The Dark Side of Social Media in eParticipation: a Socio-Legal Perspective

Full Paper

Alfatika Aunuriella Dini
University of Agder, Norway
Universitas Gadjah Mada, Indonesia
alfatika.a.dini@uia.no

Abstract

Using the taxonomy of Bright ICT research and the framework of freedom of expression, this article focuses on Restorative Bright ICT to capture the problems arising from the use of social media within eParticipation in Indonesia, and how to overcome them. The article addresses the objectives by analyzing three illustrative cases of eParticipation through social media in Indonesia. Data from document analysis and interviews are also provided to add to the understanding of the phenomena. Theoretical and practical implications are also presented, including identification of the problems of social media in eParticipation in Indonesia, along with potential restorative solutions underpinned by Bright Internet principles from legal, social and technical perspectives. Furthermore, this article also proposes a model for Restorative Bright ICT in eParticipation in Indonesia to guide future research for this interest area.

Keywords

Restorative Bright ICT, social media, eParticipation, dark side, case study, socio-legal, Indonesia.

Introduction

Social media encourages a participatory culture, allowing individuals to have greater access to information as well as for allowing greater participation culturally, socially, and politically (Lim 2013b). Mainstream media nowadays also has a tendency to become an amplification of what is happening in social media.¹ In a country of 250 million people, the number of Internet users in Indonesia is expected to reach 100 million by 2017, and to be dominated mainly by the young adult demographic. With the recent explosion of development in online media, the Indonesian government has begun encouraging eParticipation via online media initiatives in order to encourage the citizen voice. The term ‘eParticipation’, in an Indonesian context, refers to the use of information and communication technologies (ICT) to better involve citizens in government decision-making processes (Medaglia 2012). In this paper, eParticipation will be demonstrated by the dynamic relationship between the citizen and government agents such as legislators and politicians, via social media platforms. However, in the midst of such relationship, certain obstacles arise as a result of an imbalance of power between those ‘in power’ and those who are not, as well as the unintended consequences of legislation. This area requires honest examination as literature which focuses on eParticipation- and the unintended consequences of social media use in this context- is next to non-existent.

ICT, particularly social media platforms, have many affordances in the context of eParticipation. This includes its facilitation for values sharing, opinion gathering, political networking, and for its overall promotion of participation (Dini et al. 2016). On the other hand, ICT initiatives also bring with them a darker element which often presses on various legal considerations, such as risks and vulnerabilities associated with privacy, cyber-attacks, slander, ICT dependence, and gaming addiction, which go on to create global impacts that cross borders (Fedorowicz and Lee 2015).

¹ Based on observation of recent events and news in Indonesia. Sources mostly come from social media where cases emerged and developed.
In response, the Council of Association for Information Systems (AIS) coined the Bright ICT initiative in 2014 in order to address the legal aspects such as that of Internet crimes, exploration of cyber bullying and online harassment in social media as well as how to maintain freedom of expression without violating privacy on the Internet (Lee 2015; Lee 2016). The notion of “Bright” is in contrast to the “Dark” effects of ICT (Lee 2016). Thus, the goal of the initiative is to prevent the undesirable effects caused by ICT, or at least to mitigate the adverse effects, and in doing so make future societies better (Lee 2016). This paper is a call to the opportunity offered by Restorative Bright ICT research to identify the dark side of ICT in the context of social media use within eParticipation in Indonesia, as well as a submission of potential solutions for solving the problems identified.

Currently, Indonesia relies on the “Information and Electronic Transaction (IET) Law” to govern activities carried out via online media. The purpose of this law is to support the development of ICTs safely so as to prevent abuse with due regard to the abundant religious and socio-cultural values in Indonesia. However, there have been cases where parties have been abusing the provisions of the law to subjugate freedom of speech and freedom of press. Of particular interest within the legislation is the cyber defamation clause which unwinds legal restrictions against freedom of expression through online media. It provides that cyber defamation applies to anyone who posts defamatory statements through an online medium, and it carries a six year term of imprisonment and/or a fine of maximum one billion rupiah (around $80,000USD). Just like many other countries in the world, freedom of expression is also a fundamental human right in Indonesia, a right that is protected by the Indonesian Constitution and Laws concerning human rights. Additionally, Indonesia has also ratified The Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR). However, since the enactment of the IET Law in 2008, there have been more than 128 claims that seem to question a person’s right to these freedoms, as most of the cases relate to defamation claims.

From the list of 128 cases compiled by the Southeast Asia Freedom of Expression Network, this paper will illustrate three of those which relate to eParticipation activities and the unintended consequence and application of IET law. To begin, Case A focuses on an anti-corruption activist’s accusations toward a politician being involved in ‘money-politics’. Secondly, Case B is a story of a Facebook user defaming Kebumen city and finally, Case C is about a case of defamation in Padang provincial parliament. Inspired by the framework of Taxonomy of Bright ICT along with Indonesian legislation on defamation, the three cases presented in this paper will seek to provide a new framework to identify (1) the problems in social media use for eParticipation in Indonesia and (2) how the Bright ICT Initiative principles address these identified problems.

Theoretical Premise

The Bright ICT Initiative: Visionary Research by Principles

The Bright ICT initiative was introduced in 2014 by the Council of AIS with the purpose of combating the dark effects of ICTs (Lee 2016). One of the Bright ICT endeavors included the “Bright Internet” concept which emphasizes the prevention and elimination of sources of cybercrime (Lee 2016). “Research for the Bright Internet can be regarded as a typical example of visionary research with[sic.] six principles” (Lee 2015; Lee 2016 p.3). However, in this paper, only the three principles that have the greatest effect on eParticipation will be discussed; namely the principle of Rule-based Digital Search Warrants, the principle of Traceable Anonymity, and the principle of Privacy Protection. The first principle, the Rule-based Digital Search Warrant, is applied for combating cyber crime and online fraud. Specifically, it is the real time surveillance of data packets by content or username (Lee 2016; Nissenbaum 2009). It is important that this search warrant is built around an advanced rule-based mechanism for flagging inappropriate
content, because the potential for a Government to infringe on a citizen’s right to privacy as a result of broad content filters is of paramount concern. All the same, the benefit of monitoring messages through the application of this principle is expected to be greater than the risk of privacy infringement. The second is the principle of Traceable Anonymity; this principle allows an appropriate authority to access the real name of the user in the event a cybercrime has been committed; however authorization will only be granted once a digital search warrant has been issued. Essentially, these two principles work hand in hand—first by considering flagged content against what constitutes ‘freedom of expression’ so that the anonymity of a citizen is maintained and secondly, in the event of not satisfying the rule-based mechanism, the prevention of anonymous crimes, where, once an unlawful action is detected, the real name of the anonymous user then becomes traceable. When the principles indicated above are implemented, then finally, the third principle of Privacy Protection is necessary to ensure the privacy of the innocent citizens. These three principles explained above work together to become a significant part of the foundation for the innovative design of a visionary system (Lee 2016).

Bright ICT research can be classified into two, that is “Enriching Bright Internet research” and “Restorative Bright Internet research” (Lee 2016). Enriching Bright Internet research produces ICT-enabled value through addressing issues not directly caused by ICT, for instance, issues pertaining to education, healthcare and poverty. On the other hand, Restorative Bright Internet research tries to identify the dark effects of ICT, and designs solutions to solve those problems (Lee 2016). In analyzing the 3 cases of eParticipatory activities involving social media, and the application of IET law in Indonesia, The Taxonomy of Bright ICT proposed by Lee (2016), will be used. While there is already much research undertaken on Enriching Bright ICT, the research on the dark side of ICT—such as cybercrime and cyber terror—is still only just emerging. A broader ethical agenda to make a better world needs to be addressed and we must embrace new technologies such as social media and new settings where ICTs will be even more important (Walsham 2012). The Bright ICT initiative argues that first priority research must be on how the Internet will overcome the problems itself has manifested, such as cybercrime (Allen 2015). To that end, future Information Systems (IS) research, as envisioned by Walsham, would be to include ethical goals toward which ICTs should be applied in order to make a better world. In the context of eParticipation through social media in Indonesia, the principles of the Bright Internet could be incorporated into the legal framework as a technological restorative solution to re-establish eParticipation as a facilitative component toward a brighter society, but only after the problems caused by the dark side of social media are identified.

Defamation and Freedom of Expression

“Everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information of all kinds, regardless of the frontiers, in writing or in print, in the form of art, or through any other media of his choice.”

This right, however, carries special duties and responsibilities and is subject to certain restrictions including (1) the respect for the rights and reputation of others and (2) in respect to the protection of national security or for public order or for public health or morals.

Although freedom of expression is one of the oldest articles for human rights that is constitutionally recognized, in practical application its implementation has been influenced by political configurations and their policies (Wiratraman 2010). Prior to IET Law, general provisions concerning defamation were regulated under the Indonesian Criminal Code. In general, defamation was divided into six categories including insult, libel, vilification, slander, false complaints and false presupposition. However, generally article 310 and 311 are most widely used for defamation cases including those which occur in cyberspace. Article 310 and 311 provide:

- The insult must be carried out in a way of “accusing a person of committing a certain act”, with the intention for it to be known by the public.
- A person can be prosecuted under this section if the allegations or defamatory statements are made by text or images.
- It is not considered defamation if the actions were made to defend the public interest or forcibly to defend themselves.

---

11 Article 19 Law number 12 of 2005 on ratification of International Covenant on Civil and Political Rights
12 Ibid, par. 3
Defamation in the Indonesian Criminal Code is included in the “complaint-based offense” category where the cases will not automatically proceed without prior complaint. In other words, a complaint on the alleged defamatory action would need to be submitted in order for legal proceedings to take place (Hiariej 2014). A defamatory statement is generally defined as a statement or words that intend to make reasonable people think the worst of the defamed person (Price 2001). Another common definition refers to words which cause a person to be shunned or avoided (Price 2001). It is implied from the categories of defamation in the Indonesian Criminal Code that to be reckoned as defamatory, firstly, it must be an untrue statement that aims to lower the reputation and standing of an individual in the eyes of society. Secondly, the defamation (either orally or written) must be intentionally made public. Hence, a determination needs to be made as to whether a statement has been made in private online space or in the public online sphere. Also, the definition of defamation can be argued to lack scope, as the clause only specifies that dissemination of defamatory material must be “intentional” and “without right” which are also left unexplained. Even though the IET law is the more specific piece of law for instances of online complaints, before a case can proceed under that law it must meet the definition of defamation in the criminal code, otherwise it can be said that the laws are overlapping in their application. However, this is where it becomes interesting because the Criminal Code’s vague definition of defamation may lend itself to be easily used to criminalize citizens who express their freedom of opinion through social media (Lim 2013).

Besides the Indonesian criminal code and the IET Law, provisions for defamation also exist under the Indonesian Civil Code concerning civil wrongdoing. According to the jurisprudence of the supreme court decision that forms precedent in Indonesia, a civil wrongdoing is to do or not to do anything that (Hiariej 2014) (1) violates the rights of others, (2) is contrary to the legal obligations to the person committing such acts, and (3) contrary to morality and public order. There are additional criteria which must be met for civil wrongdoings and they include (1) the action must be against the law, (2) to the detriment of the other party, (3) there must be a mistake and (4) a causal relationship between action and loss. The conditions must be met accumulatively in order to prosecute the alleged action according to the civil wrongdoing article (Djojodirdjo 1979). The difference between wrongdoing (tort) in criminal law and in civil law is that by its nature as a public law, there is a public interest that is being infringed upon (possibly also the interest of individual) in a criminal action, whereas in the civil wrongdoing, the action infringes individual interest only (Munir 2005).

**Study Method and Context**

Indonesia experienced a transformation in 1998 after the fall of Indonesian President Suharto, resulting in a shift from an illiberal, authoritarian regime to one of democratic and open systems (Dini et al, 2016; Wahid and Sæbø 2015). One of the most notable changes was the emergence of freedom of expression (Wiratraman 2010). Nevertheless, the implementation of freedom of expression has always been influenced heavily by political structure and policies; to the point where social media itself is used to deliver political rhetoric (Wiratraman 2010). Using the three illustrative cases, this phenomena will be highlighted from two standpoints; first, from the perspective of the problematic legislation, including the overlap between IET Law, the Indonesian Criminal Code, and the Indonesian Civil Code. Secondly, from the perspective of the Bright ICT research taxonomy, which focuses on the principles of rule-based digital search warrants, traceable anonymity and privacy protection.

For this paper, three well-documented cases that have come about between 2008-2016 that illustrate such facets as diversity in the type of eParticipation, defamatory, application of legislation, and the status of the cases, were analyzed. The three cases were selected after careful examination of the entire 128, to identify those which involved eParticipation in the form of engagement between citizens, as the public voice, and politicians as the government agency, via social media. An eParticipation initiative in these instances could occur in many forms, and one of interest is the ability of citizens to assert public control, to criticize
the government and public services, and to involve themselves in a political discourse through social media. Supporting data sets were also collected from in-depth interviews with semi-structured guidance from two political activists and four social media political strategists, the latter whom usually represent politicians on social media. Finally, a literature review and analysis on the three cases has been included to deepen the understanding of the phenomena. A methodological approach that combines inquiry, retroactive observation, and critical reflection to generate a novel perspective in understanding the phenomena was used for analyzing the three cases (Halabi et al. 2014). Critical approach is incorporated as a lens for analyzing the aggregated data to focus on the oppositions, conflicts, and contradiction in contemporary society and it seeks to be emancipatory to help bring to light the restrictive and alienating condition of the status quo (Myers 1997). To support the analysis, documents from the cases and the interviews were also processed using NVIVO, a qualitative data analysis software.

**Case Studies**

**Case A: “Money politics” allegation disseminated through social media**

An anti-corruption activist was reported by a politician to the Indonesian National Police accused of defamation under the Indonesian Criminal Code and IET Law. Claims of defamation were made after the activist reported the politician by email to the Election Supervisory Agency on allegations that the politician issued bribes during the 2014 presidential campaign. The case stems from information obtained by the activist from a reporter of a news agency through BlackBerry Messenger (BBM) who stated that "[while] campaigning in Semarang, Politician X distributes money to the people". The activist also gathered evidence by locating those people who received money directly from the politician as well as any paraphernalia distributed during the campaign. As the campaign progressed, provocative news headlines would report that the politician was alleged to have distributed funds to several people who approached him and citing the activist as the source of information. The news was disseminated through several social media channels, however the report that the Election Supervisory Committee received was never forwarded to the authorities due to a determination of a lack of evidence. On the contrary, the activist was reported by the politician for acts of defamation, and the case proceeded to trial. In March 2016, Semarang District Court sentenced the activist to 6 months imprisonment and 10 months probation. The activist was found guilty of defaming the politician in accordance with the Indonesian criminal code.

**Case B: A girl who defamed Kebumen city and its people via Facebook status**

An 18 year old girl posted a Facebook status insulting and harassing Kebumen City and its citizens on March 18, 2016. Her status invoked so much anger that the Regional Executive Council of the Indonesian Youth National Committee filed a complaint to the police citing the cyber defamation article in IET Law. As a result of her post on social media, she also received death threats from citizens of Kebumen city who were offended. Kebumen police arrested her on the very same day as the allegation, and questioned her for three days. Her case later went through mediation and the girl was pardoned by the Kebumen Regent. The consideration for releasing the young girl included her sincere remorse, a promise to never engage in such actions again, and a public apology for her insult toward Kebumen through social media.

**Case C: Spreading words of insult between legislative members**

In January 3, 2016, Chairman of Padang Provincial Parliament reported his colleague, a fellow Padang legislator, on claims of spreading words of insult and defamation via a Facebook account. The defamation claim arose after the Padang legislator posted that the chairman had used fake education diplomas and had also been involved in the sexual abuse of a minor. The legislator denied writing the posts and mentioned that Formas, a non-government organization, was the one who had accused the chairman of these things. In July 12, 2016, the chairman eventually revoked the claim of defamation and went on to reconcile with his fellow legislator from the same political faction. The case of defamation under IET Law then was closed. However, the allegation of sexual abuse and the use of fraudulent diplomas is still an ongoing investigation even at the time of writing this paper. Many Civil Society Organizations (CSOs) and citizens of Padang demand that the allegations be investigated, as well as dozens of Non-Government Organizations (NGOs) who have requested the ethical council of the Padang parliament unearth the truth regarding the case involving their representative.
Discussion

Identification of Problems from Social Media use in eParticipation in Indonesia

Based on the concepts from the Taxonomy of Bright ICT research, ICTs may create enriching solutions to enable a bright society. However, through their application, also will there be the darker effects that accompany it. While many affordances were identified such as its benefit in promoting participation and gathering opinion (Wahid and Sæbø 2015), the use of social media is not unproblematic. Indeed, the three cases exemplify in particular how unsupportive legislation may cause problems for eParticipation initiatives. The model below (Figure 1) showcases the impediment to freedom of expression by problematic legislation leading to the high prevalence of defamation cases in Indonesia. Visionary research underpinned by the principles of Bright Internet may well serve to be the foundation to innovative design in planning restorative solutions (Lee 2016); and these restorative solutions can be from legal, social and technical perspectives. The model takes into account that social media may go on to create either solutions or cause darker effects on the road toward to eParticipation. The model is a visual representation of the Bright ICT research taxonomy adjusted to the context of eParticipation in Indonesia. The added value of the model is to provide a thorough understanding by synthesizing the Bright ICT concepts from different perspectives while still maintaining focus on Restorative Bright ICT within an Indonesian context.

![Figure 1: Proposed model on Restorative Bright ICT in an Indonesian context](image)

Social media use within the eParticipation framework can be viewed as an Information Systems (IS) artefact. An IS artefact is formed when a technology artefact, information artefact, and social artefact interacted with one another (Lee et al. 2015). First, a social media platform such as Facebook, Twitter, or a web-blog constitutes the technology artefact in the system where social media is the human-created tool to serve its purpose for achieving predetermined goals. Secondly, the information artefact in this context refers to the social media posts comprising sentences that can be processed to have meaning. Finally, the relationships between the eParticipation actors within an online social networking platform are the instantiation of social artefacts where the interaction among individuals attempts to achieve eParticipation goals. In sum, the IS artefact concept depicts a system in which the whole IS artefact is greater than the sum of its parts when all its constituents (technology, information and social artefacts) are brought together and interact with one another (Lee et al. 2015). Social media as an IS artefact within eParticipation gives rise to some implications that can be either seen as creating enriching solutions to enable eParticipation, or causing darker effects that can go on to constrain eParticipation- see figure 1 (Lee 2016; Majchrzak and Markus 2012). Constraining factors such as problematic legislation yields the darker effects of social media use, in particular the impediment to freedom of speech.
Analysis from a Legal Perspective

To begin, the identified problems will be analyzed from a legal perspective. The three cases can be assessed against the cyber defamation clause of IET Law where the act of defamation involves an electronic media such as BBM, Facebook, weblogs, or another similar user generated content media. One aspect worthy of note is that while each case is based on a cyber-defamation allegation, the charges each drew on different legislation. This illustrates that there is an overlapping and uncertainty in the applicable law regarding defamation through online media in Indonesia. In enforcing the law, there are three elements that must be considered, namely: legal certainty, expediency and justice (Sudikno 1996). Cyber defamation cases based on social media in Indonesia set a good example for the absence of legal certainty. It is only though legal certainty that the public will have clarity of their rights and obligations according to law. Table 1 is the summary of the findings from the analysis.

<table>
<thead>
<tr>
<th></th>
<th>CASE A</th>
<th>CASE B</th>
<th>CASE C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charged Law on Cyber defamation</td>
<td>IET Law</td>
<td>Criminal Code</td>
<td>IET Law</td>
</tr>
</tbody>
</table>
| IS Artifact As an IS artefact | • Information: the sharing and processing of social media posts and the formation of meaning among eParticipation actors (politician and citizen)  
• Social: establishment of relationship between politician and citizen on online social media platforms across different geographical areas in Indonesia  
• Technology: mobile phone, computer, social media features and affordability. | | |
| Legal                   | • Amendment of the law  
• Settlement under civil law  
• Alternative dispute resolution | | |
| Social                  | • Online Shaming  
• Data driven social media content  
• Public apologies and admittance  
• Neutrality  
• Use indirect / initial | | |
| Technical               | ODR with Bright internet principles | | |

Table 1. Summary of findings

Essentially, laws concerning defamation should reflect the principle that public figures, specifically politicians, are required to tolerate a greater degree of criticism than private citizens (Hussain 1999). It is also suggested that sanctions for defamation should not be so severe that they result in a chilling effect on freedom of expression to a point where the right to seek, receive, and share information will be performed in fear. Thus, a penal sanction, imprisonment in particular, should never be applied (Hussain 1999). If this is the case, then it can be argued that it is appropriate then that cyber defamation only comes under Civil Law jurisdiction, because Civil Law provides remedy and compensation for civil wrongdoing, which includes cyber defamation. Moreover, Civil Law offers remedy to the damages caused by the wrongdoing; firstly, by compensation of losses both material and immaterial. According to a report by the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, it is suggested that the only legitimate purpose of defamation, libel, slander and insult laws is to protect reputation. This implies defamation claims will only apply to individuals and not flags, states, groups, etc. (Hussain 1999; Wiratraman 2010). Therefore, by this very notion, defamation laws should never be used to prevent criticism towards government. Considering the circumstances, it can be concluded that Case B should never have proceeded to Court. Even though it is not explicitly indicated in the IET law, cyber defamation should ideally fall under complaint-based offenses⁰⁶, meaning that if the offended party revokes the report, the case will not proceed to Court.

Social Media as an IS Artefact in eParticipation

Generally, participatory culture in social media translates into political engagement that is neither automatic nor unproblematic (Lim 2013b). In Indonesia, however, sometimes an offline response emerges when content associated with sensitive issues such as religion, politics, and nationalism has been addressed. In asserting compliance, IET law is commonly abused by those in power to maintain an upper
hand in the citizen-politician relationship by suppressing the freedom of opinion that may seem to threaten the reputation of the political party in power; this kind of abuse is evident in the 128 legal cases concerning IET law. In this section, a perspective for understanding social media as an IS artefact that has the ability to create enriching solutions in enabling eParticipation as well causing darker effects as depicted in figure 1 will be offered.

From the illustrations of the three cases above, first of all social media qualifies as an advanced, user-generated platform for achieving the goal of creating content and participatory culture of discussion in eParticipation. Social media technologies allow its users to create engaging social networking activities that are faster, cost-saving, and effective compared to more traditional methods. As such, social media constitutes the technology artefact in the system for achieving social media goals. Specifically, instantiation of the sharing and commenting feature of social media in the three cases had the effect of making possible the existence of its content, thus classified as a technology artefact. Second, social media content creates the formation of meaning through sharing and processing of communication between the citizen and politician who otherwise would not interact- or interact- but in a way less efficient compared to when using social media. Therefore, the formation of meaning through the communication via social media constitutes the information artefact. Finally, the establishment of relationships- between the citizen and politician (Case A), the citizen and a group of people representing a city (Case B), as well as among politicians of the same political faction (Case C)- refers to the social artefact. The interaction between these subsystems forms the creation of an Information System artefact through which eParticipation actors can communicate and address the wide array of issues brought up in political discourse. Conversely, without the interaction of technology, information, and social artefacts, social media is not able to function as an effective eParticipation tool.

The Bright Internet Principles as a Restorative Solution to regulate Cyber Defamation

To answer on how to overcome the problems identified, it is important to examine the restorative solutions from a legal, social and technical perspective. Firstly, from a legal perspective, IET law clearly impedes freedom of expression through online media and it must be revised to restore legal certainty in the domain of cyber defamation. At the time of writing this paper, the IET Law had only just finished undergoing a revision process whereby The National Parliament (DPR-RI) made an issuance for the revision of the law in November 2016. Several notable points for revision included: (1) the lowering of the penalty for cyber defamation from a maximum of 6 years to 4 years (people can be held in detention before the charge is processed when the alleged offense is punishable by imprisonment of 5 years or more), and (2) an alignment of cyber defamation, as prescribed by IET Law, with the provisions for defamation regulated by the Indonesian Criminal code- arguably to avoid the overlapping of these law in regulating cyber defamation.

Secondly, findings from the interviews have been included as restorative solutions to regulate cyber defamation from a social perspective. From examining the interviews of the activists and social media strategists, three suggestions for avoiding the negative implications caused by the legislation can be offered. The first is to ensure thorough research to find and confirm facts before making an online opinion. Then second, to always keep the tone of an online opinion as a neutral statement by asking questions to the public for confirmation, if it seems that they are not convinced. And third, never mention by name when criticizing, instead use unobvious initials or pronouns which serve not to identify the entity directly. Additionally, as illustrated in Case B, online shaming may also be a solution to the problem from a social perspective. The construct of online shaming can be a likened to a public social control toward online behavior, as it has the effect of a deterrence to the person who may be considering engaging in defamatory practices (Skoric et al. 2010). However, online shaming also has risky consequences if the problematic legislation is yet to be revised completely. It can get stuck in the same situation as defamation itself. Thus, a solution from a technical perspective is necessary to contribute in overcoming the root of the problem.

The application of the Bright Internet principles of traceable anonymity together with the rule-based digital search warrant and privacy protection may provide a solution to the problem from a technical perspective.

---

17 Law no 19 of 2016 on the amendment to the law number 11 of 2008 on information and electronic transactions
perspective. From the 128 cases of defamation, there are several that were unable to proceed due to rights to anonymity and identity misuse of innocent citizens. Anonymity is allowed so as to guarantee freedom of expression (Lee 2015). However, it also creates a problem when anonymity cannot be traced. The condition may be exploited by criminals, therefore when an online crime, in this case cyber defamation, is reported by the offended party with sufficient initial evidence, the digital search warrant should immediately authorize for tracing the source (Baba and Matsuda 2002; Lee 2015). However, the application of this principle will bear the risk of infringing on a citizen’s privacy thus permission needs to be obtained by the law to trace anonymity only once it is beyond reasonable doubt that a crime has been detected, here the principle of privacy protection should be upheld (Lee 2015). In Indonesia, while personal rights must be protected and interception and/or surveillance is prohibited,18 the exception is when surveillance is required to be carried out within the framework of law enforcement and at the request of law enforcement agencies.19 As such, Indonesian law essentially enables for the implementation of the Bright Internet principles. These principles too may be incorporated into an online dispute resolution (ODR) system as more effective way for dispute settlement. Online Dispute Resolution (ODR) may be designated for cases under civil law that seek restitution, compensation and restoration of honor and reputation. ODR is an alternative dispute resolution process outside of conventional litigation that uses communication and the processing of information to negotiate, mediate, and arbitrate online (Katsh et al. 2001). Indeed, ODR has the potential to be applied in social media defamation cases, and the principles of rule-based digital search warrants, traceable anonymity and privacy protection could help arbitrators in speeding up the decision making process. To be effectively applicable, it would seem fitting to encourage the ODR dispute settlement system to be incorporated into IET law. In itself, ODR development creates opportunities for participation where it “encourages collaboration between the legal and computer sciences including the information system communities (Katsh et al. 2001 p. 106).” It will be up to the future work of the practitioner together with researchers to develop such technologies which allow selective, traceable anonymity and rule-based digital search warrants to be incorporated into the application of the Online Dispute Resolution systems.

Concluding Remarks

Using the three illustrative cases of cyber defamation emerging from eParticipation in the Indonesian context, this article has offered a critical perspective and potential solutions to the problems identified regarding cyber defamation from three standpoints. The study offers two main contributions. Firstly, as a practical contribution, I have identified the impediments to freedom of expression when using social media for eParticipation in Indonesia, as demonstrated by the problematic legislation governing cyber defamation. The three overlapping Indonesian laws each have their own requirements for defamation to exist, which results in public discontent. Thus, appropriation of the three so that alignment between them may exist needs to be continually revisited to ensure legal certainty. I contend that cyber defamation should be best settled under civil law since the defamatory action mostly infringes on the interest of individual, and not on that of the public. Civil law jurisdiction also offers remedies to the damages caused by wrongdoings including compensation and actions to restore honor and reputation. I propose to incorporate ODR and the Bright Internet principles, including rule-based digital search warrants, traceable anonymity, and privacy protection, as an organic, restorative solution, and one which will further contribute to a bright society, and a better world. Secondly, as a contribution to research, I have presented an elaboration of the Taxonomy of Bright ICT to overcome cyber defamation cases arising from the problematic clause in IET Law. Social, legal and technical solutions are proposed in the model to restore eParticipation as a gateway toward a bright society after disruption by the dark side effects of social media. In addition, the proposed model (Figure 1) that, for this paper, governs eParticipation through social media use in Indonesia, could also safely be applied in a similar context for other countries. As a contribution to future exploration, I propose several avenues to include (1) an expansion to the model of Bright ICT research and place more impetus on the dark side of ICTs in a similar context, and (2) to propose the possibility for the researcher and practitioner to work together in developing a system that allows for selective, traceable anonymity and rule-based digital search warrants that can be incorporated into an Online Dispute Resolution (ODR) system to address cyber defamation claims in Indonesia and beyond.

---

18 Article 40 Law number 29 of 1999 concerning telecommunication
19 Article 31 par. 3 Law number 11 of 2008 concerning Information and Electronic Transaction (IET)
REFERENCES


