Indonesia Digital Policy Against Distribution of Information Disorder: A Better Policy for Sustainable Society

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Abstract. The paper aims to criticize Indonesia's digital policy against the dissemination of information disorders and to offer a better policy model against the distribution of information disorders that meets sustainable society goals. The paper does not confer and analyze information disorders produced and published by the press and broadcasting media. Nonetheless, it only discusses and analyzes information abnormalities created and spread by regular internet users. Document research and secondary data analyses reveal that Indonesia has two policies in place to combat the development of information disorders. First, penal policy on Article 14 and Article 15 Criminal Law Act of 1946 and Article 263 and Article 264 Penal Code of 2023 criminalizes a person who intentionally and/or negligently distributes information disorder that disrupts public order. Second, there is a non-punitive approach to the Information and Electronic Transactions Act regime. Unfortunately, the acts and their execution do not accord with the ideals of a sustainable society. According to the study's findings, the present policy focuses on criminal law, which does not support freedom of expression and minimizes the liability for internet intermediaries. Further research findings indicate that the new and integrated policies necessitate criminal law and regulating greater responsibilities for internet intermediaries to battle and stop the spread of information disorder.

1 Introduction

Indonesia has the most prominent internet users in Southeast Asia. In 2022 Indonesia have 204,7 million active Internet users, which means that 73,7% of the total Indonesian population actively uses the Internet daily [1]. Unfortunately, not all information on the internet is genuine and comes from a clear source. Much false and fake information is fabricated to mislead and harm internet users. Disinformation is information that is intentionally false and designed to cause harm. Often a piece of disinformation is picked up by someone who doesn't realize it's inaccurate and shares it with their networks, believing they are helping. This type of information is called misinformation or false information, but the person sharing doesn't realize it is inaccurate or misleading. Malinformation is truthful information that is shared with the intent to cause harm. Disinformation, misinformation and malinformation are part of information disorder [2]. In Indonesia, information disorder is well known as a hoax. From August 2018 until February 2023, the Ministry of Communication and Information Republic of Indonesia declared 9,417 contents as a hoax [3].

Distribution of information disorder via the internet and digital media creates profound impact and harm than when allocated via traditional media. Distribution of information via the internet related to algorithmic operated by internet intermediaries creates filter bubbles and echo chambers which, in the end, generate post-truth among internet users [4]. Next, the distribution of information disorder causes serious harm not only to individuals but to public order and national security. Distribution of information disorder can incite other people, creating a riot that disrupts public order or national security [5]. Therefore, it's crucial to regulate the distribution of information disorder on the internet and its part of digital policy. Jorn Lengsfeld describes the digital policy as all the political decisions and definitions relating to digital technologies and the changes triggered by their proliferation [6]. Part of the policy is legislation since legislation consists of norms which consent in political discussions and decisions.

Regulating the distribution of information disorders shall support a sustainable society. Aims of a sustainable society is to create an environment to meet the needs of the present generation without compromising those of future generations [7]. A social conflict due to the distribution of information disorder became an obstacle to meeting sustainable society aims. On the other hand, inappropriate digital policy in information disorder can be a problem because it can suppress freedom of expression and opinion, which threaten future generation need.

The article has two aims. First, to discuss and analyze Indonesia's digital policy against information disorder. Second, discuss and analyze whether the policy meets sustainable society goals. A document study with secondary data was conducted to achieve the article's aims. The author studies law, legislation and court verdicts to discuss and analyze Indonesia's digital policy against information disorder and whether the

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Policy is in line with a sustainable society. Discussion and analysis including penal law, Criminal Act No. 1 of 1946 (Criminal Act 1946) and Penal Code No. 1 of 2023 (Penal Code 2023) and administrative law, Information and Electronic Transaction Act. Next, the author recommends Indonesia's digital policy against information disorder as a better policy for a sustainable society.

The research has limitations; the paper does not discuss and analyse information disorders produced and published by the press and broadcasting media. The article only discusses and analyses information disorders fabricated and distributed by ordinary internet users. Under Indonesian law, the press and broadcasting media has own rules and regulations for dealing with false and incorrect news. Law No. 40 of 1999 concerning Press and Law No. 32 of 2002 concerning Broadcasting prohibit press and broadcasting media from publishing false and fake news. Both laws also oblige the press and broadcasting media to regulate a mechanism to the press and broadcasting media to clarify and correct false and fake information, for the press and broadcasting media who violate the regulations will be subject to administrative sanctions.

2 Regulations

2.1 Penal Law

Criminalization of the distribution of information disorder regulates in Article 14 and Article 15 Criminal Act 1946. The prohibition initially came from East Dutch Colonial Government to prohibit a person from distributing information disorder that disrupts public order [8]. Prohibit only applies to someone who intentionally creates dismay and commotion in society by spreading information disorder. Then, before world war II, East Dutch Colonial Government used this prohibition new two norms. First, prohibit a person who intentionally creates dismay and commotion in society, violating Article 14 (2) Criminal Act 1946. Prohibit only applies to someone who intentionally or negligently distributes information disorder that may cause possible distress and unrest among society members—second, ban a person who intentionally or negligently distributes information disorder that may cause possible distress and unrest among society members. After Indonesia became independent in 1945, Indonesia Government still preserved those norms under Criminal Act 1946 to maintain social order during the independence war [9].

In early 2023, the Indonesian Parliament issued Penal Code 2023. Criminalization of the distribution information disorder still preserves in articles 263 and 264 of Penal Code 2023. The prohibition norm in Penal Code 2023 follows the prohibition norm in Criminal Act 1946. The prohibition initially came from East Dutch Colonial Government to prohibit a person from distributing information disorder that disrupts public order [8]. Prohibit only applies to someone who intentionally or negligently distributes information disorder that may cause possible distress and unrest among society members. After Indonesia became independent in 1945, Indonesia Government still preserved those norms under Criminal Act 1946 to maintain social order during the independence war [9].

In early 2023, the Indonesian Parliament issued Penal Code 2023. Criminalization of the distribution information disorder still preserves in articles 263 and 264 of Penal Code 2023. The prohibition norm in Penal Code 2023 follows the prohibition norm in Criminal Act 1946; however, legislator conduct minor alterations—public order disruption in articles 263 and 264 of Penal Code 2023 changes from dismay and commotion to riot. Criminalization requires clear and present dangers [10]. This means that legislators need serious harm for a person who shall be punished.

2.2 Administrative Law

Information and Electronic Transaction Act regime classified information disorder as illegal content. Article 40 Information and Electronic Transaction Act gives the state authority to discontent systems electronic or Internet to protect public order and national security. Many information disorder contents consist of incitement to conduct actions that disrupt social order and threaten national security, especially during conducive situations. The State can filter or block certain illegal content that is immoral, improper and disrupt social order. Furthermore, the State can wholly or partially interrupt the internet where certain conditions threaten social order or national security. However, this state authority shall conduct as a last resort and perform during an emergency.

Further Information and Electronic Transaction Act regulations also regulate information disorder as illegal content. Government Regulation No. 79 of 2019, Government Regulation No. 80 of 2019, Ministry of Communication and Information Republic of Indonesia No. 5 of 2020 and Ministry of Communication and Information Republic of Indonesia No. 10 of 2021 regulate internet intermediaries' liability against illegal content, including content that consists information disorder that harms society: Internet intermediaries include internet service providers, search engines, and social media companies. Internet intermediaries have two obligations, ex-ante liability and ex-post liability [11]. First, internet intermediaries are responsible for limiting the distribution of illegal content. Internet intermediaries shall maintain and ensure that their system has no unlawful content and does not facilitate the dissemination of illegal content. Second, internet intermediaries obligation to take active action against the distribution of unlawful content. Once internet intermediaries notice content as illegal, thus shall take down prohibited content on their system.

3 Discussion and Analysis

3.1 Problems with Indonesian Policy Against Distribution of Information Disorder

Indonesia has two policies against distribution information disorder, penal and non-penal policies. The implementation of both procedures has a problem as follows.

The problem in penal policy. Article 14 and Article 15 Criminal Act 1946 applies to the distribution of information disorder via the internet. From 2018 until 2021, Those articles apply to forty-one cases of distribution information disorder in Indonesian courts. Seventeen court verdicts declare defendants guilty of intentionally distributing information disorder, causing dismay and commotion in society, violating Article 14 (1) Criminal Act 1946. Fifteen court verdicts declare defendants guilty of the negligent spread of information disorder that potentially causes dismay and commotion in society, violating Article 14 (2) Criminal Act 1946. Nine declare defendants guilty of intentionally or
negligently distributing information disorder that potentially causes dismay and commotion in society, violating Article 15 Criminal Act 1946. Regarding the type of information disorder, in only eleven cases, the defendants fabricate and distribute disinformation and misinformation. Majority of the thirty patients, the defendants broadcast misinformation.

Problems with criminalization and the distribution of information disorders do not protect internet users, especially those uneducated and unknowledgeable. Based on the defendant's educational background, most defendants do not have a high education background and do not have good digital literacy. The defendants do not have the knowledge to check the fact before forwarding or reposting the message. It becomes a serious concern because, according to the Katadata Insight Center and the Ministry of Communication, the Information Republic of Indonesia Survey shows that Indonesia’s literacy index is at the middle level. Indonesian people have difficulty identifying the authenticity of a message and do not have awareness and circumspection in distributing information [12].

Next, the problem with the non-penal policy. The administrative regulation in the Information and Electronic Transaction Act regime limits internet intermediaries’ liability against the distribution of illegal content—positions internet intermediaries as the publisher, not only content distributor. Internet intermediaries who produce and distribute their content are publishers [13]. Internet intermediaries’ liability as a publisher is more comprehensive than liability as a distributor. Therefore, internet intermediaries who distribute user-generated content shall also be qualified as publishers [13]. Internet intermediaries’ liability as a publisher is more comprehensive than liability as a distributor.

Another limitation on internet intermediaries’ liability against the distribution of illegal content is the Information and Electronic Transaction Act regime regulates a safe harbour clause that protects internet intermediaries. A safe harbour clause is a clause that protects internet intermediaries who have good faith to prevent the distribution of illegal content [14]—the protection includes release from any civil and criminal suits. Internet intermediaries do not always take immediate action to remove illegal content, especially information disorders. Internet intermediaries have self-regulation, which regulate types of content that are forbidden to publish and distribute in their system. This self-regulation follows the law that internet intermediaries establish, usually the United States of America Law, particularly in California. Under that law, information disorder is not illegal [15]. When internet users report information disorder content, internet intermediaries will review and evaluate the content. Internet intermediaries under self-regulation consider the content, not illegal content. Internet intermediaries do not require to take down the range. Internet intermediaries under self-regulation can take down partial contents. Thus, internet intermediaries already have good faith to prevent the distribution of illegal content. Although according to society and the Government, the content is unlawful and harmful to public order.

In the end, the problem of the current digital policy against information disorder in Indonesia does not protect internet users dan society. Implementation of penal policy does not protect uneducated and unknowledge internet users. The Criminal Act 1946 uses as the first tool against the distribution of information disorder. Even though most cases, the defendants do not have an ‘evil mind’ to disrupt public order. On the other hand, the safe harbour clause in the Information and Electronic Transaction Act regime gives internet intermediaries discretion to determine appropriate or inappropriate content to distribute in the internet intermediaries system. However, society has adverse reactions to the content. Subsequently, the State can take last action by blocking or filtering certain contents or partially or wholly interrupting the internet to protect public order and national security. However, this state authority shall conduct as a last resort and work during an emergency.

3.2 A Better Policy Against Distribution of Information Disorder

A better policy against information disorder requires supporting sustainable societal aims. The policy shall focus on the non-penal aspect as a tool to control the distribution of information disorder. Internet intermediaries have a central role in managing and directing illegal content distribution [16]. A riot is caused not only by the defendant’s action that fabricates information disorder but also by internet intermediaries who do not actively control and stop the distribution of information disorder. Thus, internet intermediaries shall have more obligation to prevent the severe harm of information disorder.

Internet intermediaries shall have better self-regulation. In line with Indonesian law and regulations, clear criteria for illegal content require internet intermediaries’ self-regulation. In particular conditions, such as campaign general election, internet intermediaries shall tighten standards for unlawful content and promotion content to prevent promotion content which consists of information disorder that misleads and create polarisation among the audience.

Transparency is important. Internet intermediaries shall deliver reports to Government and announce to the public regarding internet intermediaries’ measures to combat information disorder. The Government, Ministry of Communication and the Information Republic of Indonesia may request internet intermediaries’ explanation and gives feedback regarding their report to combat and prevent serious harm of information disorder. In particular conditions, for example, campaigns and general elections, the Government requires internet intermediaries to alter algorithmic to limit the distribution of information disorder that can harm the democratic process. Internet intermediaries should take down information disorders
that have trivial harm. This type of harm does not disrupt public order and does not threaten national security. It is also part of prevention action to prevent insignificant damage from becoming severe. Internet intermediaries shall be reasonable for any individual or society loss caused by the inappropriate effort to stop the distribution of illegal content. Internet intermediaries shall be responsible for their actions which do not take immediate action to take down or do not take down entire unlawful content in an unconducive situation that causes a riot.

Next, the penal policy shall be limited only to intentional actions that seriously harm public order or national security. Criminalization shall not design for persons who recklessly and negligently distribute information disorder which does not cause serious harm to society. If the damage of information disorder only drives debate, pros and cons on the internet or in the community, thus shall not be qualified as severe harm—no clear and present danger caused by the defendant's action. Criminal law does not criminalize trivial injury.

**Fig. 1.** Policy Against Distribution of Information Disorder.

### 4 Conclusion

Regulating the prohibition of information disorder is part of digital policy. The distribution of information disorder via the internet and digital media harms society more seriously. An appropriate approach requires preserving the next generation's right to express their opinions and create a sustainable community.

The research result shows that Indonesia's policy against information disorder does not support a sustainable society. Current approaches focus consist of penal and non-penal policies. The disciplinary procedure with criminalization person who intentionally and/or negligently distributes information disorder that disrupts public order. As prohibited in articles 14 and 15 Criminal Act 1946 and articles 263 and 264 Penal Code 2023. The non-penal policy is administrative law regulation in the Information and Electronic Transaction Act, Government Regulation No. 79 of 2019, Government Regulation No. 80 of 2019, Ministry of Communication and Information Republic of Indonesia No. 5 of 2020 and Ministry of Communication and Information Republic of Indonesia No. 10 of 2021, which have safe harbour clause, that protects internet intermediaries who have good faith to prevent the distribution of illegal contents. However, the current policy does not support the sustainable society goal because the approach focuses implementation of penal law and limits the internet intermediaries' liability to take down and stop the distribution of information disorder.

Second research result shows, the new policy requires limiting criminal law's use only for intentional action to distribute information disorder to create riots in society. Criminal law shall not apply to recklessness and negligent act to spread information disorder, especially if that action only causes trivial harm. The policy shall focus on administrative law to regulate internet intermediaries' obligations and liability to combat the distribution of information disorder. Internet intermediaries are responsible for taking down information disorders that have trivial harm.

The research result can be used to revise current laws and regulations. The legislator can use the research result regarding the penal policy to amend the distribution of information disorder criminal offences in the Indonesian new Penal Code. The research result concerning non-penal policy can be used for drafting new approaches for the electronic information and transaction law regime, primarily to expand the legal liability of internet intermediaries.

In the end, future research requires to complete this research. Especially future research on non-penal policy and internet intermediaries' legal liability. Comparative legal study with other countries can apply to find the best practice in different countries and apply those policy in Indonesia.

### References


