

ASEAN Civil Society In The Digital Era; Are We Moving Backwards?

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Abstract—One of the impacts of technological development is the shifting of people's interaction from offline to online and borderless, from the citizen to the netizen. There is a negative side to the interaction change, which is the potential for malicious activity in the virtual world by state and non-state actors to create instability and mistrust. One of the most common threats is the spread of hoax news addressed to the government. The impact is massive enough that it can create mass action and even threaten the sovereignty with the wave of revolution that led to the fall of government. In Indonesia, the action 414 and 212 in 2016 and then became the starting point of the fall of the governor of Jakarta. Meanwhile, a wave of protests and revolutions that occurred in the Arab country in 2010 (Arab spring events) has been able to bring down governments in the countries of the Middle East such as Egypt, Libya, Tunisia and Syria. ASEAN as a region with considerable racial and population diversity should be wary of similar threats. Base on the problem below, this paper tries to get solution using the library research with statue and case approach. The researchers argue that ASEAN countries need to create a system of legal protection for their communities in interacting in cyberspace. The constitutional rights of ASEAN people need to be protected from cybercrime attacks that can threaten the sovereignty of each country.

Keywords—*ASEAN Civil Society, Digital Era, Legal Protection*

I. INTRODUCTION

The ASEAN civil society has a huge resource, not only about the wide area but also the population and natural wealth and resources. Based on data released by the United Nations, as of January 2018, the ASEAN population is 652,498,699 people with a total area of 4,340,700 km². This condition makes ASEAN civil society occupy the third largest area with the most population in Asia. In addition, ASEAN civil society is also equipped with a variety of ethnicities, cultures, languages, religions and so on. With this diversity, ASEAN civil society has grown and developed into an area calculated in all aspects globally.

One of the developments and effects of globalization that is becoming mainstream, which also has an impact in the ASEAN region is related to technological developments. The development of technology certainly has two sides, namely positive and negative. This condition is a challenge for countries in the ASEAN region, which incidentally is still dominated by developing countries. Changes in interaction patterns due to the influence of technology also change people's perspectives and lifestyles. All community needs can be met through gadgets at hand. Including crimes and driving factors for the occurrence of crime, can also be done from each gadget [1].

There is a negative side to the interaction change, which is the potential for malicious activity in the virtual world by state and non-state actors to create instability and mistrust. One of the most common threats is the spread of hoax news addressed to the government. The impact is massive enough that it can create mass action and even threaten the sovereignty with the wave of revolution that led to the fall of government. In Indonesia, the action 414 and 212 in 2016 and then became the starting point of the fall of the Governor of Jakarta, Basuki Tjahaja Purnama/Ahok. Meanwhile, a wave of protests and revolutions that occurred in the Arab country in 2010 (Arab Spring events) has been able to bring down governments in the countries of the Middle East such as Egypt, Libya, Tunisia and Syria. In Europe, social media and the internet are used as tools to garner support, such as referendum on the exit of Britain from the European Union (Brexit) in 2016 and referendum of Catalonia in 2017.

This condition is often triggered because there is no control and tends to abuse the internet and social media, especially for crimes such as human trafficking, the spread of hoax news, hacking, data breach, especially banks, and other cyber-crimes. The extent of the impact of the development of the internet was described by Nicholas Negroponte in his paper entitled "Being Digital" where he stated that computing is not about computers anymore, it is about living. Negroponte tries to portray computers (the internet) not only seen as the interaction between computers and computers, but more so than the digitalized human

interactions [2]. Computer (internet) has become the second life (cyberspace) that coexists directly with the real world [2].

Rikke Frank Jorgensen in his paper entitled Internet and Freedom of Expression contended that Internet has moved from the free anarchistic vision to the reality of commercial interests, tools and power. The private sector has realized the potential in the new information market and the increasingly commercial focus is changing some of the initial “rules” of cyberspace, for instance the initial separation between access and content providers and the vision of a free public sphere with unlimited access to information [3]. Private entities, the system sphere, are taking over an increasingly large part of cyberspace, with the result that still more interactions are mediated by the systems media (money and power) and still more subsystems are created to deal with this complexity [3].

Frank La Rue, former UN special pioneer for independence Expressions in 2008-2014, in a report dated May 16, 2011 view the internet as the most powerful instrument in the 21st century. According to him, the internet in the 21st century can be used to increase transparency in monitoring the government, providing access to information through a mechanism for public information disclosure, and can also be used as a means to facilitate citizens to participate in building a democratic society. The internet is not only able to enable a person to exercise the right to express freely, but also to voice human rights, encourage community progress towards a better direction, and play a role in fulfilling the right to truth. Therefore, ensuring universal access to the Internet must be a priority for all countries. This indication was corroborated by a resolution issued by the UN Human Rights Council in July 2012 concerning Promotion, protection and enjoyment of human rights on the Internet, which places internet access as part of human rights.

Unfortunately, the opinion and consensus about the internet is not too a reference for governments in ASEAN countries. Because, many reports from NGOs and the public related to human rights violations committed by the government in each ASEAN country related to restrictions on freedom of expression and voicing opinions through the internet, especially on social media. So that, through this paper the author wants to study related to the problematic of the constitutional rights of the ASEAN civil society in cyberspace; and mechanism for the establishment of a legal protection system on the constitutional rights of ASEAN civil society in cyberspace.

II. FREEDOM OF EXPRESSION PROBLEM IN ASEAN CIVIL SOCIETY

The shift in the function and purpose of using social media starts from the Arab Spring in 2011. At that time, social media began to experience a shift in function, from what was originally used only to find friends, exchanging messages, uploading images or videos, becoming tools to seek support, voicing freedom to oppose government policies. This condition continues to expand, not only in the Arab region, but also spread throughout the world.

Indeed, there is no doubt that the Internet and social media have opened up a whole new horizon not only for information sharing, but also for the advancement of the right to freedom of expression and opinion [4]. More and

more human rights activists, dissidents, as well as marginalized and vulnerable groups are utilizing the Internet to get their voices heard, especially in countries where traditional media are not free and the government limits or blocks the use of certain social media. This condition developed so rapidly and spread almost to all corners of the world, including to ASEAN. Moreover, media and internet also became one of whole factor that caused democratic transition in ASEAN [11].

Seeing this phenomenon, the government does not remain silent. They then imposed massive and measurable restrictions on the use of social media and the internet. For example, in China, the government has adopted an extensive system – dubbed “the Great Firewall”, which combines URL filtering with the censoring of contents on the Internet that contain keywords such as “human rights” and “democracy”. China’s elaborate and sophisticated efforts to censor the Internet have already set precedence for other Asian countries: For example, in India – commonly referred to as “the world’s largest democracy” – the Delhi High Court in India has recently warned Internet service providers that it could order measures of censorship similar to that of China if they failed to protect religious sensitivities in the country [4].

In ASEAN, restrictions and all efforts to be responsive to activities in cyberspace and social media are carried out by the government in each country through several instruments and policies presented in the following table. 1: [5]

TABLE I. THE SOCIAL MEDIA INSTRUMENTS AND POLICIES IN ASEAN [5]

Country	Cases
Cambodia	The government cracked down heavily on independent radio in September, revoking the license of Mohan kor Radio and its affiliates, which broadcast Voice of America (VOA) and Radio Free Asia (RFA), and closing the independent radio station Voice of Democracy (VOD). Authorities also forced the closure of RFA’s bureau, and a court charged two former RFAjournalists with espionage in November. The journalists, who face up to 15 years in prison if convicted, remain in pretrial detention at time of writing. Other radio stations broadcastingVOA or RFA have come under pressure from the government and stopped broadcasting in August. Almost all domestic broadcast media is now under government control.
Indonesia	On July 12, President Jokowi issued a decree amending the law that regulates nongovernmental organizations, enabling the government to fast-track the banning of groups it considers “against Pancasila or promoting communism or advocating separatism.” Pancasila, or “five principles,” is Indonesia’s official state philosophy. Days later the government used the decree to ban Hizbut ut-Tahrir/Hizbut Tahrir Indonesia (HTI), a conservative Islamist group that supports the creation of a Sharia-based Islamic caliphate. The government issued the amendment of ITE Act that punished some citizen into prison with the reason of hate speech, spreading hoax and blasphemy
Malaysia	The Communications and MultimediaAct (CMA) has been used repeatedly to investigate and arrest those who criticize

	<p>government officials on social media. Section 233(1) of the CMA provides criminal penalties of up to one year in prison for a communication that "is obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person."</p> <p>On February 20, graphic artist Fahmi Reza was sentenced to a month in prison and a fine of RM30,000 (US\$7,675) for posting an online caricature of Najib wearing clown makeup</p> <p>In August, authorities used Malaysia's restrictive Film Censorship Act to require the deletion of scenes from a film by a Malaysian investigative journalist implicating Malaysian immigration officials in the trafficking of Rohingya girls. Authorities also banned in its entirety Kakuma Can Dance, a film by a Swedish filmmaker about refugees and hip hop dance in Kenya. Both films were scheduled to be shown during the annual Refugee Festival in Kuala Lumpur.</p>
Myanmar	<p>Over 90 cases have been filed under section 66(d) of the 2013 Telecommunications Act, a vaguely worded law that criminalizes broad categories of online speech, with over 20 journalists among those charged</p> <p>In December, police detained Wa Lone, 31, and Kyaw Soe Oo, 27, who were reporting for Reuters on security force abuses against the Rohingya. The journalists were held for nearly two weeks incommunicado. After the government approved charges against the journalists under the outdated and overly broad 1923 Official Secrets Act, the two journalists were brought to court but were denied bail. They are currently facing charges for allegedly possessing leaked documents relating to security force operations in Rakhine State.</p> <p>Khaing Myo Htun, an environmental rights activist, was sentenced to 18 months in prison in October for violating sections 505(b) and (c) of the penal code, which criminalizes speech that is likely to cause fear or harm and incites classes or groups to commit offenses against each other. He had been detained since July 2016 for helping prepare a statement released by the Arakan Liberation Party, of which he was the deputy spokesperson, accusing the military of rights violations.</p>
Philippines	<p>In March, unidentified gunmen killed newspaper columnist Joaquin Briones in the Masbate province town of Milagros. In August, an unidentified gunman killed radio journalists Rudy Alicaway and Leo Diaz in separate incidents on the southern island of Mindanao. The National Union of Journalists estimates that 177 Filipino reporters and media workers have been killed since 1986.</p> <p>They are so many regulations issued by Duterte, President of the Philippines that restricted the newspaper, radio and other media and journalist activity.</p>
Singapore	<p>The government maintains strict restrictions on the right to freedom of peaceful assembly through the Public Order Act, which requires a police permit for any "cause-related" assembly if it is held in a public place, or if members of the general public are invited. Permits are routinely denied for events addressing political</p>

	<p>topics. The law was amended in 2017 to tighten the restrictions, and now provides the police commissioner with specific authorization to reject any permit application for an assembly or procession "directed towards a political end" if any foreigner is involved.</p>
Thailand	<p>Media outlets that refused to fully comply, including Voice TV, Spring News Radio, Peace TV, and TV24, were temporarily forced off the air in March, April, August, and November 2017 respectively. These stations were later allowed to resume broadcasting when they agreed to practice self-censorship, either by excluding outspoken commentators or avoiding political issues altogether.</p> <p>The junta continued to use sedition (article 116 of the criminal code) and the ComputerRelated Crime Act (CCA) to criminalize criticism and peaceful opposition to military rule. Since the 2014 coup, at least 66 people have been charged with sedition. In August, authorities charged veteran journalist Pravit Rojanaphruk and two prominent politicians Pichai Nariphaphan and Watana Muangsook—with sedition and violating the CCA for their Facebook commentaries about Thailand's political and economic problems.</p> <p>Thailand's revised CCA, which became effective in May 2017, provides the government with broad powers to restrict free speech and enforce censorship. The law uses vague and overbroad grounds for the government to prosecute any information online that it deems to be "false" or "distorted," including allegations against government officials regarding human rights abuses. Even internet content that is not found to be illegal under the act can be banned if a government computer data screening committee finds the information is "against public order" or violates the "good morals of the people."</p> <p>Since the coup, authorities have arrested at least 105 people on lese majeste charges, mostly for posting or sharing critical commentary online. Some have been convicted and sentenced to decades of imprisonment, including a man sent to prison in June for 35 years (a 50 percent reduction of the original sentence because he confessed to the alleged crime) based on 10 critical Facebook posts.</p>
Vietnam	<p>During 2017, authorities arrested at least 40 rights bloggers and activists, including former political prisoners Nguyen Bac Truyen, Truong Minh Duc, Nguyen Van Tuc, Nguyen Trung Ton, and Pham Van Troi, for exercising their civil and political rights in a way that the government views as threatening national security. At least 24 people were put on trial, convicted, and sentenced to between 3 and 14 years in prison.</p> <p>In June, a court in Khanh Hoa sentenced prominent blogger Nguyen Ngoc Nhu Quynh (also known as Mother Mushroom) to 10 years in prison for critical online posts and documents she published on the internet collected from public sources, including state-sanctioned media. In July, a court in Ha Nam province sentenced prominent activist Tran Thi Nga to nine years in prison</p>

	for her internet posts.
Laos	Laos' media is defined by a fully state-controlled press and broadcast sector, a high level of self-censorship among journalists who actively avoid covering controversial issues, and limited Internet penetration-conditions that earned Laos Freedom House's 2013 press status as 'Not Free' [6]. The country's 32 television stations and 44 radio stations are government affiliated. Laos' 24 newspapers are strictly controlled by the government, leaving Lao people with almost no choice of media providing independent or alternative viewpoints [7]. Currently, there are no media advocacies or human rights organizations in Laos to advance freedom of expression issues [8].
Brunei Darussalam	The Broadcasting Act requires Internet service providers and Internet café operators to register with the Director of Broadcasting. Internet service providers are advised to monitor content [8].

The case example shows that almost all ASEAN countries have cases of violations of their citizens' freedom of expression on the internet, especially on social media. Government preventive efforts in the ASEAN region towards the activities of their citizens on the internet, make constitutional rights to be free of opinion to be limited. Prison sentences and fines are powerful tools to limit and scare the public into voicing their ideas on social media and the like.

III. LEGAL PROTECTION SYSTEM ON THE CONSTITUTIONAL RIGHTS OF ASEAN CIVIL SOCIETY IN CYBERSPACE

Seeing the problematic violation of the constitutional rights of citizens of ASEAN countries in their online cyberspace activities, a protection mechanism that is based on the law needs to be made. Several stages and methods can be carried out by countries in the ASEAN region to overcome the many cases of violations, including :

- Hold discussions at the ASEAN Regional Forum (ARF) or other ASEAN summits and discuss the importance of legal protection for citizens' constitutional rights in cyberspace [9].
- Making joint legal products in the ASEAN region related to legal protection of citizens' constitutional rights in opinion and opinion in cyberspace. Regulations are made integrally and must be ratified by all ASEAN members [4].
- Prioritizing coaching efforts rather than repressive actions such as imprisonment or fines [10].

IV. CONCLUSION

Based on discussion and result above, we conclude that there are so many cases about freedom of expression in this digital era that happen in ASEAN, a region with considerable racial and population diversity. Some citizens are jailed to the prison and fined. This makes ASEAN civil society experience a setback in this digital era. Because, constitutional rights related to freedom of expression in cyberspace are limited.

Problematic that mentioned below are so serious. To overcome this problem, ASEAN countries need to create a

system of legal protection for their communities in interacting in cyberspace. So, it is necessary to form an integrated legal protection model system, by conducting discussions, making legal products integrated and prioritizing the pattern of guidance compared to imposing prison sentences and fines to protect the constitutional rights of ASEAN people.

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