangladeshi journalists have been among the “leading collateral victims of the tough methods

adopted” by the ruling Awami League government. The RSF also said that Prime Minister Sheikh Hasina’s re-election in the December 30 general election was “accompanied by a disturbing increase in press freedom violations, including violence by political activists against reporters in the field, arbitrary blocking of news websites, and arbitrary arrests of journalists.” Bangladesh government also used the judiciary “to silence those who annoy” them, said the report citing the detention of photojournalist, Shahidul Alam for over 100 days as an example. In its analysis on the Asia-Pacific region, the RSF said that the situation was worrying in Bangladesh, where ‘reporters covering protests and the election were the targets of unprecedented violence’. (New Age, 2019)

However, the freedom of the press is guaranteed in the Constitution of the People’s Republic of Bangladesh. Article 39 of the Constitution provides provision for press freedoms. It reads:

PART III FUNDAMENTAL RIGHTS

39. (1) *Freedom of thought and conscience is guaranteed.*

(2) *Subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence–*

(a) *the right of every citizen to freedom of speech and expression; and*

(b) *freedom of the press,*

are guaranteed. (Laws of Bangladesh, 2019)

Article 39 clearly states that freedom of thought and conscience is unlimited, but other freedoms such as speech and expression and freedom of the press are not without restrictions. The restrictions referred to in Article 39 assume action only by law. Without legislative authority, the executive cannot place any restriction or limitations on these freedoms. (The Lawyers and Jurists, 2019)

The press is, however, constrained by national security legislation as well as sedition and criminal libel laws. Journalists can be charged with contempt of court or be arrested under the 1974 Special Powers Act—which allows detentions of up to 90 days without trial—for stories that are critical of government officials or policies. The Official Secrets Act may be used to hide government information. Empowered by the Printing Presses and Publications Act, a district magistrate can revoke any publication license and shut down a publication. The Penal Code has provisions to punish anyone including journalists to protect national security, law and order and prevent moral decay. The Code of Criminal Procedure empowers the government to ban any publication which is treasonous and hurts people’s religious and social sentiments. International Press Institute (IPI) finds the following laws in Bangladesh as obstacles to media freedom: a) Criminal defamation b) The Special Powers Act of 1974. Assessing the country’s media environment (2008) IPI found judicial harassment of journalists by way of defamation charges, under sections 500, 501 and 502 of Bangladesh’s Penal Code of 1860 and under the Code of Criminal Procedure of 1898, has been common. (Khan and Kaarisma, 2014)

Since the independence of Bangladesh in 1971, there have been attempts to curb freedom for the press. The wave of democratization in the early 1990s heralded a rebirth of the debate on press freedom. As Bangladesh started its democratization process through the transition from military rule to civilian in early 1990s, the fundamental relationship between freedom of the press and emerging democracy was realized and integrated in the debates. Successive governments echoed promising words about exercising freedom of the press but often turned the other way when things were published that irritated the ruling classes and consequently various measures were taken to intimidate the press. (Khan and Kaarisma, 2014)

Digital Security Act, 2018

Amid concerns from various quarters, on 19 September 2018, the 22nd session of the 10th parliament passed the Digital Security Bill 2018 to deal with cybercrimes, including hurting religious sentiment, negative propaganda against the Liberation War and Bangabandhu, and

illegal activities in e-transactions and spreading defamatory data. President Md Abdul Hamid signed the bill into law on 8 October 2019. (Dhaka Tribune, 2018)

The law faced vocal opposition from journalists and rights campaigners who say it could quash freedom of speech – especially on social media –and would impede independent journalism. They say the act goes against the main spirit of the constitution and will restrict free-thinking, freedom of speech and freedom of expression. But Posts, Telecommunications and Information Technology Minister Mustafa Jabbar, who placed the bill before the House, claimed that one of the main objectives of the DSA is to ensure the country's security from digital crimes. Terming the law a historic one, Mustafa said, “This law will be followed by many countries because they don't have any law on digital security.” Referring to Singapore's law on digital security, the minister said if anyone compares it with the new law, he will find that the Bangladeshi one is a “heavenly law”. (The Daily Star, 2018) Prime Minister Sheikh Hasina also defended the law in Parliament, saying that it was meant to protect the country from propaganda. “Journalism is surely not for increasing conflict, or for tarnishing the image of the country,” she said. (Alam, 2018)

Methodology

The paper applies content analysis and in-depth interviews as methods for the study. The analyses of the law by various quarters published online and offline have been incorporated in the discussion. Two prominent journalists of the country have been interviewed to understand the perception of the law by the professionals as a whole and to explore if there is any change in their editorial policy after the enactment of the law.

Analysis of the DSA

In the preamble of the Digital Security Act 2018, it is stated that

The Act is enacted to ensure National Digital Security and enact laws regarding Digital Crime Identification, Prevention, Suppression, Trial and other related matters

Whereas it is expedient and necessary to formulate an Act for ensuring National Digital Security and enact laws regarding Digital Crime Identification, Prevention, Suppression, Trial and other related matters.

The Act has nine chapters and 62 clauses. The gazette also includes the ‘objective and reason containing statement’ of the minister in charge that reads:

...In the present world benefitting by the vast usage of information technology has also increased the wrong application, for which the level of cyber crime is also increasing. In this circumstances, to ensure the national digital security and redress, prevention, identification and restraint and judgement of digital crimes this Act implementation is a must. To secure the nation and the public life and property from Cyber cum digital crime is the main objective if this Act.

The bill was passed with several minor changes as recommended by the parliamentary body.

Section 3 of the new law includes a provision of the Right to Information Act 2009, which will be applicable in case of right to information-related matters.

As per section 32 of the law, if a person commits any crime or assists anyone in committing crimes under Official Secrets Act, 1923, through computer, digital device, computer network, digital network or any other electronic medium, he or she may face a maximum 14 years in jail or a fine of Tk 25 lakh or both.

Section 31 of the act says a person may face up to seven years in prison or Tk 5 lakh in fine or both if he or she is found to have deliberately published or broadcast something on a website or in electronic form which can spread hatred and create enmity among different groups and communities and can cause deterioration in law and order. (The Daily Star, 2018)

Editors' Council's Concern

The Editors' Council, association of the editors of national dailies, demands amendments to nine sections of the Digital Security Act which they believe will curb media freedom. The sections in question are 8, 21, 25, 28, 29, 31, 32, 43 and 53. In an unprecedented move, the editors of the national dailies also formed a human chain in front of National Press Club on 15 October 2018 protesting against the Digital Security Act.

Later, the Editors' Council released a statement with a section-by-section analysis of the Digital Security Act to show how it stifles the freedom of press – in direct contradiction of the Constitution of Bangladesh. In addition, the Editors' Council says what is alarming is that out of the 20 or so provisions of the law that deal with offences and punishments, 14 are non-bailable. Five are bailable and one can be negotiated. The lowest punishment is one year in prison, and the highest life-term imprisonment, but mostly in the range of between four and seven years. This will inevitably create an atmosphere of fear and intimidation, under which normal functioning of journalism will become extremely risky – if not impossible. (Dhaka Tribune, 2018b)



[Published in The Dhaka Tribune on 28 September 2018]

Digital Security Act: ‘old wine in new bottle’

The Digital Security Act was expected to replace a previous information communication technology law, which had also been criticized by journalists and human rights groups for its alleged use to crack down on dissent. Many editors and reporters were sued for defamation under the law. (Alam, 2018)

The Information and Communication Technology Act (ICT) was approved during the term of BNP-Jamaat government in 2006, but its reported misuse rose in recent years. Following massive criticism over the misuse of the Act by different quarters, the government had decided to gradually annul the controversial Section 57 and the ICT Act altogether, and introduce a new law.

However, critics say the government moved to disband this controversial section of the ICT Act, only to reintroduce similar provisions under the new law in a reformatted fashion. It is argued that all the controversial issues of Section 57 are left behind in some of the provisions of the new act.

A rough translation of Section 57 of the ICT Act says: “If any person deliberately publishes or transmits or causes to be published or transmitted in the website or in any other electronic form any material which is false and obscene and if anyone sees, hears or reads it having regard to all relevant circumstances, its effect is such as to influence the reader to become dishonest or corrupt, or causes to deteriorate or creates possibility to deteriorate law and order, prejudice the image of the state or person or causes to hurt or may hurt religious belief or instigate against any person or organisation, then this activity will be regarded as an offence.”

And for these offences, anyone can be sentenced to maximum 14 years and minimum seven years of imprisonment. The accused can also be fined Tk 1 crore or more.

The new Digital Security Act will be used to deal with defamation, hurting religious sentiments, causing deterioration of law and order, and instigation of violence against any person or organization by publishing or transmitting any material on any website or in electronic media.

According to the act's Section 17, if one uses digital media to intimidate people or cause damage to the state, he or she will face a jail time of 14 years or Tk1 crore fine or both.

Section 25 says – if someone uses a website or digital media to intimidate anyone, he or she may face three years in jail or Tk3 lakh fine.

Also, if anyone hurts another's religious sentiment as defined by the Penal Code, he or she will face 10 years in jail or Tk20 lakh fine or both, says Section 28 of the new act.

As per Section 29, if a person publishes information with the intent to defame someone, he or she will face three years in jail or Tk5 lakh fine or both.

Meaning – all the issues tackled under Section 57 of the ICT Act are still engraved in the Digital Security Act, but in an elaborated manner. (Mamun, 2018)

Contradiction with Right to Information Act 2009

The government enacted the Right to Information Act (RTI) in 2009 with an aim to empower citizens with the right to know how the government exercises its authority under the laws of the land. Section 4 of the RTI Act of Bangladesh states that: “Every citizen shall have the right to information from the authority, and the authority shall, on demand from a citizen, be bound to provide him with the information” and the term “authority” has been clarified as any type of government institution or organisation, any private organisation financed by grants from government funds, NGOs, or private organisations funded by foreign aid, or any other type of organisation or body operating within the domestic sphere. This means ordinary citizens can seek information from various private organisations including international NGOs working in domestic arenas financed by outer sources.

Critics observed that some provisions of the Official Secrets Act 1921 have been included in the Digital Security Act 2018 which directly undermines Section 3 of the Right To

Information Act. Section 3 stipulates that the RTI Act will prevail over any Act that may create obstacles in providing information or is conflicting with provisions of the RTI law.

The Right to Information Forum (RTI Forum), a coalition of more than 45 organisations that played a pivotal role in the enactment of the right to information law in 2009, believes that The Digital Security Act, in its present form, will grossly restrict the scope of people's access to information under the RTI Act which has been widely held as one of the best opportunities created by the government in empowering people to promote transparency and accountability. It also lamented that the Digital Security Act creates wide opportunities to restrict the space for raising informed public opinions and ensuring transparency and accountability of public institutions, reducing corruption, and establishing good governance as outlined in the preamble of the RTI Act 2009. (The Daily Star, 2018b)

Extracts from the Interviews

Two prominent journalists of the country have been interviewed as part of the study. They are Lazzat Enab Mahsi, Deputy Editor, the daily Prothom Alo; and Reaz Ahmad, Executive Editor of Dhaka Tribune. Both the journalists, who have a plenty of experience in the newsroom, have been very critical of Digital Security Act-2018. In their discussion, they have mentioned some interesting points involving DSA. Those points are grouped under the categories mentioned below

Culture of fear and intimidation

Both the journalists have agreed that there is a culture of fear and intimidation prevailing in the society after the DSA came into being and journalism is no exception. Lazzat Enab Mahsi says they have become extra-cautious when editing the news stories. They go back to reporters, and cross-check the information. Though it is the responsibility of journalists to present authentic information but they are very careful in presenting facts due to strict provisions in the DSA.

In many cases, journalists are forced to practise self-censorship to be on the safe side. In this regard, he says rural correspondents are more vulnerable. Being a senior news manager, he says, the editors of the daily based in Dhaka receive frequent requests from the local correspondents to tone down the language so that the reporters on the periphery don't face any backlash from the political parties and local influential quarters. Referring to the vulnerability of the local correspondents, he says, there were instances that the newspaper authorities brought local correspondents and their families to Dhaka to save them from the wrath of local goons.

There are such provisions in the DSA that the government, if it wants, can take action against any media outlet. If the present governments overlook any journalistic reports, there is a high risk that any future governments might sue the reporters and the respective media organisation for the very contents that will remain available on digital platforms, adds Lazzat. To him, they are doing journalism under fear and intimidation, taking into consideration the possible consequences.

Adding to Lazzat, Reaz Ahmad says the very act has been able to send a strong message to the journalist community that they should not cross the limit. The journalists know their limitation and do not dare to venture into uncharted territory, leading to self-censorship. To him, either government or individuals can use the law to harass journalists. In this regard, he referred to the harassment of a leading editor of the country. People loyal to a particular political party filed a total of 83 lawsuits, including 17 for sedition, filed against the newspaper editor in 53 districts. When the High Court asked these people to explain on which grounds they filed the case against the editor, nobody showed up. It means, as Reaz observes, the purpose of filing the false case was just to harass the editor, not to bring him to justice. Though DSA-2018 has not been widely applied against the journalists yet, the arrest and punishment of journalists under section 57 of previous ICT Act creates fear among the journalists as provisions in section 57 have been incorporated into section 32 of DSA, he says.

Moreover, Section 43 of the DSA has given unlimited power to police. As per the law, police can enter any premise, search any computer system, seize any computer network and its servers and arrest anybody on suspicion, says Lazzat. The threat of arrest without warrant and

also based on suspicion creates an environment of fear among the journalists. If the government does not like any media report, they can send the law enforcers to any media outlet to seize the computer server -- enough to stop news production of the concerned organisation, he adds.

Ambiguity in DSA

What makes the DSA more frightening to journalists is its vagueness, as both the interviewees agreed. The journalists are not quite sure which action should be considered as a crime. According to Reaz, he is not up against the law. As digital space is expanding, governments across the board have either formed or will form laws to control offences on the virtual space. Bangladesh is no exception. Anybody can take shelter under the law. Apparently, the Act is not directly against the media. What worries him the most is the vagueness in the Act. It contains many terms that can be misinterpreted and used against the media, he says.

For instance, as per section 32 of the DSA, if a person commits a crime or assists someone in committing a crime under the Official Secrets Act, 1923 using a computer, digital device, computer network, digital network or any other digital media, they will get a maximum penalty of 14 years in jail or Tk 25 lakh in fines, or both. Referring to that, Lazzat says the very section can be used against the media. It is very common these days that reporters use mobile phones to take pictures of classified government documents. As per section 32 of the Act, the reporters can be sued as they record through their digital devices.

Shrinking scope of investigative journalism

Asked if the DSA has limited the scope of investigative journalism, both the journalists have agreed but come up with different explanations. Reaz Ahmad says the decision to practise investigative journalism depends on the courage of individual journalists and the institutions the journalists are working for. Whoever has that courage will take risk at certain level, Reaz says, but the sharpness of journalism will be missing in many cases due to the unfavourable climate

caused by DSA. To him, there are some courageous journalists who will attempt investigative journalism, but the flow will definitely decrease. In this regard, he says 14 out of 20 sections of the DSA are non-bailable. If a journalist is arrested under any of the section of the Act, he/she won't get bail. This climate contributes to shrinking scope of investigative journalism as journalists fear that they won't get bail, if arrested under the Act, he adds. There were many anti-press laws in the past. But journalists used to believe that if they were correct they would secure bail from the court, prompting them to take risk and do investigative journalism. In addition, he says each time any government comes up with a law, they make sure stricter provisions in the new law that were absent in the previous laws -- for instance, DSA is stricter than the ICT. In the changed scenario, it is quite risky to do investigative journalism, if not impossible, as provisions under DSA are non-bailable, adds Reaz.

On the other hand, Lazzat comes up with a different explanation. Due to proliferation of digital technologies, he says, people get to know all the information in real time. In such scenario, what is the purpose of coming up with printed newspaper the next day? Though people get information instantly in this age of Internet, they also have a thirst for knowing more and more. Here lies the scope of printed newspapers to keep its readership by going in-depth, Lazzat answers. But printed newspapers cannot run in-depth stories frequently fearing lawsuit under DSA, he says. Referring to the killing of 25-year-old Rifat Sharif in Barguna on 26 June 2019, Lazzat says their local correspondent got to know some information that could have made a good report, but they could not write as expected as the local correspondent feared backlash from the local influential quarters. Asked why he is concerned about shrinking scope of investigative journalism now whereas there were anti-press laws in the past, Lazzat says doing journalism has always been risky in Bangladesh. But after the approval of DSA, this threat has significantly increased.

An Impediment to freedom of expression

Reaz Ahamad sees DSA as an impediment to personal freedom. Digital Security Act will not only hamper press freedom, but also curtail individual freedom of expression. Referring to the

arrest of poet Henry Sawpon in Barisal in May 2019 in a case filed under the Digital Security Act for “hurting religious sentiments”, Reaz says anybody can be a victim of this law. He also mentioned the viral video footage of Barguna incident in June 2019 where two youths were seen hacking another youth with sharp objects. If anybody records the incident and shares it on Internet can be sued under DSA on the pretext of sharing graphic content online. Though nobody was sued for that, but options are there under this Act, posing a threat to individual freedom of expression.

Ability/Inability to fight fake news

The purpose of DSA is to “ensure digital security and prevent crimes committed on digital platforms”. But, ahead of the December national polls in 2018, there were examples of fake news, rumour being spread on Internet. Clones of several popular news websites in the country -- The Bangla Tribune, the Prothom Alo, and BBC Bangla -- appeared, “disseminating outright false political news” (Dhaka Tribue, 2018c). Even the state-run news agency, Bangladesh Sangbad Sangstha (BSS), appeared to have been hacked (2018), questioning the effectiveness of the Digital Security Act. Asked if the DSA has been able to control the spread of fake news online, Lazzat has replied in negative. To him, a favourable environment, where the media can ensure people’s right to the truth, can only help fight fake news.

But Reaz Ahamad has clarified a bit in his explanation. To him, if the law is applied accurately, the crimes of spreading fake news and rumours can be controlled to some extent. If anybody looks at the cases filed under ICT Act, which precedes DSA, Reaz says, it will be found that there were no final reports in around 90 percent cases. It means either police did not find anything after investigation or the cases were baseless. So the purpose of the people who filed the cases was to harass people. Both government and influential people took an advantage of this law to harass people. Similarly, DSA has many similar provisions that will also encourage abuse of the law. So controlling fake news depends on the accurate application of the law rather than using it as a tool for abusing people on baseless grounds, adds Reaz.

Conclusion

The Digital Security Act was enacted when fake news spread through Facebook triggered several incidents of violence and vandalism in Bangladesh, including the 2012 communal attacks on Buddhists in Cox's Bazar. On the September 29 night in 2012, a mob destroyed 12 pagodas and more than 50 houses in Ramu. The violence was apparently triggered by the image of a Buddhist youth's Facebook page that contained an anti-Islam picture. Later an investigation found that the picture had been photo-shopped. (Sarkar, 2018)

However, when asked about the possible solutions, neither of the two senior journalists interviewed for this research demanded scrapping of the law. They rather demanded amendment to the law. Lazzat observes though the government says the media will not be affected by this law, it should give a clear explanation stating that the law will not be applicable for the media.

According to Reaz, the government cannot change the provisions, which are non-bailable, to bailable. In that case, they have to amend the law. What the government can do now is to give a clear explanation of the provisions. When the government will prepare rules for the law, as they promised, they can come up with clear definitions so that nobody can abuse the law and use it against the journalists, observes Reaz.

Meanwhile, the Editor's Council also placed seven-point demands for consideration over the Digital Security Act. The demands are as follows:

1. Amend sections 8, 21, 25, 28, 29, 31, 32, 43 and 53 of the Digital Security Act
2. Make the amendments in the last session of the current parliament
3. While conducting a raid on a media house, law enforcers only be able to block content—not shut down a computer. Law enforcers should need to discuss why content should be blocked, with the editor of the media house.
4. A prior order needs to be obtained by the court for a computer system to be seized
5. In case of a professional offence, journalists must be issued a summons to appear before the court as it is existed in the current law; and journalists should not be arrested without a warrant or adherence to due legal procedures

6. In cases where media professionals are accused of committing offences, procedures should be established to route the cases through the Press Council and establish prima facie case. Due to this, the press council may be strengthened appropriately
7. The supremacy of the Right to Information Act, passed by the government, should be unequivocally established above the Digital Security Act. All freedom and rights granted under that law, to citizens and the media, must be protected.

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Fake News and Facing the Wrong Way: Why the Focus on Truth Is Distorting Understanding in Political Communication

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Abstract

This chapter explores the core problem of true and fake news, government mis-directions and the focus on educating and enabling citizens to manage today's radically new information environment. Fake news has been with us long before 'fake news'. It predates a digital and social media-saturated society. The political contest of the origin, location and cause of 'fake news', and differentiation from traditional media, are not the key foci. Arbitrating truth or even the intention of truthfulness are not viable bases to anchor the regulation or determination of true or false news. Politics is too complicated a field of contested truths. Significant lessons can be learned from the Australian regulatory rejection on regulating 'truth' in political communication. Regulatory bodies have focussed on messenger over message, authentication over truth. Assessing whether political communication is deceptive (or 'fake news') is left to voters, who are also provided with examples of 'fake news' in election campaigns. Despite the lag in educating the public on media literacy, Australia is heading in the right direction. In an evolving digital world, many citizens now seek to discern real from fake news.

'Don't write crap. Can't be that hard. And when you have written complete crap, then I think you should correct it.'

Hon. Julia Gillard, Prime Minister of Australia.

When former Australian Prime Minister Julia Gillard made the above comment at the Australian National Press Club in 2011, it was clear she had a problem with the way traditional media was reporting on her government. Importantly, her comment was made before 'fake news' passed into common usage and social media platforms were blamed for disseminating 'fake news', demonstrating that false claims, misrepresentation, misinformation, disinformation and, indeed, bullshit (Frankfurt, 2005) have always been a feature of contested political analysis and interpretation. The phenomena predates social media, yet while social media may rightly contribute a significant volume of 'fake news', debate rages about whether 'traditional media' is more damaging to the notion of public 'truth' and, indeed, whether government attempts to regulate 'truth' in public communication

have a chance of success, or manifest as thinly veiled attempts at censorship and control. More significant is whether there is even a consensus of agreement around what constitutes truthful public communication.

What is ‘Fake News’?

Defining ‘fake news’ is a politically rich activity. Scholars may debate the term’s origins, meaning, and use but the critical turning point in its passing into the vernacular is clearly Donald Trump’s 2016 US presidential election campaign, when he used ‘fake news’ to discredit news media criticism and predictions he would lose. The electoral campaign norm is to be kind to media in the hope of sympathetic coverage. Trump did the opposite – attacking *traditional media* for spreading ‘fake news’. The emphasis on traditional media has been somewhat lost in political analysis but it’s significant. Trump’s ‘fake news’ ire was directed purely against traditional media, rather than attacking social media platforms he obviously favoured.

Traditional media commentary and polls declared Trump would lose. He won. Does that confirm that traditional media commentary and polling predictions were ‘fake news’? It certainly became a watershed moment in political communication and the term’s emerging prominence (Kaisnes, 2018). Professing superior methodology to untrained citizens, traditional media has condemned public intrusion into political commentary as precipitating ‘fake news’; that is, without its watchful eye, citizens and social media will generate ‘fake news’. Trump has definitively reframed this perspective.

The term ‘fake news’ is problematic. The Australian Government has recommended referring to it as ‘disinformation’ to bring it more in line with the European Union (Joint Standing Committee on Electoral Matters, 2019). The Australian Electoral Commission (AEC) has supported the recommendation, ironically returning full circle to ‘fake news’ difficult definition by defining ‘disinformation’ as ‘fake news’: ‘Electoral disinformation is a type of information spread regarding the election that could potentially deceive voters – either by design or unintentionally. It may also be called misinformation or ‘fake news’.’ (Australian Electoral Commission, 2019).

The problem also appears to be one of intention. While the AEC recognises ‘fake news’ can be generated intentionally or unintentionally, Reuters Institute for the Study of Journalism defines ‘fake news’ as ‘false information *knowingly* (my emphasis) circulated

with specific strategic intent – either political or commercial’ (Kaisnes, 2018). This differentiation elevates traditional media by suggesting that even an erroneous news story generated by a journalist whose intention is honest reporting is superior to intentional ‘fake news’. It is a point worth supporting, but the issue is far more complex than simply defining the quality of intentions; it goes further by questioning our trust in the messenger. However, the definition of intention as the fault-line of ‘fake news’ is a secondary consideration. It’s akin to a police officer judging whether a dead body is the result of premeditated murder or manslaughter – the person (or truth) is still dead; how they became so is examination after the fact. In the complex domain¹ of politics, where events and facts have a contested basis of interpretation, any interpretation is a postulation of meaning; the communication of that meaning is, in itself, a political act that further adds to the complexity of the domain. Which interpretation is the ‘truth’? And does our acceptance of a ‘truthful’ interpretation mean all others become ‘fake’? While we may universally agree that some ‘event’ in a complex domain happened, the meaning of that event is not fixed. Meaning is not attached to or discovered *in the event*. Rather, it is created and imposed *on the event*. It is a constructed politico-cultural product in a shifting and contested context.

Political communication is, in essence, storytelling. It delivers a narrative to explain what has happened or will happen, allowing us to process information in a complex domain. Stories don’t exist in nature; someone purposely organises events into narrative form. Neither is news reality; it is always an attempt to approximate a perspective on an unknown reality. Where ‘fake news’ is a result of a producer intending to honestly inform we can claim ‘truth’ as a central concern. However, while intentions may relate to nobility of purpose, they don’t avoid the problem of ‘fake news’. Much journalistic commentary misses precisely this point: a robust methodology, honest journalists and the finest fact-checking may mitigate ‘fake news’ but can never prevent it. To be more specific, the *impact* of ‘fake news’ can be calibrated inversely across a trusted platform; the more trusted the platform, the greater the capacity to spread ‘fake news’. The impact is far less if a questionable social media site of dubious origin and control promotes a fake story, because the recipient calibrates the message to the messenger. That is, when you receive spam in your inbox, you’re less likely to trust the message’s contents. However, ‘fake news’ from a prestigious source with methodologies,

¹Complex domain refers to contested interpretation of political meanings and not the simple, linear or binary domain of reporting simple facts, e.g. ‘the campaign launch is on Tuesday’.

training and fact-checking in place (like *The New York Times*) can be far more damaging because these factors generate recipient trust and magnify belief. This assumption is made even more complex after President Trump's condemnations of *The New York Times* reporting of his policies as 'fraud', 'badly reported 'hit job'', 'fake news' and 'sick journalism' (Milman, 2019). The messenger's contextualisation is critical, not just to belief in the story but to the magnification of belief. Surely a trusted news source has more impact than a recently added *Facebook* group? And, therefore, we come back to a significant problem of truth.

Black Swan Blindness

In 2013, journalism students at La Trobe University, Australia conducted a simple exercise.² Two groups of between 20 to 30 students were provided 'facts'³ based on public understanding of the federal government, then use a specific piece of news as the focus for developing a story for publication in any medium desired. At that time, the Prime Minister of Australia, Julia Gillard, was clearly frustrated with the dominant media narrative that defined her government and its policies as desperately governing to stay in power. The facts outlined to the students were that Julia Gillard's government trailed in the polls; her government needed more votes to win the election; female voters were more likely to vote for her; analysts had claimed Gillard needed to communicate a softer, more 'personal' style; and an election was to be held on 14 September 2013. None of the 'facts' were disputed; all were conventional, broadly agreed truths. In addition, a fictitious piece of news was provided: that Julia Gillard's partner, Tim Matheson, had proposed marriage and a wedding date had been set for 1 September 2013.

As expected of well-trained journalism students, the new information 'x is doing y', was reported in the formula 'x is doing y, *because* z'. This was not reporting but a narrative focussing on reasons for z. Every student interpreted the facts to create a key story line, effectively: 'In an attempt to improve her/polls/government standing, Julia Gillard is marrying...' The facts were interpreted – as journalists are trained to do. Consistently the base facts (providing context) impacted on the interpretation of the new fact. However, there was a

² The author conducted the exercise to allow students to examine biases in self-belief and the foundational claims of truth in reporting 'truthfully'.

³ Understanding the listing of 'facts' may also act as a framing for the stories developed, as mirroring the broader media landscape.

twist. Once the stories were written, a subsequent reveal provided an unknown piece of private information (also fictitious): Tim Matheson has terminal cancer. He does not expect to live past Christmas. His final wish is to marry the woman he loves, Julia Gillard.

Based on this ‘unknown’ fact, students were asked whether a) they would they change their story? And b) whether all their existing story elements were true? Of course, as ethical people, all students said they would change their story to address the new fact. The new information changed the interpretations of every story written, however, all had to concede that the basic facts they’d relied on to write their initial story were still true. They simply did not have, and could never be certain to have, all the facts relating to a story in a complex political domain. Importantly, a fact they did not have could have more impact on the story than all the facts they did have.

The question is, did they write ‘fake news’ or, as Prime Minister Gillard suggests, ‘crap’? This is also a key issue raised in *The Black Swan* (Taleb, 2008), which explains the impact of the improbable. The book’s central metaphor – the falsification of the European truth claim that ‘all swans are white’ upon discovery of black swans in Australia – is that all the available facts do not necessarily provide conditions for truth. Taleb argues what you don’t know can have more impact than what you do. In the case of the student exercise, secondary, unknown (fabricated) information about Matheson’s cancer overturned every student’s judgement. What if that information was true and remained a secret? If you understand you are in a complex domain and cannot guarantee you know all the related information pertinent to your story then you can write based on facts but what you write may be ‘fake news’. It may be well-intentioned but just as misleading, or perhaps even more misleading because the more trusted the source and respected the journalist, the greater capacity to spread ‘fake news’. Mainstream media tries to overcome this problem by other means – it likes to take a similar, corroborative approach to stories so that each iteration is covered in exactly the same way. It’s the ‘white swan’ argument all over again: the ‘we can’t all be wrong’ defence.

Don’t Look Here

The journalism industry has made a concerted effort to quarantine ‘fake news’ as a phenomenon linked to mass social media use. Many arguments have been forwarded, but the pivot point surrounds intention, that is, journalists *intend* to tell the truth. However, political

communication inhabits a mainly complex domain where all key facts may not be available. There must always be uncertainty; what is ‘true’ may not be claimable. At the heart of the issue is the relationship to ‘truth’. As the ‘Fourth Estate’ with attached privileges, traditional media has been the locus of problematic issues. It makes claims to veracity and truth based on methodology and professionalism in practice. Yet, an editorial on ‘fake news’ by *The Conversation* outlines the difficulty journalists face:

Over the past few years you will have heard a lot about fake news, but Harvard researcher and head of the First Draft journalism project (says)... the term is misleading and should be scrapped. ...Trust in media is in decline globally, and every time we talk about fake news, we hasten the trend by spreading a myth of false equivalence. With Donald Trump labelling everything short of sycophantic praise as ‘fake news’, too many people are falling into the trap of thinking ‘they’re all as bad as each other’.

But they’re not, and the differences matter. *The New York Times* might make mistakes, but its editorial standards are qualitatively superior to those at *Fox News* or a conspiracy theorist’s blog (Ketchell 2018, Australian edition).

There is much to agree with the advancement and support of quality journalism, but the point is blunted when you consider *The New York Times* is renowned for promoting claims of weapons of mass destruction (WMDs) in Iraq before the United States’ 2003 invasion – a position for which it was later forced to apologise. In a contortion of the ‘black swan’ problem, it promoted the view that a lack of evidence *was* evidence, becoming complicit in disinformation fabrication. The resulting war caused hundreds of thousands of deaths, making the failure to discover WMDs arguably the greatest *intentional* ‘fake news’ story of the century. At the very least, it is a terrible argument for journalism’s robust methodology. Where most would see a conspiracy theorist’s blog for what it was and discount the message based on the messenger’s perceived veracity, *The New York Times*’ ‘fake news’ comparison has a far greater impact than a ‘nutty blogger’ because it comes from a trusted messenger. Therefore, prioritising traditional journalism as the key solution to ‘fake news’ appears flawed.

There is one critical difference worth noting. Just as Prime Minister Gillard railed against journalists writing ‘crap’, she also requested this crap should be corrected if written. Though correction was made far too late to ameliorate the damage done with the WMD story, *The New York Times* acknowledged its error and sought to improve its journalistic processes. Intentional ‘fake news’, designed to mislead, has no such redemptive features.

Look Over There ...

Journalists enjoy special privileges in many societies, and their work contributes to a robust democracy. Justifiably, there should be protections in place to provide safety for that work. However, they need to qualify their claims more clearly. In *The Conversation* (Ketchell, 2018) editorial, the key narrative position advocating against ‘fake news’, intention and methodology, are claimed to immunise against the key failure of ‘fake news’ – that is, the fault of social media and digital platforms. The key solution, broadly argued, is more must be done to support journalists. In the Australian context, mass layoffs of journalists leave the industry feeling under considerable threat as traditional media revenues have abated (Zion, et al., 2016). But there may be more telling narratives that connect to how people relate to news and information. The first is an ‘orthodox’ version of events – what you would deduce from an examination of academic and journalistic writing in Australia:

Journalists are part of the great movement of democracy. As the fourth estate, they expose tyranny and corruption. They protect society, often at personal expense. In this role, they are constantly under attack from those with something to fear from the truth being made public.

Journalism’s fight against mistruth has evolved over time. Decades ago, it fought government propaganda, then it fought ‘spin’ and ‘spin doctors’ who sought to mask truth and distort news. Recently, the fight has evolved to tackle the forces of social media where ‘fake news’ is made.

Meanwhile the public, untrained and naïve, has been seduced by ‘fake news’, unwittingly propagating and spreading falsity and falling prey to the unmediated lies of politicians and powerful interests. To protect the public, journalists and media organisations have

sought to levy fake news platforms (such as Google and Facebook) to fund ‘proper’ traditional news services and establish ‘fact-checking’ centres with academic partners and government funds. The world of untrained citizen commentary and unmediated exposure to information is called ‘post-truth’.

We may also propose an alternative narrative to address *The Conversation*’s editorial concern about the public’s reduced trust in the media:

For most of human history, the majority could not read or write and primarily relied upon news by word-of-mouth. People became aware of news through interpersonal discussion, becoming adept at discerning gossips from the wise.

Large cities, printing presses and mass literacy changed that. Early printing meant choosing which version of the bible was the ‘true’ version, or what books should be printed; it shifted power to those who could authorise and disseminate information. The producers of news defined what we would think about. What was important and true.

Then it all changed. The internet and social media connected everyone together – including media, authorities, the gossips and the wise. It seems that the public took the first opportunity to stop paying for and reading traditional news. Journalists lost their jobs in the thousands.

Stripped of the illusion of omniscient truth-telling by others, the public connected to those they trusted or felt to be wise. They also now had a voice, as opposed to being silent information consumers.

There is indeed a competition for interpretation behind the issue of ‘fake news’ and an existential crisis for traditional Australian news media. But, importantly, the problem predates mass social-media and ‘fake news’. *The Conversation*’s argument that the confusion between real and fake drags down traditional quality media therefore seems wrong-headed as trust in media across Australia, the US and UK has been at a minimum for at least a decade (Greenslade, 2009).

Look Away

Australian politicians, like journalists, condemn fake news. Democracy must be protected from political misinformation; it thrives on citizens receiving the truth. However, Australian politicians' track record for ensuring truth in political communication is open for debate. In 1984, the Australian Federal Parliament introduced a law to ensure truth in political advertising. It was repealed some eight months later (Miskin & Grant, 2004). The reasoning behind the repeal was simple:

The Committee (Parliamentary Joint Select Committee on Electoral Reform) argued that, while fair advertising was a desirable objective, 'it is not possible to achieve such 'fairness' by legislation', especially given that political advertising differed from other advertising in that it 'promotes intangibles, ideas, policies and images'. It recommended that the 'safest course' was to leave the decision as to whether political advertising was true or false to voters and the law of defamation (Miskin & Grant, 2004).

However, while Parliament side-stepped the issue, The Federation of Australian Commercial Television Stations (FACTS)⁴ attempted to regulate for truth in political advertising. This key industry body regulates commercial television, and was determined to apply the *Trade Practices Act 1974* to political advertising content. FACTS believed political advertising should follow the same legal requirements of other advertising, which meant it could be legally challenged or injuncted if the advertisement was misleading or deceptive, or likely to mislead or deceive. Breaches of the act meant the full force of Australian law could be applied – as is the case for broader society. If the government had laws in place to ensure, for example, a used car salesman could not mislead or deceive a buyer, FACTS held the same standards would apply to protect our democratic process from deceptive or misleading claims. The important claim of providing truth and accuracy in political communication was a telling point. If an election campaign made a claim, the advertiser had to substantiate that claim to the independent body. FACTS would protect the industry standards and the public from deception.

⁴ Now *Free TV Australia*.

This situation did not last long. In 2002, FACTS adjusted its code of practice to discontinue vetting of political advertisements for truth and accuracy. Further, it removed the requirement for political advertisers to provide justification of claims made in their advertisements. It recognised that determinations by the Australian Parliament's Senate Finance and Public Administration Legislation Committee had not upheld a position that would make any determination by the commercial television regulator enforceable. The Committee further determined the potential for an injunction of a political advertisement during an election campaign was too great a risk for the democratic process and, therefore, political advertising would not be subject to the *Trade Practices Act 1974*.

The Australian Electoral Act is clear political advertising can be rejected if it is defamatory towards 'the personal character or conduct of a candidate, where that statement is proven to not be true' (Miskin & Grant, 2004). There is no other form of legislation or effective regulatory enforcement that requires truth, or the demonstration of truth, as a requirement in political communication. However, apart from basic regulation of technical matters (e.g. how election material complies with Australian Electoral Act technical processes), there is a key area where rules relating to political communication does apply – in the identification of the *source* of political advertising. While it does not regulate truth in political communication (the message), the Australian Electoral Act seeks to ensure the identity of the political *communicator* is made known (the messenger). Government and political advertising must, within prescribed formats, provide a clear articulation of the 'messenger' of the message – that is, who is articulating, and/or 'authorising' the message. This rule applies to almost all political advertising. It does not apply to reuse⁵ of materials from social media platforms.

The linking of messenger and message is a valuable contribution to transparency and democracy. The delineation of 'messenger – message' can be very roughly seen as 'trust – truth'. The messenger is the foundation for the message – if I disbelieve the messenger, it is unlikely I will believe the message. The messenger calibrates the message and provides a good model for dealing with 'fake news'.

⁵ This is if the re-poster or sharer is deemed to not be a *Disclosure Entity*, that is, in particular, the political party or candidate. Most often an individual sharing with friends online.

Moving Forward in the ‘Fake News’ Age

With the commercial television regulator’s failure and legislative abandonment of truth, much focus has been on Australia’s independent authority overseeing elections, the Australian Electoral Commission (AEC), widely seen as an effective and impartial body essential to ensuring democratic integrity. The AEC is at arm’s length from political influence but receives recommendations from the Australian parliament. Key recommendations flow to it from the parliamentary Joint Standing Committee on Electoral Matters, the Committee reviews and makes recommendations after every federal election.

In its report after the 1993 federal election, the Committee proposed it would be ‘entirely inappropriate’ for the Australian Electoral Commission to compromise its neutrality by making judgements on truth in advertising’ (Miskin & Grant, 2004).

However the AEC understands the issue and its role in governing electoral integrity, it states that: ‘Threats to our democracy through malicious cyber activity, physical means, electoral fraud, foreign interference or disinformation are a matter of concern for every Australian’ (Australian Electoral Commission, 2019). The AEC has been very clear on the scope of its governance, clearly stating, ‘(a) federal election is a *contest of ideas and electoral laws do not regulate the truth of electoral communication* (my emphasis), the channels used for the distribution of electoral communication or the amount of electoral advertising undertaken’ (Australian Electoral Commission, 2019).

Following the 2016 Election, the Joint Standing Committee on Electoral Matters further recommended that all future inquiries into issues concerning ‘fake news’ use the term ‘disinformation’ (Joint Standing Committee on Electoral Matters, 2019), recognising that good intentions are insufficient. Concerned about the new impact of ‘fake news’ following the role of *Cambridge Analytica* and the impact of foreign and domestic influence in the 2016 US Presidential election, the Committee put forward two recommendations (amongst others):

1. The Committee recommends that the Australian Government consider ways in which media literacy can be enhanced through education programs that teach students not only how to create media, but also how to critically analyse it.

2. The Committee recommends that the Australian Electoral Commission examine ways in which media literacy can be incorporated into a modern, relevant civics education program.

To date, there seems to be no related initiatives on the first recommendation, however, the Committee recommended ‘the Australian Electoral Commission advise on the advancement of media literacy’ (Joint Standing Committee on Electoral Matters, 2019). In fairness, the AEC is not a civic education organisation – it’s job is to regulate elections and provides information to the public – yet it has made some effort to implement the second recommendation. During the 2019 election, the AEC had a single webpage ‘campaign’ entitled ‘Stop and Consider’ (Australian Electoral Commission, 2019c), which, apart from reiterating electoral laws have no role in regulating truth in political communication, appears to consist of three paragraphs and three steps for authenticating source material: Is the information from a reliable source? When was it published? Could it be a scam? Such questions focus readers on the messenger’s credibility, suggesting the AEC has no role in adjudicating truth.

Australian Politics – Justifying ‘Fake News’

In the 2016 Australian federal election, the Australian Labor Party (ALP) supported a campaign targeting the incumbent Coalition government and its alleged intentions to privatise the national public health system, which came to be known as the ‘Mediscare’ campaign. It involved significant social media and used innovative tactics to communicate its message (Williams, 2016). Significantly it involved the ALP sending an unsolicited text message claiming the Coalition would sell Medicare if re-elected. The text message’s title – ‘Medicare’ – suggested the message was an official communication from the government authority.

In brief, the Coalition government had no plans to sell or privatise the authority, nor had it flagged any substantial policy changes to the Medicare scheme. It proclaimed the campaign as ‘fake news’. In answer, the ALP proclaimed the Coalition’s ideological opposition to the Medicare scheme justified the campaign – it *might* change Medicare. In other words, while there was no current truth to the claim, the Coalition’s ideology meant it *could* be true in the future. The Coalition subsequently won the 2016 election and has not

made any significant adjustment to Medicare. While the ‘Mediscare’ campaign did not breach electoral laws, it did provide cause for changing the electoral act, which now stipulates text messages must show authorisation – or who sent the message. In other words, ‘fake news’ was not an issue as long as it was duly authorised. Further, Federal Parliament subsequently passed a law to ensure misrepresentation of a government agency could not occur in the future. Dubbed the ‘Mediscare bill’ by the Coalition, the law made it ‘a criminal offence to impersonate a federal entity company or service, such as a government agency or department’ (Baxendale, 2018). The opportunity to anchor a claim in truth was not put forward for legislation.

Claims of ‘fake news’ again surfaced in the 2019 Australian Federal Election, this time targeting the ALP by suggesting it would introduce a ‘Death Tax’ (slang for an inheritance tax) if elected (Koslowski, 2019). Again, the ALP had no proposal to introduce the tax but had flagged other policies that would tax older Australians. The same logic was invoked as the ‘Mediscare’ campaign three years previously – though not presently true, given the context of policies and ideology, the claim *could* be true if the ALP was elected. These ‘fake news’ campaigns clearly demonstrate the Australian political system’s lack of redress and desire to regulate truth.

The Future

Truth is the beginning of every good to the gods, and of every good to man.

Plato.

Since Plato, western thought has sought to anchor its belief systems in truth. However, it is clear this cannot apply to political communication, for both practical and theoretical reasons. In the first case, journalistic and governmental bodies set up to sift and monitor communications (such as fact-checking units) suffer from a lack of speed and irrelevance (Jenson, 2019), perhaps confirming the Australian Government’s suggestion that the intangibles of political communication are simply not suited to this form of assessment. Further, the line between fake and fact in politics remains opaque – most ‘fake news’ contains some truth, some speculation and some liberal interpretation (Jenson, 2019). There is also downside to policing ‘fake news’ – with some governments seizing on the opportunity

to introduce censorship or political control (Guest, 2019). However, controlling ‘truth’ is a means to controlling news and political communication; neither aids the democratic process. Perhaps we must confront the unpleasant reality that in politics Plato may have been wrong; absolute truth is simply not the anchor-point of news and politics.

This begs the question: if ‘fake news’ isn’t a question of ‘truth’, what is it about? Whether by grand design or stumbling error, the AEC’s approach to the problem appears correct – it is about ensuring attribution of the claim. Such sentiment is supported more broadly by organisations like Wikipedia, whose editorial policy has shunned ‘truth’ for *verification*. As argued by Omer Benjakob, ‘One of the platform’s three core policies is ‘verifiability, not truth’, and it requires every claim on Wikipedia be attributed to a reliable source. Any question on the meaning of ‘truth’ is deemed moot: either you have a source for your claims, or you don’t’ (Benjakob, 2019). Significantly, Wikipedia is an independent non-government organisation with a transparent structure that engages across communities:

‘Wikipedia’s open-access format – which enables anyone, from academics to enthusiasts, conspiracy theorists ... to edit any article – also has the useful side effect of creating a situation of radical transparency. That every single edit, change and discussion happens in the open allows Wikipedia editors to keep one another in check and weed out nefarious vandals’ (Benjakob, 2019).

Despite an absence of medial literacy programs, the public is already adapting to the new information environment. Recent international research from the Reuters Institute for the Study of Journalism shows positive signs, including lower trust of news in social media compared to traditional news sources and a change in online habits. A quarter of respondents stopped using sources from less accurate news sources and 41 per cent claimed they checked the accuracy of news sources (Nielsen, et al., 2019). It seems resolution of the ‘fake news’ problem is not coming from ‘above’ but ‘below’: it is not a question of government or journalists as self-appointed truth arbiters changing the media landscape but citizens who adapt to the new media environment.

Only through broad social engagement and empowering people to the exclusion of regulators and government can we find a positive way forward. At worst, it will be a process that engages and informs citizens, not of the absolute truth, but of greater examination of trust

in messengers and messages. We cannot legislate, impose or regulate what the public will trust. Trust is earned and learned. It is the result of how we have evolved, how we filter and assess communication from the gossips and the wise.

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Desecuritisation and Estonia's Democratic Response to Disinformation¹

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Abstract

In the wake of the 2014 Russian annexation of Crimea, the discussions about Russia's hostile influence in the information sphere – the deliberate spread of disinformation – have markedly increased. Estonian security policymakers expressed concern as there is a potential that Russian disinformation will undermine Estonia's societal cohesion. However, Estonia has pursued democratic responses to disinformation. Whilst many countries employ strict legislation and assertive countermeasures to combat disinformation, Estonia's responses do not follow this trend. Its strategic move, rather, exhibits a desecuritisation process through which the issue of disinformation is retained within the paradigm of normal politics. This process is further facilitated by desecuritisers who define the appropriate responses to disinformation campaigns.

Introduction

Estonia has seen Russia-led hostile influence activities in the information sphere since its re-independence in 1991 (Mihkelson, 2017). The pervasive disinformation campaigns – the deliberate and strategic spread of false news to undermine social cohesion – particularly in the aftermath of the 2014 Russian annexation of Crimea, represent yet another wave of information threats against Estonia in particular and the West in general. Recently, the discussions about disinformation campaigns against Estonia have increased markedly, as hostile influence activities in the information sphere are considered to be a part of Russia's hybrid war strategy.

However, Estonia has maintained minimal strategic responses to Russian disinformation campaigns in the information sphere. For instance, Estonia decided to allow Sputnik – a Russian

¹ This paper is based on my MA dissertation entitled 'A poststructuralist approach to strategic culture: Estonia's strategic response to Russia's hybrid threat'. It was submitted to the Johan Skytte Institute of Political Studies, University of Tartu, Estonia.

news agency which is seen by the West as a source of propaganda – to operate in the country amidst a surge in Russia's anti-Western messages (BNS, 2016). From a regional perspective, Latvia and Lithuania imposed a temporary ban on certain Russian media outlets to stop Russian disinformation from spreading into the country's information sphere, whereas Estonia did not implement a similar countermeasure. It thus shows that Estonia pursues democratic responses to Russian disinformation.

As highlighted above, whilst Russian disinformation is regarded as a threat to national security in Estonia (Teperik, 2018), the country's responses are compatible with liberal democracy in that the free flow of popular opinions and freedom of speech are not severely infringed. Estonia is, moreover, ranked among the highest with regard to Internet freedom (Freedom House, 2017). Considering increasing security challenges in the information sphere, the expectation, particularly from a realist perspective, is that Estonia would implement assertive countermeasures such as imposing censorship or banning Russian media outlets. However, in spite of its sufficient capabilities to act against information threats, Estonia remains moderate in its responses to disinformation campaigns and those responses are proportionate. It is also crucial to accentuate that the analysis here is sector-specific as the paper examines only Estonia's information sphere. The case of Estonia thus provides an interesting manifestation of democratic responses to disinformation in the information sphere.

This paper is grounded in the conceptual framework of desecuritisation with an emphasis on the desecuritisers. In what follows, it begins by clarifying the concept of disinformation and explains why it is a security issue. It then discusses the conceptual framework. It identifies the conditions through which desecuritisation of anti-disinformation policy becomes possible. The paper concludes with reflections on the Estonian approach.

What is disinformation and why is it a security issue?

Before proceeding, it is crucial to clarify the characteristics of a modern disinformation campaign. Disinformation is nothing new. During the Cold War, it had been used by the Soviet Union as a tool to sabotage the society of the targeted country. The official Great Soviet

Encyclopaedia defines disinformation (dezinformatsiya) as ‘the dissemination [...] of false information with the intention to deceive public opinion’ (Bittman, 1985: 49). It was one of the KGB’s active measures aiming to incite public confusion in the targeted foreign countries (Shultz and Godson, 1984). Disinformation was repackaged after the demise of the Soviet Union, attuning to the post-Soviet media environment (Wilson, 2005). Hence, relying on penetrative digital media outlets, Russia’s disinformation campaigns have grown more pervasive, reaching particularly economically vulnerable groups in the West. Strategically, the dissemination of deceptive information or unsourced claims in the targeted states’ information sphere can seriously polarise public opinion and amplify political tensions (Ekmanis, 2019). In this study, disinformation refers to the strategy of engineering and manipulation of information to bring about informational ambiguity, obfuscate reality and alter public perception of certain events at all societal levels. The strategic objective is essentially to create internal vulnerabilities in the targeted country’s society.

The West became seriously concerned about Kremlin-led disinformation campaigns, particularly after the Crimean crises which brought the relationships between Russia and the West to a nadir. Russian meddling in the 2016 US election by spreading online disinformation further led Western democracies to find countermeasures (Schmitt, Sanger and Haberman, 2019), such as assertive policy tools and stricter legislative measures. The French parliament, for instance, passed the controversial fake news law which, for several critics, renders disproportionate power to the state to impose censorship on media outlets identified as a disseminator of disinformation (Fiorentino, 2018). Such responses could, albeit unintentionally, be harmful to democracy.

For Estonia, disinformation has the potential to destabilise societal cohesion. During the Soviet occupation, Soviet immigrants came to settle in Estonia. Since Estonian re-independence, a Russian-speaking population has remained in the country, making them a sizable ethnic minority in Lilliputian Estonia. Approximately a quarter of Estonia’s population is ethnically Russian. They speak Russian and are not considered fully integrated into Estonian society

(Włodarska-Frykowska, 2016). Besides, the Russian-speaking population ‘lives in a separate information space’ (Bulakh et al., 2014).

In Estonia in 2015, the launch of ETV+, the state’s Russian language television channel, testifies to the security concerns about the stability of the country in that Russia’s disinformation campaigns may incite ethnic Russians living in Estonia to cause public unrest (Grassegger and Krogerus, 2017). At the EU Summit in 2016, the Estonian Premier, Taavi Rõivas, even raised the issue of permanent funding for EU Strategic Communication Task Force (EU StratCom) to counter Russia’s disinformation (ERR, 2016). Furthermore, from the defence perspective, it is recognised that the threat to Estonia’s national security can also emerge internally with incitement from outside (Männik, 2013: 37). The National Security Concept of Estonia, for instance, acknowledges that:

‘Estonia, as a democratic, open society, may also be affected by the spread of extremist, hostile or hate-based ideologies. This may weaken social cohesion, reduce tolerance and cause social tension. In the environment of open and free media, attacks against [the] cohesion of Estonian society necessitate greater attention to the sense of cohesion and psychological defence’ (Riigikogu, 2010: 8).

Although the term ‘disinformation’ is not explicitly mentioned, it is clear that the distortion of information, which is one of the central features of disinformation, is identified as the threat to Estonia’s national security. However, to re-emphasise, Estonia remains moderate in its responses to disinformation campaigns, in that the information sphere is still open and restrictive countermeasures and censorship are strikingly limited. Considering the security environment illustrated above as a point of departure, in the following sections, the paper examines Estonia’s responses to Russia’s disinformation campaigns through the lens of desecuritisation.

Desecuritisation as a Conceptual Tool

Given the universe of possible responses, why does Estonia accept self-imposed constraints on its ability to respond to Russia-led disinformation campaigns? To tackle this puzzle, I employ the concept of desecuritisation developed in the Copenhagen School (CoS) of security studies. The premise of desecuritisation is that an issue of concern remains in a normal political realm and needs no extraordinary measures to deal with it (Buzan, Wæver and Wilde, 1998). In Huysmans's (2006) conceptualisation, desecuritisation is understood as the 'unmaking of securitisation', meaning that a security issue is moved from being a security priority to being an element in the normal political agenda. The mirror concept is securitisation, which is a process whereby an issue of concern has become a security matter when securitising actors successfully speak of something as a security issue (McDonald, 2008). In other words, this suggests that a security issue emerges when an existential threat to a particular referent object is successfully constructed through speech act.

Arguing that desecuritisation literature is insufficiently engaged with the concept of politics, Aradau (2004: 388) points out that securitisation/desecuritisation dynamics are essentially about 'the questions concerning the type of politics we want, whether that is democratic politics or non-democratic exclusionary politics'. Building on Aradau's work, I will further illustrate that the process of desecuritisation is shaped by securitising actors whose framing of an issue of concern defines the type of politics people want. Conceptualising desecuritisation in this manner does not suggest a state of *asecurity*. Rather it implies de-escalation of the security issue (Biba, 2014). Accordingly, it can be understood as 'a process in which threats are transformed into challenges' (Wæver, 1995: 60). The reasoning behind this conceptualisation is that, in spite of being labelled as a security matter, an issue of concern is still in public debate and a call for extraordinary measures to tackle such an issue is not present.

The paper's empirical investigation of the case of Estonia highlights the process of desecuritisation of Russian disinformation threats. It focuses particularly on the role of desecuritisers in framing counter-disinformation strategies. Closely studying the role of desecuritisers is important in understanding the process of desecuritisation, since they are

the ones who determine the nature of an issue of concern, whether it is a security issue or an ordinary political matter. Besides, their framing of an issue of concern reflects the type of politics they want. For instance, Aras and Polat (2008) argue that the desecuritisation of Turkey's relations with Syria and Iran is influenced by pro-democracy foreign policymakers' framing of the issue. Dominant desecuritising actors are identified as follows: security policymakers and practitioners, Propastop and ETV+. In Estonia, whilst recognising that disinformation is a potential threat, in practice, Russian disinformation campaigns have been tackled as an issue in an ordinary political realm. This is a result of desecuritising actors' interpretation and the subsequent decisions on appropriate responses to disinformation campaigns.

Desecuritising actors and the process of desecuritisation of Russian disinformation

The following empirical analysis demonstrates how desecuritising actors frame Russian disinformation campaigns and how they interpret what an appropriate response is, which, in turn, reflects the type of politics Estonia wants. The dominant desecuritising actors are interrogated. The first encompasses security policymakers and practitioners in Estonian government and bureaucracy. The second is Propastop – a volunteer-led blog whose mission is to monitor Russian disinformation. In short, it is a volunteer fact-checker. It is worth noting that some Propastop bloggers are associated with the Estonian Defence League. The last significant actor is ETV+, a state-sponsored television channel operated in Russian to attract the Russophone population in Estonia.

Estonian government and bureaucracy

Since its re-independence, Estonia has been watchful of Russian attempts to influence Estonian society through the use of media. When Estonia faced disinformation and cyberattacks from Russia in 2007 which resulted in social unrest, Estonian leaders subsequently put forth the idea of psychological defence as a means to preserve societal cohesion and counter Russia's subversive operations (Jermalavičius and Parmak, 2012: 2). The National Defence Strategy

adopted in 2010 highlights the importance of psychological defence which is a part of the total defence principle. ‘The purpose of psychological defence is to prevent panic, the spread of hostile influences and misinformation, thereby ensuring continued popular support to the state and its national defence efforts’ (Estonian Ministry of Defence, 2010: 23).

However, so far, assertive measures and restrictive laws to improve psychological defence have never been implemented. For instance, the crackdown on disinformation websites that spread anti-Estonia messages has never happened. Instead, Narits (2015) argues that an appropriate psychological defence practice for security policymakers in Estonia is to raise awareness about hostile disinformation through education, e.g. media literacy. As a matter of fact, public debates concerning an appropriate response to Russian influence operations in Estonia’s information sphere are continuing (see e.g. Veebel, 2015; Sazonov, 2016). This shows that the issue of hostile disinformation campaigns is still in a normal political sphere, requiring no unusually anti-democratic, extraordinary measures. This desecuritisation pattern can be observed in recent developments in Estonia’s security policy in response to Russian disinformation.

In 2014, when the conflict between Russia and Ukraine erupted, leading eventually to the annexation of Crimea, the world had seen Russia’s irregular tactics in warfare which combine conventional and non-conventional means including the use of disinformation in the information sphere (see Table 1). In Estonia, the fear of Russia’s hostile domestic influence increasing through the spread of disinformation grows significantly. Societal unease emerges with regard to the loyalty of the Russian-speaking population in Estonia (O’Leary, 2017). In combatting disinformation threats, the Estonian government relies on strategic communication outreach activities. The primary aim is to debunk hostile foreign disinformation by disseminating official information with reliable sources to Estonian people including the Russophone population. The official definition of strategic communication highlights that it is operated within a democratic framework:

‘Prerequisites for strategic communication in Estonia are democracy and freedom of speech, meaning that government communication is only one of many competing voices beside opposing parties, business organisations, citizens’ associations, and foreign communication’ (Estonian Government, 2018).

Furthermore, the Estonian government communication handbook, which is a manual for communication personnel in government bodies, outlines acceptable practices in countering disinformation. The pronounced principle is that ‘we clearly oppose the promotion of hostile influences and propaganda while appealing to press freedom. Each opinion, or forum for expressing it, need not necessarily be regarded as journalism’ (Government Office, 2017: 19).

Although the development of strategic communication in Estonia is linked to national security, the actual implementation is guided by citizen empowerment and good governance. For instance, Praks (2015: 223) affirmed that in response to Russian hybrid threats, ‘good governance will decrease vulnerabilities’. Regarding empowerment, it refers to the practice of debunking propaganda and providing an official narrative, but it is still up to the individual to choose which media outlets to rely on (Punthong, 2018: 71). In other words, the objective is to improve media literacy and competence (Teperik, 2018) in both the Estonian- and Russian-speaking communities alike in order to achieve better societal psychological defence (see e.g. Mihelson, 2015; Kiin, 2017; Kund, 2018). Anchoring itself in the Western democratic discourse, the debunking practice has become considered one of the appropriate strategic responses to Russian disinformation threats in the information sphere.

This approach to fighting disinformation has gained traction among political leaders and non-governmental actors. For instance, expressing his approval of debunking disinformation outreach activities, the Minister of Health and Labour Jevgeni Ossinovski – a native Russian-speaker himself – said that ‘probably for the next years, so for the foreseeable future, this (reaching out to Russian speakers) will be more visible’ (Scrutton and Mardiste, 2017). Recently, the Estonian government has also reached out to the Russian-speaking population to provide official information as a response to a misunderstanding about the presence of NATO

troops in Estonia (Punthong, 2018: 71). Regarding a non-governmental actor's desecuritisation framing of disinformation, since its inception in 2011, the National Centre of Defence & Security Awareness (NCDSA) has been acting as an independent civic platform to improve Estonia's information and societal security. Its vision is to create 'a secure Estonian society that is psychologically resilient, socially cohesive and resistant to hostile influence' (National Centre of Defence & Security Awareness, 2019). The organisation works closely with Russian-speaking population in Estonia through training and outreach activities to provide facts about the country's security and defence situation. This, in addition, shows that the non-governmental organisation also plays a part in sustaining desecuritisation momentum.

All in all, Estonian government's and bureaucracy's framing of Russian disinformation campaigns limits the frontier of strategic choices in that appropriate responses are defined by good governance and citizen empowerment. This mode of response is thus consistent with liberal democracy in which individual freedom is guaranteed. From a desecuritisation perspective, this means that the issue of disinformation is kept within a normal political realm and a call for extraordinary measures to tackle it is absent.

Table 1 The Characteristics of The Russian Hybrid Threat (Punthong, 2018: 33)

	Military	Nonmilitary
Conventional	Battlefield combat Intelligence Strategic deterrence <ul style="list-style-type: none"> • Nuclear threat 	Political ¹⁵ and economic influence ¹⁶ <ul style="list-style-type: none"> • Soft power projection • Humanitarian assistance
Unconventional	Clandestine/deniable operation <ul style="list-style-type: none"> • Insurgency • Proxies • Military-operated cyber warfare 	Informational-psychological influence <ul style="list-style-type: none"> • Propaganda and disinformation in all available media outlets
		Information sphere

Propastop

Propastop is a volunteer organisation, working primarily to monitor disinformation from Russia. Its approach in debunking Russian disinformation is done by verifying that some claims are unreliable or based on half-truth information. Propastop is thus working as a fact-checker and it does not counter disinformation with disinformation as its organisation's mission points out:

‘If we detect that someone is disseminating lies, biased- or disinformation in the media [...] we will bring it to the public. We will juxtapose lies with real facts, show motives behind the actions and bring out the ones interested in manipulating information’ (Propastop.org, 2017).

Moreover, even though having close ties to the Estonian Defence League, Propastop's practice shows that resistance to disinformation can be achieved without resorting to undemocratic means such as propagandising its own biased narrative against a particular disinformation news piece. Propastop affirms that:

‘[...] propastop.org does not engage itself in creating propaganda. It restricts itself only to exposing propaganda. We also respect the right to freedom of speech for every Estonian citizen, including a difference of opinions about Estonia’ (Propastop.org, 2017).

This shows that Propastop's practice is in line with the government's desecuritising move in countering Russian disinformation. The organisation has not pressured the Estonian government to introduce more assertive countermeasures. Instead, Propastop itself is acting as a desecuritising actor who does not overly dramatise disinformation campaigns. What is being promoted is the respect for freedom of speech which exhibits a vision of liberal democracy.

From this angle, the absence of a call for urgent responses from a civil society organisation facilitates the desecuritisation of disinformation campaigns against Estonia's information sphere.

ETV+

The above analyses reflect how Estonia responds strategically to Russia's disinformation campaigns. The establishment of ETV+, the state-financed television channel, with the aim to disseminate factual information in the Russian language, further reinforces democratic responses to disinformation. Put differently, Russian media outlets in Estonia are not censored or oppressed. The Estonian government still allows Russia-owned television channels, which are notorious as part of the disinformation machine (Eslas, 2018), to broadcast in Estonia although there is an immense risk of audiences being exposed to disinformation. Unlike Latvia and Lithuania, who implement a more assertive measure by banning Russian media outlets in response to the disinformation campaigns, Estonia, again, has never implemented such a measure. Therefore, Estonia's strategic response in this manner illustrates a liberal undertone, reflecting its liberal commitment.

The establishment of ETV+ also implies the solution to link the Estonian- and Russian-speaking communities together by reducing the conflicting messages spawned out of different information spheres. In 2017, the New Year programme of ETV+ broadcast in real time the celebration in both Tallinn, the capital city, and Narva (Nagel, 2017), in which most of the Russian-speaking population live. The programme characterises the underlying strategic thinking in that it may help to bridge the informational differences between the two communities. Nonetheless, it should be highlighted that the impact of the programme in presenting facts to audiences in different information spheres can be limited owing to the fact that not all the Russian-speaking population watches the channel. In fact, ETV+ is more popular amongst Estonian audiences (Baltic Times, 2015) and it does not reach out to the wider Russian-speaking audiences.

Consequently, there is a debate in Estonia whether Tallinn Television (TTV) should purchase airtime from the Kremlin-friendly Pervõi Baltiski Channel (PBK) in order to more

adequately connect with its Russian-speaking population who usually watch the channel (Postimees, 2017). President Kersti Kaljulaid and Justice Minister Urmas Reinsalu unequivocally demurred at the idea with their nationalistic tinge, pointing out the risk of disinformation (Baltic Times, 2018). However, although they consider Russian media outlets a source of disinformation campaigns against Estonia, they never call for any extraordinary measure such as censorship or severe legal punishment against Russian media outlets operating in Estonia. Therefore, what is observable is a consensus amongst Estonian political leaders in framing Russian disinformation campaigns as security challenges which can be handled within a democratic framework. The manifestation is the articulation of reliable, fact-based information as much as possible. Estonia, thus, strategically responds to disinformation by upholding the tenet that the public will be immune from disinformation if they are well-informed and can exercise individual choice. Darja Saar, the editor-in-chief of ETV+, emphasises that ‘ETV+ isn’t meant to shape anyone, but rather produce quality content serving Estonia’s Russian- and Estonian-speakers alike’ (Saar, 2017).

In this respect, launching ETV+ can be seen as strategic support to psychological defence; a strategic response to the spread of hostile influences and misinformation and is based on the liberal principle of freedom of speech. Therefore, the fact that Estonia does not adopt illiberal strategic choices such as blocking the broadcast of Russian television channels or restricting Russian media outlets shows that such choices are filtered out. All in all, as illustrated above, the desecuritising actors express their approval that Estonia’s appropriate strategic responses to Russian disinformation campaigns should be consistent with liberal democracy. Accordingly, imposing minimal restrictions in its information sphere is an effective solution which does not lead to anti-democratic consequences.

Conclusion

This paper has focused on Estonia’s democratic responses to Russian disinformation campaigns. It utilises desecuritisation as a conceptual tool to examine Estonian security narratives in tackling disinformation threats. A particular emphasis is given to desecuritising actors who facilitate the

desecuritisation process by keeping disinformation challenges within normal politics rather than framing them as an urgent security issue. As was highlighted, normal politics in the Estonian context refers to liberal democracy in which freedom of speech is guaranteed. In the face of the increased hostile information influence from Russia, Estonia remains committed to protecting individual freedoms and attempts to keep its information sphere open. In a similar vein, an appropriate strategic response to disinformation for Estonia is defined by its liberal identity (Punthong, 2018). From this angle, it is clear that Estonian leaders' framing of disinformation in the information sphere is conducive to desecuritisation.

The case of Estonia, moreover, illustrates that countering disinformation does not necessarily entail the infringement of people's rights and freedoms. Extraordinary and assertive countermeasures and strict legislation do not guarantee a successful and effective response to disinformation campaigns. On the contrary, empowerment through enhancing media literacy, the state's outreach activities to debunk disinformation and de-marginalisation of those living in a separate information sphere are considered more legitimate and effective strategies for Estonia in combatting disinformation. These strategies are the manifestations of the desecuritisation process driven by desecuritising actors whose vision of a type of politics Estonia should be built on is liberal democracy.

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Propaganda, Disinformation and Fake News: Communications and Democracy in the Digital Age

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Abstract

As the media industry continues to become ever more powerful and with the rise of citizen journalism and the effects that social media has on society, the aim of this paper is to investigate how governments across the world are planning to introduce initiatives to regulate the industry. Such moves are controversial for countries that allow a ‘free press’ and further regulation could have a damaging effect on the ways in which we receive news, understand the world around us and, ultimately questions the fragility of the media industry as we move forward into the 21st century. Using Kingdon’s work on Public Policy and the Path Dependency framework, the paper will showcase how government regulation over new and emerging technologies is not a new phenomenon and in fact traces its roots back to the invention of the printing press in the 15th century and beyond.

Introduction

We live in an increasingly affluent world of digitised communications. For the first time in history, we are living in a multi-million channel world. A world where ‘one to many’ communications has given way to ‘many to many’ communications. This new reality means that the market for information and knowledge is more open and diverse than ever before. Empowering ordinary people with more and better access to ideas across everything from education and healthcare to consumer goods and public policy, the coming fourth industrial revolution not only has the capacity to enrich and embolden lives, but it also has the potential to lower economic barriers, reduce asymmetries and unleash innovative forms of solutioning (Tegmark, 2017).

However, given such technology can also be used for negative purposes this paper examines some of the ways in which key elements of 20th century history can inform our thinking. In so doing, it explores previous generations of organisation tasked with defending the open society and freedom, and explores their practice, ethics and implications. While propaganda, misinformation and fake news have long been features of human interaction and power relations (Shultz and Godson, 1984), in an increasingly relativised world of ‘many to

many' communications, shared understandings on truth, facts and reality become problematic. In a world where information is being 'set free', concepts such as truth and reality fall prey to all manner of subjective and speculative interpretations, mediations and power games. It is in this context that methodologically this paper seeks to briefly examine the past so as to better inform options for the present and future.

Whilst epistemological challenges have long held the attention of philosophers and social scientists (Kuhn, 1962), this new world of 'many to many' communications means that profound questions surrounding notions of objectivity, truth and reality are colliding with the worlds of governance, legitimacy and political economy. In an increasingly open, subjective and mediated world what is to become of rubrics such as democracy and the idea of circulating elites?

While 19th and 20th century processes of industrialisation and bureaucratisation (Weber, 1922) led in many parts of the world to expand voter rights, develop modern political parties and hold regular elections, what forms of governance, legitimacy and political economy will emerge under the auspices of the fourth industrial revolution and how will they impact our ideas around belief, knowledge and truth?

Communications Back to the Future

Around the world, the Palace of Westminster in London is often referred to as the 'mother of Parliaments'. As a beacon of circulating elites, innovative public policy and timely legislation, its debates, evolution and traditions have helped to create one of the world's most stable, vibrant and prosperous democracies.

Yet, as a legitimating rubric, modern democracy is not timeless or unbound. Internationally, its institutions and practices are always socially, politically and legally constructed. As a concept, modern democracy is far from perfect. As the former British Prime Minister, Winston Churchill once commented 'Democracy is the worst form of government except for all the rest' (Langworth, 2008: 574).

During Churchill's lifetime, technology changed dramatically. He saw the rise of mass markets for the telephone, the wireless (radio), television and even the development of early computing. As a communicator, Churchill not only propagandistically sent the English language to war with his famous and rousing speeches but he also consciously exploited the early golden age of broadcasting.

In defending and promoting concepts such as democracy and the rule of law, Churchill, alongside other British politicians of the time, well understood the interconnected worlds of propaganda and disinformation. In facing the tyranny of both German national socialism and Soviet communism, they were part of a political generation which worked hard to counter the ideas, narratives and influence of totalitarianism.

In doing so, they were clear in their approach. To defend the open society from its enemies (Popper, 1945), they often had to resort to extraordinary and special measures that included all manner of propaganda and disinformation. They also used fake news.

For example, in May 1940, Winston Churchill ordered Britain's Secret Intelligence Service (SIS/MI6) to establish a secret propaganda organisation in the United States of America. Called British Security Co-ordination (BSC) and headquartered in Room 3603 of New York's Rockefeller Center, the objective was to shift US public opinion away from its constitutional isolationism, towards a more anti-German, pro-British and pro-interventionist stance (West, 1998).

As soon as Churchill became Prime Minister, he recognised that to win the war he had to persuade the US to become a fully committed ally. While President Roosevelt was privately sympathetic to Churchill's stance, US opinion polls repeatedly showed that more than 80% of Americans were against joining another war in Europe. This was a time when Anglophobia was widespread and the US Congress was opposed to any form of intervention.

However, as a large secret agency tasked with black propaganda and the nationwide manipulation of US news, BSC produced and disseminated hundreds of news stories aimed at influential US outlets such as the New York Post, the Herald Tribune and Radio New York Worldwide. Subsequently picked up, echoed and amplified by other US newspapers and radio stations, overtime, BSC had a significant impact in shifting US opinion in the run up to the Japanese bombing of Pearl Harbour.

For much of late 1940 and 1941, pro-British and anti-German stories were seeded across US newspapers and radio stations. BSC not only ran what was to all intents and purposes its own radio station, WRUL, but it also ran the influential Overseas News Agency (ONA). This outreach was complemented by a sustained campaign of 'harassment and denigration...against those organisations perceived to be pro-Nazi or virulently isolationist' (Boyd, 2019). As the writer William Boyd pointed out, until Churchill and MI6 created BSC, no one had 'ever tried to achieve such a level of "spin"...on such a vast and pervasive

scale in another country' (Boyd, 2019). With the audacious objective of changing the mind of an entire country and making ordinary Americans believe that joining the war in Europe was a good idea, the British enabled President Roosevelt to act without fear of censure from Congress or at the polls in an election.

Operationally, BSC's activities were widespread and riven with skulduggery. For example, in 1940, a German agent named Weldrick attempted to build a series of potentially dangerous relationships with a range of US oil companies. Soon exposed by BSC in a series of news articles, his work not only caused widespread outrage but his expulsion from the US also resulted in the removal of the head of Texaco (West: 1998).

Again, in the summer of 1941, BSC:

'...sent a sham Hungarian astrologer to the US called Louis de Wohl. At a press conference De Wohl said he had been studying Hitler's astrological chart and could see nothing but disaster ahead for the German dictator. De Wohl became a minor celebrity and went on tour through the US, issuing similar dire prognostications about Hitler and his allies. De Wohl's wholly bogus predictions were widely published' (Boyd, 2019).

At one point, BSC promoted a game called 'Vik' which was described as a 'fascinating new pastime for lovers of democracy'. Players were not only given booklets detailing hundreds of ways of undermining Nazi fellow travellers but they were encouraged to ring up specified targets around the clock.

One of BSC's most significant operations involved a map that was reputedly stolen from a German diplomatic courier's bag in Argentina. The map:

"...purported to show a South America divided into five new states – Gaus, each with their own Gauleiter – one of which, Neuspanien, included Panama and "America's lifeline" the Panama Canal. In addition, the map detailed Lufthansa routes from Europe to and across South America, extending into Panama and Mexico. The inference was obvious: watch out America, Hitler will be at your southern border soon' (Boyd, 2019).

In the United States, the map was widely believed to be true. On 27 October 1941, Roosevelt delivered a powerful pro-war address in which he stated ‘This map makes clear the Nazi design...not only against South America but against the United States as well’ (Boyd, 2019).

The story of the South America map and other BSC operations were written up in a limited edition typescript for private circulation following the war’s end. While initially only 10 copies existed and were held by people such as Churchill and senior SIS officers, in 1998, it was eventually published as a book with an introduction by Nigel West.

Although no one knows how many people were on the BSC payroll or worked in its agent networks - estimates vary from several hundred to 3,000, it is interesting to reflect upon its scale, impact and methods. Using forged documents, misinformation, disinformation and propaganda:

‘It almost defies belief. Try to imagine a CIA office in Oxford Street with 3,000 US operatives working in a similar way. The idea would be incredible – but it was happening in America in 1940 and 1941, and the organisation grew and grew’ (Boyd, 2019).

During World War Two, the United Kingdom mobilised an impressive array of organisations concerned with all aspects of information warfare. Whether countering enemy propaganda, misinformation and disinformation, or simply promoting their own narratives to help win British objectives, organisations such as the Ministry of information, the British Broadcasting Corporation (BBC), and the Special Operations Executive (SOE) all conspired to manage and manoeuvre in the information space (Garnett, 2002; Cruickshank, 1977; Howe, 1982).

One of the most intriguing organisations went under the cover name of Political Intelligence Department (PID). More accurately called the Political Warfare Executive (PWE), this secret organisation was in business to produce and disseminate a range of both ‘white’ and ‘black’ propaganda. Strategically, its aim was to sap and undermine enemy morale whilst boosting that of the allies, particularly in occupied countries (Garnett, 2002).

Formed in the summer of 1941 and managed by the Foreign Office, PWE employed propaganda experts from the Ministry of Information, the BBC and SOE. Disseminating information through everything from documents and leaflets to postcards and radio broadcasts, PWE even developed its own clandestine stations including 'Gustav Siegfried Eins' and 'Kurzwelesender Atlantik'. In order to deliver subversive effect, PWE famously mixed reliable news and information concerning developments in Germany and the occupied countries with all manner of carefully crafted disinformation. Collecting information from other government agencies, including open source material from newspapers in occupied countries, PWE became a powerful player in Europe's information war.

At the end of the war, PWE personnel took over responsibility for the re-education of German prisoners of war. As with different types of propaganda, PWE used the classifications of 'white', 'grey' and 'black' to categorise their captives. While ardent Nazis were classified 'black', anti-Nazis were classified 'white'. Non-political soldiers, sailors and airmen were classified 'grey' (Garnett, 2002).

Following the Second World War, the British government re-directed and re-organised its propaganda capabilities. In 1948, the Foreign Office created the Information Research Department (IRD). Designed to counter Soviet propaganda and disinformation campaigns at home and abroad (Shultz and Godson: 1984) many of IRD's targets were actually in the developing world. Discreetly staffed by emigres from Iron Curtain countries, IRD officials operated under orders not to disclose where they worked even to other staff within the Foreign Office (Leigh, 1978).

Destined to become one of the largest departments within the Foreign Office, IRD set out to aid British journalists and opinion formers with a wide range of stories and narratives. As well as regularly supplying information to the BBC World Service, IRD operated extensive networks of journalists, academics and trade unionists. Often acting as unconscious agents, these opinion formers were told very little about origins of the material they were provided. Occasionally told that material was prepared for the diplomatic service and that it was being shared with them on purely a personal basis, the information never held the status of being 'official' and was therefore not attributable to the British government.

Under its remit to collect and summarize reliable information about Soviet and communist misdoings, to disseminate it to friendly journalists, politicians and trade unionists, and to support, financially and otherwise, anti-communist publications, IRD funded

numerous popular and scholarly books including Bertrand Russell's 'Why Communism Must Fail' (Russell, 1951) and 'What is Democracy?' (Russell, 1953).

IRD not only kept extensive lists of friendly journalists, trade unionists and academics but it also worked alongside several informants to maintain its lists on potential enemies. For instance in 1949, the avowed anti-Stalinist George Orwell compiled a list comprising of thirty-eight journalists and writers who he believed were crypto-communists, fellow-travellers and people not to be trusted as propagandists. Significantly, IRD also went on to covertly fund the Burmese, Chinese and Arabic editions of Orwell's seminal book 'Animal Farm' (Garton Ash, 2003).

During much of the 1950s and 1960s, IRD worked alongside a US Central Intelligence Agency (CIA) front called the Congress for Cultural Freedom (Coleman: 1989). Supporting its Anglo-American journal *Encounter*, they promoted an anti-Stalinist left while also seeking to counter ideas of pacifism and neutrality.

In 1965 in South East Asia, IRD's monitoring unit in Singapore assisted the Indonesian Army's undermining of the Indonesian Communist Party (PKI). It not only channelled anti-PKI propaganda through a range of regional radio broadcasters including Radio Malaysia, the BBC and Radio Australia but it also placed news stories in key regional newspapers. Emphasising Chinese Communist involvement and PKI brutality, IRD's propaganda outreach was proactively supported, echoed and amplified by governments that included Malaysia, Australia and the United States of America (Easter, 2005: 64-65).

As the sociology of belief systems makes clear, humans are often prone to visions. All ages and forms of society disport beliefs that serve to legitimate their replication and interests. Whether religious or secular, societies invariably mobilise rubrics of legitimation that are inherently subjective and propagandistic in nature. Whether under 'the divine right of kings', the Marxian notion of a 'vanguard elite operating on behalf of the working class', or 'government by the people for the people'; all these legitimating rubrics serve to justify epochs and structures of governance and their attendant forms of political economy.

It is in this context that the activities of organisations like BSC, PWE and the IRD are best understood. As their histories make clear, sovereign states and polities invariably act to serve their own interests. While ethics and methods may be questionable, these activities were ultimately done in the name of democracy. In being intolerant of the intolerant, opposing tyrannies built on propaganda, disinformation and fake news were not only

countered and thwarted but their lying, injustice and unsustainability were ultimately exposed.

While ethically, the IRD could be criticised on the basis that citizens did not know the origins of their information and therefore could not adjust for bias, the opposing view holds that such information was only given to people who were already sympathetic to democracy and the open society.

Communications and Democracy in the Digital Age

Today, as the tectonic plates of technology and history shift, so stakeholders around the world are increasingly alarmed by what they perceive to be the anarchic mainstreaming of propaganda, disinformation and fake news. Whether pushed by malevolent or misguided states or enterprises; profound questions surrounding the nature of reality, truth and governance become ever more hotly contended.

As global economic and political power tilts towards South East Asia, stakeholders in this region are joining with others across the world to voice their concerns at the rise of information manipulation and its potential to distort public behaviour. That is why governments across Asia are either planning to introduce legislation in this area, if they have already done so.

Historically, one-sided propaganda, fake news and disinformation have been powerfully disseminated by authoritarian states and occasionally by democracies at times of war when fighting for survival. Whereas most governments in the past have sought to control and manage local press and media to some degree, more authoritarian regimes have always sought to manage, marginalise and eradicate alternative perspectives not amenable to their own, particularly when they threaten the regime's rubric(s) of legitimisation.

However, whereas authoritarian governments once held near monopoly power in the information space, in contemporary open and democratic societies, power and attention is increasingly shifting towards individual actors, technology companies, and even the rise of artificial intelligence. In a world of many to many communications not only is information being set free as never before, but its potential to disintermediate, relativise and privatise is starting to challenge what we understand by an open and democratically legitimated society.

As a rubric of sustainable legitimation, the danger for democracy is that it becomes increasingly separated from the freedoms of expression and thought upon which it relies. If freedom of speech and the rule of law were ever to fall victim to a concerted effort to criminalise bias, subjectivity, or the right to belief, then democracy would be debased from within. The great strength of an open and democratic society is its plurality, tolerance and belief in a subjective market in ideas and its capacity to be tested overtime.

Just as in markets and business, price signals and information are best not managed by top down planners, ministers and officials (Mises, 1949), so in a free society, ‘ideas’, ‘reputations’ and ‘truths’ tend to be more powerful, sophisticated and innovative when they are allowed to emerge spontaneously, through bottom up discourse and trial and error (Hayek, 1973). This is not to say that governments, regulators, or the bully pit of politics have no role. Instead, it is simply to point out that government officials are often more epistemologically challenged than the dispersed wisdoms held amongst their populations (Surowiecki, 2004).

An open, free and prosperous society is not afraid of ignorance, misunderstanding or those who lie. Instead, it has the confidence and tools to deal with them. In believing the world to be open and intelligible to human reason, a free society relishes the opportunity to hypothesise, test and progress under the rule of law. It believes in its capacity to discuss, experiment and advance and to see off ignorance and malevolence. Just as major innovations and advances often start at the margins of ‘established thinking’, so dissent, disagreement and experimentation are the lifeblood of a healthy, free and law abiding society.

To ameliorate, police and manage the harmful effects of propaganda, disinformation and fake news in the digital age, one should not only re-examine the foundations of the open society but also explore the underlying institutional architecture and practices of governance and democracy. In short, which forms of democracy and governance will remain consonant with an open society during in the coming forth industrial revolution?

Participatory Democracy and the Future of Governance

In many ways ‘management’ has been the greatest invention of the last 130 years as it encapsulates the most important tools and methods for bringing people together, and to mobilise and organise scarce resources for productive ends.

In 1890, 90% of people in the developed world worked in agriculture and the average manufacturing company had less than four employees. By 1915, the Ford Motor Company was making more than half a million cars a year, whereupon US Steel became the first company in the world to have a market capitalisation of more than \$1 billion. Between 1890 and 1915 most of the traditional tools of management were invented, including: divisionalisation, capital budgeting, task design and pay for performance. Across the public, private and not-for-profit sectors, most of the management tools still used around the world were invented prior to 1920. That is why so many organisations continue to use a world of principles, tools and approaches that are legacies from the past. However, as the world changes, so the debate around technology, communications and governance highlights we are indeed entering a new era.

In today's world, there are new challenges which mean that traditional models of management and governance no longer work. First, **Change has Changed**. It is accelerating, exponential, disruptive (internet connections, data storage, mobile devices connected to the internet, AI, genome sequencing, etc). Second, **Hyper Competition and Creative Destruction**. Today's world is about lower barriers to entry, disintermediation, innovation and adaptability. As a result, organisations, trades and professionals have to be more creative, inventive and adaptive than ever before. Third, **Knowledge is becoming the new Commodity**. Increasingly, the key question for organisations is how can they create and manage new information and knowledge? Whether in the public, private or not-for-profit sectors, how can people build, lead and develop organisations that change as fast as change? How can they build organisations where innovation is the work of everybody? And how can they build organisations where people bring the gifts of their creativity, innovation and passion?

Moving forward, the organisations that will thrive over the decades ahead will make progress on these fronts. The good organisations will be the ones that understand the need for new thinking when it comes to leadership, organisation, recruitment and motivation. They will be the ones that link and innovate around leadership, learning and performance. They will also explore new forms of governance and communication.

Statecraft and political economy are inevitably tied to such evolutionary trends. As science, industrialisation and the age of mass consumption took hold in the 18th, 19th and 20th centuries so the rubric of representative democracy became the beacon of a new and

liberatory legitimacy. Promoted by the enlightenment and delivered through new forms of public and private management, the developed world sought to conjoin the interests of vote motivated politicians with consumer oriented citizens and all manner of vying sectional interests.

Indeed, it was Adam Smith in *The Wealth of Nations* who pointed out ‘People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices’ (Smith, 1904). As a political economist and moral philosopher, Smith understood that most entrepreneurs would oppose genuinely free and open markets given their potential for disruption and uncertainty. He well understood the incentives of professions, trades and entrepreneurs to seek monopolistic advantages through legislative favour and politically gained barriers of entry. He also recognised that such moves were most often achieved in the propagandistic name of ‘public safety’.

Today however, the internet is disintermediating and establishing standards bottom up as never before. As technology drives knowledge, competition, change, disintermediation and creative destruction, so there is an increasing disconnect between politicised and private forms of governance: between coercion and voluntarism (Rhodes, 1994; 1997; 2007).

It was the former British Conservative member of parliament, Douglas Carswell, who argued in the UK, ‘we have a cranky, outdated, 19th century version of democracy, trying to hold to account a 20th century sized government’ (Carswell, 2013). Pointing out that the country now has more quasi-autonomous non-governmental organisations (QUANGOs) than MPs, he concludes ‘...we have thousands of government agencies and the idea that we can elect people every 4 or 5 years to manage them effectively is a nonsense’.

Carswell believes that the internet is going to change the nature of democracy. Instead of relying on 19th century models of representative democracy, the digital age is going to encourage greater levels of participation. He envisions a future in which individuals will have greater power to proactively make choices. A world in which people have more control over the tax funded public services that they chose for themselves (Carswell, 2012).

While during the last century the British state has promoted collectivism, and the market has encouraged individualism, Carswell sees a future where the digital world will drive new forms of collectivism without the state. Just as people currently vote with their money for all manner of goods and services, he believes public services will increasingly be

opened up a new forms of choice. For example, in education, the digital age will enable people to vote for a more personalised curricula. In healthcare, instead of voting for a political party that stops people from making choices and directing public money to where they want, individuals will be given much greater control over where budgets are spent for their services.

As trades, professions, structures and old ways of working are increasingly disintermediated, so traditional asymmetries of information and knowledge will erode. Just as other parts of the world have learned how to run market economies that harness dispersed wisdom and power, so many forms of western exceptionalism seem destined to decline. While the west is going to have to rediscover more agile and efficient forms of government, so we are all going to have to face up to the challenges of ‘iDemocracy’ and a refreshed statecraft consonant with the 21st century ways of working. In terms of statecraft, bottom up and participatory forms of governance will not only unleash potential within the public, private and not-for-profit sectors, but they will broaden and deepen people’s access to decision making.

Culturally, this will not be a post truth world. People will continue to live, act and thrive. As such, they will maintain beliefs based on the acquisition, interpretation and testing of information and knowledge. People will continue to sift out those truths they want to hold to and those they choose to discard. While there will continue to be a market in ideas, attitudes and opinions, it will be based firmly on notions of ‘truth’ and ‘falsehood’.

Conclusion: Epistemology and Law in the Many to Many World of Digital Communications

It was the French 19th century philosopher Ernest Renan who said: ‘Forgetting history, or even getting it wrong, is one of the key elements of building a nation’ (Pye, 2014: 19). In the 20th century George Orwell observed: ‘Who controls the past controls the future: who controls the present controls the past’ (Orwell, 2008). While both these quotes were directed against the propagandistic instincts of politicians and governments, they serve to highlight the timeless tensions between statecraft, freedom of expression and the rule of law.

Just as artificial intelligence, data science and all manner of digital technology can play a role in promoting habit forming behaviours, so too can politicians, journalists and scientists. Of course, all these stakeholders can also do the opposite. Artificial intelligence,

digital technology, politics, journalism and science can also promote change. Along with entrepreneurship, they can disrupt habits, norms and behaviours - for good or ill.

Just as biased or fake news can negatively impact voter behaviour and in some circumstances encourage individual or communal violence, so too can external truths. As we have seen (above), as soon as democratically elected politicians in Britain understood truths and realities concerning national socialist Germany and Soviet Russia they were prepared to promote all manner of ethically, morally and even violent means to fight for what they believed to be right. In so doing they also deployed all manner of propaganda, misinformation, disinformation and fake news.

While stakeholders will always use legitimating rubrics such as democracy to enact laws and legislation in the name of curbing disinformation to promote national security, deeper questions remain. Who, how and why are such laws being enacted and how do we know that they will not themselves lead to unintended and counterproductive consequences? For example, just as there can be strength in diversity, so there can also be risks with the imposition of uniformities of rule that can be gamed by those wishing to misinform and disrupt. While media literacy and fact checking programmes may contribute to people's education, history shows that effective statecraft is rarely vested in single, centralised authorities with access to timeless truths or professed certitudes. As the writer Paul Birch points out, sovereign territorial power and authority are always divided amongst rival, often competing interests:

‘Courts religious, secular and royal; commercial guilds; trades unions; local councils; houses of parliament; lords spiritual and temporal; the civil service; the King; the Pope; the Emperor; all these and more claim the right to exercise coercive power; and almost always they attempt to usurp more power than is rightfully theirs.’ (Birch, 1998: 2).

For Birch, issues of legislation, law and legitimacy ultimately rely on cultural factors. Whatever the legitimating rubric(s) of a state's power; efficacy and practice depend on the internal arrangements of the relevant courts. In terms of legitimacy and the political economy of statecraft this means:

‘A co-operatively owned court might create a commune, a church-court a theocracy, a privately owned court a monarchy, a joint stock court a republic. The dominant court might be controlled by businessmen, or lawyers, or policemen, or soldiers, or gangsters – or solid citizens. The court might be monolithic, or composite; its powers might be unitary, or divided. It might be pragmatic, or ideological. It might be honest, or corrupt. It might be in it for the money, or the power, or for the furtherance of justice.’ (Birch, 1998: 3).

The same can be said of information, knowledge and people’s beliefs. Ultimately, it is for justice and the rule of law to defend people’s freedom from phenomena such as fake news and disinformation. How courts manage and mediate abuses by governments, private entities and social media is also a matter of culture. That is why, providing the principles of due process are maintained, it is better for a society to openly surface, debate and expose falsehoods and lies, than seek to repress, censor or close them down.

For all its imperfections and epistemological challenges, only a society rooted in the values and culture of freedom, human rights and the rule of law can legitimately call itself democratic. And to date, only democratic societies with increasing degrees of participation look set to have the confidence and strength to cope sustainably with the vicissitudes of a world of ‘many to many communications’, in a time when change is changing, hyper competition is becoming a reality and knowledge is destined to be the key commodity.

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Disinformation in the 2019 Midterm Elections in the Philippines

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Abstract

The Philippines' 2019 midterm election marked the second time that digital disinformation prominently became part of the campaign toolbox of politicians. The first time was in 2016 and that helped propel Rodrigo Duterte to the presidency. Duterte's camp had substantially spent for bots, trolls and highly partisan news sites. The active presence of fact-checkers in the 2019 had made it possible to debunk some disinformation and misinformation, including the overblown, unverified and ludicrous claims circulating online and offline. The most extensive verification project was *Tsek.ph*, a collaboration of academe and media. While before fake news and disinformation came from anonymous bots, trolls, and spurious social media, *Tsek.ph* detected an overt state-sponsored disinformation in the form of red-tagging of some candidates and left-wing political groups. Red-tagging, or labeling as communist certain groups and individuals is a form of silencing dissent while in some areas of the country, often a prelude to killings of left-wing activists. This strategy was prominent on the eve of, and during, election day. It reveals the repressive element of Duterte's populism that will be buttressed by election results to his favor.

I. Introduction

The Philippines' elections have been known for disturbing elements that have endured for many years – the three “Gs,” which stand for “Guns, goons and gold,” or the combination of intimidation and vote-buying. These days, election also relies on “disinformation,” which comes in the form of deception, vilification, and threats. When transpose on social media, as what happened in the 2016 and 2019 elections, disinformation continues to enable, but at times eclipsed, the traditional strategies. Disinformation became a weapon of its own, through the proliferation of inaccurate or outright false news, also termed fake news, that are deliberately fabricate, with the intent to mislead.

This essay revisits the May 2019 midterm elections in the Philippines by examining the forms of disinformation found among the entries of *Tsek.ph*, a collaborative fact-checking and verification project of academe and media organizations. The discussion has three parts. First, it will provide a background of elections in the Philippines to show Duterte's brand of

politics and the conditions in which disinformation and fake news thrive. Second, it will examine the forms of election-related disinformation through an analysis of the fact-checked entries of *Tsek.ph*, a collaborative fact-checking project between academe and media organizations. It will highlight the content of various forms of disinformation and misinformation used by politicians to gain voters' support in a highly polarized election season. Third, it will look into how disinformation became part of the government's systematic campaign to frustrate legitimate dissent during the campaign season. Given the trends, which favored those who resorted to disinformation, this study will foreshadow the disinformation disorder likely to take place in the 2022 elections.

Tsek.ph, was organized by universities and news media during a run up to the May elections to counter the spread of election-related false information or fake news. It was oriented towards professional journalism rather than civic and political participation. The project was guided by journalistic conventions, values and ethics. This means that fact-checking was primarily considered a journalism genre that intervenes in the public discourse. This point will be discussed later but such standpoint brought challenges upon those who see fact-checking as a form of civic and political action.

While scholars preferred the use "disinformation," to designate misleading and false information, "fake news" has a particular appeal in the context of the Philippines where fake or fraudulent information, which are demonstrably false, are being passed off as news to deceive the public. Fake news has been identified with President Duterte and his supporters, starting in 2016 when Duterte employed the so-called keyboard army of paid trolls and ardent supporters overwhelm social media users with fraudulent claims. For example, his supporters created stories like Pope Francis endorsing Duterte as president, or the Queen of England praising Duterte for "raising the Filipinos from grass to grace," whatever that means. The networks stayed on when Duterte became president, with some of the bloggers joining his office, while the strategy, despite its social cost, became part of the election playbook of many politicians in the 2019 elections.

The term fake news can be subsumed under the broad category of disinformation, which is defined by Derakhshan and Wardle (2017) as fabricated and deliberately manipulated content, with an intention to deceive and harm a person, social group, organizations or country (Derakhshan and Wardle, 2017: 9). The definition can cover

categories of disinformation and misinformation that both considered demonstrably false. The only difference is that misinformation may not be intended to cause harm. Thus the production and distribution of fake news may be examined for its purpose or intention. In contrast, Egelhofer and Lecheler's (2019) extensive literature review of fake news noted that intention to deceive is the difficult to prove from a scholarly standpoint, given the range of types of disinformation that proliferate. News parody or satire, created as a counter critique, could end up being considered as fake news because they are deliberately distorted to the point of being incredulous that could trick the uninitiated. However given some familiarity with the context of election-related disinformation, this study will try to delineate disinformation from misinformation in the later part of the discussion, with the reference points provided by the fact-checking entries to determine the intention to deceive to justify some kind of politics or ideology.

II. The Philippines' Elections, Disinformation and Duterte

This section elucidates the characteristics of elections of the Philippines as a post-colonial political exercise. It will also highlight the role of disinformation as a strategy to clinch elective positions. This part also provides an account of the emergence of Rodrigo Duterte to power. It will look at his politics that make use of repressive apparatuses of the local government and the disinformation that primarily portray him as an upright politician by glossing over his record of human rights violations.

President Rodrigo Duterte is a beneficiary of the country's election system characterized as elitist and personality-based rather than pluralist and issue-oriented one. Elections are a colonial legacy of Spain and the United States. The Spaniards and Americans have laid the foundation of elite democracy in the country that has turned elections into a game where the major players are the members of the modern *principalia*,¹ which is another name for the ruling oligarchy (Simbulan, 2005). The political elites are also the socio-economic elites that are distinguished from the masses by reason of wealth, prestige

¹ The term *principalia* has its origin in the Spanish colonial administration system where local leaders were appointed officials of *pueblos* or municipalities. Coming from privileged families, the position may also be hereditary although it was later elective. Throughout the three hundred years of Spanish rule, elite families have monopolized the public positions opened to colonial subjects (Simbulan, 2005: 20).

and power concentrated on their hands (Simbulan, 2005: 6). It's under the American's tutelage that patronage politics developed with the establishment of civil bureaucracy where local Filipino elites built their own spheres of influence and amass wealth, mainly land that became their ticket to win in local and national elections (Abinales, 2006: 159). Patronage politics has survived to this day. For example, of the twelve senators elected in the May 2019 elections, nine came from prominent political clans. The nine joined seven others in the Senate, which now has sixteen out of twenty-four members coming from political families.

The resilience of political families is attributed to "Guns, goons and gold," which suggest violence, intimidation, and vote buying. The use of money to buy votes is a common election strategy but it may be also in the form of donation or gift. If not money, then goods and a promise of government employment or position are offered. Intimidation of voters takes place in the form of threats that may end in killings. Elections are far from fair and honest. Since 1949, when presidential election first took place, election has always been manipulated and rigged, manually, through vote padding, and electronically, through automated cheating although this has not been proven categorically since nationwide automation begun in 2010 (Azurin, 2016: 143).

Disinformation is probably the least lethal, but equally harmful, of the election campaign strategies included in the elite-dominated politics playbook. Disinformation, in the context of elections in the Philippines, means fabricated or manipulated information whose intention is to influence voters or the public. It also refers to information that intends to do harm to one's opponent to undermine his chances of winning. It may include the use of overblown, false or nonsensical claims in political advertisements, speeches and press interviews. The country's current election law allows politicians to buy airtime or space in the media for their political advertisements.² Likewise private survey and polling entities are free to release survey results to the public. Confusion and noise are preferred over the ban that would restrain free speech (Teodoro, 2016: 215). Within the free market framework of the media, or the commercial turn of public information, disinformation is anticipated.

² In 2001, after 14 years of ban of political advertisements in media the Supreme Court repealed it, just in time for the 2001 elections. Allowing political advertisements is part of the people's right to information and free expression. The court also lifted the ban on publishing popularity surveys 15 days before the elections because the ban is a form of speech abridgment (Teodoro, 2016: 215).

A study on media coverage of the 2004 presidential elections noted that media ecosystem, which is characterized by limited newsroom resources and the owners' business and political interests, could explain why political propaganda could sneak up on news stories (Coronel, Chua and De Castro: 2004). Editors and journalists admitted that they rely on press releases of public relations persons of politicians during the campaign period, with one editor saying: "It's more convenient. They're better written, more complete, no brains involved" (Coronel, Chua and De Castro, 2004: 23). Media were creating the conditions for the spread of disinformation because politicians were allowed to set the news agenda (Coronel, Chua and De Castro, 2004: 21). An imagined community (Anderson, 1983) may have been forged by media during an election season but partisanship inured its quality, whenever journalistic norms on fairness and independence are disregarded.

The kind of politics and the media system in the Philippines could very well explain why Duterte came to power. However domestic developments have global dimensions that should not be brushed aside. Critical theory scholars have portrayed Duterte as sharing affinity with Donald Trump of U.S., Recep Tayyip Erdogan of Turkey, Viktor Orban of Hungary, Jair Bolsonaro of Brazil and Vladimir Putin of Russia as exemplars of strongmen-rule and right-wing authoritarianism (Prashad, 2018, Fuchs 2018). Prashad argues that strongmen politics emerged out of the crisis of capitalism when neoliberalism had weakened the workers' movement and Left-wing parties. The condition had worked well for bourgeois democracy and financial corporations that have never bothered to close the huge inequality gap. They supported the repressive apparatuses of the state to suppress workers' rights and dissent. Fuchs traces the origins of the right-wing authoritarianism to authoritarian capitalism, which is characterized by financialization in the 1980s and 90s that made a lot of money in securities, real estate and commodities market but did not improve the gross domestic product (GDP) (Fuchs, 2018). Fuchs's engagement with Frankfurt School theorists, like Theodor Adorno and Herbert Marcuse, led him to argue that capitalism has inherently authoritarian tendencies that are put to use by authoritarian populists in power.³

Duterte fits the description of a leader that appears to be strong. He became president in 2016 by a minority mandate of sixteen million votes out of fifty million, beating his rivals

³ Fuchs defines authoritarianism as a way of organizing society and an ideology that aims to manage social contradictions repressively. Authoritarianism has economic, political, ideological and psychological dimensions. It may take on the form of authoritarian capitalism (Fuchs, 2018).

that have better campaign machinery. He was a former city mayor of Davao for twelve years, a vice mayor for three years and a congressman for three years. His terms as mayor were also remembered for instituting the deadly crackdown of petty criminals, drug suspects and insurgent (Human Rights Watch, 2009). Among those killed were a hundred children. Despite investigation by human rights institutions, including that of the government, Duterte was not held accountable for the killings. When Duterte ran for president in 2016, he capitalized on his reputation as a crusader. It is not that Duterte's human rights record was a secret, rather, this information was largely ignored during the 2016 elections, thanks to his disinformation machine that depicted him a no-nonsense leader, a father, visionary and a savior short of being a messiah.

The politics of Duterte could be termed rogue populism, which stands on its strong appeal to the voters and its reliance on the tropes of paternalism, nationalism and security. Paternalism is a narrative that presents Duterte as a father of the nation; nationalism⁴ means love for country and oppositional stance against foreign powers; and security is the guarantee of everyone's safety by eliminating drugs and other forms of criminality. Reduced to a sentence, the three tropes of Duterte's rogue populism can be summed up this way: Duterte is like a father who loves you as much as he loves the country which he wants to be free of criminals and drugs. For example, during his campaign, he told the crowd – "Forget the laws on human rights. If I make it to the presidential palace, I will do what I did as a mayor. You drug pushers, hold-up men and do-nothings, you better go out. Because I'd kill you. I'll dump all of you into Manila Bay, and fatten all the fish there" (BBC, 2016). The statement not only reveals the use of the tropes but how it attempts to connect with the affective subjectivity. Instead of appealing to reason, like upholding the rule of law and human rights, Duterte targets emotions and feelings that defy reason and erase fact-based judgement. This strategy is among the discursive resources for fake news and disinformation. In short, the tropes are the discursive materials of disinformation.

Duterte has effectively communicated the tropes of his authoritarian narrative through social media, primarily Facebook, thanks to his legions of trolls and keyboard warriors. As Papacharissi notes, affective statements, or the mixing of affect with ideology, "can

⁴ Nationalism is a floating signifier that can be appropriated by a range of ideological discourses and supports the goals of class, ideology or group appropriating it.

potentially allow access to fluid or liquid forms of power” that are hoping to break into the ideological mainstream or the dominant discursive realm (Papacharissi, 2015, p. 119). Such statements can be harnessed to support right-wing political tendencies and repressive political stances that Duterte demonstrated.

The preceding discussion intends to provide a context to disinformation in the recent elections in the Philippines or the parameters to assess disinformation in the 2019 election. It aims to highlight that disinformation during elections in the Philippines is built upon political, economic and social barriers to free and accurate information (Chua and Labiste, 2018). The following section examines disinformation in the 2019 midterm elections.

III. Disinformation in the 2019 midterm elections

The 2019 midterm elections, just like the 2016 presidential elections, is noted for the cultivation and escalation of forms of disinformation that traversed traditional media to become ubiquitous online. In both instances, disinformation was meant to influence or sow confusion among voters but it simultaneously targeted the media to undermine its agenda setting function. It is not that media were faultless on this regard or had never resort to partisanship; rather, the public relied on media to could get independent information on the voting process and candidates, given the government’s questionable record of ensuring that elections are fair and honest. In 2016 elections, fact-checking was hardly heard of, although it was attempted by some news organization. Since then, news organizations have launched their own fact-checking projects, with *Rappler* and *Vera Files* having the more regular fact-checks.⁵

By 2019 elections, fact-checking became systematic and popular. More media organizations were aware of their responsibility to test the truthfulness and substance of politician’s ideas and policies. With refined verification techniques, fact-checking became a form of contestation of election discourses using the verification standards of journalism. The

⁵ *Rappler* and *Vera Files* are signatories to the code of principles of International Fact-Checking Network (IFCN) and part of Facebook fact-checking partnership project.

drive to create Tsek.ph, a pioneering collaborative fact-checking project, was the unchecked proliferation of fake news in the 2016 election.

The 2016 elections laid down the groundwork for digital disinformation in the Philippines when political parties have started spending more for social media as part of their campaign strategy. However Duterte had the most effective social machinery, comprising of layers of message producers and distributors that are connected through social media network (Chua and Labiste, 2018: 19). Teams of volunteers, the so-called keyboard warriors, would pump fake news, spurious stories, and highly partisan messages to tens of thousands of fake and real social media accounts. Later, when he became president, Duterte admitted spending \$200,000 on social media to win over voters after the information came out in an Oxford study (Bradshaw and Howard, 2017). When he became president, Duterte's disinformation machine was institutionalized as he appointed some of his loyal bloggers and communication strategists to top positions in the presidential communications and operations office.

The prevalent modes of disinformation of the Duterte's camp found online have targeted the 47 million online of the 103 million of the country's population in 2016. Filipinos continues to be the top social media users in the world, spending an average of four hours and twelve minutes everyday as against the global average of two hours and sixteen minutes (Gonzales, 2019). Filipinos likely use their mobile phones (67 percent) to access social media platforms.

In the 2019 elections Facebook was became the major platform for the spread of disinformation. For example, of the 130 fact-checked entries from Tsek.ph, fifty-two percent came from Facebook. The entries earned ratings ranging from "Misleading," "Needs Context," and "False." For many Filipinos, Facebook is the internet. Since 2015, the country enjoys Facebook Free, also known as Free Basics service, which was built into the prepaid SIM card that costs less than a dollar and requires no registration. The free version of Facebook that is stripped of photos and news but users can read headlines and captions of photos and videos. In the 2016 elections, Duterte's team quickly leveraged connectivity offered by the free service to build its networked of fake news creators and distributors, through the use of clickbait and misleading headlines and captions. A few months before the 2016 elections, Facebook also trained presidential candidates, including Duterte, and their

campaign staff how best to use the free service (Vaidhyathan, 2018: 191). Duterte banned journalists from attending his presidential inauguration that was livestreamed on Facebook. However, bowing to global and local pressure, Facebook initiated a series of takedown of pages and accounts for spam and inauthentic coordinated behavior in 2018 and just before the May elections in 2019. Among those removed were suspected bots and fake users accounts that carried the name “Duterte” and numerous pages and accounts associated with Nic Gabunada, the former social media manager of Duterte in the 2016 elections. (Philippine Star 2018; Facebook Newsroom, 2018; Fenol, 2019).

The Philippines’s midterm election comes at a time when Duterte’s popularity was secured (Gomez, 2019). A survey on first quarter of 2019 showed that Duterte’s net satisfaction ratings as “very good,” at +66 percent, all over the country and in all income levels (Social Weather Station, 2019). Results of the May 2019 elections bore that out. Not one opposition candidate won a seat in the Senate while all administration candidates won either because they were close allies of Duterte or have proven political bailiwicks and enormous wealth. For example, those who became senator include a former police chief who implemented the violent crackdown of drug users and the daughter of the late dictator Ferdinand Marcos. It appears that the widespread criticisms on Duterte’s policy on drugs, labor, human rights and relations with China have no effects on voters’ choice. Meanwhile the results also showed a weakened bourgeois political opposition that also failed to rally the public against the rogue populism of Duterte.

Perhaps the bright spot during the midterm elections was Tsek.ph, the initiative against disinformation. Although trolling, fake news and hoaxes were part of the election toolbox of politicians, more voters were aware of the fraudulent news and fake news sites and account than in 2016, thanks to regular fact-checking and verification projects of media organizations like Rappler and Vera Files. Over time, they were able to develop their verification techniques and an audience for professional and fact-based journalism.

Tsek.ph brought together of three universities and eleven media organizations to fact-check the midterm elections. The journalism department of the University of the Philippines was the overall coordinator and brought its students to the project. Meedan, a non-profit digital technology company, allowed the use of its Check platform for

collaborative fact-checking while Facebook gave \$25,000 grant. Launched three months before the May 2019 elections, Tsek.ph monitored the candidates' statements, platforms, press interviews, news and social media posts. The fact-checked claims were rated Accurate, False, Misleading, No Basis, and Needs Context. In many of the verified claims, Tsek.ph has revealed in methodology and sources, as part of its policy of transparency.

There were a total of 130 fact-checked entries and eighty claims, or sixty-one percent, were rated False. The False claims generally discredited the opposition candidates although a few promoted the candidates aligned with Duterte. The fact-checked claims are not purely text-based. Close to half of the items debunked from Facebook were in visual form, including infographics, pullout quotations, photographs and memes. Only a fifth of fact-checked appeared as full texts. The emergence of non-text based fake news could be interpreted two ways: first, disinformation adjusts to its medium and second, the style suggests that they are the handiwork of disinformation and propaganda machinery.

Disinformation and misinformation are both part of the fake news genre but in the context of elections in the Philippines, as seen through the fact-checked items, the labels are clearer. Wardle (2017), who came up with a list of disinformation and misinformation, differentiates them by an "intention to deceive." This suggest that it is not the absence of facts or the misleading content that is crucial, rather it is the instrumentalization of information, or turning the information into a weapon to deceive, mislead, and confuse, that makes it disinformation. Neither it is information that mimicked the news form as discussed by Tandoc and his colleagues (Tandoc et al., 2018). Thus again, in line with Wardle, the defining feature of disinformation, as oppose to misinformation, is the former is created deliberately with an intention to deceive. The intention to deceive may be motivated by political, economic or ideological factors.

Election campaign is the time where a garden variety of disinformation and misinformation can spread, along with their intention concealed. The false and misleading statements of political actors carried on media as news and may appear credible claims. However fact-checking with Tsek.ph enables the examination of some statements that may be purposely disseminated with the intention to deceive or control the public opinion. The assessment should be done within the context of elections in the Philippines where politicians

manipulate information and spread them through their own networks and supporters. The rhetorical subterfuge can be seen in the following entries in Tsek.ph that were rated False by Tsek.ph:

“Despite evidence, Imee Marcos insists she graduated from Princeton”

“Bong Go fan page distorts Bam Aquino food waste quote”

“FALSE. Photo of *Hugpong ng Pagbabago* (coalition allied with Duterte) rally drawing a massive crowd”

Of all the entries in Tsek.ph, seventy-four percent can be considered disinformation while twenty percent could be misinformation. A number of disinformation claims came mainly from Duterte’s aligned candidates and their supporters. It is not that the opposition had not resorted to disinformation and other sleight of hand campaign tactics. It is just that more Facebook pages and accounts have been disseminating manipulated information that favored Duterte and attacked his critics.

On entries that qualify as misinformation, observable were the incompleteness of information or the presence of claims that required elucidation. While the claims were rated False and Needs Context, they are in fact insufficient in terms of facts or the truth they supplied. The judgment that bears upon the partial claims should be done in relation to their political significance, that is, they are far from finite and exact claims because they reflect the complexities of the arguments from where they are derived, i.e. contentious unemployment figures, police-civilian ratio and political tradition. It is difficult to impute an intention to deceive from inexactness and tentativeness arising from the structure of the overall arguments. The following examples on what constitute misinformation could illustrate by the following examples:

“De Guzman (labor sector candidate) out-of-school youth figure wrong FALSE”

“Samira Gutoc gets ARMM police figures wrong”

“Panelo’s solution to copy US model to stop vote-buying NEEDS CONTEXT”

On the eve and the election day, the types of disinformation took on a traditional and malicious approach, the kind that will immobilize an opponent or make her or him quit the

race, a familiar tactic in acrimonious elections at the local level. The false claims were about some candidates, implied a low regard for election as democratic process. It demonstrated a restrictive political practice that banked on “patronage politics, the use of coercion and violence and electoral manipulation”(Rivera, 2016: 54). The use of false and deceptive information to win in an election is indicative of the entrenched coercive patronage politics that endures in a more open digital era, which is known for its potential to advance the process of democratization. The underhanded tactics are part of the overall strategies in the context of opportunistic alliances and rivalries during elections.

The effects of fact-checking initiatives on election conduct and results would require more research. Whether Tsek.ph and similar initiatives have impeded the flow of disinformation and fake news have to be investigated fully. They may have encouraged politicians to be more discerning and accurate in their public statements. However they could also cause some political actors to withdraw because they don't want to be fact-checked. For example, some re-electionist and neophyte administration senatorial candidates did not attend public debates hosted by media but relied on their social media presence, political advertisement and well-financed campaign machineries to get elected.

Tsek.ph generally observed newsrooms norms. This proceeds from the belief especially among uninitiated reporters that only official sources are the government statistics and figures are reliable. The problem lies when information are drawn from other non-government sources of information or when the claim is contesting the official figures that statistics may not exactly match those of the government. In other words, such perception of fact-checkers, by the preference for official government sources, may have marginalized some candidates who campaigned by discussing vital and oppositional analyses of issues. This was the case of candidates from the so-called Labor bloc who fielded candidates for senator, not primarily to win but to raise the public awareness about workers' rights.

Although Tsek.ph was organized to prevent disinformation from proliferating during the election period, thus a political intervention, the practice of fact-checking, particularly its methodology and norms are still within the genre of journalism. In this approach, there is a divide between facts and values in choosing what should be fact-checked. In other words, opinions are not fact-checked even if they are mixed with ideology because are difficult to

verify. While keeping out opinions or values from the story may insulate the fact-checked entry from the charge of bias, it might also remove it from its discursive context. For example, when discussing about unemployment, the focus will be on the accuracy of statistics and not the reality of lack of jobs, low wages and violations of workers' rights that constitute the problem on labor.

Fact-checking, as a journalistic genre, intends to test the veracity of the candidates ideas communicated to voters. It draws from the truth-telling function of journalism and the role of the press that monitors the exercise of power. Fact-checking holds politicians to account for the truthfulness or falsity of their statements. Fact-checking projects in the Philippines have been in existence since 2015 when it started as a journalism class project in the University of the Philippines. The following year, it has gained the support of media practitioners themselves, social media users and civil society groups, coinciding with the presidency of Rodrigo Duterte who is known for his false claims and virulent language to attack his critics. It can be said that fact-checking initiatives in the Philippines have go do with exposing false news and claims identified with politicians in power, whose actuations have created a crises in politics and also undermined the agenda-setting function of news media.

During election, fact-checking however faces limitations, despite the abundance of political statements. Not all statements are "fact-checkable." Often, politicians tend to perform before the public and often resort to general statements when they address voters. When this happens, the contestation should not just be on the level of facts or statistics but also on the discourse itself. The sweeping statements of politicians could explain why Tsek.ph had rated entries "Needs context" and "No Basis" because either the claims did not disclose all details or that fact-checkers cannot find anything worth fact-checking in a politician's statements. What politicians say, and how they say it, may vary across a range of events and media's presence. However it does not mean that contestation should be ruled out because of the multiplicity of meanings that could be generated from a tentative claim. The situation illustrates a subtle disjuncture because the institutional goals of professional journalism cannot wholly embrace the broad range of political and civil society's aims of

staging elections as a form of democratic participation oriented towards consensus. Fact-checking, however, can be a meeting point of their divergence.

IV. State-sponsored Disinformation and Silencing in 2019 Elections

Duterte had resorted to weaponization of fake news and issuing ludicrous claims against media and members of the left-wing opposition during elections. As a strategy to defeat the armed insurgency in the country, the military was also engaged in a witch-hunt of left-wing activists and organizations suspected to be supporting the rebels belonging to the clandestine New People's Army – Communist Party of the Philippines. The country however has repelled its anti-subversion law many years ago thus membership in political groups is legal. There are only two entries in Tsek.ph attributed to Duterte but in one of them he called a candidate “insane senator” for “defending communists in court” (“Duterte claim that Tañada defended communist”). Unfortunately the candidate was never elected senator although both his father and grandfather were.

Two weeks before the May 13 elections, Duterte's spokesperson, Salvador Panelo, released a diagram to a newspaper which named media organizations, political groups and individuals as part of a plot to oust Duterte. This accusation came a few days after the Philippine Center for Investigative Journalism (PCIJ) released a three-part series on Duterte's unexplained wealth (Center for Media Freedom and Responsibility, 2019). Instead of answering the issue, on why he did not report or declare his wealth, Duterte badmouthed the media, calling them corrupt, dishonest and paid by foreign agents. PCIJ came up with a statement that denied the accusations on its sources of funds (PCIJ, 2019).

With only a few days before elections, the president's spokesperson again came up with another diagram with the same ouster theme. Many journalists found the accusations ridiculous that instead of fact-checking, they issued a statement condemning the media harassment and called the diagram “a piece of unadulterated crap” (NUJP, 2019). As it turned out later, the ouster plot is non-existent according the military (Panti, 2019). The alleged conspiracy was an example of disinformation, in a form of fabricated information to intimidate journalists reporting on the May 13 elections.

Two news organizations engaged in regular fact-checking, and also part of Tsek.ph, are in the crosshairs of Duterte's wrath. Rappler is facing a securities case questioning the control of foreign investments in the news organization while its CEO, Maria Ressa, was charged with cyber libel (Rappler, 2019). Duterte's supporters accused Rappler and Vera Files, another online independent news organizations of being funded by foreign agents. Another Tsek.ph partner, ABS-CBN, was threatened by non-renewal of its television franchise by Duterte himself. Journalists from National Union of Journalists of the Philippines were tagged communists by the military while four news sites of alternative media groups underwent sustained attacks from hackers in the form of Distributed Denial of Service (DDos) attacks. Based on digital forensics they obtained, the media groups believe the attacks were state-sponsored (Bulatlat, 2019).

Disinformation targeting the media is seen by a press freedom network as part of the threats to freedom of the expression. In a statement to mark the World Press Freedom Day last May 3, the "Media for Freedom, Freedom for All" network, composed of five media groups, claimed that there were 128 cases of attacks and threats against media since June 30, 2016 when Duterte became president (Media for Freedom, Freedom for All, 2019). Moreover, the same period, twelve journalists were killed. Of the cases of threats and attacks, nearly half involved state agents and public officials.

The vilification took place during the May 13 elections as examined by Tsek.ph. On eve and during election day, the military launched a coordinated campaign to deny votes for left-wing groups running as Party-list representatives in Congress. A party-list system allows for the representation of marginalized sectors if they won a percentage of total votes cast for the whole system. This political innovation intends to break the dominance of political dynasties although never happened because politicians started fielding their family members and relatives under the party-list system. The target of election disinformation was left-wing *Makabayan* (For the Nation) bloc is has consistently won some seats since the first party-list election held in 1998. It is comprised of several organizations but the winners are Bayan Muna (Nationa First), Anak Pawis (Children of the Sweat), Alliance of Concerned Teachers (ACT-Teachers), Gabriela and Anakbayan (Children of the Nation). Bayan Muna was among the top partylist groups in the survey held a week before the May 13, 2019 elections (Pulse Asia, 2019).

However during the 2019 campaign period, many supporters of the Makabayan bloc were threatened, jailed and some of their community leaders were killed for campaigning while their supporters were also tagged “communists” and prevented from voting in some areas in the country while the organizations were labeled “communist fronts” (Villanueva, 2019). Despite the harassment, the left-wing block was able to get six seats in the House of Representatives.

Discrediting the left-wing Party-list groups was a constant tactic to prevent them from winning in the polls. Groups under Makabayan-bloc bore the brunt of fraud and violence every election since 2001 when security forces, such as the police and the army, launched a campaign to disqualify them ((Tuazon, 2011: 117). The same strategy was used in the 2019 elections. Tsek.ph contains three aggregated entries about the disqualification attempts against the left-wing bloc. Of the three, the highly shared claim, which was rated False, was a meme that said five Party-list groups were disqualified from the race. The false claim, which carried the logo of a television network and the seal of the election commission, was shared by six Facebook pages of army soldiers and local police forces.

On the day of election, police officers were photographed distributing a newspaper that tagged the progressive bloc as legal fronts of the communist party of the Philippines and its military arm. The user-generated photos of the police officers giving voters copies of the newspaper were rated Accurate by fact-checkers. While Tsek.ph was not able to debunk the ideological accusations against the group, fact-checkers electronically tracked the distribution of the meme on disqualification as well as its reach, even though they were taken down later. Two senatorial candidates, endorsed by Makabayan bloc, were also red-tagged by sites traced to Duterte’s supporters.

In all, the state-sponsored disinformation is an attempt to undermine’s media credibility and discourage dissent. Fact-checking was a necessary oversight during elections and attempts to hamstring it should be resisted.

V. Conclusion

Elections, as a democratic experience, need timely, relevant and accurate information to aid voters’ choices. However, the experience of Philippines on disinformation in the 2019

elections showed that deliberate obfuscation and lying are intensely bound-up with the elite-dominated politics that the presence of active fact-checkers cannot even stop them. Fact-checking merely confirms the extent of the problem of disinformation, given the available of platform to spread it illimitably. If the trends of disinformation and other forms of silencing continues, the 2022 elections would be no different from the last two elections where the flow of manipulated, fraudulent and menacing claims affected the way that journalists produced news and how citizens engaged each other in rational and critical conversation about their way of democracy. It is even worrisome due to Duterte's unchallenged hold to power after the 2019 elections that saw his candidates winning national and local positions. As such, there is a need to revisit the goal and methodology of fact-checking in order to give equal weight to the political aspect of the journalism genre as a form of intervention in a public discourse. Fact-checking projects should support the demand for free expression and protection of journalists and fact-checkers.

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Fake News and Duterte in the Philippines

Neoliberal Subjectivities and Social-Banditry Populism

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Abstract

Popularity of President Rodrigo Duterte is associated with social network services where huge amount of fake news are produced, shared and consumed. Without social network services, his victory in the 2016 election would have been unlikely. Around 80 per cent of the people has supported Duterte, although intellectuals, mainstream press and civil society activists have criticized human rights violation in the “war on drugs,” misogynic remarks, arbitrarily decision making, nepotism, and other issues.

Those who support Duterte are called as “DDS” (Diehard Duterte Supporters) by themselves and the critiques. They engage in trolling to silence dissidents and debase political debates with disinformation. Duterte administration appointed two social media influencers of DDS to government positions until they are forced to resign due to fake news allegation. On the other hand, those who criticize Duterte with normative discourses of liberal democracy are mocked as “dilawan”(yellow) by the DDS, referring to the symbol color of the Aquinos, a traditional political family who are linked with the restoration of democracy and has produced two presidents. For the DDS, the Aquinos are the symbol of hypocritical elites who pretend to have high moral grounds to lead the nation while exploiting them.

In academic discussion, intellectuals have discussed how DDS’s fake news fueled with anti-intellectualism, misogyny, and hate speech manipulate public debate, hijack public agenda, and divide the nation. Ong and Cabanes (2018) clarified how disinformation are systemically produced: Politicians employ campaign strategists from advertising agencies, who then deploy social media influencers and fake account operators. This study aims to explore why DDS’s disinformation resonate with popular resentment. I argue that his outlaw legitimacy is anchored on deep rooted “social banditry morality” characterized by the coexistence of compassion and violence under a patriarchal boss who maintains justice outside of the law. Then, I attribute the desire for the messianic outlaw patriarch leader to the resentment of emerging lower-middle class. They are frustrated by the contradiction of neoliberal governmentality in which the idea that self-disciplining is propagated as the key for success while individual efforts are helpless to change unequal structure and overcome precariousness.

Introduction

It has become common that intellectuals deplore how fake news have fueled with anti-intellectualism, misogyny, and hate speech have manipulated public debate, hijacked public agenda, and divided the nation in many countries. However, fake news

does not always successfully manipulate the people. For fake news to be accepted and become popular, it must resonate with the people's sentiments and everyday experiences which have been ignored or negated by existing forms of politics and power relations. Thus, it is imperative to explore who resonate with what kind of fake news.

Based on the research interest, this paper aims to explain why supporters of President Rodrigo Duterte, roughly 80% of the nation, came to embrace discourses of “discipline” which not only limits their freedom but also lives in the Philippines, by focusing on resonance between creation and frustration of disciplined subjectivities by the neoliberal governmentality and social construction of Duterte as a “social bandit” by populist discourses, including fake news, in social network services.

Human rights advocates and liberalist intellectuals have criticized President Duterte's campaign against illegal drugs, misogynic remarks, flip-flap diplomacy, nepotism, and other issues. Among others, the massive killing by the “war on drugs” has been one of the most controversial issues. According to the police, official death tally was around 2,500 from June 30, 2016, when he assumed the presidency, to January 2017 while they also admitted there were around 5,600 unverified cases of death. One year later, the official death tally increased to 3,987 by January 2018.¹ Human rights organizations estimated that more than 12,000 people were killed by police and others by January 2018.² Meanwhile, according to an opinion survey, 78% of Filipinos supported the “war on drugs” as of June 2018³. Looking into the class data of September 2017,⁴ 80% of class ABC (the rich and middle class), 89% of class D (poor), and 88% of class E (poorest) approved it, showing the cross-class support base.

There are several studies that have addressed the puzzle on the rise and popularity of Duterte. Mark Thompson (2016) points out the failure of liberal democratic promises as the reason for Duterte's popularity. Walden Bello (2017) further argues that Duterte is a fascist who has emerged from the failure of “discourses of democracy, human rights, and rule of law.” Fascism would explain the cross-class

¹ ABS-CBN News (2018).

² Human Rights Watch (2018)

³ See Social Weather Station (2018).

⁴ See Pulse Asia (2017).

support to Duterte, but its emphasis on voluntary subjugation of the people to the authority does not sufficiently explain the agency of Duterte supporters. Also, their emphasis on failure of liberal democracy cannot explain the particular timing of Duterte's rise in the mid-2010s, considering the long-standing elite-capture and inefficiency of the formal political institutions in the country.

Meanwhile, Nicole Curato, based on ethnographic study in post-disaster Tacloban City, argued that people previously managed to solve drug related annoying problems in their families and communities by themselves with great frustration. However, they came to justify elimination of drug users as "dangerous others" since they were inspired by Duterte's penal populism, a punitive politics that demands punishment based on ordinary people's collective sentiments of fear and anger, criticizing judicial institution and judgement are too inefficient to realize justice (Curato, 2016). Her argument is compelling enough but it still keeps us wonder why the penal populism has become hegemonic only in mid-2010s although the illegal drugs are not a new problem at all.

In an attempt to overcome these limitations of previous works, I claim that penetration of neoliberal governmentality along with the economic growth since the mid-2000s has created a new moral subjectivities among the Filipinos, who resonate with Duterte's social-banditry populism characterized by compassion and violence of a patriarchal boss who maintains justice against "evil others" outside the rule of law. I firstly focus on how new moral subjectivities embracing discipline are increasingly constructed among Filipinos under the neoliberal governmentality. Secondly, I delve into how social network services facilitated to the hegemony of Duterte's populism anchored on popular imagination of social banditry and outlaw legitimacy. Finally, I argue that a vector sum of neoliberalism and populism has led to normalizing of "state of exception" in which a sovereign state can legitimately kill "dangerous others" in an alleged crisis.

1. Creation of Neoliberal Subjectivities

People's punitive attitudes against drug users is attributable not only to Duterte's penal

populism, but also to the neoliberal governmentality which has increasingly encompassed Filipinos as they have incorporated into the global economy.

While neoliberalism promotes state's withdrawal from welfare and flexibilization of employment, exacerbating inequality and precariousness of the people, it also propagates the idea that people's economic status, welfare, and security are ultimately dependent on individual's responsibility. Since it shifts the blame for misfortunes of lives from the state and society to individuals, people are increasingly required to discipline themselves to become "good citizens" independent from the state and skillful in the market. Despite stress and loss of autonomy in a disciplined life, majority of people have opted to subjugate themselves to the governmentality to seek survival and opportunities. However, their efforts of self-disciplining is usually helpless to overcome unequal socio-economic structure and precariousness, especially in societies where the state does not fully function. Thus, penetration of neoliberal governmentality tends to activate politics of resentment or populism against "evil others." In the Philippines, the neoliberal governmentality has considerably affected the poor households struggling for upward social mobilization, overseas Filipino workers, and new emerging lower middle class.

The poor have become a target of various kinds of neoliberal anti-poverty programs through which the state, private sector, NGOs, and international donors aim to make them entrepreneurial, independent, participatory, and disciplined "good citizenry" since the late 2000s. For instance, conditional cash transfer and resettlement programs of informal settlers demand the poor to live a decent and disciplined life as a condition of providing resources to them. Commercialized microfinances and the state's livelihoods support programs aim to transform rural poor women into bankable entrepreneurs by educating capitalist norms of individualism, hard work, and discipline.

⁵ Most of these programs target women in the name of "women's empowerment": men are usually out of eligibility due to the hidden assumption that they tend to waste money for bad habits such as drinking and gambling. However, women with raised "awareness" in poor communities are still bothered by black sheep family or community

⁵ Karim (2011).

members who make troubles.

Overseas workers are forced to live and work under demanding and unstable employment conditions in unfamiliar societies where much stricter criminal justice system is implemented than the Philippines. While stressed by such a situation, they also experience and witness how society are orderly and efficiently regulated by the state and people are disciplined enough to follow the rules. It is a common expression among overseas workers that Filipinos are disciplined in foreign countries where rule of law is strictly implemented but they become undisciplined in the Philippines causing a mess of the country. Overseas workers diligently and patiently work abroad and send hard-earned money to their families but they are often irritated with family members who mooch and waste the remittance for non-productive consumption. They are also frustrated with airport officers who extort them upon their return to the country of which economy they have contributed to through remittance.

Reflecting that oversea workers ardently invest in their children's education, undergraduate enrollment rate increased from 25% in 1990 to 35% in 2015, and the number of higher education institutions also increased from around 1,500 in 2005 to 2,300 in 2015. While a few top universities in Metro Manila keep on reproducing elites and established urban middle class, oversea workers' children who finished higher education usually at local universities or mail-order colleges have formed an emerging lower middle class. They typically work at the lower-tier of growing service industry, such as business processing offices, real estate, retailing, and entertainment, led by international demands, investment, and oversea workers' consumption. They are required by their parents, schools, and employers to become disciplined "human capital" matching with the global market demands. Comparing with their parents, many of them were self-employed in informal economies or agriculture, who usually worked under more flexible conditions, the new generation are forced to sacrifice their autonomy in work to an extent, regulated by rigid job-descriptions, for opportunities of upward social mobilization. Yet, they are troubled by precarious and stressful employment system as well as elites who monopolize higher career positions.

Accumulated frustration of these disciplined "good citizens" under the

neoliberal governmentality has generated a popular resentment against undisciplined “evil others,” namely elites and public officials who abuse the state power and resources as well as drug users who put danger to their families and communities. In many impoverished communities, previously, people put more value on ethos of sharing, even wasting what little money they earned for non-productive alcohol. Besides the joy of sharing wine with passing one glass around, weaving and strengthening interdependent mutuality with fellow neighbors was a much needed task in a society where the state and market do not guarantee their subsistence. Apparently, “moral economy” (Scott, 1977) that seeks subsistence of community members, rather than the capitalist economy that aims to maximize profits, was dominant. In such society, those who were willing to share their scarce resources with others were “good people,” while those who refused to do it were frowned upon by neighbors as a miser. However, as NGOs, private sector, and the state have instilled the capitalist value of discipline into the poor, those who skillfully make profits through business, abstemiously live a decent life, and diligently work with patience have become regarded as “good citizens,” while those who adhere to previous lifestyle of sharing joy with wine have come to represent immorality.

Resentment against laid-back lifestyles is strengthened by several factors. At the household and community level, the more people are pressed to work hard under stressful conditions, the more they are likely to resent those who waste precious money for vices and cause troubles to others. Particularly in improvised communities, the grouping system installed by microfinance and conditional cash transfer program has strengthened mutual surveillance among them against problematic behaviors which may lead to defaulting or suspension of cash release. At the structural level, since the hegemony of neoliberal governmentality has shifted the blame for poverty to immorality of individuals with depoliticizing structural factors, those who failed or rejected embracing discipline were legitimately abandoned as “undeserving of rescue.”

However, despite increasing frustration of the disciplined people, residuum of previous moral economy prevents them to ostracize the undisciplined “evil others” from their families and communities. This dilemma of the frustrated and disciplined people unleashed a desire for a messianic outlaw patriarch leader who punishes “evil others”

and leads “good citizens” with his iron discipline, self-proclaimed tough love, and violence. Thus, those who have undergone the subjective transformation under the neoliberal governmentality have taken more punitive attitudes against those who adhere to such vices as excessive gambling, drinking, and drugs.

2. Construction of a “Social Bandit” in SNS

It was the frustration and resentment of the “disciplined” people that catapulted Duterte to the presidency and has maintained his popularity. Those who resonated with Duterte’s brutal anger found a means of expression and similar minded people in the social network services. Duterte was the most mentioned and popular candidate in social network services in the 2016 election.⁶

Those who actively support Duterte are called as “*DDS*” (Diehard Duterte Supporters) by themselves, while those who are critical with him scorn Duterte supporters as “*Dutertard*.” DDS engage in trolling to silence dissidents and debase political debates with disinformation. Duterte administration appointed two social media influencers of DDS, Mocha Uson and RJ Nieto, to government positions until they were forced to resign due to fake news allegation. DDS mock those who criticize Duterte with normative discourses of liberal democracy as “*dilawan*” (yellow people) or “*yellowtard*,” referring to the symbol color of the Aquinos, a traditional political family linked with the restoration of democracy and has produced two presidents. For DDS, the Aquinos are the symbol of hypocritical elites who pretend to have high moral grounds to lead the nation while exploiting them. DDS are also offensive against mainstream media, criticizing them biased for the traditional elites like the Aquinos (Beltran 2017). Moreover, they have advanced historical revisionism by justifying burial of ex-President Ferdinand Marcos in the Hero’s Cemetery (*Libingan ng mga Bayani*) by Duterte administration despite the history of oppression and human rights abuse under his dictatorship (Cabenas, Anderson, and Ong, 2019).

Ong and Cabanes (2018) unearths how disinformation are systemically produced: Politicians, not only Duterte, employ campaign strategists as chief

⁶ Beltran (2017) and Cabanes and Cornelio (2017).

disinformation architects from the advertising and PR industry. They deploy social media influencers and fake account operators. They put realistic characters to these dummy accounts by proclaiming to be “concerned netizens” or “struggling OFW (Overseas Filipino Workers)” (Cabanas, and Cornelio, 2017: 238). These fake account operators were aspirational yet frustrated middle class digital workers: Some of them got dragged into the underground digital disinformation work to attain financial stability after experiencing precarious working condition and cheap payment in mainstream media (Cabenas, Anderson, and Ong, 2019).

Cabenas et al. call attention that disinformation should not simply be dismissed as “lies” since fake news help contrasting a vision of the world in which forces of good and evil are contending. In the Philippines, disinformation architects utilize visuals as aesthetic resources that predominate and circulate in popular culture to imbue their social media post with authenticity (Cabenas, Anderson, and Ong, 2019). In case of Duterte, it was the deep-rooted social imaginary of messianic outlaw leaders that resonated with the disciplined and frustrated people. During fieldwork, I was surprised to find that so many uneducated masses, middle class workers, and even local intellectuals all alike ardently referred that Duterte is like a folk hero. This made me realize that they associate Duterte with stories of “social bandits” who possesses legitimacy from outlaw morality of compassion and violence to protect their followers rather than adherence to the state’s legal framework.

According to Eric Hobsbawm (1969), social bandits were created from actual and imaginary interactions between the masses and outlaws during the rapid changes in the eighteenth century that were brought about by modernization. Development and the penetration of capitalism threatened the lives of the masses, destroying traditional paternal moral economy. Landlords and merchants pursued self-profit in the expanding market, disregarding their traditional obligation to protect people’s livelihoods in their communities. Modern states facilitated the emerging bourgeoisie’s economic activities through legislations of enclosure but, along with taxation, impoverished the masses. Amid social unrest, the masses interpreted and imagined bandits as heroes who represented their morality against the state and the rich, spreading their legends through

ballads and storytelling.

Regarding the role of actual bandits, Hobsbawm identified their close linkage with the masses, but Anton Blok (1972) and Richard Slatta (1987) objected that many of them actually worked for local elites to control the masses. Shingo Minamizuka (1999) argues that these variations of actual bandits were dependent on structural conditions when they appeared. In the eighteenth century when modern states were still developing, bandits acted and were imagined as a counter-force against the state. From the nineteenth to the twentieth century, however, further penetration of modern states into the periphery of societies deprived bandits of their autonomy, and they increasingly played within the state structure, often allying with local elites.

The Philippines also has rich folk stories of social bandits who thrived in the turbulent colonial and post-war period when weapons and violence proliferated, huge populations were dislocated, and absence of justice was strongly felt. These stories typically narrate how those who are oppressed by the powerful fled to the mountains to become outlaws referred to as “*tulisan*” (bandits) or “*taong-labas*” (outsider), signifying their lives outside of the law. They obtained invincible power—often exhibited through virility—from amulets, and defeated state officials and other bandits. According to Francis Gealogo (1990; 2000), they were the epitome of bravery unbound by the colonial state’s rule, and their coarseness highlighted the rejection of an imposed “civilization.” This indicates that it was the establishment of “the Other order” and the maintenance of their own sense of patriarchal justice that made them folk heroes, rather than the redistribution of stolen goods from the rich. Although they resisted the colonial states and some joined the anti-colonial movement, most of them were not agents of social transformation as they often worked with local elites (Sidel, 1999; 2000).

In contemporary politics, the persisting social imagination of bandits transformed ambitious figures into populist political leaders. Several actors who played social bandits in popular films established political careers afterwards. Successful populist Joseph Estrada’s progression from San Juan mayor to the presidency was made possible because of his success in playing Asiong Salonga, a famous gangster in post-war Tondo. Ramon Revilla Sr. portrayed Nardong Putik, a bandit in Cavite, before

becoming a senator of the republic. Social bandits have been desired in politics because of the enduring belief among Filipinos that the law is nothing more than a weapon of the elites to enrich themselves and that only outlaws can save the common people. While such belief reflects the people's desire, many local politicians have exploited it. Local strongmen tried to strengthen their legitimacy by emphasizing the morality of patron-client relationships with respect to its redistribution and social-bandit like morality for its social control with violence.

Similar to stories of these outlaws, Duterte has resorted to extra-judicial violence to "save" the frustrated "good citizens" and punish "evil others." His popularity and outlaw legitimacy can be understood in this context. Yet, it was not folk stories, ballads, or popular films but social network services that constructed him as a social bandit and made him a presidency. People are not always passively manipulated by fake news but have the agency in constructing their ideal leaders by interpreting, rewriting, and sharing information they collected in social network services. As a result, myriad "urban legends" about Duterte's alleged achievements in Davao where he was mayor for 22 years spread through social network services during the period of election campaign. Followings are some stories my informants of Duterte supporters picked up from social network services and told me.

When you are arrested for drugs in Davao, Duterte summons you to tell you to quit it and gives you an allowance of ₱10,000 when you are released from prison. But the third time you are arrested, he kills you immediately.

Duterte saw an American who was smoking in a restaurant and disregarding the smoking ban. He told the guy while pointing his gun at him, "You have three options. First, your groin will be shot; second, you will be jailed; and third, you will swallow your cigarette." The man hastily put the cigarette into his mouth.

Duterte ordered the police to arrest a guy who raped his own daughter within 24 hours.

When arrested, Duterte took the guy into a helicopter and dropped him to the

sea.

Duterte ordered a bottle of beer in bar. Although it was prohibited to serve alcohol after 12pm by an ordinance, the bar responded to the request because it was order for the Mayor. When beer was served, however, he got mad and ordered to close all the bar along the streets.

A land syndicate sold fake land title to impoverished squatters. Mayor Duterte visited the arrested syndicate members in the prison and forced them to eat the fake title. When criticized by the Commission on Human Rights, he answered that “they are just chewing gum.”

While the first legend is a fiction, the second has the sources which report that North Cotabato Governor Manny Piñol, a local Duterte ally, originally shared the story through Facebook (Gonzales, 2015). In the original story, it was a Filipino tourist from Manila who violated the smoking ban but somebody changed the nationality to American, which signifies resonance with Duterte’s nationalist attitudes against America. Duterte himself later explained that it was true that he made the guy swallow cigarette but he never pointed his gun (see Rappler, 2015). The last story is true, the TV news covering the event is still available on Youtube.⁷ These legends, including elements of both fact and fiction, represent “social bandit-like morality” as a reflection of people’s desired leadership, characterized by the combination of humor, compassion, and violence in a patriarchal boss who maintains justice for the people outside of the law.

3. Emerging “State of Exception”

It is contradictory, however, that a social bandit-like leader who usually operates outside the state has grabbed the highest position of the state, his supposed nemesis. While a social bandit lead people with a flexible, personal, unwritten, and informal order, the

⁷ GMA News (2012)

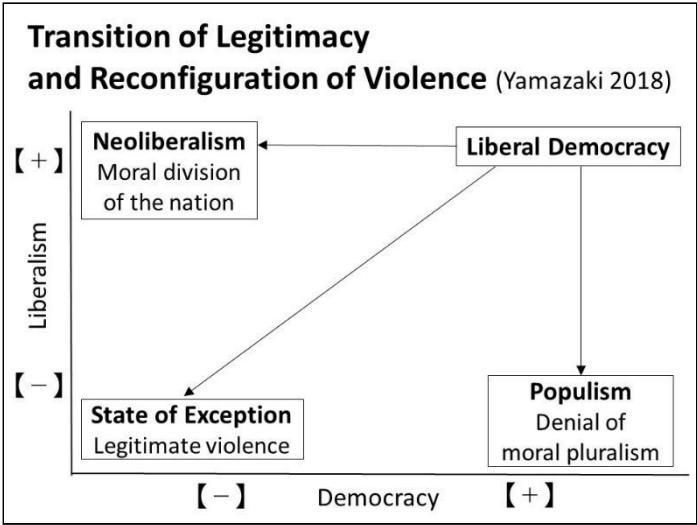
state implements a rigid, impersonal, written, and official rule of law to govern the populace. Despite the apparent discrepancy, however, I claim the two can be compatible. Duterte's extra-judicial power cannot be an act of a bandit defying state power, but rather an act of the state discretionally suspending the law. This situation is what Giorgio Agamben (2005) identifies as a "state of exception." According to Agamben, a characteristic of modern sovereign states is to discretionally stop application of the law to "dangerous others," such as Jewish people in Nazi Germany and detainees in the Guantanamo Bay detention camp during America's "war on terror," in an alleged crisis. In this sense, Duterte's politics embodies the paradoxical conflation of a social bandit and the modern sovereign state, which the majority of Filipinos expected to be an alternative to conventional liberal democratic politics.

Nozomu Yamazaki (2018) claims that "state of exception" is a characteristics in the global decline of liberal democracies in the 21st century. Liberal democracy is consist of balanced relation between liberalism that defends individual rights from the state power and democracy based on self-governance by equal citizenship. According to him, when either neoliberalism or populism become extreme, the balance of liberal democracy will be lost and "state of exception" emerges as a vector sum of extreme populism and neoliberalism (Table 1).

By applying the work, I would like to discuss as follows. On the one hand, populism, a counter-discourse that appeals to oppressed "good people" and antagonizes dominant forces as "evil others" constructs an antagonistic relationship between "good and evil" and denies moral pluralism. The rise of fake news has played the role of intensifying populism against "evil others." Populism radicalizes democracy and undermines liberalism in the name of popular will of "good people." On the one hand, neoliberalism undermines democracy by reducing the "demos" responsible with democracy into "homo economicus" or disciplined "good citizens" obsessed with economic efficiency and rationality. Neoliberalism also excludes those who fail to become disciplined "good citizens" independent from the state and skillful in the market as undeserving "evil others" beyond redemption, thereby morally dividing the nation. When frustration and resentment of the "good citizens" under the neoliberal

governmentality resonates with moral antagonism against “evil others” constructed by populism, “state of exception” is likely to be installed by the sovereign state.

Table 1.



Source: Yamazaki (2018) modified by the author.

In the Philippines, there were several steps until the liberal democracy turned into “state of exception” under Duterte regime.

Against the backdrop of dramatic martyrdom of Benigno Aquino Jr. in 1983 and democratization by the People Power revolution against Marcos dictatorship in 1986, “People Power narrative” that emphasizes national development based on liberal democratic values and institutions coupled with citizen’s participation had become a dominant moral discourse in the country. It has been the reform-oriented intellectuals and activists in civil society and traditional elites such as the Aquinos who have aggressively talked of the “People Power narrative.” What formed their alliance was the shared experience of oppression by and struggle against Marcos dictatorship. However, the democratization revived traditional elites who re-recaptured the system. Challenge against and deviation from the elite captured liberal democracy gradually unfolded through the rise of populism starting from late 1990s, which was later followed by formation of neoliberal subjectivities in 2010s.

The poor who felt alienated from benefits of the democratization and actor-turned-politician Joseph Estrada who appealed to their resentment firstly came to form a counter force against the mainstream forces of the restored democracy. Estrada won the 1998 presidential election by exploiting pro-poor discourses antagonizing the establishments but was soon ousted in 2001 by the People Power 2 in which the mainstream force composed of the middle class, Catholic Church, and the businesses played a key role. While the poor were the majority as constituents, the mainstream force was much better at appealing their legitimacy as “good citizens” responsible for democracy at streets and through media. At that time, populist challenge against liberal democracy stemmed from the resentment of the poor. The neoliberal governmentality has not yet formed a frustrated majority of disciplined people as a counter force.

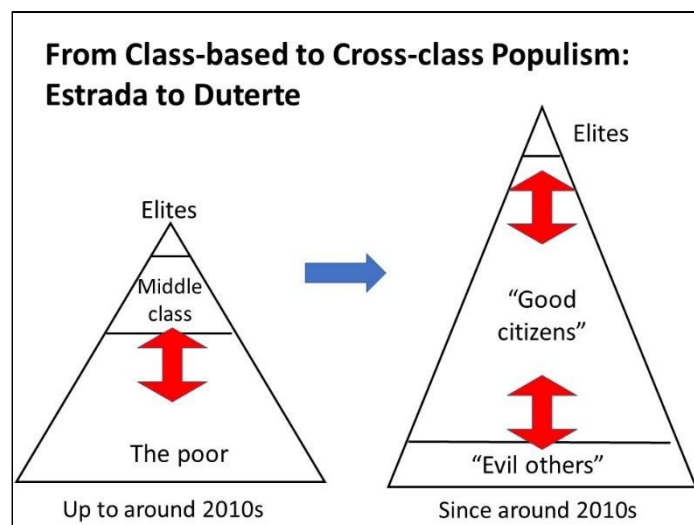
Faced with the threat from discounted poor, the mainstream force realized necessity to include them into “good citizens” to consolidate liberal democracy. It was the Benigno “Noynoy” Aquino III’s victory in the 2010 presidential election that provided a perfect opportunity for them. Many civil society intellectuals and activists enjoyed the opportunity to participate in the administration. They implemented moral based anti-poverty policies such as conditional cash transfer program, along with discourses of civic moral nationalism, to encourage the poor to become “good Filipinos” by uplifting their awareness and lifestyles. However, the attempt had the unintended outcome of constructing those who do not conform to the moral requirements as an “immoral others.”

During the 2010s, as the lower middle class rose and neoliberal anti-poverty programs expands, the neoliberal governmentality eventually came to form a new majority of “good citizens,” who resent undisciplined “evil others” and discount liberal democracy’s values and institutions. Previously, those who talk of “good citizens” emphasized educating, enlightening and uplifting the poor whom they considered as “probationary citizens” but the new “good citizens” now openly justify exclusion of those who reject “discipline.” In other words, paternal “civic inclusivism” has turned into intolerant “civic exclusivism” (Kusaka, 2017). Also, “good citizens” previously advocated for consolidation of liberal democracy, but the new “good citizens” came to

look down on them as merely instruments of the established to fortify their vested-interests.

Candidacy of Duterte in the 2016 election sparked the shared frustration and desire of the newly formed majority of “good citizens.” That majority of Filipinos under the neoliberal governmentality strongly support Duterte’s social bandit-like populism signifies the encounter of extreme populism and extreme neoliberalism. Duterte’s populism in 2010s is different from Estrada’s one in late 1990s to early 2000s in several aspects. While Estrada appealed to the class antagonism, Duterte enjoyed a cross-class support base despite the deep class cleavage in the nation (Table 2). Duterte’s populism is also inclusive to marginalized Muslims and rural populations, transcending religious, ethnic, and regional cleavages. However, this inclusiveness of “good citizens” became possible at the cost of criminalizing and excluding those who fail or reject to be disciplined as “evil others.” By emphasizing the alleged crisis of “narco-state,” Duterte has successfully created and normalized “state of exception” where drug users and dealers are extra-judicially yet legitimately executed to save “good citizens”

Table2.



Source: Author.

Conclusion

Although the majority of Filipinos found a hope in Duterte's governance of "state of exception," it does not help alleviating problems that have caused their frustration. This is because reducing the root causes of complicated issues to "drug criminals" is a false remedy. Moreover, this way of politics entails risks to Duterte's legitimacy itself. First, while supporters expect Duterte to establish a strong state that effectively regulates society, his personal decision making bypasses state institutions, which further weakens the state. In Davao, when he was mayor, he could create institutions and surround himself with royal "alter egos," but national politics is a totally different arena, with pre-established institutions and many ambitious rivals. Second, as state institutions remain weak, his "tough love" and "discipline" have implemented in distorted ways at the street level. It is reported that police officers engaged in criminal activities such as extortion and killing of innocent people including teenagers in the course of war on drugs, creating a sense of betrayal among those who once trusted him. Third, without legitimacy from due process, if his social bandit-like morality is felt to be untrue, his popularity will be critical. In sum, Duterte's national politics can be fragile not because of the violation of liberal democratic principles, but because of the failed promise of a bandit.

Then, what can be recommended to break the bottleneck? Most recommendations to address issues of fake news are divided whether legislating a legal framework to penalize creation and dissemination of fake news or improving internet literacy of citizens. Based on the argument of the paper, I suggest that the former has the risk that authoritarian leaders abuse the law to harass political rivals, which would further consolidate "state of exception." The latter recommendation implies that the more citizens are educated, the more resilient they become against fake news. However, the case of the Philippines claims that it is not ignorance of the poor but frustration of the emerging middle class with a college degree under the neoliberal governmentality that has triggered the rise of populism supported by fake news. While raising internet literacy of citizens is indispensable, we also need to analyze root causes of people's frustration and their resonance with fake news.

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The Response of Hate Speech toward President of Indonesia Joko Widodo in 2017 Based on Law No 19/2016 on Information and Electronic Transactions

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Abstract

Hate speech is a concept that is very vulnerable facing the right of opinion and expression. However, unrestricted freedom of expression of society will lead to actions that can trigger violence and anger because of hate speech directed at certain parties. Hate speech, as a broad designation, is speech which attacks others on grounds of their race, nationally, religious identity, gender, sexual orientation or other group membership, where this group membership is a morally arbitrary distinguishing characteristic. In Indonesia, hate speech becomes massive especially in 2017. Based on the police report, there were 3,325 cases of reporting hate speech. The details are 1,657 cases of humiliation or insult, 1,224 cases of unpleasant acts, and 444 cases of defamation. The main target for hate speech in Indonesia is President Joko Widodo. They are charged with Law No. 19/2016 on Information and Electronic Transactions (UU ITE). For the record, the opportunity to escape from ITE Law is very small. Indonesia is still looking for a formula for balancing between giving freedoms of opinion to the people and giving strict punishment to hate speech's maker. It is very important to provide clear boundaries and measures, including detailed guidelines on what speech or actions can be categorized as hate speech and which are not. But UU ITE still makes some controversy because mostly it is misused.

Keywords: hate speech; freedom of speech, Joko Widodo; UU ITE

Introduction

Hate speech, as a broad designation, is speech which attacks others on grounds of their race, nationally, religious identity, gender, sexual orientation or other group membership, where this group membership is a morally arbitrary distinguishing characteristic¹. It is important to provide

¹ Yulia A Timofeeva. 2003. *Hate Speech Online: Restricted or Protected? Comparison of Regulations in The United States and Germany*

clear boundaries and measures, including detailed guidelines on what speech or actions can be categorized as hate speech and which are not.

Hate speech in social media become something huge and threatening. The government of Indonesia tried to make some rule for cyberspace. The main regulation is the Law 11/2008 on Electronic Transaction and Information (UU ITE). Since authorized in 2008 there are some controversy in the process. After almost one decade, UU ITE revised and become Law 19/2016 on Electronic Transaction and Information. But, this regulation still made some controversy.

There are two institutions who concern about cyberspace, national police (Polri) and Ministry of Communications and Informatics (Kemenkominfo). They build derivative regulation as a guideline to recognized and categorized hate speech. National Police use UU ITE to restrain people in social media and the Ministry of Communications and Informatics use UU ITE to restrict content. But, the implementation become vulnerable and sometimes misused.

Research Methods

This research use qualitative method to get analytical description. The main technique is collecting documentation and interview². Documents are any written materials that contains information about the symptoms of hate speech phenomenon in social media. As a support, interview techniques are also used. First step, the collection and compilation of data obtained from various sources of documentation and interviews. The next step is the interpretation of data³. Interpreting also means analyzing the data by using the basis of the perspective, including the chosen theory. The final stage is conclusions. The validity obtained from the conclusions of this study is certainly still colored by the subjectivity and limitations of the researcher.

This research is based on four parameters. First, hate speech in 2017 because it's the highest hate speech in Indonesia. Second, President Joko Widodo as a main target of hate speech. Third, hate speech via *Facebook*. Fourt, only cases who have linkages with hate speech and hoax

² Nazir, Mohammad. 1983. *Metode Penelitian*. PT. Ghalia Indonesia. Page: 67

³ Nawawi, Hadari. 1987. *Metode Penelitian Bidang Sosial*. Universitas Gajah Mada Pers. Yogyakarta. Page: 78-79

groups called Saracen. There are three relevant cases in this research. First, Muhammad Faizal Tonang, he is arrested in 21 July 2017. Second, Jasriadi, he is arrested in 7 August 2017. Third, Asma Dewi, she is arrested in 11 September 2017. The existence of the Saracen groups shows that hate speech in Indonesia become more massive and coordinated. At the same time it becomes a turning point for government to handle hate speech in social media more serious.

The collection of data based on digital trail such as hate speech on three *Facebook* account in 2017, online news, print newspaper, and the final court. Meanwhile, there are some informants willing to interview. President of Indonesia, Joko Widodo; Vice President, Jusuf Kalla; Ministry of Communication and Informatics, Rudiantara; Public Relations of Ministry of Communications and Informatics, Ferdinandus Setu; Director of Investigation of the Directorate of Cyber Crime at the National Police Headquarters, Brigjen (Pol) Albertus Rachmad Wibowo; Sub-Directorate III, Directorate of Cyber Crime Police Headquarters, KBP Kurniadi; Komnas HAM Commissioners, Amiruddin; Member of Freedom of Expression Division on SAFENet Indonesia, Nenden Sekar Arum; Community Engagement and Growth Manager at Amnesty International Indonesia, Ken Matahari; and Research Manager at Siber Kreasi, Adya Nisita.

Theory

Merilee S Grindle said there has been little attention given to linking characteristics of policies and programs to their subsequent implementation, to relating implementation problems to characteristics of the political regimes. There are two board questions about implementation in general. First, impact of content; what effect does the content of public policy have on its implementation? Second question, about context, is of equal concern to them: how does the political context of administrative action affect policy implementation?⁴

In general, the last of implementation is to establish a link that allows the goals of public policies to be realized as outcomes of governmental activity. It involves, therefore, the creation of a “policy delivery system”, in which specific means are designed and pursued in the

⁴ Merilee S Grindle. 1980. *Politics and Policy Implementation in Third World*. Page: 5

expectation of arriving at particular ends. Thus, public policies—board statements of goals, objectives, and means—are translated into action programs that aim to achieve the ends stated in the policy. It is apparent, then, that a variety of programs may be developed in response to the same policy goals. Action programs themselves may be disaggregated into more specific projects to be administered. The intent of action programs and individual projects is to cause a change in the policy environment, a change that can be considered an outcome of the program.

It is success or failure can be evaluated in terms of the capacity actually to deliver programs as designed. In turn, overall policy implementation can be evaluated by measuring program outcomes against policy goals. The general process of implementation thus can begin only when general goals and objectives have been specified, when action programs have been designed, and when funds have been allocated for the pursuit of the goals. These are basic conditions for the execution of any explicit public policy⁵.

Theoretically, at this point, the policy formulation process is superseded by the policy implementation process, and programs are activated. But the difference between formulation and implementation is also one main difficulty in practice, since feedback from implementation procedures may lead to modification in policy goals and directions; or demand that rules and guidelines be interpreted or reinterpreted may lead to considerable amount of policymaking at the site of implementation.

More important in terms of the process, implementation is the fact that decisions made at the design or formulation stage have a considerable impact on how implementation proceeds. In addition, the process of implementation is greatly affected by the kinds of objectives that have been specified for it and by the manner in which the goals have been stated. That is, formulation decisions made --or not made-- about the type of policy to be pursued and the shape of programs to be executed are integral factors in determining how successful the programs themselves will be delivered⁶.

⁵ Merilee S Grindle. 1980. *Politics and Policy Implementation in Third World*. Page: 7-10

⁶ Subarsono. (2011). *Analisis Kebijakan Publik: Konsep, Teori, dan Aplikasi*. Pustaka Pelajar. Yogyakarta. Page: 93

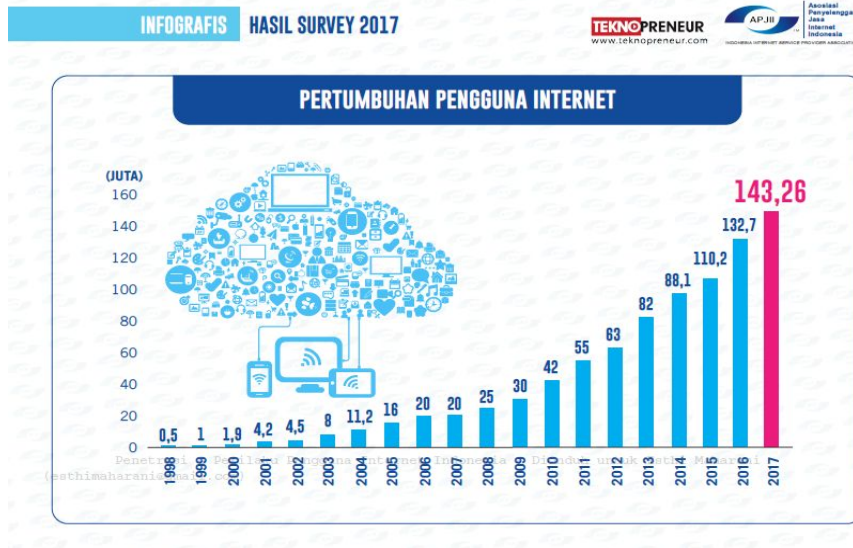
Result and Discussion

Amnesty International Report 2016/2017 said that 2017 is a year of political hatred. It was concluded that 2017 was a year of political hatred that caused human rights violations. In Indonesia, political hatred sponsor by the state actors and non-state actors. Political hatred uses a number of issues, such as the accusation of the PKI (Indonesian Communist Party), religious sentiment based, accuse people of being a separatist group or an anti-Pancasila, and targeting people who have different sexual orientations. It was also said that hatred politics that developed widely in Indonesia had a close connection with politics. This research wants to show that in 2017 there are actions and reactions between government and people because of the lack of understanding about hate speech.

Background of the Study

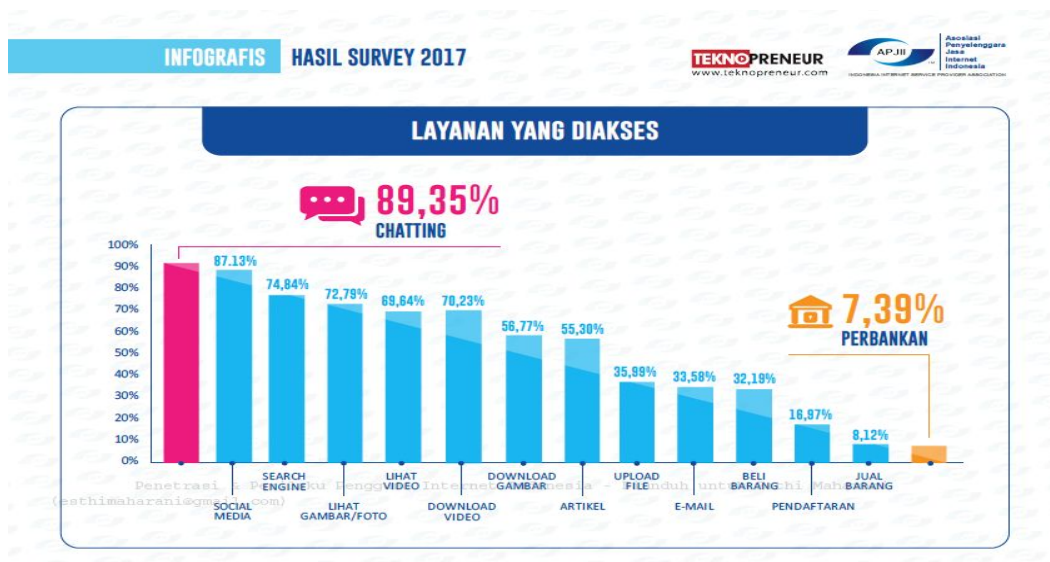
Internet users in Indonesia increase every year. In 2017, internet users in Indonesia increase 8 percent from 132.7 million people to 143.26 million people. In other hand, with population 262 million people, 54.68 percent Indonesian using internet.

Internet users in Indonesia



They are so many application circ source: www.apjii.or.id cation is the most used in Indonesia with 89.35 percent such as Whatsapp and Line. Second spot is social media (87.13 percent), search engine (74.84 percent), seeing pictures (72.79 percent), video (69.64 percent), and the rest is another internet activity.

Most used application



source: www.apjii.or.id

Indonesia is an active country on social media, especially Facebook. Indonesia is one of the countries which had the most Facebook users in the world. Indonesia is the fourth largest number of Facebook users globally. Until January 2018, the number of Facebook users from Indonesia reach 130 million accounts or six percent of all users. This is also mean Indonesia is the number one country in Southeast Asia with the highest number of Facebook users.

Facebook's top countries and cities

JAN 2018

FACEBOOK'S TOP COUNTRIES AND CITIES

Press Esc to exit full screen

COUNTRIES AND CITIES WITH THE LARGEST ACTIVE FACEBOOK USER BASES

COUNTRIES WITH THE LARGEST NUMBER OF ACTIVE FACEBOOK USERS

#	TOP COUNTRIES	USERS	% TOTAL*
01	INDIA	250,000,000	12%
02	UNITED STATES	230,000,000	11%
03	BRAZIL	130,000,000	6%
04	INDONESIA	130,000,000	6%
05	MEXICO	83,000,000	4%
06	PHILIPPINES	67,000,000	3%
07	VIETNAM	55,000,000	3%
08	THAILAND	51,000,000	2%
09	TURKEY	51,000,000	2%
10	UNITED KINGDOM	44,000,000	2%

CITIES WITH THE LARGEST NUMBER OF ACTIVE FACEBOOK USERS

#	TOP CITIES	USERS	% TOTAL*
01	BANGKOK	22,000,000	1.0%
02	DHAKA	20,000,000	0.9%
03	BEKASI	18,000,000	0.8%
04	JAKARTA	16,000,000	0.7%
05	MEXICO CITY	14,000,000	0.6%
06	QUEZON CITY	14,000,000	0.6%
07	ISTANBUL	14,000,000	0.6%
08	SÃO PAULO	13,000,000	0.6%
09	CAIRO	13,000,000	0.6%
10	HO CHI MINH	13,000,000	0.6%

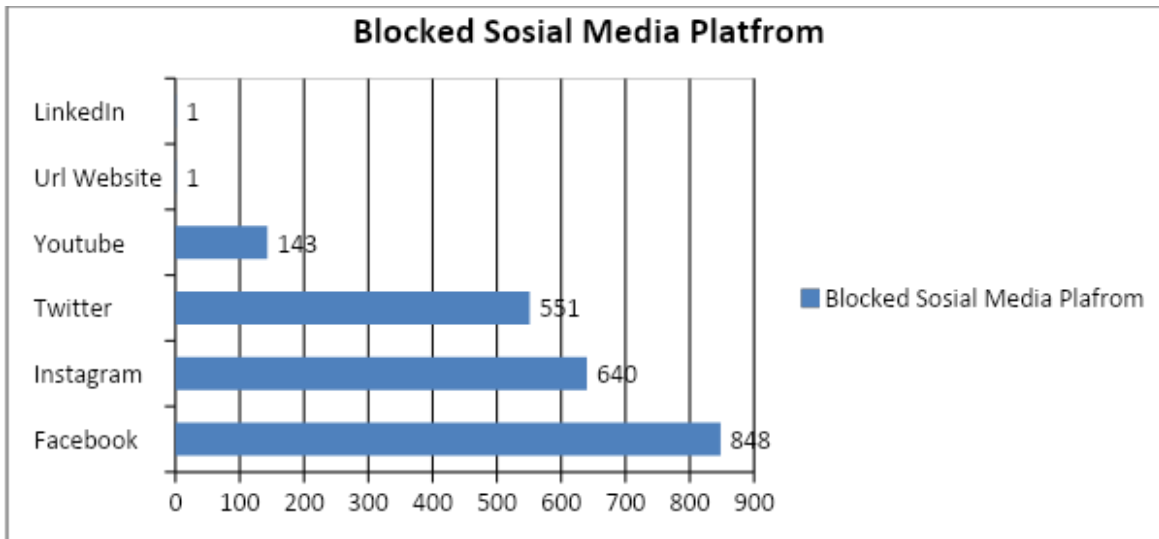
Sumber: Hootsuite

Unfortunately, the abuse of Facebook in Indonesia is also quite high. From many social media, Facebook occupies the first position of the application that is misused to spread content with various modes. Even it become the most often used application to spread ethnic groups, religions, races, and inter-groups (SARA) related content. These include those related to the spread of hate speech and hoax. President of Indonesia Joko Widodo (Jokowi) is the main target of hate speech and hoax⁷.

⁷<https://www.viva.co.id/berita/nasional/1009460-jokowi-dan-megawati-terbanyak-jadi-objek-ujaran-kebencian>

The year of 2017 became a turning point to handling hate speech. The government began to realize that hate speech become more massive and more serious to handle it. Government try to upgrade infrastructure in Ministry of Communications and Informatics and National Police. Ministry of Communications and Informatics use UU ITE as a foundation to block negative page. They create derivative rule known as Peraturan Menteri Kominfo Nomor 19 Tahun 2014 tentang Penanganan Situs Internet Bermuatan Negatif or ministry policy about blocking. But this derivative rule not supported with feasible technology. In that year, Ministry of Communications and Informatics used Domain Name Server (DNS System) technology. The blocking mechanism can only be done by using a domain name and/or server name. It means, Ministry of Communications and Informatics rely on public report about hate speech. They wait people or institution to report hate speech and hoax to them and then they try to analyze. If they think it is categorized as hate speech or hoax, they block it or send the report to the police to be punished according to the law.

Since 2014, Ministry of Communications and Informatics has been blocked 912,659 negative page included hate speech and hoax. From the total, pornography is the most blocked page in Indonesia (854,876 page), gambling (51,496 page), and the other negative page. With thousand cases, Ministry of Communications and Informatics has closed thousands of social media accounts and websites. There are 2,184 account and website which has been blocked. The details are 848 Facebook account, 640 Instagram account, 551 Twitter account, 143 Youtube account, and 1 URL website and 1 LinkedIn has been blocked.



Source: Ministry of Communications and Informatics

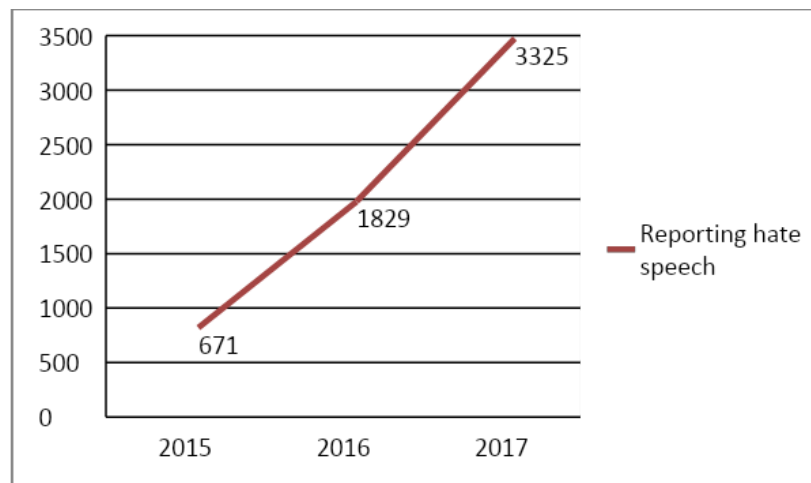
Minister of Communication and Information Rudiantara said they are three steps to minimize impact of negative pages, including hate speech and hoax. First, closed content links or account that indicated to spread hoax. Second, work with digital platform and provider to close accounts. Third, limiting access to some digital platform features or sharing files. He said, the third step is the last step if the situation became threatening and dangerous.

I believe with this step, the government can reduce the impact of hoax and hate speech spread. It is effective! There are so many countries limiting, even closing the access to social media or chatting application with some consideration⁸.

Meanwhile, National Police (Polri) use UU ITE to restrain people in social media. Polri create derivative rule known as Surat Edaran Kapolri No SE/X/2015 tentang Penanganan Ujaran Kebencian or internal rule about handling hate speech. Three months after internal rule published, hate speech cases increase significantly. Based on Polri data, since 2015 there are hundreds cases of hate speech (671 cases). In 2016, there are 1,829 cases and in 2017 it is become 3,325 cases. There are various target hate speech during the period, such as politicians, officials, and on top of that is the president of Indonesia, Joko Widodo (Jokowi).

⁸ Interview with Minister of Communication and Information, Rudiantara. Jakarta, April 11, 2019

Reporting hate speech



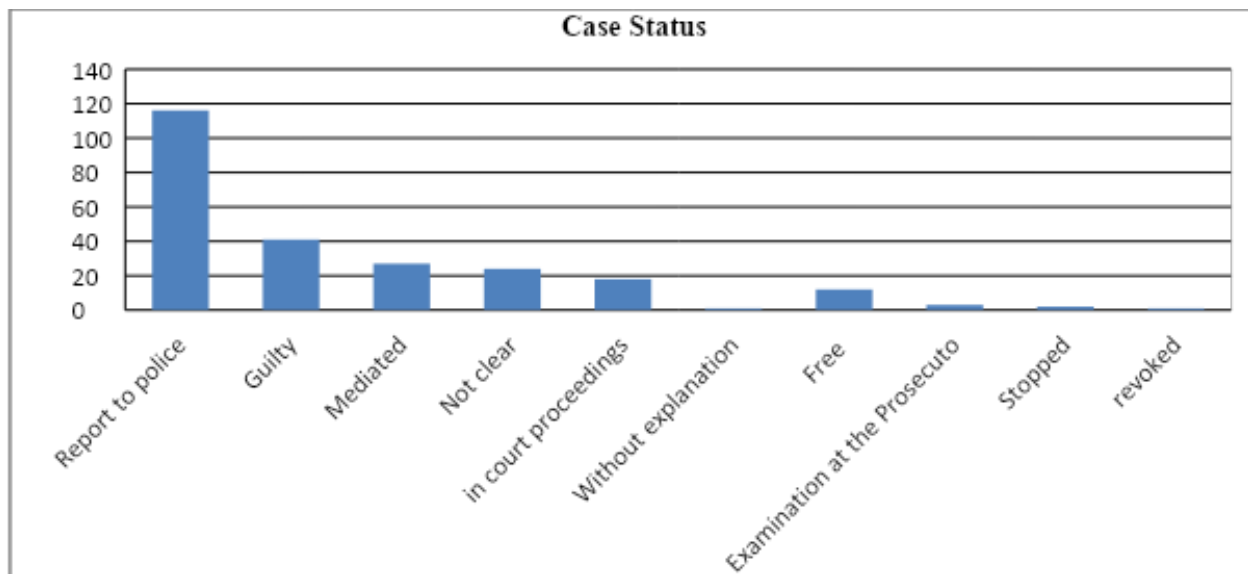
Source: National Police (Polri)

Director of Investigation of the Directorate of Cyber Crime at the National Police Headquarters, Brigjen (Pol) Albertus Rachmad Wibowo said there are five cases which need more attention. First, hate speech. Second, hoax or fake news. Third, blasphemy. Fourth, defamation. Fifth, threatening. For hate speech, Indonesia influenced by external factor, especially real event in real life and it can affect hate speech in social media⁹.

Bias Interpretation

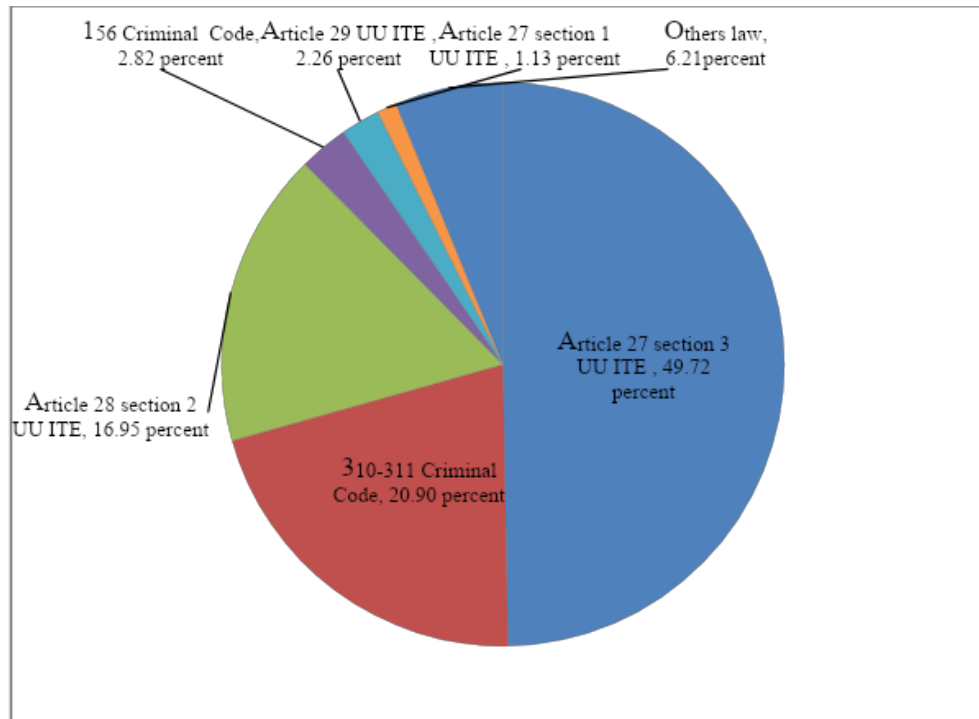
Although UU ITE had been revised, but this regulation still controversial because the regulation considered misused by government. Southeast Asia Freedom of Expression Network (SAFEnet) Indonesia, reported the chance to escape from prison because of UU ITE is almost impossible. Since 2008, until June 2018, there are 245 cases and 116 (47.35 percent) of them end up in the police. Among them, 41 cases (16.73 percent) found guilty. Only 12 cases (4.9 percent) free from the punishment and jail.

⁹ Interview with Director of Investigation of the Directorate of Cyber Crime at the National Police Headquarters, Brigjen (Pol) Albertus Rachmad Wibowo. Jakarta, February 15, 2019



Source: Southeast Asia Freedom of Expression Network (SAFEnet)

There are three main articles in UU ITE considered misused. First, Article 27 section (3): Any person who knowingly and without authority distributes and/or transmits and/or causes to be accessible electronic information and/or electronic documents with contents of affronts and/or defamation. This Article had been used 49.72 percent. Second, Article 28 section (2): 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). This Article had been used 16.95 percent. Third, Article 29: Any person who knowingly and without authority sends electronic information and/or electronic documents that contain violence threats or scares aimed personally. This Article had been used 2.25percent.



Source: Southeast Asia Freedom of Expression Network (SAFE net)

Nevertheless, not all the hate speech perpetrators deserve to be jailed or convicted. There are three cases represented the bias of UU ITE implementation. First, Muhammad Faizal Tonang arrested in July 21, 2017. He is known as Head of Media and Information in Saracen Group and quite active--more than 15--to upload memes and texts about hate speech on Facebook, especially about President Joko Widodo. Before he was known to have a connection to Saracen, he was already charged as a suspect of hate speech. These are some examples:

Now it is no longer the era of exchange sharp words in social media, it is now the era of jabbing and slashing the head, come on, when?

For the sake of our children and grandchildren, do not let our children be the slaves of PKI and China.

Laurens Kevin Paliama is a Christian terrorist wearing a cross carrying a machete likes to chop people.

The court already punished him with 1.5 years in prison. He has proved that the content he has been uploaded in Facebook are hate speech. Faizal used extreme language and preached people to do violence acts. He is using words such as ‘stabbing people’ or ‘cut people head off.’

¹⁰

Second case is Asma Dewi. She is known as a treasurer in Saracen and arrested in September 11, 2017. She was punished five months in prison. She is accused because two of the five texts that she uploaded criticized government about meat import. She thinks government does not give public solution about shortage of meat. Asma also think how meat’s price is too high to consumers. She is spreading news video in Metro TV titled ‘Ministry of Agriculture is confident import of viscera can stabilize price (Mentan yakin impor jeroan stabilkan harga)’. Asma commenting on the news with word ‘edun’ (crazy). Then, she reupload the news video on Facebook and give a comment: Stupid regime. In foreign country it is (viscera) thrown away, in Indonesia, people have to eat it! (Rezim koplak. Di luar negeri dibuang, di sini disuruh makan rakyatnya!).

She is using words ‘koplak’ and ‘edun’ to complaining about those issues. But there is no ‘koplak’ and ‘edun’ in dictionary in Indonesia. That words are slang words, have negative meaning, and tend to disrespectful to government. ‘Koplak’ has close meaning to stupid, moron, or weird. Meanwhile, ‘edun’ has close meaning to crazy or insane. But in this case, there is no invitation to do violence. Asma Dewi didn’t use extreme language and didn’t try to harm or provoke people¹¹.

¹⁰

<https://nasional.kompas.com/read/2017/12/24/23245851/11-kasus-ujaran-kebencian-dan-hoaks-yang-menonjol-selama-2017?page=2>.

¹¹

<https://megapolitan.kompas.com/read/2018/03/15/20152311/asma-dewi-divonis-bersalah-karena-gunakan-ujaran-koplak-dan-edun>

Third case is Jasriadi. He is known as the leader and manager of information and technology in Saracen. He is arrested in August 7, 2017. At first, he was arrested because he was suspected for uploading hate speech on Facebook. But, in the court, he is accused for illegal access and falsification of documents. He is already punished 10 months prison. What makes this case interesting is police change the accusation in the last minute and used different Article to prosecuting Jasriadi. If the case is illegal access and falsification of documents, it needed someone to report it. In this case, police arrested Jasriadi without any report¹².

With three cases about hate speech, the treatment from government is different. Even if they are in the same group, Saracen, but they have different types of chaotic information. On the first case, Faizal, he is confirmed as a person who spread hate speech and hoax. What he did is the type of malinformation. Malinformation describe as speech that promote and provoke violence. But in the second case, Asma Dewi is not part of malinformation, but misinformation. Misinformation describe as a fake information and spread it without attend to make violence. Most of the time, this type of chaotic information doesn't have verification. She believes that her action is for the greater good. The third case, Jasriadi doesn't have any prove to promote hate speech. What Jasriadi do is basically the type of computer crime which connected to malware.

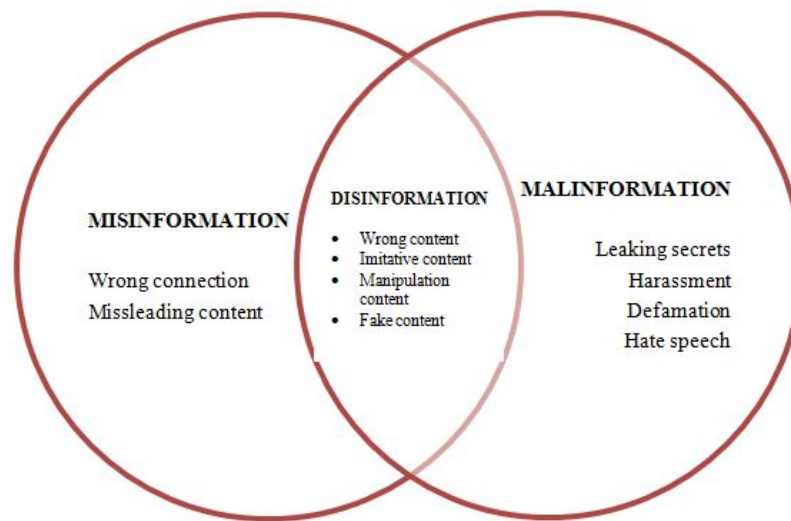
The Effort to Balancing

Hate speech must be identified more carefully because not all hate speech can be called hate speech. It needs classification between misinformation, disinformation, and malinformation¹³. Misinformation is a fake information, yet people who spread it believes the information is true without intention to harm other people. Disinformation is spreading fake information while the people who distribute it know that the information is false. Those hoaxes deliberately

¹² <https://tirto.id/siapa-jasriadi-yang-diduga-ketua-sindikat-saracen-cveT>

¹³ PUSAD Paramadina. (2019). *Melawan Hasutan Kebencian*. Jakarta. Pusat Studi Agama dan Demokrasi (PUSAD), Yayasan Paramadina Masyarakat Anti Fitnah Indonesia (Mafindo). Page: 3

disseminated in order to deceive, threatening, even endanger other. Malinformation is using the correct information to threaten the existence of a person or a group of people with certain identity, such as hate speech. Malinformation could be a guidance to give sanction according to the disruption of information generated by speech since not all speech should be convicted.



Malinformation occur when the two institutions can easily blocking without notice and arresting without legal report. Ministry of Communications and Informatics admit with crawling machine called 'AIS' built in 2017 and activated in 2018, they do not have to wait for a legal report to block. This machine can filter thousand negative contents, such as hate speech, hoax, pornography, radicalism, drugs, fraud, gambling, illegal trade, etc in seconds. This censor machine accompanied by hundreds verifier. So, the machine sort out sites and content which are relevant to the keywords and based on their impact. The more viral or popular a site and social media content is, the higher it is considered dangerous by the machine. After the impact calculated, then the machine will capture it and send it to verifier team. The verifier team will be the last gate to determine whether the site or social media is appropriate for censorship by the government. With this crawling machine, Ministry of Communications and Informatics try to reduce the impact of hoax and hate speech on social media or chatting application. The effort is

intended to minimize and avoid conflict as a result of acts of violence triggered by hoax or false news.

This is what we need. We need to try to reduce the spread of hoax, hate speech or another speech that intent to be provocative. We need to learn that spreading hoax can cause many problems and there is a punishment whoever broke the law¹⁴.

The same thing happens when police officials (Polri) began to use more often Article 28 Section (2) to arrest people considered spreading hatred without requiring reports from third party. Unfortunately, the arrest was not accompanied by adequate knowledge about which part classified as hate speech. They can even tracking down someone who suspected spoke hate or spread hoax and don't have limitation how many hate speech or hoax they spoke or spread. Even the police admit that the arrest not always end up in the court. Sometimes, they arrest people on purpose to send a bigger message to the public. They know, some of the people they arrest does not have sufficient education to know which one is hate speech and which one is not. So, police on purpose arrest them, educate them, warning them, and let them go. But, seeing the arrest, people see how terrifying it is to deal with UU ITE and hopefully they can learn and more careful when speaking in social media. In this case, police used restorative justice system¹⁵. Police modified mechanism to arrest someone and hoping there will be agreement between police and the suspect.

There is no criminalization. National police always try to educate people about hate speech and hoax. Sometimes, the arrest for hate speech is not always end up in the court. People who already arrested didn't know their mistake, so the police educate them, held a dialog, and then let them go. But we hope people understand that speaking hatred, especially in social media cause legal consequences¹⁶.

¹⁴ Interview with Minister of Communication and Information, Rudiantara. Jakarta, 11 April 2019

¹⁵ Kunarto. (1997). *HAM dan Polri*, Cipta Manunggal, Jakarta.

¹⁶ Interview with Sub-Directorate III, Directorate of Cyber Crime Police Headquarters, KBP Kurniadi. Jakarta, March 29, 2019

What Should Indonesia Do?

Some of the things that need to be taken to deal with hate speech in Indonesia. From regulation side, the government needs to make regulations which contain specific and detailed definition of hate speech. Specific and detailed definition is needed to avoid misunderstanding and is not misuse, including for political benefit. Ministry of Communications and Informatics hand in hand with the National Police undoubtedly need to update their internal regulation. UU ITE has been revised in 2016, but the derivative rules, Peraturan Menteri Kominfo Nomor 19 Tahun 2014 tentang Penanganan Situs Internet Bermuatan Negatif or ministry policy about blocking still comes from 2014, while Surat Edaran Kapolri No SE/X/2015 tentang Penanganan Ujaran Kebencian or internal rule about handling hate speech from 2015. Updating the internal regulation must be done, so both institutions have guidance and sufficient infrastructure to handle hate speech.

In terms of digital literacy and education, Siberkreasi Research Manager, Adya Nisita said the digital democracy challenge in Indonesia is a really massive internet user. Indonesia has about 150 million internet users with diverse competence. Around 40 percent of the number could not distinguish which one is a hoax or a fact¹⁷. It would be very dangerous when internet users are not invited to discuss for information offline or online. Education and digital literature are important things to do, she said. But, education should not only targeted the community, but also the government. Community Engagement and Growth Manager at Amnesty International Indonesia Ken Matahari said it is time the community needs to be taught that freedom should be responsible and pays attention to the rights of others.

Freedom of speech is something good for Indonesia because we can say our opinion. Insulting or offensive speech maybe still acceptable, but if it already discrimination, hurt and harm other people, that is hate speech. Indonesia must define free speech, offensive speech, and

¹⁷ Interview with Siberkreasi Research Manager, Adya Nisita. Jakarta, March 23, 2019

hate speech more rigid and clear in a regulation or maybe derivative regulation. If we don't define it, there will be bias interpretation that is dangerous for democracy in the future¹⁸.

At the same time, Ken also convinced not only the public, government officials also need to be educated. Unfortunately, government officials often unable to accept criticism from the public. Sometimes, they make it personal and can easily report it to the police. So, not only people of Indonesia who needed education about hate speech, but also the government officials. They need to learn how to accept criticism and not take it personal and using UU ITE to report people easily.

Southeast Asia Freedom of Expression Network, SAFENet Indonesia think there is asymmetrical power relations between someone who report it and someone who has been reported. Member of Freedom of Expression Division on SAFENet Indonesia, Nenden Sekar Arum said most of the government official is the one who reported the hoax and hate speech.

This is dangerous because they can't accept criticism and they can use UU ITE to report it and the one who reports it can go to jail easily. This can interfere democracy and freedom of expression¹⁹.

Vice Presiden Jusuf Kalla claims that UU ITE didn't protect officials and being used by them for the sake of their own power. Everyone who think they are being aggrieved by hoax and hate speech can report it to the police.

The regulation is for everybody and is not used for protecting the power of the government officials. If someone felt they are aggrieved by hoax and hate speech, they can report it. Government officials can report the hoax and hate speech, but the public can also do the same and report to the government officials. We already have a proof, which is the case of

¹⁸ Interview with Community Engagement and Growth Manager at Amnesty International Indonesia, Ken Matahari. Jakarta, March 23 2019

¹⁹ Interview with Member of Freedom of Expression Division on SAFENet Indonesia, Nenden Sekar Arum. Jakarta, March 23, 2019

former governor of DKI Jakarta, Basuki Tjahja Purnama (Ahok). He is reported by UU ITE and didn't come out clean. He had to go to jail for two years²⁰.

President Joko Widodo (Jokowi) is finally speak up after for the last four years he become main target of hate speech and hoax. In late 2017 and 2018, Jokowi try to defending himself by speaking in public that he is sad and annoyed by hate speech and hoax.

If I keep quiet, I am worried hoax and hate speech spreading more. Today, hoax and hate speech is everywhere. I don't want people to think that those hoax and hate speech are true. It is already four years and I didn't want to keep quiet. I need to speak up²¹.

Jokowi said he wanted democracy to develop in a polite atmosphere with some ethics. But to create those atmosphere is not easy. Indonesia must learn to speak politely when trying to express their opinion or give the government critics.

It is okay to be different in political view, but they can deliver it with an attitude, not hate speech, hoax or defamation. There are so many ways to express their view and feeling²².

He is suspicious that negative content spreading on purpose to build fear, pessimism, and threatened. To fight it, he said, the regulation is not enough. Indonesia need digital literacy. Hopefully, the public can use technology in a good way, especially when it comes to freedom of expression. They can choose which one is fake news, which one is hate speech, and which one is criticism.

The rapid advancement of digital information technology must be balanced with high moral and ethical standards. Indonesia need to speak in good manner. It doesn't mean to cover the fact. We need to speak the truth in a polite way. If you criticize the government, you need to show us data and not just anger²³.

²⁰ Interview with Vice Presiden, Jusuf Kalla. Jakarta, February 6, 2019

²¹ Interview with President of Indonesia, Joko Widodo (Jokowi). Jakarta, January 26, 2019.

²² Interview with President of Indonesia, Joko Widodo (Jokowi). Jakarta, January 26, 2019.

²³ Interview with President of Indonesia, Joko Widodo (Jokowi). Jakarta, December 10, 2018

Conclusion

Indonesia began to realize that regulation for cyberspace is important. But the implementation is still bias, especially Law No. 19/2016 on Information and Electronic Transactions (UU ITE). But, the derivative regulation need an update. After 1998, people tend to express their feelings and share their mind in public dan social media. Government started to take the issue seriously. In 2008, government legalize UU ITE which then revised in 2016. Even though the content is not changed much.

UU ITE has become the backbone to arrest and to block some parties considered harmful. The government tent to see freedom of speech as a dangerous thing, so they try their best to filter, block, even arrest people who--by their opinion-- is threatening. National Police (Polri) is able to arrest people immediately and doesn't have to wait for a report from the public. Ministry of Communications and Informatics can filter thousands of websites and social media, then blocked the account without warning. Chances to escape from UU ITE in nearly impossible. But, hundreds of reports about hate speech or hoax are not always end up in jail. The government is on purpose to send a bigger message to the public. They want the public to see and to know that they should not speak carelessly without understood the consequences.

Nonetheless, people began to question the government's action because the government (or regime) can use UU ITE as a tool to make people stay silent and not criticize them. Indonesia is trying to balance between freedom of speech and law enforcement. People don't have moral compass and ethical standard to do an activity in cyberspace. The government officials doesn't have proper regulation, so they tend to abuse the power.

Thus, today, Indonesia is in the Access Controlled phase. This phase characterizes a period during which states have emphasized regulatory approaches that function not only like filters or blocks, but also as variable controls. The salient feature of this phase is the notion that there are a large series of mechanisms, at a variety of points of control that can be used to limit access to knowledge and information. These mechanisms can be layered on top of the basic filters and blocks established during the previous era . The mechanisms of the Access Controlled period are more subtle and nuanced than the first-generation filtering and blocking mechanisms

that they complement. These controls can change over time to respond to changing political and cultural environments that arise online and offline. Filtering mechanisms can be made to work just-in-time, in order to block content and services at politically sensitive moments.

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Tackling Online Disinformation in Indonesia Through Media Literacy: The Redirect Method

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Abstract

Issues surrounding the spread of disinformation have become a principal security concern in Asia generally, and Indonesia specifically. Disinformation has the capacity to affect democratic election outcomes, incite violence and affect public health and safety. This paper will discuss the ways in which disinformation narratives are spread in Indonesia and go on to outline the solutions proposed by Moonshot CVE to tackle the spread of disinformation through our Redirect Method and inoculation content.

About Moonshot CVE

Moonshot CVE is a social enterprise set up to disrupt and ultimately end violent extremism. Our work has grown to encapsulate a range of global online threats, including disinformation. We design and deploy new methodologies and technologies to enhance the capacity of our partners to respond effectively to online threats. We specialise in data-driven responses to extremism and disinformation.

This report presents preliminary data from monitoring of the disinformation environment in Indonesia, conducted by Moonshot CVE in the period January - June 2019. This report was produced by Moonshot CVE for the purposes of the Asia Centre conference on fake news and elections in Asia on behalf of the USAID-funded project: 'Advancing Media Literacy among New Digital Arrivals in Developing Countries'. Moonshot CVE was responsible for gathering data from Facebook, Twitter and YouTube, and examining the key disinformation themes and audiences vulnerable to disinformation. This report will also include detailed plans of the intervention process that will take place upon the completion of the Media Literacy content.

Introduction

Forms of deceptive information dissemination are quickly emerging as a principal security concern in Asia. In these territories, rapidly increasing cohorts of new digital arrivals with no, or limited, digital media literacy skills are highly susceptible to disinformation and disinformation.

This burgeoning issue has already played out in the recent election cycles of one of the largest democracies in the world: Indonesia.

Disinformation involves the spread of false or inaccurate information, either deliberately or unintentionally, that has the potential to cause tangible harm, for example by undermining democratic processes, inciting violence, discrimination or hostility and, or posing a threat to public health and safety. Moonshot CVE has used this as a working definition throughout a project in collaboration with the University of Notre Dame, IREX and GeoPoll. For this project, Moonshot CVE monitored the spread of disinformation over the course of the 2019 Presidential Elections, analysed trends and themes, and pioneered and tested new forms of global counter-messaging strategies.

We have found that there is a clear connection between the use of disinformation techniques by malign actors to drive hate speech narratives, increase polarization between communities, and negatively impact democratic processes in Indonesia. In 2016, the weaponization of disinformation against Chinese and Christian populations by hard line conservative groups resulted in violent rioting, the intimidation of those of ethnic-minority descent, as well as the removal and arrest of the innocent Governor of Jakarta.

Since then, disinformation has continued to pose a threat over the course of the 2019 Presidential Elections. Disinformation against the credibility of the state, democratic process and the incumbent president - Joko Widodo - sowed doubt about the election results and has since resulted in violent rioting, arson attacks, and murder. As a direct consequence, the Indonesian government has blocked access to social media in the hope of stifling the spread of disinformation and further violence.

Responses to this issue require sustainable, accessible, and scalable approaches. We will discuss how we have worked with partners to deploy techniques of gamification and inoculation, along with our Redirect Method: Disinformation, to build digital literacy skills and resilience to disinformation in Indonesia. In addition to sharing our results on disinformation and its impact on voter behavior in Indonesia, we will discuss the overall effectiveness of media literacy programmes and fact checking endeavors and how Moonshot CVE's use of data science and technology seeks to ameliorate these efforts.

A recent history of disinformation in Indonesia

Disinformation has long been evident in political campaigning in Indonesia. Internet penetration and growing social media usage saw its importance grow in the 2014 election. The 2017 Jakarta governor elections were a turning point: disinformation, viral memes, and derogatory religious and ethnic rhetoric are widely believed to have contributed to the surprise defeat of Jakarta Governor Basuki Tjahaja Purnama, popularly known as “Ahok”.

In the wake of this, police have uncovered ‘cyber armies’ on both sides of the political spectrum. A prominent example is the Muslim Cyber Army (MCA) that spread messages in favour of Prabowo, the nationalist candidate; however, police also detected other ‘cyber armies’ dedicated to pumping out messages in favour of Ahok, the favourite - ethnically Chinese, Christian, and formerly a running mate of the current President, Joko “Jokowi” Widodo. Ahok’s online presence however was noticeably smaller, with only 20 employees compared to the hundreds employed by the MCA (Lamb, 2018). Many suspect that high-profile politicians and lobby groups are involved in the creation, funding or spread of disinformation on both sides of the political spectrum. While new legislation has sought to prevent this, political disinformation is widely expected in the run up to the 2019 elections.

Disinformation narratives

Moonshot CVE formulated a working definition of disinformation:

The spread of false or inaccurate information, either deliberately or unintentionally, that has the potential to cause tangible harm, for example by undermining democratic processes, inciting violence, discrimination or hostility and/or posing a threat to public safety.

Within this broad definition, there are three subcategories:

- Anti-Communism
- Anti-Chinese
- Islamic Chauvinism

There are many overlaps between these subcategories, as they each often have a political dimension and are motivated by efforts to discredit a political opponent.

Anti-communism

Communism has been a source of tension in Indonesia since the founding of the communist party (PKI) in 1914. Today, nationalist and Islamist parties and activists deploy allegations of sympathy with communism to smear opposition and other forms of dissent. Allegations of sympathy for communism are also used to prevent discussion of historical abuses by the Indonesian state during the 1960s. Anti-communist disinformation has the potential to disrupt democratic processes, incite violence and restrict individuals' right to free speech.

Anti-communist sentiments became more evident during the fight for independence against the Dutch in the 40s. Many groups, including the PKI, nationalist factions, Islamic groups right-wing militias, were involved in splintered guerilla warfare, but the PKI had a large amount of influence over other groups and was central in fighting the Dutch (mainly because of support and training from the Soviet Union or China). Sukarno (who would later become the first president of Indonesia), right-wing & Islamic splinter groups and foreign powers (mainly the US) were worried about the PKI's growing influence. This led to a lot of internal fighting between groups and consequently, lasting tension between Islamist groups and nationalist groups with communist ideology in Indonesia.

There was a brief resurgence of the communist party during the 1950s, when it gained mainstream support by actively supporting Sukarno, making it the third largest communist party after the USSR and China. Sukarno relied upon the method of 'Nasokom', the combined support of nationalist, political Islamist and communist groups.

A failed coup attempt on 30th of September 1965 (referred to as G30S or G30S/PKI), during which 6 military generals were killed, was a catalyst in anti-communist sentiment. The Indonesian government blamed the PKI for the murders, and launched a nationwide anti-communist propaganda campaign, precipitating the systematic killing of at least 500,000 - 1

million communists¹, affiliated groups, sympathizers and ethnic Chinese. However, the facts behind the alleged coup attempt remain controversial. To this day, it is largely considered fact in Indonesia that a group of communists committed these murders; however, researchers from Cornell identified that the evidence linking the PKI to the events is inconclusive. Rather they have identified stronger evidence that these rumours were spread by the military (lead by general Suharto, later the right-wing authoritarian president of Indonesia), who scapegoated the communist party in order to gain power with the support of political Islamist groups and violently crack down on communists and other dissenters. This led to the total elimination of the PKI as a political force and sowed the continuing narrative that communism is a serious threat to the nation and is an enemy of religion.

This history of anti-communism has continued to be a primary source of disinformation. If someone is accused of being ‘PKI’ even without explanation, it can have serious political and social consequences for their lives or careers as anti-communist sentiment runs very deep. Moreover, spreading Communist ideology is a criminal offence, prohibited under Article 107a of the Indonesian Criminal Code (“Crimes against State Security”), carrying a sentence of up to 12 months imprisonment (Kusumandewi, 2016). Anti-communist disinformation often focuses on fears of a revival of communism, playing on historic anti-communist propaganda campaigns. Examples of anti-communist disinformation campaigns include:

- In September 2017, images were posted on Facebook and blogs that reported that the PKI was being revived at a conference. In reality, a group of researchers and human-rights activists were meeting to discuss the 1965 massacre. The allegations led to a group of self-styled anti-communists attacking the conference, trapping attendees overnight (Bevins, 2018).
- In December 2016, several news outlets reported that the national currency had a communist symbol on it. These rumours were instigated by Rizieq, the leader of the Islamic Defenders Front (FPI), an Islamist political organisation, and quickly went

¹ Historians disagree on the total number of killings. Between two or three million people were reportedly killed by citizens, the Indonesian military or paramilitary death squads during the communist purge according to the most recent estimates, however within Indonesia the most reported number is between 500,000 to one million.

viral on social media. These rumours spawned conspiracies of the re-emergence of the PKI. Rizieq was detained on suspicion of slandering the Bank of Indonesia, provoking violent protests outside the police station where he was being held (Pearlman, 2017; Cox, 2017; Bevins, 2017).

- In April 2016, during the Jakarta governor elections, memes were spread which framed Ahok² as a communist and President Joko Widodo (Jokowi) as implicit in Ahok's 'communist and religiously blasphemous' actions and as a supporter of the Chinese. As can be seen in the screenshot below, a popular photo that was circulated online showed a communist rally in 1955 in which Jokowi can be seen in the crowd. This has become so prolific that it is the first image that appears when you google search communism in Indonesia (Jokowi was not born until 1961).



² See **Islamic chauvinism** subcategory - Ahok is a recent high-profile target of disinformation campaigns. He is an ethnic Chinese Christian who was Jokowi's running mate and deputy as governor of Jakarta, who succeeded Jokowi's role as governor after he became president. In 2016, he was running to be re-elected for his position.

Anti-Chinese

Anti-communist and anti-Chinese disinformation campaigns are historically connected,³ with some disinformation campaigns using anti-communist rhetoric to target ethnic Chinese Indonesians. For example, one meme that circulated said “We don’t hate the Chinese for being Chinese but for spreading communism” (Amin, 2018: 3-10).

Anti-Chinese sentiment has flared up periodically since independence and has been instrumentalized during contemporary political campaigning. It intersects with disinformation, where malicious actors falsely claim that actors or policies are Chinese or connected to the Chinese in order to discourage support for them or instill fear and distrust. For example:

- During the 2014 elections, disinformation circulated claiming that Jokowi is a Chinese Christian or that his mother and grandmother are Chinese Christian. This resulted in Jokowi releasing his marriage certificate, which proved his Muslim religion and ethnic background (Kwok, 2014).
- There were also false pictures of hundreds of fake IDs, used to argue that Chinese people were committing electoral fraud in order to get Jokowi into power (Sasmito, 2018).
- Early January 2019, two men were arrested for spreading on WhatsApp group chats that the ballots for the upcoming election were posted from China (Anon, 2019).

Anti-Chinese disinformation may also seek to leverage ethnic tensions, with the potential to instigate violence against Chinese citizens living in Indonesia; or ethnic-Chinese Indonesians. For example:

- Photos from other parts of the world were used to spread the hoax that tens of millions of Chinese migrant workers were immigrating into Indonesia (the actual number is 21,000) (Pearlman, 2017).

³ During the communist purge led by Suharto in 1965-66, many Chinese were considered communist sympathisers. When Suharto became president, Chinese Indonesians continued to suffer widespread discrimination under his authoritarian regime.

- In December 2016, rumours spread on Facebook and WhatsApp, that the Indonesian military's top commander had made derogatory comments toward China in a speech, such as that China were scheming to tear apart the country by sending Chinese citizens to work in Indonesia. In reality, the commander was not even present where this speech was reported to have taken place and these rumours were purposefully engineered in order to legitimise hate speech (Aritonang, 2016).
- Also, in 2016, myths circulated online that Beijing was using 'biological weapons' to destabilise the Indonesian economy. One story alleged that chili seeds produced by an Indonesian farm run by Chinese nationals contained crop-killing bacteria went viral. Besides completely ruining the farm's business, the rumours may exacerbate ethnic tensions. They also have international effects; the Chinese embassy in Indonesia has stated that these have worryingly threatened diplomatic relations between the two countries (Jaipragas, 2016).

Islamic chauvinism

Islamic chauvinist disinformation refers to the spread of disinformation or smear campaigns that have the eventual purpose of advocating that Indonesia should be an Islamic state, that Indonesian Muslims have a greater authority to the land, etc. It has the potential to incite violence, discrimination or hostility against religious minorities (approximately 87 per cent of the population is Muslim) or those not deemed to be practicing the 'right' kind of Islam. Although these narratives are similar to the dangerous narratives perpetuated by violent extremist groups, the conservative groups that have been known to spread Islamic chauvinist disinformation do not support or condone violent extremist activities. Nevertheless, violent extremist groups have taken advantage of this kind of disinformation and the political unrest it has caused; using it as a way to infiltrate conservative group platforms and recruit. Scholars have argued that such disinformation trends have increased the risk of mainstream support and sympathy for violent jihadist groups.

Islamist chauvinism is also instrumentalized during political campaigning and can be harmful to people's careers and livelihoods. In the wake of the controversy surrounding Ahok, President Jokowi launched a disinformation defense strategy which puts a dominant focus on countering “anti-Pancasila organizations or rhetoric” (Coca, 2018).

These ideas have existed since the birth of Indonesia; prior to colonialism, Indonesia did not exist as a singular cultural or ethnic entity. Since Indonesia's independence, debate as to how to define Indonesian nationalism without the confines of colonial notions has dominated politics. As alluded to earlier, the first President of Indonesia, Sukarno, grappled with this issue and tried to balance the three main ideological groups - Islamism, Communism, and Nationalism (lead by the army). In the late 1950s, there was a constitutional deadlock between those who wanted Indonesia to be an Islamic state, and those who supported the idea of the state based on the Pancasila ideology (the government's religious freedom and social justice philosophy). Following the communist purges, Nationalism defined by Pancasila won out, but has remained a point of criticism for Islamist groups who believe that political Islam should define nationalism. A common attack aimed from Islamist groups against the Pancasila is that it is ‘thaghut’ (Riviere, 2016). This means that it allows for the worship of anything or anyone other than Allah and Islam. In traditional theology it refers to the worship of evil spirits and Satan.

There are several disseminators of Islamic-Chauvinist disinformation. The most notable being the FPI and the Muslim Cyber Army (MCA), an anonymous online group which paid users to manage hundreds of fake social media accounts and spread inflammatory content intended to dissuade Indonesian Muslims from supporting Ahok. Although, Indonesian police have cracked down on the MCA, it remains a threat to the upcoming April 2019 elections (Lamb, 2018).

There are also a number of ‘news’ sites that push a hardline Islamist agenda through a combination of heavily opinionated pieces and disinformation: MCA are good examples of these sorts of groups. VOA-Islam.com, Arramah.com, PKS Piyungan.

The anti-communism and anti-Chinese examples listed above are also examples of disinformation campaigns that are spread on these websites, by these groups, with these kinds of motivations. Although they may employ anti-communist or anti-Chinese rhetoric their ultimate goal is to destabilise the government by inciting anger and distrust.

Examples of this kind of content includes false tales of politicians commercialising or defaming Islam. For example, in December 2018, fake government papers from the Ministry of Human Development and Culture circulated, stating an intention to abolish Islamic education in December 2018; and that the Pancasila allows for acts that are at odds with Islam such as claims that it does not outlaw LGBT people or acts (Febrylian, 2017).

One of the most high-profile disinformation campaigns has centered on Basuki Tjahaja Purnama (or, Ahok). Ahok, who is of Chinese descent and Christian, was the governor of Jakarta until violent protest broke out accusing him of blasphemy which led to his subsequent trial and imprisonment in May 2017.

Ahok had been targeted by several conservative and radical Islamic organisations (i.e. the Islamic Defenders Front (FPI), an Islamist political organisation) since he became governor, who cited that he was not fit to lead a Muslim majority capital because of his religion. They argue that the Quran prohibits Muslims from supporting non-Muslim leaders. They led several protests however these attracted only a low turnout, principally because the participating organisations suffered credibility problems due to their earlier, frequent participation in mass violence. In addition, their causes did not resonate with a large number of more moderate Muslims.

The anti-Ahok movement gained momentum in late 2016 after Ahok delivered a speech in which he lashed out at politicians and argued that no one should manipulate the Quran for political gain. This was not the first time that Ahok had launched such criticisms.

However, after this occasion, a Facebook user edited a video of the speech to make it seem as though he had insulted the Quran. "The edited video made it seem as though he said "You've been lied to by the 51st verse of the [Quran's] Al-Maidah chapter" instead of what he actually said, "You've been lied to by [people] misquoting the 51st verse of the Al-Maidah." By making it seem as though he was insulting the Quran and those who follow it, word quickly spread that Ahok had committed blasphemy. The Facebook user who posted it, Buni Yani, later admitted to misquoting offenses.

This Facebook post spread on social media (mainly Facebook). However, this was picked up on by popular national news sources. It triggered further political tension gave leverage to

conservative Islamist groups, like the FPI. They organised an anti-Ahok protest in October demanding Ahok's imprisonment for defaming the Quran.

The successful framing of Ahok as a 'blasphemous Jakarta governor defaming Islam' struck a chord among many Indonesian Muslims, which spurred the widespread participation in the "Defending Islam" rallies in late 2016.

They were also helped by political groups exploiting the issue to assist Ahok's rivals and destabilise Jokowi's leadership. These groups distributed huge sums for transport, food and water for participants to maximize attendance at the rally. For these political actors, religion is simply an instrument to gain political advantage.

The verdict of guilty delivered by a panel of judges was met with scrutiny, condemnation and heavy criticism by many Indonesians and observers in the international community, in a case widely seen as a test of religious tolerance and free speech. Many said the verdict was politically driven, retaliatory in nature, and the judges had succumbed to pressure from: extremist Islamic groups, disgruntled corrupt business groups, and politicians and officials who were previously criticized by Ahok's administration. The promotion of three judges from the panel a few days after the verdict also raised suspicions and spurred criticism from many Indonesians.

The Offline Disinformation Environment

From March 27 - April 24, 2019, GeoPoll's team of interviewers in Jakarta implemented a computer-assisted telephone interview (CATI) for 1,000 successful interviews. The survey was nationally representative proportionately to 2019 census data estimates at the first administrative level (province), age group and gender.

Data insights include:

- Majority of both genders access social media daily; whereby females lead with 64 per cent as compared to males at 58 per cent
- Most respondents across all age groups prefer to use social media on a daily basis except age group 56 and above; the majority in this group have reported they have not interacted with social media before

- Television is the leading primary source of news across all genders and age groups
- Most respondents regularly read/watch local news on Facebook with a percentage of 55 per cent females and 53 per cent males. Age Group 25-35 leads with 58 per cent as 66+ takes the least percentage of 27 per cent
- Across the survey, YouTube takes the lead with 43 per cent of the respondents who reported to be using it for global news. The male gender leads in the percentage of those who use YouTube to access global news with 45 per cent; for females access is 41 per cent. Age Group 15-24 takes the lead with 54 per cent for YouTube users.
- Most people who took the survey have an account with WhatsApp (86 per cent), more than all other social media platforms
- Majority of the respondents agreed to be reading entire articles on social media (40 per cent) with the percentages ranging between 33 per cent - 44 per cent amongst the different age groups and the female leading with 42 per cent
- Majority of the respondents share false news with the aim of enlightening others with the male leading with 71 per cent
- Across the survey, most respondents are neutral about the accuracy of real events that they were asked; most being the female gender with a percentage of 48 per cent; age group 15-24 (45 per cent) and University as their highest level of education (48 per cent). The same proportions are seen with misleading information where those who are neutral lead with 46 per cent, male taking the lead with 50 per cent, Age group 66+ with 56 percent where 53 per cent have reached the university level.

The Online Disinformation Environment

Online Indicator Database

Moonshot CVE bespoke dataset of key terms related to disinformation on social media and online searches in order to deploy The Tracker to monitor the online disinformation environment

in Indonesia. The Tracker was deployed on Google search as well as on Facebook, YouTube, Twitter and WhatsApp. The tool identified popular disinformation pages and channels across these various online platforms. Any risky pages, channels, groups, and websites were verified by Indonesian experts and cross-referenced against the findings of CekFakta, a collaborative fact-checking and verification project in Indonesia. This database is updated on an ongoing basis to ensure the latest disinformation trends are captured.

The Tracker enables the measurement of how users in Indonesia engage with disinformation. By deploying The Tracker on a variety of different platforms, we can gain a holistic understanding of the various different ways users engage with disinformation and therefore, how it spreads. For example, as search is non-performative, search data is indicative of users that are seeking to validate stories they have seen elsewhere or already believe. It can also demonstrate which stories are considered most credible and have most traction. On the other hand, Twitter data can illustrate the origin and evolution of disinformation trends.

Google Search

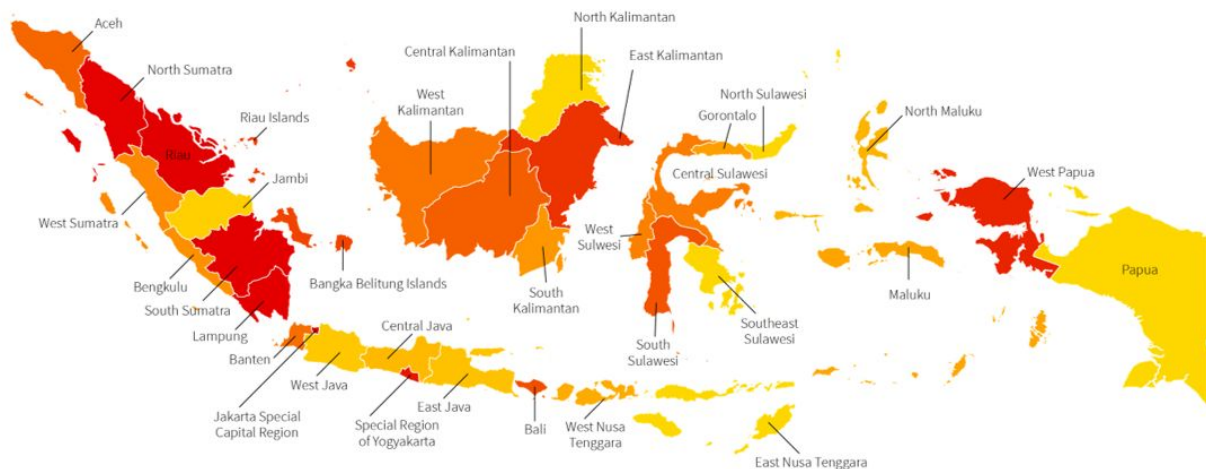
Geographic Breakdown of Disinformation

This section reveals the geographic breakdown of the disinformation consumption by narrative type, based on search traffic data collected over a four-month period in 2019.

Heatmap of Indonesia according to anti-communist searches per capita

Nationalist and Islamist parties and activists deploy allegations of sympathy with communism to smear opposition and other forms of dissent. Allegations of sympathy for communism are also used to prevent discussion of historical abuses by the Indonesian state during the 1960s.

Anti-communist disinformation has the potential to disrupt democratic processes, incite violence and restrict individuals' right to free speech. Anti-communist searches refers to any search for falsely claim presidential candidates, the government or other politicians are communists, or about the revival of the threat of the communist party. Examples include 'jokowi's mother was in the PKI', 'the PKI is rising up again', and 'communists sighted in Indonesia'.



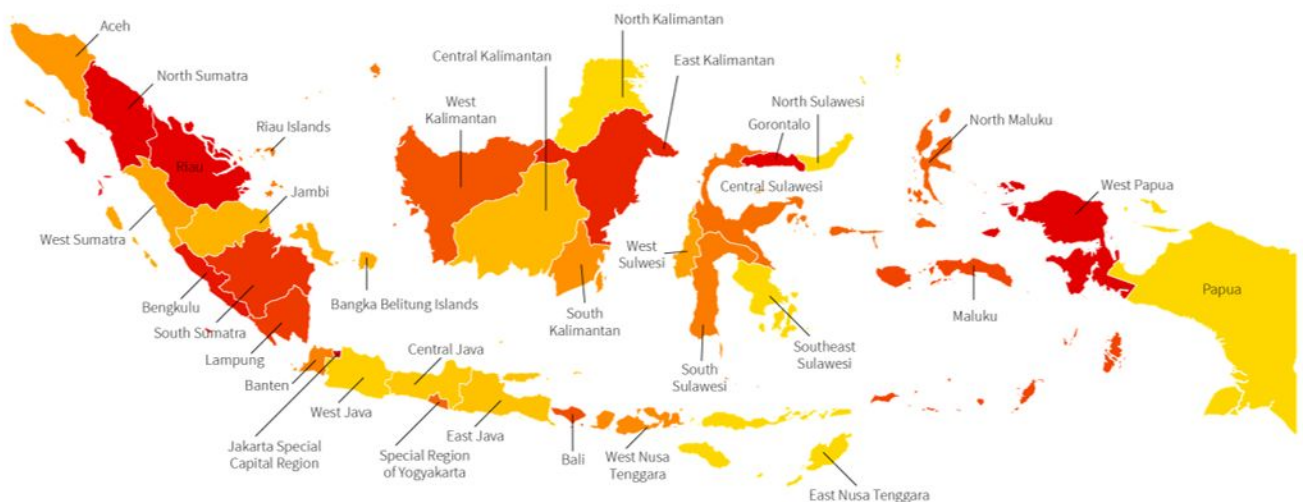
Heatmap of Indonesia according to anti-Chinese searches per capita

Anti-Chinese sentiment has long been instrumentalized during contemporary political campaigning. It intersects with disinformation, where malicious actors falsely claim that actors or policies are Chinese or connected to the Chinese in order to discourage support for them or instil fear and distrust. Anti-Chinese searches refers to any search for that falsely claim presidential candidates, the government or other politicians are Chinese, or that exaggerate the number of Chinese immigrants or their power in business and economic affairs of the country. For example, 'Prabowo is a chinese stooge', 'Millions of chinese migrant workers in Indonesia', and 'Chinese abuses native person'.



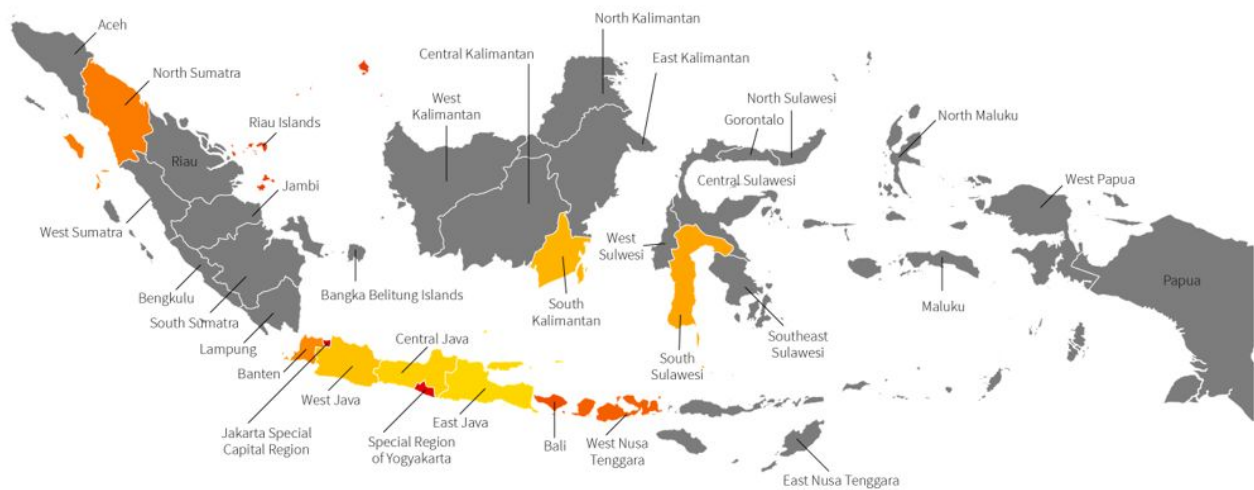
Heatmap of Indonesia according to Islamic chauvinist searches per capita

Islamic chauvinist disinformation searches include those falsely claiming that the government or politicians are not Islamic enough or that they are directly threatening Muslims in some way. For example, ‘the president of indonesia is not islamic’, ‘PDI-P is campaigning to eat pork’, or ‘prabowo is a kafir’.



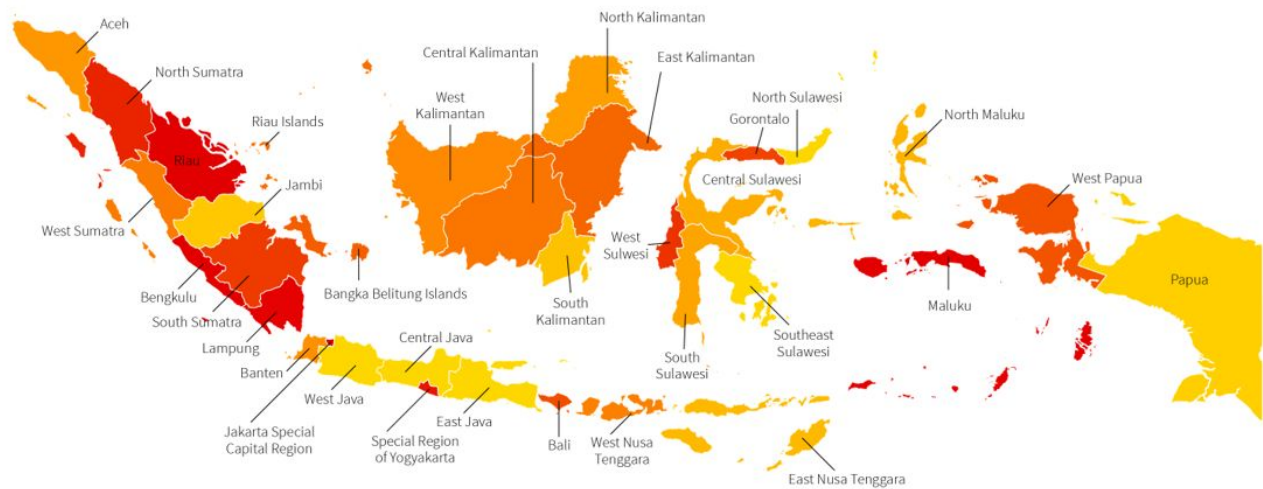
Heatmap of Indonesia according to political smear searches per capita

Political smear searches that do not fall into any of the above narrative types. These searches include those for stories that seriously and falsely besmirch the credibility of politicians or electoral institutions. Example searches include: ‘did jokowi actually win the election?’, ‘is prabowo the true winner of the election?’, and ‘the election results were fixed’.



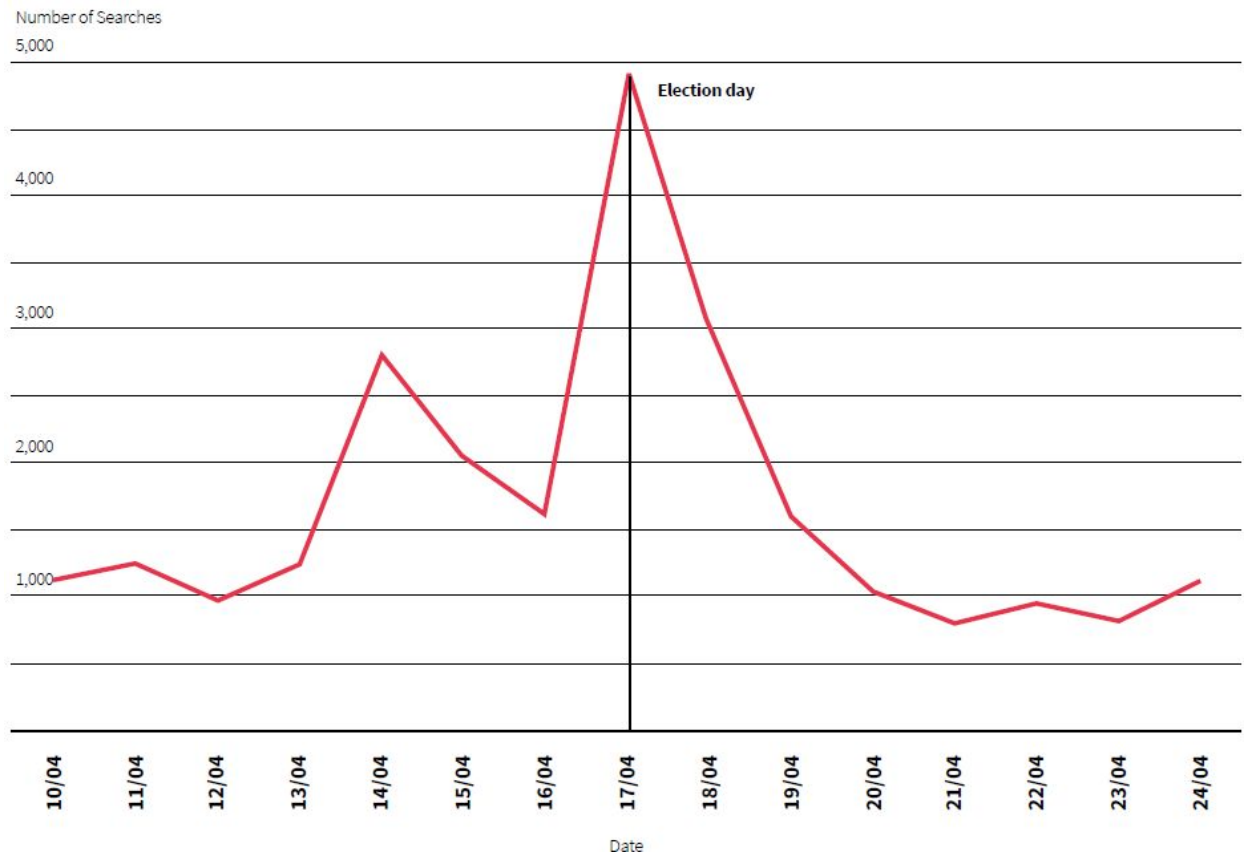
Heatmap of Indonesia according to credulity searches per capita

Credulity searches are those which indicate an attempt by the user to fact check disinformation narratives or access media literacy content. Searches of this kind were included in the Tracker keyword database in order to gauge the existing appetite for media literacy content in Indonesia. Example searches include ‘how to identify fake news’, ‘is news on twitter real?’, and ‘Is it true that Ahok defamed the Quran?’.



65 per cent of total searches were for credulity content, which demonstrates that Google Search is used as a tool to validate stories seen on other platforms and not the original source of the spread of disinformation. This finding also confirms that users are less likely to seek out disinformation but instead, are inadvertently targeted by a range of actors on a range of platforms. Therefore, going forward it is imperative to ensure that those looking to validate disinformation through search are presented with the correct information and the credible sources they are looking for. The media literacy campaign should primarily target other online platforms where disinformation is disseminated.

Timeline of searches before & after the 2019 Elections



Disinformation has posed a serious threat to the April 2019 General Elections. Moonshot CVE measured 13,684 searches in total for disinformation related content on Google Search five days preceding and on the day of the election. 36 per cent (4,928) of these searches were on the day of the election itself. This was a 352 per cent increase in searches from the previous week.

Timeline of Searches over the course of the May Riots

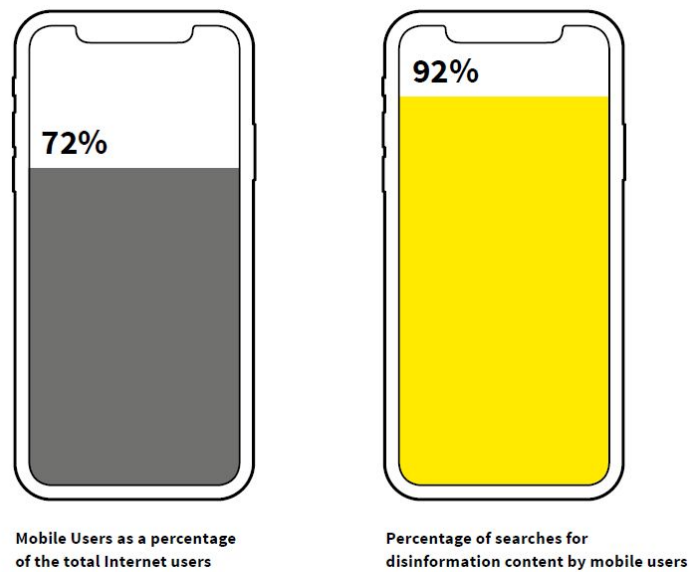
Date	Number of Searches
19/05	0
20/05	0
21/05 [Riots - Official election results announced one day ahead of schedule]	169
22/05 [Riots]	157
23/05 [Riots End]	65
24/05	3

Disinformation against the credibility of the state, democratic process and the incumbent president, Joko Widodo, sowed doubt about the election results and has since resulted in violent rioting, arson attacks, and murder. As a direct consequence, the Indonesian government blocked access to social media in the hope of stifling the spread of disinformation and further violence. Over this period, The Tracker was suspended and did not capture the full extent of data resulting in low search data. The results that were collected indicate a spike in searches for disinformation stories on the day the election results were officially announced ahead of schedule. The most searched terms were variations of ‘the election results were faked’. There is a significant drop in searches once the riots were called off.

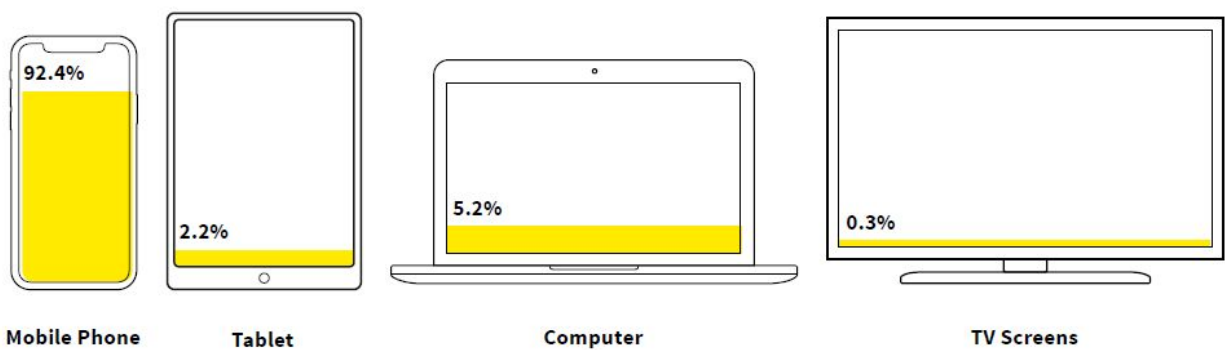
Devices

Half of the Indonesian population are active internet users. As a developing country, Indonesia has experienced a rapid growth of new digital entrants with low levels of digital literacy.

Approximately 72 percent of Indonesia's internet users access the internet through their mobile phones (Statista, 2019). This lines up with findings from Moonshot CVE that these devices are by far the most used by individuals searching for disinformation related content (including credulity searches).



Breakdown of searches by device (percentage of total searches)

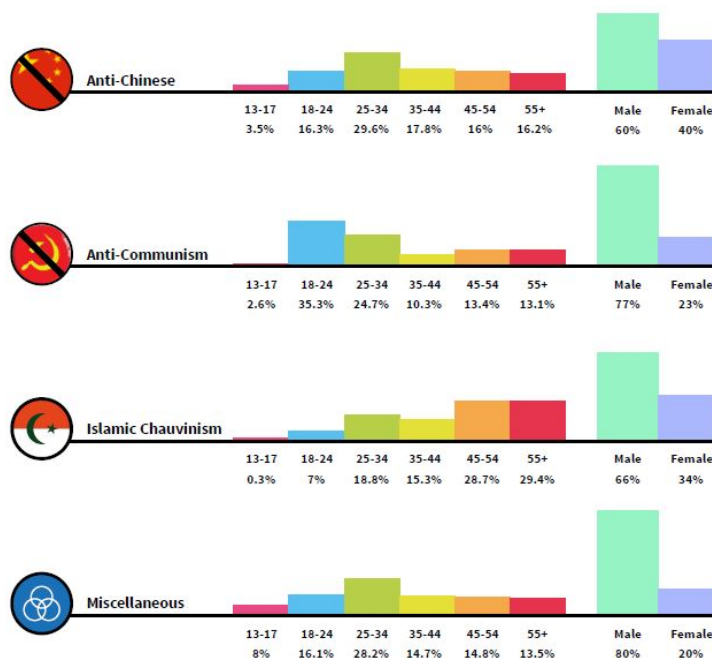


YouTube

Disinformation videos were disseminated across **147 YouTube channels**. Channels do not exclusively show disinformation videos: they broadcast a mixture of entertainment and disinformation. Channels showing a particularly high proportion of disinformation often include vocabulary related to media and broadcasting, for example *News*, *Warta* (News), *Jurnal* (Journal) and *Berita* (News) in order to imitate the appearance of official news channels. In the miscellaneous category, videos were also shown on general interest or hobby-related channels, for example gaming channels. The most popular channels are depicted below.

- Anti-Chinese: WARTA NKRI, PRO KONTRA, TV JURNAL and Sarjana Indonesia
- Anti-communist: Heek That, News Com, Aryo, and Alpian Ahmad
- Islamic chauvinist; WARTA NKRI, Islamic Peace 212 and GARUDA NEWS
- Miscellaneous: Apa Aja, Harry Ware, Dorothy Dragon Gaming and MAQ

Age and gender breakdown of audience of disinformation videos

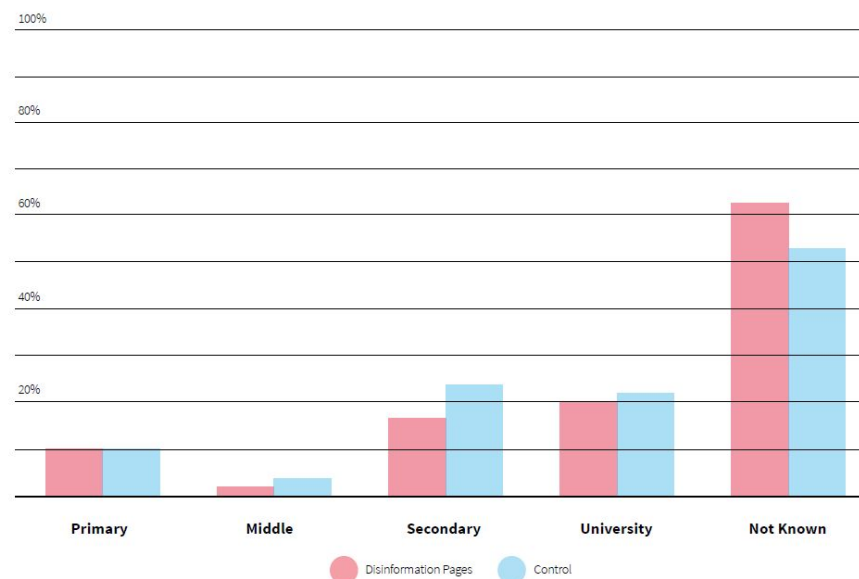


Facebook

Moonshot CVE analysed Facebook pages identified as spreading disinformation by Cekfakta. They were primarily focused on spreading disinformation about the general election. The most common content shared on them is links to blogspot articles containing disinformation and memes about ongoing events in the election. Most content was pro-opposition, a smaller proportion was anti-opposition, and a minority was more general global or national content. The focus of disinformation content shared varied, including anti-communist, anti-Chinese, Islamic chauvinist as well as more general political smears. As they are regularly updated, the narratives are very dynamic and do not tend to fall within just one category.

Education Level

Moonshot CVE analysed self-reported education levels of a random selection of 4244 Facebook users that had liked Facebook pages sharing disinformation. Data gathered was compared against a random control group of 500 Facebook users who had liked pages of major Indonesian media outlets.



Twitter

Moonshot CVE identified 1,136 accounts sharing or retweeting disinformation on Twitter. These accounts were selected through a multi-step process of scoping researched disinformation narratives to identify popular tweets and hashtags, using this information to distinguish key influencers of disinformation, and mining a selection of their problematic tweets to identify those who had retweeted them indicating high credulity.

The accounts were part of a dense and self-reinforcing network of accounts sharing links to the same articles, videos, images or stories at almost the same time. Hashtags would be used to get a disinformation story to be ‘Trending’ and appear on the national Twitter homepage. Upon inspection, only a small portion of these tweets actually contained the hoax link, image or video and instead, most tweets were unrelated or would just include the hashtag alone. Tweets of this nature would come from accounts exhibiting bot-like behavior.

From the 1st of January to date (06/17) there were approximately 196,695 mentions of anti-Chinese keywords on Twitter. Those who tweeted anti-Chinese sentiment on Twitter mostly spoke about workers, migrant workers, how many of them are there, and security.

Perkerja: worker

TKA: Chinese Migrant Workers

Beberapa: How many

Security: Security

Tersebut: Rumoured

Massa: Mob

Video: Video

Nampak: seems

From the 1st of January to date (06/17) there were approximately 24,870 mentions of anti-communist keywords on Twitter. Those who tweeted anti-communist sentiment on Twitter mostly spoke about foreigners, migrant workers, Jokowi, and the government

Bule: foreigners

Perkerja: worker

TKA: Chinese Migrant Workers

Jokowi (Name of President)

Permerintahan: Government

Komunis: Communist

Tuding: Accusation

Ditangkap: arrested

From the 1st of January to date (06/17) there were approximately 81,612 mentions of Islamic chauvinist keywords and 149,065 mentions of political smear keywords on Twitter. These two categories were substantially more dynamic and so, trends were multifarious. The only consistently high performing topic over this whole period for both of these categories were ‘Jokowi’ and ‘Prabowo’, referring to the two presidential candidates. The multifarious and dynamic nature of disinformation of these topics can explain the consistent high performative of these keywords over this period.

Network analysis of Images

On platforms such as Twitter, Instagram and WhatsApp, images are a popular means by which disinformation is spread. The wide proliferation of image editing tools and their relative ease of use has resulted in a deluge of fake images that serve to deceive the viewer. To combat the spread of image disinformation a research team at the University of Notre Dame will develop technology that can determine not only if an image has been “photoshopped”, but also determine the original state of the constituent images before the manipulation occurred. In addition, Notre Dame is currently developing an identity management technology for identifying the image

manipulators using behavioral biometrics in order to identify the creator of the deceptive image. These image forensics tools are critical to demonstrate how some images are faked.

The team has initially conducted a survey of the election-related memes collected between May 31st 2018 and May 31st 2019.⁴ Approximately 170,000 images from 14 different sources on Twitter were collected and 1,900,000 images from 20 different sources were collected from Instagram.⁵

Using a beta version of the identity management technology, researchers analysed the spread of these memes and were able to track down their origin to just two users on Twitter. This reflects research done by Reuters into ‘buzzer’ teams employed by political groups in order to create social media buzz about the topics they wish (Potkin, 2019). A buzzer team is made up of upwards of 250 fake accounts per real-life user. Each network of accounts is used to engage with and perpetuate propaganda content. Buzzer teams sprung up in large quantities and their number grew exponentially ahead of the presidential election.

Conclusion and Long Term Plans

Moonshot CVE specialises in messaging hard-to-reach audiences at-risk of perpetrating violence. These messages are tailored to highly segmented audiences, to challenge violent narratives, introduce alternative messages and ultimately change behaviours. Moonshot initially partnered with Alphabet’s technology incubator - Jigsaw - to develop *The Redirect Method* to respond to violent extremism online. This methodology has evolved since its launch in 2016 to take into account the lessons from international deployments to date and encompass a broader array of online harms, such as disinformation.

The Redirect Method: Disinformation utilises advertising techniques to reach individuals attempting to access extremist and other violent content with curated material designed to counter disinformation through inoculation and, or media literacy.

⁴ The research team is made up of Walter J. Scheirer, William Theisen, Joel Brogan, Daniel Moreira, Michael Yankoski, Pascal Phoa, and Tim Weninger.

⁵ Image sources were identified by **CekFakta**.

The media literacy content for this project will be developed by IREX. At the time of writing IREX is in the process of reviewing its existing Learn 2 Discern (L2D) curriculum to introduce to the Indonesian context. This process involves the further curation of its most relevant and effective L2D content to deliver to the target audience, including both translation and contextualization of the content. IREX will use this updated curriculum to design educational images and videos, that either summarise the lessons in the curriculum or encourage users to access the media literacy website developed by UND.

The media literacy website developed by UND will not only feature lesson summaries but also an image manipulation analysis tool. The tool will essentially process images, detect image manipulation and flag doctored images. The objective is to make a user-friendly, accessible software that empowers users to gauge the veracity of an image by themselves.

Finally, Moonshot CVE will undertake a data-driven approach to *Redirect Indonesia: Disinformation*. The structure of the campaigns presented in this report has been designed to facilitate evaluation and contribution of evidence on its efficacy.

Alongside this project, Moonshot CVE is developing other methodologies to tackle disinformation, such as *The Inoculation Method*. Once an individual believes a particular piece of disinformation, it can be especially challenging to convince them otherwise. The aim of inoculation content is to help the public develop robust ‘psychological resistance’ to fake news before they are exposed to disinformation. Inoculation theory has been compared to ‘vaccination’ against fake news through increased societal media literacy. In 2018, University of Cambridge researchers found that gamified inoculation content reduced the susceptibility to fake news headlines by an average of 21 percent.

Moonshot CVE will continually refine and update the proposed structure and methodologies based upon engagement metrics. The project incorporates A/B testing by default to identify the impact of reach and engagement of IREX content. Where possible, Moonshot CVE uses control and comparison groups to determine if the at-risk audiences are more engaged with the content offered by *Redirect Indonesia: Disinformation* than the general population. The goal is to continuously improve and develop media literacy content and how we best reach audiences vulnerable to disinformation.

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Emerging the Principle of People's Right to Know In Tackling Fake News through the Constitutional Court

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Abstract

A judicial review conducted by the Constitutional Court of the Republic of Indonesia regarding Law No. 7 of 2017 on the Election could be a great opportunity to elaborate a principle, namely the principle of the people's right to know, to protect democracy from the existence of fake news in Indonesia during the 2019 election. As the Election Day neared, the Constitutional Court delivered a Decision responding to two pleas about the constitutionality of norms regulating the ban on the distribution of pre-election poll results during the quiet days and the quick count on the day of election, in which the applicant claimed that the norms had violated their rights to know about any election information during the time. Unfortunately, the arguments of the Judges came predominantly from sociological perspectives instead of legal perspectives. Hence, this article aims to support the position of the Constitutional Court with legal arguments that use the principle of people's 'right to know'. Using the conceptual approach, this article stresses that the principle of people's right to know must be applied properly, and that it is a feature of the right that the government is obliged to protect people from misleading information while people enjoy their right to access information. In conclusion, this article urges for the proper application of the principles of people's right to know by the Constitutional Court to hold the independence of people votes during an election.

Keywords: people's right to know, fake news, election, constitutional court

A. Principle of People's Right To Know

A democratic state requires the political participation of the people. This means that there is access for the people to interact with and give feedback to the government. It is well said that people need to be involved to become part of the decision-making process¹ in order to avoid an authoritarian state that may put the people in the weak position. A perfect example of the democratic feature is the presidential or legislative election where people can vote directly.

One important element in creating a democratic state is exercising the people's right to know. Originally, the right allows the people to demand full information about the executive ongoing programs to ensure the government's accountability.² Examples include

¹ Joel A. Tickner (2001) 'Democratic Participation: A Critical Element of Precautionary Public Health Decision-Making', *New Solution*, 11(2): 93-111, 98.

² Morton H. Halperin and Daniel N. Hoffman (1976), 'Secrecy and The Right To Know', *Law and Contemporary Problems*, 40(3): 132-165, 132.

the transparency of state's expenses, the recruitment process of certain public offices, the public administrative procedures, the government work plans, etc. As Alasdair Roberts³ said, the right becomes an instrument for discouraging arbitrary state action and protecting the basic right to due process and equal protection of the law.

The concept of the people's right to know has developed recently in some areas. The right not only speaks to the area of public law such as the need of government's transparency, but also to the area of private law where there has been a controversial issue on balancing the individual right to privacy against the people's right to know.⁴ This article aims to elaborate the people's right to know in relation to the need of accurate information by both the government and private sectors. For the purpose of maintaining a healthy democracy, people must be provided accurate information.

The discussion about the people's right to know starts from the concept of the freedom of expression. Traditionally, the focus of the right to the freedom of expression, which may be exercised by speaking, writing, drawing and any other acts, has been on the provider of information.⁵ As a result, the people can obtain much information from the output stemming from the freedom of expression.

Information is divided into two categories: facts and opinions. *Lingens v Austria* 1986 distinguishes between facts and opinions, explaining that the existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof.⁶ In addition, opinions are viewpoints or personal assessments of an event or situation. Thus, opinions are not susceptible to being proven true or false. However, the underlying facts on which the opinion is based may be capable of being proven true or false.⁷ As a consequence, facts can be verified and proven true or false while opinion enjoys protection from being proven.

For example, it is a fact that there are twenty political parties confirmed by the General Election Commission of the Republic of Indonesia to become the 2019 election

³ Alasdair Roberts (2002) 'Access to Government Information: An Overview of Issues', in Laura Neuman (eds), *Access To Information: A Key To Democracy*, Atlanta: The Charter Center, 9-14.

⁴ David E. Morrison and Michael Svennevig (2002) *The Public Interest, the Media and Privacy*, London: Broadcasting Standards Commission.

⁵ Maeve McDonagh (2013), 'The Right to Information in International Human Rights Law', *Human Rights Law Review*, 13(1): 25-55, 29).

⁶ Monica Macovei (2014) *Freedom of Expression: A Guide to the Implementation of Article 10 of the European Convention on Human Rights*, Cedex: Directorate General of Human Rights Council of Europe.

⁷ *Ibid.*

participants.⁸ Hence, news that reports a different number of the parties will not be considered factual since the fact is already verified. On the other hand, the different judgments of whether the 2019 election was done democratically or not are opinions. These judgments are part of the freedom of speech and are unnecessarily debated, though it always can be challenged.

Freedom of speech underlies the theory that there is no such thing as a false idea.⁹ The three premises upon which this principle is based on are *first*, an individual who seeks truth must consider opposing opinions to sieve the true from the false. *Second*, even assuming absolute truth can be found, the political state may not be the appropriate body to make such a determination to maintain democracy. *Third*, the determinations of truth or belief belong to the individual.

While opinions are formed by the individual, facts are discovered.¹⁰ This means that the truth in fact already exists. Hence, finding the truth is a matter of effort. In order to find the truth, an examination must be properly done. The importance of conducting the examination stems from the nature of the facts itself. Rodney W. Ott said that a statement that could be proven true or false is automatically considered factual, stressing the need for fact validation in seeking the truth.¹¹ For example, if someone is assumed to be faking an identification document, then the statement must be proved by finding the fact. At this point, any relevant facts should be weighed to get at the truth.¹²

The Supreme Court in *Gertz v. Robert Welch, Inc.* emphasizes that a distinction between statement of fact and statement of opinion is essential. Such distinction requires people to determine which information needs to be confirmed before they accept it as qualified knowledge. As part of human rights, the right to information helps society build

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https://kpu.go.id/index.php/pages/detail/apot0iLrrZyifsKYz_GuQqr4AK3aV3Uw1fLMVQMZaM3o9XgO_fUNNC2NR1YF_ncmo63ls5haF_3BI1V-8gGmPw~/5WhJvV0WIJAraEa_AlQtorydHbVbhrGPtr0D4h8SULxiveDze2h5xE_6CJ4fDfxn65Gv66efspHSyEvjIKvbpg~~

⁹ Michael Sandor (1987), 'The Fact/Opinion Distinction: An Analysis of the Subjectivity of Language and Law', *Marquette Law Review*, 70(4): 673-91, 674-75.

¹⁰ Thomas I. Emerson (1963), 'Toward a General Theory of the First Amendment', *The Yale Law Journal*, 72: 877-956, 882.

¹¹ Rodney W. Ott (1990), 'Fact and Opinion in Defamation: Recognizing the Formative Power of Context', *Fordham Law Review*, 58(4): 761-94, 770-71.

¹² Irini Katsirea (2019), "'Fake News': Reconsidering the value of of untruthful expression in the face of regulatory uncertainty', *Journal of Media Law* 10(2): 159-188, 162.

their strengths and assets so as to improve the quality of life.¹³ The more information received by the people, the more opportunity for them to create activities that may improve their quality of life. Examples include collective decision-making. For a wider context, Josiah Ober asserts that the value of aggregated knowledge may influence the quality of the public's decision-making, which also eventually helps to improve an epistemic democracy in a state.¹⁴

The current problem that arises in society while people are enjoying the right to information is the phenomenon of fake news. David O. Klein and Joshua R. Wueller define fake news as the online publication of intentionally or knowingly false statements of fact.¹⁵ For example, a widely shared article from the now-defunct website denverguardian.com with the headline, "FBI agent suspected in Hillary email leaks found dead in apparent murder-suicide." or the now-defunct website wtoe5news.com reported that Pope Francis had endorsed Donald Trump's presidential candidacy.¹⁶ The examples show that fake news is aimed at fabricating or falsifying a fact for certain (political) purposes. Nowadays, fake news is predominantly shared through online mass media. Online technology has provided people with an easy way of not only receiving but also sharing the news simply by clicking. This convenience, provided by technology, creates both positive and negative impacts on society. On the negative side, it is a great means to distribute fake news among society.

It can be concluded that the concept of fake news being mentioned above is in the context of factual information. Therefore, this article will limit discussion of the principal of the people's right to know to factual information, not the information in the form of opinions.

The people's right to know (about factual information) appears to guarantee access to true information for the people. The 1981 judgment in *Manubai D. Shah Vs. Life Insurance Corporation* reaffirmed that the people's right to know is a fundamental principle of freedom of speech and expression, both of which are human rights.¹⁷ As a consequence of the status of the people's right to know, the government is obliged to give people protection in order to exercise the right.

¹³ M.M. Ansari (2008), 'Right to Information and its Relationship to Good Governance and Development' UNESCO Lecture, Paris, 3.

¹⁴ Josiah Ober (2008), *Democracy and Knowledge: Innovation and Learning In Classical Athens*, New Jersey: Princeton University Press.

¹⁵ David O. Klein and Joshua R. Wueller (2017), 'Fake News: A Legal Perspective', *Journal of Internet Law* 20 (10): 5-13, 6.

¹⁶ Hunt Allcott and Matthew Gentzkow (2017), 'Social Media and Fake News in the 2016 Election', *Journal of Economic Perspectives* 31(2): 211-36, 213-14.

¹⁷ Jayanta Ghosh (2013), 'Protection of 'Right to Know' Under Human Rights & Constitutional Law', <https://ssrn.com/abstract=2231217> or <http://dx.doi.org/10.2139/ssrn.2231217>.

Theoretically, a state owns three different levels of obligation towards human rights.¹⁸ *First*, the obligation to respect human rights. This requires a state to not take any actions that could lead to a deprivation of an individual's enjoyment of their rights or the impairment of the ability to satisfy those rights by their own efforts. *Second*, the obligation to protect human rights. This requires a state to take necessary measures to prevent human rights violations by third parties. *Third*, the obligation to fulfill human rights. This obligation requires a state to take measures that enable people under its jurisdiction to satisfy not only their basic social and economic needs such as an access to food, water and education but also their civil and political rights such as the right to fair elections or the right to legal assistance.

Of these three levels of obligation, it is the government's obligation to protect human rights that directly applies to the people's right to know. As explained previously, the people's right to know allows people access to factual information. Fabricating a fact may harm other people *vis a vis* violating another's human rights. Therefore, applying the government's obligation to protect guarantees that everyone can perform the right properly without harming others.

The government's obligation to protect might be implemented by enacting a limitation on the exercise of the people's right to know. While human rights must be respected unconditionally, it is possible for the government to make an exception in order to maintain the public peace.¹⁹ The Universal Declaration of Human Rights reaffirmed that everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society.

The people's right to know falls under the category of derogable rights. As part of the freedom of expression, the limitation by the government may be applied to the right. The case of *Times Newspaper Ltd vs. The United Kingdom* illustrates that the exercise of freedom of expression should not be done absolutely, but should follow certain restrictions regulated by law.²⁰ The limitation of such human rights may take place in the national legislation.

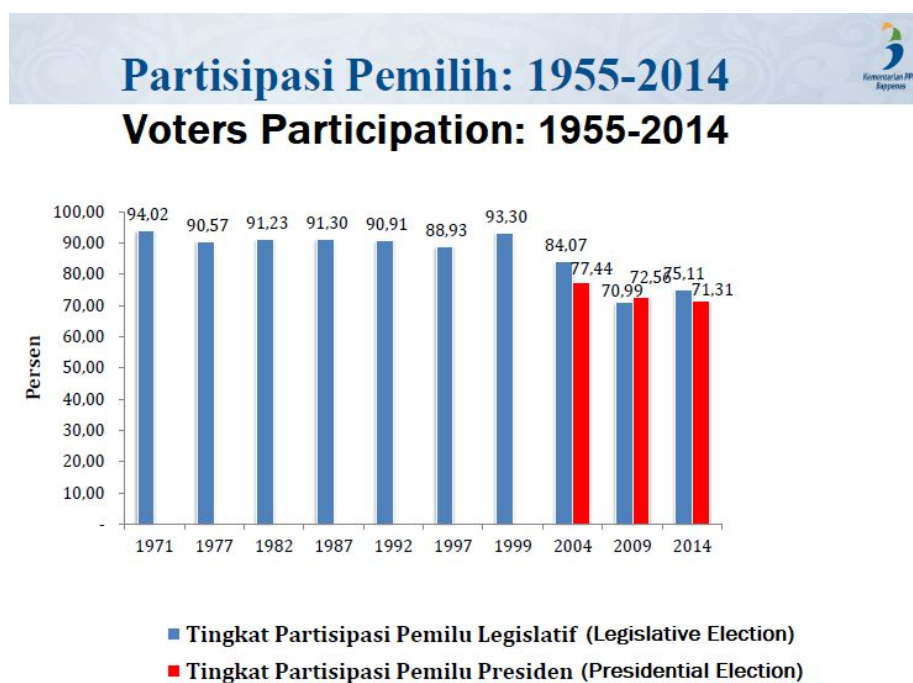
¹⁸ Ralph Hemsley (2015), 'Human Rights & Corruption: State's Human Rights Obligation to fight Corruption', *Journal of Transnational Legal Issues* 2(1): 1-24, 5.

¹⁹ David L. Richards and K. Chad Clays (2012), 'An Umbrella With Holes: Respect for Non-Derogable Human Rights During Declared States of Emergency, 1996-2004', *Human Rights Review* 13 (3): 443-71, 444.

²⁰ Stijn Smet (2010), 'Freedom of Expression and the Right to Reputation: Human Rights in Conflict', *The American University International Law Review* 26 (1): 183-236, 231.

B. The 2019 Election and The Decision of the Indonesian Constitutional Court

Historically, Indonesia held its first election in 1955 to vote for the members of the House of Representatives and the Constitutional Assembly. The election system significantly changed in 2004 when the people were entitled to vote directly in the presidential election, followed by the election of local leaders in 2005. Despite ups and downs in the levels of people's participation in the elections, it was found that participation was always more than 70% of the total eligible voters. In 2019, the number reached 81% beyond the national target set by the Indonesian General Elections Commission.²¹



Sumber: RPJMN 2015-2019

I could say that the 2019 election is the most hectic election because it is the first simultaneous presidential and legislative election in Indonesia. The election gained so much attention from the public as the presidential candidates confronted each other through mass media. Indeed, the mass media took on an important role in distributing any information

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<https://nasional.kompas.com/read/2019/05/27/16415251/kpu-sebut-partisipasi-pemilih-pada-pemilu-2019-capai-81-persen>

related to the candidates and had a huge impact on creating public perspectives on the candidates.

Ideally, the mass media shall take a neutral position during the election year, but the ongoing trend shows that the ownership of mass media companies is predominantly held by politicians such as Aburizal Bakrie (the former Indonesia's Coordinating Minister for Economy and the current politician in the Golkar Party) who runs TvOne, ANTV and vivanews.com, Surya Paloh (the former chairman of the advisory board of the Golkar Party but currently active in Nasdem Party as its founder) who runs MetroTV, and Chairul Tanjung (Indonesia's former Coordinating Minister for Economics) who runs TransTV, Trans7 and detik.com.²² The current situation came to the attention of the Ministry of Communications and Informatics such that the Minister delivered a message for all mass media to be aware of the election year and not to be part of the disputing parties in the election.²³

During the election year, the mass media focused on the movement of both presidential candidates. Not only did the news publish reports and articles, but the society contributed a lot in sharing the posts and giving their comments on social media. The election hustle happened intensively among the people. This situation caused both positive and negative impacts on the society. On the one hand, the information helped them to gain more knowledge about the candidates' details. On the other hand, certain people used the opportunity to create fake news or hoaxes to disturb the election.

It is reported that political fake news and disinformation shot up 61% between December 2018 – January 2019, with the incumbent candidate being the biggest target.²⁴ One of the examples of fake news is when a Twitter account posted false information saying that Jokowi's high school certificate was fake and accused radical Catholic Chinese group as being behind the creation of the fake certificate.²⁵ Other fake news targeted governmental institutions saying that the server of General Election Commission of the Republic of Indonesia was set to win Jokowi's side.²⁶

²² Aisyah (2014) 'Politisasi Media Televisi di Indonesia' [The Politization of Television Media in Indonesia], Jakarta: Universitas Islam Negeri Syarif Hidayatullah, 6.

²³ https://kominfo.go.id/content/detail/14147/pers-harus-independen-kawal-pemilu/0/berita_satker.

²⁴ <https://www.theguardian.com/world/2019/mar/20/fake-news-spikes-in-indonesia-ahead-of-elections>

²⁵ <https://turnbackhoax.id/2019/01/16/salah-ijazah-sma-presiden-joko-widodo-palsu/>

²⁶ <https://news.detik.com/berita/d-4501205/polisi-tangkap-2-buzzer-hoax-server-kpu-di-setting-menangkan-jokowi>

The escalation of fake news during the election year has created a chaos in society through mass media although it was always predictable by the government. In order to settle the problems, the legislation prepared some provisions in the election law to tackle the flow of election hoaxes.

Legislation has a substantial function to regulate the enforcement of an election. It brings a technical procedure that is adjusted with the domestic conditions, which may change anytime. Hence, it is normal for the government to amend the election laws before the election is held. Indonesia is one of the examples of states that quite often amend its election laws. There have been at least four amendments to the legislative election law and three amendments to the presidential election law after the Indonesian reform era in 1999.

In 2017, Indonesia enacted a new law namely Law No. 7 of 2017 on Elections to replace the former election laws. The Law No. 7 of 2017 aims to regulate the enforcement of the first simultaneous presidential and legislative election that was held on April 2019.

Among the controversial issues on the simultaneous election, there are two interesting matters contained in the Law No. 7 of 2017. *First*, Article 449 paragraph (2) of the Law regulates the ban on the publication of pre-election poll results during the quiet-days. The quiet-days is a three-day term when campaigns are not allowed to be conducted until the election day. In this term, all of the mass printed and daring media, social media and broadcasting institutions are forbidden to broadcast any news, advertisements, track record of election participants, or any other forms that could benefit or harm the election participants. *Second*, Article 449 paragraph (5) regulates the delay on the quick count on the day of election. The specific provision explains that the election quick count publication shall be issued two hours after the voting in the West Region of Indonesia is done.

The government argued that both provisions do not aim to limit the public's information access to the election contestants' eligibility, but to create a conducive situation to create a peaceful election and also to protect the people from inaccurate information.²⁷ In addition, the opinion of the House of Representatives regarding norms highlighted the importance of the regulations in preventing the abusive power of certain parties who have power in the mass media to obtrude a figure in order to influence the society's choices.²⁸

²⁷ The Constitutional Court Decision No. 24/PUU-XVII/2019, 41.

²⁸ Ibid., 30-31.

The existence of the provisions is actually not new in the Indonesian election law. Previously, they were similarly regulated in the former legislations on Election, which are Law No. 10 of 2008 and Law No. 8 of 2012. Both provisions in both former laws were constitutionally challenged before the Constitutional Court in 2009 and 2014. Using the argument of the people's right to know and freedom of information access, the Constitutional Court affirmed that the provisions of the publication of pre-election poll results and the quick count were constitutional since the access to information was part of human rights and the existence of the information did not disturb or influence the society as much.²⁹

Surprisingly, the Constitutional Court changed its opinion in the judicial review of Law No. 7 of 2017. Just a month before the election day, two cases were registered in the Constitutional Court claiming that Article 449 paragraph (2) and paragraph (5) of the Law was unconstitutional. The arguments presented by the applicants were quite similar to the arguments of the previous cases, which accentuated the principle of people's right to know. Responding to the arguments, the Constitutional Court delivered a different judgment that the constitutionality of the provisions is valid.

The latest Decision actually raises two main questions. *First*, is allowed for the Constitutional Court to deliver a different judgment on the same case? *Second*, what caused the Constitutional Court to make a u-turn?

The answer to the first question is yes, the Constitutional Court may overrule its judgment in the past. In order to uphold the supremacy of the Indonesian Constitution rather than the judicial supremacy, the Constitutional Court is obliged to seek the constitutional truth by reviewing its decisions and fixing wrong interpretations.³⁰ Such effort is legitimate as long it is done to seek the constitutional truth.

The latter question is answered by the Decision. Differing from the previous judgment, The Constitutional Court mainly argued about the provisions which regulate the ban on the publication of pre-election poll results during the quiet days and the ban on the quick count on the day of election that:

1. The Law No. 7 of 2017 aims to prevent any potential horizontal conflict in society;

²⁹ The Constitutional Court Decision No. 24/PUU-XVII/2014, 41.

³⁰ Umbu Rauta, Indirani Wauran, Ninon Melatyugra (2018) 'Legitimasi Praktik Overruling Di Mahkamah Konstitusi' [The Legitimacy of Overruling Practice in the Constitutional Court], Jakarta: The Constitutional Court of the Republic of Indonesia, 70-71.

2. There are possibilities that the published pre-election poll results on the quiet days are designed to influence and change people's votes, whereas the quiet days aim to give people time to think clearly about their choices.
3. The publication of the quick count on the day of the election, which is regulated to be issued two hours after the election in the West Region of Indonesia is done, could not be considered as an elimination of people's right to know since the provision aims to create fairness in the election in the three regions of Indonesia and to prevent any parties from influencing the society psychologically by publishing the results of the regions that finish the election earlier.
4. Methodologically, a quick count system contains a margin of error so that people should be aware of the result.

By using those arguments above, the Constitutional Court concludes both provisions on Law No. 7 of 2017 are constitutional to save people's vote purity.

C. The Proper Application of the Principle of the People's Right To Know in Judicial Review by the Indonesian Constitutional Court

There are two main points that this article would like to stress in this part. *First*, people are protected from fake news by the proper application of the principle of the people's right to know. *Second*, judicial review by the Constitutional Court could be a means to enforce the protection of the people.

As it has explained in Part B, this article discusses the scope of the people's right to know in the context of the right to access factual information. The right to ensure that the people get accurate information can help improve their quality of life. Consequently, people must be protected from the existence of fake news which intentionally falsify the facts for certain purposes. As the feature of the right falls on the category of derogable rights, the government may establish limitations on the exercise of this right. This is legitimate since it is conducted to ensure the people to get the access to true information.

The Law No. 7 of 2017 is an example of a limitation set by the government to regulate the extent to which people have the right to know during the election. The law included a ban on publication of pre-election poll results on the quiet days, and a ban on publication of the quick count two hours until polls closed on the day of the election. The

Court argued that this limitation on the people's access to information must be performed to save the purify of people's vote.

Ensuring that the results of the pre-election poll results and the quick count are published accurately is an important matter. However the effect of the law is undermined by the existence of fake news produced by surveyor institutions who are biased towards a certain party. This is because the results published by these surveyor institutions are designed to influence the people's vote in favour of a certain party. On April 2019, there were 6 surveyor institutions that were reported to the Police and accused of publishing misleading statements to confuse the people.³¹ The continuous broadcasting of false information about poll results on television programs can have the effect of swaying the public's opinion to a certain side. This phenomenon is commonly known as the 'bandwagon effect'. These misleading results can also impact the accuracy of forecasts that predict parties' or candidates' vote shares at elections.³²

Given that there is always a possibility that people may get influenced by the polls before they finally decide which way to vote³³, the government must follow the law to protect the people from misleading information. Therefore, the Law No. 7 of 2017 has become the weapon to protect the people from such misleading information during elections. Moreover, Article 22E paragraph (1) of The Constitution of the Republic of Indonesia states that the general election shall be conducted in a direct, general, free, secret, honest, and fair manner once every five years. In order to actualize the election based on those principles, the government must create a supporting situation for the voters to perform their rights to vote without any pressure or disturbance.

The quiet days have been set aside by the government to allow the people to think clearly about their decision before they make their final vote at the polling station. It is hoped that the information that is widely distributed on mass media, which probably contains fake news or manipulated data, will not affect the people's choice during the quiet days. Also, the

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<https://www.liputan6.com/pilpres/read/3944971/lembaga-quick-count-pemilu-2019-dilaporkan-ke-bareskrim-polri>

³² Gianpietro Mazzoleni, Kevin G Barnhurst, Ken'ichi Ikeda, Rousiley Maia, Hartmut Wessler (2016), *The International Encyclopedia of Political Communication*, Chichester: John Wiley & Sons.

³³ Kurt Lang and Gladys Engel Lang (1984), 'The Impact of Polls on Public Opinion', *The Annals of the American Academy of Political and Social Science* 472: 129-142, 136.

time difference in Indonesia, which is divided into three regions takes part in considering the rule enactment of the delay of publication quick count to prevent any pressure on the people.

While there might be accurate information issued by the surveyor institutions, there is no one to determine whether such information is accurate or not. The only institution who has authority to issue the official result of the election is the General Election Commission. Therefore, the Indonesian people should trust the only institution that provides the true information about the votes counting is the Commission itself. The contribution of the private surveyor institutions is indeed required to maintain the principle of checks and balances in a state. However I emphasize that the Constitutional Court is the only forum in which such a contribution should be considered.

The Constitution of the Republic of Indonesia grants the Constitutional Court authority to decide disputes over the results of general election. After being established in 2003, the Constitutional Court has issued 1,237 decisions³⁴ regarding disputes over the results of general election. Hence, disputes over the numbers of general election vote shall be resolved before the Constitutional Court.

In addition, the Constitutional Court has authority to try a case at the first and final level and it has the final power of decision in reviewing laws against the Constitution. This authority is known as judicial review. Judges in the case of Attorney-General vs. Quin (NSW) affirmed that “...*The duty and jurisdiction of the court to review administrative action do not go beyond the declaration and enforcing of the law which determines the limits and governs the exercise of the repository’s power.*”³⁵ This statement highlights that it is the duty of the Court to observe government (executive and legislative) performance, including the publication of domestic legislation. As legislation may rule the people’s activities, the Court must ensure the legislation also does not violate the human rights. This duty is recognized by the Constitutional Court, which provides for the protection and guarantee of human rights. Accordingly, the knowledge of human rights application must be mastered by the Judges.

This article believes the construction of legal concept of the people’s right to know must be understood in the way that it has elaborated in the first section. As a conclusion, the

³⁴ <https://mkri.id/index.php?page=web.Putusan2dev&id=1&kat=1&menu=5>

³⁵ Umbu Rauta and Ninon Melatyugra (2018), ‘Hukum Internasional sebagai Alat Interpretasi dalam Pengujian Undang-Undang’ [International Law as an Interpretative Tool in Judicial Review], *Jurnal Konstitusi* 15 (1):73-94, 76.

provisions should be considered as a legitimate limitation that aims to protect the people's right to know. It underlines that the State plays its role as the protector of human rights.

In order to build a better democracy in a state, the guarantee of people's access to information is not adequate enough. It must be supported with good quality of the information which I claim as true information. As D.O. Klein and J.R. Wueller (2017, 5) said, fake news can raise concerns about the future of democracy. It means that fake news may intercept the people's access to true information. Hence, the government needs to take an action to prevent the massive publication of fake news through legislation or judicial review.

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Contextualising Fake News in Cambodia After 2013

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Abstract

In the early 2010s in Cambodia, digital democracy supposed a wave of optimism in the terrain of political participation; it would give voice to the voiceless and would promote inclusiveness. Yet such enthusiasm vanished in the aftermath of the Cambodian 2013 general elections, when authoritarian practises went on the rise and put the drawbacks of digital democracy at the forefront of the political scene. Negative impacts like fake news are today a matter of concern both among the government and civil society, thus questioning the effectiveness of digital democracy. Therefore, there is the need to explore how digital tools are shaping governance in Cambodia and how threats like fake news can be addressed. To understand *how*, a rich contextualisation is essential; it allows to take into account historical, political and social issues that explain why fake news flourish and are spread among citizens, and also why education remains a partial but fundamental solution.

Digital Democracy and Fake News in Cambodia After 2013

Over the last decade, Cambodia has become a digitised country at an extraordinary pace. This has been possible due to a better access to the Internet and the rampant penetration index of smartphones. However, numerous problems associated with digital technology have flourished, too. One of the is fake news, including misinformation and disinformation. Fake news is a global phenomenon, not restricted to Cambodia at all, but this does not mean that a generic explanation of the nature of fake news applies to all case studies, as well as how it can be addressed. In such regard, factors like the historical context, political background and social settings of Cambodia are essential to frame fake news in a way that allows not only allow a better understanding of the factors that allow fake news to flourish, but also how to fight this phenomenon. This article is thus a review of the literature on the digitalisation of Cambodia over the last decade; its process, opportunities, challenges, and the contextual settings that have a prominent role in the analysis of fake news. Moreover, this paper also includes some preliminary observations I have made during the – still ongoing – fieldwork to research digital politics in Cambodia. Raw data consists of forty-seven semi-structured, in-depth interviews with civil society organisations (CSOs) across several sectors and ordinary citizens who live in Phnom Penh.

Cambodia; the emergence of digital tools in a hybrid regime

Peace and illiberal democracy

The cruelty of the civil war of the 1970s and the subsequent regime of the Khmer Rouge profoundly marked Cambodia's history since its independence in 1953. Later, in 1991, the signing of the Paris Peace Agreements (PPAs), the establishment of the United Nations Transitional Authority in Cambodia (UNTAC) and the celebration of the first elections in 1993 would set up another new beginning for Cambodia (Hughes, 2001). All in all, a bid for a liberal democratic system rooted in the western notions of democracy. Although big efforts have been made since 1991 to promote and foster a strong rule of law, Cambodia's political accountability has been compromised ever since; the current political struggle is not only a dispute between the state and civil society, which has resulted into sharp differences between the dominant political and economic elites and the bulk of the civil society, but also among state institutions themselves (Un, 2006). In perspective, the PPAs successfully ended a protracted conflict and were the base to establish democratic mechanisms, yet their consolidation has been less fruitful. The existing scholarly literature has been able to capture the current crisis of accountability and often categorises Cambodia as a failed case of democratisation (Roberts, 2001; Hughes, 2003; Un, 2006).

The flaws of the newly established democratic rule quickly showed up and dissipated virtually all hopes for the newly established rule of law – which had been built on sand – to be consolidated; in 1997, the constant disagreements between co-prime ministers Hun Sen and Prince Norodom Ranariddh brought the former to stage a violent coup to oust the latter (Peou, 1998) – a violent act that became of great importance because a democratically elected leader had been removed from power using force and, at once, it also exposed Cambodia's democratic weaknesses, both domestically and internationally. Domestically, the coup brought to question Hun Sen's legitimacy to govern Cambodia, while internationally, democratic legitimacy had been lost and organisations like Freedom House (1998) classified Cambodia as a *non-free* country (6/7, where 1 is free). The decline of social and political rights that began with the 1997 coup persisted and became the norm. Prior to the 2003 elections, political tension and violence had decreased, but harassment against opposing forces was not uncommon and the country still classified as *non-free* (Freedom House, 2004).

Overall, a climate of political fear dominated Cambodia, which allowed the Cambodia People's Party (CPP) to ratify its dominance – as the party did not encounter difficulties in winning the 2003 and 2008 commissions (47% and 58% of the electorate supported the CPP, respectively) (International Republican House, 2003; Krupanská et al., 2008). Therefore, to sum up, the democratic journey of Cambodia that began in 1991 shows a systematic intolerance to opposing parties and ideas to those of the ruling party; two factors that put large amounts of power in the hands of its leaders, over the conviction that nobody is politically more capable than themselves (Heder, 2011). Moreover, such a hoarding dominance has also allowed the ruling elite to extend its network of subordinates, hence the erosion of governance and rule of law (Everett, 2013). In perspective, the mix of democratic mechanisms and authoritarian practises has comprised Cambodia's civil and political liberties since the 1990s and makes the country stand in the grey area between liberal democracy and autocracy or, in other words, it has turned Cambodia into a hybrid regime (Bogaards, 2009; Diamond, 2002; Wigell, 2008).

To sum up, the consequences of the war period in Cambodia extended beyond the obvious and produced a sharp imbalance of power in favour of the elites, partly as a consequence of the poor implementation of the newly established democratic mechanisms. Such an imbalance also affects the production, distribution and consumption of information; those with the economic means and skills are now able to produce information that favours their interests and allows them to protract the imbalance of power. But the concerns go beyond who produces information; a disproportionate amount of power in the hands of a few has raised serious concerns over freedom of expression and the freedom of dissident voices – especially ahead of electoral periods (Parameswaran, 2018). Several CSOs – including activists – have expressed their concerns on fake news, as they do not only affect the masses; CSOs themselves are often the target of misinformation campaigns that try to undermine their credibility. All in all, what this does is shrinking the public space in Cambodia, thus preventing a healthy and democratic dialogue.

The emergence of digital democracy

The elections of 2013 represented one of the biggest – if not the biggest – turnaround in the political scene since 1997. Although the CPP was able to obtain another win, the margin over

the Cambodia National Rescue Party (CNRP) – led by Sam Rainsy – was only by 13 seats (the CPP gained 68 seats, while the CNRP won 55 seats) (McCargo, 2014; Men, 2014). There are two crucial factors to interpret these results: first, Sam Rainsy was granted a royal pardon only a few days before the elections, as per Hun Sen's request. Therefore, he was able to make a triumphant return to Cambodia and his popularity quickly skyrocketed (Human Rights Watch, 2010; McCargo, 2014). Second, the 2013 elections were the first commissions that were celebrated in the era of the Internet hype, after the use of smartphones had become generalised and social networking sites (SNS) had become normalised across many segments of the society. The use of digital tools among citizens was regarded as a fundamental variable that allowed the CNRP's results to soar because, on one hand, Sam Rainsy and the CNRP were capable of using SNS like Facebook very effectively to mobilise its electorate (COMFREL 2013; Men, 2014). On the other hand, the CPP had left SNS out of the equation, thus showcasing its unpreparedness to cope with the increasing importance of digital tools. Moreover, the grip and strength that the CPP was believed to enjoy among a vast majority of the citizens was also questioned (Hughes, 2013). These two factors combined contributed to a wave of fresh air and hope for a change that would give space and voice to new and alternative political views.

The 2013 elections were a warning sign for the CPP and its members, who saw their rule compromised for the first time ever and quickly perceived that digital tools played a critical role. Therefore, alongside an undeniable wave of political optimism for a change, the aftermath of the 2013 elections would also mean a change of plans regarding the way the CPP would use SNS from that moment on. For example, Hun Sen endorsed himself with his own Facebook page just a few months after the elections in a clear attempt to enhance his own image and to show that the CPP was also capable of using the exact same digital tools that government critics had been using (today, Hun Sen's page has over ten million followers, and his sudden online popularity has become subject of lawsuit due to the source of these millions of *likes* and how the misuse of this platform can have major political implications) (Ellis-Petersen, 2018). Later on, the government also passed a series of new laws – like the Law of Political Parties, which bans political parties led by members convicted of criminal offenses (it is the case of Sam Rainsy and Kem Sokha, facing defamation charges), or the Law on Association and NGOs, which obliges these organisations and other grassroots

organisations to register with the government and to comply with restrictive regulations and policies (iapsdialogue, 2017) – that critics (Wieczorek, 2017) have described as a strategy to put pressure on citizens and societal organisations who were capable lobbying the government and threatening the hegemony of the ruling party as a result of the new power dynamics – even if these new laws were officially claimed to be an issue of national security. These series of new measures triggered political consequences of noticeable echo. The most mediatic case was the pressure upon opposition blocs, which ended with the dissolution of the CNRP and left the multiparty system only with the CPP and a number of minor political parties with no real change to obtain a significative number of seats in the National Assembly – parties that come into play just some months before the elections but fade in the aftermath of the elections (Wallace, 2019) – thus allowing an uncontested victory of the CPP in the 2018 commissions (Human Rights Watch, 2018). The context in which such elections took place was interpreted as “the death of democracy” (Reid, 2017) in Cambodia, which transformed the country into a de facto one-party state after the CPP has now all the seats in the National Assembly.

The strong interaction of digital tools with politics that Cambodia has experimented since the early 2010s has positioned Internet-based tools as a potential mechanism to challenge the current imbalance of power hovering the country; they have the potential to make a more people-centred society, but the utopian view that sees digital tools as the ultimate tool to fight authoritarianism can be misleading, as threats have also raised. Fake news is one of them, which has skyrocketed as a consequence of the use of digital tools. Two factors will be important in the near future: first, how the government of Cambodia fights fake news through new legislation and, second, how citizens themselves are empowered to avoid misinformation and disinformation. Fake news is not an unknown topic among ordinary citizens; ordinary citizens with different socioeconomic profiles express their concern, usually with terms like *trust* and *reliability*. Therefore, the main problem is not awareness, but giving people the right tools so citizens can discern between what they consider as true and what is not.

Can digital democracy disrupt politics?

A syntopian view on digital democracy

As it has been explained before, fake news exemplifies the fact that digital politics comes with opportunities and threats. This section looks at such coexistence, taking the 2013 elections as a starting point. The 2013 electoral results were unexpected and, moreover, the role that Internet-based tools had played was pointed out as decisive for the results of the CNRP. Digital democracy, or e-democracy, is the intersection between digital tools and democracy (Freeman and Quirke, 2013: 144; Norris, 2010: 339), which results in “the practise of democracy using digital tools and technologies” (Simon et. al, 2017: 11) that promotes civil participation to governmental institutions (ibid)¹. The hype of digital democracy in Cambodia was especially felt in the early 2010s and was shaped by two contextual factors: on the one hand, how Cambodia became a mobile country and, on the other, the motivations people had to use SNS and other digital means so intensively.

First, Cambodia as a mobile country has been a meteoric phenomenon. While the Internet penetration in 2004 was as low as 1%, by 2012 it had increased up to 16%, and up to 49% in 2018 (Internet World Stats, 2018; We Are Social, 202). This sharp increase in such a short time can be partly attributed to the use of smartphones. In 2016, 96% of the adults had a mobile phone; 47% of those had a smartphone, and out of those, 33% had contracted a data plan (Hughes and Eng, 2018; Phong et al., 2016). Strongly linked to the use of the Internet and smartphones, the second factor is *how* people use digital tools. The sudden increase of use of smartphones with an Internet connection affected, to a large extent, the new sign-ups to SNS like Facebook, which is the most popular platform in Cambodia; its number of new users increased by 41% in 2012 just before the electoral period (We Are Social, 2012). But the patterns of use of digital tools do not only display a sharp and sudden increase of the Internet; they also showed how most of the new Facebook users who joined the platform did so for entertainment purposes (sharing photos, sending messages, etc.). However, they

¹ This conceptualisation of digital democracy differs from e-government and e-governance (Simon et. al, 2017: 11).

quickly learn how to use Facebook as a mechanism to stay updated on political news and local events (Phnong et al., 2016). Other studies (Soeung, 2013; Um, 2014) complement these findings by explaining the role of Facebook in reaching foreign news outlets – an alternative to the state-controlled mass media – with a preference for Voice of America or Radio Free Asia. All in all, what the existing studies reveal is that the patterns of use of digital tools quickly changed: SNS began as a sociological phenomenon (entertainment) that quickly switched to a political one, a gateway for citizens to actively participate and deliberate on political issues (deforestation, human rights, etc.) and make their voices heard. In other words, digital tools now interact with politics and, considering the results of the elections of 2013 and the demographic profile of Cambodia – mostly young people under the age of thirty – it can be argued that digital tools successfully engaged a new and large part of the civil society in politics, a factor that, today, is highly contributing to reshaping the political scene.

On the positive side, citizens in Cambodia have benefited from the meaning-making opportunity that digital tools provide: wider access to the Internet means higher exposure to new inputs, which affects the number of politically-literate citizens and how political messages are spread – for instance, Facebook is a convenient example of interactivity and information being quickly spread and amplified through people’s networks (de Gramont, 2015; Joseph, 2011; Vong and Hok, 2018). The quick spread of information also facilitates the coordination of tasks, not in the traditional way where people physically meet up and create an organised structure, but it creates bonds and bridges among those who are unrepresented and unheard of (Shirky, 2011). Newly-created online structures are unlikely to trigger a large-scale upheaval, but they certainly complement the forms of organisation that already exist, thus becoming a mechanism that facilitates political participation by widening its meaning and forms (Christiansen, 2012; Economist, 2010; Joseph, 2011). A utopian view on the net that normally expects that the mere presence of these tools will allow citizens to contribute more directly into all kinds of policy making (van Dijk, 2000) thus shifting power in favour of the people.

On the other hand, the pessimist discourse – or dystopian view – warns on the over-optimistic view on digital tools (Morozov, 2009). It is important to note that the

pessimist discourse acknowledges the capabilities of digital tools to strengthen democratic governance and reshape the political sphere, thus making citizens more participative (Etling et al., 2010). However, the mere existence of digital tools is unlikely to end up with authoritarianism. Digital tools can thus complement people's offline actions. As Morozov (2011:19) claims, "tweets, of course, do not topple governments; people do" – he does not ignore the connection between digital tools and governance, but he does not categorise them as a panacea to all problems.

However, treating digital democracy in dichotomous terms leads to a sterile discussion. Several examples – like the Arab Spring, Occupy Central or the Iranian Green Movement – have proved that civil society greatly benefited from the use of digital tools and SNS, yet local authorities also used these tools to prevent further civil actions. The latest example is how China has been accused of flooding Telegram with "garbage requests" to disrupt communication in the context of the current mass protests in Hong Kong². Moreover, while some segments of the population are making the most of the associated benefits and have increasingly shown their interest in politics, a sharp digital divide between urban and countryside citizens still exists – this is, for instance, the case of Cambodia (Hughes and Eng, 2018). Therefore, treating digital democracy as a "syntopia" (Katz and Rice, 2002) seems accurate; a view that is neither utopian nor dystopian, but rather an acknowledgement of the coexistence of advantages and disadvantages that can both help and harm users (Carothers, 2015). Because, as Hindman (2009: 142) states, it has become "easy to speak in cyberspace, but difficult to be heard".

A disrupted political scene?

Some examples justify the syntopian view on digital democracy. Cambodian citizens have greatly benefited from the advantages associated with digital tools: easier access to media outlets away from the sphere of influence of the government have become popular; SNS have increased their number of new users and have been one of the mechanisms to mobilise citizens; communication among family members and friends has improved, and some politicians had to remain accountable for their own actions after some Facebook posts by

² This particular event was taking place during the writing up of this article (June 2019) – some news may need further corroboration and in-depth analysis.

Cambodian citizens³. However, the benefits are counterbalanced by systematic attacks on the freedom of expression – citizens who have been arrested over Facebook posts⁴ that were interpreted as insults to the government or as actions to create incitement – that have contributed to a climate of political fear and refrain to express political views, which has been partly fuelled by fake news. Today, “freedom of expression is not quite the same as before. So, people are worried about what they can say” (Barron and Eli, 2018). An overview of the political events unveils thus a shrinking of the democratic space. In 2018, pressure against opposition political parties resulted in some of their members living in exile and some others are facing charges in Cambodia. Regarding media outlets, the country has lost most of its independent newspapers after the closure of the Cambodia Daily and the Phnom Penh Post being sold to a Malay businessman. “Democratic space in Cambodia has reached its lowest level since before the intervention over 25 years ago by the international community through the United Nations Transitional Authority in Cambodia (UNTAC), established to facilitate the implementation of the 1991 Paris Peace Accords.” (Human Rights Watch, 2019).

On the flip side, however, the diminished democratic space can be interpreted as a response to the new – and more democratic – possibilities of digital democracy, which the civil society has used to leverage the power of the ruling elites. A remarkable difference between 1997 and today is the presence of digital tools, an element that is more to fight against and silence if compared to punctual protests that took place in 1997. While some of the most recent events might create some doubts on the effectiveness of digital democracy, it is worth examining why digital tools remain as a particularly powerful tool that can disrupt and reshape the political scene.

Why digital tools matter in politics and why fake news is a threat

The previous section has analysed some of the characteristics of digital democracy that simultaneously help and harm several segments across the civil society, thus showing that the coexistence between pros and cons is inevitable. With a particular focus on the advantages, a

³ See (Tha, 2016).

⁴ See (Sun, 2019).

majority of them can be framed in a liberal democratic context. It seems nearly undeniable that the Cambodian society is exponentially becoming more tech-dependent – including the field of politics, although at a slower pace compared to other fields like public transportation, to name one example. In spite of the digital divide experienced among age groups or between rural and city dwellers (Hughes and Eng, 2018), the use of smartphones and SNS is quickly becoming more democratised in terms of use and accessibility, which means that an increasing number of individuals are now enjoying their benefits and, more importantly, that digital tools are not only used to the own advantage of a small selected group of individuals anymore. “It won’t be killer robots that enslave us. All it takes is ruthless individuals capable of using the machines to their own advantage. In the land of technologically dependent, the savvy political operator is king.” (Runciman, 2018, loc. 1625). This section will thus examine some of the potential political implications of digital tools in a liberal democratic system of governance and why fake news in particular represent a threat in Cambodia, as well as some considerations to work towards reaching the full potential of digital democracy and fighting misinformation and disinformation in the Cambodian context.

Given the sharp increase in the use of smartphones and SNS and how digital democracy has emerged over the last decade, a reconceptualization of political participation – and its scope – to find new ways of political engagement has become indispensable. Reconsidering what accounts as participation is doable thanks to the fact that political engagement is in itself a dynamic concept that can adapt to the environment (Vissers and Stolle, 2013). The contribution of digital tools in politics requires thus an understanding not only of its benefits and drawbacks, but also of the link between online and offline activities. So, what can be considered as online engagement but, above all, how it is linked to offline activity because, after all, online political activity is not isolated from offline engagement (Hirzalla and Zoonen, 2011) – which was seen in cases like the Arab Spring: digital tools alone did not prove to be able to turn dictatorships into democracies. However, they demonstrated that online action can trigger offline actions (Joseph, 2011: 166; Morozov, 2011). This suggests that the use of digital tools is not the ultimate tool in political participation, but rather a mechanism that offers a gateway for Cambodian people to learn about politics and, more importantly, is very likely to complement offline participation. The specific case study of Cambodia is of particular relevance in the context of the Global South

and as an example of hybrid regime – a cohort countries that still remain less explored compared to OECD countries (Sinpeng, 2017), which differ a lot from the cases in the Global North.

Offline politics can benefit from the virtual space and opportunities that digital tools have created to fight the environment of distrust that many Cambodians perceive – especially the youth. The current political atmosphere in Cambodia is characterised by a noticeable lack of constructive political discourse and neo-patrimonial structures with rigid social hierarchies that restricts political participation more than promotes it, which results in distrust towards the political classes and a generalised lack of interest in politics (Bong and Sen, 2017).

However, the flip side of this narrative also demonstrates that large cohorts of population do have an interest in politics – citizens have private discussions on politics; participation in elections is traditionally very high; other actors like NGO are becoming an alternative to traditional ways of engagement and, more recently, SNS like Facebook have taken a predominant role in the political scene (ibid). The strongest asset of social media as a means of engagement is that it benefits all the stages in the policy cycle: 1) it allows citizens to engage and learn about political issues via consumption of data; 2) citizens can identify specific issues they wish to get involved with; 3) at a further stage, people can engage with certain stakeholders to lobby the government (NGO, think tank, advocacy group, etc) or gain power in governance (political party); 4) finally, it offers the opportunity to be part of the decision and monitoring-process (Mocker and Chapman, 2016). Therefore, and given the rigidity of the political system in Cambodia, digital tools have emerged as an opportunity for citizens to actively engage in politics with different degrees of implication; from simply learning new facts and becoming more politically-literate to lobbying the government via other stakeholders. Digital tools alone are not seen as political tools, but rather as a powerful mechanism that can create new ways of (online) engagement to complement the existing (offline) mechanisms, like NGOs or advocacy groups. “The tools are there – ready to give us better access to politicians, and to engage more easily in the topics that affect our lives. It’s up to us to make the most of them” (Netherlands Institute for Multiparty Democracy, 2018). In short, digital tools are an opportunity for inclusiveness.

Inclusiveness implies a stronger civil society – as the space that assembles a voluntary set of actors that are independent from the state and private capital (Anheier et al., 2010; Christie, 2013; Diamond, 1994; Schmitter, 1997; Wheatley et al., 2010) – that allows all stakeholders to create bonds and bridges, to develop organisational skills and to deliberate on collective interests in the public sphere, thus making actors and the state accountable to each other (Claridge, 2014). The use of Internet-based technologies has meant that the traditional physical space for discussion is now virtual, as well; a new alternative for citizens and organisations to discuss on several political issues (Habermas, 1989) and create new institutionalised networks among stakeholders who interact with each other thus creating collectively-backed capital, or credential, that facilitates action (Putnam et al., 1994; Worms, 2004). In such regard, therefore, digital tools are an important asset for democracies to address power imbalances through cooperation and to set boundaries on state's actions and power (Claridge, 2004). Overall, “political participation is the cornerstone of a healthy democratic system” (Vissers and Stolle, 2013: 937) and considering the political context of Cambodia since the late 1990s, the capacity that digital tools have to give governance a more people-centric approach is highly relevant; it contributes towards a solution to the great feeling of alienation that many citizens have towards the political class or, in Schumpeterian terms, a procedural and elitist model of democracy – a view that places universal suffrage and representation as the foundation of democracy. “In this view, the lack of information gathered and distributed by the state is the most important problem to be solved with the aid of digital media” (van Dijk, 2000). A people-centric approach through the widespread use of digital means, first of all, that a socialisation of politics in Cambodia that reasons from civil society can become a reality – including not only individuals but also organisations who use networks to become a stronger lobbyist in the political scene. Second, a larger number of stakeholders with a political voice means more chances to fight majorities, hence the emphasis on small and changing coalitions of minorities who can empower themselves through online discussions or, in other words, they practise deliberative democracy. Closely linked to the above-presented views, the third point is the promotion of participatory democracy, which does not only aim at socialising democracy but also make its stakeholders active participants in it (ibid). Digital tools have thus become a mechanism to move towards what Williamson and Sandle (2014: 14) name an “active democracy”; a view on democracy that allows counterbalancing the vested interests of the powerful elites, thus rooting the

democratic system on balanced power, participation and deliberation. In an active democracy, therefore, power is *shared* rather than *exercised over*, its members are *active*, and the system is thus co-created.

However, this idealistic view on the ways digital democracy can empower citizens in Cambodia is not free of setbacks. Although the Cambodian society is becoming tech-dependent at a fast pace – something that is favoured thanks to the youth, who constitute a large segment of the population and are the most tech-savvy segment – there is the need for more and better ICT training and human rights education (Sovan and Sok, 2014), which would promote sustainable development and also address the digital divide that is still remarkable in the fields when looking at age groups and geographical origin. Moreover, fake news is an added threat to all the above-mentioned values and views on a more democratic system of governance. Fake news polarises people and do not allow trust among citizens and institutions to be created. It is still unclear how Cambodia can combat fake news, but as most CSOs point out, education is the most powerful tool. Education has the power to give people critical thinking skills, which creates independent citizens who are capable of analysing the information that receive – and potentially identifying fake news – and to position themselves in relation to such information. However, organisations also point out that this is easier said than done, as this requires better general knowledge, improved digital literacy and more empowered citizens who understand their role in governance.

Conclusions

Over the last decade, digital democracy has allowed citizens in Cambodia to benefit from the participatory features of the Internet, a tool that can potentially disrupt the political scene by widening the concept of political participation. This is due to the inclusive nature of digital tools that reasons from civil society and empowers its stakeholders, thus generating new ways of political participation. In Cambodia, this is especially relevant due to a large amount of power that the ruling political elites concentrate into their hands since the signing of the Paris Peace Accords and the first democratic elections in 1993, which has left the majority of people at the margin of politics. However, the breath of fresh air that arrived with the results of the 2013 elections and the widespread use of Internet-based tools quickly vanished and

was replaced by a generalised sense of political fear and self-censorship on the net. There is little doubt that the benefits and problems associated with the use of digital tools like fake news will coexist; while the civil society is quickly catching up with the new uses of digital democracy, the elites have been able to quickly become tech-savvies and counterbalance the push of the people. After the latest actions of the government – broadly considered to go against freedom of expression – it is necessary to observe whether the civil society is capable of making the most of the possibilities that digital tools have to offer to promote some of the features of a democratic system – especially those of a direct democracy – or if digital tools are reinforcing the current dynamics of power. In order to better understand contemporary threats like fake news, it is fundamental to give priority to research that puts local contextualisation at the forefront of its priorities, thus understanding the local context in which the digital and political transformation is happening. A strong awareness of these contextual factors will give a more accurate vision of the strengths and shortcomings of digital democracy – for example, we cannot know the extent to which fake news constitute a problem if we do not link them to socioeconomic factors like education or digital literacy – but also a clue on further actions to make a difference with sustainable development, which must be tailored to the needs, views and opinions of the local community. In other words, it should not be assumed that the western conceptualisation of democracy will necessarily work in Cambodia.

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