

Anti-Fake News Act: Liberty in Crisis (反假新聞：在危機中的自由民主)

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Recently, the credibility of news on new media (internet and social media) has been challenged and the so-called 'fake news' problem has become the hot topic of discussion. The emergence of fake news could be known as the distribution online of false information disguised as legalised news sources. The motives behind the dissemination of 'fake news' can be to attract internet traffic and advertising income; to damage a personal or business reputation, or to sway the public's viewpoint or ideology. The issue has become more pronounced in recent months in headlines that contend deception and propaganda in the lead up to the 2016 US presidential election. Authorities especially in Southeast Asia, including Singapore and the Philippines, have drafted laws aiming at keeping under control the distribution of 'fake news', whereas media rights advocates have denounced the tendency in the region. On top of that, recently, Malaysian authorities will soon pass a fake news bill to attack false online sources that the government states could endanger national security. The notion of 'fake news' implied in this bill seems too ambivalent and vague to be subject to such ruthless penalties. Such law has been critically questioned for its need as the authority already had extensive powers. Thus, this article is to study the impact of the 'fake news' law has on the public in Malaysia.

Keywords: Fake news, law, human rights, freedom of speech, media rights, security

Introduction

The credibility of news on new media (internet and social media) has been challenged and the so-called 'fake news' problem has become the hot topic of discussion. The emergence of fake news could be known as the distribution online of false information disguised as legalized news sources. The motives behind the circulation of 'fake news' can be to attract internet traffic and advertising income; to damage a personal or business reputation, or to swag the public's viewpoint or ideology. The issue has become more pronounced in recent months in headlines that contend deception and propaganda in the lead up to the 2016 US presidential election.

Germany has passed an anti-fake news law, with the legitimate procedure, the authority has been assigned to punish social media parties with the maximum amount of €50 million. Authorities in Southeast Asia, including Singapore and the Philippines, have drafted laws aiming at keeping under control the distribution of 'fake news', whereas media rights advocates have denounced the tendency in the region. On top of that, recently, Malaysian authorities have passed an anti-fake news

act to attack false online sources that could endanger national security. Malaysia is among the first few countries to introduce a law against fake news, even though it already possesses a group of draconian laws, such as the Sedition Act, to curtail the publication of critical news and posting on social media (StraitsTimes, 2018).

The definition of 'fake news' implied in the law is apparently too ambivalent and vague to be subject to such ruthless penalties. Such law has been critically questioned for its need as the authority already had extensive powers. Thus, this article is to examine the notion of 'fake news' as well as its impact on the public in Malaysia.

Anti-Fake News Act

The Anti-Fake News 2018 bill, which was introduced in Parliament on March 26, carries a punishment up to 10 years in prison for knowingly creating, circulating, or posting/ publishing "fake news," defined to be known as "news, information, data and reports" that are "wholly or partly false." This law is also applicable to individuals or organizations running outside of Malaysia if the fake news is about Malaysia or affects Malaysian citizens (StraitsTimes, 2018).

According to StraitsTimes (2018), Malaysian authorities blame the advancement of technology which causes the distribution of fake news rampantly, the Anti-Fake News Act has been passed by the parliament on the 2nd of April despite the protest, it passed with a majority voting for 123 and 64 against the bill. With the restriction of fake news, but not the restriction of speech and press, the Anti-Fake News Act 2018 carries harsh sanctions with a maximum of 6 years imprisonment and a RM500,000 fine.

Before the 14th General Election, Malaysia claimed that it was a "victim of fake news" in the last general election as the BN ruling parties had faced a serious loss from the election since the opposition parties had used social media for winning votes from the public, hence the Anti-Fake News Act was introduced in April 2018. This act is used to combat the opposition's fake news and keyboard warriors, particularly on the Internet.

Hence, the Anti-Fake News Act with the goal of maintaining "public order and security" indicates the rising restriction of freedom of speech on the Internet that has been somehow wielded by the Multimedia Super Corridor. The Anti-Fake News Bill was questioned for its necessity as the current existing draconian laws are proven to curtail "issues". However, the authorities claim that those pre-existing laws are not enough for them to address the complex difficulty caused by the advancement of technologies. Nonetheless, the timing of the law is so suspicious which is just weeks before GE14 instead of a year or two ago (Haciyakupoglu, 2018).

Concerns of Anti Fake News Act

Due to the inappropriate handling of investment fund reporting, a group of politicians, writers, and cartoonists have been caught with the offense of sedition and defamation. Those who are investigating the fund's finances were fired and even some publications that report about the 1MDB scandal have been censored (Haciyakupoglu, 2018).

Regarding the Anti-Fake News Act, it does not state where the distinction between 'mistakes' and 'intentional falsehoods' lies, nor does it mention the line between 'online gossiping' and 'actual

reporting' and also does not mention how the authority intends to apprehend suspects living out of Malaysia (Hutt, 2018). The vague and broad definition of the Anti-Fake News Act is seemingly intertwined with the meaning of false and seditious.

For the offenders, they will face the punishment with a fine of up to RM100,000 and the fine can be increased up to RM3,000 for each day if the content of the post remains after he/she has been found guilty. Other than that, those offering financial support to the distribution of "fake news" are responsible for the act and accountable for the fine (Rodzi, 2018). Many have questioned the introduction of the Anti-Fake News Act 2018 and its punishment. Compared to current existing legislation, the amount of Anti-Fake News Act fine is 10 times and the imprisonment term is more than three times longer compared to current existing laws. Moreover, this act has enlarged the government's control to "outsiders" who mentioned Malaysia's issues (Rodzi, 2018).

Lastly, the Anti-Fake News Act seems to be a 'redundant' law of the Printing Press and Publication Act 1984 and the Communications and Multimedia Act 1998 since the law addressing fake news is already included in these two laws. "False news, obscene, indecent, false, menacing or offensive" stated in both Acts.



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Case Study of Anti-Fake News Act

After the pass of Anti Fake News Act, the first person punished under Malaysia's new and controversial Anti-Fake News Act is a Danish citizen in Malaysia who has been found guilty of maliciously posting fake news on Youtube criticising the policemen. The Danish man named Salah Salem Saleh Sulaiman posted a video on Youtube on April 21 regarding the murder case in Kuala Lumpur. According to The Star's reports, in the video, he claimed that he was with the Palestinian victim during the shootings, and numerous calls had been made, but the police only arrived at the scene 50 minutes later. On the other hand, based on Reuter's report, police claimed that a patrol car

arrived at the scene 8 minutes after the shooting. Hence, he was charged with 'maliciously publishing fake news'. He will be imprisoned a month in jail because he could not pay the fine of \$2,500. He claimed that he was a visitor who had only been there for 10 days and did not know Malaysia had passed this law and admitted it was a mistake and apologized.

Before the law was passed, The Southeast Asian Press Alliance suspected that the Anti-Fake News Act is another instrument for the Malaysian authorities to curtail the press, journalists as well as critics from satirists or writers. Sulaiman's case shows that people who are out of Malaysia sharing news and critical views about Malaysia or about a Malaysian will also be caught under Anti-Fake News Act.

International law firm Baker McKenzie argued that "In the absence of judicial interpretation, the practical scope of the provisions of the Act is yet to be seen." Sulaiman's case shows that it is not yet known what else might be involved. Some even suspected that it may be used by 6th Prime Minister Najib Razak to repress reporting on his scandal.

New Authority- To Be Revoked or To Be Reviewed?

"Even though we support freedom of press and freedom of speech, there are limits," Malaysia's new prime minister, Mahathir Mohamad declared in a live telecast on public broadcaster RTM. "The fake news law will be given a new definition so that the public and media outlets will know what is fake news and what is not fake." He reaffirmed that the Anti-Fake News Act would be reviewed and not revoked, such a contradictory statement has been made from his coalition has been condemned by a few groups of journalists (Channel Newsasia, 2018). This means that the new authority will make the decision on the definition of 'fake news' and implicitly indicate the practice of censorship will be resumed as to 'cage' the freedom of expression and media on views and reporting.

Before the 14th General Election, Mahathir promised to repeal the Anti-Fake News and other draconian laws if the Pakatan Harapan coalition would win the election. However, since PH's triumph, Mahathir has apparently changed his mind about the act. On the other hand, Nurul Izzah Anwar from another Pakatan Rakyat component party insisted on the repeal of the anti-fake news act, which shows an opinion contradictory to Mahathir's action regarding the act.

The Centre for Independent Journalism urges Pakatan Harapan coalition ruling parties "To comply with their manifesto pledges and take immediate steps to repeal the Anti-Fake News Act 2018 that was passed by the previous government". Other than that, The Institute of Journalists also stated that it is not the time to follow the steps of the ex-administration that were used to silence its critics and to create a climate of fear and "hopes for better protection of journalists and freedom of expression in the country" (Channel Newsasia, 2018).

The call-off for Act was still on-going even though the new regime had claimed to remain the Act. Regarding the first time of recalling the Act, it was passed by at the stage of the Dewan Rakyat but it faced further rejection from the upper house- Dewan Negara in August 2018 (The Straits Times, 2019). A year later the Anti-Fake News Act was abolished. However, MIC (Malaysian Indian Congress) urged for the re-introduction of the Act with the threat of false-news regarding COVID-19 (Palansamy, 2020).

Conclusion

Even though the government has changed which shows a sight of hope for democracy, the future of media and people's voices are still undetermined. After the tiring journey of the abolishment of the Anti-Fake News Act, it had finally paid off in December 2019. Even though the Act was abolished, numbers of the substitutes still remained.

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