



INDONESIA

Submission to the Special Rapporteur on the **Promotion and Protection of the Right to Freedom and Expression**

The Commission for the Disappeared and Victims of Violence

2021

The Commission for the Disappeared and Victims of Violence—a human rights nongovernmental organization based in Jakarta, Indonesia—would like to deliver our report to the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and will focus on the issue of disinformation and freedom of opinion and expression for her upcoming report to the Human Rights Council, to be presented in June 2021.

Our report was written as a response to the following questions:

1. What do you believe are the key challenges raised by disinformation? What measures would you recommend to address them?

Disinformation, as false or inaccurate information to intentionally cause public harm, can cause harm a range of human rights. Subsequently, the disinformation raised several critical challenges that many parties—civil society, human rights defenders, and state authorities—have to face. One of the critical challenges is how disinformation compromised the right to information. In this pandemic situation, much information spread in Indonesia regarding how the pandemic does not happen, and it was just a part of some international propaganda. The disinformation also persuades people not to comply with the health protocol because the virus will not infect them. In contrast, this inaccurate information may deter people from making healthcare decisions that protect their health. This risked their health rights, and also putting others at greater risk.

Besides the right to information, the other challenge is how the disinformation violates other human rights violations. Most of the current approaches to tackling disinformation with any inevitable method remove the legitimate form of freedom of expression. In making policy to tackle disinformation, the state is usually put in a central authority position. Consequently, this authority will justify the state's actions in carrying out any policy that is vulnerable to violating human rights. In the context of disinformation, one of the rights prone to violations is the right to freedom of expression. The anti-disinformation or fake news law tends to use measures that criminalize the publication and circulation of fake news, leading to censorship and the suppression of freedom of expression.

The determinations of whether speech or content is disinformation mainly undertaken by the state without consideration from any independent and impartial judicial authority. This hinders the effort to uphold the human rights values in tackling the disinformation,

where the proportion of the responses or sanctions will be questioned. If there is an independent and impartial authority to determine the speech or content is disinformation, the determination can be done through a thorough and impartial investigation. Thus, it will result in a better response or sanction besides the hefty fines, imprisonment, and the blocking of websites that are likely to be disproportionate.

To address these critical challenges, we would like to recommend several measures to the state, and they are:

- a. Regulate the law in tackling the disinformation that fully upholds human rights;
- b. Establish an independent and impartial judicial authority to determine the disinformation of any content and investigate the violations of freedom of expression;
- c. Resolve the human rights violations resulted from disinformation by taking the rights of victims into account.

2. What legislative, administrative, policy, regulatory or other measures have Governments taken to counter disinformation online and offline?

Ironically currently in Indonesia, the biggest online and offline disinformation is carried out by the government itself. It mobilized several social media accounts and buzzer groups with several objectives, spreading malicious slander to carry out bullying, discrimination and discrediting the people's movement. In handling COVID-19, the Coordinating Minister for Maritime Affairs and Investment, Luhut Binsar Panjaitan spread disinformation by stating that the virus was not strong (in Indonesia) due to the hot weather. However, on the other side at the same time, the government takes extreme measures to arrest and imprison ordinary people whom the government considers to be spreading disinformation using Article 45A paragraph (1) of the Law No. 19 of 2016 regarding the Amendment to Law No. 11 of 2008 on Electronic Information and Transactions. Throughout 2020 alone, the Indonesian Police issued two telegrams to order police all over Indonesia to 1) enforce cybercrime laws and monitor opinion in cyberspace regarding the spread of disinformation related to Covid-19 pandemic and critics against the authorities; 2) make counter-narrative against public criticism regarding the Job Creation Bill.

3. What has been the impact of such measures on i) disinformation; ii) freedom of opinion and expression; and iii) other human rights?

Both of the telegrams resulted in human rights violations. The order to enforce cybercrime law violates the human rights of many people because the government uses it to criminalize people who criticize, question and raise complaints about the government's ways of dealing with the pandemic. Within one month of the telegram release, we recorded 41 arrests of people accused of insulting state officials or spreading fake news, which then became counterproductive to the social distancing policies because over-criminalization also

led to crowded places of detention. On the other hand, the orders were carried out to exert excessive force in handling demonstrations. The cyber patrols were arbitrarily arresting citizens who voiced opinions against the Bill accompanied by a constructed narrative that people who rejected the Bill were spreading disinformation or were disinformed because they had not read the Bill, so those who took to the streets were accused of being masterminded and paid. Furthermore, the Government policy on this issue threatens the right to education because the campus will drop out students who make public protests.

Apart from the mentioned issues regarding the handling of Covid-19 and the Bill on Job Creation above, the Indonesian government also criminalizes people who criticize Government policies and publish human rights violations committed by the military/police in Papua disinformation. The Indonesian government is over criminalizing without building access and providing reliable and comprehensive public information from the government itself.

The EIT Law's existence criminalizes people who criticize or express their opinion on hospital services or other institutions. Even though the hospital or institution cannot prove the harm, they have experienced these critical opinions. However, the police to the court usually always find them guilty for disinformation. Thus, the Indonesian government's criminalization approach does not impact the circulation of disinformation, instead violates the right to freedom of expression, including the freedom to seek, receive, and impart any information and ideas. It impacts the right to education and health so that nowadays people are afraid to express their opinions both online and offline. The government does not even bother taking any measures to address those negative impact on human rights.

4. Please share information on measures to address disinformation that you believe have aggravated or led to human rights violations, particularly the right to freedom of opinion and expression.

The implementation of the Indonesian Electronic Information and Transaction Law (EIT Law) has been especially prone to human rights violations, especially the right to freedom of opinion and expression. Several articles, such as the criminalization of spreading hoaxes (article 28 paragraph 1), hate speech (article 28 paragraph 2), and defamation (article 27 paragraph 3). The loosely defined articles made it possible for the police force to use their discretion to define and use the law to criminalize people voicing their critics or protest towards the government. In 2020, KontraS recorded at least 19 cases of criminalization toward people who express their critics toward the government using this EIT Law.

Another measure taken by the state to address disinformation is via a secret telegram message¹ among the police force, instructing the police force to, among other instructions,

¹ <https://www.thejakartapost.com/news/2020/10/05/police-telegram-urges-control-over-protests-against-controversial-jobs-bill.html>, accessed on February 15, 2021.

carry out intelligence functions regarding protests plans, do cyber patrol and media management to push the narrative that the public is against any protest during the pandemic, and carry out a counter narration against expression that "discredited" the government. The telegram message was a response toward potential massive protest across Indonesia following the legislation of the problematic "Omnibus" Job Creation Bill, which will relax environmental and labour protections. Although the argument against the Job Creation Bill was given by many groups of CSO's, academician, student, and labour groups, the President later in his speech claimed that the massive protest was driven by misinformation spread by certain groups to push their political agenda. When the public protest finally occurs, it was met with a massive amount of human rights violations consisting of forceful dispersal, excessive use of force, torture, and inhumane punishments.²

In handling the COVID-19 situations, the government decided to use criminal law against people who spread disinformation about COVID-19 and its vaccines.³ Although disinformation regarding COVID-19 is indeed a huge problem, we believe it is the government's responsibility to persuasively give a comprehensive and scientific explanation to the people, rather than using criminal law to polarize further the public does not solve the problem of disinformation.

5. Please share any suggestions or recommendation you may have for the Special Rapporteur on protecting and promoting the right to freedom of opinion and expression while addressing disinformation.

- a. Actively engage with states, in particular Indonesia, to carry out the relevant functions regarding the access to information and make recommendations on addressing disinformation. The Special Rapporteur shall uphold its independence hence the engagement should not undermine the ability of the Special Rapporteur to provide an objective judgement of the freedom of expression and addressing disinformation;
- b. Besides the states, the Special Rapporteur shall engage at the national level with domestic political actors, also the people and civil society to seek more perspective in addressing disinformation and give more robust recommendations to Indonesia.

² <https://kontras.org/2020/10/25/temuan-tindakan-kekerasan-aparat-pembungkaman-negara-terhadap-aksi-aksi-protes-menolak-omnibus-law-di-berbagai-wilayah/>, accessed on February 15, 2021.

³ <https://www.wartaekonomi.co.id/read274770/hoaks-corona-bertambah-menkominfo-ancam-tindak-pidana>, accessed on February 15, 2021.