

Jurisprudence Concerning ‘Fake News’ and Related Concepts in Malaysia

Sajaneer Sukumaran- Faculty of Law, Universiti Kebangsaan Malaysia, Malaysia.

Chin Yuh Herng- Faculty of Law, Universiti Kebangsaan Malaysia, Malaysia.

Rizal Rahman*- Faculty of Law Universiti Kebangsaan Malaysia, Malaysia.

Ammar Abbas Kadhim- Professor, Department of Law, Al-Mustaqbal University College, Iraq.

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Abstract

The development of digital technology encourages the advantages of using digital media as the main information source. However, such development has also been misused by certain individuals or entities to mislead the public by generating fake news. On the Internet, false information travels faster than the truth, and it takes a lot of effort to stop it. This article uses a qualitative approach analysis to evaluate the various strategies used to thwart false news. In the first part, the authors described the notion of false news. In the second part, the authors examined the legislative framework that Malaysian parliaments have adopted to make it illegal to spread and publish false information. In the final part, the authors zoomed through the lens of jurisprudence that can be applied as a counter measure against dissemination of fake news. Hence, the importance of this article is to provide a clear understanding of the jurisprudence analysis of fake news in Malaysia.

Keywords: Fake News, Dissemination, Jurisprudence, Malaysia, Law.

* E-mail : noryn@ukm.edu.my

1. Introduction

According to the Oxford Dictionary, fake news is a term that defines news that is deemed as a made-up story that is published on purpose to mislead readers. The purpose of fabricating false information is to boost reading or wage psychological warfare. Fake news issue has raised concerns in society in these few years as it has become a significant phenomenon in the world of Internet-based media. Many authors are examining the causes, traits, and effects of its production and dissemination. Due to wide studies of it, it is hard to find an actual, agreed term for 'fake news' within the academic circle. Some of the views are usually connected with other terms such as false news, rumour, misinformation, and maliciously false news. (Farmer, 2021). By quoting the clarification given by Allcott and Getzkow, fake news is defined as news stories that are blatantly, demonstrably, and potentially untrue (Allcott and Getzkow,2017). While for Conroy, fake news means deceptive news, including heavy fabrication, hoaxes, and satires in his work. (Rubin and et al,2015) In Balmas's view, satirical news is referred to be fake news since it contains incorrect information. Satire news, in contrast to false news, is by its very nature entertaining (Molina and Lee,2019).

2 .Fake News and Related Concepts

There are several terms that are built up by many related concepts with fake news. Society often uses those terms to represent some parts of the fake news concept or think that they are equivalent to the meaning of fake news. In fact, they actually have some differences with fake news. Hence, the other related concepts would be explained briefly to help the readers have a clearer mindset on what is not considered fake news.

2-1. Fake News

As mentioned above, the definition of fake news concept can be referred to Allcott and Getzkow, who stated that it refers to a news article that is deliberately and verifiably false and could mislead readers (Allcott and Getzkow,2017).

2-2. False News

False news is the type of news that contains inaccurate information, no matter if it was produced on purpose or by mistake, while fake news is faulty information that has been purposefully invented. These two terms

have been used interchangeably by scholars as no fixed and all agreed definitions for these two terms (Wang,2020).

2-3. News Satire

News satire can be defined as a type of humorous media works like news articles, and television shows, which the reader or viewer commonly understand that it is just for fun but not the true fact as it does not stand for accurate information of a matter. Although it does not transmit the true fact, it still differs from fake news, as there is no intention to cause harm but only to make fun of certain aspects in society (Smith and et al,2021,117-137). However, it is hard to rule out that some people might accept the parody message of the news satire unconsciously, then form an opinion about a matter through it. Some people may even mistakenly and wrongly believe that the satirical news that it reports is legitimate news (Wang,2020).

2-4. Yellow Journalism

Yellow journalism is a way used by media workers to gain more attention, and more viewers by using exaggerated or even rumoured titles and facts, in their work. It might still spread the true fact inside some of those articles, but one cannot deny that it surely aids in the dissemination of false information. And because those are still sharing true news in it despite having shocking headlines, this concept should be differentiated from the concept of fake news too (Wang,2020).

2-5. Junk News

Junk news refers to useless news whose contents would not raise the interest of the viewer as it is usually deemed as 'trash' information that has no benefit for anyone. The content might be propagandist, ideologically extreme, hyper partisan, or conspiratorial political information. The difference between junk news and fake news is that it does not have any audience group because it is not important at all (Wang,2020).

2-6. Pseudo-News

Pseudo-news is the type of news that the whole content that is presented in that article is made up by the author. This is in contrast to fake news which still consists of true facts but has been presented inaccurately and misleading to the actual truth (Wang,2020).

2-7. Hoax News

Hoax news refers to a message that leads the viewer to believe that something is true when it is not. Hoaxes can be taken as facts in many scenarios like through myths, urban legends, pseudoscience, and April Fool's jokes. Therefore, it usually would be deemed as a joke and would not be taken seriously. Inaccurate messages are inserted in hoax news intentionally, not by accident, as it is for humorous or malicious deceptions (NordVPN,2022).

2-8. Propaganda News

A sponsored news report that presents propaganda as news is known as propaganda news. It presents an embellished truth as sponsorship is given to news organisations to spread misinformation. However, since the source, funding party, and purpose are not disclosed, the viewer cannot be certain that the news is not a typical news story. Besides, based on the facts that propaganda news does not contain inaccurate or incorrect facts, it is not fake news, but since it is intentionally given to communicate a certain message, it differs from regular news reports (Wang,2020).

2-9. Advertorial

Advertorial is a type of advertising with content that looks like a news article and typically includes a sponsor statement with the aim of delivering a marketing message to the viewer. However, as it is not news and contains no inaccurate or incorrect information, an advertorial is different from the concept of fake news. Some individuals could believe that an advertorial is a sort of fake news since it deceives the viewers by using news reporting methods for advertising commercial content. The difference between the advertorial and propaganda news is that the advertorial discloses its source, the funding provider, and the motivation (Wang,2020).

3 .Who Produces Fake News?

In general, it is hard to identify who has produced fake news, and who is behind the disinformation as it might be governments, organisations, companies, and individuals. However, to handle the issue of fake news, one must start by analysing the motivation of those who produce it, although we usually cannot catch the origin creator and the true person who is responsible for the particular fake news due to many reasons. Motivation can mainly be categorised into three types: political, financial, and social aspects .

Looking into political motivation, it is a motivation that has been heavily circulated in fake news stories all the time. The disinformation produced under this motivation is known as propaganda, which is generated by politicians or political area-related individuals to influence and affect the public's mind towards some issues that are beneficial to themselves. The beneficial part means altering or maintaining a power balance of their political position. As clarified by Jowett and O'Donnell in their book, (Jowett and O'Donnell,2012) the content of propaganda is usually negative and dishonest, and that has led to the result that the synonyms for the word propaganda are lies, distortion, deceit, manipulation, mind control, psychological warfare, and brainwashing (Kalsnes,2018). If not controlled, it would lead to chaos not only within the country but may create regional tension with its neighbours (Hafeznia and et al,2014).

Next, financial motivation also contributes to the amount of fake news nowadays, which content is similar to yellow journalism. This can normally be seen in social media like Facebook where some users produce fake news to gain more reviews, and attract people to click and share as this is how their profit is generated. People who produce fake news due to financial motivation are not aiming for political benefit but merely seeking money (Kalsnes,2018). The dissemination has become even more rampant, considering many people have been out of employment due to downsizing of companies and enterprises in the wake of the economic hardship during and post COVID-19 pandemic, especially when business activities were put to a halt in force majeure (Bagheri and et al,2021). In addition, financially-motivated fake news is also connected to the act of deceit to lure potential victims. (Harun and et al,2015).

The last type of motivation is from the social dimension, that is the social needs. Some people need attention, identity building, or entertainment from fake news. This is evident in social media where the high amount of 'likes', 'shares', and 'comments' gained by the fake news post would give a feeling to the creator, that he resonates and connects with others, and has been paid attention by them, and some of them might be able to build up their own identities through the exaggerated fake news created by them, as it is not easy to find out the truth on internet messages. And with social media, fake news could spread at a very fast speed to the wider world (Kalsnes,2018).

4 .Who Believes in Fake News?

The population in society who usually would believe fake news have some common characteristics through several aspects based on the data survey conducted by some scholars. The aspects included the growing distrust in the media; the users' level of education, some of the less educated users have a poorer cognitive ability to discern the authenticity of the news; and age, older people would be more likely to trust fake news. In addition, party affiliation and ideological identity also lead ideologically right-wing individuals to have a stronger propensity to reject difficult topics and rely more heavily on implicit reasoning, and this has led to the tendency in them to accept fake news more easily. Besides, the ample availability and time dedicated to social media also cause the content of fake news to be more familiar and easily accessible to some users (Baptista and Gradim,2020).

5 .What is the Malaysian Legal Position on Fake News?

Governments around the world are concerned with false news that might mislead readers because of structural changes in news content. Malaysia also has several legislations catering to handle the diffusion of fake news, as outlined in the following discussion. It is also to be noted that for those news disseminated online, it is regarded as electronic evidence in Malaysian courts (Rajamanickam and et al, 2022; Yahya and Hashim,2021).

5.1 .Anti-Fake News Act 2018

The Anti-Fake News Act 2018 is a short-lived statute that was in force for a mere duration of two years. Section 2 of the Act defines "fake news" as "any news, information, data, and reports, which are or are wholly or partly false, whether in the form of features, visuals, audio recordings, or in any other form capable of suggesting words or ideas".

Any written, digitally, or electronically created publication was included in the definition of the word "publication." Nevertheless, it is unclear if Section 2's definition of "publication" must be interpreted in conjunction with Section 114(A) of the Evidence Act 1950. According to Section 3(1) of the Act, extraterritorial applicability means that anyone despite his nationality or current residence will be subject to the Act. The Act's authority is further expanded by Section 3 (2), under which a person may be held responsible for publishing false information about Malaysia or Malaysian citizens.

Categories of offences with a maximum punishment of RM500,000 or 10 years in jail are outlined in the Anti-Fake News Act of 2018. The Act does not explain why such harsh penalties were applied, as though they were akin to crimes against the state. Any act of “making, offering, publishing, printing, distributing, circulating, or disseminating any false news or publication containing fake news” is prohibited by Section 4 (1) of the Act. However, in order to be found guilty, one must deliberately do the aforementioned activities. Absence of knowledge or ignorance about the truthfulness of the news will not render a person guilty under the Act, though from the civil perspective it would amount to misrepresentation if other people so believe and act upon it.

The second category stipulates that anybody who offers financial aid, whether directly or indirectly, to enable an offence under the above provision may also be found guilty under Section 5. Furthermore, section 6(1) inflicts an obligation to delete publications that include fake news, and failing to do so is a crime. In this circumstance, the Sessions Court may issue an order under Section 7 for the deletion of any publication that contains fake news. Explanation to Section 7 states that, for the purpose of making it easier to serve court orders, such service may be done (other than through the regular postal services) to the offender’s email address or social media account. However, there is no deadline set forth in the Anti-Fake News Act 2018 for the purported offender to remove fake news. If the Content Code is cross-referenced, the infringing content must be taken down within one to twenty-four hours after the takedown notice is submitted. This implies that the Content Code’s removal processes were more specific so that explicit instructions could be given to delete illegal content. In contrast, the court is empowered by the Act to order the enforcement authority to take whatever steps are required to remove the stated publication if anybody obtaining such a removal order neglects to delete any fake news. Such measures were not specified or recommended under the Act, nevertheless.

However, if the recipient of the removal order feels that the allegedly false news publication, he is in possession of is not fake news, he may ask the court to reverse the decision. However, if the government has secured the removal order in accordance with Section 7, no application to set aside such an order may be made by any individual (as provided under Section 8). This

is especially true when the false news contains material that jeopardises public order or national security; as a result, the Act grants the government a specific right to have such fake news removed.

A Danish person was charged under the Anti-False News Act 2018 within the first month of its passage for intentionally distributing fake news in the form of a YouTube video under the user's name Salah Sulaiman and was sentenced to a week in prison and a fine of RM10,000. (Tariq, (2018) In fact, he was the first and last person convicted under the Act, as the Act was effectively repealed in 2019 on the ground that it is not necessary as other provisions of law are already sufficient. The offence provision was however revived in Section 4 of Emergency (Essential Powers) (No. 2) Ordinance 2021 which came into operation, albeit temporarily, when emergency was declared in Malaysia due to the COVID-19 pandemic.

5.2 .Printing Presses and Publications Act 1984 (PPPA)

This Act controls the Malaysian print media sector, which includes publications in print or audio, such as newspapers, books, magazines, and comics. This Act, which was approved in 1987, was meant to stop the spread of “malicious “false information in the published media sector. The PPPA primarily legislates against printing or publishing a newspaper without a permit (Section 5) and having, printing, or publishing a forbidden publication as instructed by the Minister (Section 7 & 8).

Section 8A (1) of the PPPA provides, “Where in any publication there is maliciously published any false news, the printer, publisher, editor and the writer thereof shall be guilty of an offence“ .

This “catch-all” provision pertains to all publications in general, hence pamphlets handed out during a political seminar are also included. However, social activists and opposition politicians have frequently been the target of criticism over the above provision. (Shuaib and Haron,2019; cxxvii)

The Act's inadequate definition of what constitutes “false information “has received criticism over the abuse of law. Another issue is the severe need to abolish the implied malicious element. (Nawang & Mustaffa, 2017, 1718–1722) It should be emphasised that the publisher must have taken all necessary procedures to confirm the authenticity of the news, as required by Section 8A (2) of the Act. (Faruqi,2008) However, the effort to verify whether the publisher has taken all necessary precautions itself would eventually be shown to be a significant challenge among real whistle-blowers due to its subjectivity.

However, charges under Section 8A of the PPA 1984 have decreased significantly in recent years, paralleling the local fall in major printed press publications. (Haron and et al,2019). The necessity for restrictions over internet material has recently come to light due to the growing trust in online news as a primary source of information (Daud,2019).

5.3 .Communications and Multimedia Act 1998

The Act is a comprehensive set of rules that the Malaysian Communications and Multimedia Commission (MCMC) administers to the communications and multimedia industries.

Section 211 and Section 233 have been applied against the online initiation or dissemination of fake news. (Nawang and Mustaffa,2017:1718–1722) Section 211 which provides for prohibition on provision of offensive content states:

“1. No content applications service provider, or other person using a content applications service, shall provide content which is indecent, obscene, false, menacing, or offensive in character with intent to annoy, abuse, threaten or harass any person.

2.A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both and shall also be liable to a further fine of one thousand ringgit for every day or part of a day during which the offence is continued after conviction .

Section 213 which provides for Content code states:

“1.A content code prepared by the content forum or the Commission shall include model procedures for dealing with offensive or indecent content.

2. The matters which the code may address may include, but are not limited to—

- (a) the restrictions on the provision of unsuitable content;
- (b) the methods of classifying content;
- (c) the procedures for handling public complaints and for reporting information about complaints to the Commission;
- (d) the representation of Malaysian culture and national identity;
- (e) public information and education regarding content regulation and technologies for the end user control of content; and
- (f) other matters of concern to the community“ .

According to Section 211, “fake news “falls under the general classification of ‘offensive content’ (Daud and Zulhuda,2020:32–48), whereas Section 233 provides for improper use of network facilities or network services; which includes dissemination of false content. (Daud,2016:132) In practice, section 233 controls online platform providing interactive content for example social media like Facebook, Instagram and TikTok, while Section 211 governs online static content such as official websites and blogs. (Daud, 2019) Hence the reason behind the many prosecutions and convictions under Section 233, in particular during the COVID-19 pandemic.

Nevertheless, the ambiguity of the terminology outlined in Section 211 and 233 pose a problem, in particular the usage of the word ‘false’ and ‘offensive’. That is where the Content Code developed by the Communications and Multimedia Content Forum (CMCF) becomes handy. (Daud and Zulhuda,2020:32–48)

5.4 .Penal Code (Revised 1997)

Section 505(b) of the Penal Code states:

“Whoever makes, publishes or circulates any statement, rumour or report... with intent to cause... fear or alarm to the public, or to any section of the public where by any person may be induced to commit an offence against the State or against the public tranquility... shall be punished with imprisonment which may extend to two years or with fine or with both..

Section 505(b) of the Penal Code generally restricts the spreading of both physical and online false information. It is also not confined to a mere dissemination of such information but it also causes public fear or worry for a person to be charged under the provision. The provision has been extensively utilised against the diffusion of fake information regarding COVID-19, (Bernama,2020) in addition to other temporal measures to contain the pandemic. (Idris and et al.,2021).

Since the Malaysian government mainly relies on criminal procedures to control the spread of false information, the use of this provision has drawn criticism from Human Rights advocates, who raised their worries, especially Article 19. In this regard, they argued that such legal actions were to be reserved for the “most serious and dangerous forms of speech “and only in extreme cases (ARTICLE 19,2020). This provision’s criminal liability, which heavily depends on the listener’s subjective reaction and whether it is likely to create panic or not, is the major source of worry, (Zainul,2020: 1–4) as we know that in order to curb actions that are deemed criminal,

sufficient profiling should also be taken into consideration (Mustaffa and et al.,2022). This eventually may offer the listener leverage to quiet others who are critical of him (Human Rights Watch,2015). Along with the aforementioned provisions, civil defamation tort proceedings can be brought against the publisher of “fake news”.

6 .Jurisprudential Views on Fake News

6.1 .Legal Enforcement of Morality on Fake News

What is seen as moral changes as society develops and beliefs shift. There are several historical instances of legislation that, by today’s standards, are obviously immoral. The only way that morality is incorporated into the law is through a set of standards for behaviour, and these standards are only granted legal standing in the courts not because of their moral obligation, but rather because of the legal character that is bestowed upon them by common law recognition. Whilst not everyone concurs with the judgements, modifying the legislation is a significant step in the direction of altering prevailing social perceptions (Sauer,2023).

Law and morality are related because they both aim to improve moral standards and, ultimately, people’s lives. Morality implies a basic reference to the distinction between what is right from what is wrong. Any conflict arising from different perceptions of morality may either be settled amicably between the parties or via judicial proceedings (Dahlan and Rajamanickam,2021). How far the law should impose morality raises the issue of morality’s enforcement. Ironically, some will be citing Article 10 of the Federal Constitution, which protects citizens’ right to free speech, to support their argument that everyone is free to express their opinions without thinking about the consequences. For example, some may find it fine to simply share whatever they assume right when in reality it would jeopardize the legal process (Ismail, Yee and Hussein,2022). As a result, the law resembles a conflict between absolutist freedom and flawless morality. (Gizbert-Studnicki and Klinowski,2010). Citizens demand that their laws reflect their changing conception of what is moral as society grows more knowledgeable, free, and open.

Morality and law both presume human freedom. Of course, morality cannot be discussed in the absence of freedom. However, if the law were to be upheld mechanically rather than willingly, people would merely be robots. What is meant by freedom? Everybody has another description and

definition of what it is. According to Arthur Schopenhauer, it can be distinguished into three types of freedom: physical, intellectual, and moral freedom. Moral freedom means that there are some simulations such as “threats, promises, dangers “which may be barriers to human acts, even if these are compatible with his will. “Will “here means “I may do what I want “which would lead to the spreading of fake news. Threats to violate these moral standards relate to moral and social effects (Schopenhauer,1839).

Our freedom is constantly restricted by the law. It’s possible that the interference is legitimate or not. Zooming through the lens of jurisprudence, philosopher John Stuart Mill asks: “What, then, is the rightful limit to the sovereignty of the individual over himself? Where does the authority of society begin? How much of human life should be assigned to individuality, and how much to society? “However, Mill answers that the harm principle limits interference in society’s individual life. How does the principal sound? The idea behind the principle is that as long as they do not cause harm to anyone, they can do anything. For example, if they kill someone, they must be convicted and punished. If they steal your money, they must pay you. Mill gives an interesting example of the enforcement of morality. “Suppose now that in a people, of whom the majority were Muslim, that majority should insist upon not permitting pork to be eaten within the limits of the country. This would be nothing new in Muslim countries. Would it be a legitimate exercise of the moral authority of public opinion? And if not, why not? The practice is really revolting to such a public”(Mills,1871).

The authors do agree with Mills’s opinion that everyone has the freedom of speech with some limitations to it where it should be analysed as to how far the consequence of the news, especially fake news, would impact society. The law should interfere when fake news brings harm to society. The law is sometimes compared to a conflict between moral absolutism and full freedom. Legal orders include the use of the law to enforce morals. We need to comprehend how freedom of expression was established as well as some associated risks from false news.

The issue of legal paternalism and the boundaries of freedom are intertwined. According to Dworkin, paternalism is “the interference with a person’s liberty of action justified by reasons referring exclusively to the welfare, good, happiness, needs, interests or values of the person being coerced.” In which scenario does that indicate legal paternalism? What restricts our freedom on the ground of paternalism? Dworkin gives the

following example: laws requiring motorcyclists to wear safety helmets, laws forbidding persons from swimming at a public beach without lifeguards, laws making suicide a crime, and laws forbidding women's and children's work at certain types of jobs. Our freedom, both physically and morally, is restricted when the principle of paternalism in the law is realised. Limitations can be fair or unfair, and we must constantly take into account societal or personal values when evaluating the fairness of legal constraints on our freedom. Any paternalistic law must be firmly justified by the respect for human dignity and freedom (Dworkin,1972).

Malaysia does have a specific law on fake news to combat fake news from spreading. Therefore, we may not feel completely free in the eyes of the law, but we may feel completely free in the eyes of our system of values and/or conscience. Yet we must understand where to stop.

6.2 Natural Law and Utilitarianism Theory on Fake News

According to Rawls's Liberty Principle, "Each person has an equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme of liberties for all" (Rawls,1971). Linked to our issue, one of the subjects of fake news that has been discussed over these years is the ambiguity of spreading fake news and freedom of speech. (Latham,2020). Freedom of speech is a fundamental liberty of every human being as stated in the Federal Constitution of Malaysia, but the spread of misinformation would be even harder to solve if the law does not impose some restrictions on individuals. The restriction of such liberty is the only way to balance the liberties of others who receive that information. Therefore, although everyone should have the right to enjoy their fundamental rights such as freedom of expression to express any thoughts, the scope of this authority should be integrated with another theory, which is the Utilitarianism Theory of Justice. Referring to Jeremy Bentham's famous utilitarian theory, "A law should be enacted with the prime object of providing maximum justice to the maximum number of people" (Bentham,1890).

The right to fake news leads the discussion to a topic that has been raised up by the CarrCenter for Human Rights Policy at Harvard Kennedy School, by a multidisciplinary cast of Kennedy School scholars, other Harvard faculty, and visiting scholars (Ranalli,2022). This topic is whether the right to truth exists. According to the opinion of Professor Mathias Risse, CarrCenter faculty director and the conference co-organizer: We are familiar with a

right to truth in a range of specific contexts. In the human rights world, we are familiar with it in the domain of transitional justice, where the United Nations human rights machinery has long recognized a right to truth specifically in the context of mass atrocities. The idea is that victims and other members of communities where massive abuses happened are entitled to actually know what happened, and who did what to whom. And we know of specific rights to truth in other contexts, such as in medical ethics and in the judicial context when oath-taking is involved, things like that. So, the right to truth is familiar from specific contexts—that is how we know it—but then there is the question of: How broadly an entitlement to truth can we formulate here?” (Ranalli,2022).

Apparently, the right to truth is closely related to the freedom of speech and expression. How wide should this right be held? How much impact would it bring on the right to speech and expression? How much should it be restricted to ensure the balance between it and the freedom of speech and expression ?

By viewing this problem in Malaysia, the country is actually on the right path in balancing these two rights, as stated in Printing Presses and Publications Act 1984, Communication and Multimedia Act 1998, Anti-Fake News Act 2018, and Penal Code (Revised 1997). However, it is a must to at least give it a try in imposing legal restrictions to control the fake news issue. It is crucial to approach the ideal situation, which is maximum individuals able to enjoy their maximum freedoms and their rights. This includes freedom of speech and right to the truth, and causing the least minimal loss in society in order to maximise the public interest, as suggested in the Utilitarian theory; and none of either one of the rights should be completely abandoned as laid out in natural law.

6.3 .Sociological School of Thought on Fake News

The position of law towards the fake news issue could be formed, weighed, and reviewed based on the Pound theory under the Sociological School of law in jurisprudence. Pound’s theory about the sociological school of law is a jurisprudence principle based on “the science of law, using the term law in the juridical sense, as denoting the body of principles recognised or enforced by public and regular tribunals in the administration of justice. “Every issue that happens can be linked to the social dimension, thus jurisprudence should be on the relationship between law and society (Muhammed,2019). Pound has distinguished this theory from the general sociology of law by

clarifying that it is more practical for an issue than forming law to take action for that issue. For the practical aspects, it can be started by identifying the social interest that is necessary and important to be taken care of by law in order to eradicate or reduce as possible as the law can about a particular issue.

According to Pound's theory, there are five points that need to be considered to determine the scope and subject matter of a system that can rule a particular issue. Firstly, the preparation of an inventory of interests. Secondly, the selection of the interests which should be legally recognized. Thirdly, the demarcation of the limits of securing the interests so selected. Fourthly, the consideration of the means whereby laws might secure the interests when these have been acknowledged and delimited. Lastly, the evolution of the principles of evaluation of the interests.

We could go through these five points to identify the systematic and effective ways to generate a suitable legal framework system for controlling fake news issues. Firstly, the interests that should be considered within this issue could be categorised into three views as laid out under Pound's theory too: (i) individual interests: (ii) public interest: (iii) interest of the state as a guardian of social interest.

For individual interests, it means the needs of an individual life. Within the fake news issue, the interest of the individual would be the freedom of speech and expression as well as the right to truth. For public interests, it is like the claims of public society which means people only without the government's involvement. In this case, it can be said as a secure and reliable information system provided to society, which can help them make the right decision and rational thinking in their life. This can be seen in the news that the second dose of the COVID-19 vaccine shot has caused complications for the recipients, and this has led many people to have refused to be vaccinated, especially their older family members (Ministry of Communication and Digital, 2022). Such fake news affected people's judgment at such a critical moment, delaying the epidemic prevention opportunity for more people, causing more casualties, and seriously endangering public safety. At the same time, state interests stand for the interests from the governmental dimension, as a guardian of social interest. For example, the state's security is due to fake news that impersonates state officials to express state positions towards some sensitive issues. It is just

like the fake news incident that happened in March 2020, where the research showed that around 30% of U.S. adults trust the news that the coronavirus was created by the Chinese government as a bioweapon (Abrams,2021). It caused hatred between the races and nations which made the pandemic situation tenser. And also, during the 2016 US Presidential election, the deliberate use of false news on social media to influence political processes has been noted (Helm,2021). The harm of fake news would influence public and state interests, also been supported in Human Rights Law Review 2021 that fake news usually has an impact on a broader interest, such as public order or the integrity of democratic processes. It has been used as a weapon of foreign sabotage and interference adds to the arsenal of contemporary information warfare instruments. Thus, the purpose of generating fake news has been explained as “designed to undermine security, public order, and peaceful democratic processes “(Council of Europe Parliamentary Assembly,2018). By carrying out an investigation under the interests of these three categories, the interests that existed under the fake news issue could be identified.

Secondly is the selection of the interests being found out in the first step in order to identify which should be legally recognized and protected. Thirdly, the demarcation of the limits of securing the interests are also selected. As mentioned in the integration between natural law and utilitarianism theory before this, we are not able to reach the maximum benefits of society if we are not willing to do any sacrifice, which means limits some interests to reach the most ideal information environment .

Fourthly, the consideration of the means whereby laws might secure the interests when these have been acknowledged and delimited. In this particular case, one needs to select the interests that are more crucial in solving the chaotic environment brought by the fake news issues, and sacrifice some interests that are not that important in contrast by law. For instance, restriction of some people’s right to freedom of speech and expression when it contains indecent, obscene, false, menacing, or offensive characters with the intent to annoy, abuse, threaten or harass any person .

Lastly, the evolution of the principles of evaluation of the interests. As we know, to control the content of expression, it is necessary to restrict the scope of freedom of expression of people, and this would lead to conflicting interests, and thus it is important for the state to rule out the law that has considered all factors involved in the drafting of this law.

In order to perform the last step that completes the whole system, which is law drafting, parties involved should always adjust the law to suit the exact society's needs based on referred materials. This principle is called 'social engineering'. By clarifying social engineering, Pound argues that judges and lawyers should let go of their rigid attitude and adjust the law to accommodate for changes, weigh and balance the conflicting interests to achieve the greatest amount of interests enjoyed by society and accompanied with the least amount of friction and waste.

In order to address this delicate balancing act, as mentioned above, the efficacy of the regulatory provisions in achieving the regulatory goal can be determined by an evidence-based analysis and drafting process. Some amount of free speech limits are unavoidable in order to deter the creation and spread of fake news, as opposed to just halting it. The amount to which the public believes the social benefits of the free flow of information to be outweighed by the public interest in eradicating the societal harms produced by false news, however, may vary depending on how much social cost each society is willing and able to pay off (Helm, 2021:302–328). The relevant authorities of the state should keep analysing the best restriction scope for their own society which has different needs and conditions from others, by referring to Pound's theory suggested methods.

7. Conclusion

In short, the law and policy of a state should always weigh and balance the scope of the restrictions placed on the information in order to solve the fake news issues as much as they can, thus the chilling effect caused by their action would not affect the right to information of people. The chilling effect stands for a phenomenon where the law or the policy of the government is actually preventing the exercise of the rights to free speech and expression. There has not been much investigation into what it actually means, and the infrequent attempts to systematically document the chilling effect placed on free speech by laws and court rulings have been thwarted by a lack of trustworthy and readily accessible data. (Townend, 2016) However, undoubtedly, the chilling effect will happen when the state is paying more attention to reviewing the fake news issue. With the avoidance of creating fake news and facing legal action, it will preclude the very development of media content because nothing is written in the first place, so nothing has to be altered to reduce and even stop the possibility of

untruthful or misrepresented content. Therefore, the most appropriate way to reach the best resolution on the regulation of fake news would be to always keep an eye on the social needs and feedback on this issue, and amend the governing law to provide the greatest respect to individual rights and interests, and as far as possible to achieve the maximum social interests.

In addition, some counter measures have also been taken. For example, information correction is conducted by developing a specific digital platform where the deception of fake news can be clarified to the public. Many nations, including Canada, China, Croatia, Italy, and Pakistan, have adopted the concept of creating an internet site for resolving fake news. In Singapore, they have improved this way where the authorities may issue a correction direction under the Protection from Online Falsehoods and Manipulation Act 2019 to compel a maker of a false statement or an internet intermediary service provider to issue a corrective notice in accordance with the Act's specifications (Helm,2021:302–328). Also, the state authorities could conduct content removal or block. This means by using automatic content filtering or a group of content moderators that manually evaluate material that internet users have flagged as offensive, the online content may face removal or blockage. Twitter, for instance, has enacted a “synthetic and manipulated media” policy that mandates the removal of “tweets” that contain material that has been deliberately manipulated so as to mislead or fool people about its authenticity and put their physical safety or other critical interests at risk. While Facebook and Twitter have also made efforts to delete potentially damaging misleading information during the coronavirus pandemic, these steps emphasise labelling and downgrading rather than content removal (Helm,2021:302–328). These methods may be helped in controlling fake news issues as well, but it is hard to be consistently successful and may even bring the opposite impact on society on their fundamental liberties, freedom of speech, and expression.

To conclude, no matter what methods and actions have been taken by the government and the state authorities in controlling this issue, they should always critically re-examine the necessity and proportionality of such law or policy, by referring to the jurisprudence principles: Morality, Natural Law, Utilitarianism, and Sociology School of Law. Only then the liberties of the society will be balanced to their better benefits.

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