

CHAPTER 1 INTRODUCTION

1.1 Background

With the biggest archipelago in the world from Sabang to Merauke, Indonesia is home to more than 270 million people. Communication plays an important role in connecting all the people in this country. In Indonesia, the Internet has become an essential communication instrument for both personal and business purposes. With over 170 million internet users as of 2021, Indonesia has one of the largest and fastest-growing internet populations in the world.¹ It allows people access and freedom to speak easily to locations that were previously unavailable. Because it is made to make a human task simpler, it is thought to be helpful in everyday life. The internet can be used by people to enhance their standard of living.

The internet has developed into a powerful tool for sharing and communicating about events taking place around the globe. People can now be more easily informed about significant events and problems thanks to the use of social media platforms, online news sources, and other digital communication methods. An excellent illustration of how information can be shared using the internet is the wave of protests that took place in Papua and West Papua in August 2019. In the eastern part of Indonesia, Papua, and West Papua experienced an internet shutdown by the government due to uprising demonstrations and riots because police arrested a group of Papuan students in Surabaya, Java, accusing

¹ Kemp, Simon. "Digital in Indonesia: All the Statistics You Need in 2021 - DataReportal – Global Digital Insights." DataReportal. DataReportal – Global Digital Insights, November 4, 2021. Last modified November 4, 2021. <https://datareportal.com/reports/digital-2021-indonesia>. Accessed 19 November, 2022.

them of disrespecting the Indonesian flag during Independence Day celebrations.² It sparked massive demonstrations that led to riots when the news of the student's arrest due to alleged police brutality.

On August 19, these demonstrations went violent as demonstrators clashed with police in various locations throughout the province and set fire to a *Dewan Perwakilan Rakyat Daerah Papua Barat* building in the city of Manokwari. On August 21, The Ministry of Communication and Information/*Kominfo* published a Press Release No. 155/HM/KOMINFO/08/2019 regarding Internet service provider blocking in Papua and West Papua. On August 22, to restore order the government implemented an internet shutdown in the region. The government claimed that the internet shutdown was caused by the spreading of hoaxes and fake news in the cyber world.

The shutdown of the internet access often done on purpose by the government with the objective of disrupting the internet user community's ability to access or distribute information on the internet. Internet disconnection has become a trend in various countries as a form of government repression in the 21st century. In 2022 alone, governments disrupted the internet at least 187 times across 35 countries.

² Mediatama, Grahanusa. "Fakta Dan Kronologi Lengkap Tentang Kerusuhan Manokwari Papua." PT. Kontan Grahanusa Mediatama. Last modified August 20, 2019. <https://regional.kontan.co.id/news/fakta-dan-kronologi-lengkap-tentang-kerusuhan-manokwari-papua?page=all>. Accessed 19 November, 2022.

India and Pakistan are the top countries in implementing internet disconnection policies.³

It is a serious violation that occurred by the government which contradicted with article 28F the 1945 Constitution of the Republic of Indonesia and Article 19 of the Universal Declaration of Human Rights. The decision that was made by the government could be considered an act against human rights that could lead to a step backward in democracy. This becomes a violation of human rights, without properly following the mechanism and announcing a public emergency, this internet shutdown becomes a symbol that shows the absence of good governance.

Human rights advocacy group *Lembaga Studi dan Advokasi Masyarakat* or known as *ELSAM* and Lokataru Foundation stated that the government action of internet shutdown was determined that it was a kind of digital repression that was contrary to the principles of a state of emergency.⁴ A mini paper made by Lokataru Foundation entitled “No Signal” about the internet shutdown in Papua and West Papua, has stated that the government approach has infringed digital rights, by limiting access to material covered by Article 19 of the International Covenant on Civil and Political Rights (ICCPR), following human rights have also been violated

³ Felicia Anthonio, Sage Cheng, Carolyn Tackett, Alexia Skok, Zach Rosson. “Internet Shutdowns in 2022: The #KeepItOn Report.” *Access Now*. Last modified February 28, 2023. <https://www.accessnow.org/internet-shutdowns-2022/>.

⁴“Internet Shutdown in Papua: A Digital Form of Repression That Contravenes the Principle of Emergency Situation.” *ELSAM*. <https://www.elsam.or.id/bisnis-dan-ham/internet-shutdown-in-papua-a-digital-form-of-repression-that-contravenes-the-principle-of-emergency-situation-2>.

such as Freedom of thought, includes the right to decide for oneself which are governed by the Preamble to the 1945 Constitution, the International Covenant on Civil and Political Rights (ICCPR), the Covenant on Economic, Social, and Cultural Rights (ICESR),⁵ Which all of which Indonesia has ratified.

In response of the policy made by the government which affect the economy and those who cannot access the internet in Papua and West Papua, *Aliansi Jurnalis Independent (AJI)* and the Southeast Asia Freedom of Expression Network (SAFEnet) filed a lawsuit to the *Pengadilan Tata Usaha Negara (PTUN)*, claiming that the internet shutdown violated the rights of the people in Papua and West Papua to freedom of expression and access to information based on article 19 of the International Covenant on Civil and Political Rights (ICCPR). In that lawsuit, the plaintiffs are suing the Minister of Communication and Information of the Republic of Indonesia as the first defendant and the President of the Republic of Indonesia as the second defendant registered on No. 230/G/TF/2019/PTUN-JKT.

Pengadilan Tata Usaha Negara (PTUN) play an important role in this case, *PTUN* is a State Administrative court established to guarantee the position of citizens in the law, It has the authority to examine, decide and resolve state administrative disputes because of the issuance of state administrative decisions by state administrative bodies or officials at both the central and regional levels. It was established with the intention of a prosperous, secure, tranquil, and orderly system of living for the country and nation, one that can guarantee the legal standing of its

⁵ admin. "No Signal : Throttling & Blackout Di Papua Dan Papua Barat." *Lokataru Foundation*. Last modified September 2, 2019. <https://lokataru.id/throttling-blackout-papua-papua-barat/>.

citizens and maintain peaceful, balanced, and harmonious relationships between its administrative officials and its people.⁶

Indonesia's establishment of *PTUN*, which supports the principles of justice, legal certainty, and human rights is evidence that the country is a constitutional state. According to Article 50 Law No. 5 of 1986 *jo.* Law No. 9 of 2004 *jo.* Law No. 51 of 2009 concerning the State Administrative Court, the responsibilities and authority of *PTUN* are to examine, decide, and resolve State Administrative disputes, namely a dispute that arises in the area of administrative law between individuals or civil legal entities (civil society) and *TUN* Bodies or Officials (government) both at the central and regional levels.

The reasons for filing a lawsuit in the Administrative Court are regulated in Article 52 paragraph (1) of the Administrative Court Law and in Article 53 paragraph (2) of the Administrative Court Law. The reason is in the form of the State Administrative Decision being sued must be contrary to the applicable laws and regulations and the State Administrative Decision being sued.

The plaintiffs, *Aliansi Jurnalis Independen (AJI)* and the Southeast Asia Freedom of Expression Network (SAFE) won, and the court decide that the government's action to block access to the internet in Papua and West Papua was an act against the law. In its decision, the government was found guilty and was commanded to pay the fine in the amount of Rp 475.000 and then was told to not repeat this act in all parts of Indonesia.

⁶Law No. 5 of 1986 of The Republic of Indonesia about State Administration Jurisdiction.

The government action on restricting the internet is a form of limitation. Limitation is the exercise of a particular human right may be restricted or curtailed in certain situations. Human rights are universal and inalienable, but they are not absolute and can be limited by law. Provisions regarding the terms of limitation are contained in various laws and regulations, such as In Article 29 paragraph (2) of the Universal Declaration of Human Rights (UDHR) it is stated In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

In Article 4 of the International Covenant on Civil and Political Rights (ICCPR), two requirements must be met to restrict human rights: the emergency must endanger the survival of the country, and the head of the state (president) party must formally proclaim the state to be in a state of emergency; If three conditions are met—namely, that there is an emergency situation that jeopardizes the nation's survival, that the state has to formally declare an emergency situation, and that the Secretary-General of the United Nations has been informed of the official declaration of the emergency situation, then those restrictions on human rights are only permissible. The United Nations Secretary General will subsequently inform the other state parties and validate the public emergency.

The constitution of the Republic of Indonesia has guaranteed the rights of the community and regulates the limitation of human rights which must be based on statutory regulations. Among them is Law No. 11 of 2008 concerning Information

and Electronic Transactions (UU ITE) which states that communication can be restricted if it has content that is prohibited or contains crimes. This law indicates that communication may be blocked if it includes information that is illegal or contains crimes. In addition to this, it is claimed that the government has the ability to impose limits on the inappropriate use of electronic information in order to maintain public order.

The only way the internet network was shut down for reasons related to public order or a condition of danger was often via the dissemination of a news statement. In fact, Indonesia is a nation built on the rule of law. Therefore, in order to comply with the law, this policy cannot be implemented by means of a press release; rather, it must be done so via a presidential decree or an official statement from the government.

Digital rights are human rights, and that these rights include the freedom to access information, the right to speech, and the right to have a sense of safety and security when using the internet. According to Article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), limits on a person's right to freedom of information may only be implemented if certain criteria are met.

Article 70 of Law No. 39 of 1999 concerning Human Rights also stated the limitations, it must be done by law, guarantee recognition and respect for the rights and freedom of person, and order to meet just or fair demands in accordance with moral considerations, security, and public order in a democratic society. Article 73 of Law No. 39 of 1999 provides provisions that are a bit different, stating that the

rights and freedoms governed by the provisions outlined in this Act may be limited only by law, guarantee the recognition and respect for human rights human beings and the freedom of others, and respect for decency, public order, and the interests of the nation. Meanwhile, according to Article 28J paragraph 2 of the 1945 Constitution of the Republic of Indonesia, restrictions on human rights may be implemented if it is constituted by law, ensures acknowledgment of observance of the rights and liberties of others, and meets just or fair demands in a democratic society while upholding moral principles, religious beliefs, security, and public order. All these requirements must be met simultaneously.

Therefore, the primary reason why the author is presenting this thesis is because the author believes that the fundamental rights of human rights to communicate and obtain information, which are essentially guaranteed in Article 28F of the 1945 Constitution and Article 19 of the Universal Declaration of Human Rights, are being violated by the shutdown of the internet. The internet has become an integral part of our day-to-day lives, and it has become a platform through which individuals may access information, exercise their freedom of speech, and communicate with one another. As a result, the relationship between the internet and human rights is an intriguing and important topic. Every single human right should be treated with the same level of importance, and human rights should never be given up under any circumstances. We can only hope that an event like the shutdown of the internet will not happen again in the near future.

Examining the intersection between the internet and human rights can provide valuable insights into the complex issue surrounding technology and society.

Overall, the study of the internet and human rights is essential in understanding how technology can both promote and hinder the realization of human rights in the digital age. The author is interested in conducting an in-depth analysis on this matter in the form of research with the title” **LEGAL ANALYSIS OF THE INTERNET SHUTDOWN IN PAPUA DURING THE 2019 RIOT BASED ON THE 230/G/TF/2019/PTUN-JKT**”.

1.2 Formulation of Issues

Based on the background of the formulation of issues above, the questions that arise from the author are:

1. Is the internet shutdown during the 2019 riot in Papua and West Papua enacted by the central government considered a violation of human rights according to the national and international law of human rights?
2. Is the PTUN decision in in line with the human rights principles?

1.3 Purpose of Research

As a follow-up to the background, and formulation of issues that have been stated above, the purpose of research in this thesis is to:

1. To discover and analyze if the internet shutdown is included in human rights violations.
2. To discover and analyze the decision of the PTUN has applied the principles of human rights in upholding justice.

1.4 Benefits of Research

This research can be useful theoretically and practically as follows:

1.4.1 Theoretical Benefit

It is intended that it will be beneficial for the growth of law in general as well as human rights, and it is anticipated that it will serve as a reference for students, lecturers, and the larger community in gaining insight and understanding about law and human rights. This may be used to both the government and the global community in order to guarantee the significance of human rights in the digital world. More specifically, it could be used to determine how to control the shutdown of the internet using the appropriate legal process that did not violate human rights.

1.4.2 Practice Benefit

In a practical sense, the author of this thesis anticipated that it may provide views within the legal framework of Indonesia as well as towards compliance with human rights for the government in further developing and repairing its policies. Second, the author of this thesis expresses the expectation that it will serve as a point of reference for future generations of law students and scholars, as well as readers and governmental entities, so that they may better prepare themselves to deal with issues that are linked.

1.5 Writing System

The author of this thesis will break it up into five distinct parts, which will be referred to as chapters. After that, there is a sub-chapter inside each chapter that

details the concerns that were brought up in the main chapter. The following are the components that are in question:

CHAPTER I INTRODUCTION

This chapter is more broad in scope than the others, and it gives an overview of the problems that were brought up by the case. This first chapter of the thesis covers a variety of topics, including the history, difficulties, research aims, research advantages, literature evaluation, research methodologies, and writing systematics.

CHAPTER II LITERATURE REVIEW

The author will determine the rules, regulations, and policies that are in place in Indonesian and International law to control internet shutdown mechanisms in the second chapter of the literature study that is being conducted. In the second part of this article, the author will expand on the ideas of laws and the shutdown of the internet and human rights, freedom of speech, public emergency, government action, and internet along with its legal influence and implications towards Indonesian users.

CHAPTER III RESEARCH AND METHODOLOGY

In general, the author will expand on and cover the study methodology, data gathering procedures, and data analysis methods in this chapter. The author then elaborates on this thesis by discussing it using a wide variety of research data, methods for analyzing research data, and approaches to research.

CHAPTER IV ANALYSIS

The purpose of this chapter is to provide a legal analysis of one of the issues discussed in this thesis, namely the court decision number 230/G/TF/2019/PTUN-

JKT in Indonesia. The author addresses the issue and outlines the use of national law, international law, and the misuse of power by the government in order to establish legal certainty for the people who have the right to share and get information in Indonesia by shutting down the internet in Papua and West Papua. This was done to prevent people from accessing information online.

CHAPTER V CONCLUSION

In this last chapter, the author will go through an analysis of the other chapters and make ideas based on the findings of the study in order to answer the question posed in Chapter IV. This final chapter will summarize the final and general conclusions as well as proposals to answer the question posed in Chapter IV. It is believed that this would be beneficial as a reference for students, professors, and the larger community in general, especially in enhancing understanding and knowledge about law and human rights.