

## REVIEW OF THE INTERNET BLOCKING CASE IN PAPUA IN CYBER LAW PERSPECTIVE

**Melvin Elvino Putra**

Satya Wacana Christian University, Indonesia, E-mail: [putra.mlvn2708@gmail.com](mailto:putra.mlvn2708@gmail.com)

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Article Info	Abstract
<p><b>Keywords:</b> Cyber Law, Human Rights, Internet.</p> <p><b>DOI:</b> 10.25041/lajil.v4i1.2524</p>	<p><i>The internet has become an indispensable part of modern life, enhancing efficiency across numerous domains. However, its misuse can lead to crimes that affect everyone, underscoring the need for legal frameworks known as Cyber Law, which also intersects with Human Rights. This article focuses on the controversial practice of internet blocking in Papua, where the government has intermittently restricted internet access, raising significant concerns in the realms of Human Rights and Cyber Law. According to the 1945 Constitution, every individual has the right to benefit from technological advancements. In the case of Papua, the government's actions seem to contravene this Human Rights principle. However, from a Cyber Law perspective, such restrictions are viewed as preventative measures intended to curb social media crimes and internet-based chaos. This paper examines the Papua case through the lens of Cyber Law. The Administrative Court's decision is analyzed using a normative legal approach and an objective case approach, adopting a qualitative methodology that integrates both literature and empirical data. This involves legal analysis and observations of social phenomena within the community. While further research is necessary, this research contributes to a deeper understanding of the Papua internet blocking case. It argues that the government's actions, though controversial, were not in violation of the law. These actions were taken in the interest of the wider community, aiming to safeguard against cybercrime and the spread of false news, which could potentially fracture Indonesia's unity.</i></p>

### A. Introduction

The advancement of technology has allowed Indonesia grow and reached the technological trend of the industrial revolution 4.0. The internet is one of the fastest technological developments in Indonesia that connects people and provides convenience. The development of internet brings both positive and negative impacts. The internet has also evolved the crime into Cyber Crime. Cybercrime is settled based on the Cyber Law, which defines all the principles, norms, or rules of institutions, institutions, and processes that regulate virtual

activities using information technology that utilizes multimedia content and telecommunications infrastructure.<sup>1</sup>

In 2019, the Indonesian government restricted the internet connections in Papua to handle the spread of hoaxes, hate speech, and provocations in Papua. This restriction has triggered public's outrage as it is perceived as the violation of the Human Rights and Cyber Law. Indonesian's 1945 Constitution ensures that everyone has the right to benefit from technology. However, seen from the Cyber Law, the restriction could minimize the occurrence of cyber crime on social media or the internet. This paper comprehensively explains the restriction of internet access within the perspective of the Cyber Law.

A normative legal approach and an objective case approach were used in this qualitative research. This research regarded data obtained from literature review and empirical approach, including analysis of laws and social phenomena that occur in the community.

## B. Discussion

This paper discusses the problems that occurred in Papua related to the restriction of internet network done by the government. The restriction was intended to control the spread of hoaxes which could provoke criminal acts on social media. The unrest was triggered by the acts of racism against 41 Papuan students in Surabaya which had caused riots in several areas of Papua, including Jayapura, Manokwari, Sorong, Fakfak, and West Papua. Despite the positive intention of the government underlying the internet restriction, the court judges stated that "if there is such a situation, the government should handle hoaxes, not turn off the internet which harms the rights of others in large numbers." The researcher is intrigued to explore and propose several opinions regarding this case within the perspective of the Cyber Law.

Cyber Law is a realization of the legal protection in the field of technology against cybercrime. The blocking or disconnection of the internet network is an effort that can be carried out to avoid cybercrimes in specific situation. The internet restriction in Papua, was conducted by the Indonesian government to secure the nation. This action was sued to the State Administrative Court as the government was deemed to have violated the law related to internet blocking in Papua. The judge stated that the government does not own the right to revoke the internet in a region. In this case, the Constitutional Court considered government's actions constitutional based on the principles of the rule of law.

### 1. The Implementation of Cyber Law in Indonesia

In addition to the positive enhancement in various sectors from the internet development, the negative effect in the form of crime on the internet or cybercrime follows. In the current digital era, the internet can sometimes serve as a platform for offenses committed by irresponsible individuals. For instance, a notable incident occurred in Indonesia in 2001, where a crime involved the use of the internet to order goods from abroad with a forged credit card.<sup>2</sup> A crime is handled by the law that is juxtaposed with a legal norm in order to provide protection to the society. In other words, there is a need for countermeasures against cybercrime in the form of law enforcement (cyber law) to handle cybercrime. The government has enacted the ITE Law to counter back cybercrime.

The scope of Cyber Law in Indonesia encompasses both Public Law—covering aspects such as jurisdiction, online ethics, consumer protection, anti-monopoly regulations, fair competition, taxation, regulatory oversight, data protection, and cybercrimes—and Private Law, which includes intellectual property rights, e-commerce, cyber contracts, domain names,

<sup>1</sup> Tasya Safiranita Ramli et al., "Prinsip-Prinsip Cyber Law Pada Media Over The Top E-Commerce Berdasarkan Transformasi Digital Di Indonesia," *Jurnal Legislasi Indonesia* 16, no. 3 (2019): 392–98.

<sup>2</sup> Lita Sari Marita, "Cyber Crime dan Penerapan Cyber Law Dalam Pemberantasan Cyber Law di Indonesia," no. 18 (n.d.).

and insurance.<sup>3</sup> Given the rapid expansion of the internet in Indonesia, cyber crimes are a primary focus for both law enforcement and the government in their efforts to mitigate online criminal activity.

#### **a. Cyber Law and Human Rights**

Human rights (HAM) are natural rights inherent in every human being since birth given by God Almighty. Therefore, nobody or anyone can take away or revoke the human rights. Human rights do not inherently require regulation within a national legal system. However, given that many societal frameworks operate within a secular and positivistic paradigm, establishing a juridical basis for human rights becomes essential for maintaining orderly human existence<sup>4</sup>.

Article 28C paragraph (1) of the 1945 Constitution of the Republic of Indonesia stipulates that everyone has the right to develop themselves through the fulfillment of basic needs, access to education, and the opportunity to benefit from advancements in science and technology, as well as arts and culture, in order to enhance their quality of life and contribute to the welfare of humanity.

The Indonesian government has established several mechanisms to ensure the enforcement of human rights, including the establishments of: 1) the National Human Rights Commission (*Komnas HAM*), 2) human rights courts, 3) Truth and Reconciliation Commission to provide alternative resolutions for human rights violations outside the Human Rights Court, and 4) the ratification of various international human rights conventions.<sup>5</sup> It is the government's responsibility to ensure that its citizens' human rights are fully realized in accordance with these normative provisions. In addition to safeguarding human rights, the government is also committed to protecting all citizens from crimes, including cybercrime.

## **2. Internet Restriction Case in Papua**

#### **b. Analysis of Administrative Court Decision Number 230/G/TF/2019/PTUN-JKT**

This dispute involved the Minister of Communication and Information and President Joko Widodo as the defendants. They transferred his authority to S.T. Burhanuddin, the Attorney General of the Republic of Indonesia. Meanwhile, plaintiffs representing various legal entities were preparing to sue the central government over this issue..

The Plaintiff outlined the key arguments in the lawsuit regarding the internet blockade in Papua, citing several legal bases, including: a) Article 4 paragraph (1) of Law Number 40 of 1999 on the press, which guarantees independence as a fundamental human right, and Article 4 paragraph (3), which ensures press freedom by granting the national press the right to seek, obtain, and disseminate ideas and information, a right that was obstructed, thus impairing journalists' efforts to cover events in Papua, West Papua, and the surrounding area. This limitation restricted the public's access to information; b) Article 28 J of the 1945 Constitution of the Republic of Indonesia, in conjunction with Article 73 of Law Number 39 of 1999 concerning Human Rights, which outlines that restrictions and prohibitions can only be imposed based on law. Among other points raised.

The plaintiff argued that the government unlawfully restricted internet services in Papua, violating specific legal and constitutional provisions related to human rights. In response, the government justified its actions in its decision by citing Article 40 of the *ITE* Law, which states that the government is tasked with protecting public interest against disturbances arising from misuse of information.

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<sup>3</sup> Darmawan Napitupulu, "Kajian Peran Cyber Law Dalam Memperkuat Keamanan Sistem Informasi Nasional," *Teknologi Informasi Dan Komunikasi*, 2017, 100–113.

<sup>4</sup> Bambang Sutyoso, "Konsepsi Hak Asasi Manusia Dan Implementasinya Di Indonesia," *Unisia* 25, no. 44 (2002): 84–94, <https://doi.org/10.20885/unisia.vol25.iss44.art7>.

<sup>5</sup> Besar Besar, "Pelaksanaan Dan Penegakkan Hak Asasi Manusia Dan Demokrasi Di Indonesia," *Humaniora* 2, no. 1 (2011): 201, <https://doi.org/10.21512/humaniora.v2i1.2971>.

In their decision, the panel of judges cited Article 6 paragraphs (1) and (2) letter e of the Government Administration Law, which grants government officials the authority to make decisions and take actions, including the use of discretion to achieve their objectives. Furthermore, the judges referenced Article 22 paragraph (2) of the same law, stating that the use of governmental authority aims to: a. facilitate the administration of government; b. fill legal voids; c. provide legal certainty; and d. overcome government stagnation in specific situations for the benefit and public interest. The court emphasized that these four discretionary objectives are cumulative rather than alternative.

Despite these provisions, Decision No. 230/G/T.F./2019/PTUN-JKT ruled in favor of the plaintiffs, declaring the government's action of internet blocking in Papua and West Papua unlawful. The decision stated that although the government argued it had the authority to block the internet as per its legal interpretation, the judges found that this act still constituted a violation of the law.

It can be concluded that according to Article 28 J of the 1945 Constitution and Article 40 of the ITE Law, the government has the right to block the internet in Papua in cases of sudden and urgent situations, as this action is deemed necessary for the good of the nation, particularly for regions like Papua. When the government is accused of wrongdoing in such instances, it is important to consider that alongside the protection of human rights, the actions taken by the government are also a form of human rights protection. This perspective is supported by the Constitutional Court's decision in a judicial review of the government's authority under Article 40 of the ITE Law to decide on internet content blocking. The Court's verdict conclusively rejected the applicant's challenge, ruling that the government's internet blocking measures are constitutional. The Constitutional Court recognized that such actions by the government are necessary to safeguard the public interest from various forms of disruption, thus aligning with the principles of the rule of law<sup>6</sup>.

In Malaysia, the Communications and Multimedia Commission (MCMC) serves as the central authority for internet regulation. The MCMC is legally mandated to enforce and implement laws and regulations related to communications and multimedia. This mandate encompasses the issuance, revocation, and modification of telecommunications licenses, all while aligning with the government's national cyber policy objectives.<sup>7</sup>

Similarly, in Bangladesh, there have been instances where the government temporarily blocked access to social networking applications due to security concerns. For example, at the beginning of 2015, platforms like Facebook, WhatsApp, and Line were blocked for four days. The government cited concerns that these platforms were being used by terrorists to coordinate movements against government opposition activists. This was not the first time such measures were taken; similar internet restrictions were imposed in 2012 and 2013, when access to YouTube and Facebook was blocked<sup>8</sup>.

Thus, it can be interpreted that the government's treatment of the people in Papua is intended to protect the community and prevent complex issues. Similarly, Malaysia and Bangladesh have temporarily blocked internet access in the interest of national well-being.

### C. Conclusion

Cybercrime has become increasingly prevalent with the growth of the digital era. Cyber Law plays an essential role in providing legal certainty and preventing crimes committed by

<sup>6</sup> "Mahkamah Konstitusi Nyatakan Pasal Pemblokiran Internet Konstitusional - Nasional Tempo.Co," n.d.

<sup>7</sup> M Z Islam et al., "Ensuring Safe Cyberspace for Children: An Analysis of the Legal Implications of Social Media Usage in Malaysia and Singapore," *Iium Law Journal* 28, no. 8th International Conference on Law and Society (ICLAS) (2020): 395–413.

<sup>8</sup> Md Zahidul Islam and Rabeya Anzum, "Internet Governance: Present Situation of Bangladesh and Malaysia," *International Journal of Recent Technology and Engineering* 7, no. 5 (2019): 176–80.

malicious actors. Cyber Law intersects with Human Rights, asserting that everyone has the right to access technological facilities, which governments are obliged to protect. For example, in the case of Papua, where the government restricted internet access, it was not a legal violation but a decision made to safeguard the community. This action was aimed at protecting against cybercrimes and preventing the spread of false news that could threaten national unity.

## REFERENCES

- Besar, Besar. "Pelaksanaan Dan Penegakkan Hak Asasi Manusia Dan Demokrasi Di Indonesia." *Humaniora* 2, no. 1 (2011): 201. <https://doi.org/10.21512/humaniora.v2i1.2971>.
- Islam, M Z, S Zulhuda, NHMB Afandi, and M A Shafy. "Ensuring Safe Cyberspace for Children: An Analysis of the Legal Implications of Social Media Usage in Malaysia and Singapore." *IIUM Law Journal* 28, no. 8th International Conference on Law and Society (ICLAS) (2020): 395–413.
- Islam, Md Zahidul, and Rabeya Anzum. "Internet Governance: Present Situation of Bangladesh and Malaysia." *International Journal of Recent Technology and Engineering* 7, no. 5 (2019): 176–80.
- Lita Sari Marita. "CYBER CRIME DAN PENERAPAN CYBER LAW DALAM PEMBERANTASAN CYBER LAW DI INDONESIA," no. 18 (n.d.).
- "Mahkamah Konstitusi Nyatakan Pasal Pemblokiran Internet Konstitusional - Nasional Tempo.Co," n.d.
- Napitupulu, Darmawan. "Kajian Peran Cyber Law Dalam Memperkuat Keamanan Sistem Informasi Nasional." *Teknologi Informasi Dan Komunikasi*, 2017, 100–113.
- Ramli, Tasya Safiranita, Ahmad M Ramli, Danrivanto Budhijanto, Rika Ratna Permata, Huala Adolf, Eddy Damian, and Miiranda Risang Ayu Palar. "Prinsip-Prinsip Cyber Law Pada Media Over The Top E-Commerce Berdasarkan Transformasi Digital Di Indonesia." *Jurnal Legislasi Indonesia* 16, no. 3 (2019): 392–98.
- Sutiyoso, Bambang. "Konsepsi Hak Asasi Manusia Dan Implementasinya Di Indonesia." *Unisia* 25, no. 44 (2002): 84–94. <https://doi.org/10.20885/unisia.vol25.iss44.art7>.

