

# Internet Freedom As Human Right?

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*Abstract*— In the international world, the protection of human rights and the internet has become one of the important discussions at the United Nations. In 2012, the United Nations issued a Resolution on the Promotion, Protection and Enjoyment of Human Rights on the internet, one of which acknowledged that expressions delivered online received the same protection in offline expression activities. But in Indonesia the government has blocked internet and data services due to demonstrations in several regions such as Jayapura, Manokwari, Sorong, and Fakfak. Blocking actions on a number of platforms or internet sites, has drawn a number of polemics in the public. These actions are often judged disproportionately.

This research is in accordance with the grouping of the concepts of the fifth law, namely the law is a manifestation of the symbolic meanings of social actors as seen in their interactions. This type of research is sociological (non-doctrinal) legal research. Research Approach is a sociological study which is a study of law using the approach of law and social sciences. Empirical social research or socio legal research only places law as a social phenomenon. Therefore, in this study social problems have always been linked. Method of Collecting Data *that used in this research is* in-depth interview data collection techniques and literature study. Validity Data *in This research uses data triangulation and information from one party is verified by obtaining information from other sources. For example from second parties, third parties and so on using different methods. The data analysis technique used in this study is qualitative data analysis.*

Internet content governance policies, in addition to providing clear classification restrictions regarding content, should also contain the following elements: first, control of internet information (control to content) which is closely related to the role of key actors in managing the internet as public goods (netizens) including oversight mechanisms; second, access to services (access to internet service) that provides a set of rules on how the position of the role of internet intermediaries (rule of internet intermediaries) in managing internet information; third, protection of vulnerable groups (children, women.); and fourth, the remedy mechanism (remedy mechanism) if certain actions have an undue impact in relation to the enjoyment of access to knowledge. In this context, governance policies in Indonesia still show a number of shortcomings.

*Keywords*—internet, human right, cyberlaw

## I. INTRODUCTION

The problem of regulating the internet and human rights in Indonesia is also one of the challenges of human rights today, because the internet has become one of the important aspects in the lives of Indonesian. In 2012, Indonesia ranked 8th in the world and 4th in 51,096,860 users, 20 million Twitter users, and blogs around 5,270,658 [1]. However, human rights protection related to the internet in Indonesia is inadequate. The 2012 Freedom on the Net report places Indonesia in the 'partially free' category and is ranked 21 out of 47 countries surveyed [2].

Indonesia still faces problems related to access gaps, screening, and blocking / censorship that has not been clearly formulated, criminalization of internet users, threats to the rights of privacy and personal data, freedom to use the internet and so on and personal data, freedom to use the internet and so on. Some countries have positioned cyber security as a matter of national security. The impact of cyber security is often contradictory with individual security. Problems that arise are often countries formulating decisions that are ultimately inappropriate and tend to limit human rights.

At the national level, the laws and regulations in Indonesia have guaranteed various human rights enshrined in the constitution, namely the Undang-Undang Dasar 1945 and various other laws and regulations. The Undang-Undang Dasar 1945 contains special provisions concerning human rights (Chapter XA) so that these rights are constitutional rights of citizens. Another important regulation in guaranteeing human rights in Indonesia is Law Number 39 of 1999 Human Rights, which in addition to containing various guaranteed and protected human rights in Indonesia also regulates the National Commission on Human Rights [3].

The right to privacy is important for individuals to express themselves freely. The individual's willingness to debate on controversial matters in the public domain is always associated with the possibility to carry out the debate anonymously. The internet allows individuals to access information and conduct public debates without having to reveal their identities, for example through the use of fake accounts in chat forums and message rooms (Council of Europe. 2016). But at the same time the internet also presents tools and mechanisms through two private parties and the government to monitor and collect information about communication and individual activities on the internet. Such practices can lead to violations of the rights and privacy of internet users and reduce people's confidence and security in using the internet, inhibiting the free flow of information and ideas on the network.

The Ministry of Communication and Information has just issued Minister of Communication and Information Regulation No. 14 of 2009 concerning Handling of Negative Sites, especially in Article 8 paragraph (1). This ministerial regulation raises the pros and cons, it is because of the problem of regulating internet content that is indeed a dilemma. Called that dilemma because on the one hand, the arrangement provides security for internet users about the negative content that may exist, but on the other hand it is feared that the regulation will curb the user's freedom to express and obtain any information. This debate is the same as the debate about the need for law because humans can regulate them selves, which is then criticized that humans with their egos will be able to do whatever they want and may violate the rights of others so judged by law is needed. According to Law No. 11 of 2008 concerning Information

and Electronic Transactions Article 40 emphasizes, the government facilitates the use of Information and Electronic Transactions, and also the government protects the public interest from all types of disturbances as a result of misuse of Electronic Information and Electronic Transactions that disturb public order, in accordance with the provisions. This means that the public interest must be protected from efforts that want to make the internet a new medium for running or spreading negative content.

At present the government and internet service providers (PJI) are currently using a database from the Positive Massive Trust and DNS Nawala to block inappropriate sites, both locally and globally. With this service it is expected that internet users, especially parents and people who care about the morals of the nation can access the internet in a comfortable and calm manner. The public can participate in reporting pornographic sites and other inappropriate sites through the nawala.org site [4]. Not only limited to blocking negative sites but the government has also blocked internet and data services that have been in force since August 21 or since the outbreak of demonstrations in several areas such as Jayapura, Manokwari, Sorong, and Fakfak [5].

Blocking actions on a number of platforms or internet sites, has drawn a number of polemics in the public. These actions are often judged disproportionately. Why is not proportional? Because what is blocked is direct access to the platform, not selectively against sites that have content that is considered illegal according to Indonesian law. Whereas as a state party to the International Covenant on Civil and Political Rights (ICCPR), it should be that in making any restrictions on internet content, the Indonesian government must comply with the principles of restrictions, as stipulated in Article 19 (3) of the ICCPR, as well as Article 28J of the Constitution 1945. The aim of this research is to describe the protection of cyber security based on the perspective of human right

## II. METHOD

This research is in accordance with the grouping of the concepts of the fifth law, namely the law is a manifestation of the symbolic meanings of social actors as seen in their interactions. This type of research is sociological (non-doctrinal) legal research. Research Approach is a sociolegal study which is a study of law using the approach of law and social sciences. Empirical social research or socio legal research only places law as a social phenomenon. Therefore, in this study social problems have always been linked. Method of Collecting Data *that used in this research is* in-depth interview data collection techniques and literature study. Validity Data in this research uses data triangulation and information from one party is verified by obtaining information from other sources. For example from second parties, third parties and so on using different methods. The data analysis technique used in this study is qualitative data analysis

## III. RESULT

The internet allows individuals to search for, receive and disseminate information and ideas about everything quickly and cheaply beyond national boundaries. By expanding the capacity of individuals to enjoy their rights to freedom of expression and opinion, which are supporters of human rights, the internet helps political, economic, social

development and contributes to the development of humanity as a whole.

The internet has become a communication tool used by individuals to channel the right to freedom of opinion and expression as guaranteed by Article 19 of the Universal Declaration of Human Rights and Article 19 of the Covenant on Civil and Political Rights (Law No. 12 of 2005)

- a. Everyone has the right to opinion without interference
- b. Everyone has the right to freedom of opinion: this right includes the freedom to seek, receive and disseminate information and ideas, either orally or in writing or in print in the form of art or through other media of choice
- c. the use of these rights has special obligations and responsibilities.

This can be subject to certain restrictions but these restrictions must be in accordance with the law and are carried out really - really important as a tribute to the rights of the reputation of others, as protection of national security or public order or public health and morals.

Restricting the flow of information through the internet must be carried out as little as possible except in certain circumstances specified by international human rights law. Full guarantees for the freedom of expression must be the norm, and any restriction is considered an exception.

The state has an obligation to protect individuals from third-party interventions that are disturbed by the enjoyment of the freedom of expression and expression. This is a state obligation despite the situation that determining the origin of cyber attacks and the identity of perpetrators is often difficult technically. The positive obligation to protect requires the state to take effective and appropriate actions to investigate activities carried out by third parties, arrest responsible persons and use actions to prevent such incidents from happening again in the future.

Basically everyone has the right to privacy. This right states that everyone has the right not to be meddled or attacked by personal, family, home or correspondence matters or illegally. Everyone has the right to legal protection from such interference or attacks (Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights).

In connection with correspondence or other communications or correspondence, covering all other forms of communication including communication via the internet. The right to correspondence must increase the obligation of the state to ensure that electronic mail and other forms of communication in the network are actually sent to the intended recipient without interference or inspection from state agencies or third parties.

Everyone has the right to freely communicate without unauthorized and arbitrary monitoring such as tracking behavior, profiling and cyberstalking or threats of surveillance and wiretapping. All agreements relating to access to online services including reception for monitoring must be clearly stated in the form and nature of the monitoring.

In addition, everyone has the right to virtual personality that cannot be contested. Virtual personality must be respected but that right cannot be used to harm other parties. Digital signatures, user names, passwords, PINs, etc. must not be used or changed without permission or knowledge from the owner.

Protection of personal data embodies a special form of respect for the right to privacy. The state is obliged to regulate through clear laws the recording, processing, use and delivery of personal data and to protect people affected by misuse of data by state agencies or private parties. In addition, it also prohibits data processing for purposes that are not in accordance with the Covenant on Civil and Political Rights. Data protection laws must recognize the limits of information, corrections and if needed deletion of data and the provision of effective guidance.

Various state obligations related to international human rights are in line with Indonesian law. The 1945 Constitution states that the protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government. The protection and enforcement of human rights are carried out in accordance with the principles of a democratic rule of law and set forth in legislation.

Indonesia has ratified various international human rights instruments. Indonesia has been a party to more than 7 international human rights treaties including in 2005, Indonesia ratified two main points of the human rights covenant. In addition to the commitment to protect human rights in accordance with the provisions of international human rights instruments as a consequence of being a state party, Law Number 39 of 1999 also stipulates that international law accepted by Indonesia concerning human rights becomes a national law. The government has the responsibility to respect, protect and uphold and promote human rights as stipulated in Law Number 39 of 1999 and international law on human rights accepted by the Indonesian state.

Table 1. The State's Responsibility to Human Rights and Indonesian Law

The protection, promotion, enforcement and fulfillment of human rights are the responsibility of the state, especially the government	Article 28 paragraph (4) of the 1945 Constitution
The protection, promotion of enforcement and fulfillment of human rights are the responsibility of the government	Article 8 of Law No. 39 of 1999 concerning Human Rights
The provisions of international law accepted by the Republic of Indonesia concerning human rights became national law	Article 8 of Law No. 39 of 1999 concerning Human Rights
The government is responsible for respecting, protecting, upholding and promoting human rights regulated in this law, other regulations and international law concerning human rights accepted by the Indonesian state.	Article 71 of Law No. 39 of 1999 concerning Human Rights

Based on these data, each country has three obligations related to human rights, namely the obligation to respect (to respect) protect (to protect) and fulfill (to fulfill). The

balance between the three obligations and responsibilities varies according to the rights guaranteed and applies to all rights and includes civil and political rights and all social and cultural economic rights. The state is also obliged to provide remedies for human rights violations that occurred. Obligatory respect means that the state must refrain from intervening or intervening. This includes the prohibition of certain actions taken by the government to reduce the enjoyment of the right to privacy. The government must respect various personal communications conducted by citizens without any interference or unauthorized supervision. Communication interception or interception of someone committed by the government if it is done is not based on law or with a reason that is allowed is a violation of the right of privacy.

#### IV. CONCLUSION

Based on the explanation above, internet penetration in Indonesia has not been accompanied by legal rules or regulations that are responsive to technological changes. This also happens in the legal architecture in Indonesia, which still seems unclear in determining the direction of policies in response to the development of the use of the internet in the needs of people's lives. The government needs to change the governance of internet content that is able to contribute in building an internet ecosystem that is able to adopt the principles of human rights, so that it can represent all interest groups. Although control and supervision of internet content is possible, especially in the context of state law and technology architecture, what must also be underlined is the role of the internet in providing access to information and facilitating freedom of expression globally.

The state must be fully aligned and proportionate to the protection of human rights, specifically freedom of expression and the right to privacy. Consequently, internet content management models must refer to human rights standards that have been guaranteed in various international human rights treaties. At the very least, internet content governance policies, in addition to providing clear classification restrictions regarding content, should also contain the following elements: first, control of internet information (control to content) which is closely related to the role of key actors in managing the internet as public goods (netizens) including oversight mechanisms; second, access to services (access to internet service) that provides a set of rules on how the position of the role of internet intermediaries (rule of internet intermediaries) in managing internet information; third, protection of vulnerable groups (children, women,); and fourth, the remedy mechanism (remedy mechanism) if certain actions have an undue impact in relation to the enjoyment of access to knowledge. In this context, governance policies in Indonesia still show a number of shortcomings.

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