

Impact of Criminal Code's Articles 263 & 264: A Critical Look at Press Freedom and Human Rights

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Abstract

The public, human rights advocates, and media practitioners have engaged in significant debate regarding Articles 263 and 264 of the new Criminal Code (KUHP). These articles establish laws that criminalize spreading false news that could cause social unrest. The punishments for spreading such information vary depending on the severity and intention behind its dissemination. Articles 263(1) and (2) differentiate between intentionally spreading false information that the perpetrator knows is untrue and spreading information that is reasonably believed to be false. The punishment for this offense can be imprisonment for up to six years or a maximum fine of category V. Article 264 specifically addresses the act of spreading false information that the perpetrator knows is untrue. Meanwhile, Article 264 specifically addresses the act of spreading ambiguous, exaggerated, or incomplete news. Those found guilty can face a maximum penalty of two years in prison or a category III fine. This study utilizes normative legal methodologies, which include statutory, conceptual, comparative, and futuristic approaches. The research design is characterized by both descriptive and prescriptive elements. Content analysis was conducted to evaluate the collected data. The study's findings illustrate that the primary objective of Articles 263 and 264 of the new Criminal Code is to maintain public order and deter riots that may arise as a consequence of the dissemination of incorrect information. Nevertheless, these provisions have been criticized for their potential to be used as a means to suppress press freedom and limit public expression, both of which are fundamental aspects of democracy and the protection of human rights. Concerns have been raised about the potential impact of the implementation of these articles on the protection of press freedom as guaranteed by the Press Law.

1. Introduction

Since its inception in 1963, the amendment of the Criminal Code (KUHP) has undergone a series of intricate and prolonged stages of formulation and discussion. The effort to modernize the Criminal Code, which was derived from the Dutch colonial era's *Wetboek van Strafrecht voor Nederlandsch-Indië* (WvSNI), seeks to accurately represent Indonesia's present values, conventions, and socio-political circumstances. Following extensive deliberations, research, and amendments, the government and the House of Representatives (DPR) have successfully enacted a new Criminal Code under Law No. 1 of 2023 on the Criminal Code.¹ Significant revisions have been implemented in the Criminal Code, encompassing amendments

¹ Zico Junius Fernando, Sri Wulandari, and Panca Sarjana Putra, "Potential Overcriminalization in Religious Offenses : A Critical Analysis of The Formulation of The New National Criminal Code (Law 1 Number 2023)," *Jurnal HAM* 14, no. 3 (2023): 205–16, <https://doi.org/http://dx.doi.org/10.30641/ham.2023.14.3>.

to human rights provisions, reaffirmation of national legal authority, and adjustment to the requirements and complexities of modern society. These amendments are expected to strengthen Indonesia's criminal justice system and reaffirm the nation's commitment to democracy, justice, and the preservation of human rights. Since achieving independence in 1945, Indonesia has made great progress by implementing the new Criminal Code, which represents a pivotal moment in the nation's legal history.² As a remnant of the Dutch East Indies era, the old Criminal Code has been widely recognized as being incongruous with the progress made in culture, customs, technology, and social organization. The revised Criminal Code is expected to better reflect the fundamental ideas and values of Indonesian criminal justice enforcement. It is anticipated that the new Criminal Code will improve justice, strengthen the effectiveness of law enforcement, and protect human rights, in response to the demands of modern society.³

The concerns surrounding the new Criminal Code in Indonesia, particularly regarding the potential threats to press freedom and freedom of expression, can be better understood through concrete examples. One illustrative case is the provision related to defamation, which has been historically used in various jurisdictions to suppress critical journalism and dissent. For instance, if the code criminalizes statements that insult public authorities and this is broadly interpreted, journalists and activists could face legal repercussions for legitimate investigative reporting or criticism. This could lead to self-censorship among the press, significantly limiting the scope of democratic discourse in Indonesia. Another example involves the potential misuse of vaguely defined laws against blasphemy or morality, which could affect artistic and academic expressions. In scenarios where artists or scholars tackle subjects deemed sensitive or controversial, these provisions could be invoked to curtail their work, thus stifling creative and intellectual freedom. These examples underscore the importance of precise language in legal drafting to prevent the misuse of the law and the discriminatory application against specific groups such as minorities, opposition figures, or the media. By highlighting such scenarios, stakeholders can better advocate for revisions that ensure the law not only updates the criminal code but also aligns with international human rights standards and Indonesian society's democratic aspirations. This concrete approach can help pivot the discussion from abstract concerns to specific legal reforms needed to safeguard fundamental freedoms.⁴

The dissemination of false information or deceptive content has emerged as a significant worldwide issue in the ever-changing era of information.⁵ As of May 2023, 11,642 hoax contents have been identified by the AIS Team of the Directorate General of Informatics Applications of the Ministry of Communication and Informatics. The total content was calculated from August 2018 to May 2023. Of the total 11,642 hoax contents identified, verified, and validated by the Ministry's AIS Team, the most hoax contents in the health category were found, reaching 2,287 hoax items. Furthermore, there is 2,111 hoax content in the government category, 1,938 hoax content in the fraud category, and 1,373 hoax content in the political category. According to the Ministry of Communication and Information's AIS Team, the total number of hoaxes, disinformation, and misinformation content in the period January to May 2023 tends to increase when compared to the same period in 2022. Hoaxes related to government, such as the profiteering of public officials and fraud, dominate, although hoaxes related to health, especially the COVID-19 pandemic, are still found.⁶ This phenomenon has a profound impact on multiple facets of society, ranging from the stability of social and political structures to the level of public confidence in institutions and media.⁷ Due to the widespread availability of digital platforms and social media, incorrect

- 2 Daffa Rizky Dewanto and Rahtami Susanti, "Hukuman Mati Menurut Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana Dalam Perspektif Hak Asasi Manusia," *Wijayakusuma Law Review* 5, no. 1 (2023): 64–70, <https://doi.org/10.51921/wlr.v5i1.239>.
- 3 Randy Pradityo, "Menuju Pembaharuan Hukum Pidana Indonesia: Suatu Tinjauan Singkat (Towards Criminal Law Reform of Indonesia: An Overview)," *Legislasi Indonesia* 14, no. 02 (2017): 140–41, <https://e-jurnal.peraturan.go.id/index.php/jli/article/view/92/pdf>.
- 4 Moh. Fadhil, "Criminal Law Reform in Indonesia: The Perspective on Freedom of Expression and Opinion," *Al-Jinayah: Jurnal Hukum Pidana Islam* 9, no. 2 (2023): 128–46.
- 5 D P Rana, I Agarwal, and A More, "A Review of Techniques to Combat The Peril of Fake News," in *2018 4th International Conference on Computing Communication and Automation (ICCCA)*, 2018, 1–7, <https://doi.org/10.1109/ICCA.2018.8777676>.
- 6 Hanifah Triari Husnah, "Sampai Mei 2023, Kominfo Identifikasi 11.642 Konten Hoaks," [aptika.kominfo.go.id](https://aptika.kominfo.go.id/2023/06/sampai-mei-2023-kominfo-identifikasi-11-642-konten-hoaks/), 2023, <https://aptika.kominfo.go.id/2023/06/sampai-mei-2023-kominfo-identifikasi-11-642-konten-hoaks/>.
- 7 Deddy Satria M and Hairunnisa, "The Phenomenon of Fake News (Hoax) in Mass Communication: Causes, Impacts, and Solutions," *Open Access Indonesia Journal of Social Sciences* 6, no. 3 (May 25, 2023): 980–88, <https://doi.org/10.37275/OAIJSS.V6I3.161>.

information can rapidly and extensively propagate, frequently without undergoing filtration or verification. This not only generates confusion and misinterpretation among the general population but also allows certain parties to manipulate public sentiment or provoke unrest.⁸ Consequently, the significance of media literacy and the capacity to differentiate between genuine information and hoaxes has grown more crucial in order to uphold public trust in institutions and the media, as well as to preserve the stability and integrity of the public sphere.⁹ Indonesia, a democratic nation that upholds press freedom through legislation, faces a distinct problem in striking a balance between combating disinformation and protecting human rights, particularly the freedom of expression and the press.¹⁰ This issue arises from the necessity for the government to implement decisive measures to halt the spread of false information or deceptive rumors that have the potential to jeopardize socio-political stability and harm the community at large. However, this task must be executed without impeding the citizens' rights to freedom of speech or association.¹¹ Essentially, this requires finding a delicate equilibrium between implementing laws and regulations aimed at curbing misinformation, but also protecting the core principles of democracy, such as freedom of the press. The government and relevant authorities should meticulously formulate and implement policies that successfully prevent hoaxes while ensuring that they do not excessively curtail the freedom of the press to report or the people's capacity to express themselves.¹²

Articles 263 and 264 regarding fake news in the new Criminal Code are frequently cited as prime examples when discussing controversies around the potential suppression of press freedom. The primary issue with these articles is their potential to curtail media freedom and expression through the prosecution of journalists or media organizations who distribute information considered by the government to be false news.¹³ Article 263 imposes sanctions on anyone who intentionally sends or spreads false material known to be erroneous and has the potential to cause unrest within the community. Article 264 serves the same purpose of maintaining order and preventing riots by specifically targeting the dissemination of incorrect, exaggerated, or insufficient information that has the potential to provoke disturbances. Human rights groups and media professionals express apprehension about both articles, despite their stated intention to uphold social order. They argue that these articles could be used to suppress press freedom as the existing mechanisms of the Press Law and the supervision of the Press Council should have been sufficient for regulating rules on reporting. Press freedom is an essential component of a democratic society as it enables everyone to get accurate information and express their viewpoints regarding the actions and policies of the government. It facilitates accountable and transparent governance and ensures that the general public can have confidence in well-informed decision-making processes.¹⁴ This background aims to offer a more comprehensive understanding and emphasize the need to grasp the intricacies of press freedom and human rights in Indonesia, specifically in relation to Articles 263 and 264 of the Criminal Code (KUHP). The Indonesian constitution guarantees both press freedom and human rights as fundamental components. A fundamental principle of press freedom is to uphold government accountability and transparency while also enabling public engagement in the democratic process through the provision of accurate and impartial information.

This study distinguishes itself from previous studies by adopting a comprehensive and interconnected approach to analyzing the impact of Articles 263 and 264 of Indonesia's new Criminal Code on press freedom and human rights. Prior studies may have mostly focused on analyzing the legal ramifications of anti-fake news legislation or its impact on media operations. However, by incorporating a framework based on human

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- 8 Savvas Zannettou et al., "The Web of False Information," *Journal of Data and Information Quality (JDIQ)* 11, no. 3 (May 7, 2019): 1–37, <https://doi.org/10.1145/3309699>.
 - 9 Sadia Khan, "Negotiating (Dis)Trust to Advance Democracy through Media and Information Literacy," *Postdigital Science and Education* 2, no. 1 (2020): 170–83, <https://doi.org/10.1007/s42438-019-00072-9>.
 - 10 Vidya Prahassacitta and Harkristuti Harkrisnowo, "Criminal Disinformation in Relation to the Freedom of Expression in Indonesia: A Critical Study," *Comparative Law Review* 27 (December 22, 2021): 135–65, <https://doi.org/10.12775/CLR.2021.005>.
 - 11 Lara S.G. Piccolo et al., "Opinions, Intentions, Freedom of Expression, ... , and Other Human Aspects of Misinformation Online," in *Conference on Human Factors in Computing Systems - Proceedings (Association for Computing Machinery, 2021)*, 1–5, <https://doi.org/10.1145/3411763.3441345>.
 - 12 Andrew Ray, "Disinformation, Deepfakes and Democracies: The Need for Legislative Reform," *University of New South Wales Law Journal* 44, no. 3 (September 1, 2021): 983–1013, <https://doi.org/10.53637/DELS2700>.
 - 13 Donato Vese, "Governing Fake News: The Regulation of Social Media and the Right to Freedom of Expression in the Era of Emergency," *European Journal of Risk Regulation* 13, no. 3 (2022): 477–513, <https://doi.org/DOI: 10.1017/err.2021.48>.
 - 14 Journal Of Law & Legal Reform Volume ; Cited As Ekaningsih, "Press Roles in Democracy Society," *Journal of Law and Legal Reform* 1, no. 3 (April 30, 2020): 539–48, <https://doi.org/10.15294/JLLR.V1I3.38510>.

rights, this study expands its scope of analysis and provides a more thorough understanding of how to achieve a harmonious equilibrium between protecting fundamental rights and combating misinformation. The article “The Criminalization of Fake News: A Critique on Indonesia’s New Penal Code” by Vidya Prahassacitta and Harkristuti Harkrisnowo, published on February 26, 2024, constitutes a study on the subject. The methodological focus and analysis of this study vary significantly from the previously stated study. Prahassacitta and Harkrisnowo’s study is centered around the Criminal Code (KUHP) that was recently enacted in 2023. Their objective is to investigate the origins and limitations of Indonesia’s criminalization of fake news that causes public disorder. This study stands out due to its comprehensive examination of the legal system and the historical, political, social, and cultural contexts that underpin the prohibition of spreading false information as a restriction on the freedom of expression in the Indonesian context.

2. Method

The study, titled “Controversial Articles in the Information Age: Articles 263 and 264 of the New Criminal Code and Their Impact on Press Freedom and Human Rights,” examines two controversial articles of Indonesia’s new Criminal Code that specifically address the dissemination of incorrect information. The study utilizes normative legal methodologies to evaluate the consequences of these articles on press freedom and human rights.¹⁵ The study employs statutory, conceptual, comparative, and futuristic approaches to examine, understand, and assess the impact of Articles 263 and 264. This is a descriptive-prescriptive study with the objective of examining the substance and practicality of the articles while also providing recommendations and solutions to the identified challenges. The data collected was subjected to content analysis, which enabled a systematic assessment and interpretation of the content and context of Articles 263 and 264, together with the associated discourse and debates. The analysis aimed to understand the potential impact of the articles on freedom of the press and expression, as well as their alignment or deviation from international human rights and constitutional principles. To analyze the compatibility of these articles with global standards for press freedom and freedom of expression, a forward-thinking approach was used.

3. Findings and Discussion

3.1 Fake News vs Freedom of Expression: Unraveling the Controversy of Articles 263 and 264 in Indonesia’s New Criminal Code

Articles 263 and 264 of the recently enacted Criminal Code are quite prominent and controversial when it comes to Indonesian legislation and media. The primary objective of these articles is to tackle the problem of spreading inaccurate information or news, which has gained significant prominence in the era of digital technology and has the capacity to incite societal unrest. Articles 263 and 264 of the updated Criminal Code establish a system for law enforcement to address the dissemination of false or misleading information that has the potential to provoke social unrest. Article 263 of the law distinguishes between two types of culpability in the dissemination of false information. Subsection (1) applies to individuals who intentionally spread false information that is known to provoke riots, and they can face a maximum punishment of six years in prison or a category V fine. Subsection (2) applies to individuals who knowingly spread information based on their “reasonable suspicion” that it is false and has the potential to incite riots. They can be sentenced to a maximum of four years in prison or a category IV fine. This article differentiates between actions performed under circumstances where the perpetrator should have been aware of the potential falsehood of the information, and actions performed with full awareness of the information’s falseness. This distinction implicitly acknowledges varying levels of awareness and degrees of culpability. Article 264 expands the range of punishment to include the dissemination of material that is not only blatantly incorrect but also ambiguous, exaggerated, or incomplete, which has the potential to cause unrest. Offenders may face a maximum prison term of two years or a category III fine. This article highlights the danger of spreading information irresponsibly, underlining that even moderately accurate information can have harmful consequences for the society if presented dishonestly. The articles reflect legislative efforts to address the intricate nature of information dissemination in the digital era, when its detrimental impact on society is magnified by its rapidity and wide reach. The law aims to strike a balance between protecting the public from harmful material and

15 Panca Sarjana Putra et al., “Judicial Transformation: Integration of AI Judges in Innovating Indonesia’s Criminal Justice System,” *Kosmik Hukum* 23, no. 3 (2023): 233–47, <https://doi.org/10.30595/kosmikhukum.v23i3.18711>.

respecting the fundamental right to freedom of expression by enforcing these articles. The main challenge lies in creating fair and transparent boundaries for their implementation.

The implementation of Articles 263 and 264 in Indonesia's new Criminal Code, aimed at combating misinformation and maintaining social order, raises significant concerns about the potential risks to media freedom and freedom of expression.¹⁶ These articles, which potentially criminalize the dissemination of what might be deemed false information, are seen by critics as a threat to journalistic practices and the broader right to free speech. The indicators of press freedom that could be affected include the ability to report without fear of retribution, the right to criticize government policies and public figures, and the safeguarding of a diverse and independent media landscape. To objectively assess the impact of these laws, it is crucial to consider both the potential risks and the stated objectives of the legislation. While the law aims to curb the spread of false information, which is a legitimate concern, especially in the era of digital media where bombastic headlines and sensationalism can indeed skew public perception and discourse, the broad wording of the law could be used disproportionately against the press. This raises the potential for misuse, where media entities, under the threat of legal action, may opt to avoid publishing critical but necessary reports on public interest issues.

In balancing the comparison between the potential threats and the intended purposes of the law, it's important to establish clear guidelines and safeguards that ensure the law is not used to unduly stifle legitimate journalistic activities. This involves setting stringent criteria for what constitutes "false information" and ensuring that there are robust mechanisms for appeal and review of any accusations made under these articles. This approach not only protects the essential role of the media in a democratic society but also addresses the real concerns about misinformation in a manner that is fair and proportionate. Article 264 aims to protect the public from the harmful consequences of misleading information, including uncertain, exaggerated, or incomplete news. Similarly, Article 263 is designed to protect the public from the spread of false news that is known or reasonably believed to incite a riot. However, the loose definitions and criteria for categorizing information as "fake news" or "news that may incite riots" give rise to concerns about the possibility of subjective and broad interpretation. The potential impacts of the articles on the freedom of the press and expression only serve to intensify these concerns. Media outlets and journalists may face criminal implications for generating or spreading news material, even when they are ethically reporting and fulfilling their obligation to inform the public. This could potentially have a chilling effect on press freedom, leading the media to exercise more caution or even avoid discussing sensitive and risky topics. Consequently, this would diminish the quality and extent of investigative journalism. In addition, it is not solely the media that faces the potential impact of the legislation that may curtail freedom of speech. Affected parties may encompass individuals or community organizations who engage in communication via social media or other platforms to share ideas or information. To safeguard core democratic principles, law enforcement officials must exercise great care and use discretion judiciously when interpreting these provisions to avoid undermining efforts to combat misinformation.

Moreover, there could be a certain degree of overlap between Law No. 40/1999 on the Press, which currently provides a structure for regulating press-related issues under the oversight of the Press Council, and the Criminal Code due to the incorporation of these provisions. If these articles are enacted without considering the specific context of news reporting and journalistic ethics, the Press Council, which aims to protect press freedom and address concerns regarding journalistic ethics, will be compelled to uphold the values of media autonomy and press freedom. This could potentially complicate the differentiation between ethical violations and criminal acts, impede the media's ability to fulfill its supervisory function, and limit the extent of public discourse for constructive critique and discussion. In a legal context, it is necessary to employ just and rational approaches to enforce Articles 263 and 264, while ensuring the protection of fundamental human rights, such as the right to freedom of expression. This requires maintaining a delicate equilibrium between safeguarding individuals' freedom of expression and dissemination of information, while also protecting the public from the harmful consequences of false information. To effectively address the problem of false information, a comprehensive and interdisciplinary approach is required. This approach should incorporate technological, pedagogical, and legal measures. The success in addressing this issue will depend on the efficiency of rules such as Article 263 and Article 264, as well as the understanding and active participation of all members of society in promoting a culture of responsible information sharing.

16 Moh. Fadhl, "Criminal Law Reform in Indonesia: The Perspective on Freedom of Expression and Opinion."

3.2 Establishing a Resilient and Informed Society: A Human Rights-Based Approach to Addressing the Spread of False Information

To effectively address the challenges posed by the spread of false information, a human rights-based approach is essential, particularly in the context of establishing a resilient and informed society. This approach recognizes the dual necessity of protecting public discourse from misinformation while safeguarding fundamental freedoms like the right to free speech and access to information. The high level of public trust in media sources, coupled with a tendency to accept information from reputed outlets without further verification, underscores a critical vulnerability, low public literacy in evaluating news content. This situation is exacerbated when media consumers do not cross-check facts or delve deeper into news stories. A robust analysis of this issue involves grounding the discussion in related theories, principles, and legal rules that emphasize the protection of human rights in the digital age. Legal frameworks must be scrutinized and possibly reformed to ensure they do not inadvertently stifle freedom of expression under the guise of combating fake news. For instance, principles from international human rights law, such as those articulated in the International Covenant on Civil and Political Rights (ICCPR), emphasize the need for any restrictions on speech, such as those combating misinformation, to be necessary, proportionate, and tailored to achieve legitimate aims. Furthermore, it is crucial to elaborate on specific regulations that directly focus on the discussion. This includes detailing the mechanisms through which misinformation is identified and addressed in the legal system and how these mechanisms are designed to prevent overreach that could harm public discourse. Regulations should be crafted to provide clear definitions of what constitutes harmful misinformation, ensuring these laws are not used to suppress dissent or marginalize voices. Take the case of Dandhy Dwi Laksono, a filmmaker and journalist who was arrested on September 26, 2019 in Bekasi, West Java. The arrest was related to content posted on Twitter about the situation in Papua. According to Dandhy's wife, Irna Gustiawati, at around 22.45 WIB, a police team arrived at their house and informed them that they would arrest Dandhy. Dandhy was then taken to Polda Metro Jaya using a police car at around 23:05 WIB. This incident highlights the issue of freedom of expression and the challenges faced by journalists and filmmakers in Indonesia in carrying out their profession in safe and legally protected conditions. Moreover, educational strategies must be integrated into these legal frameworks to enhance public literacy, equipping individuals with the skills needed to critically analyze media content. By integrating these elements, the analysis not only deepens understanding but also proposes actionable strategies that uphold human rights while combating the spread of false information. This dual focus is crucial for fostering a society that is both resilient to misinformation and committed to upholding democratic principles.

When analyzing the use of human rights instruments in managing and preventing the spread of false information or hoaxes, it is important to have a deep understanding of how law enforcement activities, as regulated by Articles 263 and 264, must align with human rights principles. In this context, it is crucial to consider the fundamental values of freedom of speech, the right to knowledge, and the right to public order and security. Freedom of expression, a fundamental human right, is extensively protected by various international human rights agreements, including the International Covenant on Civil and Political Rights (ICCPR) and Article 19 of the Universal Declaration of Human Rights (UDHR).¹⁷ This right grants individuals the freedom to openly express their thoughts and actively search for, obtain, and share information and ideas via any method of communication, without being limited by national boundaries.¹⁸ Nevertheless, the right to freedom of expression is not without limitations and might be subject to certain restrictions. These restrictions may be established by the laws of different countries, as long as they adhere to legal principles and are considered essential for certain objectives.¹⁹ These restrictions should be designed to uphold the rights and reputations of others, safeguard national security, maintain public order, promote public health, and uphold public morals.²⁰ In accordance to the principles of legality, necessity, and proportionality, clear legislation is important in regulating every restriction, ensuring that it is aimed at legitimate objectives in accordance with international law and is strictly necessary for achieving such

17 Emily Howie, "Protecting the Human Right to Freedom of Expression in International Law," *International Journal of Speech-Language Pathology* 20, no. 1 (January 2, 2018): 12–15, <https://doi.org/10.1080/17549507.2018.1392612>.

18 Douglas McCormick, "Freedom of Expression?," *BioTechniques* 43, no. 3 (May 16, 2018): 251, <https://doi.org/10.2144/000112539>.

19 Mogens Schmidt, "Limits to the Restrictions to Freedom of Expression—Criteria and Application," *Religion & Human Rights* 5, no. 2–3 (January 1, 2010): 147–51, <https://doi.org/10.1163/187103210X528165>.

20 Mohamed Saeed M Eltayeb, "The Quest for Permissible Limitations on Freedom of Expression: Public Order and Public Morality Exceptions," *The Review of Faith & International Affairs* 13, no. 1 (January 2, 2015): 69–74, <https://doi.org/10.1080/15570274.2015.1005914>.

aims in a democratic society.²¹ Moreover, the preservation of the right to free expression must be meticulously weighed against the need to impose restrictions in order to protect other recognized interests. These assessments often involve complex considerations and require individual examination to ensure that restrictions are not imposed to suppress freedom of speech or silence criticism.

An objective assessment of how restrictions on freedom of speech are used to prevent the spread of false information that could potentially harm social stability and public order is essential for understanding the interpretation of Articles 263 and 264 within the context of human rights. It is important to uphold the principles of necessity and proportionality in law enforcement efforts, while also avoiding excessive restrictions on freedom of expression, to protect human rights. This implies that the punishment or penalty applied must be suitable for the transgression committed and absolutely necessary to achieve a lawful objective, such as preventing societal unrest. Furthermore, a fair and impartial judicial system is a crucial factor that influences the implementation of Articles 263 and 264 in relation to human rights. This encompasses the entitlements to protect oneself, an unbiased judicial system, and an equitable and open court proceeding. To ensure that individuals are not unjustly accused of criminal behavior based on their chosen words, the legal system must maintain transparency in both its decision-making process and its implementation. Moreover, a strategy based on human rights emphasizes the importance of promoting public awareness and education as an effective approach to halt the dissemination of hoaxes.²² Acquiring knowledge on media and information literacy can enhance individuals' ability to evaluate and disseminate information, while also reinforcing the value of truth and honesty in public communications.²³

Integrating law enforcement initiatives with the advocacy of freedom of speech and public education within a human rights framework offers a more robust and sustainable foundation for tackling the dissemination of false information.²⁴ This approach ensures both legal compliance and the development of an informed, responsible, and resilient society that is resistant to disinformation and hoaxes. Developing the ability of a community to identify and respond to false information is essential when adopting human rights measures to counteract the dissemination of false information. This entails providing financial assistance for educational and training programs that promote the development of digital and critical literacy skills, enabling individuals to discern between trustworthy sources and deceptive ones. Thus, a policy that is based on human rights places equal emphasis on proactive prevention through community empowerment and reactive police enforcement against violations. In addition, it is essential to take into account the social and cultural environment while formulating and implementing legislation aimed at preventing the dissemination of false information, particularly in a diverse and multicultural country like Indonesia. To enhance the effectiveness of education and communication projects, it is important to adopt a respectful approach toward diverse cultures and perspectives. This ensures that communications are relevant and resonates with a wide range of social groups. In addition, international cooperation and the exchange of effective strategies could lead to new insights and pragmatic methods for addressing the global issue of spreading false information. International human rights institutions provide a platform for countries to share experiences, learn from each other, and preserve freedom of expression while combating false information, such as the Universal Periodic Review (UPR), a peer assessment mechanism under the UN Human Rights Council.²⁵ The utilization of artificial intelligence (AI) and technology can offer prospects for the detection and prevention of the dissemination of false information. Nevertheless, their utilization, which encompasses protecting data and ensuring privacy, must adhere to human rights standards. To ensure responsibility and avoid bias or unfair treatment, it is imperative for social media platforms and other technological systems to be open and clear about the algorithms and decision-

21 Dirk Voorhoof and Hannes Cannie, "Freedom of Expression and Information in a Democratic Society," *International Communication Gazette* 72, no. 4-5 (May 18, 2010): 407-23, <https://doi.org/10.1177/1748048510362711>.

22 Barrie Sander, "Freedom of Expression in the Age of Online Platforms: The Promise and Pitfalls of a Human Rights-Based Approach to Content Moderation," *SSRN Electronic Journal*, May 23, 2020, 1-68, <https://doi.org/10.2139/SSRN.3434972>.

23 Yonty Friesem, "Teaching Truth, Lies, and Accuracy in the Digital Age: Media Literacy as Project-Based Learning," *Journalism & Mass Communication Educator* 74, no. 2 (February 22, 2019): 185-98, <https://doi.org/10.1177/1077695819829962>.

24 Marystella Auma Simiyu, "Freedom of Expression and African Elections: Mitigating the Insidious Effect of Emerging Approaches to Addressing the False News Threat," *African Human Rights Law Journal* 22, no. 1 (2022): 76-107, <https://doi.org/10.17159/1996-2096/2022/v22n1a4>.

25 Noam Schimmel, "The UN Human Rights Council's Universal Periodic Review As a Rhetorical Battlefield of Nations: Useful Tool or Futile Performance?," *World Affairs* 186, no. 1 (November 7, 2022): 10-45, <https://doi.org/10.1177/00438200221121523>.

making procedures they employ. Ultimately, the creation of a comprehensive and all-encompassing plan for managing false information necessitates effective communication and engagement with various stakeholders, such as the private sector, governmental entities, and civil society. Through this engagement, a comprehensive strategy may be developed that balances the protection of the public from misinformation with the preservation of the right to free speech. Hence, the application of human rights principles in addressing the spread of false information requires a thorough approach that considers the importance of education, community engagement, cultural awareness, global collaboration, and responsible technology usage, alongside legal factors. An effective plan could contribute to the creation of a resilient and well-informed society that values human rights.

Legal theories are essential in connecting law enforcement activities to human rights principles to effectively manage and prevent the spread of false information or hoaxes. The Natural Law Theory emphasizes that the state is not allowed to violate fundamental human rights, such as the right to free speech, by intervention. However, this theory also recognizes that individual rights can be restricted for the greater good of the society, as long as the restrictions are fair and proportional. This can be seen in situations where public order or national security needs to be preserved. Furthermore, positive legal theory emphasizes that laws enacted by legislative bodies form the basis for the implementation of the law, which may involve the limitation of human rights. In this particular situation, it is crucial that the formulation and implementation of Articles 263 and 264 strictly conform to fundamental principles of human rights, including but not limited to fairness, equality, and non-discrimination, as well as existing legal provisions. Furthermore, John Rawls' Theory of Justice as Fairness asserts that all social and political actions, including the handling of hoaxes, should be guided by the principles of fairness. This idea posits that to prevent some groups or individuals from experiencing disproportionate harm due to actions taken against false information, limitations on the freedom of speech should be established within a fair and equitable framework. Hence, an analysis of the approach to addressing false information through human rights instruments and relevant legal theories requires achieving a harmonious equilibrium between safeguarding the right to information and freedom of expression, and ensuring public safety and order, while making sure that any restrictions imposed are rational, proportionate, and in accordance with the law.

3.3 Achieving Balance: Redefining the Legal Approach to False Information in the Era of Freedom of Expression

To effectively address the concerns raised by Articles 263 and 264 of Indonesia's new Criminal Code, a nuanced approach that balances the need for press freedom with the protection of the public from harmful misinformation is essential. These articles, intended to regulate the deliberate spread of false information that could destabilize society, highlight the legislators' commitment to maintaining social order. However, there is a significant risk that these provisions might be used to unduly restrict media freedoms and impede human rights, particularly the right to free expression. Criticism of these articles often centers on the potential for their arbitrary or excessive use to suppress dissenting voices within both the media and the general public, which are critical for sustaining a democratic society and fostering an informed citizenry. To mitigate these risks, it is crucial to define "fake news" more precisely and establish reliable, transparent, and objective verification methods. Such measures would help ensure that information assessments are fair and not used as a pretext for censorship. Additionally, implementing a robust and efficient appeals mechanism is vital to address and rectify any unjust applications of the law. Drawing comparisons with other countries that have successfully navigated similar challenges can provide valuable insights. For example, countries like Germany and South Korea have implemented stringent laws against misinformation without stifling press freedom. Germany's Network Enforcement Act targets hate speech and fake news on social media platforms, providing clear criteria and legal processes that include appeals and corrections mechanisms. South Korea has strict laws regarding the spread of false information, particularly during elections, as well as vigorous protections for press freedom and a transparent judicial process to prevent misuse of these laws. By examining the frameworks in these countries, Indonesia can better understand how to balance legal regulations against misinformation with the need to uphold democratic freedoms, offering a practical roadmap for refining the application of Articles 263 and 264. This comparative approach not only enriches the discourse but also underscores the importance of developing a legal framework that simultaneously protects public order and supports the fundamental rights of free speech and media freedom.²⁶

Furthermore, to ensure that the legal process pertaining to the application of Articles 263 and 264 of the Criminal Code does not supersede or replace the mechanisms established by the Press Law, the Press Council's

26 Tingting Zhang, "The Criminal Law Regulation of the Behavior of Fabricating and Deliberately Disseminating False Information of Epidemic," *Ukrainian Policymaker* 6 (2020): 104–13, <https://doi.org/10.29202/up/6/10>.

role and capacity as an independent institution in handling press-related cases must be strengthened. Therefore, the key to coming to a consensus on the best way to execute these principles without compromising democratic norms and human rights is to enhance communication between the government, press organizations, human rights advocates, and civil society. Various countries have used a variety of approaches to tackle the issue of hoaxes and disinformation, customizing their tactics based on their unique social, political, and technological environments. Germany has chosen a stringent legislative approach with its Network Enforcement Act (NetzDG), forcing social media companies to remove illegal content promptly. This action demonstrates the seriousness with which Germany is addressing hate speech and fake news, but it also raises concerns about the potential effects on free expression.²⁷ Meanwhile, Sweden adopts an educational approach that places a strong emphasis on media literacy. This preventive measure aims to develop the critical ability of its citizens to evaluate information, which may be more sustainable in the longterm without jeopardizing press freedom. Another effective but contentious legal method that gives the government substantial tools to combat misinformation is Singapore's Protection from Hate and Online Disinformation Act (POFMA), which may impose restrictions on free expression.²⁸ Finland, on the other hand, demonstrates a commitment to a multi-agency approach through its National Program Against Disinformation, which involves cooperation between the government, media, and education sectors to counter disinformation with critical media education.²⁹ Recognizing the value of media and digital literacy as a tool to enable citizens to spot false information, Canada shares the view that education is the key to tackling this problem. This analysis demonstrates that there is no single, all-encompassing answer to deal with the false news and misinformation issue. While education-based techniques take longer to show effects, they provide a more lasting solution by enhancing citizens' analytical skills. Regulative approaches may be helpful in the short term, but they may also raise concerns regarding freedom of speech. The sharing of best practices and experiences among nations can aid in the development of sensible and successful plans for battling misinformation while defending democratic values in an increasingly interconnected world.

Furthermore, the methods employed by these nations demonstrate how critical it is to modify plans in response to regional and international obstacles in the fight against misinformation. By enacting stringent legislation, Germany and Singapore demonstrated government control over online narratives and established legal guidelines that social media companies must abide by, highlighting their obligation to remove damaging content. However, this also spurred a conversation on how to reach an equilibrium between regulation and free speech, highlighting how difficult it is to strike a balance between the need to combat misinformation and upholding an open and unrestricted public space. However, Sweden, Finland, and Canada understand that empowering people via education is just as important in countering misinformation as regulation and law enforcement. This approach seeks to create resilient communities where people possess the essential abilities to discern between reliable and false news. To lessen society's susceptibility to misinformation, these nations are investing in long-term solutions by emphasizing media and digital literacy from a young age. It has also become evident how important cross-sectoral cooperation is, as demonstrated by Finland, where the government, media, and educational institutions collaborated to develop a comprehensive national program. In addition to bolstering educational initiatives, this kind of collaboration encourages different stakeholders to take an active part in the fight against misinformation. This demonstrates the understanding that battling misinformation necessitates collaboration between all societal segments. Additionally, in order to deal with the ever-changing dynamics of information and technology, adaptation and flexibility in approach are essential. Strategies to combat disinformation need to change along with technology advancements and shifts in the ways that information is transmitted and consumed. Programs like the digital and media literacy effort in Canada serve as an example of how important it is to update and modify instructional materials on a regular basis to keep them current with emerging technologies. All things considered, experiences from different countries provide insightful information about various strategies for battling misinformation. A society that is resistant to misinformation can only be built through a mix of reasonable legislation, media literacy education, and cross-sectoral cooperation; yet, there is no one-size-fits-all approach. Countries can create more efficient and long-lasting plans to preserve the integrity of their public places by studying and adjusting to each other's best practices.

27 William Echikson and Olivia Knodt, "Germany's NetzDG: A Key Test for Combatting Online Hate," *Computer Und Recht* 33, no. 5 (November 22, 2018): 310–33, <https://doi.org/10.9785/CR-2017-0506>.

28 Shashi Jayakumar, Benjamin Ang, and Nur Diyanah Anwar, "Fake News and Disinformation: Singapore Perspectives," *Disinformation and Fake News*, January 1, 2020, 137–58, https://doi.org/10.1007/978-981-15-5876-4_11/COVER.

29 Pia Maria Niemi et al., "How and Why Education Counters Ideological Extremism in Finland," *Religions* 2018, Vol. 9, Page 420 9, no. 12 (December 18, 2018): 1–16, <https://doi.org/10.3390/REL9120420>.

To improve and revise articles related to the spread of false information that can cause societal unrest, as outlined in the example article above, a careful approach is needed to balance the need to combat disinformation and maintain freedom of opinion. Here are some suggestions for revision with comprehensive analysis:

1. Clearer and Specific Definition

Amendments to relevant clauses in the laws and regulations should be conducted with caution and prudence to effectively tackle the issues arising from the spread of false information that could potentially lead to civil unrest. An essential aspect of this transformation is the development of more accurate and comprehensible definitions for terminology such as “fake news,” “uncertain,” “exaggerations,” and “incomplete.” To ensure that the interpretation of the law does not lead to any misuse that could endanger the right to free speech, it is imperative to create measurable and objective criteria. Such definitions must differentiate between spreading false information unintentionally and deliberately disseminating misleading information aimed at deceiving the public. It is crucial to establish a clear definition of “fake news” as information that is intentionally created and spread with the purpose of deceiving, even when there is solid evidence that the information is false or incorrect. To effectively address the issue, it is crucial to focus on targeting only actions that have both malevolent purposes and a significant influence on public order. This approach will not only assist in law enforcement efforts but also protect the freedom of journalism and speech. Additionally, it is essential to present evidence of intent, or “mens rea,” for the act of spreading false information to be classified as a criminal offense. This suggests that individuals can only be held accountable if it can be proven that they intentionally spread information that they were aware of or should have been aware of as being false, and that such dissemination could potentially lead to riots or other forms of societal unrest. The revised articles should explicitly state that evidence of malicious intent is required, in addition to establishing the inaccuracy of the content. Once a precise and impartial description is established, it is essential to provide explicit guidelines for the verification process. This will enable the public and media to authenticate materials and avoid any accusations of legal infringement. By utilizing this approach, the principles of fairness and equity will be maintained, preventing the unwarranted criminalization of journalistic activities and the expression of public opinion.

2. Distinction between intention and negligence

It is crucial to differentiate between intentional conduct (*mens rea*) and negligence in order to improve the handling of the spread of false information that could disrupt public order. This approach recognizes that not all false information is spread with malicious intent or a full understanding of the falsehood. Therefore, it is important to make a mature thorough of the offender’s motivation and awareness in order to respond in a fair manner. Legally, deliberate behavior refers to the actions of an offender who knowingly spreads false information and is aware of the potential for inciting riots or other forms of social unrest. This behavior demonstrates malevolence and a conscious understanding of the consequences of their actions, necessitating more stringent legal sanctions such as longer imprisonment or increased financial penalties. The purpose of this is to discourage individuals or groups who deliberately employ disinformation as a tool to disrupt public order or achieve objectives that are detrimental to society. Negligence, however, pertains to situations where someone spreads information without confirming it beforehand, lacking complete awareness of its falsehood, or without wanting to cause any unrest. These actions often arise from inadvertently disseminating unverified content or from a lack of understanding of the importance of fact-checking. Consequently, a distinct strategy is necessary to address this negligence, one that prioritizes cautions and instruction to enhance awareness and the ability to verify information. In order to encourage more responsible conduct in the sharing of information, it may be more effective to implement remedial actions instead of harsh punishments, such as imposing smaller fines or other administrative sanctions. Regulations can effectively address various situations involving the dissemination of false information by distinguishing between intentional actions and negligence, while also considering nuanced variations in the knowledge and intentions of the perpetrators.

3. Verification and Correction Mechanism

Developing robust mechanisms for verifying and rectifying articles that regulate the spread of deceptive material is crucial for establishing a fair and responsive legal framework. This section aims to provide anyone accused of spreading deceptive information with an opportunity to verify the accuracy of the content and, if necessary, delete or modify it prior to suffering legal consequences. This approach recognizes the potential for unintentional errors in the dissemination of information to occur without any malicious intent, while upholding the rules of procedural justice. Implementing verification and correction systems offers a multitude of substantial benefits. By providing the media and individuals with the opportunity to rectify

mistakes in a proactive manner, it enhances the principles of press freedom and freedom of expression. In doing so, the media can mitigate the potential damage that false information may cause while still preserving their reputation. Furthermore, this mechanism promotes responsibility in the dissemination of information. The legislation promotes responsible journalism practices and encourages a more deliberate approach to using social media by requiring a verification process before distribution and providing options for information correction or retraction. For verification and rectification processes to be successful, they must be explicitly defined in the legislation. This encompasses an explanation of the appropriate methodology for carrying out the verification procedure, the individuals responsible for its execution, and the expeditiousness with which errors must be rectified or withdrawals must be made upon their detection.

4. Protection for Journalists and Media

When designing legislation to prevent the spread of false information, it is essential to incorporate provisions that explicitly protect journalists and the media in carrying out their journalistic duties. To qualify for this protection, they need to comply with rigorous information verification requirements and operate within the parameters of a journalistic code of ethics. This measure is designed to ensure that the media can fulfill its responsibility as a trustworthy source of information for the public and protector of democracy, without being at risk of facing criminal charges as a result of their reporting. Given the importance of the media in promoting transparency and holding individuals and institutions accountable, it is imperative to ensure their protection. When information has the potential to offend those in positions of power, those individuals often play a prominent role in revealing the truth and sharing important information with the public. Therefore, without guaranteed legal protection, the media may be hesitant to address sensitive or controversial topics, potentially weakening democratic processes and diminishing the quality of public discussion. In order to ensure robust protection, it is imperative to establish unambiguous measures in the legislation that unequivocally safeguard journalists and the media from facing legal repercussions, as long as they are 1). Adhering to ethical and responsible journalistic standards, such as rigorously fact-checking information before dissemination, 2). Striving to provide accurate and significant information to the public with sincerity, 3). Relying on trustworthy sources and providing sufficient context for the presented information. 4). Ready to promptly and transparently rectify or withdraw information that has been found to be inaccurate.

5. Affirmation of Media Literacy Education

In order to enhance society's ability to address disinformation, it is imperative to integrate media and information literacy education into articles that restrict the dissemination of false information. The aim of this program is to equip individuals with the essential resources to assess the accuracy of information, understand the procedures employed in the production and distribution of news, and recognize tactics employed in the manipulation of information. Participating in media literacy classes enables individuals to develop a more profound understanding of how the media works, including the impact of algorithms on information filtering and their influence on public opinion. To achieve this, the law should promote the establishment of educational programs that have a positive impact on all segments of society, ranging from students in schools to adults residing in communities. Additionally, it should facilitate collaboration among the government, media, educational institutions, and civil society organizations. These skills will be instilled in individuals from a young age by incorporating media literacy into educational curriculum and public awareness campaigns, resulting in a generation that is well-informed and resilient to disinformation.

6. Establishment of an Independent Panel

An effective strategy for improving and revising articles on the spread of false information is to establish an independent panel consisting of academics, media practitioners, and legal authorities. This panel is crucial for analyzing cases concerning the alleged spread of false information. It provides a comprehensive and evidence-based analysis that incorporates perspectives from the legal, journalistic, and academic fields. The primary objective of this independent panel is to ensure fair and impartial handling of every case, while considering the broader social, political, and technological context, as well as any potential impact on human rights and freedom of speech. This panel can serve as a consultative body for government institutions, providing knowledgeable recommendations on how to address issues involving misinformation. These recommendations may pertain to the need for pursuing legal recourse, the right forms of punishment, or other remedies such as mediation or a public awareness campaign. Through this action, the panel enhances public consciousness regarding the problem of disinformation and promotes solutions that will improve the accountability and transparency of the legal system. The establishment of an impartial panel in response to the spread of false information showcases a commitment to the principles of fairness and balance. This

enables the ability to counter misinformation in a more advanced and flexible manner that can distinguish between deliberate malicious activities and unintentional mistakes.

4. Conclusion

The implementation of articles 263 and 264 of the new Criminal Code (KUHP) in Indonesia, designed to curb the spread of false or deceptive information, poses important questions about finding a harmonious equilibrium between maintaining societal stability and protecting the freedom of expression. The application of these articles gives rise to significant concerns due to the lack of clarity in the editorial and the potential for abuse that could stifle dissenting voices and manipulate the public discourse, despite the commendable legislative objective of tackling the issue of false information dissemination and its disruptive impact on society. This controversial characteristic underscores the necessity for more exact and clear definitions of “fake news” and “social unrest” to avert erroneous legal interpretations and exploitation. Furthermore, the presence of the Press Law and Press Council is increasingly vital to ensure that the inclusion of Articles 263 and 264 in the Criminal Code does not blur the distinction between criminal offenses and breaches of press ethics. This is important because it could potentially endanger press freedom and the independence of the media. The Press Law and Press Council should establish a precise and comprehensive framework for addressing matters pertaining to the press. Legislative amendments are necessary to provide clear definitions, differentiate between intentional and negligent conduct, and protect journalists and the media to reduce disputes and enhance the effectiveness of these laws. To mitigate the spread of false information, it is crucial to enhance media literacy and education through educational programs that focus on equipping individuals with the skills to identify deceptive content. Collaboration among the public, government, media, and digital platforms is vital to identify and halt the spread of false information. Therefore, despite the noble objectives of Articles 263 and 264, it would be prudent to implement them with more clarity and fairness. Additional essential steps to ensure that efforts to combat misinformation do not undermine democratic values and human rights involve enhancing media literacy and promoting collaboration within the sector.

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