

ASEAN BRIEFS

‘Fake News’ in Social Media
and Elections in Southeast Asia



Vol. 6/ Issue 1/ March 2019



ASEAN Briefs is a regular publication about current developments on ASEAN regionalism, especially in the Political-Security, Economic as well as Socio - Cultural Pillars.

**The Habibie Center -
ASEAN Studies Program ASEAN Briefs**

Project Supervisor:

Hadi Kuntjara

(Executive Director)

Mohammad Hasan Ansori

(Director of Program and Research)

Head of ASEAN Studies Program/Editor:

A. Ibrahim Almuttaqi

Researcher:

Muhamad Arif

Hana Hanifah Bastaman

Vierna Tasya Wensatama

Finance and Administration:

Anissa Dini

Design and Publication:

Mayka Risayatul Asnawiyah



Introduction: 'fake news' versus freedom of expression

The ever growing rate of Internet penetration and the democratisation of communication technologies have accelerated the manner of news and information distribution at a pace faster than ever before, including in Southeast Asia. Technology enables people to constantly keep up with many kinds of information that can easily be accessed through various social media and other information-sharing platforms. The United Nations' recognition of access to the Internet as a basic human right¹ shows how the international community upholds the importance of people's voices as part of democracy and how they shall be protected at all costs. However, as easy as it is to disseminate information in the present day through those platforms, they are also the forefront hotspots to spread 'fake news'.² The intentions may be rather 'innocent': some aim to reap high revenue by acquiring subscribers, hence the occasional click-bait titles are conducted purely for financial gain. However, what really threatens democracy is the way in which some people fabricate and/or disseminate fake news to mislead their audience. It is concerning when people try to achieve their 'goals' through any means possible, including framing headlines and stories that somehow could steer their audience's belief away from the truth.

For governments, the promulgation of false information is threatening as it has the latent potential to damage a nation's unity

and sovereignty. It is now happening at an unprecedented scale and governments need to take serious actions to prevent it from going too far. Challengingly, false information is often an ulterior motive of deliberate misleading but masked with what seems as a normal exercise of 'free speech'.

Freedom of expression, one of the internationally recognised fundamental human rights, is embodied in the Universal Declaration of Human Rights (UDHR)³ and the International Covenant for Civil and Political Rights (ICCPR),⁴ where the two documents provide the groundwork for the fundamental human rights that the international community has agreed upon. It is without doubt that freedom of expression is essential to democracy and the democratisation process itself, and that civil society plays a pivotal part in steering a nation to the implementation of democracy. With a healthy exercise of the freedom of expression, politics can flourish in an unbridled and constructive manner. The involvement of people in the democratisation process makes for an important progress for development, as governments are obliged to listen and adhere to the voice of the nation. Recognising the importance of this issue, the United Nations Human Rights Committee has suggested approaches to implementing the ICCPR provision on freedom of expression in its General Comment No. 34 of 2011.⁵ Limitations and/or restrictions on the exercise of such right can be allowed, but they must fulfil the conditions provided for in ICCPR through Article 19(3) as a 'three-part test', which requires that

any restriction must be (1) provided by law, (2) for the purpose of safeguarding a legitimate interest (including, as noted, protecting the reputations of others), and (3) necessary to secure this interest. To avoid misinterpretation, limitations and restrictions made upon ICCPR must not challenge or contrast with the purposes of the articles in concern.⁶ In this case, much is at stake - including the government's role in protecting their people's right to freedom of expression, as well as their need to protect national sovereignty and public order, particularly in a democratic system.

How 'fake news' in social media are related to elections in Southeast Asia

One of the most fundamental ways for individuals of a democratic country to exercise their right to participatory governance is through voting in elections. At the international level, such right is recognised through Article 21 of UDHR and Article 25 of ICCPR. Both Articles acknowledge the fundamental role of elections as part of a democracy, including that the will of the people should be the basis of government authority, and everyone has the right to take part in the government “directly or through freely chosen representatives.” In order to freely choose such representatives, the Articles then call for periodic, genuine elections with universal and equal suffrage and secret ballot.

The media plays a central role in elections, as it is important to ensure that the electorate can actively participate in the process, where they are able to obtain the necessary information about the political parties, their policies, and the candidates, as well as to engage in public discussions - all in order to educate themselves to make well-informed choices. For many years, the media have long been understood to refer to the traditional ones such as the printed press, radio, and television. However, the definition of media has nowadays become broader, including new media such as online journalism, as well social media. Facebook plays a pivotal role in the dissemination of

information in the region, evident through how four Southeast Asian countries are among the top fifteen leading countries based on the number of Facebook users: Indonesia is ranked fourth with 130 million users, followed by the Philippines at number six with 75 million users, Vietnam at number seven with 61 million users, and Thailand at number eight with 50 million users.⁷ Aside from these platforms, people are also using online messenger applications as a more private channel to share information. Facebook's Messenger service, along with Whatsapp and LINE, are the online messenger applications with the highest usage in Southeast Asian countries.⁸

Nevertheless, the rise of new alternative media and the trending tendency to share and receive 'news' through social media platforms are adding new fuel to the burning fire of disinformation. The high traffic in all the aforementioned platforms poses a tough challenge for social media companies to 'moderate' content. Billions of information in the form of text, photos, and videos are shared everyday to everyone with Internet access. Substance-wise, while a post may seem like a false information, it might only be a genuine expression; and any obligation of companies to respond to every user report on what they see unfit can be risky and strenuous. In particular, 'fake news' and the act of disinformation are highly dangerous in election periods. At such moments, people become more sensitive yet attentive: contradicting thoughts, if not worded carefully, can easily be taken as an attack on one's political choice. In this situation, any kind of false news tied to a part of one political propaganda can then become a significant harm to the democratic process.

Practices in select ASEAN member states that recently have held elections show that the promulgation of fake news intensifies in election periods. On 24 March, Thailand held its first general election since the 2014 military coup. As mandated by the new election law enacted by the military government in September 2018, Thailand has been tough on regulating election-related social media behaviour. A 'war room'

for election was introduced by the government mainly to look for violations of the said law, such as posts that spread lies, slander candidates, or use rude language.⁹ A similar approach is also used by the government of Indonesia, which 'war room' is government-run and has seen an increase of 30% in political hoaxes this year.¹⁰ It is true that the current presidential election campaigning period in Indonesia has also been tainted by a massive amount of hoaxes. Earlier this month, Mafindo – an Indonesian organisation focused on combating fake news and improving digital literacy – released a report on recorded and verified hoaxes from early 2018 to January 2019. From a total of 997 hoaxes, it is revealed that fake news on politics dominated with a count of 488 (49.94%), with targets including both presidential candidates as well as the government and state agencies, particularly the electoral commission.¹¹ These kinds of falsehood are exceptionally threatening for a democratic system, as fake news about electoral bodies is often an effort to delegitimise the bodies' integrity and the validity of their work. Sooner or later, such situation will potentially endanger people's level of trust in the electoral system, leading to more polemics on the future election results.

In fact, countering disinformation is a multi-faceted responsibility shared between stakeholders of a nation, but efforts can only be made possible with a preceded strong commitment of the government to do so. In doing their part, however, governments are facing the inevitable dilemma of finding the right balance between enacting the necessary regulation and protecting their people's freedom of expression. At the international level, it is called upon states to refrain from enacting laws that contradict with the values of freedom of expression, such as:

“(i) Discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion

and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups;

(ii) The free flow of information and ideas, including practices such as the banning or closing of publications or other media and the abuse of administrative measures and censorship;

(iii) Access to or use of information and communication technologies, including radio, television and the Internet.”¹²

The said provisions, particularly point (i), gives governments little to no room for error in drafting election laws. According to the aforementioned General Comment No. 34 of 2011, laws with restrictions on the freedom of expression must pass the strict test of necessity and proportionality, and the said restrictions has to be “applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.”¹³ In such case, justifying the criminalisation of disinformation in elections needs to be done carefully, and punishment, where necessary, shall be proportionate. Governments need to ensure that the people's rights to hold opinions, criticisms, or even satire statements are protected as part of their freedom of expression, as long as there is no proven deliberate intention to mislead or badly influence election results, which can be subjected to related provisions in criminal law. In principle, restrictions by the government shall be reasonable on the basis of national security and public order. When such restrictions are heavily vague, they may lead to arbitrary use or abuse of such power by the authorities. As an example, Malaysia's effort on drafting a law that strikes the fair balance between the protection of the freedom of speech and taking a necessary step towards preventing disinformation has not been quite successful, as the Malaysian Anti-Fake News Act 2018 has vague and ill definitions of what would suffice to be categorised as fake or false news with punishment being up to six years in jail and a fine



of up to RM500,000.¹⁴ A more recent example would be the government of Singapore, who has received numerous criticisms towards the newly introduced Protection from Online Falsehoods and Manipulation bill.¹⁵ The controversial bill regulates that a person who deliberately spread false information online with the intention or knowledge to influence the outcome of an election is found guilty in court, he can be fined up to S\$50,000, imprisoned for a term of up to five years, or both.¹⁶

Nevertheless, laws of such nature shall not place the liability solely on the actor (i.e. creator, disseminator, and/or publisher) of fake news. As more people resort to social media platforms to share and obtain information, social media companies shall also be responsible for the falsehood circulated in their respective platforms, due to their ability to virtually remove accounts or posts and halt the spread of false publications. This practice has been done by companies such as Twitter and Facebook, which has taken to deleting fake accounts in Indonesia on a regular basis. In particular, Twitter is working to remove networks of accounts engaged in misinformation and disinformation; while Facebook trains election management bodies how to flag fake news to the company, which is then evaluated by moderators and deleted if it breaks its community standards.¹⁷ In Thailand, Facebook also operates teams with Thai-language speakers to monitor posts and restricts electoral advertisements from outside the country, as the company considers combating false news 'crucial to the integrity and safety of the Thailand elections'.¹⁸ On the

other hand, exercising control over what content is spread can be quite challenging for instant messaging service providers, due to the private nature their services offer. With technology such as message encryption, it would constitute as a privacy breach if providers decide to take a look into what messages their users are exchanging. Nonetheless, such providers are evidently still making efforts; for example, in Indonesia, WhatsApp is working together with mainstream media such as radio stations to broadcast public service announcements on how to identify potential fake news and how to not further spread such messages. In Thailand, the government has established a cooperation with LINE - with 45 million users in the country - to do its part by only showing articles from what the company considers 'trusted publishers' on its news feature.¹⁹ Such good practices shown by these social media companies need to become an explicit obligation mandated by governments, in order to ensure active participation of private companies in related sectors in putting a stop to disinformation.

The role of fact-checking non-governmental organisations and their publicly accessible websites is also one of the key efforts by civil society to counter false information. In January 2018, the Parliament of Singapore formed the Select Committee on Deliberate Online Falsehoods, dedicated to examining and reporting on the problem of deliberate online falsehoods as well as recommending strategies to deal with them. Among the recommendations made in September 2018, the Committee specifically called for a fact-checking coalition of media organisations and industry partners to swiftly debunk deliberate online falsehoods with the necessary competence.²⁰ This idea is practiced in the Philippines with Tsek.ph, a fact-checking organisation as part of an elections-focused collaboration comprising some of the nation's main newspapers, television stations, and media academics.²¹ In Indonesia, aside from the government-run 'war room', a website named cekfakta.com was established in 2018 as a collaborative project between Mafindo,

Google News Initiative, Internews, FirstDraft, and more than 20 media outlets.²²

At the regional level, ASEAN has also taken steps to encourage its member states to actively cooperate in preventing and countering the huge waves of disinformation. At the Fourteenth Conference of the ASEAN Ministers Responsible for Information and Fifth Conference of ASEAN Plus Three Ministers Responsible for Information on 10 May 2018, ministers of ASEAN member states have stated their mutual realisation that the issue of fake news is a real challenge that continues to grow rapidly at a global scale, especially on social media platforms. This led to an agreement between the ministers that ASEAN needs to collaborate and exchange best practices in combating fake news and mitigating its harmful effects. The Framework and Joint Declaration to Minimise the Harmful Effect of Fake News²³ was then endorsed, providing 'a common frame of reference for AMS to strengthen cooperation, share ideas, and propose viable solutions to address the proliferation of fake news and its negative impact, for the benefit of the people of ASEAN'.²⁴ Through the provisions, ASEAN member states commit to "[w]ork together to raise awareness on the potential problems posed by fake news to prevent its proliferation"²⁵ as well as to "[s]trengthen national capacity to detect and respond to fake news, including through media monitoring, fact checking, and building up strong and trusted government communications".²⁶ As part of their 2019 Chairmanship, the Thai Government Public Relations Department hosted "Maintaining Credibility and Trust in Journalism: A Collaborative Workshop for Addressing Fake News in ASEAN", where journalists from ASEAN, members of mass media, and the parties to the online networks in each country cooperated in sharing their experiences in dealing with disinformation and exploring approaches to fight fake news.²⁷



Policy Recommendations

Adhering to the aforementioned findings, it is understood that the recent cases of fake news taking place within the Southeast Asian region are alarming. As discussed earlier in this edition of ASEAN Briefs it has been seen how ASEAN and its member states decide to respond to the promulgation of fake news, particularly in relation to elections. Nevertheless, there are a few policy recommendations that can be made upon this issue.

First, it is of high importance that the governments of all ASEAN member states revisit their commitment to the international community and its rules. Despite the internationally accepted nature of the norms embedded in the Convention, the fact that only some of ASEAN member states – namely Brunei Darussalam, Malaysia, Myanmar, and Singapore – have either ratified or acceded to ICCPR shows just how most ASEAN member states are not yet willing to fully commit to the internationally recognised rules. As the affirmation to adhere to international law has been repeatedly reiterated by the international community, it signifies the attention shed on Southeast Asia and how the region needs to make efforts to improve the condition in the respective states. The efforts to fight disinformation may have become part of the agenda of ASEAN member states; however, in realisation, priorities vary due to the respective states' condition. When approached

as a security concern, the disparities in member states' understanding, competence, and even willingness to counter disinformation may hinder regional collaboration on the issue. In such case, ASEAN as a regional organisation may take actions to narrow the gap and bridge cooperation between states through the available forums and mechanisms. Revisiting the commitment made by member states, such as the aforementioned Framework and Joint Declaration, can be a good start to explore the possibilities of future cooperation that can be done.

Second, ASEAN as a regional organisation and governments of ASEAN member states shall establish strong relationship with media companies to halt the spread of false information. 'Traditional' media shall also be able to retain their role as critical watchdogs, as quality journalism is key to fighting fake news, and therefore can provide transparency throughout the whole election process. Meanwhile, it is intriguing to see what social media giants are planning to do over the coming years to do their part in fighting disinformation, as they are equipped with the necessary tools and capability. Furthermore, both government and media companies shall also work together to continuously educate the users on how to wisely make use of social media, and how to avoid becoming one of the many people responsible for the circulation of online falsehoods.

Last but not least, considering the indispensable benefits of the Internet and social media as a platform to exercise the right to express thoughts and opinions, governments have to avoid drafting draconian election laws with ambiguous provisions. Inherent to this, governments also need to be careful in drafting laws and exercising their power to refrain from overextending their authority. Making use of the existing laws on criminalising disinformation can help governments avoid overreaching regulations for elections. It is believed that balanced regulatory frameworks in elections can help guarantee people's fundamental

freedoms related to democracy - including freedom of information and expression - as well as the impartiality and transparency of media. Tough as it may seem, governments need to find a just balance between their rights to enact regulations to ensure public order and their obligations to ensure the protection of their peoples' rights. The aforementioned measures indeed need to be taken in order to increase the engagement of civil society in the governance as well as to forge a healthy ecosystem for the media, all for a more democratic country.





Endnote

- 1 United Nations General Assembly, Human Rights Council Resolution, No. A/ HRC/32/L.20 (27 June 2016) <<https://documents-dds-ny.un.org/doc/UNDOC/LTD/G16/131/89/PDF/G1613189.pdf?OpenElement>>
- 2 'Fake news' may be termed differently in many occasions; but for the purposes of this edition of ASEAN Briefs, any of the interchangeably used terms - including but not limited to false information and online falsehood - will refer to 'disinformation', which is defined as 'false information deliberately and often covertly spread (as by the planting of rumors) in order to influence public opinion or obscure the truth'. See <https://www.merriam-webster.com/dictionary/disinformation>. It is not to be confused with 'misinformation' or any similar terms referring to spreading false information but without the ill intention.
- 3 Universal Declaration of Human Rights (UNGA Res 217 A (III), adopted 10 December 1948), Article 19.
- 4 International Covenant on Civil and Political Rights (999 UNTS 171, adopted 16 December 1966, entered into force 23 March 1976), Article 19.
- 5 UN Human Rights Committee, General comment no. 34(CCPR/C/GC/34) on Article 19, Freedoms of opinion and expression (12 September 2011) <<http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>>
- 6 The UN Economic and Social Council adopted the Siracusa Principles in 1984, a non-binding international document serving as guidance as to what extent limitations and derogations to the ICCPR may be done.
- 7 As of January 2019. See "Leading countries based on number of Facebook users as of April 2019 (in millions)" (Statista, 2019) <<https://www.statista.com/statistics/268136/top-15-countries-based-on-number-of-facebook-users/>>
- 8 Extracted from the "2018 Global Digital suite of reports from We Are Social and Hootsuite" <<https://wearesocial.com/blog/2018/01/global-digital-report-2018>>
- 9 "In Thai election, new 'war room' polices social media" (*The Straits Times*, 19 March 2019) <<https://www.straitstimes.com/asia/se-asia/in-thai-election-new-war-room-polices-social-media>>
- 10 Jack Board, "Inside Indonesia's 'fake news' war room, fighting political hoaxes in election season" (*Channel News Asia*, 13 April 2019) <<https://www.channelnewsasia.com/news/asia/indonesia-election-fake-news-war-room-fighting-political-hoaxes-11439398>>
- 11 "Siaran Pers: Meningkatnya Dominasi Hoaks Politik Jelang Pemilu (Press Release: The Increase of Political Hoaxes Domination Ahead of the General Election)" (MAFINDO, 16 March 2019) <<https://www.mafindo.or.id/2019/03/16/siaran-pers-meningkatnya-dominasi-hoaks-politik-jelang-pemilu/>>
- 12 United Nations General Assembly, Human Rights Council Resolution No. A/ HRC/RES/12/16 (12 October 2009) <<https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G09/166/89/PDF/G0916689.pdf?OpenElement>>, Paragraph 5(p), emphasis added.
- 13 *Supra* note 5, Paragraph 22.
- 14 Malaysian Anti-Fake News Bill 2018 <https://www.cjlaw.com/files/bills/pdf/2018/MY_FS_BILL_2018_06.pdf>
- 15 Mike Ives and Raymond Zhong, "Singapore Plans Law to Fight False News, but Critics Fear Repression" (*The New York Times*, 1 April 2019) <<https://www.nytimes.com/2019/04/01/world/asia/singapore-fake-news-law.html>>.
- 16 Singaporean Protection from Online Falsehoods and Manipulation Bill <<https://www.parliament.gov.sg/docs/default-source/default-document-library/protection-from-online-falsehoods-and-manipulation-bill10-2019.pdf>>
- 17 Fanny Potkin & Agustinus Beo Da Costa, "In Indonesia, Facebook and Twitter are 'buzzer' battlegrounds as elections loom" (*Reuters*, 13 March 2019) <<https://www.reuters.com/article/us-indonesia-election-socialmedia-insigh/in-indonesia-facebook-and-twitter-are-buzzer-battlegrounds-as-elections-loom-idUSKBN1QU0AS>>.
- 18 "In Thai election, new 'war room' polices social media" (*The Straits Times*, 19 March 2019) <<https://www.straitstimes.com/asia/se-asia/in-thai-election-new-war-room-polices-social-media>>.
- 19 "In Thai election, new 'war room' polices social media" (*The Straits Times*, 19 March 2019) <<https://www.straitstimes.com/asia/se-asia/in-thai-election-new-war-room-polices-social-media>>.
- 20 Ng Jun Sen, "Call to set up fact-checking coalition" (*The Straits Times*, 21 September 2018) <<https://www.straitstimes.com/singapore/call-to-set-up-fact-checking-coalition>>.
- 21 Simon Roughneen, "Fact-checkers battle against fake news ahead of Asia's elections" (*Nikkei*, 23 March 2019) <<https://asia.nikkei.com/Politics/Fact-checkers-battle-against-fake-news-ahead-of-Asia-s-elections>>.
- 22 "Tentang Cekfakta (About Cekfakta)" <<https://cekfakta.com/about>>
- 23 ASEAN Framework and Joint Declaration to Minimise the Harmful Effects of Fake News (10 May 2018) <<https://asean.org/storage/2012/05/Annex-5-Framework-Declr-Fake-News.pdf>>
- 24 Joint Media Statement from the Fourteenth Conference of the ASEAN Ministers Responsible for Information and Fifth Conference of ASEAN Plus Three Ministers Responsible for Information: Inclusive and Informed Digital ASEAN (10 May 2018) <<https://asean.org/storage/2018/05/14th-AMRI-JMS-FINAL.pdf>>
- 25 *Supra* note 23, paragraph 3.
- 26 *Ibid.*, paragraph 5.
- 27 Benjamin Nathaniel Bondoc, "ASEAN workshop on fighting fake news opens in Bangkok" (*Philippine News Agency*, 21 March 2019) <<http://www.pna.gov.ph/articles/1065180>>.



Check out our latest edition
of ASEAN Briefs and download at
<http://thcasean.org/publication>

About The Habibie Center

The Habibie Center was founded by Bacharuddin Jusuf Habibie and family in 1999 as an independent, non-governmental, non-profit organisation. The vision of The Habibie Center is to create a structurally democratic society founded on the morality and integrity of cultural and religious values. The mission of The Habibie Center are first, to establish a structurally and culturally democratic society that recognizes, respects, and promotes human rights by undertaking study and advocacy of issues related to democratization and human rights, and second, to increase the effectiveness of the management of human resources and the spread of technology.

About ASEAN Studies Program

The ASEAN Studies Program was established on February 24, 2010, to become a center of excellence on ASEAN related issues, which can assist in the development of the ASEAN Community by 2015. The Habibie Center through its ASEAN Studies Program, alongside other institutions working towards the same goal, hopes to contribute to the realization of a more people-oriented ASEAN that puts a high value on democracy and human rights. The objective of the ASEAN Studies Program is not merely only to conduct research and discussion within academic and government circles, but also to strengthen public awareness by forming a strong network of civil society in the region that will be able to help spread the ASEAN message. With the establishment of ASEAN Studies Program, The Habibie Center aims to play its part within our capabilities to the ASEAN regional development.

About Talking ASEAN

Talking ASEAN is a monthly public dialogue held at The Habibie Center in Jakarta. Covering a wide array of issues related to ASEAN, Talking ASEAN addresses topics of: Economic Integration, Socio-cultural, & Democracy, human rights and regional peace, among others. Featuring local and visiting experts, Talking ASEAN is one of a series of twelve dialogues regularly held each month and open to a target audience consisting of ASEAN officials, foreign ambassadors & diplomats, academics, university students, businesses, and the media.

Cover Image:
(Medioimages/Photodisc/Getty Images)

www.thcasean.org



ASEAN Studies Program - The Habibie Center

The Habibie Center Building - Jl. Kemang Selatan No.98, Jakarta 12560
Tel: 62 21 781 7211 | Fax: 62 21 781 7212 | Email: thc@habibiecenter.or.id

 facebook.com/habibiecenter  [@habibiecenter](https://twitter.com/habibiecenter)  [@habibiecenter](https://www.instagram.com/habibiecenter)