A Look behind the Fake News Laws of Southeast Asia

Lasse Schuldt

16.12.2018 doi: 10.17176/20190211-224332-0

Much has been said about the possible influence of fake news on the 2016 U.S. presidential election, the 2017 French elections or the 2017 German federal parliamentary election. Countries around the globe are currently pondering ways to address the phenomenon. A high-level group of experts set up by the European Commission presented a report on possible policies to counter fake news and disinformation spread online. France recently passed an anti-fake news law. In many discussions, the German Network Enforcement Act (*Netzwerkdurchsetzungsgesetz*) has been cited as a prototype, though this law merely reinforced existing notice-and-take-down duties.

The developments and discussions have been followed closely around the world, including in Southeast Asia, the region with one of the world's highest diversity in terms of political and constitutional systems, legal influences, religions, cultures and languages. Here, diverse countries such as Cambodia, Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam have recently passed or are considering the passing of fake news laws, i.e. laws that criminalize the publication or distribution of false information and/or establish duties to remove impugned content from the internet.

The "politics of falsehood" is a particularly interesting lens through which deeper analyses of political discourses can be conducted. The question which falsehoods can be accepted and which need to be removed from public debate often touches upon the fabric of political systems, taking into account unique aspects and sensitivities in every country. The term "fake news" has therefore been characterized as a floating signifier, the definition of which is subject to public discourse until one hegemonic understanding prevails. The normative construction, i.e. the division into acceptable and unacceptable falsehoods, thereby not only reflects political power struggles in politics but also throws into sharp relief those issues and interests that are considered vital for the continued existence of states, systems or societies.

Fake news laws are different from general libel, defamation, sedition or similar laws (see also Section 66(d) of Myanmar's Telecommunications Law) because they establish a direct relation between a falsehood and a threat to public interests. They constitute a very early intervention against still abstract threats as they allow the removal of false information from public discourse before a critical mass of misinformation may pose a threat to protected interests. How to justify these restrictions of freedom of expression is an important question of our time.

In Southeast Asia, attempts to regulate the fake news phenomenon can be broadly categorized, on the one hand, in cases where fake news laws are conceived at least also as the government's weapon to silence critics and dissenters, and on the other hand, cases where the discourse is lead more open-ended.

Under the first category, Malaysia springs to mind where a sweeping Anti-Fake News Act was enacted by parliament in April this year. The law was clearly intended to shield then-prime minister Najib Razak against any further exposure in the 1MDB corruption scandal. The Act criminalized everyone who "knowingly creates, offers, publishes, prints, distributes, circulates or disseminates any fake news", whereas fake news was defined as "any news, information, data and reports, which is or are wholly or partly false". The new Pakatan Harapan coalition government under prime minister Mohamad Mahatir repealed the Act in August. The repealing law has been blocked by the Senate, which is, however, likely to be overridden by another vote in the House. The Malaysian case demonstrates how fake news legislation can be abused for political purposes. On the other hand, the wind of change after the election corrected this.

In Cambodia and Vietnam, it is expected that fake news legislation will largely serve those in power. In Cambodia, where the government has effectively removed all opposition, a ministerial directive has established measures against websites publishing "fake news" that "provoke, create chaos, damage national defence and security, incite discrimination, affect national customs and culture". A high-ranking ministerial representative said, "fake news is not good for real democracy, we want good news for our people." In Vietnam, which is ruled by the Vietnamese Communist Party, the recently enacted Cybersecurity Law, which also criminalizes spreading false information under specified conditions, is intended to be used against "enemy and reactionary forces" who incite protests, riots and terrorism.

Thailand is a somewhat mixed case. The Computer Crime Act, which also contains provisions criminalizing the distribution of false information, has been enacted in 2007. The law has then been amended in 2017 by the current military government, which is also about to enact a sweeping cybersecurity law. Indications that, since the 2014 coup, existing provisions have been used against political opponents demonstrate the problematic flexibility of these laws.

Much more open-ended are the fake news discourses in Indonesia, the Philippines and Singapore, three major democracies in Southeast Asia.

As to Indonesia, a majority-Muslim country which has long struggled with Islamic militancy, the most important issue in politics and society is probably the peaceful coexistence of the six constitutionally recognized religions. Recent years have seen a sharp rise of identity politics that played religions off against each other. A major incident occurred in 2016, when then Jakarta governor Basuki "Ahok" Tjahaja Purnama, a Christian of Chinese descent, was accused of blasphemy based on a doctored online video. Major Muslim rallies took place. Eventually, Ahok was sentenced to serve two years in prison. Very recently, tens of thousands of conservative Muslims formed a "reunion" in Jakarta, which was also attended by Prabowo Subianto, who will face incumbent president Joko Widodo in next year's presidential election.

Other fake news incidents creating public irritation and backlash could be named. Against the background of this weaponization of religious sentiment, the Indonesian government has launched a new cybersecurity agency at the beginning of this year to monitor the internet for fake news. Moreover, according to a draft provision of the revised penal code, "any person who broadcasts fake news or hoaxes resulting in a riot or disturbance shall be punished". The government also announced to hold weekly "fake news briefings" for the public. In sum, the fake news discourse is very much embedded in Indonesian identity politics.

The Philippines have been present in world news largely due to president Rodrigo Duterte's highly divisive drug war and the country's withdrawal from the International Criminal Court. Duterte has managed to secure broad parliamentary support for his policies, and even the Philippine Supreme Court appears to play by his rules as the ouster of Chief Justice Sereno by her colleagues has demonstrated. At the same time, the fragile peace process in southern Mindanao, confrontations with communist forces as well as the planned federalization of the country are important issues, too. In this political climate, several bills to tackle fake news have been put forward. They all invoke democracy, unity and trust in institutions as their goals.

According to the draft by Senator Villanueva, "false news or information [that] cause or tend to cause panic, division, chaos, violence, hate or which exhibit or tend to exhibit a propaganda to blacken or discredit one's reputation" shall be criminalized. A similar bill, introduced by House member Villafuerte, defines fake news as any "misquotation or the false and/or inaccurate report of one's statement, editing audio or video which results in the distortion of facts and/or the context, or purely fabricated content". Another bill by Senator Poe aims particularly at public officials who shall be explicitly prohibited from publishing false news or information.

The case of the Philippines shows how various political issues and power struggles form the background of fake news legislation. Interestingly, however,

populist president Duterte himself has publicly rejected any need for legislative action in this regard.

Recent developments in Singapore are particularly noteworthy. In September, the parliament's Select Committee on Deliberate Online Falsehoods published its final report after extensive public hearings that involved professionals from various backgrounds as well as members of the general public. The committee recommended a multi-pronged approach consisting of improved education and digital media literacy, better support for quality journalism, and disruption of online falsehoods by tagging or correction mechanisms and other measures including the removal or blocking of content or the shutting down of accounts.

As to the purposes of future Singaporean legislation, the final report focuses largely on the protection of Singapore's sensitive social cohesion and the harmonious and peaceful coexistence of racial and ethnic groups. The committee also refers to possible spill-over effects from religious conflicts in neighboring countries. Another important theme is the protection of democracy in terms of informed voting and the "meaningful exercise of freedom of speech", which, however, needs to be seen against Singapore's very low ranking in the World Press Freedom Index. Protection of the trust in authorities and the country's national sovereignty against foreign agents and state-led disinformation campaigns are also mentioned.

In sum, the Southeast Asian region demonstrates how the debates around fake news laws may allow a deeper look into the respective political and social discourses. Over time, these continuous processes will result in definitions of acceptable and unacceptable falsehoods, and they will determine which public interests justify state intervention. The question is, however, whether, or to what extent, the hegemonic understanding of fake news will be a tool to reaffirm national narratives and identity and whether new lines of demarcation will be drawn. It remains to be seen whether there will soon be acceptable and unacceptable versions of history and whether inconvenient truths can be labeled as fake.

ABOUT THE AUTHOR

Lasse Schuldt

Dr. Lasse Schuldt is Assistant Professor of Law at the Faculty of Law, Thammasat University, Bangkok.Dr. Lasse Schuldt is Assistant Professor of Law at the Faculty of Law, Thammasat University, Bangkok.

SUGGESTED CITATION

Schuldt, Lasse: A Look behind the Fake News Laws of Southeast Asia, Verfassungsblog, 16.12.2018, doi: 10.17176/20190211-224332-0.

Licensed under CC BY-SA 4.0.

Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20190211-224332-0.