



SUMMARY OF COURT DECISION **INDONESIA INTERNET SHUTDOWN**

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Summary of Decision Number 230 / G / 2019 / PTUN-JKT
 Jakarta State Administrative Court (First Court)

Summary of Court Decision Indonesia Internet Shutdown



Overview:

The Legal Aid Center for the Press (LBH Pers) is the legal counsel of AJI Indonesia and Safenet who attends the trial, makes claims, answers responses to the defendants, prepares and submits documentary evidence, presents witnesses who corroborate the claim and makes at the same time submit concluding documents to Panel of judges.

This verdict is a lawsuit against the law by a government agency and / or official (Onrechtmatige Overheidsdaad) for the shutdown by the Ministry of Communication and Information (Defendant I) and the President of the Republic of Indonesia (Defendant II) in the Provinces of Papua and West Papua with the authority of the Jakarta Administrative Court.

Lawsuit Object:

1) Government action of throttling or slowing down of access / bandwidth in several regions of West Papua Province and Papua Province on August 19, 2019 from 13.00 Eastern Indonesian

Time to 20.30 WIT;

- 2) Government actions of blocking data services and / or terminating internet access completely in Papua Province (29 Cities / Regencies) and West Papua Province (13 Cities / Regencies) dated 21 August 2019 until at least 4 September 2019;
- 3) Government actions of extending the blocking of data services and / or terminating internet access in 4 Cities / Regencies in Papua Province (Jayapura City, Jayapura Regency, Mimika Regency, and Jaya Wijaya Regency) and 2 Cities / Regencies in West Papua Province namely Manokwari City and Sorong City since 4 September 2019 at 23:00 CET SD 9 September 2019 at 18.00 WIB / 20.00 WIT.

Chronological:

- 1) On August 19, 2019 Defendant I had conducted throttling or slowing down access / bandwidth in several areas of the Province of West Papua



- and Papua Province. Defendant I explicitly admitted that the access was slowed down since Monday, 19 August 2019 at 13:00 CEST, and started normally on 19 August 2019; Defendant I reasoned doing throttling to prevent the wide spread of hoax that triggered the action;
- 2) On August 19, 2019, Defendant I acknowledged explicitly and openly through Press Release Number 154 / HM / KOMINFO / 08/2019 concerning the Deceleration of Access in Several Regions of Papua and West Papua on Defendant I's official website;
 - 3) On August 21, 2019 to September 4, 2019, Defendant I took action to completely block data services and / or terminate internet access in Papua and West Papua Provinces, the a quo action resulted in the termination of all data service access in 29 cities / districts in Papua Province namely, Mimika Regency, Paniai, Deiyai, Dogiyai, Jayawijaya, Bintang Mountains, Numfor, Jayapura City, Yahukimo, Nabire, Keerom, Puncak Jaya, Puncak, Asmat, Boven Digoel, Mamberamo Raya, Mamberamo Tengah, Intan Jaya, Yalimo, Lanny Jaya, Mappi, Tolikara, Nduga, Supiori, Waropen, Marauke, Biak, Yapen, and Sarmi District. While the City Regencies in West Papua Province that were affected were 13 City Regencies namely, Fakfak, South Sorong, Raja Ampat, Wandoma Bay, Kaimana, Tambrau, Maybrat, South Manokwari, Arfak Mountains, Sorong City, Sorong Regency and Manokwari.
 - 4) On August 21, 2019 Plaintiff II openly objected through the online petition # TurningLagi change.org and directly related to Defendant II and Defendant I emails, at the time of submitting objection letters and subpoena to the Defendants on August 26, 2019 they had received 11,000 support petition.
 - 5) On August 23, 2019 Plaintiff II sent a warning letter. Submission I on August 23 and Commemoration Letter / Submission II on August 26, 2019 to Defendant I, but there was no response and also changes made by Defendant I.
 - 6) On October 4, 2019, the Plaintiffs sent administrative objections to Defendant I and Defendant II, and also did not get a response and concrete changes to the actions of Defendant I.
 - 7) Defendant I in various press releases argued and or explained the object of the lawsuit was carried out for the following reasons / considerations:
 - a) The extent of the spread of hoaks that triggers action (Press Release number 154 / HM / Kominfo / 08/2019)
 - b) To accelerate the restoration of the security and order situation in Papua and surrounding areas (Press Release Number 155 / HM / Kominfo / 08/2019)
 - c) The high distribution and transmission of hoax information, hoaxes, provocation, racism, hate speech, and incitement (Press Release Number 159 HM / Kominfo / 08/2019).

Impact of Actions:

The impact experienced by Plaintiff I

- 1) The direct impact experienced by Plaintiff I as an organization advocating for press freedom. Like, the press media of Tabloid Jubi (PT Honest Papua) according to the claimant of the Plaintiff I member, Victor Mambor who is the Editor in Chief of Tablod Jubi who had difficulty verifying and clarifying the information that arrived at the editorial desk, accessing email, and coordinating with reporters on duty in the field . With interrupt access, the Jubi Tabloid press media was forced to rent a room at the Kotaraja Horizon Hotel from 21 August 2019 to 13 September 2019 only to use the internet channel provided by the hotel. The Jubi Tabloid also suffered material and immaterial losses such as the late publication of printed newspapers and a dramatic drop in income.
- 2) Pos Cendrawasih Media which experiences a direct result of internet blocking, according to the claimant of the Plaintiff I member, Lucky Ireuw who is the editor in chief of the Cendrawasih Pos media suffered losses due to difficulties in receiving data from journalists so that all activities that require internet should / must be moved to hotels the closest that still has the wifi service. Blocking the internet makes the work system disrupted because information, data and or the results of reporters' coverage cannot be directly sent via email or whatsapp. So reporters came directly to the office to submit the results of their coverage.
- 3) Tempo Media suffered a direct loss, according to the Plaintiff I member who is the Chief Editor of Tempo and Tempo Fact Check Wahyu Dhyatmika. According to Wahyu, on August 19, 2019 Temp media received information about Papua after the siege of Papuan student dormitories in Surabaya. Containing photographs and narration of the "Radical Hate!" Papua branch again killed 31 trans



Papuan road workers, at the OPM anniversary event it was suspected that it would establish a 'laipah state; Morning Star. The Tempo fact check team re-contacted Dicky via Whatsapp, but experienced difficulties due to constraints internet in Papua had been limited to 2 days. That on August 23, 2019, Tempo fact check got a viral video on Twitter that was shared by the Suryosodipuro account with the narration of "rioters (Papuan) in Sorong City surrounding the mosque preparing to attack the mosque and the Muslims. But the takbir of the mosque is calling for jihad ... "The upload on Twitter was later deleted on August 24, 2019. Check for facts Tempo found it difficult to find the details of the video due to the absence of an internet channel.

- 4) Indonesian CNN Media suffered a direct loss, according to the recognition of Plaintiff I member Joni Aswira who is the coordinator of CNN Indonesia TV Media Coverage. Joni was assigned to do the coverage for 6 days. Arriving at Jayapura Sentani Airport, the internet network can no longer be used. Joni has difficulty communicating with an editorial in Jakarta for the needs of coordination, sending pictures or video coverage. Joni and the CNN team also could not send news and were forced to return to the hotel to be able to get internet access.

Plaintiffs' Experiences II

- 1) Plaintiff II members named Syaifullah and Aldo Mooy who are domiciled in Jayapura. The blocking of the internet has resulted in the cessation of the SAFENet organization program in the Papua and West Papua sub-divisions that cannot coordinate and communicate with their members.
- 2) Plaintiff II members cannot access Telkomsel cellular internet in Jayapura on August 20, 2019, Aldo in Jayapura on August 23, 2019 who can only access the internet through the Wifi Indihome network.
- 3) On August 26, 2019, Syaifulla reported that there was a cellular internet network (data service) until August 26, 2019 that was still blocked in Jayapura.
- 4) Report from Aldo on August 27, 2019, experiencing Indihome Wifi network could not be accessed for several days until finally he can send messages to the organization at night.
- 5) Report from Syaifullah on August 29, 2019, at 15.35 East Indonesian Time the cellular

network in Jayapura disappeared, including being unable to send texts and make phone calls.

Lawsuit Object Violated

- 1) Article 4 paragraph (1) and (3) of Law Number 40 of 1999 concerning the Press;
- 2) Article 28 J of the 1945 Constitution jo Article 73 of Law number 39 of 1999 concerning human rights;
- 3) Article 19 paragraph (3) of Law Number 12 Year 2005 concerning Ratification of the International Covenant on Civil and Political Rights;
- 4) Article 2 paragraph (2) of the Substitute Law Number 23 of 1959 concerning the Substitute of Law Number 23 of 1959 concerning Revocation of Law Number 74 of 1957 (State Gazette Number 160 of 1957);
- 5) Article 1 number 1 of Law Number 9 of 1998 concerning Independence expressing Opinion in Public;
- 6) Article 19 paragraph (2) of Law Number 12 Year 2005 concerning Ratification of the International Covenant on Civil and Political Rights;
- 7) Law Number 25 of 2009 concerning Public Services.
- 8) General Principles of Good Governance.

Judges Considerations:

- A) Legal considerations regarding hazardous conditions
 1. Article 49 letter a of Law number 5 of 1986 emphasizes that a state of danger that causes a government decision and or action cannot be sued in the Administrative Court must be based on applicable laws and regulations, the Assembly's opinion to determine the state of danger cannot be based solely on the basis of evaluation of the Agency and or government officials, because if this is possible, the Agency and or government officials may make subjective judgments and potentially always use the reasons of danger in issuing decisions and or take government actions to avoid being tested legally by the Administrative Court. Regarding testing whether the decision and or action taken is an abuse of authority and if it is considered a discretion, then the discretion will be tested by the court, according to the panel of decision making and or actions of the body and or government officials carried out in a state of danger must be based on objective parameters from



both perspectives government agencies and or officials who make decisions and or actions, from the perspectives of the affected community and from the perspective of the court who will judge legally the government's decisions and / or actions. The objective parameter is the Law in this case the Government Regulation in Lieu of Law Number 23 Year 1959 / Law Number 23 Regulations in lieu of law Year 1959 concerning Dangerous Conditions.

2. Government Regulation in Lieu of Law Number 23 Year 1959 / Law Number 23 Prp Year 1959 concerning Hazards in Article 1 number (1) states in essence that the President / Commander in Chief of the Armed Forces declares all or part of the territory of the Republic of Indonesia in a state danger with the level of a state of civil emergency or military emergency or state of war. Followed by Article 2 paragraph (2), it is regulated that the announcement of the statement or the elimination of the danger situation is carried out by the President. The Assembly considers that Article 49 letter b of Law Number 5 of 1986 also states that the reasons for the public interest must be based on the applicable laws and regulations. With regard to the formulation of this article, the Assembly further provides an assessment that in the statutory regulations governing development in the public interest, these laws and regulations would instead give authority to the State Administrative Court to adjudicate Government Decrees, including Law Number 2 The year 2012 concerning Land Procurement for Development in the Public Interest which in Article 23 states that the State Administrative Court has the authority to examine and decide on a lawsuit against the determination of the construction site for public purposes, the law of which then regulated further in the Supreme Court Regulation No. 2 of 2016 concerning Guidelines for Procedure in Disputes on the Establishment of Development Locations for Public Interest in the State Administrative Court. The judge considered the actions taken by the government which were the object of the dispute to be carried out in a situation that could not be declared as a state of danger, therefore the Jakarta Administrative Court

had absolute authority to examine and adjudicate the a quo dispute.

- B) Considerations Regarding Plaintiffs' Legal Standing Rights
The Assembly is of the opinion that the actions taken by the government which are the object of the dispute are no longer carried out by the Defendants, but because these government actions have been carried out and at the time they are considered to have caused harm to the citizens, the plaintiffs who have complied requirements as an organization that can file a claim through the organization's legal standing mechanism (legal standing) Remain to have the right to file a lawsuit against the defendants.
- C) Legal considerations regarding internet rights
Based on the object of the dispute and the attachment of evidence regarding government authority in article 40 paragraph (2), (2a), and (2b) of Law Number 19 of 2016.
 - 1) The Government as the implementation of Electronic information and transaction Law, because Government Regulation Number 71 Year 2019 regarding the Implementation of Electronic Systems and Transactions in lieu of PP Number 82 Year 2012 only takes effect on October 10, 2019 after the government acts which become the object of the dispute, in providing legal assessment Regarding government actions which are subject to dispute, the Assembly does not use PP Number 71 Year 2019 as an instrument of analysis, but it is based on PP Number 82 Year 2012 which at the time the government action was carried out is still valid.
 - 2) Regarding the provisions of Article 1 number 23, Article 40 paragraph (2), paragraph (2a) and paragraph (2b) as well as general explanation of number 1 paragraph 9 of the Electronic information and transaction Law, Article 1 number 17 of Law Number 36 of 1999 concerning Telecommunications, Article 1 number 35 PP Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions and Articles 2 and 3 of Presidential Regulation Number 54 of 2015 concerning the Ministry of Communication and Information, the Assembly is of the opinion that Defendant I has the authority to terminate access and or order the Operator of the Electronic System to conduct termination of access



to electronic information and or electronic documents that have unlawful contents.

- 3) Regarding the authority of Defendant I to terminate and or order the Electronic System Operator to do the termination, it can only be done in the form of terminating access to electronic information and or electronic documents that have unlawful contents or in the form of terminating access to internet data services that As a result, the access that is cut off is not only on electronic information and or electronic documents which have unlawful contents, the panel of judges will consider it in relation to the use of Defendant I's authority from the aspect of procedures and substance.
- 4) Regarding the limitation of various international and national human rights law instruments, in fact Article 28 J paragraph (2) of the 1945 Constitution and various national laws that regulate human rights have conveyed quite clearly the criteria for restrictions, so that in considering disputes, the assembly will refer more to the Constitution 1945 and Indonesian national law as well as international treaties namely the International Covenant on Civil and Political Rights that have been ratified by the Law including its interpretation which according to the Assembly, authentic interpretation is the interpretation published by the UN Human Rights Council in general comment No. 34 so that the assembly draws the conclusion that restrictions on freedom of expression and the right to seek, obtain and impart information and the right to seek, obtain and impart information and other rights that are used through the internet there are 3 conditions: first, restrictions must be regulated in statutory regulations in the form of laws. Second, Restrictions must fulfill / in accordance with one of the following objectives, namely to guarantee recognition and respect for the rights or good names of other parties, or to meet fair demands in accordance with moral considerations, religious values, security, decency, public order, or health society in a democratic society. Third, it must be proven that the limitation is required proportionally. According to the assembly, the order of terms of limitation of human rights as an analytical tool for the subject matter of the dispute is: whether or not one of the objectives has been fulfilled to guarantee the recognition and respect for the rights or good names of other parties, or to fulfill just demands in accordance with moral considerations, religious values, security, decency, public order, or public health in a democratic society. Both of these restrictions must be based on law and third must be proven that these restrictions are needed proportionally.
- 5) Regarding the first condition, the panel of opinion argued in the duplicate response and the conclusion of the defendants who argued that the object of the dispute was based on riots in Malang and Surabaya and had an impact on Jayapura and other areas in Papua and West Papua so that Defendant I did throttling or slowed down access according to the object of the dispute, the evidence submitted by the defendant and the testimony of witnesses of Defendant I have fulfilled the first requirement, which is to be carried out in accordance with the demands of security and public order considerations.
- 6) Related to the second requirement, based on the statutory regulations, according to the plaintiff's expert statement and the actions taken by Defendant I, the judge considered the formulation of Article 40 Paragraph (2b) of Law Number 19 Year 2016, according to the court, agreed with Defendant I in one that is, that the authority includes two things, namely terminating access and or ordering the electronic system operator to terminate access. However, whether the scope / scope of access that can be terminated either by the government or by the organizer of the electronic system at the behest of the government is the same or different, because the explanation of the article states that it is clear enough, the assembly refers to the general explanation of paragraph 9 of the Act which states including that, "in order to protect the public interest from all types of disturbances as a result of misuse of Electronic information and transaction law, it is necessary to affirm the role of government in preventing the dissemination of illegal content by taking action to cut off access to Electronic Information and or electronic documents which have unlawful contents so that they cannot be accessed from Indonesian jurisdiction and



the authority required for investigators to request information that is entrusted in the Organizer of the Electrical System for the benefit of criminal law enforcement in the field of Electronic information and transaction law. The Assembly considered in the statutory regulations and witness statements of Defendant I, according to the Assembly due to restrictions on the right to internet according to the 1945 Constitution and Human Rights Law number 12 of 2005 must be regulated in the law, if a legal vacuum is considered, then the issue / problem of emptiness The law is not a matter of whether or not there is a slow down SOP and or termination of internet network access, but the issue of whether or not there is a law that gives authority to the government to terminate internet network access, not just the termination of access to Electronic Information and / or Electronic Documents that have content that violates the law .

- 7) Regarding the danger that is a limitation in surfing, the panel considers in the response of Defendant I, the legislation and the statements of the defendant I, the panel believes that the right to the internet in addition to being a vehicle to enjoy and use the right or freedom of expression and the right to information is also as a medium to realize many other rights in terms of the right to education and teaching, the right to benefit from science and technology, arts and culture, the right to work, political rights, the right to association and assembly, and the right to health services as recognized and guaranteed in Article 28 C, Article 28D paragraph (2), Article 28E and Article 28H of the 1945 Constitution and Law Number 11 of 2005 concerning Ratification of the International Covenant on Economic, Social and Cultural Rights (International Covenant on Economic, Social Rights and Culture), Law Number 12 Year 2005 concerning Ratification of the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights), Law Number 40 of 1999 concerning the Press in order to guarantee freedom of the press, and various other Laws, so as to limit the exercise of their rights and freedoms, Article 28J paragraph (2) The 1945 Constitution emphasizes that it must be in the form of a Law and the limitation

is carried out for a variety of reasons and objectives that have been limitatively stated in the 1945 Constitution and human rights legal instruments above and must be done because they are needed proportionally in a democratic state of the country.

- 8) Restrictions on the internet apply to actors who abuse the internet that are illegal. Electronic information and transaction Law does not allow termination of access to the internet network that can have an impact on the human rights of other parties who are not perpetrators.
- 9) The object of the dispute in the form of a slowdown and termination of the internet network according to the court has exceeded the act of human rights remedies allowed in Article 40 paragraph (2), (2a), (2b) of the I Electronic information and transaction Law is no longer a form of limitation of the right to the internet as stipulated in Article 28J paragraph (2) 1945 Constitution, Article 73 of the Human Rights Law and Article 19 paragraph (3) of the Sipol Covenant, however it is a form of reduction of the right to internet which implies other rights as enshrined in Article 4 paragraph (1) of the International Covenant on Civil Rights politics, the right to association and assembly, and the right to health services as recognized and guaranteed in Article 28 C, Article 28D paragraph (2), Article 28E and Article 28H of the 1945 Constitution and Law Number 11 of 2005 concerning Ratification of the International Covenant on Economic, Social and Cultural Rights (International Covenant on Economic, Social and Cultural Rights), Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights), Law Number 40 of 1999 concerning the Press in order to guarantee freedom of the press, and various other Laws, so as to limit the exercise of their rights and freedoms, Article 28J paragraph (2) The 1945 Constitution emphasizes that it must be in the form of a Law and the limitation is carried out with various reasons and objectives that have been limitatively stated in the 1945 Constitution and human rights legal instruments above and must be done because they are needed proportionally in a democratic state atmosphere.



- 10) Regarding the restriction of the state in a state of danger the assembly considers based on statutory regulations, evidence regarding coordination with other institutions. The Assembly is of the opinion that freedom of expression and information including freedom of the press by using whatever means are considered appropriate to express opinions and information so as to reach as many people as possible is a fundamental human right which is the basis of rights and other freedoms in a democratic society because it enables people to actualize all rights and potential for self-development, conveying and revealing the truth and actively participating in the administration of government so that a transparent, accountable, responsive, effective and efficient government (good governance) can be realized.
- 11) Regarding the object of the dispute in the form of slowing down and / or termination of the internet, even though Defendant I did so in the context of expediency to prevent the spread of hoaxes, incitement, expressions of hatred or hostility based on SARA that have the potential to cause unrest which could divide unity and threaten security countries in Papua and West Papua and carried out only on cellular data services, the assembly considered because most people use the internet to use cellular data services and even dependence on carrying out any activity.
- 12) Regarding the actions taken by Defendant II who exercised their authority to first declare all or part of the territory of the Republic of Indonesia in a state of danger along with the level of emergencies and not to establish / appoint a body which assisted Defendant II based on Perpu on Dangerous Conditions, according to the defendant's act act. those who do not carry out their authorities and obligations constitute a form of not doing any act within the framework of administering government which falls into the category of government action that is contrary to the authority and legal obligations of Defendant II before agreeing to the actions of Defendant I, so that according to the Assembly's consideration of the procedural and substance aspects of Government Actions done by Defendant I, then the actions of the Government of Defendant



Act, the procedure and substance are also contrary to the laws and regulations.

- 13) Regarding the reason for the discretion in carrying out the actions of the object of the dispute due to the occurrence of a legal vacuum in Article 22 paragraph (2) letter b of the Government Administration Law, then from the perspective of discretion, the object of the dispute does not fulfill the cumulative purpose of the discretion as specified in Article 22 paragraph (2) Government Administration Act. In addition, from the procedure and substance, the object of the dispute is contrary to the laws and regulations as previously considered, so that the cumulative purpose of discretion and the use of the discretion are not in compliance with statutory regulations, then the discretionary requirements as regulated in Article 24 letter a and b of the Government Administration Act also becomes unfulfilled in the object of dispute. Then according to the assembly, the object of the dispute conducted by Defendant I from the aspect of procedure and substance of the dispute carried out by Defendant I from the aspect of procedure and substance is contrary to the applicable laws and regulations, so that the panel of judges no longer need to consider the fulfillment of general principles of good governance in the object of the dispute.

Verdict:

- 1) Reject the Defendants' Exception;
- 2) The object of the disputed case is **an illegal act** by a government agency and or official;
- 3) Brace the defendants to pay the court fee.