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FAKE NEWS & ELECTIONS IN ASIA

10-12 July 2019
Bangkok, Thailand



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CONFERENCE PROCEEDINGS

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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.

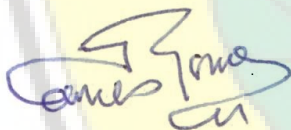
To navigate fake news in Asia and seek sustainable solutions to combating disinformation, Asia Centre, in collaboration with 12 partners, namely Faculty of Communication Arts, Chulalongkorn University; the Thai Media Fund; School of Media, Languages and Cultures, University of Nottingham, Malaysia; NSHM 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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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

¹⁰At:

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 snares 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=.9Z4i5ypGQeGiS7w9arwTvO.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 Kukul 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 erita_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) kiblata.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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