

**PRESS FREEDOM AND HOAX NEWS: DEMOCRACY ANOMALY**

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**ABSTRACT**

*After the collapse of the New Order regime, the hope of a more realized configuration gave freedom of approval through a press. However, the freedom obtained by the Press is currently full of negatives, namely news of false news that is increasing. The method used in this study is a normative juridical legal research method. According to the results of the 2018 Edelman Trust Barometer survey, seven out of 10 people in the world were worried that fake news would be used as "weapons". In Indonesia alone, 76 to 80 percent of the public is worried about using hoaks as a weapon to create instability in the country. These findings indicate that there are challenges from democratic reform and post-reform law enforcement. This paper discusses the solution to the legal aspect of dealing with the rise of false news as an effort to protect democracy and freedom of information.*

**Keywords:** *Press Freedom, Law Enforcement, Democracy.*

**INTRODUCTION**

Democracy and freedom of the press are two components that go hand in hand. Democratic regimes are reflected by freedom of the press. On the other hand, freedom of the press gives everyone the freedom to express their ideas and ideas. However, in addition to the positive side which then emerged, the fact is that democracy and freedom of the press are able to give rise to rampant lies.<sup>1</sup> Especially when it is related to the process of political contestation in a democratic regime, the public does not easily identify the authenticity of a story and tends to obscure or even distort a fact. Freer democratic space, including freedom of the press and open expression after the fall of Soeharto in 1998. Where, the Press has a role in controlling the running of the government and at the same time working to voice the aspirations of the people.

The role of the press like this should be idealized in various constitutions in the world as in the United States Constitution referred to as the fourth branch of government (the fourth branch of government). Even in the Dutch Constitution, namely in Article 7, the constitutional protection of the press is marked by the need for a licensing system for publication and the absence of censorship. The same thing is also found in the Constitution of East Timor as a newly established country. Where Article 41 guarantees freedom of the press and media and prohibits monopoly and political and economic interference in the media.

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<sup>1</sup>Ibnu Sina Chandranegara, *Bantuan Hukum dan Rezim Kenegaraan*, (Jakarta: *Paper*, Peranan Mahasiswa dan Lembaga Bantuan Hukum dalam Penanggulangan Hoax di Fakultas Hukum Universitas Muhammadiyah Jakarta, 13 March 2019), p. 3.

However, during the amendment to the 1945 Constitution during the reform era, efforts to include articles on guaranteeing freedom of the press were prevented so that it failed to become a constitutional article. Even so, Article 4 of Law Number 40 Year 1999 concerning the Press abolished the rules relating to *breidel*, censorship, and licensing. Even the ministerial institution which was considered a scourge of freedom, namely the Ministry of Information, was dissolved during the reign of Abdurrahman Wahid. However, beyond previous estimates, the tap of freedom - including freedom of the press - is like excessive. Like mushrooms in the rainy season, the press grows and develops rapidly, the amount experiences tremendous inflation, the "media content" (substance) is even more diverse and daring to attack, criticize, and even dismantle the dominance of the discourse of state discipline. The shackles of the press that have been lost make broadcasters and online media compete and become lucrative business fields both at national and local levels. However, a few years later, many also went bankrupt and closed. This is because there are many presses that do not meet ethical standards, are not professional, and have low quality. This also worsens the situation and the quality of the press which correlates with journalists who are only pragmatic and opportunistic oriented so that they give rise to the term 'envelope journalist', 'reporter or fake media, reporters without newspapers (WTS), and so on. In addition, the freedom of the press that has been granted has slowly begun to be stripped away or after a weakening. The state has again issued policies and legislation that are anti-freedom of the press, including

provisions that allow the criminalization of journalists through Law No. 44/2008 on Pornography, Law No. 11/2008 concerning Information and Electronic Transactions, revisions to the Law Criminal Law, and other laws.

Apart from the emergence of various provisions, the phenomenon of the growing and rampant lies especially in approaching the political constellation clearly brings the problem of new social conflicts. social conflicts that occurred in the new order occurred vertically, namely between the ruler and his people, so now social conflicts occur horizontally, namely between one community group and another community group. This paper intends to outline legal solutions regarding tackling rampant lies as an effort to protect democracy and freedom of information.

## **METHOD**

Legal research is a process to find the rule of law, legal principles, and legal doctrines to address the legal issues at hand.<sup>2</sup> The type of legal research used in this study is normative juridical. The data used are secondary data using primary legal materials, secondary legal materials, and tertiary legal materials.

## **DISCUSSION**

### **Surplus and Information Overdose**

The term "surplus" was quoted from Susilo Bambang Yudhoyono when expressing how free the freedom of the press after the new order.<sup>3</sup> While the term

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<sup>2</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana Prenada Media Group, 2005), p. 35.

<sup>3</sup>"We used to have a deficit, but now we have a freedom of press surplus ..." The remarks were delivered by President Susilo Bambang Yudhoyono (SBY) when given the commemoration of the fourth anniversary of the National Journal Daily in Jakarta, June 3,

"overdose" was introduced by Professor Tjipta Lesmana in describing how freely the Press even called it an "excessive" thing.<sup>4</sup> The face of a free press does have two sides that have opposite dimensions. The same thing with the invention of the printing press that made Gutenberg great merit in strengthening democracy in Europe. This printing press was also used by the Nazis to spread fascism. Franklin D. Roosevelt cleverly used radio to save US democracy but it was radio that Hitler's propagandist Joseph Goebbels used to spread hatred and fascism. When the Slobodan Milosevic tyrant government in Belgrade shut down an opposition radio station, the group then uploaded the broadcast via the internet and was finally relayed by other stations such as Radi Free Europe and Deutsche Welle.<sup>5</sup> The internet as a value-free technology product has a double face when it is in the universe of political pragmatism: it is used to revive democracy, but it is also contradictory to kill democracy. In addition to the presence of oligarchic praxis in the transition to democracy, the laying down of gray information also

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2010. The daily was a political communication tool through the media Democratic Party, a party that raised and won SBY in electoral political contestation twice the period, 2004 and 2009 ago.

<sup>4</sup>Tjipta Lesmana said, "... press freedom is too excessive or 'overdosed'. Even compared to the United States and the United Kingdom, press freedom in Indonesia is greater and seems to have no restrictions. This 'overdosed' press is inseparable from the legislation that sheltered it, which at the time of making the regulation, Indonesia was stricken with freedom after the Soeharto regime (Oase, Kompas, 9/12/2010).

<sup>5</sup>Leslie David Simon, *Democracy & the internet: allies or adversaries ?*, (Washington D.C: Woodrow Wilson Center Pres, 2003) p. 104.

ultimately enacts the oligarchic natural laws that emerge.<sup>6</sup>

One thing that can be understood from the development of technology through the history of the birth of the internet is a contradiction. The internet that was born in 1969 from the United States Department of Defense office created anomaly. Where unlimited media instruments are born or created by the most rigid institutions associated with restrictions. Related to the birth of the internet as a free media, the fundamental question arises whether the internet will be a friend or foe to democracy? To this question, there are 3 (three) streams, namely pessimistic flow, optimistic flow, and realistic flow. Pessimistic schools feel that the internet cannot be a loyal friend of democracy but stabs from behind. The optimistic school believes strongly that the internet will strengthen democracy. Realistic flow is a balancing flow between two other streams, namely by encouraging

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<sup>6</sup>Robert Michels believes that every political system eventually turns into an oligarchy, following what he calls the 'iron law of oligarchy'. According to this school of thought, modern democracy must in practice be seen as an oligarchy. In this system, the actual differences between political competitors seem small, the oligarchic elite impose rigid limits on political positions that are 'acceptable' and 'respected', and political careers are highly dependent on the economy and media of the unelected elite. This phenomenon is expressed in a popular phrase: there is only one political party, the 'incumbent party'. When power is effectively in the hands of a small, elite group of individuals within a highly influential economic entity or economic instrument, such as banks, commercial entities, it is called the corporatocracy. The commercial entities involved as stated above usually commit improper actions, by oligarchic drive, and often with little or nothing to protect constitutional prerogatives, *Ibid*, p. 105.

the democratic side of the internet, and at the same time recognizing and minimizing the antidemocratic side of the internet.<sup>7</sup> The internet has 9 (nine) special features that can erode authoritarianism, namely: breaking physical boundaries, no control, increasing the ability of civil power to associate freely, reducing state control over its citizens, making the state a dilemma (using it or not), its power is unstoppable, forcing governments to be more democratic, empower civilian forces, and expand access to public education.<sup>8</sup>

At the time of the advent of the internet, these nine characteristics were believed to be raising the level of democracy from analog democracy to digital democracy. But in fact, regimes in several countries also use the internet with success to strengthen their totalitarian power. They use social media for economic capitalization only, but silence it when entering the political domain. It is true what David Gompert said, information technology is the sine qua non of globalization and power. Technology integrates the world economy and spreads freedom, but at the same time is an important factor for the military and other forms of power.<sup>9</sup> As a result of the nature of the ambivalence of the internet, causing each country to differ in responding to the internet or social media: some give space because they realize the economic benefits, some are anxious about their political potential, and some face a dilemma between wanting to enjoy the economic

benefits of the internet but still control the content to anticipate the impact of its politics. The internet influences the course of democracy and simultaneous economic growth. But some countries try to take one benefit, and eliminate other benefits.<sup>10</sup>

This double face of the internet is felt until the era of social media, one of the "babies" that he was born now. If it wasn't for social media, Arab Spring would never have come true. But, "thanks" to social media, the Islamic State of Iraq and Syria (ISIS) groups can spread their ideology and products of terror throughout the world.<sup>11</sup> Examples of the double face of the internet in the political sphere can be seen in Barack Obama and Donald Trump. Where, moderate and pro-globalization Barack Obama was born from the womb of social media, as did conservative and protectionist Donald Trump. Trump was won by "fake news" which is the dark side of social media. What we need to do is anticipate the dark side of social media, while maximizing the bright side (democracy). Because social media is only one instrument among the many instruments that colored the long history of the journey of democracy. Previously other technocratic instruments were born, and in the future will also be replaced by more innovative. Black campaigns are rife in the early era of the emergence of print and television media. However, with both media democracy has reached its maturity and expanded its area of public participation.

Social media is similar too: it is used creatively by voters as a new means

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<sup>7</sup>David C. Gompert, *National Security in The Information Age*, (Naval War College Review, v. LI, no. 4, Autumn 1998), p. 22.

<sup>8</sup>Leslie David Simon, *Democracy & Internet*, ...*Op. Cit.*, p. 106

<sup>9</sup>David C. Gompert, *National Security in The Information Age*.....*Op. Cit.*, p. 32

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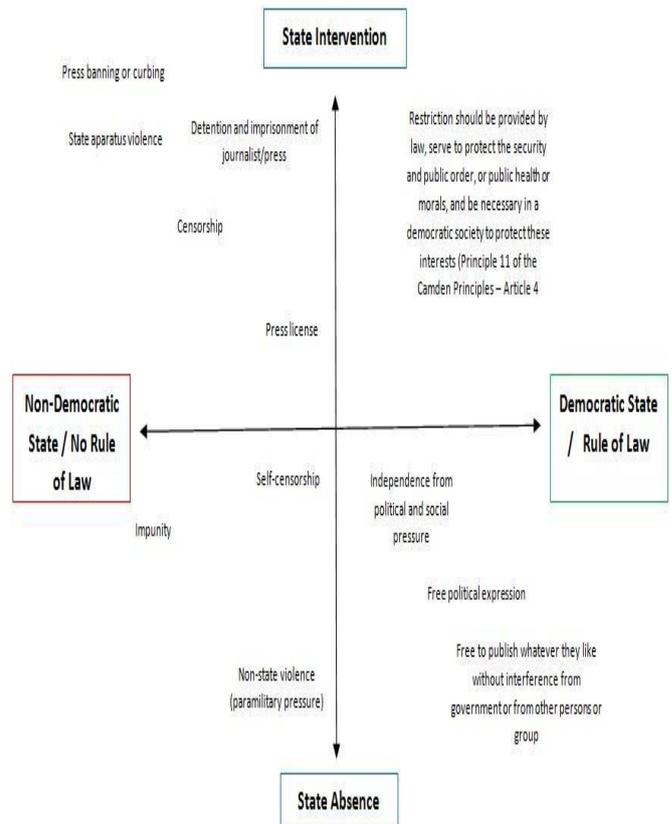
<sup>10</sup>Leslie David Simon, *Democracy & Internet*, ...*Op. Cit.*, p. 106

<sup>11</sup>Abdel Bari Atwan, *Islamic State: The Digital Caliphate*, (California: UCLA Press, 2015) p. 28-29.

of political participation. Lying news is an inseparable result of this new political participation tool called social media. The potential for socio-political conflict is easier because it is facilitated online.

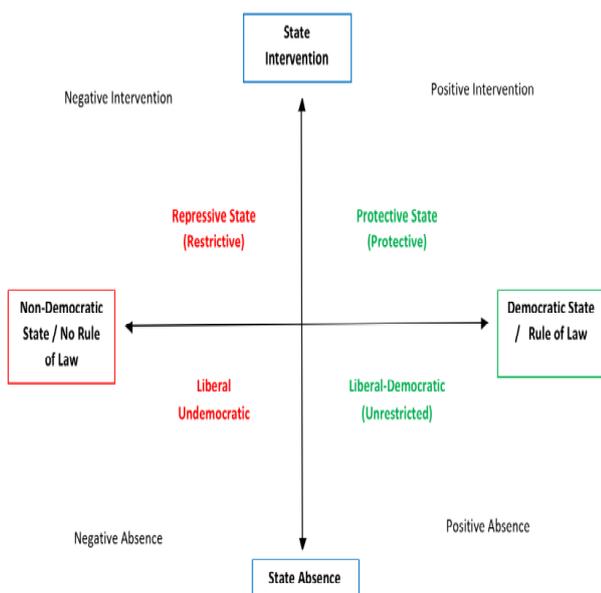
Social media is a very potential tool to strengthen and expand democracy which is experiencing a crisis of participation. Social media has also become a new energy that makes civil power grow into a socio-political "David" that is able to rival the "Goliath" supremacy of power. Social media makes it easier for civil society to carry out its role as a power balancing force and buffer the state. Based on the description above, press relations and freedom can use the scheme compiled by Herlambang P Wiratraman as follows:<sup>12</sup>

Further explained Herlambang P. Wiratraman explained his scheme with indicators and their impact as follows:<sup>13</sup>



This pattern is even considered by Herlambang P. Wiratraman as the dominant model of media ownership in political contestation which is actually very dangerous because power control in its democratic model will weaken, so that media workers are likely to be insensitive, critical and professional, because they will be more serving the power holders of certain media, economics and politics, as well as democratic instruments that utilize the tradition of 'privatized gangsters' power, still leaves question marks about the direction of political-economic democratization in Indonesia. This pattern is what ultimately media workers will compete to provide positive sentiment for owners or who are considered media owners need to be "jacked up" in popularity or tend to try to create negative sentiment. Finally, the excessive fanatic side makes the birth of news that tends to be excessive both in the context of positive

The Role of the State and Press Freedom: Types



<sup>12</sup>Herlambang P. Wiratraman, Press Freedom, Law and Politics in Indonesia, A Socio Legal Study. (Dissertation in Leiden University, 2014), p. 16.

<sup>13</sup>Ibid, p. 17.

sentiments and negative sentiments, which in turn gives birth to false news.

### **Restrictions through law**

There are a variety of legal instruments that have actually been provided to deal with the emergence of false news. Such as restrictions on freedom of expression through international criminal law instruments such as child pornography, calls to encourage actions that lead to genocide, advocacy of hatred based on race, religion, or nationality which is an invitation to discriminate, hostility, or violence, and an invitation to terrorism.<sup>14</sup> Referring to Article 28 J paragraph (2) of the 1945 Constitution is a form of restriction even by the constitution "Restrictions established by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with moral considerations, religious values, security and public order in a democratic society. Restrictions in the ITE Law are actually regulated in detail, and several things are important in developing freedom of citizen journalism so that it becomes increasingly responsible and fosters responsibility to the public. For example, in journalism citizens must pay attention to personal rights (privacy rights), as stipulated in article 26 of Law Number 11 Year 2008 concerning Information and Electronic Transactions.<sup>15</sup>

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<sup>14</sup>Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression <http://daccessods.un.org/access.nsf/Get?Open&DS=A/66/290&Lang=E>, paragraph 20-36.

<sup>15</sup>Article 26 Paragraph (1) of the ITE Law: In the use of Information Technology, protection of personal data is one part of personal rights (privacy rights). Personal rights

The affirmation of "actions issued" involves expressly in articles 27-37 of the ITE Law, as opposed intentionally and without rights and / or transmits and / or makes access to Electronic Information and / or Electronic Documents that provide that support decency, pay for gambling , contents of defamation and / or defamation, extortion and / or threats. Prankspublik, pdf, pdf, pdf, psp, pdf, pdf, psp, pdf, psp, psp, psp, pdf, psp, pdf, psp, pdf, psp, psp, psp, psp, psp, apartments, banners, intergroup SARA) A challenging scare fight. In addition, this article also discusses the Criminal Code, among others: First, the hate sowing articles (haatzaai articleen), such as articles 154-157 of the Criminal Code; second, insults and defamation, articles 134, 136bis, articles 137, articles 207-209, articles 310, 311, 315 and 316 of the Criminal Code; early, broadcasting false news, article 171, 317 of the Criminal Code. Fourth, Incitement, articles 160-161 of the Criminal Code; Fifth, violations of decency and decency, articles 282 and 533 of the Criminal Code; Sixth, change over state secrecy, articles 112-115 of the Criminal Code.

According to Herlambang, P. Wiratraman, recent legal growth and press freedom. Instead the facts on the ground. This is caused by several reasons including, first, seen, seen, glasses, law enforcement, court provisions used to win the press, not to support press freedom.

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include the following: a. Personal rights are the rights to enjoy private life and are free from all kinds of distractions. b. Personal rights are the right to be able to communicate with others without spying. c. Personal rights are the right to supervise access to information about one's personal life and data.

This case can be seen from a number of cases, such as the 2003 case of Rakyat Merdeka sponsored by Megawati and the Tempo case supported by Tomy Winata and the 2007 case of conviction of Bersihar Lubis for the column he published. Secondly, from the perspective of the normative text, the word "written" or "writing" in the Criminal Code is transferred to complete the press in it. This interpretation is used as a legal basis for breaking into disputes considering certain parties so as to represent disputes and disputes over third disputes. Third, being approved in the Supreme Court ruling Number 1608 / K / PID / 2005 clearly shows that: (1) applying the Criminal Law to cases related to the press regulated in the Press Law is wrong, (2) it must also discuss the national press should be a political pillar, so that judges should contribute to supporting the law for press workers and consider the Press Law as *lex specialis* (point 83), (3) in accordance with the *lex specialis derogate legi generali* principle in its application the provisions in The Press Law must take precedence in accordance with other provisions, including provisions in the Criminal Code. (4) Up to now many countries have dealt with issues such as defamation, defamation, unpleasant actions, and civil law issues. Because these countries have decided on defamation provisions, it is deemed necessary to renew the negotiation process. In addition, international institutions, such as the United Nations, OSCE and OAS, have proven the need to eliminate penalties for defamation, because supporting the remedies cannot be

justified. Therefore, it must be changed, from 'defamation' to 'civil defamation'.<sup>16</sup>

When referring to General Comment No. 34 of the International Covenant on Civil and Political Rights, which has been ratified through Law No. 12 of 2005, states that the obligation to guarantee all forms of citizen opinions without third party interference,<sup>17</sup> is an absolute thing that must be carried out for the states parties (Covenant). Restrictions are also not allowed on even offensive opinions, which can use false facts, as long as they cannot prove a real loss to the public. Restrictions on freedom of expression,<sup>18</sup> dengan menggunakan pendekatan pemidanaan, baru bisa dilakukan apabila ekspresi atau pendapat yang diungkapkan dinilai memuat ancaman, propaganda kebencian, atau hasutan kekerasan yang nyata terhadap kelompok ras, agama, suku atau golongan tertentu.<sup>19</sup> Nevertheless, the dissemination of hoax news on a very massive level still has serious consequences for the promotion and enforcement of human rights in a democratic society. In the United States, restrictions on all forms of information on the internet are not permitted by federal law, but they are still valid if they are carried out based on over-the-top (swaregulation) corporate decisions, such as search engines and social media service providers, in the

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<sup>16</sup>Herlambang P. Wiratraman, "Kebebasan Pers, Hukum dan Perkembangannya" in *Kebebasan Ekspresi di Indonesia: Hukum, Dinamika, Masalah dan Tantangannya*. (Jakarta: ELSAM, 2016), p. 101-103.

<sup>17</sup>Article 19 paragraph (1) of Law No. 12 of 2005.

<sup>18</sup>Article 19 paragraph (3) jo ayat (2) of Law No. 12 Tahun 2005

<sup>19</sup>Article 20 of No. 12 Tahun 2005.

context of spreading hate speech. through the term of service mechanism. These actions can be done by filtering, blocking or blocking public access to certain social media information or accounts.<sup>20</sup>

The German Government plans to impose fines on site managers who are deemed to have failed in anticipating the spread of hoaxes in their domain. The plan, Germany will set a fine of at least a maximum of 500,000 euros or more than Rp. 7 billion. Maximum imprisonment for 5 years will also be applied to the perpetrators of spreading hoaxes and hearsay on the internet. The plan is still under discussion in the German parliament.<sup>21</sup>

Until now, internet service providers such as Facebook and Google have initiated many strategies to prevent the consequences of hoaxes and actively respond to the dissemination of hoax news in their networks. One of the steps implemented was in September 2016, the Partnership on Artificial Intelligence to Benefit People and Society was formed which aims to develop research on artificial intelligence (AI) to support the ethics of transparency, accountability and reliability of the use of artificial intelligence in society, including also the prevention of false news which has the potential to disrupt people's trust in AI

technology. This collaboration was initiated by several over the top giants such as Amazon, Facebook, IBM, Microsoft, Google, and DeepMind.

## CONCLUSION

Based on several problems that arise due to the growing and rampant hoax news, it is necessary to have a series of solutions that need to be developed in addition to regulation. Giving advocacy to the spread of false news can be done in several ways such as, first, structuring media organizations, this is done by encouraging the work of healthy and pluralistic media and increasing the accuracy and checking of facts, to encourage journalists to be more transparent about their sources and to tell the truth, secondly, increase media and digital literacy, thirdly, carry out advocacy related to diverting digital advertising funds to support news outlets in identifying and banning fake news websites for transparency and responsibility, fourth, encouraging ideas campaigns, not black campaigns (black campaign) in the case of political contestation that uses the media as a means of distribution.

Therefore, anticipating false news and its damaging consequences in society cannot be carried out only through a criminalization or criminal approach. If this becomes the main focus of law enforcement against the dissemination of false news, the Government of Indonesia has the potential to crash the commitments of respect, protection and fulfillment of human rights that have been mandated in the 1945 Constitution of the Republic of Indonesia and the International Covenant on Civil and Political Rights. Where, the Covenant standard stipulates that an

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<sup>20</sup>Dave Maass, *California Bill to Ban "Fake News" Would be Disastrous for Political Speech*, ELECTRONIC FRONTIER FOUNDATION (Mar. 27, 2017), <https://www.eff.org/deeplinks/2017/03/california-bill-ban-fake-news-would-be-disastrous-political-speech>.

<sup>21</sup>Joe Miller, *Germany Votes for 50m Euro Social Media Fines*, BBC (June 30, 2017), <http://www.bbc.co.uk/news/technology-40444354>.

opinion cannot be limited, especially through punishment, only because it is merely filled with hoaxes. The Indonesian government should realize that hoaxes can only be resolved if they involve broad public participation in encouraging media / digital literacy and an accountable, reliable and transparent legal and policy infrastructure.

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