Rights based internet governance:

A study on the general issues in internet governance and the impacts on the protection of human rights

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All ELSAM publications are dedicated to the victims of human rights violations in addition to be part of the efforts to promote and protect human rights in Indonesia.

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Acronyms

APJII	Indonesian Internet Service Provider Association
AWARI	Internet Cafés Association
DARPANet	Defense Advanced Research Project Agency Network
DNS	Domain Name Service
e-gov	e-government
HAM	Human Rights
ICANN	Internet Corporation for Assigned Names and Numbers
ICCPR	International Covenant on Civil and Political Rights
IETF	Internet Engineering Task Force
IGF	Internet Governance Forum
IP	Internet Protocol
ISP	Internet service Provider
ITE	Information and Electronic Transaction
ITU	International Telecommunication Union
KUHP	Criminal Code
MK	Constitutional Court
TCP	Transmission Control Protocol
UDHR	Universal Declaration of Human Rights
WGIG	The Working Group on Internet Governance
WSIS	World Summit on the Information Society

"*the Internet has become a key means*
by which individuals can exercise their right to freedom and expression."

[**Frank La Rue**, 2011]

A. Introduction

Until the year of 2012, there were at least 2,405,518,376 people in the world utilized the internet. The penetration reached 34.3% of all the total population of the world, which has reached more than 7 billion of people. [1] Indonesia itself, until the end of 2012, according to a record made by the Association of Indonesian Internet Service Providers (APJII), has at least 63 million of internet users. This means that the number of internet users was more or less 24.23% of the total population. This number was higher than the previous year, which was only 55 million of users. The APJII predicted that in 2015, internet users in Indonesia would reach 139 million of users. [2] Not to mention the number of the active social media users, such as Facebook that has reached 47 million users and twitter users that has reached 19.7 million users. [3] The high number of population and internet users in Indonesia has put Indonesia at number 8 in the world, and number 4 in Asia, in the use of internet. The internet itself, according to Milton Mueller, Hans Klein and John Mathiason, is:

> "The ability of global data communication realized through the interconnection of the public and private telecommunication networks by using the Internet Protocol (IP), Transmission Control Protocol (TCP), and other necessary protocols for the implementation of IP to work globally, such as DNS and routing protocol package". [4]

With the said development of the internet users, various problems and innovations related to the use of the internet became known by the public. For instance, the internet

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1 See "World Internet Users and Population Stats", at http://www.internetworldstats.com/stats.htm, accessed on 14 May 2013.

2 See "Indonesia Internet Users", at http://www.apjii.or.id/v2/index.php/read/page/halaman-data/9/statistik.html, accessed on 14 May 2013.

3 Tifatul Sembiring (Minister of Communication and Information), A Speech at the opening of INAICTA 2013 in Jakarta, 14 February 2013.

4 See Milton Mueller, John Mathiason, and Hans Klein, "The Internet and Global Governance: Principles and Norms for a New Regime," Global Governance 13, No. 2 (2007), pp. 244.

is a medium that is commonly used to support the public participation in the a policy making through a real-time broadcast of sessions in the parliament; online provision of public information, such as the rulings of the Supreme Court and the Constitutional Court; or the use of internet to support and to bring public services closer to the people, such as the use of the internet based administrative system through the e-gov program (e-government).

Moreover, the internet also started to become a popular medium to support advocacy by civil society organizations, such as in various support mobilizations for the resolution of corruption cases, the "lizard-crocodile" case threatening the existence of the KPK, as well as other cases in the effort to give supports for the advocacy for women's and children's rights and the prevention of violence against women.

However, on the other side, the development of the internet also brings other implications that potentially become a threat to human rights. This was evident in the cases of Prita Mulyasari, [5] Diki Candra, [6] and some other names threatened by criminal sanctions due to some activities and information addressed through the internet. However, until today, we must admit that there has not been any policy to develop more constructive internet governance. The internet is still a new arena with minimum governance. Even though there are also provisions on the level of laws or on the executive level tending to tighten controls over the use of internet. Therefore, the descriptions on this work sheet try to fill in and provide initial discussion materials to encourage the process of forming a policy regarding more constructive internet governance with a human rights basis.

B. The internet and human rights

In the context of human rights promotion, the high number of internet users has certainly created a lot of opportunities. According to the statement made by Frank La Rue, the UN Special Rapporteur on Freedom of Opinion and Expression, the internet has become a highly necessary tool to fulfill various human rights, to combat injustice, and to accelerate development and human advancement. Therefore, ensuring a universal

[5] See Tangerang District Court Verdict No. 1269/PID.B/2009/PN.TNG 29 December 2009.
[6] See Tangerang District Court Verdict No. 1190/Pid.B/201 0/PN.TNG, 18 February 2011.

internet access shall be a priority for all states. [7] This was reconfirmed by the UN Human Rights Council resolution in June 2012 regarding *The promotion, protection and enjoyment of human rights on the Internet*, that puts the access to the internet as a part of human rights. [8]

The role of the internet in the enjoyment of human rights has begun to gain attention in human rights discourse at the UN body in the mid of nineties along with the issuance of a resolution of the UN Human Rights Commission – now is the UN Human Rights Council No. 27/1997 that ordered the UN Special Rapporteur on Freedom of Opinion and Expression to include and consider all aspects arising from the emergence of the new information technologies to the equality and opportunities in accessing information and the enjoyment of the right to freedom of expression, as provided for in the ICCPR. [9]

In the initial discussion at the UN Human Rights Council, the debate on the internet was focusing on the important role of the internet as a medium for the enjoyment of the freedom of expression and information. In this context, the internet was discussed as an integral part of the advancement of communication technology; therefore it is understandable that the main focus in the UN initial documents were the direct impacts related to the development of the information technology as a digital gap phenomenon in terms of the internet access between the southern and the northern countries. [10]

In his first report after the issuance of the resolution 27/1997, the UN Special Rapporteur on Freedom of Opinion and Expression, Abid Hussain, argued that new technologies have opened an alternative way to express, to make opinions, and to transfer information. However, besides giving a new alternative, the impacts of the new technology have also risen some serious concerns, particularly regarding the issues of racism and hate speech, incitements of violence, pornography, privacy and reputation, as well as cultural or social values. Therefore, according to the Special Rapporteur, it is

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7 See A/HRC/20/L.13, dapat diakses di http://daccess-dds-ny.un.org/doc/UNDOC/LTD/G12/147/10/PDF/ G1214710.pdf?OpenElement.

8 See A/HRC/20/L.13, accessible at http://daccess-dds ny.un.org/doc/UNDOC/LTD/G12/147/10/PDF/ G1214710.pdf? OpenElement.

9 See E/CN.4/1997/27 par. 12(f) accessible at http://ap.ohchr.org/documents/E/CHR/ resolutions/E-CN_4-RES-1997-27.doc.

10 *Ibid*.

necessary to have a balance between the need to protect the freedom of opinion and expression and the negative impacts of the internet, such as racism and violence.[11]

The Special Rapporteur also emphasized on the tendency of the government in some states to regulate and control the access to the internet network. The regulation and control conducted by some of the States have often been broadly and vaguely imposed, therefore they were not in line with the principles of necessity and proportionality. Moreover, the regulations are often not in line with the objectives provided in the Covenant.

The Special Rapporteur gave an example of a case involving a censorship provision in the Law regarding Telecommunication Reform of 2006, in the United States of America that was later declared unconstitutional by the Supreme Court of the United States. In the ruling, the Supreme Court declares that the freedom of speech on the internet shall obtain constitutional protection. Another interesting case was the case of the issuance of the Law regarding Computer Science in Myanmar, on 27 September 1996. The Law prohibits the citizens of Myanmar to import or to posses any computer with a certain specifications, particularly computers that have networks. Furthermore, the government of Myanmar established a Computer Science Commission of Myanmar that had the authority to determine the type of computers allowed for distribution in Myanmar. Any Myanmarian violating the law would face 5-15 years of imprisonment, and also fines.[12]

The Special Rapporteur expressed his concerns on the said situation and argued that the new technology, particularly the internet, was inherent with democratization, since the internet gives access to both public and individuals to information and enables everyone to actively participate in communication process. The Special Rapporteur also believes that the state actions to impose excessive regulation on the use of the internet, on the ground that control, regulations and access denial are needed to maintain the moral system and social cultural identity are paternalistic actions. These actions are not in line with the principles and values of the Covenant as well as with individual dignity. [13]

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[11] See E/CN.4/1998/40, para. 33-35, accessible at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G98/ 103/12/PDF/G9810312.pdf?OpenElement.

[12] *Ibid*., para. 38-41.

[13] *Ibid*., para. 45.

In his next year's report, the Special Rapporteur on Freedom of Opinion and Expression, Abid Hussain argued the same statement he wrote in his previous report regarding the internet. In addition to that, he also argued that the internet was an increasingly important tool for human rights education, since it contributes to a broader understanding about international human rights standards, provisions and principles. The internet has also become one of the most effective tools to combat intolerance, since it opens the gate to provide the message of respect, as well as enabling them to look for information freely across the globe. Any action by any government to restrict the access to the internet can be said as violating Article 19 of the UDHR. [14]

However, according to the Special Rapporteur, the internet is not made as a "free law zone', regulations are allowed, particularly for the protection of consumers' and children's rights. The main challenge presented by the internet is not how to impose restrictions creatively in order not to exceed the grounds for restriction set out in international human rights instruments. The challenge is to integrate fully new information technologies into a development process. Therefore, it is necessary to make internet universally accessible, not only to developed countries but also to developing countries. [15]

Apparently, in the development, governments of some countries focused themselves more to internet control and regulation. Their efforts to broaden the network, including improving technical capacity to reach out the underprivileged people or out of service areas, were less priority to them. This situation was captured in the Report of the UN Special Rapporteur on Freedom of Opinion and Expression in 2000. In his report, the Special Rapporteur highlighted the types and the extent of control imposed on the internet, in addition to the relation between printing and electronic media, particularly in terms of control and censorship.[16]

According to the Special Rapporteur, the internet is one of the main component of an "information revolution", since the internet can play an influencing role to voice out different voices, therefore it creates political and cultural debates. Its global, as well as decentralized and interactive natures and its independent infrastructure allow the

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[14] See E/CN.4/1999/64, para. 30, accessible at di http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/107/66/PDF/G9910766.pdf?OpenElement.

[15] *Ibid*., para. 33-36.

[16] See E/CN.4/2000/63, para. 54, accessible at http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/16583a84ba1b3ae5802568bd004e80f7/$FILE/G0010259.pdf.

internet to go beyond national borders. Therefore, the Special Rapporteur reaffirmed that the internet is a significant experiment to go beyond rigid borders of national integrity and territorial. However, the internet cannot be accessed by the majority of the world's population due to financial problem, economic and technological constraints. The internet users are concentrated in developed countries. In order to support the important role of the internet, the Special Rapporteur argued that online expressions must be guided by international standards and provided with equal protection guarantees as provided for conventional expressions – offline expressions. [17]

The concern of the Special Rapporteur on government control over the internet was reaffirmed in his report submitted to the UN Human Rights Commission in 2001. In that year, some countries started to impose criminal sanctions against their citizens for their posts on the internet. Those who posted any writings or other forms of expression whose materials considered subversive were, in addition to the closing of the page, also faced with imprisonment. Apart from the increase criminalization against internet users, the issuance of some laws in some states requiring internet users to ask for administrative authorization was also a concern during that time. The stipulation existed as a result of some leaks of state secrets through the internet. [18]

In light of the situation, the Special Rapporteur concluded that it is necessary to encourage states to put the internet and information technology as an important facility to obtain voice plurality and to take measures towards integration into development processes. The Special Rapporteur also underlined the importance of the measure to minimize access gap in internet between developed and under developed countries. He reaffirmed that the internet is an important and effective tool for the promotion oh human rights and forms of violations against them. The Special Rapporteur believes that the internet has the potential to become one of the most effective tools to combat poverty and all forms of discriminations on any grounds.[19]

In his next report, the UN Special Rapporteur reaffirmed again that the internet is a key instrument in terms of receiving and disseminating information. The internet has a big potential, however, unfortunately, it was still only available for developed countries. Generally, in this report, the Special Rapporteur highlighted two main problems related

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17 *Ibid*., para. 55-58.

18 See E/CN.4/2001/64, para. 59-60, accessible at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G01/ 111/23/PDF/G0111123.pdf?OpenElement.

19 *Ibid*., para. 61-68.

to the internet, namely the tendency of digital divide, both due to infrastructure problems and restrictions and surveillance through the internet. The practice of surveillance has been specifically strengthened by the tragedy of September 11, 2011 in the United States of America.[20]

C. Points of emphasis

Since the beginning of the debates on the internet and human rights have been narrowed down to the issues of access gap and regulations made by some states to restrict or control the use of the internet. During the first period, in one of his reports, the UN Special Rapporteur argues that online-internet expressions must be guided by international standards and protected equally with the same protection given to conventional expressions-offline expressions. In the said context, the internet is regarded as an expanded medium of the enjoyment of the right to freedom of expression, opinion and to obtain information and, therefore,
It falls under the regulation on the guarantee of the freedom of expression. In general, the guarantee of freedom of expression is based on the provisions under Article 19 of the Universal Declaration of Human Rights:

> "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

The guarantee is reaffirmed by a legally binding covenant for the states ratifying it, as provided for in Article 19 of the International Covenant on Civil and Political Rights of 1966. The framework of the protection has three main elements, namely: (1) the freedom to hold opinions without interference; (2) the freedom to seek and receive information; and (3) the freedom to impart information. Article 19 of the Covenant on Civil and Political Rights (ICCPR) formulates the provision in detail and rigid as follows:

> 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all

[20] See E/CN.4/2002/75, para. 88-94, accessible at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G02/ 103/96/PDF/G0210396.pdf?OpenElement.

kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;
(b) For the protection of national security or of public order (ordre public), or of public health or morals.

In line with the said instrument, in its development, the internet became a new medium for the promotion and enjoyment of the right to freedom of expression. The internet gives a large room for various forms and actualization of expressions. In light of this situation, the General Comment No. 34 on the ICCPR regarding the freedom of expression firmly mentions the use of the internet as an integral part of the right to freedom of expression. In the paragraph 12 of the General Comment, it is mentioned that:

> "…protects all forms of expression and the means of their dissemination. Such forms include spoken, written and sign language and such non-verbal expression as images and objects of art. Means of expression include books, newspapers, pamphlets, posters, banners, dress and legal submissions. They include all forms of audio-visual as well as electronic and internet-based modes of expression…".[21]

The recognition of the special character of the role of the internet in the promotion of human rights is reaffirmed by putting the internet as an 'enabler' for the enjoyment of other human rights such as the right to education, and the economic, social, and cultural rights. However, recognition of the special character has not fully answered the question on whether or not a different pattern of regulation should be applied. Based on the special position and function.

Referring to Article 19 paragraph (3) of the ICCPR, limitations of the right to freedom of expression – including the internet, can only be done if it is provided by the law and

[21] See CCPR/C/GC/34, General comment No. 34, Article 19: Freedoms of opinion and expression. Accessible at http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf.

necessary for the protection of rights and reputation of others, as well as to protect national interest or public orders or public morals. However, the formulation of restriction itself is still general and allows a broad interpretation. Therefore, in the development, the conditions for restriction shall be elaborated in more detail as mentioned in the Siracusa and the Johannesburg Principles in the following table:

Conditions	Description
Provided by the law	- Based on laws - The implementation of the law shall be in line with the Covenant - The Covenant applies during the restriction
In a democratic society	States must prove that the restrictions do not disturb the function of a democratic society, a society that highly upholds human rights as provided for in the UDHR.
Public orders	- A set of norms guaranteeing the function of the society - A set of norms underlying the formation of a society - Shall be interpreted in the context of a particular human right - A state institution holding the authority to maintain public orders shall abide by controls from the parliament, courts, or other competent bodies.
Public health	- A threat against the health of a population or a member of a population - A measure to prevent illnesses or wounds or to provide health care for the sick or injured
Public morals	- Power to make discretions - Able to prove that the restriction is necessary for the respect of fundamental social values - Does not contradict non-discriminatory principles
National security	- Related to the existence of a nation, territorial and political integrity, or independence - Shall not be applied to a local threat or a relatively isolated threat against the law and order. - Shall not be used to justify oppression against opposition or resistance against state repression

Public safety	- A threat against safety, life, and physical integrity or serious damage of property - Shall not be applied to blurry and arbitrary restrictions - Shall only be applied on adequate protection and effective reparation mechanism
The rights and freedom of others	- Shall not be used to protect the state and state's officials from public criticisms and opinions - When a conflict occurs between rights, the fundamental and non-derogable right prevails.

At the national level, the said normative framework has been adopted into domestic law through the second amendment to the 1945 Constitution, particularly through the additional provisions to Article 28F, stating:

> "Every person shall have the right to communicate and to obtain information for the purpose of the development of his/her self and social environment, and shall have the right to seek, obtain, possess, store, process and convey information by employing all available types of channels."

Before it was reaffirmed as a part of a constitutional right, the recognition of the right to information as a human right had been provided for in Article 14 of the Law No. 39 of 1999 on Human Rights:

(1) Everyone has the right to communicate and obtain information they need to develop themselves as individuals and to develop their social environment.
(2) Everyone has the right to seek, obtain, own, store, process, and impart information using all available facilities.

The guarantee of protection was reaffirmed by the commitment from the Government of Indonesia to ratify the International Covenant on Civil and Political Rights as adopted through the Law No. 12 of 2005.

Furthermore, the recognition of the right to freedom of expression, which also contains the right to information, was strengthened along with several laws adopted later. For example, the Law No. 40 of 1999 on Press; the Law No. 32 of 2002 on Broadcasting, as well as the Law No. 14 of 2008 on Public Information. In the law on public information, particularly, in addition to strengthen the protection of right, the provisions also provide

a mechanism to claim the right, both through mediation and non-litigation adjudication processes that is final and binding by using the Public Information Commission.

Although the normative framework of the guarantee and protection of the right and freedom of expression can be regarded as a positive progress, however there were two basic weaknesses as a medium to implement the right to freedom of expression. *First*, the overall regulations on freedom of expression explicitly reaffirm the extension of the guarantee for the internet; *Second*, the policies that regulate the internet, in fact, potentially violate the implementation of the right to freedom of expression on the internet.

The law specifically regulating the internet, such as the Law No. 11 of 2008 on Information and Electronic Transaction (ITE) in fact has some characteristics that are not in line with the spirit of human rights protection.

Furthermore, an observation shows that the imposition of these regulations, in fact, has a potential to become a serious threat for the implementation of the right to freedom of expression. [22] The potential violation is sourced in the regulations on the authority to conduct tapping and its procedures, as well as the criminal sanctions imposed over the dissemination process of electronic information. [23] Moreover, a similar threat also came from some other laws such as the Law on the Freedom of Information, particularly through the regulation of the excluded type of information, reaffirmed by the formulation of information restriction related to intelligence secrets broadly formulated in the Law No. 17 of 2011 on State Intelligence.

Restrictions on the enjoyment of rights are generally based on the provisions under the 1945 Constitution, particularly Article 28 paragraph (2). The restrictions under the constitution have some fundamental differences compared to the internationally applicable standards for restriction. [24] According to this regulation, all types of rights are subject to restriction by the state with the following criteria, namely: (1) stipulated by a law; (2) to guarantee the recognition and respect of the rights and freedom of others;

[22] See Elsam's *Briefing Paper* No. 2/2010, *Pidana penghinaan adalah pembatasan kemerdekaan berpendapat yang inkonstitusional*. Available at http://elsam.or.id/?act=view&id=616&cat=c/401.

[23] See Indriaswati D.S, et al., *Hak Asasi Manusia dalam Pusaran Politik Transaksional: Penilaian terhadap Kebijakan HAM dalam Produk Legislasi dan Pengawasan DPR RI Periode 2004-2009*, (Jakarta: Elsam, 2011).

[24] The differences were based on the missing of the two categories of rights, namely derogable and non-derogable rights.

(3) to fulfill a just demand in a democratic society with regards to: morals, religious values, security, and public orders.

The said restrictions were obviously still generally formulated; therefore it is necessary to have a legislation that can provide more detailed explanations on the restrictions the scope of definition of each condition. Until now, the said provision has not existed, therefore the understanding and implementation of the article was fully based on the interpretation of the Constitutional Court, the institution holding the mandate to conduct a review of the constitutionality of a law.

In some of its rulings, the Constitutional Courts stated that, from the perspective of the original intent of the 1945 Constitution makers, all human rights enshrined in Chapter XA of the 1945 Constitution can be limited (Article 28 J of the 1945 Constitution) as a closing article of all provisions regulating human rights in the Chapter XA of the 1945 Constitution. Moreover, according to the Constitutional Court, based on systematic interpretation, provisions on human rights under Article 28A to 28I of the 1945 Constitution shall be subject to limitations provided for in Article 28J of the 1945 Constitution. [25]

In addition to that, in further development, some legislations adopted later were even more controversial and resisted by the public because the formulation and the conditions to limit the freedom to expression were not fully based on the human rights understanding and standard as mentioned above.

Some laws use the limitation basses that are not in line with the constitution and the ICCPR. The Law No. 39 of 1999 on Human Rights, for instance, adds the clauses of 'morality', and 'state interests' as the basses to impose restrictions. While the Law on Public Information uses 'decency and public interest' as the bases. While the Law on Information and Electronic Transaction uses the bases provided under the Covenant and includes a clause on morality as used in the Law on Pornography. The restrictions have direct implications on the formulation of the norms in the laws, for instance, the blurry and multi-interpreted restriction on freedom of expression in the definition of pornography, the broad implementation of information classified as intelligence secrets, excessive sanction against the act imparting, receiving and downloading electronic

[25] For further information see Ruling No. 132/PUU-VII/2009, pp. 31. The opinion was reaffirmed by the Constitutional Court in the Rulling No. 45/PUU-VIII/2010.

information, as well as the heavy sanction for defamation that is even more than what it is provided under the Criminal Code.

The development of the internet also has an important impact in the discussion about the right to privacy. The internet facilitates direct interaction process (real time) and expands the speed of information dissemination. However, the said development created another impact related to the protection of privacy. In various countries, the issue related to privacy and regulations on privacy have been developed as an integral part of the social development of the society. Therefore, it is reasonable that, in some democratic countries, positive laws and jurisprudences regarding privacy have existed long before privacy was made an integral part of the human rights law regime. [26] This might explain why there was almost no specific reference in various UN documents on the scope of definition of the privacy concept.

Westin (1967) simply defines the right to privacy as an individual, group, or organizational claim to determine when, how, and to what extent can information about them be communicated to other people. The broad scope of privacy usually created many regulations on privacy in a country, both in terms of type and level. [27] Another definition and scope of privacy concept which is often made as a reference is the formulation made developed by William Posser, by referring to at least four things: [28]

(a) Disruption of one's action to isolate him/herself, or disruption of his/her personal relationships
(b) Public disclosure of humiliating personal facts
(c) Exposure that leads to misconception of a person in public
(d) Arbitrary possession of one's similarity for personal gain of another person.

In the development of the international human rights law, the protection of the right to privacy is provided in Article 12 of the Universal Declaration of Human Rights, reaffirming:

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[26] On the development of the idea of privacy, see Harry Henderson, *Privacy in the information Age, Revised Edition*, (New York: Facts On File, Inc, 2006), pp. 6-16.

[27] A. F. Westin, *Privacy and Freedom* (New York: Atheneum, 1967), pp. 7-8.

[28] William Posser, as cited in DeCew, Judith, "Privacy", The Stanford Encyclopedia of Philosophy (Fall 2012 Ed.), Edward N Zalta (ed). Available at http://plato.stanford.edu/archives/fall2012/entries/privacy/

> No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

In a shorter and more straightforward formulation, protection on the right to privacy is reaffirmed in the International Covenant on Civil and Political Right, particularly in Article 17:

> (1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honor and reputation.
> (2) Everyone has the right to the protection of the law against such interference or attacks.

In the context of Indonesian law, protection on the right to privacy is recognized as a constitutional right of the people, as reaffirmed in the 1945 Constitution, after amendment. Article 28G mentions:

> "Every person shall have the right to protection of his/herself,[29] family, honor, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right."

Moreover, similar guarantee is also formulated in a slightly different manner in the Law No. 39 of 1999 on Human Rights, particularly in the following articles:

Article 29 paragraph (1)	Everyone has the right to protection of the individual, his family, opinion, honor, dignity, and rights.
Article 30	Everyone has the right to security and protection against the threat of fear from any act or omission.
Article 31 paragraph (1) Article 31 paragraph (2)	No one shall be subject to arbitrary interference with his home or to set foot in or enter the enclosure of a house or enter a house without the permission of the person who lives there, except for reasons provided for under prevailing legislation.
Article 32	No one shall be subject to arbitrary interference with his

[29] The Article referred to is the same article with the one in the UDHR, in this context, the term 'privacy' is translated into 'self'.

	correspondence, including electronic communications, except upon the order of a court or other legitimate authority according to prevailing legislation.

Furthermore, in the explanation of Article 31, it is clearly elaborated that the definition of 'shall not be interfered' refers to private lives (privacy) in one's residence. The explanation reaffirms private residences as a protected area as a part of privacy. However, there is no further reference to determine whether a private residence refers to a domicile or whether it includes a more factual definition referring to a place where an individual is resided.

Moreover, in the General Comment to Article 17, The UN Committee on Civil and Political Rights as formulated in the General Comment No. 16, reaffirming the relative character of the protection of the right to privacy which very much depends on the social context of the society. This document gives more detailed limitations on the definition of 'arbitrary interference' or 'unlawful interference' against privacy. The said definition includes the elements of: interference of privacy shall only be done in cases determined by the law; interference determined by the law shall fulfill the following conditions: (a) shall be in compliance with/do not contradict the provisions and objectives of the Covenant, (b) shall be logical in a particular context, (c) shall describe special conditions justifying the interference of privacy in a detailed manner, (d) shall only be done by the authority appointed by the law, (e) shall only be done on case-by-case basis. [30]

The said guideline also reaffirms the prohibition of unlawful obtainment or possession of personal data by another party, both public authority and private sectors. Personal data include bank data or other data in other wears. In this context, every individual has the right to know and obtain certainty about the personal data automatically stored in a data file, the purpose of the obtainment of the data by the agency/institution holding the authority over their personal data. Therefore, every individual has the right to ask for reparation or deletion of their personal data if the data was wrong or the collection process is unlawful. The standard of protection for personal data has been developed into a regional human rights mechanism. The European human rights mechanism, for

[30] See CCPR/C/GC/16, General comment No. 16, Article 17: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation, available at: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/23378a8724595410c12563ed004aeecd?Opendocument.

instance, has started to develop a set of protection through the adoption of the European Council Convention in 1981. [31] The adoption was strengthened by the ruling of various jurisprudences by the European Human Rights Court. [32] A similar development also takes place in the American human rights mechanism.

In the context of Indonesia, a threat against the protection of the right to privacy emerged after the adoption of several laws justifying interference of privacy, particularly in relation to tapping and surveillance of personal data. The development of policy in the security sector has been one of the biggest threats, both in relation to the security sector reform such as the State Intelligence Law and other policies related to counter terrorism. As an example, in relation to tapping, there are at least 16 legal provisions justifying tapping, 12 provisions among them are in form of laws, namely, among others, the Law on counter terrorism, the Law on the eradication of corruption, the law on narcotics, and the Law on State Intelligence.

Some basic weaknesses in the tapping practice are the absence of a uniformed standard and regulation of terms of conditions for tapping, as well as the absence of a reparation mechanism for those who become victims of tapping. [33] Moreover, the tapping process justified in various legal provisions was not equipped by a control mechanism for the authority holding the power to tap. [34]

In addition to tapping, some problems related to the protection of privacy (personal life) occurred in the policy justifying digital private data collection, such as retina photos and digital finger print in the making of immigration document, as well as electronic identity card. The collection of digital personal data has created concerns regarding human rights violation, considering that there has not been any legislation that allows and guarantees protection against abuses, data storing mechanism, data retention policy and reparation mechanism related to the possibility of violation against the protection of

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[31] See Article 8 of the Council of Europe Convention 1981.

[32] Furthermore see, European Court of Human Rights, 2011, Internet: case law of the European Court of Human Rights, including analysis on all cases related to the internet and the freedom of expression as well as the protection of privacy until mid 2011.

[33] Wahyudi Djafar, Protecting privacy rights from wiretapping, The Jakarta Post, 21 February 2013.

[34] As an example, some years ago, some a document allegedly collected by illegal taping against the people of Papua was disclosed. The document of 500 pages consists of reports on surveillance of activists, religious leaders and the people of Papua since 2006-2009, the document belonged to the Kopassus. The leaked information was condemned by human rights organizations nationally and internationally. See http://wikileaks-press.org/human-rights-watch-indonesia-military-documents-reveal-unlawful-spying-in-papua/.

personal data. Provisions on personal data protection were only limitedly provided for in Article 26 of the Law No. 11 of 2008 on Information and Electronic Transaction Law.

D. Internet governance and human rights

Discussing about internet governance is discussing about a big, complex and ambiguous topic. [35] However, the idea of internet governance is not a new thing. The discussion and the early development of internet governance can be traced back to the seventies. The issue of internet governance was initiated by the United States government in the development of a research project for defense purposes, known as the Defense Advanced Research Project Agency Network (DARPANet). This project found the so-called Transmission Control Protocol/Internet Protocol (TCP/IP), which later produced the idea of governance. [36]

As mentioned above, the internet governance project was an ambitious project, referring to Solum (2009), there were some models of internet governance, including: [37]

(a) The virtual world and spontaneous order models based on the idea that the internet is a world with its own government that emphasizes individual freedom, and outside the government control.

(b) The transnational and international organization models based on the idea that the internet governance surpasses national borders and, therefore, the most appropriate institutions are transnational quasi-private cooperation or international organizations, the regulations are based on the agreement between national governments.

(c) Code and internet architecture models based on the idea that regulations made by communication protocol and other software determining how the internet operates.

(d) National government and legal models based on the idea that the internet shall be based by a decision or regulation made by national government through a law.

(e) Market and economic regulations model assuming that market power encourages basic decision on the nature of the internet.

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[35] Lawrence B. Solum Models of Internet Governance, in Lee A. Bygrave and Jon Bing, *Internet Governance Infrastructure and Institutions*, (Oxford: Oxford University Press, 2009), p. 48.

[36] When we discuss about internet regulations, we know some institutions that can function to regulate technical infrastructures and internet architecture, such as the Internet Engineering Task Force (IETF) and the Internet Corporation for Assigned Names and Numbers (ICANN).

[37] Lawrence B. Solum, *Models of ... Op. Cit*, pp. 56-57.

The idea of these regulation models has been developing and officially made as a diplomatic agenda between states since the beginning of 2003 in the World Summit on the Information Society (WSIS) in Geneva. The agreed action plan was followed up by the establishment of The Working Group on Internet Governance (WGIG), which was later recommended to be brought to the World Summit on the Information Society (WSIS) in 2005, in Tunisia. [38]

In the proposal of the WSIS meeting in Tunisia, the WGIG proposed a definition about internet governance for the first time. According to the proposal, the definition of internet governance is, "*the development and application by governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programs that shape the evolution and use of the internet*" [39]. The definition was then adopted in the WSIS meeting in 2005.

The WSIS meeting in 2005 also received attention from the UN Special Rapporteur on Freedom of Opinion and Expression, Ambeyi Lagabo. According to him, the internet is a unique place to open up all nations to increase information, opinion and ideas exchange. Moreover, he also argues that the amount of available resources in the internet will contribute to the economic, social and cultural advancements, particularly in developing countries. Therefore, he argues, it is necessary to establish cooperation between private sector-that has an important role in the promotion of technology, and the UN and the civil society. This cooperation is important to ensure that human rights are the most fundamental component and that it is inevitable in the future of the internet governance. [40]

Another issue that also received the attention was the one related to the need of having a special unit in every country to handle cyber crimes. The unit is important in terms of preventing and minimizing negative risks of the internet, such as child pornography and incitements, by using legal instruments, without restricting the freedom of opinion and expression. [41] In a report in 2007, the Special Rapporteur reiterated his concern regarding the restriction of the freedom of expression in the internet that was massively

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[38] See, Jovan Kurbalija, *An Introduction to Internet Governance, 4th edition*, (Geneva: Diplo Foundation, 2010), pp 8-15.

[39] See John Mathiason, *Internet Governance The New Frontier of Global Institutions*, (London: Routledge, 2009), p. 18.

[40] See E/CN.4/2006/55, para. 37, available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/100/26/PDF/G0610026.pdf?OpenElement.

[41] *Ibid*., para. 38.

done by some countries. The Report of the Special Rapporteur states that some countries, in collaboration with private sector, monitored some websites to identify and cease various forms of opposition and criticisms. As a result, some people were arrested for expressing their personal opinions through emails or particular websites. [42]

As previously described, during the WSIS meeting in 2005, a recommendation about the urgency of the establishment of an intergovernmental body that can regulate and develop the traffic and the use of the internet. This intergovernmental body is expected to be able to regulate globally for non-profit purposes for the development of the use of the internet and other technological information for education, dissemination of information and distribution of knowledge.[43]

According to the Special Rapporteur, the establishment of the said body to regulate the internet with human rights approach must be made a priority by the UN and the international community. A global regulation to ensure a sustainable development of the internet a media for democratic expression is very important for the international community. It shall also include the efforts to promote and protect human rights. [44]

The Special Rapporteur also warned that internet governance shall guarantee the digital world where profit oriented private sectors can live side by side with social and cultural projects. [45] Various internet problems, such as child pornography and intervention against privacy, can only be overcome with a serious and focused discussion in the governance forum. [46] Including determine what kind of intervention shall be made to ensure necessary financial supports for developing countries to expand the access to the internet.[47]

An experiment of a standard form of a multi-parties, multi-states internet governance was started in these forums, through the Internet Governance Forum (IGF). This annual multi-parties forum aims at discussing various issues regarding internet governance. The content and scope regarding to the internet develop from time to time, for instance,

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[42] See A/HRC/4/27, para. 39, available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/101/81/PDF/G0710181.pdf?OpenElement.
[43] See E/CN.4/2006/55, para. 36.
[44] See A/HRC/4/27, para. 38.
[45] See A/HRC/4/27, para. 41.
[46] See A/HRC/7/14 30, accessible at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/112/10/PDF/ G0811210.pdf?OpenElement.
[47] See A/HRC/4/27, para. 43.

issues related to the internet resources technical development, network neutrality, digital divide, privacy, and data protection.

The discussion about the internet governance has been proposed since the beginning as a discussion in the field of technical regulation in the information technology sector. The minimum discussion about human rights aspects in the development of the governance concept was addressed in the report of the Special Rapporteur in 2006, which, among other things, due to the International Telecommunication Union (ITU), as an organizer, did not provide sufficient conducive atmosphere in discussing about human rights in all of the meeting agendas. On the other hand, the idea and discussion about the urgency of a right-based approach, instead, emerged in almost all parallel activities organized by civil society along with the said inter governments meeting.[48]

However, the experimental drafting of standards and regulations through an international multi parties like the IGF opens a room for human rights discussion in the development of the governance concept applicable internationally along with the increase active roles of the civil society in the process and the meeting. The forum received supports from the UN through the General Assembly in 2010 to extend the IGF mandate for five years and emphasize some improvements in the dialogue process through that forum. [49] The improvements include, among others, more participation from developing countries both from the government and other stakeholders.

The development also shows that the idea of governance was still far from ending, and would still continue, at least until 2015 when an evaluation regarding IGF's achievements will be conducted. In this context, the urgency to continuously sharpen inputs, to respond to the implications of technological advancements, particularly the internet to human rights and the correlation between the internet and human rights are important agendas. When it was first debated in the governance forum, there were at least three issues in the human rights and the internet field, namely: the issue of privacy, the issue of content, and the issue of freedom of expression.[50] Furthermore, some human rights issues related to the internet governance, at least, consist the following things:

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[48] See E/CN.4/2006/55, para. 30-34.

[49] See A/RES/65/141, accessible at http://unpan1.un.org/intradoc/groups/public/documents/un/unpan045268.pdf

[50] See John Mathiason, *Internet Governance … Op.Cit.*, p. 20.

Blocking and filtering policies

Currently, blocking and filtering are often practiced to close down users' access to the available contents in the internet. Some grounds generally used to justify blocking and filtering are, among others, related to the control over political expression, both from the citizens and as an effort to prevent outside influence to domestic political practices in a country. Moreover, blocking is often based on the ground related to the prevention of pornography, as well as public morals. Blocking and filtering are conducted in various ways, including the prevention of users to access some particular web pages, internet protocol (IP) blocking, domain name existence, and the closing down of a web page from the server page where it is hosted. In addition to that, access prevention is also conducted by applying a filtering system to block or dispose a webpage involving a certain keywords.

The above-mentioned cases regarding these practices are varied, there were cases where the government blocked web pages and providers, such as in the blocking of YouTube and filtering of search engine in China. In some cases, the practices sometimes involved intermediaries, when providers are 'forced' to conduct blocking or filtering against their users. The filtering and blocking patterns were also applied in Indonesia, the order came from the Ministry of Communication and Informatics to internet service providers (ISP). As one example is the case of RIM in Indonesia that was required to conduct blocking as one of the conditions to operate in Indonesia. [51]

The government, through the Ministry of Communication and Informatics also launched the Trust Positive (Trust+) program to filter any contents allegedly involve pornography. According to the Ministry of Communication and Informatics, the program aims to provide protection for the people from ethics, morals and values that are not in line with the image of Indonesian people. The program sets up a database consisting of Negative Lists of some particular web pages that are perceived of consisting pornography or not in line with the national ethics and morals (blacklist). In addition to search and make analysis, the web pages were also collected from report from the people. The list of the web pages was then distributed to providers to be blocked. The

[51] See "BlackBerry Diblokir di Indonesia? Bukan Tidak Mungkin", available at http://inet.detik.com/read/ 2010/08/02/150658/1411828/317/blackberry-diblokir-di-indonesia-bukan-tidak-mungkin/?topnews.

program has also gradually checked the progress of all closed down sites, whether there are changes in the contents or not. [52]

Filtering is also conducted by using third party's services, through a DNS (domain name service) based filtering. This practice of filtering is known as Nawala Project, initiated by AWARI (Internet Cafes Association). The project offers DNS Nawala, which can be used by users or internet service providers.

DNS Nawala blocked all sites considered to involve negative contents and which are not in line with Indonesian norms of decency, particularly pornography or gambling. Controversies against the imposition of DNS Nawala are sourced on the point of where filtering should be done, some support a filtering model with the agreement from end users, therefore, this practice forces filtering at the service provider level. [53]

In the filtering practice, both through the Trust+ or DNS Nawala program, we often see controversies triggered by mistakes in conducting filtering/blocking. The mistakes occurred due to the filtering process that was based on keywords perceived as parts of pornography or other negative contents. In the context of Indonesia, this is worsened by the poor quality of the formulation of pornography in the multi-interpreted law on pornography which opens for multi interpretations. [54] In Indonesia, particularly, another problem occurred in the blocking and filtering processes is the lack of provisions that regulate the mechanism and procedures of blocking/filtering of contents in a detailed manner. Indonesia has not also had an independent special body holding a mandate to conduct blocking and filtering of internet contents. The UN Special Rapporteur of Freedom of Opinion and Expression, Frank La Rue argued that blocking can be justified because the national law is strong enough to regulate as well as provide effective protection against abuses or arbitrary blocking, including review and judicial review by independent judiciary or any impartial and independent bodies. [55]

While in Indonesia, Article 18 point a of the Law No. 44 of 2008 on Pornography only mentions that in order to prevent the spread of pornography, the government can cut

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52 See http://trustpositif.kominfo.go.id/.

53 See http://www.nawala.org/.

54 See "Salah Blokir Karena Kominfo Terlalu Bersemangat", available at http://inet.detik.com/read/2010/08/ 11/163754/1418467/398/salah-blokir-karena-kominfo-terlalu-bersemangat?topnews.

55 See A/HRC/17/27, available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf.

off the networks of those who produce and distribute products of pornography trough the internet. This provision does not provide more on who holds the authority to conduct internet blocking as well as the blocking procedures to confirm due process of law, as suggested by the Special Rapporteur.

The application of criminal sanctions against internet users

One of controls against internet users that often creates conflicts with the enjoyment of the right to freedom of expression is the application of ciminal sanctions against presented, distributed and accessed (received) contents. In the context of Indonesia, this has been made possible with the regulation in Article 27 of the Law No. 11 of 2008 regarding Information and Electronic Transaction (ITE). The said provision provides limitations for information- prohibited deed, including information involving: (a) violation of norms of decency (paragraph 1), (b) gambling (paragraph 2), (c) insult and defamation (paragraph 3), as well as (d) extortion/threat (paragraph 4). This important issue includes the formulation and limitation of forbidden information because the formulations have a very general meaning and are relative in nature because they are closely related to a particular social and cultural context.

In practice, the application of the criminal sanctions, especially based on the use of the information and electronic transactions law combined with the Criminal Code, [56] has claimed some victims. There are some possibilities of increase in this practice in Indonesia in the future. Some prominent cases are, among others, the case of Prita Muyasari (2009), the case of Diki Candra in Tanggerang (2011), the case of Musni Umar (2012), and the case of Ade Armando (2013). All were facing criminal sanctions, particularly in relation with defamation due to the information written in the internet. Another case related to the spread of hate, punishable according to Article 28 (2) of the Law on Information and Electronic Transaction and the application of the Criminal Code. [57] It occurred in the case of Alexander An in West Sumatera who was sentenced to two years imprisonment and fined 10 million rupiah for writing some information on a Facebook group where he joined in, and the contents were considered to have spread hates against the majority religion. [58] A similar case also faced by Sebastian Joe in

[56] Particularly the provision in Articles 207, 208, 310 paragraph (1), 310 paragraph (2), 311 paragraph (1), Article 315 on minor insult, and Article 316 on additional punishment for any insults against a public official.

[57] Particularly in Article 156.

[58] See Wahyudi Djafar and Roichatul Aswidah, *Intimidasi dan Kebebasan: Ragam, Corak dan Masalah Kebebasan Berekspresi di Lima Propinsi*, (Jakarta: Elsam, 2013), pp. 111-112.

Ciamis, who was sentenced to four years of imprisonment for writing a status on his Facebook account considered as an act of religious blasphemy. [59]

An action against the use of criminal sanction was done by filing a request for judicial review against Article 27 paragraph (3) of the Law on Information and Electronic Transaction to the Constitutional Court. The request for judicial review was filled by some bloggers and civil society organizations. Unfortunately, the Constitutional Court refused to rule that the provision is unconstitutional and not binding. In the consideration, the Constitutional Court mentions that the provision about (offline) insult in the Criminal Code does not cover insult and defamation in the virtual world (online). The Constitutional Court argues that the elements in the provision in the Criminal Code are impossible to be used for online insults. [60]

Aside from the use of criminal instruments for domestic internet users, there was also the application of national legal liability for internet users overseas. This other form of limitation started to draw attention from the international community and the internet users. In this practice, a country applies its national standard upon any individual expression his/her ideas and opinions in the internet. This practice is usually known as "libel tourism" where any party objected to any content of information presented in the internet can make a legal suit anywhere. For instance, there is still an ongoing law suit against an Australian news agency, the Sydney Morning Herald, due to a news regarding Indonesia, particularly on the ruling president, from the wikileaks, sometime ago. [61]

The enforcement of legal liabilities on intermediaries

As described in the report of the UN Special Rapporteur on Freedom of Opinion and Expression, Frank La Rue, intermediaries hold significant roles in guaranteeing individual access to the internet. Therefore, supervision for and application of criminal/legal sanctions against intermediary service providers (private sector) for any failure to prevent any illegal access is considered as a serious threat against the enjoyment of right. In this context, intermediaries include internet service providers,

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[59] See Ciamis Distric Court's Rolling Number 278/PID.B/2012/PN.CMS of 2012, available at: http://putusan.mahkamahagung.go.id/putusan/5b65915958f4f77947a681c1080a283e.

[60] See Elsam's research report, "*Dua Kebebasan Dasar di Indonesia dalam Putusan MK: Studi Putusan MK Terkait Kebebasan Beragama atau Berkeyakinan dan Kebebasan Berekspresi, 2010*", unpublished.

[61] See "Gugatan terhadap media Australia terkait Wikileaks berlarut-larut", available at http://nasional.kontan.co.id/news/gugatan-terhadap-media-australia-terkait-wikileaks-berlarut-larut-1.

telecommunication service providers, website domain providers, online service providers, such as blogs, emails, and social media. [62]

The protection of the right to privacy, including personal data

One of the important things in the development of the internet is the more open individual information digitally. The changes in information system also affected data collection model for public purposes, in terms of medical, civil data, or any other personal information related to third parties, such as banks and telecommunication.

This situation posed another threat to the protection of the right to privacy, including the right to the protection of personal data, as previously mentioned. The absence of legislation also enables the ongoing practice of personal data trading for business purposes, such as in various cases of financial products promotions such as insurance and credit cards, the sms-buzz practice; when someone receives a text message from an unknown number about promotion of a certain products. By far, these cases must be regarded as a disturbance that has not been stopped due to the minimum set of regulations for enforcement.

In this category, another practice conducted is the collection of personal information for consumer behaviour observation by collecting data from internet service providers. One of the important issues in this category is the absence of any regulation regarding data retention applied by the parties that contain and keep personal data.

Discriminatory circuit (*net-neutrality*)

Since the beginning, the internet circulation is developed by non-discriminatory principle. The application of this principle means that every content and application can be transmitted without having the approval from network operators. By applying this principle, every individual with access to the internet can contribute and make innovations. However, along with the development of the use of the internet and the access to the internet, the development of network technology enables operators to choose the contents to be transmitted. Moreover, the development of the internet users also affected the density of information traffics affecting the network performance.

[62] See A/HRC/17/27, para. 38-48.

This development encouraged some parties, particularly network operator service providers to urge the need to apply a different treatment towards information traffic transmitted through network. If the tendency is allowed, it would pose another threat against the access to the internet, because there might be a preference to give network priority and transmission traffic to provitable business contents or contents that do not damage the network operator service provider. In the long run, this approach also allows dominance of one party over another party in using the access to the internet.

Digital gap (Digital divide)

Another important issue related to information and communication technology development including the internet access. Although there have been a high number of internet users so far, if we observe them, there are two gaps in terms access. First is the geographical based gap between countries; the proportion of internet users in developed countries have reached 74% while in developing countries, internet access are only enjoyed by 26% of the population. [63]

Second, access gap in a certain country; the proportion of internet beneficiaries is concentrated in a certain areas. This access gap is due to several aspects, including pricing policy that does not allow te poor to access the internet, and infrastructural gap that allows each person to have equal access to the internet. In this context, there is a State's positive obligation principle to ensure the provision of adequate infrastructures. [64] Besides the infrastructure element, another thing causing access gap is geo-political factor hampering access expansion. [65]

E. Conclusion and recommendations

Some previously described explanations give a fundamental picture of aspects related to the development of internet governance and the implication and its relation with human rights. Issues and cases described show that the making process of human rights standards through the formulation of a good internet governance system is still a long way to go.

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[63] See A/RES/66/184, p. 2, availablet at http://www.itu.int/wsis/review/inc/docs/S12-WSIS20-C-0006!!PDF-E.pdf

[64] In the context of Indonesia, this principle cannot be applied by putting the burden to provide the infrastructures to service providers. As a result, there are gaps among areas that are not potential market and these areas will remain underdeveloped.

[65] See A/HRC/4/27, para. 43.

Some old provisions that potentially impede the freedom of expression is till also used in public regulations, the internet is regarded as an existence of the application of the regulations, including the use of criminal sanctions and defamation offense. Moreover, the problems clearly indicate the absence of a clear position and standard applied and used by the government in developing policies regarding the internet governance, besides facilitating stakeholders in the use of the internet itself. Therefore, the following recommendations can be used to develop a right-based internet governance, including:

1. It is necessary to have broad discussions involving public participation and internet users in the policy making process related to internet governance. The internet development covers various many issues and therefore it is necessary to consolidate to map out the problems constructively.
2. All this time, the internet and internet development have not been included in the working agendas of various government institutions other than the Ministry of Communication and Informatics. Therefore, a more constructive coordination forum to ensure the related government institutions to understand their functions and roles is an important element that must be started, so that the discussion and development of governance do not concentrate only in one agency and one government institution only.
3. The need to conduct evaluation on applicable policies which, in fact, posing threats towards human rights, particularly through the internet.
4. The use of human rights standards in forming policies as a response to various problems related to the internet governance. In this context, the government has a positive obligation to implement human rights that must be considered in forming responses to related problems, for instance, problems related to access gap, filtering and blocking of contents, as well as discrimination against network traffics.

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In the context of human rights promotion, the high number of internet users has certainly created a lot of opportunities. According to the statement made by Frank La Rue, the UN Special Rapporteur on Freedom of Opinion and Expression, the internet has become a highly necessary tool to fulfill various human rights, to combat injustice, and to accelerate development and human advancement. Therefore, ensuring a universal internet access shall be a priority for all states. This was reconfirmed by the UN Human Rights Council resolution in June 2012 regarding *The promotion, protection and enjoyment of human rights on the Internet*, that puts the access to the internet as a part of human rights.

The role of the internet in the enjoyment of human rights has begun to gain attention in human rights discourse at the UN body in the mid of nineties along with the issuance of a resolution of the UN Human Rights Commission – now is the UN Human Rights Council No. 27/1997 that ordered the UN Special Rapporteur on Freedom of Opinion and Expression to include and consider all aspects arising from the emergence of the new information technologies to the equality and opportunities in accessing information and the enjoyment of the right to freedom of expression, as provided for in the ICCPR.

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