

Internet Rules: Unboxing digital laws in Southeast Asia

Summary notes from Day 3: Freedom of Expression

Session 5: Speaking up: SEA laws on protecting freedom of expression

The third day of Internet Rules: Unboxing Digital Laws in Southeast Asia 2021 workshop was an opportunity for participants to learn about how the Southeast Asia region protects freedom of expression through various laws, or perhaps, instead of protecting, the tendency to harm or violate the freedom of expression, which is recognized as part of basic Human Rights in the Article 19 of both Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR).

Wahyudi Djafar, the Executive Director of the Institute for Policy Research and Advocacy (ELSAM), explained that freedom of expression is an essential element for citizens' participation in political life and it encourages the citizens to think critically. It's a precondition for manifesting transparency and accountability principles, which is also essential for the promotion and protection of human rights. Freedom of expression is a starting point for enjoyment of freedom of assembly, association, and the exercise of the right to vote.

In the context of the internet, Wahyudi explained that the internet has been the main facility for an individual to exercise the right to freedom of expression. The Internet has become the required tool to realise human rights, exterminate unfairness, and accelerate development and human advancement. Freedom of expression on the internet encompassed the right to express, right to information, and right to access, which each has its own challenges, ranging from prior censorship, criminalization, identity disclosure laws, content filtering or blocking, implementing net neutrality principles, intimidation and harassment of journalists/activists by state, to addressing digital divide and providing internet access to the disadvantaged communities, investing in infrastructure, and carrying out policies and practices in a non-discriminatory manner.

Regarding the legal framework of freedom of expression in the Southeast Asian region, Wahyudi remarked that even though all ASEAN countries, except for Brunei Darussalam, has recognized it as part of the constitutional rights, the implementation itself is not consistent. The inconsistency is seen when the limitation of freedom of expression is applied but without the fulfillment of the requirement. There are still various legislations not aligned with the freedom of expression concept and principles. With the high penetration and impact of the internet, various new legislations are created which bring new threats to freedom of expression. This session also provided an exercise for the participants to map out the laws in their own countries that protect freedom of expression and ones that harm or might violate it. At the end of the session, Wahyudi elaborated on how each Southeast Asian country uses conventional laws to limit freedom of expression on behalf of public order and national security.

Session 6: Unpacking hate speech, defamation, and misinformation

Herlambang Wiratraman, a Senior Lecturer and Researcher at the Centre of Human Rights Law Studies (HRLS), Faculty of Law, Airlangga University, assisted the participants to understand the complexities of hate speech, misinformation, and defamation at the international level and in Southeast Asia (SEA).

There were several trends in the region brought up during the session. While there is an absence of international legal definition of hate speech, in contrast hate speech in various new forms (race & religion; political ideology & values; sexual minorities; foreign nationals, migrant workers, & refugees) is pervasive in the region. Herlambang then emphasized the importance for us to examine the connection between hateful expression with its potential ramifications on violence. Moreover, with the surging amount of fake news in the region, authorities tend to respond to the matter by issuing fake news laws. However, those laws may be misused and therefore have implications on freedom of expression of the societies. Besides that, there is also a trend in the region to use cyber-defamation laws to silence criticisms from the public and also media outlets.

During the breakout session, the participants experienced hands-on practices examining and deliberating the complexity and grey areas of hate speech, defamation, and misinformation. With such dynamics in the region and at the international level, the participants were empowered to have discerning eyes to identify legitimate from prohibited speech.