

INTERNET ACCESS RESTRICTIONS IN PAPUA; GOVERNMENT POLICY AND VIOLATIONS AGAINST PRESS FREEDOM

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Article Info	Abstract
Keywords: Internet Restrictions, Violations, Press Freedom. DOI: 10.25041/lajil.v4i1.2104	This research explores how internet access restrictions lead to press freedom violations and how national and international law view restrictions on internet access in the status quo. This normative juridical research employed a descriptive-analytical method to gain comprehensive conclusion. In reference to both international law and positive Indonesian law, the government's efforts to prevent the spread of fake news and incitement are allowed. However, the restriction of internet access in Papua and West Papua was flawed for not following the procedures. This research concludes that the hate speech that occurred in Surabaya against Papuan students has resulted in riots in Papua and West Papua. In dealing with the spread of fake news and incitement related to this incident, the government has committed violations of press freedom and violated the procedure of as stipulated in the national and international law.

A. Introduction

As a democratic country, press freedom is an essential instrument that encourages openness and transparency, which are the pillars of democracy and law enforcement.¹ The internet has brought significant development in journalism,² through the development of the reception and distribution of information, news, and all incidents.³ The incident of the destruction of Indonesian flag at Kamasan Dormitory has triggered racial acts against Papuan students residing there.⁴ This racial act then led to sympathetic actions in some areas in Jayapura,

¹ Vivi Ariyanti, "Kebebasan Pers dalam Perspektif Peradilan Pidana", *Jurnal Dakwah dan Komunikasi* 4, no.1 (2010): 1-13, 1. DOI: 10.24090/KOMUNIKA.V4I1.134.

² Muslimin M, "Perkembangan Teknologi dalam Industri Media", *Jurnal Teknik Industri* 12, no. 1 (2011): 57-64, 61, DOI: 10.22219/JTIUMM.Vol12.No1.57-64.

³ Febi Trafena Talika, "Manfaat Internet Sebagai Media Komunikasi Bagi Remaja Di Desa Air Mangga Kecamatan Laiwui Kabupaten Halmahera Selatan", *e-journal "Acta Diurna"* 5, no. 1 (2016): 1-6, 1.

⁴ BBC News Indonesia, "Asrama Papua: Cek fakta kasus bendera merah putih dan makian rasialisme di Surabaya", May, 1, 2020. <https://www.bbc.com/indonesia/indonesia-49446765>.

Fakfak, Manokwari, and Timika.⁵ The actions were rather chaotic since many public facilities were destructed and burned down.⁶

To minimize the spread of fake news and provocation, the government restricted the internet access in Papua and some regions.⁷ The Ministry of Communication and Informatics on August 19 2019 has spotted the spread of fake news on social media in the form of a photo Papuan student beaten to death by authorities in Surabaya and news of kidnapping actions by police officers in Surabaya toward Papuan students. The restrictions were based on Press Release No.154/HM/KOMINFO/08/2019 Related Access Retardation in Several Regions of West Papua and Papua on Monday, 19 August 2019. The restrictions in these areas took place from 13.00 WIT to 20.30 WIT.⁸

Several parties joined in the alliance of Independent Journalists, and the South East Asia Freedom of Expression Network (SAFENet) to file a lawsuit against President Joko Widodo and the Ministry of Communication and Information of the Republic of Indonesia on Thursday, November 21, 2019.⁹ The lawsuit resulted from policy throttling the slowdown in access/bandwidth has resulted in losses for press and broadcasting activities in Papua and West Papua.¹⁰ The Jakarta State Administrative Court on June 3, 2020, granted the applicant's petition and declared that Defendant I (Minister of Communication and Information of the Republic of Indonesia) and Defendant II (President Joko Widodo) guilty for issuing the internet access restriction policy.¹¹

The government's decision to restrict internet access in the region was justified by their intention to prevent riots and curb the spread of fake news, which could potentially destabilize security. In Article 28J paragraph (2) of the 1945 Constitution, the rights for freedom can be limited for security and public order purposes in a democratic society. This research takes the perspective of positive Indonesian law and international law to identify any violation of press freedom in the policy of restricting internet access in Papua and West Papua. This research was performed to address the question regarding how the restriction on internet access be seen as an effort to protect the state sovereignty and how national and international law view restrictions on internet access in a *status quo*.

This normative juridical research discusses the legal principles, legal systematics, and legal comparisons relevant to the issue.¹² The restriction of internet access in the Papua and West Papua regions by the Indonesian government which was conducted based on Ministry Press Release Communications and Information Technology of the Republic of Indonesia No.154/HM/KOMINFO/08/2019. In this research, secondary data consisting of primary legal materials such as International Covenant on Civil and Political Rights, *Universal Declaration*

⁵Kompas.com, "Kerusuhan di Papua, Apa yang Terjadi di Manokwari hingga Jayapura?", May, 1, 2020. Available online <https://www.kompas.com/tren/read/2019/08/29/183000065/kerusuhan-di-papua-apa-yang-terjadi-di-manokwari-hingga-jayapura->.

⁶Kompas.com, "Ini Kronologi Demo di Jayapura yang Berubah Jadi Kerusuhan", May, 1, 2020. Available online <https://regional.kompas.com/read/2019/08/29/17525601/ini-kronologi-demo-di-jayapura-yang-berubah-jadi-kerusuhan>.

⁷Pusat Penelitian Badan Keahlian DPR RI, "Pembatasan Internet Dalam Mengatasi Konflik Di Papua", May, 1, 2020. Available online https://berkas.dpr.go.id/puslit/files/info_singkat/Info%20Singkat-XI-17-I-P3DI-September-2019-1946.pdf.

⁸Press Release No. 154 / HM / KOMINFO / 08/2019.

⁹Suara.com, "Presiden Jokowi Digugat ke Pengadilan, Kasus Blokir Internet Papua", May, 2, 2020. Available online <https://www.suara.com/news/2019/11/21/192615/presiden-jokowi-digugat-ke-pengadilan-kasus-blokir-internet-papua>.

¹⁰See "In the Main Case / Posita", Decision Number: 230 / G / TF / 2019 / PTUN-JKT. p. 18.

¹¹See in "Adjudicating", Decision Number: 230 / G / TF / 2019 / PTUN-JKT. p. 278.

¹²Depri Liber Sonata, "Metode Penelitian Hukum Normatif Dan Empiris: Karakteristik Khas Dari Metode Meneliti Hukum", *Fiat Justisia: Jurnal Ilmu Hukum* 8, no. 1 (2014): 15-35, 25, DOI: 10.25041/fiatjustisia.v8no1.283.

of Human Rights, 1945 Constitution, Law on ITE, Law on Press, Press Release Ministry Communications and Information Technology of the Republic of Indonesia No.154/HM/KOMINFO/08/2019 were gathered. In addition, secondary sources of law used in this research come from literature such as; journals, books, and previous research as well as tertiary legal materials from relevant articles and news were analyzed. Data of this research were collected from literature research through reading, collecting, and writing activities. The data were then processed through several data selection, data classification and data systematization. This qualitative research employed the descriptive-analytical method to analyze the data and draw comprehensive conclusions.

B. Discussion

1. AJI and SAFENet's Reasons for Alleged Violations of Press Freedom Due to Policies on Restricting Internet Access in Papua and West Papua regions.

A sovereign state has sovereignty that must be protected from threats to its existence and state life viability.¹³ Sustainable efforts to maintain sovereignty ensure the safety of the community and the whole nation.¹⁴ In current conditions, threats to the sovereignty include both military threats and non-military threats.¹⁵ Non-military threats include hoaxes and hate speech.¹⁶ The restriction on internet access in Papua and West Papua Regions was performed by Indonesian government to prevent the spread of hoaxes and hate speech from the riots that occurred in the region.¹⁷ This effort was in accordance to the 1945 constitution which declares that the state is obligated to protect Indonesian people.¹⁸

The protection of the Indonesian people in this specific context refers to the protection from hoaxes and hate speech which triggered tension from Papua people.¹⁹ During that period, the Papuan community was particularly aggrieved by the actions of Indonesian Army (TNI) personnel who committed racist acts against Papuan students in Surabaya.²⁰ Ignoring such incidents could potentially trigger a broader conflict.

This conflict may cause the disintegration of the nation,²¹ as the separatist groups in Papua expects to separate Papua from Indonesia.²² To avoid this disintegration, Indonesian government restricted the internet access.

¹³ Herman, "BESTUURSZORG PEMERINTAH DALAM NEGARA HUKUM INDONESIA", *Jurnal Esensi Hukum* 1, no. 1 (2019): 1-11, 1-2, DOI: 10.35586/esensihukum.v1i1.6.

¹⁴ Nurul Atik, Afrizal, "Upaya Pemerintah Indonesia Dalam Menjaga Wilayah Perbatasan Indonesia-Vietnam Tahun (2010-2014)", *Jom FISIP* 4, no. 1 (2017): 1-12, 2.

¹⁵ Jerry Indrawan, "Ancaman Non-Militer Terhadap Keamanan Nasional di Papua", *Jurnal Ilmiah Hubungan Internasional* 12, no. 2 (2016): 1-15, 10, DOI: 10.26593/jihi.v12i2.2651.159-173.

¹⁶ Gerald Theodorus L. Toruan, "Tinjauan Yuridis Kebijakan Bela Negara KEMHAN dalam Perspektif Hukum Indonesia", *Jurnal Esensi Hukum* 1, no. 1 (2019): 70-80, 70-71, DOI: 10.35586/esensihukum.v1i1.16.

¹⁷ <https://news.detik.com/berita/d-4672323/cegah-hoax-kominfo-sempat-lambatkan-internet-di-papua>, accessed on April 19, 2020.

¹⁸ Ade Fartini, "Hukum Dan Fungsi Negara Menurut Undang-Undang Dasar Negara Republik Indonesia Tahun 1945", *Al Ahkam* 14, no. 1 (2018): 1-19, 12, DOI: 10.37035/ajh.v14i1.1427.

¹⁹ <https://nasional.kompas.com/read/2019/08/23/07172221/pembatasan-akses-internet-di-papua-tujuan-mulianya-tuai-pro-dan-kontra?page=all>, accessed on April 20, 2020.

²⁰ <https://www.voaindonesia.com/a/luapan-protes-mahasiswa-papua-atas-tindakan-diskriminasi-dan-rasisme/5048270.html>, accessed on April, 20, 2020.

²¹ Muhammad Sholeh, Nur Rohim Yunus, Ida Susilowati, "Resolusi Konflik Pencegahan Disintegrasi Bangsa Melalui Legalitas Hukum Syariat Di Aceh", *Salam* 3, no. 2 (2016): 217-230, 218, DOI: 10.15408/sjsbs.v3i3.7862.

²² Georgy Mishael, Joko Setiyono, Soekotjo Hardiwinoto, "Kebijakan Operasi Militer Tentara Nasional Indonesia Terhadap Organisasi Papua Merdeka Dalam Perspektif Hukum Humaniter Internasional", *Diponegoro Law Review* 5, no. 2 (2016): 1-12, 2.

2. Restrictions on Internet Access in A Status Quo Under National and International Law.

The protection of human rights for citizens by the rule of law is important.²³ Article 19 The Universal Declaration of Human Rights states that freedom of opinion and expression is the right of every person, including the right to seek, receive, and convey information without any restrictions through any media, including the internet.²⁴ The UN also acknowledges internet access as a part of human right referred to as digital right.²⁵ However, each right is limited by the rights of others.²⁶ The 1945 Constitution in article 28 J paragraph (2) states that restrictions on the rights and freedoms of everyone's rights should be based on the values of religion, morals, security, and public order.²⁷

Article 40 paragraph (2), paragraph (2a), and paragraph (2b) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (*ITE Law*) require the government to prevent disruption to the public interest due to misuse of Electronic Information and Electronic Transactions.²⁸ Restrictions imposed by the Republic of Indonesia's government on internet access in the Papua and West Papua regions on the grounds of preventing the spread of fake news and widespread riots is a reasonable action to prevent inter-group issues are in accordance to Article 20 paragraph (2) of the International Covenant on Civil and Political Rights.²⁹ According to Article 4 of the International Covenant on Civil and Political Rights (ICCPR), it is important to recognize that the understanding and application of human rights can be adjusted in response to a state of emergency. However, such a situation must be officially declared to be in a state of emergency through appropriate legal measures, such as a Presidential Decree.³⁰ The European Court of Human Rights defines this situation as a state of emergency or crisis that is extraordinary for affecting society's overall condition and posing a threat to life.³¹

The conditions in Papua and West Papua can be regarded emergency conditions which can be the ground for the restriction of certain human rights. However, seen from the legal procedure, the restriction was not made based on Presidential Decree or similar decrees stating the emergency condition. The violations committed by the Indonesian government against Article 40 paragraph (2b) of the *ITE Law* was conducted by Indonesian government to handle the spread of fake news, incitement, and other provocations that disturb the public order. Contents that are against the law are freely shared on electronic media³² which can create a domino effect from the violation of Article 4 paragraph (3) of Law Number 40 of 1999 concerning the Press, which states that there is a guarantee for press freedom to seek, obtain and disseminate information and ideas to the general public.³³ Based on the Decision of the

²³ Putu Eva Ditayani Antari, "Tinjauan Yuridis Pembatasan Kebebasan Berpendapat Pada Media Sosial di Indonesia", *Jurnal Hukum Undiknas* 4, no. 1 (2017): 15-28, 16.

²⁴ Latipah Nasution, "Hak Kebebasan Berpendapat Dan Berekspresi Dalam Ruang Publik di Era Digital", *Adalah* 4, no. 3 (2020): 37-48, 44, DOI: 10.15408/adalah.v4i3.16200.

²⁵ See In the Main Case, Decision Number: 230 / G / TF / 2019 / PTUN-JKT, 167.

²⁶ Osgar S. Matompo, "Pembatasan Terhadap Hak Asasi Manusia dalam Prespektif Keadaan Darurat", *Jurnal Media Hukum* 21, no. 1 (2014): 57-72, 58.

²⁷ Arief Rianto Kurniawan, Yuliana Primawardani, "Proporsionalitas Pembatasan HAM dalam Pasal 28 Undangundang Pemberantasan Tindak Pidana Terorisme", *Jurnal LEGISLASI INDONESIA* 16, no. 1 (2019): 16-26, 17.

²⁸ Article 40 paragraph (2), (2a), (2b) Law Number 19 Year 2016.

²⁹ Article 20 paragraph (2) of the International Covenant on Civil and Political Rights.

³⁰ Fadillah Agus, "Pembatasan HAM dalam Keadaan Darurat Menurut Peraturan Perundang-Undangan Indonesia", *Jurnal Paradigma Hukum Pembangunan* 3, no. 2 (2018): 105-114, 108.

³¹ Nihal Jayawickrama, *The Judicial Application of Human Rights Law National, Regional and International Jurisprudence* (Cambridge University Press, yr. 2002), 205.

³² Article 40 paragraph (2b) of Law Number 19 Year 2016.

³³ Article 4 paragraph (3) of Law Number 40 of 1999.

State Administrative Court Number: 230 / G / TF / 2019 / PTUN-JKT, the Minister of Communication and Information Technology and the President of the Republic of Indonesia were found guilty of restricting internet access in the Papua and West Papua regions.³⁴

C. Conclusions

Through press release No. 154 / HM / KOMINFO / 08/2019, the Government of the Republic of Indonesia has made policies to restrict internet access in the Papua and West Papua regions to prevent the spread of fake news and incitement related to unrest in the region. AJI and SAFENet consider this policy against the principle of journalism and the law. According to international law and Indonesian national law, the limitation of rights is justified if the restriction aims to prevent riots, security disruption and disturbance to public order. Unfortunately, this policy is flawed in the procedure because for not being issued following the regulations. Indonesian Government did not declare an emergency through a Presidential Decree. According to Article 40 paragraph (2b) of the Indonesian Information and Electronic Transactions Law (*ITE Law*), the restriction of internet access as a measure to prevent the spread of fake news and illegal content is only permissible in terms of terminating access to specific electronic documents, not to broader internet services. Based on the Verdict of the State Administrative Court Number: 230/G/TF/2019/PTUN-JKT, the government's policy to restrict internet access in the Papua and West Papua regions is not justified under Article 40 paragraph (2b) of the Indonesian Information and Electronic Transactions Law (*ITE Law*). This article specifies that measures to prevent the spread of fake news and illegal content should only entail terminating access to specific electronic documents, rather than imposing a broader internet shutdown. The court's ruling reinforces this interpretation, stating that the government's actions in this case were incorrect and contrary to the law, as they exceeded the scope of restrictions permitted under the *ITE Law*.

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