# PERSPECTIVE

RESEARCHERS AT ISEAS – YUSOF ISHAK INSTITUTE ANALYSE CURRENT EVENTS

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## Indonesia's Policing of Hoax News Increasingly Politicised

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### EXECUTIVE SUMMARY

- 2019 saw increasing arrests by police of citizens for spreading or distributing 'hoax news'.

- The Ministry of Communications and Information Technology is working closely with the police on this matter.

- Most of the arrests were of citizens accused of creating or spreading hoax news that discredited President Joko Widodo.

- The controversial Information and Electronic Transactions Act (UU ITE) is becoming the country's de facto 'anti-fake news' law.

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## INTRODUCTION

'Hoax news' has become a buzzword in the Indonesian lexicon. For this article I define 'hoax news' as similar to the more globally recognized term 'fake news': material deliberately fabricated and masqueraded as truth. Arrests for creating hoax news are supported by many Indonesians because popular (and much scholarly) discourse generally argues that the regulators cannot keep up with the hoax news creators.[1] This paper examines recent Indonesian police arrests of Indonesian citizens for creating or spreading hoax news, and the discussion revolves around issues of freedom of speech, proper process of police action and consistency in implementing laws. It is argued that Indonesia's controversial Information and Electronic Transactions Act (UU ITE) is becoming the country's de facto 'anti-fake news' law, similar to those proposed or in existence in other countries in the region.

My research examines some recent arrests made during the Indonesian election (September 2018-April 2019) of citizens for creating and/or distributing hoax news material.[2] Prior to the election period, between September 2018 and April 2019, SAFENET documented 22 cases of charges under UU ITE. There were also at least 19 arrests of people accused of creating or distributing hoax news reported in the Indonesian media during this time, many of which under UU ITE. Such arrests occurred all over the country, including Aceh, Lombok, Riau, Sulawesi and Kalimantan, but the majority occurred in Java. The cases discussed in this paper are largely ones covered by Indonesia's online media; there may indeed be many more not reported, especially in the 'outer regions' given Indonesia's notoriously Java-centric news coverage.[3] This research does not include the high profile 'fake news factory' Saracen, which spread hate speech against the president and other political figures, because the arrests being studied were made prior to September 2018.[4] A number of arrests made in May, in the aftermath of the election, are not included in this report.

I argue that arrests for distributing hoax news remain problematic for legal reasons and for political transparency, and require further investigation from scholars, non-government organisations and legislative and legal bodies in Indonesia. Of course, Indonesian legal cases are often inconsistent and can raise more questions than provide answers.[5] My purpose is to provide a broader analysis of 'hoax news' arrests, which are something that is new to Indonesia's policing and legal landscape, and to problematize the modus operandi throughout the 2019 election campaign, when arrests for this crime increased.

## CREATION VERSUS DISTRIBUTION

A number of arrests were made in Indonesia during the election campaign concerning content that was deemed to be of a non-political nature. They include cases involving the spreading of material about earthquakes and child kidnappings, and health scares. Most of these investigations remain open or have not yet gone to court. Notable cases include five separate arrests in early October 2018, of citizens in Sulawesi Selatan, Riau, Batam, Lombok and Surabaya who shared hoax material about an earthquake and/or tsunami occurring in Indonesia[6]. In early November, police made 13 separate arrests of citizens in Jakarta, East Java, West Java and South Sulawesi for sharing material about children being kidnapped.

The problem here is that arrests of citizens are made for *distributing* 'hoax news'. Did these citizens share information maliciously knowing it was fake, or were they duped by the content and shared thinking it was real? In the case of child abduction videos in Jakarta, those arrested included a security guard, an *angkot* driver and an unemployed woman. The police admitted the suspects thought the content was real and were simply trying to raise awareness.[7] In the case of earthquakes or tsunamis, for example, posts of disaster warnings are regularly posted by citizens on their social media platforms. Are citizens expected to only post warnings once the official bureau of meteorology had posted something? Given how official systems have previously failed to warn citizens of impending disasters, such a policy would be both unrealistic but also potentially unsafe.[8] This distinction between creating and distributing is also important when it comes to political hoax cases. How do the police decide whether the case is a crime or whether it is a non-chargeable error of judgement?

The larger issue evident in these cases is how the police connect actors from all around the country in order to identify the network of perpetrators. Are they alleged to have conspired together to spread the offending material or to have shared the same material? Does it matter? For example, in the case of the child abduction videos, police claim arrests were made of the first people to upload the videos to their Facebook account.[9] If this was all coordinated through a professional syndicate then that makes sense, but if these citizens simply happened to be first to share the material on Facebook (after receiving it from personal sources on WhatsApp, for example) then there is no larger conspiracy.

The answers to these questions lie in the coordination between the Ministry of Communication and Information Technology (Kominfo) and the National Police's criminal investigation division (Bareskrim). Information-collection and sharing between the Ministry of Communications and the Police is seen as a positive development by the government, which wants to curtail the growing problem of hoax news. But questions remain about whether a government body (Kominfo) should be working so closely with an institution that should be separated from government direction (police). As one Indonesian expert stated, the blurring of these two institutions means "we don't know whether to report an attack to the police's cybercrime unit or to the ministry of communications and information."[10] The further concern is that these institutions become beholden to the sole task of defending the sitting government. In January 2018, Indonesia launched the National Cyber and Encryption Agency (BSSN), tasked to help stop the spread of hoaxes. It reports directly to the president.[11] As we shall see below through analysis of political cases throughout the 2019 election, government bodies and the police predominantly cracked down on hoax material that was almost exclusively against the sitting government and incumbent president.


## ARRESTS FOR POLITICAL HOAX NEWS

As the election campaign neared, efforts to stop the creation and spread of hoaxes with political content increased. The mainstream media largely focused on the danger of hoax news undermining Indonesia's democracy. One *Diplomat* article headline even asked 'Will 'Fake News' Determine Indonesia's Next President?'[12] Sensing this battle, Indonesia's security forces increased their capacity to combat disinformation. Kominfo had a 'war

room' on 24-hour shift worked using Artificial Intelligence to combat hoax material.[13] Reports to the police can also be made by individual citizens, political and volunteer groups, and NGOs.  In 2017, the national police claimed to have received 4,000 reports of hoax material.[14]

In September 2018, five people in Sidoarjo, East Java, were arrested for sharing fake news about a student protest at the Constitution Court in Jakarta.[15] In November, police arrested an Acehnese man as alleged administrator of the Instagram account 'Suara Rakyat' that was accused of spreading material stating that Jokowi was a communist.[16] That same month, BSSN arrested a citizen in Bandung for uploading a hoax video that said the TNI arrested Chinese citizens who made 110 million e-KTP's in order to secure a Jokowi victory. On December 26, an arrest was made in Aceh of the editor of a video which had Jokowi's running mate, Ma'ruf Amin, dressed as Santa Claus. He was later sentenced to a seven-month imprisonment.[17] In early January, five Indonesians were arrested for involvement in spreading the fake news that seven containers of already punched ballot papers voting for Jokowi had arrived in Jakarta's port of Tanjung Priok.[18] That same month, another arrest for fake news slandering President Joko Widodo included a case in Bekasi of someone who shared material stating that Jokowi had a fake degree from UGM.[19] In February, three women in Karawang, West Java, were arrested and subsequently jailed for six months for creating the hoax news that if Jokowi were to be elected, there would be no more *azan* (call to prayer). The interesting aspect of this case was that the women were arrested for essentially conducting a door-to-door campaign – they were all members of the PEPES (Partai *Emak-Emak* Pendukung Prabowo-Sandi), although their case went 'viral' due to video footage of them distributing this material. In March, there were two arrests in Medan of people accused of creating a hoax that voting ballots had already been punched to favour Jokowi prior to the election.[20] In early April, there were arrests in East Jakarta and in Lampung for alleged creators of a hoax that the KPU server was set to automatically determine that Jokowi would win.[21]

The pattern here is clear. The arrests were all for creating or distributing hoax material which discredited or slandered the president, Jokowi. Indeed, some citizens arrested were even identified as Prabowo supporters. This is not to say that the above arrests were illegitimate. Rather, it is to highlight the type of arrests that gets prioritized, and to point out that there is seemingly no evidence of any police arrests of citizens who shared fake news about Prabowo Subianto or Sandiaga Uno, nor of citizens who were creating hoax material to help Jokowi win the election.

It was likely that there would be *more* cases of hoax news against the president than against any other political figure. For example, Mafindo, a Jakarta-based organization set up to counter hoax news, reported in 2018 that 28.98% of hoax material was directed against President Jokowi, and 20.85% against Prabowo.[22] But there is clear indication that there was hoax news created by both supporters throughout the election campaign.[23] For example, a well-known case of slander during the election campaign was 'Sandi-leaks' material depicting Sandiaga as a philanderer. [24] The government took down the scandalous site, but despite it being reported to the police[25], as far as we know, no one has been arrested in relation to this case. In late January, Prabowo's team reported the tabloid *Indonesia Barokah* to police for spreading hoax material. They claimed to have already reported 20 cases of defamation and hoax material created to undermine their campaign, including reporting to the police. They said at the time some reports had been there for three to six months and no

arrests had been made.[26] One arrest was made of a man who was making financial gain through a fake news syndicate. This included material slandering Prabowo but many other political figures like Jokowi and Megawati Sukarnoputri.[27]

The most publicised case of hoax news throughout this election was that concerning Ratna Sarumpaet, a former campaign team member of losing pair Prabowo-Sandiaga's team who claimed to have been assaulted by a group of men for her involvement in the opposition campaign. Photos of her swollen face were distributed widely on the internet and on WhatsApp groups. She later confessed that the swelling was the result of cosmetic surgery. The case transcended media platforms, and Ratna was the subject of all sorts of jokes, memes and social media commentary. She was eventually sentenced to two years' jail for spreading misinformation and causing public disorder under Article 14 (1) of the Criminal Code, as well as hate speech under Article 45A (2) of the UU ITE.

The case of Ratna Saruampeut deserves further scrutiny, yet her conviction was rarely criticised by NGOs, Human Rights activists or Indonesian media commentators. Her case was seemingly 'watertight' because she admitted guilt publicly, and furthermore, as a public figure she knew the consequences of her accusation would lead to a media circus, which she seemingly deliberately instigated. But Ratna was sacked from the campaign team and was sensationally ridiculed online and found to be lying. Was not her sacking and internet shaming enough punishment? Why did the prosecution ask for the maximum sentence – six years imprisonment – which is more than for some corruption cases? Ratna's eventual two-year sentence was the same length as that of a group named Saracen, convinced of creating a 'fake news factory'. Were these two cases similar and their equal length of sentence fair? Finally, there were other politicians who repeated Ratna's claims about her having been assaulted.[28] Should they have been charged for distributing fake news, given how others had been charged for this in the cases outlined above? None of these questions have easy answers, but they do point to the way in which these cases of 'hoax news' are currently being investigated in the country.

## UU ITE AS INDONESIA'S ANTI-FAKE NEWS LAW?

When neighboring Malaysia introduced its controversial anti-fake news law in the lead-up to its general election in 2018, there was swift international condemnation. One person was arrested under this law[29]: a Danish national descent who criticized the police and who pleaded guilty without a lawyer, before being deported.[30] The law was eventually overturned by the new government. New Prime Minister Mahathir Mohamad would later point out: "When you have a law to prevent people from airing views, then we are afraid that the government itself may abuse it, as has happened in the past. We do not want any government, whether this or the next one, to abuse such a law".[31] Politicians in government in Indonesia are not making similar statements.

The highly controversial UU ITE was created in 2008 to address commentary online. It includes a defamation clause similar to the one in the existing Penal Code, but specifically for online communications. There was immediate backlash and reviews at the Constitutional Courts, which ultimately failed to have the law revoked. Prosecutions under this law grew from there. SAFENET documented only one case of UU ITE in 2010, but 20 in 2013, to 41 cases in 2014.[32] In the Freedom House 2016 'Freedom of the Net' Report, it

was argued that UU ITE "continues to represent a serious threat to internet freedom. Often resulting in pre-trial detention, charges facilitate retaliation for online expression, even in cases that never make it to court".[33]

Some politicians in Prabowo's coalition have spoken out against the harsh use of UU ITE[34], in particular recently after opposition politician Ahmad Dhani was sentenced to 1.5 years in jail for a series of political crude tweets. Another example is that of opposition vice-presidential candidate Sandiaga Uno who said that if he were elected he would revise the law, because "I want to protect us from ourselves. I don't want us to be using those laws to hit our opponents".[35] In the aftermath of the election, the Indonesian government also made statements about revising the UU ITE, but for different reasons. In August, Minister of Law and Human Rights Yasonna H Laoly confirmed that the administration was planning to submit a content revision to UU ITE, in light of the case of Baiq Nuril, a female teacher who was sentenced to six months in prison for recording her principal sexually harassing her. Nuril was pardoned by President Joko Widodo in July 2019.[36] Overall, there has been little reflective commentary from government officials about whether UU ITE is basically being used as an equivalent of an 'anti-fake news law'.

Police also charged citizens under Article 14 Paragraph 2 of Law No. 1/1946 on the Criminal Code – usually referred to in the mainstream media as a law against 'treason' or 'subversion' – which carries a maximum sentence of three years behind bars. But as critics of this law have argued, the Criminal Code Law stipulates a high measure of 'chaos', and was written in 1946 – a time of heightened political tension around the formation of the new nation, and certainly long before the internet was invented. As Institute Criminal Justice Reform executive director Anggara argues, "commotion among netizens isn't enough to trigger the 'chaos' article of the law and use it as a basis for suspect naming".[37] In May 2019, police arrested the campaign spokesman for Prabowo and Sandiaga, Lieus Sungkharisma, as well as opposition PAN politician Eggi Sudjana[38] 'on suspicion of subversion and spreading hoaxes'.[39]

Of course, it is quite reasonable to believe that if someone deliberately creates hoax news material for the purpose of slander or for vilifying ethnic or religious groups, they deserve to be investigated, and if found guilty, sentenced accordingly. Thus, the question we should be asking is whether the current modus operandi of Indonesian police arrests for spreading hoax news is satisfactory and fair, and what alternatives might be considered.

**CONCLUSION**

Almost everyone agrees that Indonesia (as everywhere in the world) has an increasing problem of hoax news material being spread widely on the internet and social media platforms. The motivations for individuals who create hoax news are twofold. First, some people are motivated by money. The clicks they receive on their website or social media page can lead to significant funds. Second, in the political arena, people create and distribute hoax news because they can in that way gain a political advantage for their chosen candidate. The hoax is usually a slandering of a rival candidate. More responsibility needs to go to the platforms themselves. Google, Youtube and Facebook need to make sure 'fake news' is not a viable business model. Political 'black campaigning' is harder to manage, but 'takedowns' of social media disinformation producers does seem to help discourage these

types of actors.[40] In the absence of them doing so, the Indonesian government is stepping in by making arrests and criminalizing citizens for spreading hoaxes.

This article has outlined the existing problems with this approach. A key finding is that arrests are seemingly haphazard, or politicized. Arrests for *distributing* (as opposed to creating) hoax news is problematic, and police investigations should centre around observing and arresting 'syndicates' who spread fake or hoax news with the purpose of making money, or who are paid significant funds by political actors. Arresting individual citizens via a network of collaboration between a government institution and police units has the potential to create distrust of authorities within Indonesia's generally open and vibrant public sphere. Civil defamation laws, rather than criminal ones, could be a useful alternative in many of these political cases.

A second key finding is that the current system favours arrests of those who attack the sitting president. While the president is no doubt a major subject of political hoaxes, the structure within the police to report directly to the president, and its close relationship with a government ministry (Kominfo) seemingly leads to a more partisan operation. This system creates the potential for arrests that are politically motivated and based largely around whether the content is anti-government, leading to a perception that the government does not tolerate criticism and is using the security forces as an instrument of political repression.

By reflecting on the approaches taken throughout the 2019 elections, Indonesian government and security forces might look to more reasoned and accountable police process in the immediate future. There is a warning for other countries in the region too, as reflected in the comments made by Mahathir and Sandiaga Uno, that once an 'anti-fake news law' is created, police arrests for hoax material have a tendency to focus on hoax content which is critical of government and security forces. Police and government institutions must remember that the laws they create, and when and how they are used, is done for the benefit of all citizens, rather than for serving those currently in power.

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