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Law Enforcement Review of Internet Access Restrictions in Papua

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Abstract

Actions to limit internet access in Papua by the Government to quell mass demonstrators in Papua have become a polemic to this day. This research focuses not only on how the process of taking these actions and the side effects, namely human rights issues, but also has implications for aspects of law enforcement that are in the spotlight. This research uses normative juridical research with primary legal material in the form of laws and regulations combined with analytical descriptive studies. The results of the study found that there is no basis for government legitimacy to limit internet access, which may be limited to restrictions on access to electronic information (social media) containing violations of the law, so apart from being said that the action violates human rights (HAM), law enforcement that can be applied to the government both in the fields of administrative law, civil law, and criminal law as long as the elements are fulfilled.

INTRODUCTION

As technology advances throughout the world,¹ this encourages the acceleration of mobility and efficiency in terms of easy access to information including the high number of internet users, various countries are trying to balance the possibility of internet abuse. It was noted that according to the Access Now (Non-Profit Organization) report on July 8 2019, restrictions on internet access occurred in various parts of the world, at least the report stated that in 2018 alone there had been 196 restrictions on internet access in 25 countries, including in Indonesia.²

¹ Kelvin Chandra and Tundjung Herning Sitabuana, "Kebijakan Negara Melakukan Pembatasan Internet Di Papua Dan Papua Barat Dalam Putusan Nomor 230/G/Tf/2019/PTUN-JKT Melalui Perspektif Hak Asasi Manusia," *Jurnal Syntax Transformation* 3, no. 10 (2022): 1353–1360.

² Isabel Linzer, "Penjelasan Tentang Pembatasan Internet: Apa, Siapa, Dan Kenapa?," 2021.

Restricting internet access is an open secret that often occurs. These restrictions may take the form of (1) content filtering/blocking of certain platforms; (2) slowing down internet traffic (internet throttling); or (3) internet shutdowns/blackouts.³ This policy was also implemented by the Government of Indonesia through the Ministry of Communication and Information (Kemkominfo). It is noted that this policy has been carried out several times, especially in Papua, including:

First, internet blocking activities in the Papua and West Papua Provinces by the Government on August 21 until at least returning to normal on September 4 2022 by slowing down and even completely cutting off internet access in the Papua region where mass actions are taking place such as in Manokwari, Jayapura, Merauke and several other places.⁴ *Second*, There was an internet outage in Wamena Regency, Papua Province, by issuing Press Release Number 187/HM/Kominfo/09/2019 concerning Restrictions on Data Services in Wamena on September 23, 2019. *Third*, Total internet blackouts have again occurred in Papua Province, specifically Merauke Regency, from March 26, 2022, until normal returns on May 27, 2022, what surfaced at that time was allegedly due to a broken underwater cable, but another wild issue tht was also blowing hard was that the termination was related to the anticipation of hoax news on social media ahead of the approval for the division of the South Papua Province.

The most striking implementation of the internet restriction policy occurred in mid-August 2019 because several areas in Papua experienced riots (mass conflict). The incident occurred after allegations of racism took place at a Papuan student dormitory in Surabaya. The incident unfolded and information spread profusely through social media, triggering demonstrations in Manokwari, Jayapura and several other areas in Papua and West Papua. The action was marred by riots, road blockades and arson.⁵

To deal with the increasingly widespread riots, the government through the Ministry of Communication and Informatics (Kemkominfo) adopted a slowdown policy which was followed by blocking internet services in the Papua and West Papua regions. As contained in the press statement of the Ministry of Communication and Information Number 155/HM/Kominfo/08/2019 states that there are more than 230,000 hoax URLs in Papua being

³ Ade Adhari, Tundjung Herning Sitabuana, and Luisa Srihandayani, "Kebijakan Pembatasan Internet Di Indonesia: Perspektif Negara Hukum, Hak Asasi Manusia, Dan Kajian Perbandingan Internet Restriction Policies In" (n.d.).

⁴ D K Nena Tanda and Margaretha Hanita, "Analisis Pengambilan Kebijakan Perlambatan Internet Pada Konflik Papua Tahun 2019," *Syntax Literate; Jurnal Ilmiah Indonesia* 7, no. 4 (2022): 4667–4682.

⁵ Siti Chaerani Dewanti, "Pembatasan Internet Dalam Mengatasi Konflik Di Papua," Info Singkat 9 (2019).

viral via social media, mainly via Twitter. The content is massive, inciting, and even pitting one against the other. The high number of news reports with negative content means that the government considers it obligatory to control the content that violates the law, including by terminating access to speed up the process of restoring security and order in the Papua region.⁶

The legal basis used by the government refers to the provisions of Article 40 paragraph (2a) and paragraph (2b) of Law Number 19 of 2016 concerning Amendments to Law Number 18 of 2008 concerning Information and Electronic Transactions (ITE), which reads:

- (2a) The government is obligated to prevent the dissemination and use of Electronic Information and/or Electronic Documents that have prohibited contents by the provisions of laws and regulations.
- (2b) In carrying out the prevention as referred to in paragraph (2a), the government has the authority to terminate access and/or order Electronic System Operators and/or Electronic Documents that contain content that violates the law.

The steps taken by the Government were reaffirmed by Rudiantara (Menkominfo) at the time, who said that blocking internet access on social media was effective in preventing hoaxes from circulating because such videos quickly ignite people's emotions.⁷ From this conception, it can be understood that there is nothing wrong with blocking the internet the Government an effort to protect the public interest to control the content that violates the law.

However, the Ombudsman stated that the point was that the government should review the intended policy for good,⁸ in addition, the Southeast Asia Freedom of Expression Network (SAFEnet) cynically stated that the government's efforts to limit internet access are a form of internet throttling (slowing down internet traffic) which has the potential to be bad, especially for the right to freedom of expression in Indonesia.⁹ Meanwhile, talking about freedom of expression will bring us to the topic of human rights, which some researchers have studied thoroughly and tend to criticize the government's policies, especially regarding human rights. It is even known that together with the impact of internet restrictions in Papua, several Civil Society Alliances dared to file a lawsuit at the State Administrative Court on November 21

⁶ Ahya Unzila Akbar, "Tindakan Pemerintah Melakukan Pemblokiran Internet Ditinjau Dari Perspektif Keamanan Negara" (Universitas 17 Agustus 1945 Surabaya, 2022).

⁷ CNN, "Kominfo Yakin Batasi Medsos Efektif Tangkal Hoaks," 2019, https://www.cnnindonesia.com/teknologi/20190523195352-185-397926/kominfo-yakin-batasi-medsos-efektif-tangkal-hoaks.

⁸ Ombudsman, "Pro Kontra Pembatasan Internet Di Papua: Ombudsman Minta Evaluasi, Pemerintah Menilai Demi Kebaikan," 2019, https://ombudsman.go.id/news/r/pro-kontra-pembatasan-internet-di-papua-ombudsman-minta-evaluasi-pemerintah-menilai-demi-kebaikan.

⁹ YLBHI, "Pembatasan Akses Internet: Kebijakan, Batasan, Dan Dampaknya," 2019, https://ylbhi.or.id/informasi/kegiatan/pembatasan-akses-internet-kebijakan-batasan-dan-dampaknya/.

2019 against the government CQ. Menkominfo and the President of the Republic of Indonesia for unlawful acts (PMH).¹⁰

Based on the description above and based on several previous studies that focused more on aspects of human rights, then in contrast to this research aimed to identify and analyze law enforcement aspects of internet access restrictions in the Papua region. Emphasis on the aspect of law enforcement becomes important to study if it is alleged that the policy can lead to potential violations of law, both administrative and criminal law, this is solely done to find a different and original point of view.

The type of research applied in this research is normative juridical research. This research is known as library research which is guided by legal norms found in laws and regulations, doctrines, agreements, court decisions and legal norms that live in society. The sources of legal materials used are primary legal materials in the form of laws and regulations, and secondary legal materials in the form of journals, articles, the internet and other legal literature. The approaches applied are statutory approaches, case approaches and conceptual approaches which are then analyzed using descriptive analysis.

RESTRICTIONS ON INTERNET ACCESS IN PAPUA AND LAW ENFORCEMENT

Talking about law enforcement is essentially an attempt to realize ideas about the realization of justice, legal certainty, and social benefits to become reality.¹¹ Likewise, law enforcement regarding restrictions on internet access is an act and/or process of coercion for the sake of law and justice. This is in line with Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which expressly states that "Indonesia is a country based on law".

The consequence of the characteristics of a rule-of-law state is the principle of the rule of law to provide constitutional guarantees that the implementation and enforcement of the law by the executive branch of power (government) will always rely on the authority determined by law. Furthermore, it can be said that all the actions of society, including the government, should be directed to uphold the law, not the other way around.

In this regard, the government has several times restricted internet access referring to Article 40 paragraph (2a) and paragraph (2b) of the ITE Law as a basis for action. This article

¹⁰ Hukum Online, "Pembatasan Akses Internet Di Papua Berujung Gugatan," 2019, https://www.hukumonline.com/berita/a/pembatasan-akses-internet-di-papua-berujung-gugatanlt5dd6637f3ce09/.

¹¹ Sanyoto Sanyoto, "Penegakan Hukum Di Indonesia," Jurnal Dinamika Hukum 8, no. 3 (2008): 199–204.

authorizes the government to "cut off internet access and/or instruct electronic system operators to cut off access to electronic information and/or electronic documents that have content that is prohibited by law". It is even stated that to protect the public interest, the Government can place restrictions on the misuse of electronic information.

Referring also to the ICCPR Covenant which the Government of Indonesia ratified through Law Number. 12 of 2005, it is also emphasized that: in urgent situations and endangering the life of the nation and society at large, the government as a policy maker can limit the freedom of information by taking into account the following conditions:¹²

- 1. carried out under the law;
- 2. done with the intention:
 - a. National Security,
 - b. public order,
 - c. respect for others,
 - d. public morals,
 - e. public health; and
- 3. not to avoid public criticism.

In short, it can be explained that the conditions for the restrictions are: *First*, the state's situation is in an emergency that endangers the life of the nation; *Second*, the State has officially declared a state of emergency.¹³ However, what is concerning is when the government restricts internet access for reasons of public order or a state of danger, it is only done through a press release. Even though as a country based on law, the government in making policies should not be carried out solely through press releases, but must be preceded by issuing a presidential decree or official government,¹⁴ including involving the community and even informing the public in a transparent manner regarding internet access restrictions as well as progress information on developments towards stabilizing internet access.

This means that the government is not allowed to arbitrarily implement the intended policy. Moreover, if traced, it can be understood both regarding regulation and application of provisions that are "powerful" in nature, this is not regulated further in the elucidation of the article. Apart from that, these regulations can lead to further problems, especially since they do not regulate the procedures or procedures for restricting internet access. On the other hand, it is

¹² YLBHI, "Pembatasan Akses Internet: Kebijakan, Batasan, Dan Dampaknya."

¹³ Made Aryandi Singa Gothama and Anak Agung Istri Ari Atu Dewi, "Kewenangan Pemerintah Dalam Membatasi Akses Media Sosial Dalam Perspektif Hak Asasi Manusia," *Kertha Negara: Journal Ilmu Hukum* 7, no. 9 (2019): 1–13.

¹⁴ YLBHI, "Pembatasan Akses Internet: Kebijakan, Batasan, Dan Dampaknya."

as if the government's authority can be taken without having to go through a judicial mechanism (judiciary institution).

From a constitutional perspective, encompassing the concept of rule of law and human rights, including its enforcement, actions or actions by the government apart from being contrary to the principle of the rule of law, as well as potentially colliding with the principle of due process of law or the principle of legality, where this principle holds the view that the government can only take legal action if it has legitimized by law which is the embodiment of people's aspirations.¹⁵ This due process of law is also a constitutional guarantee that the law will not be enforced arbitrarily, irrationally, or without certainty. This affirmation can be seen in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads: "everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law".

In addition, these restrictions can lead to human rights issues. It should be noted that the right to digitization in the form of access to information, seeking information and the right to freedom of opinion and expression is the actualization of human rights. In line also according to Article 19 of the Universal Declaration of Human Rights (DUHAM) explains that: "every human being has the right to exercise freedom of opinion and expression". This means that freedom is in the form of receiving information, seeking information and conveying information through social media without interference and restrictions.

Human rights are an absolute right that every human being has and must be protected without exception because it is non-derogable in their fulfilment, including the right to access and obtain information. This is in line with a democratic state system, the right to access information or guarantees for public access to information (public access to information), and good governance, are three important things in a country. When carrying out social life, the right to obtain information has a great influence in enabling the community to control the steps and policies taken by the government. Indonesia is a democratic country so in a democratic country, the administration of power must be accountable to the people. Good accountability boils down to guaranteeing human rights.¹⁶

¹⁵ Adhari, Sitabuana, and Srihandayani, "Kebijakan Pembatasan Internet Di Indonesia: Perspektif Negara Hukum, Hak Asasi Manusia, Dan Kajian Perbandingan Internet Restriction Policies In."

¹⁶ Noviyanti Noviyanti, Sayid Mohammad Rifqi Noval, and Ahmad Jamaludin, "Pembatasan Akses Internet Oleh Pemerintah Saat Terjadi Unjuk Rasa Dan Kerusuhan Di Papua Dan Papua Barat Ditinjau Dalam Perspektif Hak Asasi Manusia," *Logika: Jurnal Penelitian Universitas Kuningan* 12, no. 01 (2021): 42–55.

The description of internet access restrictions in Papua in perspective This human right is more specifically about access to information and so on. In this case, the government considered by society limits space will freedom of expression information and expression. Freedom of self-expression has been arranged inside Article 28E paragraph (3) which states, that every human individual and society has a right to associate, assemble, and issue opinions. So, access restrictions on the internet did the same to impact other aspects considered to be interfering mobility of people's lives attached to the presence Internet.

Do internet restrictions cause sectors such as banking, private employment, and even human rights activists who will be looking for information about the condition of the region in Papua become a difficulty in finding and accessing that information? In this case, the government can be said to have failed in implementing and protecting or respecting the rights of citizens, so it is considered to have violated the human rights of the people and those in the Papua region.

Originally the goal of the government throttling and throttling such internet access only aims to relieve the condition of still anarchy and chaos happening in the Papua region which can potentially be a security threat to a country without intending to violate constitutional rights owned by every citizen. In this case, the United Nations also justifies and regulate what happens those restrictions are also known as permissible *limitations*.¹⁷ However, it's a shame in this case the initial goal intended by the government didn't go well.

Then apart from the human rights spotlight, if you look in more detail, actually Article 40 paragraph (2a) and paragraph (2b) of the ITE Law itself explicitly regulates and gives authority to the government to limit or block access only to electronic information that is considered "unlawful" or restrictions on social media only, do not include the act of disconnecting the internet network or access to the internet because this has no legal basis. This interpretation has also been confirmed by PTUN Decision Number 230/G/TF/2019/PTUN-JKT which in its consideration states:¹⁸

... authority to carry out prevention by the government by terminating access only to Electronic Information and/or Electronic Documents that have content that violates the law and does not include terminating access to the internet network.

¹⁷ Ibid.

¹⁸ Adhari, Sitabuana, and Srihandayani, "Kebijakan Pembatasan Internet Di Indonesia: Perspektif Negara Hukum, Hak Asasi Manusia, Dan Kajian Perbandingan Internet Restriction Policies In."

Even in the PTUN decision, it is stated in essence that the government's action in terms of limiting internet access is an unlawful act (PMH) because this action is an action against human rights restrictions.¹⁹ Furthermore, when viewed from the perspective of administrative law, if the government does not comply with the Administrative Court's decision, then the government or administrative officials may be subject to mild, moderate and/or severe administrative sanctions and even other sanctions by the applicable provisions as stated in Article 81 of Law Number 30 of 2014 concerning Government Administration.²⁰

In addition to being proven to have committed an unlawful act in the administrative field, this government action could lead to an unlawful act (onrechtmatige daad) in the civil field. As emphasized in Article 1365 BW which reads: "Every act that violates the law, which causes harm to another person, obliges the person who because of his mistake to issue the loss to compensate for the loss". The formulation of this provision is directly proportional to the losses resulting from internet access restrictions. You can imagine how many people or telecommunications consumers, especially the Papua region, cannot enjoy internet access even though they have purchased data packages and/or subscribe to Indihome. The Minister of Communication and Information needs to be responsible for carrying out the obligation to provide compensation or compensation to the public who use telecommunication services.²¹

While examined from the perspective of criminal law which is also aluminium remidium (the last drug), the government's actions in terms of limiting internet access are unprocedural actions or contrary to criminal procedural law. Because if hoaxes or information are spread which are against the law as stipulated in the ITE Law, the mechanism that must be carried out is to carry out searches, confiscations, arrests, and/or detention through investigators against the perpetrators who spread the electronic information. So that it is consistent that the limiting authority is only aimed specifically at the dissemination of misleading electronic information, not for comprehensive restrictions on internet access throughout the Papua region.

¹⁹ Okviani Assa Anggraini and Emy Rosnawati, "Juridical Review on Restrictions of Internet Access by Governments in Human Rights Perspective (Case Study of Jakarta Administrative Court Decision Number: 230/G/TF/2019/PTUN-JKT)," *Indonesian Journal of Law and Economics Review* 10, no. 1 (2021).

²⁰ I Gede Nyoman Aditya Riana Triputra, I Nyoman Putu Budiartha, and Luh Putu Suryani, "Akibat Hukum Pemutusan Internet Oleh Pemerintah Saat Demonstrasi Dan Kerusuhan," *Jurnal Konstruksi Hukum* 3, no. 3 (2022): 471–475.

²¹ Tirto, "Rudiantara Lepas Tangan Soal Kerugian Akibat Blokir Internet Papua," 2019, https://tirto.id/rudiantara-lepas-tangan-soal-kerugian-akibat-blokir-internet-papua-ehYq.

So, even with restrictions on internet access, it is intended to create public order to protect the entire Indonesian nation.²² But on the other hand, it can have a domino effect in the emergence of confusion over information, anxiety and conflict in society. Thus, apart from being contrary to human rights and constituting an unlawful act, the government's action ordering restrictions on internet access apart from deviating from Article 40 of the ITE Law also "could be categorized as a criminal act" as long as it means that everyone (including the government and/or telecommunications operators) who commits acts without rights, is illegal or manipulates access to telecommunications networks and/or access to telecommunications services and/or access to special telecommunications networks shall be punished according to Article 50 junto Article 22 of Law Number 36 of 1999 concerning Telecommunications with a maximum imprisonment of 6 years and/or a maximum of Rp. 600 million rupiahs as long as the elements are met.

CONCLUSION

Internet access restrictions or blackouts in the Papua region besides not being able to fulfil the principles of a rule of law where on the pretext of protecting the public interest the government itself misinterpreted Article 40 paragraph (2a) and paragraph (2b) of the ITE Law which failed the government to carry out and protect or respect citizens rights to internet access and freedom of expression so that it has violated the human rights of the community and those who are in the Papua region. Furthermore, this action has other consequences in law enforcement against the government both in administrative law, civil law, and criminal law.

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²² Rudini Hasyim Rado and Nurul Badillah, "Konsep Keadilan Restoratif Dalam Sistem Peradilan Pidana Terpadu," *Jurnal Restorative Justice* 3, no. 2 (2019): 149–163.

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