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

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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 research is a normative juridical study analyzed using descriptive-analytical methods, then conveyed using a descriptive-analytical approach to make it easier to conclude. These research findings show that refers to both international law and positive Indonesian law, the government's efforts to prevent the spread of fake news and incitement are correct. Still, the government's policies to restrict internet access in Papua and West Papua are wrong because they have recorded procedures and are against the law. 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 because the Indonesian government's efforts are procedural and contrary to national or international law.

A. Introduction

As a democratic country, press freedom is an essential part of creating openness and transparency, which are the pillars of democracy and law enforcement. The internet has provided real developments in journalism. The internet has made changes in the development of the reception and distribution of information, news, and all incidents. The incident of the destruction of the red and white flag at the Kamasan Dormitory, made several elements of the

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.

community and the TNI commit racial acts against Papuan students residing there.⁴ This racial act has led several regions in Indonesia to take sympathetic actions and condemn the action. Some of the areas that happen similar actions were Jayapura, Fakfak, Manokwari, and Timika.⁵ The action was chaotic and led to the destruction and burning of public facilities.⁶

To minimize the spread of fake news and provocation, the government did some actions and restrictions on internet access in Papua and Papua regions. The Ministry of Communication and Informatics, at least as of Monday, August 19 2019 has found the spread of fake news in the form of a photo Papuan student beaten to death by authorities in Surabaya and kidnapping news two people for Papuan students by the Surabaya Police who spread on social media. The restrictions are 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. It was noted that internet access restrictions in these areas took place from 13.00 WIT to 20.30 WIT.

Several parties joined in the alliance of Independent Journalists, and the South East Asia Freedom of Expression Network (SAFENet) filed a lawsuit against President Joko Widodo and the Ministry of Communication and Information of the Republic of Indonesia on Thursday, November 21, 2019. 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. 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) were guilty of the policy of restricting internet access. 11

When viewed from the government's reasons for taking measures to restrict internet access in the region to prevent riots, the spread of fake news that could have implications for security stability, this is justified. In Article 28J paragraph (2) of the 1945 Constitution, the rights exercised can be limited because the limitation is for creating security and public order in a democratic society. This research will look at the perspective of positive Indonesian law and international law comprehensively whether there is a violation of press freedom in the policy of restricting internet access in Papua and West Papua. Therefore the formulation of the problem that will be used in this study is how do the restriction on internet access be seen as an effort to protect the state sovereignty and how do national and international law view restrictions on internet access in a *status quo*.

⁴BBC 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.

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.

This research is a normative juridical study, which discusses legal principles, legal systematics, and legal comparisons. 12 According to the policy of restricting internet access in the Papua and West Papua regions by the Indonesian government which is based on Ministry Press Release Communications and Information Technology of the Republic of Indonesia No.154/HM/KOMINFO/08/2019. The data source is secondary data consisting of primary legal materials such as International Covenant On Civil and Political Rights, Universal Declaration of Human Rights, 1945 Constitution, Law on ITE, Law on Press, Press Release Ministry Communications and Information Technology of the Republic No.154/HM/KOMINFO/08/2019. Secondary sources of law used in this study come from literature such as; journals, books, and previous research. For tertiary legal materials, come from articles and news relevant to this research. The data collection method is a literature study through reading, collecting, and writing activities. Data processing is implemented through a data selection process, data classification and data systematization. This study was analyzed using qualitative analysis methods conveyed through descriptive-analytical methods to facilitate the delivery and drawing of 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 anything that has the potential to interfere with the existence and state life viability. ¹³ Efforts to maintain sovereignty will be sustainable in an effort to ensure the safety of the community and the whole nation. ¹⁴ In current conditions, threats to the sovereignty are not only focused on military threats, but also non-military threats. ¹⁵ Non-military threats include hoaxes and hate speech. ¹⁶ In the case of the restriction on internet access in Papua and West Papua Regions, The Indonesian government did this as an excuse to preventing hoaxes and hate speech from the riots that occurred in the region. ¹⁷ This effort is accorded to the concept in the 1945 constitution that declared that the state protects the Indonesian people and all of Indonesia's sacrifices. ¹⁸

Protection of the Indonesian people and all of the Indonesia's sacifices, in this case, refers to the fact that hoaxes and hate speech are feared to trigger emotions from Papua people. Especially in that time the Papuan people were annoyed by the Army of Indonesia (TNI)

¹² Depri 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.

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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.

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

personnel who committed acts of racism against some Papuan students in Surabaya. ²⁰ If this thing is ignored, it will trigger a wider conflict.

It is feared that this conflict may cause the disintegration of the nation.²¹ As we all know that separatist groups in Papua who want Papua to be independent and separate themselves from Indonesia were still exist.²² This thing must be avoided, and according to that the Indonesian government was restricting internet access.

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

Protection of human rights for citizens by the rule of law is the main thing.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 stated that internet rights are human right which is often referred to as digital right.²⁵But, in exercising rights, each is limited by the rights of others.²⁶ The 1945 Constitution itself in article 28 J paragraph (2) states that restrictions on the rights and freedoms of everyone's rights must pay attention to and consider the values of religion, morals, security, and public order.²⁷

Judging from the rules of 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) is the government's obligation 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 can be said to be true. Restrictions on internet access by the government in the Papua and West Papua regions to prevent hatred based on SARA are following 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, it must be remembered that in understanding human rights, it must be due to the state's condition in an emergency and must be declared officially. This emergency through a Presidential Decree.³⁰ This kind of condition by The European Court of Human Rights is defined as a state of

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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.

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.

emergency or crisis that is extraordinary, affecting society's overall condition and posing a threat to life.³¹

Judging from the conditions in Papua and West Papua, it can be said that an emergency condition allows the limitation of human rights, but if seen from the legal procedure it is not fulfilled because there is no Presidential Decree or the like which states that there is an emergency condition in Papua and West Papua. Legal violations committed by the Indonesian government due to Article 40 paragraph (2b) of the ITE Law, the efforts that the Indonesian government can make to overcome the spread of fake news, incitement, and other things that disturb public order can only be made by cutting off access to documents. Electronics which are considered to have contents that are against the law.³² This has a domino effect in the form of a 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 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 fake news and incitement related to unrest in the region. AJI and SAFENet consider this policy to cause losses in the production of journalistic works, and this policy is against the law. According to international law and Indonesian national law, the limitation of rights is justified if the restriction aims to prevent riots and disturbing security and order. Papua and West Papua's situation allows for restrictions on rights, in this case, restrictions on internet access. Unfortunately, this policy is flawed in the procedure because it is not under applicable regulations. After all, the Indonesian Government did not declare an emergency through a Presidential Decree or the like, and the government's policy to restrict internet access in Papua and West Papua is not justified according to article 40 paragraph (2b) of the ITE law because in that article it is explained that to prevent its spread fake news and content that is against the law is only allowed to terminate access to electronic documents and to terminate access to electronic documents. Based on the Verdict as well as government policies restricting internet access in Papua and West Papua regions are not justified according to article 40 paragraph (2b) of the ITE law because in that article it is explained that to prevent the spread of fake news and content that is against the law only to terminate access to electronic documents and termination of access to these electronic documents. Based on the Verdict as well as government policies restricting internet access in Papua and West Papua regions are not justified according to article 40 paragraph (2b) of the ITE law because in that article it is explained that to prevent the spread of fake news and content that is against the law only to terminate access to electronic documents terminating access to these electronic documents. Based on the VerdictState Administrative Court Number: 230 / G / TF / 2019 / PTUN-JKT, those who have legal force continue to say that the government's actions in the quo case are wrong and contrary to the law.

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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.

³⁴See in Adjudication, Decision Number: 230 / G / TF / 2019 / PTUN-JKT, 278-278.

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