



Mitigating Disinformation: Reflection of #NoNotAgain Campaign in Nepal for Indonesia

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Abstract

Ahead of election day in Nepal, a #NoNotAgain campaign movement has emerged on Facebook advocating people not to vote for some incumbent prime ministerial candidates. The campaign criticized the candidates' failures during their previous terms in office. Nepal's Election Commission then reacted by demanding that the Facebook page be shut down through the threat of imprisonment or fines. With a normative legal research method that uses statutory, factual, conceptual, and comparative approaches, this article is prepared with the aim of analyzing the legality of the Nepal Election Commission's restriction efforts on the freedom of expression of Nepalese through the restriction requirements contained in the International Covenant on Civil and Political Rights. Given that this phenomenon is related to the conditions that Indonesia will face in the 2024 general election, therefore, this article also seeks to find the ideal formulation of disinformation mitigation mechanism while respecting freedom of expression. The results of this study show that the response of Nepal's Election Commission has violated freedom of opinion and expression. By reflecting on Nepal's experience, Indonesia can employ several alternative methods in dealing with disinformation.

Keywords: *General Election; Disinformation; Freedom of Expression; Freedom of Opinion; Human Rights*



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Abstrak

Menjelang hari pemilihan umum di Nepal, muncul sebuah gerakan kampanye #NoNotAgain di Facebook yang mengadvokasi masyarakat untuk tidak memilih beberapa kandidat perdana menteri petahana. Kampanye tersebut berisi kritikan terhadap kegagalan kandidat yang dimaksud selama beberapa periode jabatan sebelumnya. Election Commission Nepal kemudian bereaksi dengan menuntut laman Facebook itu ditutup melalui ancaman pidana penjara atau denda. Dengan metode penelitian yuridis normatif yang menggunakan pendekatan perundang-undangan, fakta, konsep dan perbandingan, artikel ini disusun dengan tujuan untuk menganalisis sah-tidaknya upaya pembatasan Election Commission Nepal terhadap kebebasan berekspresi warga masyarakat Nepal melalui syarat pembatasan yang tertuang pada International Covenant on Civil and Political Rights. Mengingat bahwa fenomena ini berkaitan dengan kondisi yang akan dihadapi oleh Indonesia nanti pemilihan umum tahun 2024, karenanya, artikel ini juga berupaya untuk menemukan formulasi ideal mekanisme mitigasi disinformasi dengan tetap menghormati kebebasan berekspresi. Hasil dari penelitian ini menunjukkan bahwa respon Election Commission Nepal telah melanggar kebebasan berpendapat dan berekspresi. Dengan merefleksikan pengalaman Nepal, Indonesia dapat melakukan beberapa metode alternatif dalam menangani disinformasi.

Kata Kunci: *Pemilihan Umum; Disinformasi; Kebebasan Berekspressi; Kebebasan Berpendapat; Hak Asasi Manusia*

A. Introduction

As the general election activities were underway, the Election Commission Nepal (the institution in charge of elections, "EC") was shocked by the appearance of a "No, Not Again" Facebook page calling for a campaign not to vote for the candidate for defense prime minister.¹ Through various

¹ Shristi Karki: Many Nepalis Say No, Not Again. <https://www.nepalitimes.com/latest/many-nepalis-say-no-not-again/>. accessed 13 November 2022.

posts with the hashtag #NoNotAgain, the Facebook page that has 39,000 followers² display photos and elaborate explanations of the ineligibility of the candidate in question.³

Deemed to be spreading propaganda and hate speech, Nepal's EC urged the Facebook page to be shut down immediately.⁴ Nepal's EC even stated that it was ready to take the matter to the law, which would put the initiator of the campaign under the threat of five years' imprisonment and a fine of 100,000 RS.⁵ The measures taken by the Nepal's EC above, despite aiming at stopping what is considered 'hate speech', have the potential to kill a critical element in any electoral process in a democratic country, which is the discourse to make choices.⁶ In this case, when people are not allowed to discuss freely to determine who is entitled to their vote, their choice may be premature because it is not preceded by careful consideration of sufficient information. In fact, in essence, elections are a medium for people to elect their representatives in government.

² *Ibid.*

³ Diwakar Dhakal: "No Not Again": What Nepalis Need to be Aware of?. <https://myrepublica.nagariknetwork.com/news/no-not-again-what-nepalis-need-to-be-aware-of/>. accessed 19 November 2022.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ Benhadj v. Algeria, HRC Communication No. 1173/2003, (20 July 2007), p. 8.10.; Park v. Republic of Korea, HRC Communication No. 628/1995, (5 July 1996); Frank La Rue. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. UN. Doc. A/HRC/26/30, (2 July 2014), p. 10 and p. 18.

On the other hand, the Nepal's EC concerns cannot be blamed. This is because the practice of manipulating information has been used massively to favor a party in an election. In fact, political science scholars have classified this practice as "a fraud of pre-vote".⁷ It is logical, then, for any election management institution to attempt to counteract such practices in order to realize "free and fair elections." From the description above, it can be illustrated that the process of organizing elections is always faced with an intersection between the public's right to information and efforts to avoid manipulation practices. This issue intersects with the rules in international law, specifically in the International Covenant on Civil and Political Rights—as ratified by Nepal⁸—which guarantees freedom of expression, but calls for restrictions on that guarantee.⁹

Referring to the assessment of the Asian Forum for Human Rights and Development, the Nepal's EC move to silence the organizers of the #NoNotAgain campaign is considered to have threatened the freedom of expression of

⁷ Wildhan Khalyubi & Aditya Perdana. Electoral Manipulation Informationally on Hoax Production in 2019 Presidential and Vice Presidential Election in Indonesia. *Journal of Government Political Issues*. Vol. 1, No. 2. 2021. page. 88.

⁸ United Nations Treaties Bodies: UN Treaty Body Database. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=122&Lang=EN accessed 13 November 2022; *International Covenant on Civil and Political Rights* (1966) 999 UNTS 171. ("ICCPR").

⁹ Pasal 19 ayat (3) ICCPR.

the Nepalis people.¹⁰ However, such threats are not necessarily invalid, given that the ICCPR allows restrictions on freedom of expression. Certainly, in this case, restrictions cannot be carried out arbitrarily, out of the corridors that have been determined by the law as stated in Article 19 paragraph (3) of the ICCPR.

As a country that has experienced the practice of manipulating information during elections, Indonesia should learn from Nepal for its #NoNotAgain campaign.¹¹ Moreover, Indonesia's next simultaneous election will be held in 2024, one year away from the time of this article. In previous elections, campaigns were operated in the digital space, which contained numerous false or misleading information. The seriousness of the Indonesian government to tackle this condition can be seen in the discourse of the Ministry of Communication and Information Technology ("Kominfo") which sets the option of closing several major sites such as Facebook, Google and TikTok if deemed necessary to stop the circulation of fake news.¹² Although it is still a plan, to ensure the legality of the implementation of the discourse in the

¹⁰ *Ibid.*

¹¹ Wildhan Khalyubi & Aditya Perdana, *op.cit.*, page. 88.

¹² CNN Indonesia: Kominfo Bisa Tutup FB, Google dan Tiktok Bila Sebar Hoaks Pemilu. <https://www.cnnindonesia.com/teknologi/20221019115413-192-862550/kominfo-bisa-tutup-fb-google-dan-tiktok-bila-sebar-hoaks-pemilu>. accessed 3 Februari 2023.

future, it is necessary to conduct a more in-depth study, considering that Indonesia is also a state party to the ICCPR.¹³

The first discussion of this article seeks to answer the question of whether or not Nepal's EC action falls within the standard of restriction of freedom of expression according to the international law it accepts, namely the ICCPR, through an examination of various decisions of the Human Rights Committee ("HRC")—a body established under Article 28 of the ICCPR with the function of monitoring the implementation of obligations under the covenant. The answers found are then used as a benchmark in examining the legality of the implementation of the Indonesian government's discourse in tackling disinformation during the election.

Reflecting on how Nepal dealt with the #NoNotAgain campaign and the condition of Indonesia's legal arrangements regarding digital space, the formulation of disinformation mitigation mechanisms while respecting freedom of expression should be developed in order to achieve a balance between the right to information to finalize choices in elections and the obligation to maintain an orderly condition. This is what the author tries to express in the second discussion of this article. This discussion contains

¹³ Indonesia has ratified the ICCPR as confirmed in Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights).

manifestations of national legal formulations for the purpose of countering disinformation, which still follow the standards of human rights restrictions under international law that have been reviewed in the first part.

B. Discussion

1. Analysis of Freedom of Expression Violations in Nepal's EC Response to the #NoNotAgain Campaign

The conditions for limiting freedom of expression include three things commonly referred to as the three-part test or Siracusa principle¹⁴ and must be cumulatively fulfilled.¹⁵ To determine the legitimacy of the restrictions on the #NoNotAgain campaign, the assessment of the fulfillment of the three conditions of restriction must be analyzed more deeply.

a. Condition That the Restriction is Provided by Law ("Provided by Law")

This is a legality requirement, which aims to ensure that restrictions on expression have been established by law or other legally binding regulations and documents

¹⁴ HRC. Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR, UN.Doc.E/CN.4/1985/4 (1985). ("Siracusa")

¹⁵ HRC. General Comment GC 34, General Comment No. 34, UN Doc CCPR/C/GC/34, (2011), ("GC 34"). p. 22; Siracusa, page 6-7; Andrey Tsukanov v. Kazakhstan, HRC Communication No. 2829/2016, (2022), p. 7.4.

adopted under the law,¹⁶ authorized by the legislative institution.¹⁷ It also requires that a country's laws allow its people to regulate their behavior in accordance with the law, and provide adequate guidance to those responsible for the execution of these rules to ensure what types of expression are truly restricted and what are not.¹⁸ The law in this context must be accessible to the public and synchronized with the objectives of the ICCPR.¹⁹ and must not violate non-discrimination provisions.²⁰

The national laws used by the Nepal's EC in this case is The Electronics Transaction Act 2008 and The Election (Crime and Punishment) Act 2017 can be said to fulfill one of the elements, because the regulations were made by the Nepalese legislature. However, the national law²¹ used in restricting freedom of expression does not

¹⁶ Centre for Law and Democracy International Media Support: Briefing Note 2: Restrictions on Freedom of Expression. <http://www.law-democracy.org/live/wp-content/uploads/2015/02/foe-briefingnotes-2.pdf>. diakses 15 November 2022; The Word "Laws" in Article 30 of the American Convention on Human Rights, Advisory Opinion OC- 6/86 of 9 May 1986, Series A, No. 6. p. 36.

¹⁷ Amanda Mille: "Provided by Law"? Applying Article 19's Legality Requirement to Facebook's Content Moderation Standards. https://ijclinic.law.uci.edu/2021/08/02/provided-by-law-applying-article-19s-legality-requirement-to-facebooks-content-moderation-standards/#_ftn17. accessed 15 November 2022.

¹⁸ GC 34, p. 25 & 27.; Jaona v. Madagascar, Communication No. 132/1982, (1 April 1985).

¹⁹ GC 34, p. 25-26.

²⁰ GC 34, p. 26.

²¹ Section 47 of the Electronics Transaction Act 2008; Section 23 (1) of the Election (Crime and Punishment) Act 2017.

meet the other elements, where the regulation used does not have clear criteria for what is meant by "...contrary to the public morality or decent behavior or any types of materials which may spread hate or jealousy against anyone..." The provision does not have a clear meter so that people can behave properly. The perspective above is consistent with several cases handled by the Committee. It appears that the Committee is consistent that the criteria for restrictions must be in accordance with existing national law, but it is even more important that the regulation can show clear criteria for a restriction in the sense that it should not be vague.²²

b. Requirement that a Restriction is Necessary to Achieve the Objective ("Necessary to its legitimate aim")

A summary of the Necessity Principle can be seen in the opinion of Elizabeth Evatt and David Kretzmer in *Faurisson v. France*, where restrictions on freedom of expression should not be interpreted as a license to prohibit "unpopular speech" or "speech that some groups of people find offensive", restrictions must be justified to protect one or more of the interests specified in Article 19 paragraph (3) of the ICCPR, namely to respect the rights

²² Marina Adamovich v. Belarus, HRC Communication No. 2619/2015, (25 January 2022), p. 7.12.; Yasinovich and Shevchenko v. Belarus, HRC Communication No. 1835 & 1837/2008, (20 March 2013), p. 9.5–9.6.

or good name of others, to protect national security, public order, health or public morals.²³ The extent of restrictions imposed on freedom of expression should be proportionate to the value protected by the restriction and should not exceed what is necessary. As the Committee states in General Comment 10, restrictions should not endanger the right itself.²⁴

In this case, it is very clear that there is an ulterior motive by the Nepal's EC to suppress criticism of certain candidates during the election period. While the protection of freedom of expression itself is protected regardless of its form, even if it is offensive or wrong,²⁵ therefore there is no need to limit freedom of expression by punishing those who are critical of the government (in this case p. politicians.).²⁶ In addition, the value placed by the ICCPR on freedom of expression is particularly high in the circumstances of public debate in democratic societies regarding public and politic figures.²⁷

²³ HRC. Promotion and protection of the right to freedom of opinion and expression, UN Doc. A/74/486, (2019), p. 5-6.

²⁴ Individual Opinion by Elizabeth Evatt and David Kretzmer in *Faurisson v. France*, co-signed by Eckart Klein (concurring), HRC Communication No. 550/1993, (8 November 1996), p. 8.

²⁵ HRC. Irene Khan, *Promotion and Protection of the Right to Freedom of Opinion and Expression*, (2021) A/HRC/47/25, P. 9-38.

²⁶ GC 34, p. 42.

²⁷ GC 34, p. 34.

Based on the explanation above, it can be understood that it is very difficult to justify restrictions in order to protect the reputation of public figures. This is because the figure is the object of criticism and opposition.²⁸ Therefore, people cannot be limited in their freedom of expression if the implementation of that freedom is a form of criticism.

c. Requirement That the Restriction Must Be Proportional to Achieve the Purpose of the Restriction

The proportionality test determines whether the action taken does not impede public discussion that affects people's lives,²⁹ where the restrictions imposed are also appropriate to achieve their protective function,³⁰ and is the least intrusive measure ("*less intrusive measure*").³¹ Ultimately, a country must demonstrate a clear and direct link between the expression and the threat at hand.³²

The approach to this criteria has had similar results, for example in the case of *Marques de Morais v.*

²⁸ *Marques de Morais v. Angola*, HRC Communication No. 1128/2002, (5 September 2002), p. 6.8.

²⁹ GC 34, p. 33; *Leonid Zdrestov v. Belarus*, HRC Communication No. 2391/2014, (13 March 2020), p. 8.4.

³⁰ GC 34, p. 34.

³¹ GC 34, p. 34.

³² GC 34, p. 35; *Shin v. Republic of Korea*, HRC Communication No. 926/2000, (16 March 2004), p. 7.3.

Angola, where the person concerned was arrested, detained, or had his travel restricted, for writing criticism of the Angolan president. The Committee argued that the severity of the sanctions imposed on him could not be considered a proportionate measure to protect public order or the honor and good name of the President; a public figure who was therefore subject to criticism and opposition.³³ A similar point was made by the Committee in *Adonis v. Philippines* case, where a radio broadcaster was imprisoned for defamation. The Committee found this in violation of Article 19 of the ICCPR, not only because the sanction was unnecessary and unreasonable, but also because lesser sanctions were available.³⁴

In relation to this case, the threat of fines or imprisonment is disproportionate to the protection of freedom of expression.³⁵ Because, there are still alternative measures that can be used.

Based on the explanation and elaboration of the case against the limitation requirement contained in Article 19 paragraph (3) of the ICCPR, it can be seen that

³³ *Marques de Morais v. Angola*, *op.cit.*, p. 6.8.

³⁴ *Adonis v. Philippines*, HRC Communication No. 1815/2008, (26 October 2011), p. 7.7.

³⁵ Human Rights Committee: Freedom of Expression and Elections in the Digital Age. <https://www.ohchr.org/sites/default/files/Documents/Issues/Opinion/ElectionsReportDigitalAge.pdf>. accessed 14 November 2022.

the limitation imposed by the Nepal's EC does not fulfill the entire three-part test. This means that restrictions on freedom of expression cannot be justified under the ICCPR. Looking at the case in Nepal, it is hoped that the experience can be a valuable lesson for Indonesia in regulating restrictions on freedom of expression, especially in the context of elections. It is important to pay attention to the applicable requirements when facing restrictions on freedom of expression, especially ahead of the 2024 electoral contestation. Restrictions on criticism of political figures must meet several criteria, as outlined earlier. First, the restriction must be in accordance with applicable law and have clear boundaries. Second, restrictions must have a well-defined purpose, one of which is to protect the reputation of individuals. However, it is recognized that protecting the reputation of public figures can be difficult to enforce in the context of restrictions on freedom of expression. Third, restrictive measures must be proportionate and not threaten the right itself. This is important not only because it imposes unnecessary and unreasonable sanctions, but also because there are lighter alternative sanctions that can be applied.

Therefore, the author will further explain the steps that Indonesia can take to implement mitigation against the threat of disinformation and measures in line with the

proportionality prerequisite, as stated in Article 19 paragraph (3) of the ICCPR.

2. Ideal Model of Disinformation Mitigation in the Context of General Elections

The circulation of disinformation in the context of elections can be addressed through effective mechanisms at certain stages, such as at the pre-circulation, during circulation, and post-circulation stages of disinformation. Through these mechanisms, restrictions on freedom of expression can be in line with international and national legal instruments.

a. Optimizing Media Literacy Skills as an Antidote to the Spread of Disinformation

In Indonesia, the percentage of internet users in 2019 was around 150 million users or 56% of the total population, spending an average of around 8 hours 36 minutes browsing the internet, which includes an average of 3 hours 26 minutes in active use of social media.³⁶ Meanwhile, in 2021, Indonesia's internet usage increased by 17.7% with 202.6 million users. In this regard, in 2021, Kominfo and Katadata Insight Center ("KIC") released a

³⁶ Meliana Zhong. An Implication Studyf Social Media Literacy at School. *WACANA: Jurnal Ilmiah Ilmu Komunikasi*. Vol. 19, No. 1. p. 2.

survey which stated that 73% of a total of 10,000 respondents used social media as a means of extracting information.³⁷ This shows that the community has been able to utilize the internet as a source of information. However, this does not indicate a high level of understanding of the population's media literacy.

In detail, the digital literacy index in Indonesia is categorized as moderate, as seen from the index score obtained floating above the value limit of 3.00 out of an overall value of 5.00. The index score includes several pillars including the Digital Skills Pillar, Digital Culture Pillar, Digital Ethics Pillar, and Digital Safety Pillar. From the set of pillars above, the one that plays a role in measuring public understanding of information processing and data literacy, as well as critical thinking is the Digital Skills Pillar, which scored 3.44 out of 5.0.³⁸ Furthermore, individuals who carry a high digital literacy index are more likely to disseminate hoax news and reduce positive habits in digesting online news. Instead of achieving enlightenment, digital literacy skills are used haphazardly to mislead.

³⁷ Kementerian Komunikasi dan Informatika Republik Indonesia (Kominfo) & Katadata Insight Centre (KIC), *Status Literasi Digital di Indonesia 2021*, p. 25.

³⁸ *Ibid*, p. 57.

However, it cannot be denied that the even distribution of increased digital media literacy of the public can reduce the obscurity of information through careful analysis and evaluation. The step taken by the Indonesian government is an inter-institutional collaboration, namely a comprehensive media literacy program called the National Digital Literacy Movement (*Gerakan Nasional Digital Literasi*) #SiBerkreasi ("GNLB #SiBerkreasi") in 2018, with the hope of facing the challenge of misleading information and increasing the country's digital competitiveness. The program focuses on digital skills, digital culture and ethics in responding to disinformation; providing webinars aimed at educating the public to become good citizens online; and socializing digital literacy to various sectors, especially the education sector, by integrating digital media literacy materials into the formal curriculum.

Although it is an effort to protect from the rampant disinformation outbreak, the GNLB #SiBerkreasi program is not free from praise and criticism from the public.³⁹ On the one hand, the literacy program movement deters the public from negative content in circulation, including through initiatives to disseminate

³⁹ Dadan Kurnia. Analisis Kritis Terhadap Gerakan Nasional Literasi Digital Dalam Perspektif Good Governance. *Jurnal Academia Praja*. Vol. 4, No. 1. 2021. p. 113.

factual information and build positive virtual communities. On the other hand, the webinars and socialization materials provided tend to focus on obedience to the state through Act No. 11 Year 2008 on Electronic Information and Transactions ("ITE Act"); and present topics such as "earning money through social media" and "becoming an influencer", which frame social media as an appropriate means to build wealth. Thus, it is not surprising that some people consider the materials provided to be intimidating and that some see the literacy program as an "influencer" factory, including Kominfo's expert staff on legal affairs, Henry Subiakto.⁴⁰ This is contrary to its essential point to increase the knowledge of ordinary people about the importance of critical thinking in facing the swift flow of various information exchanges in cyberspace.

Indeed, GNLB #SiBerkreasi has the potential to be an effective catalyst in improving the media literacy of the Indonesian people if it is optimized by narrowing the focus of the material on improving digital media literacy, as well as implementing two-way discussions on webinars to create dynamic interactions. Even if digital media literacy has been improved, the circulation of disinformation cannot be avoided. Therefore, repressive

⁴⁰ *Ibid.*

mechanisms are needed under the threshold of limiting the right to expression, to realize a digital ecosystem that is free from disinformation and other negative content.

b. Formulation of "Content Moderation" under the Threshold of Violation of Freedom of Opinion and Expression

In general, social media platforms such as Facebook, Twitter, Instagram strive for content moderation through fact checking flagging⁴¹, filter, removal, labelling, content demotization in controlling illegal content.⁴² Countries can collaborate with these social media companies to restrain the flow of sensitive information if it conflicts with each country's policies.⁴³ However, account suspension and aggressive content removal features,⁴⁴ including misleading content, is considered more intrusive and can violate the right to expression guaranteed in the ICCPR and foreign constitutions. The use of the fact-checking flagging approach still provides media consumers with the right to receive information.

⁴¹ Dongfang Gaozhao. Flagging fake news on social media: An experimental study of media consumers' identification of fake news. *Government Information Quarterly*. Vol. 38, No. 3. 2021. p. 1.

⁴² ARTICLE 19, 2022. *Moderasi Konten dan Pemangku Kepentingan Lokal di Indonesia*. p. 9

⁴³ Meta Transparency Centre: Content restrictions based on local law. <https://transparency.fb.com/data/content-restrictions/>. accessed 14 November 2022.

⁴⁴ Chloe Havadas: When Does Flagging False Content on Social Media Backfire? <https://slate.com/technology/2020/04/flagging-fake-news-social-media-backfire.html/>. accessed 14 November 2022.

The warning of misleading content has a substantial psychological effect in responding to disinformation for users to respond critically to an issue.⁴⁵

Indonesia cannot be said to have optimized its content moderation options. The weakness of content moderation in Indonesia lies in the difficulty of reaching the offices of social media platforms.⁴⁶ Moreover, the process of submitting and reviewing content by social media platforms takes a long time. In 2017, Rudiantara, the then Minister of Communication and Information, criticized the difficulty of outreach, the slow response, and doubted that foreign social media platforms' policies could understand local issues.⁴⁷

In an effort to counter non-responsive action, the defiance of social media platforms to implement content moderation, a country often gives ultimatums through constitutional practice in the form of fines and penalties,⁴⁸ as well as national scope blocking.⁴⁹ German

⁴⁵ Dongfang GaoZhao, *Loc. Cit.*

⁴⁶ Art. 19, *op.cit.*, p. 31.

⁴⁷ Kabar Bisnis: Soal konten hoax, Menkominfo: Opsi terakhir Facebook akan ditutup. <https://www.kabarbisnis.com/read/2876555/soal-konten-hoax-menkominfo-opsi-terakhir-facebook-akan-ditutup>, accessed 15 Februari 2023.

⁴⁸ Australian Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act 2019, s474.33; Centre for Digital Wellbeing, *International Regulation on social media*, (2021), p. 25.

⁴⁹ Andrew Wilks: Turkey fines social media giants for breaching online law. <https://apnews.com/article/business-turkey-media-social->

law enforcement through The Network Enforcement Act ("NetzDG"), imposes large fines for platforms' non-compliance with the removal of content deemed illegal under the German Criminal Code.⁵⁰ Austria enforced a similar policy through The Communications Platforms Act in 2021, in response to hate speech, harassment, and the spread of disinformation on online platforms. As stated in the Act's provisions, social media platform providers with more than 100,000 users in Austria are required to establish effective reporting and removal procedures within 24 hours to 7 days. Failure to comply may result in fines totaling €10 million to the company, and €1 million to the managing board member of the social media platform.⁵¹

Indonesian law enforcement is one of the countries that enforce this non-proportional policy through Article 45A of the ITE Act. Individuals who violate this Article through the spread of false and misleading news may be subject to a fine of up to Rp. 1,000,000,000 (one billion

[media-560de2b21d54857c4c6545c1bd20fc25](https://www.al-monitor.com/originals/2020/11/facebook-twitter-social-media-fines-turkey-youtube.html#ixzz7tMnwaStU). diakses 12 Februari 2023; Diego Cupolo: Facebook, Twitter, other social media companies fined in Turkey. <https://www.al-monitor.com/originals/2020/11/facebook-twitter-social-media-fines-turkey-youtube.html#ixzz7tMnwaStU>. accessed 12 Februari 2023.

⁵⁰ Act to Improve Enforcement of the Law in Social Networks (Network Enforcement Act)

⁵¹ European Commission, Draft Federal Act on measures to protect users on communication platforms (Communication Platforms Act).

rupiah) and/or imprisonment for a maximum of 6 (six) years. The provisions of the law listed above are a disproportionate criminalization paradigm based on Article 19 paragraph (3) of the ICCPR. Reflecting on the implementation of restrictions on freedom of opinion and expression in various countries, it is not wrong to say that law enforcement is oppressive, and controversially serves the political purpose of silencing opposition and criticism.

c. Urgency of Information Monitoring and Assessment Program Projection

In the practice of restricting freedom of expression, the government's view must be consistent with international instruments, and the process must be accompanied by detailed analysis and assessment. However, the spread of disinformation has increased exponentially in a short period of time as elections approach. To tackle this issue, Bawaslu is in the stage of designing a program to deal with disinformation in the upcoming 2024 elections. Not only Kominfo, the *Badan Siber Sandi Negara* ("BSSN"), Bawaslu, *Masyarakat Anti Fitnah Indonesia* ("MAFINDO"), and other organizations should participate in efforts to prevent the circulation of disinformation through the design of the Digital

Community Concept.⁵² The multi-stakeholder consortium's initiative includes blocking disinformation, sara politicization, and hoaxes, without any clarity on what methods will be used to filter misinformation, disinformation, and malinformation.

Recalling that freedom of expression applies to *all types* of information, the wrongful removal of content may violate people's integral rights in civil and political life. Therefore, actions that can be taken in this way include:⁵³ **First**, improving the ability of institutions to detect, analyze and expose disinformation is done by providing tools that can aggregate and gather subject matter experts. **Second**, strengthen coordinated and joint responses to disinformation, creating an always-on notification system to provide information. **Third**, collaborate and mobilize the private sector to tackle disinformation together.

Through disinformation, it can spark the fire of hatred in the form of hate speech, which is the most serious abuse of the

⁵² Jaa Pradana: Cegah Disinformasi dan Ujaran Kebencian Pemilu 2024, Bawaslu Rancang Konsep Komunitas Digital. <https://www.bawaslu.go.id/id/berita/cegah-disinformasi-dan-ujaran-kebencian-pemilu-2024-bawaslu-rancang-konsep-komunitas-digital>. accessed 14 Februari 2023.

⁵³ European Commission: Action Plan against Disinformation. https://ec.europa.eu/info/sites/default/files/eu-communication-disinformation-euco-05122018_en.pdf. accessed 14 November 2022.

right to freedom of expression.⁵⁴ Thus, proactive information review should include testing through the Rabat Plan of Action threshold test, legalized by the United Nations High Commissioner for Human Rights.⁵⁵

The Rabat Plan of Action aims to help judicial authorities define restrictions on freedom of expression to identify cases where speech acts may constitute incitement to hatred and be punishable. In assessing the appropriateness of restrictions on freedom of expression through the test, it must consider: 1) the social and political context;⁵⁶ 2) speaker status,⁵⁷ 3) intention to incite the audience against the target group;⁵⁸ 4) content and form of speech;⁵⁹ 5) spread rate;⁶⁰ dan 6) possibility of causing harm.⁶¹ Through the Rabat Plan of Action, it is expected to realize the digital information biome, without any violation of human rights.

⁵⁴ Elena Mihajlova, Jasna Bacovska, and Tome Shekerdjiev. *Freedom of Expression and Hate Speech*. Skopje: OSCE. 2013. p. 24.

⁵⁵ HRC. Annual report of the United Nations High Commissioner for Human Rights, United Nations. Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred. UN. Doc A/HRC/22/17/Add.4, (2013), p. 6.

⁵⁶ *Ibid*, p. 29(a).

⁵⁷ *Ibid*, p. 29(b).

⁵⁸ *Ibid*, p. 29(c).

⁵⁹ *Ibid*. p. 29(d).

⁶⁰ *Ibid*. p. 29(e).

⁶¹ *Ibid*. p. 29(f).

C. Conclusion

The Nepal's EC response to the #NoNotAgain campaign criticizing the prime ministerial candidate in the 2022 general election is a violation of the freedom of opinion and expression guaranteed by the ICCPR. In the first category, no justification can be submitted, while in the second category, even if there is a justification for limiting freedom of expression, it must follow the three-part test in accordance with Article 19 paragraph (3) of the ICCPR. However, Nepal's EC action does not fulfill all three conditions, as the parameters of the restriction are vague and unnecessary, making it disproportionate.

Nepal's condition will be relevant for Indonesia in preparation for the upcoming elections in 2024. Kominfo's option to close major websites to stop the spread of fake news has the potential to violate people's freedom of expression. Therefore, it is necessary to formulate alternative mechanisms such as increasing digital literacy, content moderation, and monitoring programs that adopt the thresholds in the Rabat Plan of Action, especially related to disinformation and hate speech. Through these alternatives, when dealing with the phenomenon of widespread disinformation, the government should take steps that least violate freedom of expression when available.

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