

DETERMINATION OF INTERNET RIGHTS IN LAW COUNTRY: JURISDICTIONAL ACTIONS OF GOVERNMENT VIOLATIONS AGAINST THE LAW AND PRINCIPLES OF HUMAN RIGHTS IN INDONESIA

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Abstrak: Penelitian ini bertujuan untuk menjelaskan tentang pelanggaran yang melibatkan perbuatan hukum Pemerintah dalam memblokir Internet di Papua-Papua Barat, dan menganalisis hukumalasan di balik narasi putusan yang diambil oleh hakim tentang alasan pembatasan hak akses internet dalam putusan pengadilan nomor 230/G/TF/2019/PTUN-JKT. Prinsip-prinsip hak asasi manusia melindungi hak penggunaan internet baik secara konstitusional maupun berdasarkan peraturan perundang-undangan turunannya. Penulis menyimpulkan bahwa setiap warga negara Indonesia memiliki alasan yang baik untuk mendapatkan dan menikmati Internet akses sebagai hak asasi manusia. Akses internet bukan hanya kemewahan bagi mereka yang mampu tetapi juga diperlukan bagi individu untuk menjalani kehidupan yang layak secara minimal, terutama di suatu daerah jauh dari Ibu Kota Negara, seperti Papua dan Papua Barat. Oleh karena itu, pembatasan dan perlambatan akses internet (throttling/blocking) yang dilakukan oleh Pemerintah melalui siaran pers dari kementerian komunikasi dan informasi di Wilayah Papua dan Papua Barat sebagai upaya preventif untuk mencegah penyebaran informasi palsu, provokatif, hoax, dan ujaran kebencian merupakan perbuatan melawan hukum negara/pemerintah karena (1) Pemerintah hanya dapat membatasi hak asasi manusia untuk mengakses internet (internet rights) melalui pembatasan/pemblokiran berdasarkan hukum dan asas proporsionalitas (2) kewenangan Pemerintah hanya sebatas pemutusan akses elektronik informasi dan dokumen elektronik yang isinya melanggar hukum dan tidak mencantumkan memutuskan akses jaringan internet, (3) tindakan Pemerintah secara substansial bertentangan persyaratan pembatasan hak asasi manusia. Memblokir rentang IP internal domestik adalah proses yang sangat kontroversial. Oleh karena itu, dalam melaksanakan pengamanan lebih efektif operasional, Pemerintah harus terlebih dahulu mengidentifikasi setiap tujuan sistem web TI terhubung ke internet.

Kata Kunci: Hak Internet, Perlindungan Jaringan Siber, Hak Asasi Manusia, Putusan Pengadilan.

Abstract: This study aims to explain the legal reasons behind the narrative of the judgments taken by judges regarding the justification for limiting internet access rights as the construction of articles on content restrictions involving violations of the law in the ITE Law is contrary to human rights principles and describe how the application of human rights principles used in decisions as a *metawacana* that underlies judges to adopt these human rights principles, both constitutionally and based on derivative laws and regulations. This study examines decision number 230/G/TF/2019/PTUN-JKT. This study is a normative-philosophical legal research through a statutory, conceptual, and case study approach. The author concludes that every Indonesian citizen has a good reason to get and enjoy Internet access as a human right. Internet access is not only a luxury for those who can afford it, but also necessary for individuals to live a minimally decent life especially in area far from the State Capital such as Papua and West Papua. Therefore, the restriction and/or slowdown of internet access (throttling/blocking) carried out by the government through press releases from the ministry of communication and information in the Papua and West Papua regions as a preventive effort to prevent the spread of fake, provocative, hoax, and hate speech is an act against state/government law because (1) the product of limiting human rights to access the internet (internet rights) through throttling/blocking can only be carried out based on the law and the principle of proportionality (2) the government's authority is only limited to terminating access to electronic information and/or electronic documents that have unlawful content and do not include severing internet network access, (3) the government's actions substantially contradict the requirements of human rights restrictions. The application of universal human rights principles is accommodated in the decision as stipulated in Article 28 J paragraph (2) of the 1945 Constitution, Article 73 of the Human Rights Law, Article 19 paragraph (3) of the ICCPR.

Keywords: Internet Rights, Human Rights, Decisions.

A. Introduction

Internet is a means of fulfilling the sociological needs of human life in the post-modern era. The internet is present in human life as a medium that bridges the fulfillment of citizens' constitutional rights, especially in channeling the rights of expression, obtaining information, and communicating. Reglitz (2020) argues that Internet access is it a human moral right that requires everyone to have unsupervised and uncensored access to this global media? Therefore, the Internet should be accessible to anyone and can even be made available to the public free of charge for people who cannot afford it Instead of being a mere luxury, Internet access should be considered a universal right as every individual must be able to live a decent life. It is known that the protection of the right to use the internet as part of the elaboration of human rights principles in Indonesia has been regulated in the constitution, laws and regulations derivative, as well as in international human rights instruments such as Article 28 F of the 1945 Constitution, Article 14 of Law no. 39 of 1999 concerning Human Rights, and Article 19 of the Declaration of Human Rights. International rules and Indonesian state regulations firmly guarantee the rights of individuals to information, opinion, and expression using the media. The internet as one of the media is an important means in fulfilling the rights to obtain information, communicate, express opinions, and all Indonesian people. Freedom of expression is a complex right. It is called so because it is not absolute and therefore must be accompanied by certain duties and responsibilities and must meet several restrictions, as long as these restrictions are stipulated by law and is necessary. The right to freedom of expression is also complex because it protects the rights of speakers as well as the rights of listeners.(Reglitz, 2020)

Speaking of freedom of expression, freedom of expression in Indonesia has gone through a long history, especially during the New Order era. At that time, freedom of expression was severely restricted not only for activists and political opponents but also for society in general. Freedom of expression is restricted under the pretext of maintaining the stability of the country. In a Human Rights Watch report entitled Academic Freedom in Indonesia: Dismantling Suharto Barrier, it is stated that [4]. In the New Order government, restrictions on expression were carried out in various forms; even these restrictions were regulated by government policies. According to Aditya and al-Fatih (2020) in the Orde Baru, 3 keywords can describe the state of freedom of expression, namely censorship of books, restrictions on discussion and thought, and prohibition of the press.(Lopez, Sargolzaei, Santana, & Huerta, 2015)

Now under the Indonesian Orde paling baru government led by President Jokowi, especially after the issuance of decision number 230/G/TF/2019/PTUN-JKT, the existence of the right of expression using internet access is increasingly being "strengthened" by the state as part of the principles of human rights. On June 3, 2020, the Open Session for Case Number 230/G/TF/2019/PTUN.JKT Between the Alliance of Independent Journalists (AJI), represented by Abdul Manan, et al, and the Defenders of Freedom of Expression of Southeast Asia (SAFE-net) represented by Damar Juniarto. et al., against the President of the Republic of Indonesia and the Minister of Communication and Information In The Republic of Indonesia was held. This trial resulted in a decision that several actions of the President of the Republic of Indonesia as Defendant I and the Minister of Communication and Information of the Republic of Indonesia, namely (1) Throttling or slowdown of access/bandwidth in some areas of West Papua Province and Papua Province on August 19, 2019 from 13.00 WIT (Eastern Indonesia Time) to 20.30 WIT, (2) blocking of data services and/or complete termination of internet access in Papua Province (29 Cities/Regencies) and West Papua Province (13 Cities/Regencies) dated August 21, 2019 until at least September 4, 2019 at 23:00 WIT, (3) extending the blocking of data services and/or cutting off internet access in 4 Cities/Regencies in Papua Province (i.e. Jayapura

City, Jayapura Regency, Mimika Regency, and Jayawijaya Regency) and 2 Cities/Regencies in West Papua Province (i.e. Kota Manokwari and Sorong City) since September 4, 2019 at 23.00 WIT until September 9, 2019 at 18.00 WIB / 20.00 WIT, is a violation of the law by Government Agencies and/or Officials [1]. At the same time, this decision is a declaration that in Indonesia the restriction and/or slowdown of internet access is a form of castration of human rights in the digital field. (Mendel & Solomon, 2011) Based on this background, this study will explain the legal reasons behind the narrative of the decision taken by the judge regarding the justification for limiting internet access rights as the construction of the article on content restrictions involving violations of the law in the ITE Law is contrary to human rights principles and describes how the application of human rights principles is used. In the decision as a *metawacana* that underlies the judges adopting these human rights principles, both constitutionally and based on derivative laws and regulations.

There are several studies related to the issue of blocking and/or disconnection of networks and internet access in Indonesia by the Government of Indonesia. One of them is Wulandari's research (2020) entitled *Internet Blocking Policy in Indonesia: Between Realities, Pros and Cons?* In his research, Wulandari proves that in recent years, there has been an increase in blocking internet sites with negative content by the Government of the Republic of Indonesia. Wulandari argued that the case surrounding the video circulating in Wamena was categorized as prohibited content where the content generated hatred based on racism, ethnicity, and religion (SARA). Therefore, the government through the Ministry of Communication and Information has blocked internet access in Wamena. This action is under the protection mechanism regulated in Article 40 of Law Number 19 of 2016 concerning Information and Electronic Transactions. Wulandari sees that even though Article 40 of Law Number 19 of 2016 concerning Information and Electronic Transactions has the authority to stop access and/or instructs Electronic System Operators to stop access to Electronic Information and/or Electronic Documents whose contents are against the law, however, in the implementation process, the government is obliged to disseminate information about the use of the internet or social media, how to actually use the internet and social media so that the wider community can filter themselves from negative content or destructive hoaxes. Restrictions on internet access are only shown if information or electronic documents whose contents violate the law, especially violations of criminal law. The authority to limit the internet on constitutional rights is in the hands of the president, but the restrictions are publicly stated to the public first, and the time limit for limiting these rights must also be stated.

Wulandari stated that the Government has made laws and regulations that give the authority to block internet content that is negatively charged, based on Article 28 A - J of the 1945 Constitution and Article 19 of the Covenant on Civil and Political Rights related to restrictions on the application of human rights, Law Number 19 of 2016 Juncto Law Number 11 Year 2008 concerning Information and Electronic Transactions (ITE), Law Number 44 Year 2008 concerning Pornography, Ministerial Regulation Number 19 Year 2014 concerning Supervision of Internet Websites Containing Negative Content, and Joint Regulation of the Minister of Law and Human Rights and the Minister of Communication and Information Technology Number 14 of 2015 and Number 26 of 2015 concerning Implementation of Closure of Content and/or User Access Rights for Copyright Infringement and/or Related Rights in Electronic Systems related to the provisions of the Copyright Law. Therefore, the Government has the right to grant blocking and filtering authority to Internet Service Providers (ISPs) to protect the interests of the public from all forms of interference or misuse of information and electronic transactions that disrupt public order, with the existence of a trusted institution to ensure accountability and

transparency as part of the protection of rights. Consumers or users of internet content, which are derivatives of statutory provisions and government regulations that form the basis for implementing blocking actions in preventing crimes based on electronic media content. However, according to the author, the conclusions obtained by Wulandari do not show partiality to the human rights principle of the community to continue to get justice in accessing the internet. This research is different from the author's study because in this study, the author adheres to the human rights argument because a reduction in the right to internet access as a whole will have an impact on other human rights such as education, economy, expression, and the press.

The second research is Aditya and Al-Fatih (2020) entitled *Indonesian constitutional rights: expressing and purposing opinions on the internet*. This study states that Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) is a law that is often the subject of debate by legal experts in Indonesia. To date, there have been more than 20 court decisions related to the ITE Law, especially cases of insult and defamation involving internet users as regulated in Article 27 paragraph (3) of the ITE Law. According to Aditya and Al-Fatih (2020) the ITE Law has transformed into a law that most threatens to criminalize citizens, where people's rights are informed and debated, threatened with accusations of insult and defamation. Then the articles that are most often armed are article 27 and article 28 of the ITE Law. This research has similarities with the author's study, highlighting the case of using the ITE Law in legal matters; the panel of judges must still defend the human rights argument for all Indonesian people. Because people's freedom of expression especially online expression, is facing serious challenges after the issuance of the ITE Law. Since it was passed in 2008, this law has seemed to attract many people to be entangled with the ITE Law. The ITE Law must be socio-juridical and aim to regulate economic transaction activities using technology media. The ITE Law should not be used as a tool to criminalize other organizations, and as a minority the ITE Law regulates criminal defamation, hate speech, and threats, mostly using technology media.(Aditya & Al-fatih, 2020);(PTUN, 2019)

B. Research Method

This is a normative study, underpinned by philosophical, legislative, conceptual and case-law approaches, aimed at exploring the concept of human rights in relation to internet use and the judge's reasoning for overturning the government's internet blocking measures in Administrative Court Decision No. 230.(Christiani, 2016; Hazmi, 2018; Jahar, Hazmi, & Adhha, 2021) In other words, this aspect of normativity will also lead to the ratio legis context of a judgement's ratio decidendi, thereby forming a unified whole in the process of tracing this concept. In this study, secondary data serves as the most important starting point; consequently, legal materials (primary, secondary and tertiary) form an integral part of the research. The descriptive content analysis method forms the basis for analysing the legal problem in this study.

C. Result and Discussion

Law Country and Regulation of Internet Rights in Indonesia

Nowadays, human life cannot be separated from technological developments. Technology is always there and needed at anytime, anywhere, and by anyone. Indonesia as a legal state that guarantees human rights guarantees human rights as regulated in the provisions of Article 28F of the 1945 Constitution guaranteeing the protection of human rights to access and use technology. Major changes in technological developments have also pushed Indonesia as a modern democracy to realize its electronic system for the public interest. This is realized through the presence of Law Number 14 of 2008 concerning Public

Information Disclosure (UU KIP) and Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) Juncto Law Number 19 of 2016. According to Cahya (2021) progress Information technology in Indonesia, especially related to the use of the internet, also has several negative impacts in addition to positive impacts. Irresponsible use of the internet such as propaganda or even racism on SARA issues by some irresponsible parties often disrupts the stability and security of the country. The spread of news with sources and data that cannot be accounted for has caused unrest among the people and even led to disputes between residents which indirectly disrupted security stability which had an impact on economic, social, cultural, political, and security conditions. This prompted the government to limit the use of the internet on the grounds of maintaining the unity and integrity of the Indonesian nation, for the sake of creating security and order in society. However, as a country of law, the author needs to review whether the government policies that restrict internet access and block internet in some parts of Indonesia are in accordance with existing legal methods. (Wulandari, 2021)

According to Joniarto (1968), the rule of law in the rule of law implies that the act of enforcing state power must be based on law, not based on law power and will of the ruler alone. The aim is to limit the power of the authorities, and protect the public interest, namely the protection of members of the human rights community from arbitrary actions. As a guarantor of human rights for all Indonesian people, the Government should fulfil its integrity in guaranteeing human rights in Indonesia related to the internet. The integrity of human rights law must be able to give effect to universal moral rights in the form of a uniform set of individual rights for all human beings. In essence, these moral rights guarantee someone may have interests that are morally important and urgent enough to pose a moral obligation on others to honour or help realize the rights of the person. There are two criteria in the realization of human moral rights:

First, human rights should be based on universal interests that are essential for a decent life is minimal. These basic interests include basic welfare issues such as the necessities of life, physical security, and housing, which give rise to basic socio-economic rights. However, material means alone are not enough because a decent human life cannot be one of neglect and discrimination. Thus, minimal modesty of interests is also an important provision to protect equal moral status among human beings (such as political and civil rights). Thus, this argument is an example of a practical reason for the belief that in today's digital era, universally secure and even free Internet access in Indonesia has become an urgent need to be justified as a human right because such access is now needed to secure various interests. The community needs to support a minimum decent life.

Second, human rights must be an issue worthy of international attention in the sense that if the primary recipient of these rights claims – the rights-holding state – is unwilling or unable to guarantee these rights, the international community of states is required to act as a secondary guarantor. This human right is reflected in its origins in establishing human rights as an international standard which was introduced after the Second World War as a reaction to crimes against humanity committed by Nazi Germany and Japan against minorities in their societies or territories occupied by the two countries. According to Beitz (2009), human rights are issues that must be of international concern. This is what distinguishes it from domestic constitutional rights. For instant the community's leader who provided funds and health service facilities in a community during the Covid-19 pandemic. If community leaders decide to cut funding and reduce the provision of medical services to members community, but the minimum care requirements required by the human right to health are guaranteed. Therefore, in this case, the international community has no right to criticize (or intervene) against members of the community. Thus, the higher the standard of human rights is, the more difficult it is for the state to avoid failure and the

more vulnerable a state is to external criticism. This explains why in today's unequal world human rights can only be a set of minimal international moral norms that all states can reasonably expect to comply with. (Raz, 1986)

These two criteria are minimal explanations of human rights. They cover only what is essential for human life with minimal standards of eligibility. Some scholars related to the relationship between human rights and internet access may think that human rights can be exercised without Internet access. However, according to Reglitz (2020), this opinion underestimates how much the Internet has changed the way humans communicate, interact, obtain information, and how important the possibility of the availability of the internet is needed to realize other human rights [14]. First, the Internet is the most effective means for individuals to influence and obtain unlimited information globally. Second, in cyberspace some forms of freedom of expression and assembly are currently only accessible via the Internet, so those without Internet access are unfairly disadvantaged in the exercise of these rights. Third, if Internet access was universally guaranteed and better regulated, it would be critical to protecting human rights, for example in exposing human rights abuses and in supporting political engagement, association, and information mobilization. Taken together, the Internet is necessary for the exercise of several key human rights and a unique tool for democratic empowerment. Thus, the value of Internet access justifies special rights i.e. rights that cannot be reduced to other rights (eg freedom of expression). (Christiano, 2011)

Thus, the essence of state life in Indonesia, which is a state of law, is to uphold the protection of human rights. The rule of law cannot be separated from the concept of protecting human rights. A state of law without the protection of human rights will result in a state of law losing its meaning and legitimacy as a state of law, while the protection of human rights that is not within the framework of a state of law will only present tyranny and personal egoism. The protection of human rights is a fundamental principle for the rule of law. The principle of the rule of law basically also boils down to the way to protect human rights, if human rights are guaranteed and protected, then the State has created a conducive atmosphere in society, nation and state which will optimally encourage the achievement of the ideals of the state. Human rights protection demands alignment with the State in setting policies to preventing and overcoming the occurrence of human rights violations, whether intentional or due to negligence. (Beitz, 2009); (Reglitz, 2020); (Segura-Serrano, 2006)

Ratio Legist of Internet Access Restrictions as Jurisdictional Actions of Government Violations

Decision number 230/G/TF/2019/PTUN.JKT is the first lawsuit to the State Administrative Court (PTUN) that uses the Supreme Court's Regulation on Guidelines for Dispute Settlement of Government Actions and Authority to Adjudicate Unlawful Acts by Government Agencies and/or Officials (Onrechtsmatige Overheidsdaad). This lawsuit was filed against the President of the Republic of Indonesia and the Minister of Communication and Information of the Republic of Indonesia in 2019 for throttling or slowing access/bandwidth Internet, extending the blocking of data services and/or cutting off internet access, as well as blocking data services and/or completely cutting off internet access in Indonesia at 29 Cities/Regencies of Papua Province and 13 Cities/Regencies of West Papua Province. For this incident, the Coalition of civil society organizations such as the Alliance of Independent Journalists (AJI) and the Defenders of Freedom of Expression in Southeast Asia (SAFE-net) sent a letter of objection to the President of the Republic of Indonesia and the Ministry of Communication and Information Technology, but the letter did not receive a positive response. Therefore, the coalition filed a lawsuit against the

Jakarta Administrative Court.

Regarding this lawsuit, the Government as Defendant I and Defendant II argue that the restriction and termination of internet access were carried out to deal with hoaxes in Papua. The Ministry of Communication and Information then blocked internet access in several areas in Papua and West Papua. According to the government, this decision is under the protection mechanism regulated in Article 40 of Law Number 19 of 2016 concerning Information and Electronic Transactions. However, in decision 230/G/TF/2019/PTUN.JKT, the panel of judges concluded that the scope of the government's authority to terminate access and/or order Electronic System Operators to terminate access as referred to in Article 40 paragraph (2b) of the Law Number 19 of 2016 is the same, namely severing access only to Electronic Information and/or Electronic Documents that have content that violates the law and does not include severing access to the internet network. In his duplication, the Minister of Communication and Information as the first defendant argued that he had the authority to exercise discretion, namely filling legal voids as stipulated in Article 22 and Article 23 of Law No. 30 of 2014 concerning Government Administration. The legal vacuum in question is that there is no Standard Operating Procedure (SOP) for terminating internet access. Article 6 paragraph (1) and (2) letter e of the Government Administration Law, government officials have the right to use the authority to make decisions and/or actions, including using discretion according to their objectives.

However, the panel of judges cited Article 22 paragraph (2) of the Government Administration Law which states that every use of discretion of government officials aims to (a) to launch 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. According to the panel, these four discretionary objectives are cumulative, not alternative as stated by Defendant I. According to the Assembly, the Law gives the government the authority to slow down and cut off the internet through Government Regulation no.23/Prp/1959 on the State of Emergency Therefore, the panel of judges believes that in this case there is no legal vacuum to regulate the object of dispute carried out by Defendant I. Therefore, for the Council the actions of the Minister of Communication and Information Technology in the object of dispute constitute a violation of the law by government officials.(PTUN, 2019)

In this case, it should be remembered that access to the internet is part of human rights [16]. The internet is a vehicle that is neutral in nature and which makes the internet not neutral for users and their use. If there is internet abuse through the dissemination of content or content that violates the law, the appropriate action to limit internet rights is aimed only at the perpetrator and the content that is considered to violate the law. For this reason, the complete severance of the internet network will have a greater negative impact in the form of neglect of other human rights that can be realized positively through the internet. The complete severance of the Internet network in Papua and West Papua is an act that is contrary to efforts to protect the rights to freedom of speech and assembly. If examined, the difference between areas that have internet access and areas without Internet access can be compared with people who are in a crowd. Community A has a megaphone and Community B does not have any loudspeakers. This can lead to inequality of rights. Having Internet access is not just about more effective free speech, but internet access opportunities in cyberspace is about having equal opportunities to be active before the law. Even in political society, people who do not have Internet access will be excluded from those can to access and join forums or platforms and obtain all the available information.

The Panel of Judges in their decision stated that the internet is a neutral vehicle and what make the internet non-neutral are the users and their use. If there is a misuse of the

internet through the dissemination of content or content that violates the law, the appropriate action to limit internet rights is aimed only at the perpetrator and the content/content that is deemed to violate the law. For this reason, the panel of judges considered that the complete severance of the internet network would have a greater negative impact in the form of neglecting other human rights that can be realized positively through the internet. In the consideration of the panel of judges, it was stated that as with other human rights, the right to the internet can only be derogated by severing the internet network if it is in a state of danger/emergency following applicable laws.

The panel of judges in their decision also assessed the actions of Defendant II in this case, namely the President of the Republic of Indonesia who did not carry out his authority and obligations (omission) in the context of administering the government in the category of government actions that were contrary to the legal powers and obligations of Defendant II before approving the actions of Defendant I in a procedural and substance is contrary to the laws and regulations. In its consideration, the Assembly considered Article 29 paragraph (2) of the United Nations Universal Declaration of Human Rights (UDHR); Article 28J paragraph (2) of the 1945 Constitution; Article 73 of the Human Rights Law; and Article 19 paragraph (3) of the Sipol Covenant as well as various interpretations of Article 19 of Sipol in several instruments such as: i) Syracuse Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, ii) The Johannesburg Principles on National Security, Freedom of Expression and Access to Information and iii) The Camden Principles on Freedom of Expression and Equality, as well as General CommentNo.34 on Article 19 of the Civil Code Covenant provides guidelines regarding restrictions on freedom of expression and the right to seek, obtain and convey information and other rights including those used over the internet.(PTUN, 2019).

Implementation of Human Rights Principles in Decision no. 230/G/TF/2019/PTUN-JKT

The government both represented by Defendant I and Defendant II, should understand that Internet access is a necessary means to ensure adequate “value” of basic political freedom for all. As John Rawls distinguishes between formally equal liberties and the value these freedoms have for people depending on their means of realizing them. Rawls points out that the realization of formally equal freedom depends on other means such as money, influence, and knowledge. While it is generally accepted that people do not have exactly the same way of exercising their basic liberties (i.e. that their basic liberties have a different value to them), Rawls argues that the state should ensure that its institutions are set up to ensure all fair opportunities for people. people to take part and influence the political process. In this view, it is not enough to simply understand that people have the same formal basic freedoms; they must also have an acceptable number of resources to take advantage of this freedom. What exactly is meant by an “acceptable number of resources” is, of course, a matter of debate. But in the virtual age, being able to access the Internet (along with democratic structures, basic public education, free information, and social minimums) is arguably part of a sufficient set of resources to exercise the basic freedoms of freedom of speech and association.(Rawls, 1999)

The Internet is a Necessary Tool for Implementing Other Crucial Human Rights. The government as the decision and policy maker in this case should pay attention to the idea that Internet access affects the importance of some basic freedoms of the people both in Papua, West Papua and in other regions. It makes sense when governments consider how the Internet has changed people's ways exercising their basic rights. As the most basic example, the Internet has lowered the cost of access, the cost of creating, and the cost of transmitting information and has exponentially expanded the potential community of

people. People are "online" to get information and communicate through social media. Indeed, until now people still send and receive information in the traditional way, and use traditional mass media (radio, TV, and newspapers) to reach a population, but this reach can only express the opinions of a small number of people. The Internet actually removes barriers to the global exchange of information and thus expands the practice of virtually free speech and assembly in Papua, West Papua, and other parts of Indonesia, and even throughout the world.

The Internet has thus changed the "value" of several other basic human rights obligations of the people such as education, economy, expression, and the press. The government's act of rejecting the need for Internet access to exercise people's freedom and to live a decent minimum life in a digital society by cutting off networks in several areas in Papua and West Papua is an act of ignoring the transformative nature of the Internet in the way people live, work, communicate and interact with each other. Today exercising freedom of speech and obtaining information has become highly dependent on access to the Internet. Therefore, the relative value of this freedom for people without Internet access has decreased. Internet access should be a human right because it is a necessary condition to have adequate opportunities to exercise the essential freedoms that are an indispensable part of minimally decent human life.

The right to universal Internet access should be properly realized and protected – Internet access will be a very powerful instrument for protecting core human rights, such as the human rights to life, liberty, and freedom from torture, and bodily integrity. In this case, the idea that Internet access in itself is a human right must be defended. The internet has become a unique tool to protect vital human interests. Thomas Christiano in part bases his argument for human rights over democracy in a similar way. Christiano argues that the right to live in a democratic state can exist because 'democracy is usually necessary and reliable in protecting basic human rights of personal integrity. Internet access for all regions of Indonesia universally can be a mentally important tool in the same way. At first glance internet access may seem an unreliable way to protect life, liberty, and bodily integrity. This happens because of government negligence which weakens the guarantee of human rights over Internet access, the Government should continue to maintain its integrity by adhering to the narrative that rights can only be effective if the environment supports them.(W. Nickel, 2007)

Internet access is not only a luxury for people who are able to access it. On the other hand, internet access is very conducive to many interests and demands for the realization of human rights. And finally, Internet access can provide a unique and effective way to promote government accountability and protect human rights in conjunction with other settings (such as democracy and a vigilant international community). The result of this consideration is that the panel of judges in the decision number 230/G/TF/2019/PTUN-JKT has strong reasons to accept the idea that Internet access for the people of Papua and West Papua should be recognized as a human right because it is necessary to ensure the life of the people of Papua and West Papua which is feasible at least in the digital age. The benefits of the Internet and the potential for universal Internet access are important enough to create a moral obligation for states and the international community to enact laws to ensure that everyone is "online".

As the United Nations (UN) states that the states are obligated to ensure "people's universal access to the Internet by developing concrete and effective policies in consultation with individuals from all sections of society, including the private sector and relevant government ministries. The government should make the Internet widely available, accessible and affordable to all segments of the population. UN Regulations This also implies a positive obligation for governments to fund Internet access costs for those

who cannot afford it if it is affordable. Internet access must be “readily available” in a tested manner. In affluent societies, Internet access should be considered as part of the sociological minimum; that is, everyone has the right to an adequate Internet connection, just as in many developed societies, all citizens have the right to a telephone connection. Such laws already exist in several countries. Therefore, all countries are asked to design a progressive online development strategy, to make appropriate investments in their Internet structure, and to provide assistance to poor countries that they commit to by registering with the United Nations Sustainable Development, rather than by totally severing the Internet without a clear constitutional basis. (Muhammed Zekeriya Gunduz & Das, 2019)

Decision number 230/G/TF/2019/PTUN-JKT erases the public's estimation of the Court State General Highs who are impressed tend to produce decisions are concerned with formal aspects. Max Weber stated the interpretation of micro-sociology (behaviouristic theory). Weber interprets the area of judge behaviour as an area that is rigid so that the concept of administrative justice is partial [23]. This ruling proves a change in the habitus of judges of the General High Court of the State who are more progressive legal discovery (dominus litis paradigm shift in the judiciary administration [judicial activism]. The judges can think progressively by prioritizing the holistic concept of administrative justice. As Dworkin in Taking Right Seriously assumes that interpreting the law must be guided by a hierarchy of levels above the moral norm, namely upholding the right to access anything for one's good .(Christiano, 2011)

D. Conclusion

The author concludes that every Indonesian citizen has a good reason to get and enjoy Internet access as a human right. Internet access is not only a luxury for those who can afford it, but also necessary for individuals to live a minimally decent life especially in area far from the State Capitals such as Papua and West Papua. Therefore, the restrictions and/or throttling internet access (throttling/blocking) conducted by the government through a press release of the Ministry of Communication and Information of Indonesia in Papua and West Papua as a preventative measure inhibit the spread of false news, provocative, hoaxes, and utterances of hate is an act against the law, because (1) the product of limiting human rights to access the internet (internet rights) through throttling/blocking can only be carried out based on the law and the principle of proportionality (2) the government's authority is only limited to severing access to electronic information and/or electronic documents that have a content that violates the law and does not include severing access to internet networks, (3) substantively the government's actions are contrary to the requirements for limiting human rights. The application of universal human rights principles is accommodated in the decision as stipulated in Article 28 J paragraph (2) of the 1945 Constitution, Article 73 of the Human Rights Law, Article 19 paragraph (3) of the ICCPR.

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