

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

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Article Info	Abstract
<p><b>Keywords:</b> Cyber Law, Human Right, Internet.</p> <p><b>DOI:</b> 10.25041/lajil.v4i1.2524</p>	<p>The internet has become an essential part of modern life, increasing the efficiency of everything. It should be no surprise that internet abuse can lead to crimes that harm everyone. As a result, there is a need for legal safeguards known as Cyber Law, which intersects with Human Rights. The case of internet blocking in Papua, in which the government blocked or slowed internet connections in Papua, is the subject of this article because it raises many issues in the fields of Human Rights and Cyber Law, which, on the human rights side, is regulated in the 1945 Constitution, which states that everyone has the right to benefit from technology. In this case, the government cannot meet the aspect of Human Rights. However, in Cyber Law, this is intended as a limitation to reduce a crime on social media or the internet that causes chaos. As a result, this paper will elaborate on the Papua case from the standpoint of Cyber Law. The Administrative Court's decision used a normative legal approach and an objective case approach to investigate this phenomenon experimentally. The study then employs a qualitative method with literature and empirical approach, obtaining data through legal analysis and social phenomena that occur in society. Although further investigations are needed, the present study contributes to a better understanding of the case that occurred in Papua related to the government's blocking or disconnection of the internet. It was not a violation of the law because the government at the time made good decisions for the entire community's benefit, ensuring that everyone was safe from cybercrime or false news, which has the potential to sever Indonesia's unity.</p>

### A. Introduction

Technological developments in Indonesia from year to year continue to grow so that at this time, Indonesia has touched the technological trend of the industrial revolution 4.0. The internet is one of the fastest technological developments in Indonesia. In the current era, all people use the internet to connect, and even today, all public facilities use the internet for convenience for

their consumers. Behind the positive side of the internet, there is a negative side, one of which is a crime in the scope of internet/electronic technology, commonly called Cyber Crime. The settlement will contact Cyber Law, which defines all the principles, norms, or rules of institutions, institutions, and processes that regulate virtual activities carried out using information technology that utilizes multimedia content and telecommunications infrastructure. The advancement of information, communication, and technology are one of the main factors that drive economic development and growth<sup>1</sup>.

There was a case in 2019 where the government blocked or slowed internet connections in Papua. The government intends to impose these restrictions to combat hoaxes, hate speech, and provocations in Papua. This caused chaos in Papua among students and the general public, who were outraged by the central government's decision to block internet access in the country. This case raises many problems in the field of Human Rights and Cyber Law, which on the human rights side, of course, is regulated in the 1945 Constitution that everyone has the right to benefit from technology. In this case, the government cannot fulfill the aspect of Human Rights. However, for the field of Cyber Law, this aims as a limitation to minimize a crime on social media or the internet, causing chaos. Therefore, this paper will be explained further from the point of view of Cyber Law regarding the case that occurred in Papua.

The author uses a normative legal approach and an objective case approach, not forgetting that this research uses a qualitative method with literature and empirical approach—the data obtained through the analysis of laws and social phenomena that occur in the community.

## **B. Discussion**

The author of this article will discuss the problems in Papua related to blocking the internet network by the government, which aims to reduce the existence of hoax news and can lead to criminal acts on social media. This case occurred due to acts of racism against 41 Papuan students in Surabaya and caused riots in several areas of Papua. The racism and student arrests triggered a wave of rolling demonstrations in Jayapura, Manokwari, Sorong, Fakfak, and West Papua. The central government considers this in the name of national security and emergencies. The government's steps are also reasons not to let hoax news run rampant from the Cyber Law side. However, the PTUN judge gave another opinion in his consideration in the decision stating 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 statement given by a judge in the decision of this case is exciting, and the author will provide another opinion in this case in the field of Cyber Law.

Cyber Law is a form of legal protection in the field of technology against the actions of cybercrime. The blocking or disconnection of the internet is carried out to avoid all crimes in the world of technology. In this case, the government has done what it should as a country that protects human rights. It was tried through litigation, namely the State Administrative Court. In its decision, the government was deemed to have violated the law related to internet blocking in Papua. The consideration given by the judge referred to the authority of the government, which has no right to revoke the internet in a region. However, it has a different opinion by the Constitutional Court in which the government's actions are constitutional and by the principles of the rule of law.

### **1. Application of Cyber Law in Indonesia**

The internet is one of the technologies increasing in Indonesia, making it easy and efficient for human life. There is a weakness behind the advantages of the internet itself, namely crime on

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<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.

the internet or commonly called cybercrime. In the current digital era, the internet can be a source of offenses committed by irresponsible people, such as a case in Indonesia in 2001 when a crime occurred by using the internet to order goods from abroad using a forged credit card.<sup>2</sup> Where there is a crime, there is a law that applies to be juxtaposed with a legal norm so that society can be protected. In other words, there is a need for countermeasures against cybercrime in the form of law enforcement (cyber law) as a bulwark against cybercrime. One of the movements of the government to reduce the existence of cybercrime is the ITE Law.

The scope of Cyber Law in Indonesia is Public Law: Jurisdiction, Ethics of Online Activities, Consumer Protection, Anti-monopoly, Fair Competition, Taxation, Regulatory Body, Data Protection, and Cyber Crimes. Private Law: Intellectual Property Rights, ECommerce, Cyber Contract, Domain Name, Insurance<sup>3</sup>. With the rapid growth of the internet in Indonesia, cyber crimes remain the primary focus for law enforcement or the government to reduce crime on the internet.

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

Human rights (HAM) are natural rights inherent in every human being since birth which means that God Almighty gives them to His creation. For this reason, nobody or anyone can rob or revoke the right of the gift from God Almighty. Human rights do not need to be regulated in a national legal system. Still, most human life systems are secular and positivistic, so human rights require a juridical basis to hold human life more orderly<sup>4</sup>.

Human rights related to technology are regulated in the Indonesian Constitution, namely the 1945 Constitution of the Republic of Indonesia in Article 28C paragraph (1), which states that everyone has the right to develop themselves through fulfilling their basic needs, has the right to education and benefits from science. And technology, arts, and culture, to improve the quality of life and for the welfare of humanity.

The guarantees for the protection of Human Rights built by the Government for the enforcement of human rights are 1) the Human Rights Commission (Komnas HAM); 2) human rights courts 3) establishment of a Truth and Reconciliation Commission as an alternative settlement of human rights violations outside the Human Rights Court, and 4) ratify various international conventions on Human Rights.<sup>5</sup> The Government must ensure that its people are fulfilled in their human rights. Not only in normative provisions but other matters related to human rights must be fulfilled. Apart from the provisions related to human rights, the Government continues to work for the good of all people to be protected from all crimes such as Cyber Crime.

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

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

The defendants in this dispute are the Minister of Communication and Information and President Joko Widodo. They gave his power to the Attorney General of the Republic of Indonesia, namely S.T. Burhanuddin. Meanwhile, the plaintiffs from various legal entities will sue the central Government regarding this issue.

The Plaintiff gave the main points of the case submitted in the trial related to the internet blocking dispute in Papua with several legal grounds, namely: a) Article 4 paragraph (1) of Law Number 40 of 1999 concerning the press, which stipulates that " independence is guaranteed as

<sup>2</sup> Lita Sari Marita, "CYBER CRIME DAN PENERAPAN CYBER LAW DALAM PEMBERANTASAN CYBER LAW DI INDONESIA," no. 18 (n.d.).

<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 Sutiyo, "Konsep 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>.

a human right of citizens.", and Article 4 paragraph (3) which reads "to guarantee the freedom of the press, the national press has the right to seek, obtain and disseminate ideas and information," because it hinders and interferes with the activities of journalists who are doing media coverage in Papua, West Papua, and the region. So that the recipients of the Information are limited to get the 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 regulates restrictions and prohibitions that can only be limited by and based on law. Other. And some others.

Plaintiff stated that the Government had no right to cut off the internet network in Papua and violated a legal provision and human rights regulated in the Constitution. However, the Government denied this in the decision by explaining that Article 40 of the ITE Law that the Government protects the public interest of all kinds disturbance as a result of misuse of Information.

Meanwhile, the panel of judges in their decision stated that based on Article 6 paragraphs (1) and (2) letter e of the Government Administration Law, government officials have the right to use the authority to make decisions and actions, including using discretion according to their objectives. The Assembly cited Article 22 paragraph (2) of the Government Administration Law, which states that every use of the control of government officials is aimed at: a. smoothing the administration of Government; b. fill legal voids; c. provide legal certainty; and d. overcoming government stagnation in certain circumstances for the benefit and public interest. "The four discretionary objectives according to the assembly are cumulative, not alternative."

Decision No. 230/G/T.F./2019/PTUN-JKT finally granted the claim from the Plaintiffs and stated that the Defendant's exception was not accepted. The Government's actions related to blocking the internet in Papua and West Papua is an act that violates the law. If viewed from the Government in its exception in the lawsuit, it is explained that there is a provision that the Government has the authority to do this. Still, it turns out that the panel of judges has reversed what Defendant has done as 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 if there is a sudden and urgent situation, the Government has the right to block the internet in Papua because this is for the good of the entire nation, especially Papua as the main sector in this regard. When a government is judged guilty, it is not the right thing because behind the existence of human rights that must be protected, but what the Government does is also included in the protection of human rights. This is supported by the decision of the Constitutional Court related to the judicial review of the Government's authority to decide to block internet content in Article 40 of the ITE Law. The verdict rejected the applicant's application in its entirety on the consideration that blocking the internet by the Government is a constitutional act. The Constitutional Court considers that the blocking and termination of the internet carried out by the Government as the context of this country must be present to protect the public interest from all forms of interference so that this does not conflict with the rule of law principles<sup>6</sup>.

In Malaysia, there is a commission known as the Communications and Multimedia Commission (MCMC) which acts as the main internet regulatory commission for Malaysia. The MCMC itself has a legal mandate to protect and ensure that laws and regulations relating to communications and multimedia are enforced and implemented. The mandate includes the issuance, revocation and amendment of telecommunications licenses while striving to achieve the government's national cyber policy objectives<sup>7</sup>. Likewise, in Bangladesh, at the beginning

<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.

of 2015, several social networking applications were blocked by the Government of Bangladesh, causing severe disruption for four days. At that time, the reason was that it was suspected that terrorists used social media platforms such as Facebook, Whatsapp, Line, and so on for a movement against government opposition activists. The government of Bangladesh has also done this in 2012 and 2013 that residents were blocked on Youtube and Facebook<sup>8</sup>.

Thus, it can be interpreted that the government's treatment of the people in Papua is an act that is intended to protect the entire community in the hope that it will avoid difficult issues or things. Some countries such as Malaysia and Bangladesh apply the same thing to their people to temporarily block the internet for their nation's good and interests.

### C. Conclusion

Cyber Crime or crime in the world of technology has emerged after the digital era, which is growing. To avoid such a crime, it is necessary to have Cyber Law that regulates to ensure legal certainty rather than Cybercrimes committed by irresponsible people. Cyber Law also intersects with Human Rights, where everyone has the right to obtain technological facilities, and the government must protect these human rights. With the example of the case that occurred in Papua related to the blocking or disconnection of the internet carried out by the government, it was not a violation of the law because the government at that time made good decisions for the good of the whole community so that all of them were protected from cybercrime or false news. It has the potential to divide the unity of Indonesia.

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<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.

