

# Freedom of Expression in the Spread of Hoax News on Social Media Between Indonesia and South Korea

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## ABSTRACT

Freedom of expression is the right of people to freely express their opinions through various media without considering their limitations and without violating the rights of others. One example of the spread of fake news that has the potential to damage reputation is the spread of hoax news, which mainly occurs in Indonesia and South Korea. This study aims to understand the comparison of regulations governing the spread of fake news in Indonesia and South Korea and how the government faces this problem in the election process. The method used is a normative methodology through a legislative approach, which allows a comparison of freedom of opinion regulations in spreading fake news between Indonesia and South Korea. In Indonesia, freedom of opinion is regulated in Article 28 E paragraph (3) of the 1945 Constitution of the Republic of Indonesia and Article 1 paragraph (1) of Law Number 9 of 1998 concerning Independence, while South Korea indirectly regulates freedom of opinion regulated in Article 21 paragraph 4 of the South Korean Law. In Indonesia and South Korea, special regulations are given regarding sanctions against perpetrators of spreading fake news, in Indonesia is contained in Article 28, paragraph (1) and paragraph (2) of Law Number 11 of 2008 concerning Information and Electronic Transactions, while South Korea is substantially stated in Criminal Act No. 14415 Article 307. However, it is necessary to ensure that freedom of expression is not used to circulate fake news, which is a symptom of a problem rather than the root of the issue itself.

## Introduction

Freedom of expression is the basis for every individual to actualize themselves as a form that upholds democratization, including in political matters.<sup>1</sup> This reflects the high popularity of the democratic system. The constitution of

<sup>1</sup> W Syaputri et al., "Internet (Social Media) and Its Relationship with Hoax and Fake News in the 2019 Presidential Election," in *Proceedings of the 1st Paris Van Java International Seminar on Health, Economics, Social Science and Humanities (PVJ-ISHESSH 2020)*, 2021, <https://doi.org/10.2991/assehr.k.210304.163>.

Indonesia guarantees individual freedoms;<sup>2</sup> however, these freedoms make the divide between identities (religion, ethnicity, language, gender, etc.) clearer, especially concerning the political issues of the nation). Today's society is facing the progress of the times. Many still cannot identify social media's positive or negative sides. Social media allows people to communicate without limits and without considering morals and ethics.<sup>3</sup>

Elections are an essential moment for democracies in determining leaders and public policies. An election is indeed not far from the existence of a campaign. Theoretically, a campaign is an organized and systematic activity that encourages people to do something they want using specific methods and media. Technology and social media development have significantly impacted the electoral process in the current digital era.<sup>4</sup>

The spread of hoax news in Indonesia before the 2024 General Election campaign is widely circulated. The Ministry of Communication and Informatics related to the 2024 General Election found dozens of hoaxes spread in 355 contents on various social media during the period July 17-26 November 2023. Kominfo noted that in July 2023, there were only six hoax findings, then August 18 hoaxes, September 13 hoaxes, and October 20 hoaxes. The findings then increased to 39 hoaxes in November 2023 as the campaign period approached.<sup>5</sup>

The General Election Commission (KPU) stipulates that the 2024 Election campaign period officially starts from November 28, 2023, to February 10, 2024, for both presidential and vice-presidential and legislative candidates. If we look at the distribution, in July-November 2023, the most election hoax content was found on Facebook, namely 312. A total of 274 contents have had their access terminated, and 38 contents are being followed up. Then, on TikTok, there are 21 similar Hoax content, 17 YouTube content, 3 Twitter content, and 2 SnackVideo content. TikTok has cut off access to 4 Hoax contents, while the remaining 17 are being followed up. Then YouTube cut off access to 10 pieces of content, with seven still being followed up. Then Twitter / X cut off access to 1 content and is

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<sup>2</sup> D G F A Sumardi et al., "Sentiment Analysis of Hoax News toward the Election 2019 Based on Student Perspective," *Journal of Physics: Conference Series* 1217, no. 1 (May 1, 2019): 012125, <https://doi.org/10.1088/1742-6596/1217/1/012125>.

<sup>3</sup> Suryo Ediyono, "Analysis of the General Election Hoax News Phenomenon from the Perspective of Pancasila as the Integrity of the Indonesian Nation," *Brazilian Journal of Development* 10, no. 6 (June 19, 2024): e70612, <https://doi.org/10.34117/bjdv10n6-049>.

<sup>4</sup> Wildhan Khalyubi and Aditya Perdana, "Electoral Manipulation Informationally on Hoax Production in 2019 Presidential and Vice Presidential Election in Indonesia," *Journal of Government and Political Issues* 1, no. 2 (November 20, 2021), <https://doi.org/10.53341/jgpi.v1i2.17>.

<sup>5</sup> Fritz Siregar, "The Role of the Elections Supervisory Agency to Contend Hoax and Hate Speech in the Course of 2019 Indonesian General Election," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 07, no. 02 (2020): 158–80, <https://doi.org/10.22304/pjih.v7n2.a2>.

still following up on two content, while SnackVideo only cut off one content, and one other content is still being analyzed.<sup>6</sup>

Indonesia and South Korea are experiencing problems with elections regarding hoax news. In the 2022 provincial election, an AI-generated video circulated on social media depicting President Yoon Suk Yeol supporting a local candidate from the ruling party. In January, voters in New Hampshire received AI-generated robocalls impersonating US President Joe Biden advising them not to vote in the state's presidential primaries.<sup>7</sup> Not only that, the hoax in the South Korean government also found a false policy of prohibiting residents who do not have a vaccine card from determining their voting rights in the presidential election.<sup>8</sup> This was responded to by a spokesperson for the South Korean National Election Commission; the policy was not justified, and: "The claim that unvaccinated people will be prohibited from voting is completely unfounded. There is no relationship between the right to vote and a person's vaccination status."<sup>9</sup>

As countries that embrace a democratic system, Indonesia and South Korea guarantee freedom of speech, both oral and written, for their citizens. Indonesia guarantees freedom of speech as stipulated in Article 28 E paragraph (3) of the 1945 Constitution of the Republic of Indonesia and Article 1 paragraph (1) of Law Number 9 of 1998 concerning Freedom of Speech.<sup>10</sup> In line with this, South Korea indirectly regulates freedom of speech as contained in Article 21 Paragraph 4 of the Law of South Korea related to the limits of freedom of speech, which states that freedom of speech must not injure or violate the honor or rights of others. Indonesia and South Korea provide specific regulations related to sanctions against the perpetrators of the spread of hoax news, in Indonesia as contained in Article 28, paragraph (1) and paragraph (2) of Law Number 11 of 2008 concerning Electronic Information and Transactions, while Korea has been

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<sup>6</sup> Cindy Mutia Annur, "Hoaks Di Media Sosial Meningkatkan Jelang Kampanye Pemilu 2024," *Kata-Data.Com*, December 12, 2023, <https://doi.org/https://databoks.katadata.co.id/infografik/2023/12/12/hoaks-di-media-sosial-meningkat-jelang-kampanye-pemilu-2024>.

<sup>7</sup> Hitoshi Mitomo et al., "How People Respond to Fake News: A Comparison of Japan, South Korea, and Thailand," in *Broadcasting in Japan* (Singapore: Springer International Publishing, 2022), 155–90, [https://doi.org/10.1007/978-981-19-4699-8\\_8](https://doi.org/10.1007/978-981-19-4699-8_8).

<sup>8</sup> Firza Setiawan Putra et al., "Impeachment Mechanism for The President and/or Vice President of Indonesia and United States," *Journal of Indonesian Constitutional Law* 1, no. 2 (2024): 96–111, <https://doi.org/ejournal.pustakaparawali.com/index.php/jicl/article/view/4>.

<sup>9</sup> Sanny Pestari Dewi and Ulul Azmiyati Auliyah, "An Analysis of South Korean TRUST Diplomacy toward Indonesia in Pandemic Covid-19," *Conference Series* 4 (January 26, 2022): 116–32, <https://doi.org/10.34306/conferenceseries.v4i1.707>.

<sup>10</sup> Edwi Arief Sosiawan and Rudi Wibowo, "Kontestasi Berita Hoax Pemilu Presiden Tahun 2019 Di Media Daring Dan Media Sosial," *Jurnal Ilmu Komunikasi* 17, no. 2 (2020): 15.

substantively contained in Criminal Act No. 14415 in Article 307 and has specific regulations in punishing the spread of hoaxes of presidential candidates.<sup>11</sup>

In line with the two-state regulations, there are certainly differences in definition. In the existing regulations, South Korea does not provide specifications of hoax news elements in the formulation of articles, so they are attached to the existence of defamation rules.<sup>12</sup> While Indonesia provides special regulations related to hoax news with defamation with different regulations. However, authorization in South Korea, can be felt that there are standard regulations regarding hoax news, especially those that are detrimental or smear other names with true news but still get criminal threats.

The originality of this research is based on several previous studies with relatively similar characteristics in terms of themes and studies. Based on the author's search, research that is almost the same as the title of this study was found, written by: First, Edwi Arief Sosiawan, "Contestation of Hoax News of the 2019 Presidential Election in Online Media and Social Media", *Journal of Communication Science*, 2019. The focus of the discussion is the Contestation of the Spread of Presidential Election Hoax News on Online Media and Social Media. In contrast, the difference in our research focuses on things that can be done to minimize the spread of hoax news in election campaigns on social media.<sup>13</sup>

Second, Pande Made Adhistya Prameswari, "Hoax Regulation in the Perspective of Comparative Law in Indonesia", *Kertha Semaya Journal*, 2021. The focus of the discussion is on special rules governing criminal acts that occur in cyberspace, which cause problems in their application, so it is necessary to reform the law to find a comprehensive legal concept and be able to deal with the issue of Hoax Regulation. In contrast, the difference in our research focuses on special rules related to the sentences given to the perpetrators of spreading hoax news.

Third, Cindy, D., Bella, I. D., Chandra, G. G. C., & Bryan, L. D., *Legal Review of Criminalization of Hoax News: Maintaining Unity vs. Freedom of Opinion*, *Cosmic Journal of Law*, Faculty of Law, University of Muhammadiyah Purwokerto, 2021. The focus of the discussion is related to hoax news that makes aspects of democracy, such as conscious dialogue and proper information, unattainable. In contrast, the difference in our research focuses on freedom of opinion being an excuse for spreading hoax news.<sup>14</sup>

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<sup>11</sup> Nurus Zaman et al., "Questioning the Constitutional Court Decision Regarding Age Limit of Presidential and Vice-Presidential Candidates," *PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH* 9, no. 2 (2024): 611–29, <https://doi.org/10.22373/petita.v9i2.299>.

<sup>12</sup> Cindy Bella Devina et al., "Tinjauan Hukum Kriminalisasi Berita Hoax: Menjaga Persatuan vs. Kebebasan Berpendapat," *Kosmik Hukum* 21, no. 1 (2021): 51.

<sup>13</sup> Jennifer Yang Hui, "Social Media and the 2019 Indonesian Elections: Hoax Takes the Centre Stage," in *Southeast Asian Affairs 2020* (ISEAS Publishing, 2020), 155–72, <https://doi.org/10.1355/9789814881319-010>.

<sup>14</sup> Windisen Windisen, "Fake News in the Time of COVID-19 in Indonesia: Criminal Law Issues," *Jurnal Kajian Pembaruan Hukum* 2, no. 2 (August 31, 2022): 205, <https://doi.org/10.19184/jkph.v2i2.31184>.

This study aims to add insight into knowledge about the differences in regulations related to the sentencing of perpetrators of the spread of hoaxes during elections between Indonesia and South Korea and to find out what kinds of acts of freedom of expression can be categorized as criminal acts of spreading hoaxes on social media related to the spread of hoax news during elections between Indonesia and South Korea and the handling of perpetrators of spreading hoax news.

## Methods

The legal research methodology used in this writing is normative with a statutory approach. This methodology sees law as something that must be applied collectively in society.<sup>15</sup> Therefore, normative methodology departs from assumptions about values that need to be applied collectively and then sees whether there are legal products that can be interpreted to harmonize with these values. The legal approach used in this research is the statute approach. The statutory approach is carried out by “reviewing and analyzing all laws and regulations related to the legal issues being addressed.

## Discussion

### Comparison of Hoax News Dissemination Regulations in Indonesia and South Korea

Telecommunication technology is advancing rapidly nowadays. The spread of the internet among people, from children to adults, has changed their lifestyles. The internet is not only known to office people; even farmers and traders have started using it. Anyone, regardless of age, occupation, and position, can use the internet with social media, which now has many kinds.<sup>16</sup> The internet allows technology users to access social media more efficiently. Through social media, the circulation of information in society is getting faster. If, in previous times, the circulation of information was more one-way, originating from the mass media and in the era of social media, individuals can become agents of information dissemination with a broader capacity.<sup>17</sup> Changes in information methods certainly do not come without adverse effects. Changes in information distribution are often

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<sup>15</sup> Amiruddin dan Zainal Asikin, *Pengantar Penelitian Hukum* (Jakarta: Rajawali Pers, 2018), <https://www.rajagrafindo.co.id/>.

<sup>16</sup> Arina Rohmatul Hidayah, “Political Marketing of Stream by Candidates through Facebook in the 2018 Regional Election of East Java,” *Politicon: Jurnal Ilmu Politik* 3, no. 1 (March 31, 2021): 1–33, <https://doi.org/10.15575/politicon.v3i1.9456>.

<sup>17</sup> Jiuchang Wei et al., “The Process of Crisis Information Dissemination: Impacts of the Strength of Ties in Social Networks,” *Kybernetes* 43, no. 2 (February 25, 2014): 178–91, <https://doi.org/10.1108/K-03-2013-0043>.

misused by irresponsible people, one of which is the spread of hoaxes or fake news, which can be accessed quickly and easily via the Internet or social media.<sup>18</sup>

Cyberdemocracy has moved the tradition of telling stories and exchanging gossip and rumors from word of mouth to information links that fill social media timelines. The two-way interaction model on the internet and social media makes the user community act as readers who interpret texts and as parties who produce texts in the form of other meanings that the original text may not intend. For example, reproducing hoax news texts has created new meanings in the form of exaggeration.<sup>19</sup> In the process of exaggeration, readers will produce the meaning of the text beyond what the initial text intended so that what is expected can be bombastic, and what is worrying can be very scary. This information distribution structure gives the audience more power, so they are no longer just reading. As a result, they are more proactive in spreading what they think is right and by their values.<sup>20</sup>

The conditions for disseminating such information become very pronounced during the election contestation. The portrait of the 2024 elections is a clear illustration that competition, friction, and clashes occur not only on the front stage of politics but are also often present and even driven from the backstage (black stage) of politics. Hoax spreaders may have a political or personal agenda they want to promote. They may want to discredit a political opponent or favor a particular candidate, so they create or spread fake news that supports their cause.<sup>21</sup> Therefore, the validity of facts is no longer a priority that must be present because the more critical aspect is virality and how it can ignite the emotions of its readers to follow the will of the creators of such information and news.<sup>22</sup> This will indirectly trigger divisions against the nation's unity—cyberwar in political camps to dominate the discourse and further expand the support base to gain votes.

As we can see, the perpetrator of spreading hoax news that was popular during the 2019 election period was Ratna Sarumpaet, a sympathizer of one presidential candidate. Ratna Sarumpaet has been proven legally and convincingly

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<sup>18</sup> Risyad Fadhillah Ahmad, "Criminal Acts for Event Organizers Online Game Tournament Organizers Who Receive Sponsorship from Online Gambling Sites Based on Indonesian Criminal Law," *Trunojoyo Law Review* 5, no. 2 (August 29, 2023): 161–74, <https://doi.org/10.21107/tlr.v5i2.20942>.

<sup>19</sup> James W. Dearing, "Evolution of Diffusion and Dissemination Theory," *Journal of Public Health Management and Practice* 14, no. 2 (March 2008): 99–108, <https://doi.org/10.1097/01.PHH.0000311886.98627.b7>.

<sup>20</sup> Rocky Marbun, "Disengagement of Hoax and Hate Speech from Social Context: Analysis of Intersection between Criminal Law and the Influence of the Linguistic," in *International Conference on Law Reform (INCLAR 2019)* (Atlantis Press, 2020), 147–51, <https://www.atlantispress.com/proceedings/inclar-19/125935426>.

<sup>21</sup> Samuel Fernando, Apriade Voutama, And Ade Andri Hendriadi, "Klasifikasi Berita Hoaks Kampanye Pemilihan Umum (Pemilu) 2024 Menggunakan Algoritma Naïve Bayes," *Jati (Jurnal Mahasiswa Teknik Informatika)* 8, No. 2 (2024): 2112.

<sup>22</sup> Tansah Rahmatullah, "Hoax Dalam Perspektif Hukum Indonesia," *Jurnal Hukum Media Justitia Nusantara* 8, No. 2 (2018): 108.

guilty of committing the criminal act of broadcasting false notifications and intentionally publishing chaos among the public. For her actions in manipulating information about her photo as if she was beaten by supporters by the opponent of the candidate she supported. The panel of South Jakarta District Court judges has sentenced the defendant, Ratna Sarumpaet, to two years' imprisonment.<sup>23</sup> Certainly, the state has provided legal certainty against the perpetrators of Hoax spreading so that they can be charged under Indonesian positive law.

Indonesia is a democratic country that upholds freedom of expression. Article 28 E paragraph (3) of the 1945 Constitution states, "Everyone has the right to freedom of association, assembly, and expression."<sup>24</sup> The existence of freedom of opinion is often abused by irresponsible people who take advantage of the right to freedom by making a shield to spread baseless information, leading to public opinion. One of them is reflected in the Ratna Sarumpaet case.<sup>25</sup> This case is just one of the various criminal charges against the perpetrators of spreading false information. These criminal charges are implemented to maintain national stability. However, on the other hand, this action can potentially interfere with the right to freedom of speech, which the Constitution also guarantees. Even when it occurs, the abuse of freedom of speech is a significant concern.

The regulation of the spread of hoax news and hate speech in Indonesia can be seen from positive law. Article 154 of the Criminal Code, article 154a, article 156, article 156a, and article 157, paragraph (1) and paragraph (2) regulate hate speech and differ from the spread of hoax news. Hate speech includes denouncing, inciting, and insulting certain parties with harmful content in various aspects of life. Hoax news, on the other hand, is defined as news that has three criteria: (1) follows the format of media coverage containing (2) verifiable falsehoods and (3) deliberate deception for political or commercial purposes.<sup>26</sup> Juridically, the regulation of the dissemination of hoax news can be found in Article 28, paragraph (1) and paragraph (2) of Law No. 11 of 2008 concerning Electronic Information and Transactions, as well as Article 40, paragraph (2) of Law No.19 of 2016 concerning Amendments to Law No.19 Year 2016 on the Amendment of Law No.11 Year 2008 on Electronic Information and

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<sup>23</sup> Sahrul Pora, Rasid Pora, and Dafrin Muksin, "Hoax Ratna Serumpaet Dan Perang Wacana Di Media Sosial," *Journal of Government Science (GovSci): Jurnal Ilmu Pemerintahan* 3, no. 1 (January 23, 2022): 22–34, <https://doi.org/10.54144/govsci.v3i1.28>.

<sup>24</sup> Ansori Ansori, Agung Ali Fahmi, and Mukhlis Mukhlis, "A Normative Review of The Simultaneous General Election and Regional Head Election Delay," *Trunojoyo Law Review* 4, no. 1 (August 8, 2022): 36–44, <https://doi.org/10.21107/tlr.v4i1.16340>.

<sup>25</sup> Febriansyah Febriansyah and Nani Nurani Muksin, "Fenomena Media Sosial: Antara Hoaks, Destruksi Demokrasi, Dan Ancaman Disintegrasi Bangsa," *Sebatik* 24, no. 2 (December 16, 2020), <https://doi.org/10.46984/sebatik.v24i2.1091>.

<sup>26</sup> Young Min Baek, Hyunhee Kang, and Sonho Kim, "Fake News Should Be Regulated Because It Influences Both 'Others' and 'Me': How and Why the Influence of Presumed Influence Model Should Be Extended," *Mass Communication and Society* 22, no. 3 (May 4, 2019): 301–23, <https://doi.org/10.1080/15205436.2018.1562076>.

Transactions, and Article 40 paragraph (2a) of Law No.19 Year 2016 on the Amendment of Law No.11 Year 2008 on Electronic Information and Transactions.<sup>27</sup>

The spread of hoax news is a problem in Indonesia and South Korea, a democratic country that respects freedom of speech. However, South Korea has set limits to the freedom rights of its citizens, as stated in Article 21 Paragraph (4) of the South Korean Constitution, which states that freedom of speech must not injure or violate the honor of others. In this case, South Korea can classify hoaxes, often protected by the First Amendment, as part of freedom of speech. The spread of hoaxes has become a serious problem in election contestation, such as hoax news about candidate Moon Jae-in that spread widely on social media after the campaign. False and provocative allegations that Moon Jae-in had close ties with North Korea and would compromise South Korea's national security.

Juridically, South Korea has guaranteed the existence of untrue news or hoaxes accumulated against the elements of defamation regulated in Criminal Act No. 14415 in Articles 307, 308, and 309 and Article 44 paragraph (7) of the Telecommunications Business Act and Article 70 of the Act on Promotion of Information and Communications Network Utilization and Information Protection. Apart from that, South Korea also specifically regulates the punishment of groups or individuals who spread hoax news related to presidential candidates as regulated in Article 82 paragraph (4) and Article 250 of the Public Official Election Act.<sup>28</sup>

So, in this case, based on the comparison of the two countries, Indonesia and South Korea, in the element of Hoax news reporting, Indonesia has many quite complex regulations, and the clause of elements in the spread of hoax news has been regulated separately. In South Korea, the meaning of the word hoax news dissemination is accumulated with defamation.

## **The Government's Efforts in Handling the Spread of Hoax News on Social Media in Indonesia and South Korea**

Hoaxes are invalid or false news or statements that are spread to create panic and use inaccurate data.<sup>29</sup> In addition, some people create hoax news to influence someone's mind about something, which can lead to wrong thinking due to the

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<sup>27</sup> Wahyu Widodo et al., "Hoax Di Indonesia: Suatu Kajian," *Jurnal Meta-Yuridis* 2, no. 2 (2019): 72–73, <http://journal.upgris.ac.id/index.php/meta-yuridis/article/view/4691>.

<sup>28</sup> Young Min Baek, Hyunhee Kang, and Sonho Kim, "Fake News Should Be Regulated Because It Influences Both 'Others' and 'Me': How and Why the Influence of Presumed Influence Model Should Be Extended," *Mass Communication and Society* 22, no. 3 (May 4, 2019): 301–23, <https://doi.org/10.1080/15205436.2018.1562076>.

<sup>29</sup> Ethan Shattock, "Fake News, Free Elections, and Free Expression: Balancing Fundamental Rights in Irish Policy Responses to Disinformation Online | Fake News, Eleições Livres e Liberdade de Expressão: Equilibrando Direitos Fundamentais Em Políticas Públicas Irlandesas Para," *Revista Publicum* 5, no. 2 (December 16, 2019): 201–31, <https://doi.org/10.12957/publicum.2019.47210>.



influence of the opinions developed. Before social media such as Instagram, Facebook, Twitter, Path, WhatsApp, and even blogs, hoax news was disseminated through e-mail and short messages, namely Short Message Services (SMS).<sup>30</sup>

According to UNESCO, Cherilyn Ireton, and Julie Posetti (2018), “fake news” intentionally misleads people and has a specific political agenda. Unlike hoaxes that only mislead, fake news has no factual basis but is presented as a series of facts, as revealed by Tapscott and Don Matthew in 2013.<sup>31</sup>

The original intent of Article 28E paragraph (3) of the 1945 Constitution is based on the legal ideals, values, and principles of Pancasila embodied in the five precepts. In the context of freedom of speech, Pancasila emphasizes the balance between rights and obligations.<sup>32</sup> In terms of criminal policy against insults and defamation through social media, this policy is guided by the Second Precept 'Fair and Civilized Humanity', which is inspired by the First Precept 'Belief in One God' and implemented through the Third Precept.”

Freedom of expression includes seeking, receiving, and disseminating ideas and information. This freedom is a broad right with significant legal implications for human rights.<sup>33</sup> While freedom of expression is a constitutional right guaranteed by the 1945 Constitution,<sup>34</sup> Its meaning should not be freely interpreted without regard to legal and other norms. Human rights, including the right to freedom of opinion, must be placed in the context of a national legal system guided by Pancasila. Freedom of speech owned by one should not harm or violate the same rights held by others.

According to the research results of the Indonesian Telematics Society, the most common types of hoaxes received by the public are related to socio-political topics, regional elections, government, and SARA. In this study, hoax cases are news, information, and images related to government and Presidential activities.<sup>35</sup> Therefore, hoaxes have a complex legal dimension because they are related to

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<sup>30</sup> Dewi Ayu Pranesti and Ridwan Arifin, “Perlindungan Korban Dalam Kasus Penyebaran Berita Hoax Di Media Sosial Di Indonesia,” *Jurnal Hukum Media Bhakti*, 2019, 8, <https://journal.fhupb.ac.id/index.php/jhmb/article/view/28>.

<sup>31</sup> Najwa Syifa Radzakani, Yudho Taruno Muryanto, and Muhamad Alief Hidayat, “Hate Speaking and Hoax as Challenges to Democracy in the Digital Era,” in *Proceedings of the International Conference for Democracy and National Resilience 2022 (ICDNR 2022)* (Paris: Atlantis Press SARL, 2023), 16–21, [https://doi.org/10.2991/978-2-494069-75-6\\_3](https://doi.org/10.2991/978-2-494069-75-6_3).

<sup>32</sup> Syahril Siddik, “Cursing the Sacred: Debates on Islam and Blasphemy in Indonesia,” *Tebuireng: Journal of Islamic Studies and Society* 2, no. 1 (December 31, 2021): 1–29, <https://doi.org/10.33752/tjiss.v2i1.2241>.

<sup>33</sup> Muwaffiq Jufri, *Hukum Dan Hak Asasi Manusia; Dasar Teori Dan Praktiknya* (Depok: Rajawali Pers, 2023), <https://www.rajagrafindo.co.id/produk/hukum-dan-hak-asasi-manusia-dasar-teori-dan-praktiknya-muwaffiq-jufri/>.

<sup>34</sup> Firdaus Syam et al., “Narrative and the Politics of Identity: Patterns of the Spread and Acceptance of Radicalism and Terrorism in Indonesia,” *Religions* 11, no. 6 (June 12, 2020): 290, <https://doi.org/10.3390/rel11060290>.

<sup>35</sup> Hairiyah Hairiyah, “Islam Dan Nasionalisme: Studi Atas Pergumulan Islam Dan Nasionalisme Masa Pergerakan Nasional Indonesia,” *Staatsrecht: Jurnal Hukum Kenegaraan Dan Politik Islam* 2, no. 1 (May 31, 2022): 115–31, <https://doi.org/10.14421/staatsrecht.v2i1.2804>.

criminal law, technology law, and human rights. Original sentence: Based on the results of research by the Indonesian Telematics Society, the types of hoaxes that are often received by the public are in the fields of socio-politics, regional elections, government, and SARA. In this study, the cases are in the form of information or news and hoax images related to the administration of the government and the President. Therefore, hoaxes have a complex law enforcement dimension because it will be closely related to criminal law, law and technology, and even human rights.<sup>36</sup>

Based on Article 28, paragraph 1 of Law No. 11 of 2008 concerning Information and Electronic Transactions (UU ITE), as emphasized by Hamzah (2014), Bassar (2016), Reid (1997), and Rosita & Hari (2016), it explains the spread of hoaxes or false news: “Any person who intentionally and without having the right to disseminate false and misleading news that results in consumer harm in electronic transactions.

The Indonesian government handles the spread of hoax news on social media in several ways:<sup>37</sup>

- 1) Closing Content or Account Access: To stop the spread of false information, they close access to content or accounts that spread hoaxes.
- 2) Slowing down or disconnecting the Internet: The government can slow down or disconnect Internet networks to stop the spread of hoaxes that can harm consumers in electronic transactions.
- 3) Cooperate with Digital Platforms: The government is working with digital platforms to close accounts that have proven to be spreading hoaxes.
- 4) Limiting Access to Digital Platform Features: The government can restrict access to certain digital platform features to stop the spread of hoaxes.
- 5) Implementation of the Electronic Information and Transaction Law (ITE Law): The government applies the ITE Law, which stipulates punishment for hoax spreaders with a maximum sentence of six years in prison and/or a maximum fine of one billion rupiah.

In South Korea, handling the spread of hoax news is done in several ways:

- 1) Monitoring and stopping inappropriate content: Encourage online intermediaries to monitor and crack down on problematic content.

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<sup>36</sup> Ainun Najib et al., “Regulation on Freedom of Expression on Social Media in Indonesia and Malaysia,” *Journal of Indonesian Constitutional Law* 1, no. 1 (2024): 46–60, <https://doi.org/https://ejournal.pustakaparawali.com/index.php/jicl/article>.

<sup>37</sup> Agus Purnomo et al., “Characteristics of Hate Speech and Freedom of Expression in the Perspective of Maqāṣid Al-Sharī’ah,” *JURIS (Jurnal Ilmiah Syariah)* 22, no. 1 (June 26, 2023): 171, <https://doi.org/10.31958/juris.v22i1.9446>.

- 2) Regulating the definition and handling of “fake news”: Propose amendments to the Network Act that define “fake news” and regulate service providers that fail to limit the spread of harmful disinformation.
- 3) Punish media outlets that publish false information: Introduce a penalty of five times the estimated loss if the media publishes false information, intentionally or unintentionally.

In synthesis, South Korea is taking measures to monitor and stop the spread of hoax news through online intermediaries, regulate the definition and handling of “fake news,” and punish media that publish false information. However, Indonesia's internet restriction policy has raised concerns that some people perceive as threatening individual freedom of speech. According to Suparman Marzuki, a synthesis and harmonization between international human rights legal instruments, the Indonesian Constitution, and the national human rights law is required to understand the internet restriction policy from the perspective of human rights in Indonesia.<sup>38</sup>

The following sets out the right to freedom of expression and the right to communication and information in several key documents:<sup>39</sup>

- 1) International Covenant on Civil and Political Rights (ICCPR): An international human rights instrument that regulates civil and political rights derived from the Universal Declaration of Human Rights (UDHR).
- 2) Constitution of the Republic of Indonesia (UUD NRI) 1945: As the primary legal basis in Indonesia, it acts as a grundnorm.
- 3) The Law on Human Rights (UU HAM) explains and affirms the human rights listed in the 1945 Constitution.

Two approaches can be used to address the problems that have occurred in society: penal and non-penal. Penal efforts, or law enforcement, involve criminal law actions to prevent and punish criminals. This process includes investigation, further investigation, prosecution, and others to provide criminal sanctions as a threat to the perpetrators. Meanwhile, non-penal efforts focus more on preventing crime before it occurs.<sup>40</sup> This method does not involve the criminal law system but emphasizes human values and behavior by legal rules. Law has a vital role in securing the life of the social community because it has a reciprocal relationship with society. Thus, non-penal measures can help increase awareness and harmony

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<sup>38</sup> Nur Cahyo Ari Prasetyo and Sri Endah Wahyuningsih, “The Handling Of Hoax/False Information In The Legal Jurisdiction Area,” *Law Development Journal* 3, no. 3 (August 12, 2021): 564, <https://doi.org/10.30659/ldj.3.3.564-572>.

<sup>39</sup> Agung Ali Fahmi, Muwaffiq Jufri, and Ansori, “The Implementation of Islamic Value Absorption in Regional Regulations on Districts at Madura,” *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 15, no. 1 (2020): 157–58, <https://doi.org/http://doi.org/10.19105/al-ihkam.v15i1.2682>.

<sup>40</sup> Tan Yigitcanlar and Sang Ho Lee, “Korean Ubiquitous-Eco-City: A Smart-Sustainable Urban Form or a Branding Hoax?,” *Technological Forecasting and Social Change* 89 (November 2014): 100–114, <https://doi.org/10.1016/j.techfore.2013.08.034>.

between law and society and reduce crime through a more preventive and educative approach. In synthesis, penal and non-penal measures have different objectives, but both are important in addressing the crime problem in society. Penal measures focus on eradication and punishment, while non-penal measures focus on prevention and education. Both approaches can be used simultaneously to achieve a more compelling goal in addressing the problem of crime.

The South Korean government has taken several steps to stop the spread of hoax news. Here are some examples of steps taken:<sup>41</sup>

- 1) Development of Machine Learning-Based Classification Model: The South Korean government has developed a machine learning-based classification model to detect fake news in real time. This model has proven effective in detecting potential phony news and providing concrete solutions to stop the spread of hoaxes.
- 2) Digital Literacy Education: The South Korean government has conducted digital literacy education programs in educational institutions to increase public understanding of fake news. This program has positively impacted people's ability to detect fake news and form a critical attitude toward information.
- 3) Legal handling: The South Korean government has prioritized tackling the crime of spreading fake news every year. The Republic of Korea Police is strongly committed to enforcing the law against perpetrators of this crime.
- 4) Communication Strategy: Lubuklinggau City Police in South Korea has developed an effective communication strategy to deal with fake news on social media. This strategy includes pre-emissive, repressive, and preventive efforts that positively impact society.
- 5) Counseling and Education: The South Korean government has also conducted counseling and education on hoax news, the mask distribution movement, and hand washing to address problems in the community. This activity has taught the public to always be wise in receiving information, to use masks, and to wash hands properly.

Thus, the South Korean government has taken adequate measures to stop the spread of hoax news and raise public awareness about the importance of accurate and factual news. In Indonesia, freedom of speech is guaranteed by Article 28 of the 1945 Constitution of the Republic of Indonesia and Article 1 of Law Number 9 of 1998 on Freedom.<sup>42</sup> Similarly, South Korea indirectly regulates freedom of speech with limitations listed in Article 21 Paragraph 4 of the South Korean

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<sup>41</sup> M. Jae Moon et al., "A Comparative Study of COVID-19 Responses in South Korea and Japan: Political Nexus Triad and Policy Responses," *International Review of Administrative Sciences* 87, no. 3 (September 18, 2021): 651–71, <https://doi.org/10.1177/0020852321997552>.

<sup>42</sup> Ni Putu Suci Meinarni and Emmy Febriani Thalib, "Privacy Related to Cyber Space Activities," in *Proceedings of the International Conference on Innovation in Research (ICIIR 2018) – Section: Economics and Management Science* (Paris, France: Atlantis Press, 2019), 123–39, <https://doi.org/10.2991/iciir-18.2019.32>.

Constitution, which asserts that freedom of speech must not injure or violate the honor or rights of others.<sup>43</sup>

The government has issued special regulations in Indonesia and South Korea to punish perpetrators of spreading hoax news through social media. In Indonesia, the punishment applied is based on Article 45A of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. The penalties include imprisonment for six years and/or a fine of Rp. 1.000,000,000.00. Meanwhile, in South Korea, the punishment applied is based on Criminal Act No. 14415, Article 309. According to paragraph (1), the offender may be punished with imprisonment without hard labor for not more than three years or with a fine not exceeding seven million won. Paragraph (2) provides that the offender may be punished by imprisonment for not more than seven years, suspension of qualification for not more than ten years, or by a fine not exceeding fifteen million won. In summary, both countries have taken serious steps to stop the spread of hoax news through social media, with strict and effective punishments.<sup>44</sup>

## Conclusion

Due to the development of information technology and social media, both Indonesia and South Korea face complex challenges in dealing with the spread of hoax news. The spread of hoax news has seriously threatened social and political stability, as it can influence public opinion, disrupt the democratic process, and even trigger social conflict. In Indonesia, regulations related to the spread of hoax news are contained in Law No. 11/2008 on Electronic Information and Transactions (ITE Law) and Law No. 19/2016, which is an amendment to the ITE Law. Meanwhile, South Korea has laws regulating the spread of hoax news, such as Criminal Act No. 14415, the Network Act, and the Public Official Election Act.

The main difference between the two countries' approaches lies in the legal arrangements and handling strategies. In Indonesia, the government focuses on law enforcement by punishing the perpetrators of spreading hoax news with imprisonment and fines under the provisions of the ITE Law. In contrast, in South Korea, in addition to law enforcement, the government also focuses on digital literacy education, technology development to detect hoaxes in real-time, and effective communication strategies. In conclusion, both countries are aware of the importance of handling hoax news in maintaining social and political stability.

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<sup>43</sup> Ni Putu Suci Meinarni and Ida Bagus Ary Indra Iswara, "Hoax and Its Mechanism in Indonesia," in *Proceedings of the International Conference of Communication Science Research (ICCSR 2018)* (Paris, France: Atlantis Press, 2018), <https://doi.org/10.2991/iccsr-18.2018.39>.

<sup>44</sup> S. Mo Jang and Joon K. Kim, "Third Person Effects of Fake News: Fake News Regulation and Media Literacy Interventions," *Computers in Human Behavior* 80 (March 2018): 295–302, <https://doi.org/10.1016/j.chb.2017.11.034>.

Although legal approaches and handling strategies may differ, focusing on education, law enforcement, and technology development is key to facing the challenges of spreading hoax news in the digital era.

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