



Digital Democracy: A Study on the Legal Protection for Social Media Users in Indonesia

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Abstract

The democracy in Indonesia develops with the shift of people's behavior. People's social lifestyles have shifted with the use of social media and the digitalization process. In the last few years, there have been many cases of hashtag actions in social media, such as Facebook, Twitter, and Instagram. This is a new legal phenomenon in the practice of democracy, called digital democracy. In its practice, some problems occur. Thus, there need to be solutions so that digital democracy can run effectively and efficiently. There needs to be characteristics and forms of legal protection. This qualitative research uses the normative approach and the literature study analysis. Results show that after being compared to legal stipulations, doctrines of experts, and democratic principles, the characteristics of the digital democracy above are already according to the democratic norms, doctrines, and principles. Even though it has not yet been explicitly regulated, the legal stipulations in Indonesia may still be used to regulate and protect these practices. But, as a form of democratic dynamics, there need to be further regulations to handle the problems of the hashtag actions in social media, so that it may run well.

Keywords: *Digital Democracy; Hashtag Action; Social Media; Indonesia; Legal Protection*

Introduction

Technological advancement keeps on developing. The globe is currently at development phase 4.0, shown with the extensive use of internet (Persada and Aru 2020).

In 2020, 3,8 people billion are social media users (Hootsuite, n.d.). Among 269,6 million Indonesian people (Kusnandar 2020), 64% of them are internet users (We Are Social 2020).

Internet usage leads to a new social lifestyle, through the use of social media, namely a non-linear communication tool in the virtual world that is both interactive and opened (Susanto 2017). This situation calls for digitalization, namely the change and the administration in the usage of digital systems in daily life.

This social media lifestyle has been implicitly regulated in Indonesia's 1945 Constitution, Article 28F. It states that every person has the right to communicate and to obtain information using the various available methods.

This digitalization process impacts economic, social, and political aspects. Then, how are the dynamics of the Indonesian democracy under this digitalization process? On 17 April 2019, Indonesia established a simultaneous general election of its president and legislative members (Retaduari 2019). Unfortunately, hoax information (Widiantoro 2017) and hate speeches via social media emerged, threatening the democratic process (Hidayat 2018).

In 2020, Indonesia was hit by the Covid-19 pandemic disaster, impacting its democratic dynamics. People can no longer carry out mass actions in the street, such as May Day demonstrations (Yuniar 2020). These actions are then substituted by hashtag actions via social media applications such as Twitter.

Hashtags (#) are a code to help people see specific topics in social media (Permatasari and Trijayanto 2017). Hashtag actions help unite topics and people's posts. The tags may be collected to become a trending topic in social media.

These hashtag actions have been used in the following events: First, the hashtag action of Klaten people towards the Klaten Regent on 27 April 2020. The people were ashamed as the regent's was deemed as seeking popularity by labelling almost all governmental Covid-19 social aid and adding governmental banners with her photo. Thus, netizens in Twitter criticized Regent Sri Mulyani's narcissism with the hashtag **#BupatiKlatenMemalukan** (The Klaten Regent is Embarrassing).

Second, the hashtag action of university students towards their campuses' policies during the Covid-19 pandemic, where online learning activities were carried out without the decrease of tuition fees although campus facilities are unused. Thus, students demand a decrease in tuition fees as well as the provision of internet quota. Various hashtags emerged from different campuses, including **#kalijagamenggugat** (Kalijaga students demand), **#umspelit** (Universitas Muhammadiyah Surakarta is Stingy), **#unsoedjutek** (Universitas Soedirman Semarang is Unfriendly), etc.

Third, the united hashtag action of university students towards the policies of the Minister of Education and Culture, Nadiem Makarim, during the Covid-19 pandemic concerning online learning. It used the hashtag **#NadiemMendengar** (Nadiem Hears).

Fourth, the hashtag action of university students, students, and people of Yogyakarta towards the governmental policy on the Omnibus Law in October 2020 with the hashtag **#JogjaMemanggil** (Yogyakarta Calls).

Fifth, the hashtag action of university students from all over Indonesia on the Governmental policy concerning the Omnibus Law. There was a hashtag action several days before a mass gathering in the Legislative House. This action was initiated with the expression of demands via Twitter using the hashtags **#GagalkanOmnibusLaw** (Fail the Omnibus Law), **#TolakOmnibusLaw** (Reject the Omnibus Law), **#JegalSampaigagal** (Tackle until they fail).

In hashtag actions, social media users used several methods. They used writings, funny memes, and funny videos. Memes express people's feelings, including happiness, sadness, and anger through writings or visual images (Asfihan 2021). The social media actions attract due to two things, namely friendship-driven activity and interest-driven activity. The two are caused by several factors, namely: (1) Level of Engagement, namely the usage of social media to influence people that are involved in political actions, (2) Types of Friendships, namely increasing the number of friends to reach popularity, and (3)

Media Socialization, where social media is used to invite other people to participate in political activities (Prasetya 2019).

Street actions or demonstrations have explicitly been explained in Article 1 clause 3 of Law No. 9 of 1998 on the Freedom of Speech. People are free to express their aspirations demonstratively in public. But what about the hashtag actions? This case will be discussed in this research, using several regulations that implicitly regulate the hashtag actions, such as the 1945 Constitution, the Criminal Code, Law No. 9 of 1998 on Expressing Opinions in Public, Law No. 11 of 2008 on Electronic Information and Transaction, Regulation of the Republic of Indonesia's Head of the Police Force No. 7 of 2012 on the Procedures in Establishing Service, Security, and Resolving Cases of the Expression of Opinions in Public.

To explain the characteristics of the hashtag actions, the writer uses democratic principles according to experts. First, the existence of the same opportunity for all people to give justification to the truth in assessing the implementation of political and governmental processes (Robert A. Dahl). Second, the freedom to speak, to participate, the freedom of the press, and the freedom to give opinions with guaranteed truth, either through the constitution or through agreements (Hans Kelsen, Carter and Hertz, Andrews and Chapnan). Third, respecting tolerant attitudes towards opposing or different opinions (Carter and Hertz). Fourth, voluntarism (William Ebenstein).

In its practice, some problems occurred,: (1) the existence of buzzers, namely a group of people who use social media to spread information with ideological, economic, and political motives (Pambudi 2019); (2) the misuse of the Banned Account feature, namely the ability to massively report an account; (3) the lack of archives or history on the results of the collected hashtag actions; (4) cybercrime, such as hacking. Thus, the people cannot express their aspirations well in the digital democracy process. The problems of this research are: (1) How are the characteristics of digital democracy through social media in Indonesia? and (2) How is the legal protection of digital democracy via social media in Indonesia?

Method

This is legal research with a doctrinal approach, as the law is conceived as written norms that are created and stipulated by authorized state institutions or officials. This descriptive paper uses the normative approach, namely the activity of taking inventory of constitutional regulations and *in-concreto* legal findings.

This research uses two types of data, namely secondary literature materials that include social media, documents, archives, publications, etc. as well as primary data, namely the information from parties that are involved with the analyzed objects.

The collected data is identified using the doctrinal analysis, using the theory of pure law from Hans Kelsen. Then, the data are discussed. Lastly, the writer finds the *in-concreto* law.

Results and Discussion

In this research, the writer carried out five analyses on the practice of digital democracy in the form of hashtag actions in Indonesia, namely: (1) the hashtag action of Klaten people against their Regent, (2) the hashtag action of university students against their universities' policies during the Covid-19 pandemic, (3) the hashtag actions of university students against the policy of the Ministry of Education and culture during the Covid-19 pandemic, (4) the hashtag actions of university students, students, and people of Yogyakarta against the government policy related to the Omnibus Law, and (5) the hashtag actions of university students all over Indonesia against the government policy related to the Omnibus

Law. The five hashtag actions above are then juxtaposed with some democratic principles to see the characteristics and the forms of legal protection.

First, it is based on Robert A. Dahl's principle on the existence of the same opportunity for all people to give justification to the truth in assessing the implementation of political and governmental processes (Culla 2018). The practice of that principle may be seen in the five hashtag actions above that use Twitter as a facility to criticize and to spread pamphlets on the policies of the government or those of other institutions.

The five hashtag actions above fulfill the constitutional regulations as critiques on the implementation of political and governmental processes are regulated in the 1945 Constitution Article 28E clause (2). It states that every person has the right to the freedom in expressing opinions and attitudes according to their conscience. The critiques through social media fulfill Law No. 9 of 1998 on Expressing Opinion in Public. Article 1 number 2 states that the phrase "in public" means in places that may be visible or accessible to many people. Then, social media has the same sense as this phrase. This is also regulated in the Regulation of the Republic of Indonesia's Head of the Police Force No. 7 of 2012 on the Procedures in Establishing Service, Security, and Resolving Cases of the Expression of Opinions in Public Article 1 number 1 which stipulates the expression of opinions in public. Then, the concept of spreading pamphlets fulfill the constitutional regulation Article 4 letter f, namely opinions expressed in public include those in the form of images and pamphlets.

The five hashtag actions above fulfill Charles Costello's doctrine on democracy, which is a governmental social and political system that limits the government's power using the law, the individual rights of citizens (people's rights), and customs. Critiques, as well as image and pamphlet distribution, are individual rights of citizens that are manifested as a limitation of the government's power (Windu 2019). The democratic practices in the five hashtag actions were carried out online. Thus, these actions may be identified as a form of digital democracy's characteristics.

Second, the five hashtag actions through tweets is a practice of the principles of Hans Kelsen; Carter and Hertz; and Andrews and Chapnan on the freedom to speak, to gather, to participate, the freedom of the press, and the freedom to give opinions with guaranteed truth, either through the constitution or through agreements (Thalhah 2008; Muntoha 2009; Culla 2018). People use tweets as a form of critique. They spread funny memes as creative and entertaining satire criticism that attract others to repost. This is according to social media's function to entertain (Wilkins et al. 2019). Meanwhile, the hashtag action from Sunan Kalijaga State Islamic University with the hashtag **#kalijagamenggugat** also uses an online petition.

The five hashtag actions above fulfill the constitutional regulations as the freedom of speech and the freedom in expressing opinions and critiques are implicitly regulated in Indonesia's 1945 Constitution Article 28. This is also regulated in Article 28E clause (3) that regulates the freedom in expressing opinions. Then, the expression of opinions in the form of funny memes is implicitly regulated in Law No. 9 of 1998 on the Expression of Opinion in Public. Article 1 number 1 of this law stipulates the freedom of every citizen to express opinions in the form of writings, etc. that may be interpreted to include funny memes. The Regulation of the Head of the Police Force No. 7 of 2012 on the Procedures in Establishing Service, Security, and Resolving Cases of the Expression of Opinions in Public Article 5 clause (1) letters a, c, and d, citizens have the right to express opinions through writings and spread them according to their conscience via electronic facilities. Then, the hashtag actions that used an online petition via the web is regulated in this Regulation of the Police Force No. 7 of 2012 Article 4 letter f, which stipulates that the expression of opinions in public include that in the form of petitions.

The five hashtag actions above fulfill Hans Kelsen's doctrine on democracy, concerning the existence of the idea of freedom based on the people's conscience in determining their interests (Thalhah

2019). The idea of freedom based on people's desires may be manifested in the form of tweets on Twitter, funny memes, and online petitions.

The democratic practices in the five hashtag actions are carried out virtually with styles different that are different from actions on the street. Thus, it may be identified as a characteristic of digital democracy.

Third, these five hashtag actions practice the principle of Carter and Hertz on democracy, namely respecting tolerant attitudes towards opposing or different opinions (Sunarso 2018). There is a form of tolerance towards differing opinions. For instance, the criticized government officials respond to the people's critiques by clarifying and apologizing. Social media is a new alternative for people and public officials to communicate interactively (Wilkins et al. 2019).

The five hashtag actions above fulfill the constitutional regulations as the form of tolerant attitudes towards different opinions as regulated in Law No. 9 of 1998 on Expressing Opinion in Public. This is also regulated in the Regulation of Head of the Police Force No. 7 of 2012 on the Procedures in Establishing Service, Security, and Resolving Cases of the Expression of Opinions in Public. Article 5 clause (2) states that in expressing opinions in public, people are obliged to respect other people's rights and they must comply with the limitations as stipulated in the law.

The five hashtag actions fulfill the doctrine of Aristotle on democracy which is the value concept and the communicative praxis that is liberating, as it is oriented to the development of a free, equal, just, inclusive, and tolerant social order (Supardan 2016).

University students all over Indonesia consistently express opinions, critiques, and suggestions via tweets on Twitter which spread to national media. In expressing opinions, these critiques and suggestions require active communication. The formation of this model is based on politicians' practical reason to group public participation, to obtain feedback and contribution (Susanto 2017). This is part of digital democracy's characteristic as it may be seen from the process of differing opinions and tolerant attitudes carried out via social media.

Fourth, based on the democratic principle according to William Ebenstein on Voluntarism (Culla 2018). The five hashtag actions in the form of collecting hashtags are voluntarily participated by social media users on Twitter. It is a form of the social media users' voluntarism. This is regulated in the 1945 Constitution Article 28C clause (2). It explains the rights of every person to collectively strive to develop society and to even become the most popular trending topic. It is an example of the collective struggle to develop the interests of society, the nation, and the state. This is also regulated in Law No. 9 of 1998 on the Expression of Opinions in Public. Article 2 clause (1) explains the people's rights in expressing opinions individually or in a group to manifest democracy. Thus, the results of the hashtag actions above are forms of expressing opinions as a group in social media.

The five hashtag actions above fulfill the doctrine of Farabi on humans' needs as social creatures as the trending topic is a form of human's essence as social beings (Sjadzali 1993). Trending topics can only be achieved collectively, forming a virtual society.

Based on the results of the discussion on the characteristics of digital democracy with the five cases of hashtag actions in Indonesia, it is concluded that all of these actions are according to the legal norms and the doctrines of experts on democratic principles as shown in Table 1.

Table 1: The Suitability of Hashtag Actions to Democratic Principles (Source: Data Processed from Results of the Research, 2021)

No	Hashtag Action	Democratic Principles	Suitable	Not Suitable
1	The Hashtag Action of Klaten people to their Regent	The existence of the same opportunity for all people to give justification to the truth in assessing the implementation of political and governmental processes	V	
		The freedom to speak, to gather, to participate, the freedom of the press, and the freedom to give opinions with guaranteed truth, either through the constitution or through agreements	V	
		Respecting tolerant attitudes towards opposing or different opinions	V	
		Voluntarism	V	
2	The Hashtag Action of college students on their campuses' policies during the Covid-19 Pandemic	The existence of the same opportunity for all people to give justification to the truth in assessing the implementation of political and governmental processes	V	
		The freedom to speak, to gather, to participate, the freedom of the press, and the freedom to give opinions with guaranteed truth, either through the constitution or through agreements	V	
		Respecting tolerant attitudes towards opposing or different opinions	V	
		Voluntarism	V	
3	The Hashtag Action of college students towards the policies of the Ministry of Education and Culture during the Covid-19 Pandemic	The existence of the same opportunity for all people to give justification to the truth in assessing the implementation of political and governmental processes	V	
		The freedom to speak, to gather, to participate, the freedom of the press, and the freedom to give opinions with guaranteed truth, either through the constitution or through agreements	V	
		Respecting tolerant attitudes towards opposing or different opinions	V	
		Voluntarism	V	
4	The Hashtag Action of college students, students, and people of Yogyakarta on the governmental policy concerning the Omnibus Law	The existence of the same opportunity for all people to give justification to the truth in assessing the implementation of political and governmental processes	V	
		The freedom to speak, to gather, to participate, the freedom of the press, and the freedom to give opinions with guaranteed truth, either through the constitution or through agreements	V	
		Respecting tolerant attitudes towards opposing or different opinions	V	
		Voluntarism	V	
5	The Hashtag Action of college students all over Indonesia on the governmental policy concerning the Omnibus Law	The existence of the same opportunity for all people to give justification to the truth in assessing the implementation of political and governmental processes	V	
		The freedom to speak, to gather, to participate, the freedom of the press, and the freedom to give opinions with guaranteed truth, either through the constitution or through agreements	V	
		Respecting tolerant attitudes towards opposing or different opinions	V	
		Voluntarism	V	

The practice of Digital Democracy gives a positive impact, namely forming a culture of critical thinking. This may be seen from the forms of attitude statements on the expression of people's opinions and the spread of pamphlets in social media that may be unlimitedly accessed by society in general. The freedom of speech in social media makes people creative and unique in establishing the practice of hashtag actions using tweets and funny memes.

Then, it facilitates active communication between citizens and governmental officials. It is easier for them to obtain direct responses and feedback from the officials compared to direct demonstrations on the street. This digital democracy also increases public participation. This may be seen from the abundant number of collected hashtags. It indicates the number of the action's mass, making it more effective in elevating the issue directly to the national scale – in other words making it go viral.

Even with these advantages, the practice of digital democracy has some obstacles, for example, the existence of cybercrimes or hacking. This is regulated in Law No. 1 of 2008 Article 30 clauses (1) to (3) and Article 31 clause (1). Then, hoaxes are regulated in Law No. 11 of 2008 Article 28 clause (1).

Buzzers influence the course of the hashtag actions as some undergo activities to reject the hashtag actions. They also spread other issues so that fewer people participate in the hashtag actions. Law No. 11 of 2008 on Electronic Information and Transaction Article 28 clause (2) may be used to prevent the activities of buzzers in the context of individually spreading information that causes hate or conflicts in the society. But this regulation has not yet stipulated the elements of buzzer's practical activities, as these practices are carried out systematically in a team (as opposed to individual actions), and they are paid (commercial) by people with interests in opposing the hashtag actions or in diverting issues.

Another weakness in the practice of digital democracy is the lack of historical archives on the hashtag actions collected. This is because Twitter's system does not provide a track record feature or archives of the hashtags collected. Next, there is also the misuse of the banned account feature from Twitter. An account may be banned if it is greatly reported by some other Twitter accounts. This feature may be misused by Buzzers to shut down the influential participants of the hashtag actions.

Next, the Criminal Code only regulates defamation (Article 310 clause (1)), slander (Article 311 clause (1)), insults (Article 315) and false suspicion (Article 318 clause (1)). It is difficult for these articles to criminalize the mastermind, the perpetrators, and the users of the buzzers' services. Then, Law No. 11 of 2008 limits the freedom of speech in social media, namely Article 27 clause (3). This article regulates electronic insults and/or defamation. This regulation may be used to make the participants of hashtag actions who express aspirations via social media become criminalized by public officials who feel insulted or defamed. Then, Regulation of the Republic of Indonesia's Head of the Police Force No. 7 of 2012 has not yet regulated the legal technical forms, procedures, mechanisms, and protection for hashtag action participants in social media.

Based on the advantages of the five hashtag actions above, the writer suggests the concept of the digital democracy practice, namely a mechanism in establishing the digital democracy practice in the form of posts, tweets, pamphlets, memes in the form of images or videos, and other forms according to the social media users. Then, the place to express opinions in public may be manifested through the social media home page that can be accessed without limits by all social media users. The number of participants in a mass action may be indicated by the number of hashtags collected. The aim of the trending hashtags as a democratic practice is to obtain feedback from the related governmental officials, to form a critical thinking culture in social media, and to collect mass action in the street. The results of the trending hashtags may be included in the press release statement by the hashtag action organizers as a solution to the lack of history archive feature on the number of hashtag actions in Twitter.

Then, the regulations on cybercrime such as hacking and spreading hoaxes in Law No. 11 of 2008 may become a suggestion in regulating the practice of digital democracy. As a comparison, the South

Korean Criminal Code categorizes the activities of buzzers as criminal actions in manipulating comments or public opinions as they inhibit the process of public information. Article 314 clause (2) states, "A person who disturbs the work of others by inserting fake information to information-processing devices such as computers, inserting invalid orders, or causing obstacles in processing information through other means is to be criminalized." The phrase "causing obstacles in processing information" is used to criminalize comment manipulation (Lee 2018). Thus, to handle buzzers in Indonesia, the writer suggests the formation of legal stipulations that regulate the case of buzzers with the phrase "the action of manipulating public opinion." This phrase is not limited to the actions of buzzers, but it may also be used on other criminal actions such as hoax, framing, etc.

Conclusion

The practice of democracy through social media is a manifestation of the digitalization process, which becomes a new alternative in practicing the action to express a public opinion through the collection of hashtags or hashtag actions. These hashtag actions via social media prove the existence of a new characteristic of the Indonesian democracy, namely the digital democracy.

The five hashtag actions discussed in this paper has fulfilled the principles of democracy, namely voluntarism; the existence of the same opportunity for all people to give justification to the truth in assessing the implementation of political and governmental processes; the freedom to speak, to gather, to participate, the freedom of the press, and the freedom to give opinions with guaranteed truth, either through the constitution or through agreements; and respecting tolerant attitudes towards opposing or different opinions.

To handle buzzers in Indonesia, the writer suggests the formation of legal stipulations that regulate the case of buzzers with the phrase "the action of manipulating public opinion."

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