DEFENDING FREEDOM
OF EXPRESSION AND INFORMATION

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ARTICLE 19

Navigating Indonesia's Information Highway

March 2013

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ISBN: 978-1-906586-42-3

Executive summary

In this report, ARTICLE 19 and ICT Watch explore the key trends and challenges in Indonesia regarding the right to freedom of expression – the right to seek, receive and impart information and ideas of all kinds - on the Internet. The report suggests ways in which these challenges can be addressed in line with international standards of freedom of expression.

It also aims to support and stimulate debate in Indonesia about Internet freedom and to contribute to the development of a comprehensive strategy on this issue.

Following the end of the repressive Suharto era in 1998, Indonesia has made significant progress in advancing freedom of expression and freedom of information. The Reformation, as the transitional period following Suharto's rule has come to be known, opened the door to increased press freedom and paved the way for Indonesia to become what it is today - a country with one of the largest online populations in the world.

Indonesia has been at the forefront of information and communication technology (ICT) debates regionally and internationally. With the largest economy in Southeast Asia, Indonesia's approach to ICT freedom will not only have a great impact on the realisation of domestic rights but will also have a significant influence on the trajectory of ICT development in other countries within Southeast Asia.

The report observes that the rise of the use of the Internet and of mobile telephony in Indonesia has been mirrored by increased attempts by the authorities to crack down on ICT freedom. As conservative political parties have gained greater political power in recent years, their representatives in parliament have introduced tougher measures to regulate the media and the Internet in the name of upholding morality.

At present, the most significant threat to freedom of expression online in Indonesia comes from the implementation of Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law), which has become the main instrument for the regulation of online content. It is the first law to regulate cyber activity in Indonesia and is often used, in conjunction with the Indonesian Penal Code, against individuals who voice critical opinions on the Internet.

Further threats to ICT freedom come from laws aimed at protecting public morals. Multiple laws, including the ITE Law and Law No. 44 of 2008 on Pornography, prohibit the dissemination of content containing "pornographic" elements. Following a sex-tape scandal regarding a famous Indonesian pop singer in 2010, the Ministry of Communication and Information Technology has increased efforts to block access to pornography websites. Its blocking campaigns originally took place before Ramadan; however, longer-term efforts to filter out websites with prohibited content have been initiated and promoted.

The report also highlights the use of other laws, such as those on defamation or blasphemy, in targeting online speech. For example, one of the most prominent online defamation cases has been the prosecution of a Jakarta-based housewife and mother, who criticised hospital services using her personal email account. Blasphemy legislation was used against a Facebook user who was charged for "defaming Islam and insulting the Prophet Muhammad" via a group dedicated to atheism on the social media website.

Although there is no mandatory filtering of the Internet in Indonesia, state and private online filtering programmes have been set up and the Government has given ISPs and other Internet companies strong encouragement to use these services. Intermediaries, such as Google, have been asked by government agencies to remove content deemed 'inappropriate' and 'offensive'; and blogging and online video companies, such as Wordpress and YouTube, have also been known to remove content the government considers inappropriate.

The censorship of information and opinions on the Internet is not limited to existing laws. The Indonesian government has also put forward several new draft laws which, if approved, would have a strong impact on freedom of expression online. In particular, there are concerns that the draft Cybercrime Bill and the draft Telematics Convergence Law will be used to bring any online content and information produced by the public under even stricter government control.

The meaningful exercise of the right to freedom of expression requires access to the Internet, sufficient bandwidth and appropriate IT skills. This report also, therefore, discusses Indonesian policies on Internet access, broadband and digital inclusion.

Summary of recommendations

- The ITE Law should be amended to comply with international freedom of expression standards;
- All content regulations, including those on pornography, hate speech and defamation, should be reviewed for compliance with international freedom of expression standards. In particular, Indonesia should decriminalise defamation and revise prohibitions of incitement to hatred;
- The Government should repeal all blasphemy and defamation of religions provisions in their entirety;
- The Government should drop criminal charges against online users who are being prosecuted under restrictive and overly broad laws, in particular those on defamation and pornography;
- The draft Cybercrime Bill and draft Telematics Convergence Law should be made publicly available to allow stakeholders to contribute to the drafting and commenting process before the bills are discussed in Parliament. Both drafts should be reviewed for their compliance with international freedom of expression standards and any provisions that violate these standards should be removed;
- Bloggers and citizen journalists should continue not to be specifically regulated;
- Bloggers and citizen journalists should benefit from protection of sources;
- The Government should address the structural challenges of digital inclusion policies;
- The Government should sustain efforts to ensure universal broadband service throughout the country, including remote areas.

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Acknowledgements

ARTICLE 19 is an international human rights organisation, founded in 1986, which defends and promotes freedom of expression and freedom of information worldwide. It takes its mandate from the Universal Declaration of Human Rights, which guarantees the rights to freedom of expression and freedom of information. An increasingly important means to express oneself and to seek, receive and impart information is through information and communication technologies such as the Internet. ARTICLE 19 has therefore been promoting Internet freedom for over ten years and is active in developments in policy and practice around freedom of expression and the Internet through our network of partners, associates and expert contacts. We have also analysed various Internet related laws, such as those in Brazil, Bolivia, Venezuela, Iran and Pakistan.

In addition, ARTICLE 19 has extensive experience of working on freedom of expression issues in Indonesia. For example, our shadow reports to the Universal Periodic Review on Indonesia in 2007 and 2011 highlighted concerns about freedom of expression and freedom of information in the country. In 2011 ARTICLE 19 also published a baseline assessment of access to information in East Nusa Tenggara, Indonesia. In May 2012, we provided a brief to the Constitutional Court of Indonesia, calling on the court to remove provisions in the Law on State Intelligence that violate international freedom of expression standards.

For more information about the work of ARTICLE 19 in Indonesia, please contact Judy Taing, Asia Programme Officer, at judy@article19.org. For further information about the legal content of this report please contact Gabrielle Guillemin, ICT Legal officer, at gabrielle@article19.org.

This report was written with the assistance of ICT Watch, a non-profit civil society institution legally established in 2002 in Jakarta, Indonesia. ICT Watch focuses on new media publications, research and social campaigning activities relating to the implementation and promotion of ICT freedom within Indonesia.

The report is published with the support of the Adessium Foundation of The Netherlands, as part of their assistance in ARTICLE 19's work on freedom of expression and Internet communications technologies in Brazil, Indonesia and Tunisia.

Introduction

Since the end of the repressive Suharto era in 1998, Indonesia has made significant progress in advancing protections for the rights to freedom of expression and freedom of information. In 1999, Indonesia held its first free parliamentary election, and its first direct presidential election took place in 2004. The Reformation, as the transitional period following Suharto's rule has come to be known, opened the doors to increased press freedom and paved the way for Indonesia to become what it is today - a country with one of the largest online populations in the world.

Indonesia has been at the forefront of the debates on information and communication technology (ICT) regionally and internationally. With the largest economy in Southeast Asia, Indonesia's approach to ICT freedom will not only have a great impact on the realisation of domestic rights but will also have a significant influence on the trajectory of ICT development in other countries within Southeast Asia.

The rise of the use of the Internet and mobile telephony in Indonesia has been mirrored by increased attempts by the authorities to crack down on ICT freedom. As conservative political parties have gained greater political power in recent years, their representatives in the parliament have introduced tougher measures to regulate the media and the Internet in the name of upholding morality.

Another key factor affecting regulation of the Internet in Indonesia is religion. The dominant faith is Islam, with more than 85% of the country's population following the Islamic faith.[1] With a population of over 242 million people,[2] Indonesia has more Muslim adherents than the entire Arab world.[3] The prevalence of conservative Islam extends from the social arena into politics, leading to strict legislation governing speech. The passing of controversial laws, such as Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law), and the demand for Blackberry and Internet Service Providers (ISPs) to filter out pornographic content are signs of a populist response to increasing pressure from conservative groups, and show little regard for the likely impact on the rights to freedom of expression and freedom of information. Indonesia is, therefore, an interesting arena: its strong civil society is fighting these recent developments but needs greater international support to be more effective.

This report explores the key trends and challenges regarding the right of all Indonesians to seek, receive and impart information and ideas of all kinds through the Internet. It is grounded in the principle that universal human rights, including the fundamental freedoms of expression, assembly and association, extend to the digital sphere, as has been confirmed by international law.

The report aims to support and stimulate debate on Internet freedom in Indonesia, examining what is needed to establish an environment conducive to freedom of expression both online and offline. It also hopes to contribute to the development of a comprehensive strategy on Internet freedom that tilts the balance in favour of those who wish to protect free expression and away from those who wish to use it to silence protest and criticism.

The structure of this report is as follows:

1 It provides an overview of international standards for the protection of the rights to freedom of expression and freedom of information. This forms the basis of our recommendations on how best to protect these rights in the context of Internet use in Indonesia.

2 It outlines major areas of the Indonesian legal framework that have been used to regulate and often curb freedom of expression on the Internet. It also identifies recent legislative proposals that could seriously undermine freedom of expression online.

3 It discusses problems relating to the protection of bloggers and citizen journalists.

4 It examines state-sponsored and private censorship initiatives to block websites, including those containing content deemed pornographic, defamatory or blasphemous.

5 It assesses the availability of the Internet in Indonesia and the efforts taken by the Government and civil society to extend access in the more remote areas in the country.

Standards for the protection of the right to freedom of expression online

International freedom of expression standards

The rights to freedom of expression and freedom of information form a fundamental and necessary condition for achieving the principles of transparency and accountability which are, in turn, essential for the promotion and protection of all human rights in a democratic society. Through its membership of the United Nations (UN), and as a state party to the International Covenant on Civil and Political Rights (ICCPR) and other major international human rights treaties, Indonesia is required to respect and protect the rights to freedom of expression and freedom of information.

Universal Declaration of Human Rights

Although the UN Human Rights Council (HRC) resolution A/HRC/20/L.13 reaffirmed the need to protect freedom of expression online, international law has long provided for the right to freedom of expression regardless of frontiers. The Universal Declaration of Human Rights (UDHR)[4] first guaranteed this right in Article 19, which stipulates:

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

The UDHR, as a UN General Assembly Resolution, is not directly binding on states. However, parts of it, including Article 19, are widely regarded as having acquired legal force by becoming customary international law since the adoption of the UDHR in 1948.[5]

The International Covenant on Civil and Political Rights

The ICCPR [6] elaborates upon, and gives legal force to, many of the rights articulated in the UDHR. The ICCPR binds its 167 state members, including Indonesia, to respect its provisions and implement its framework at national level.[7] Article 19 of the ICCPR provides that:

1 Everyone shall have the right to freedom of opinion;

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

In July 2011, the UN Human Rights Committee (HR Committee), as the treaty monitoring body for the ICCPR, issued General Comment No. 34 in relation to Article 19.[8] General Comment No. 34 constitutes an authoritative interpretation of the minimum standards guaranteed by Article 19. ARTICLE 19 considers General Comment No. 34 to be a progressive clarification of the international law relating to freedom of expression and access to information.[9] It is particularly instructive on a number of issues relating to freedom of expression on the Internet.

Importantly, General Comment No. 34 states that Article 19 of the ICCPR protects all forms of expression and the means of their dissemination, including all forms of electronic and Internet-based modes of expression.[10] In other words, the protection of freedom of expression applies online in the same way as it applies offline.

At the same time, General Comment No. 34 requires State parties to the ICCPR to consider the extent to which developments in information technology, such as Internet and mobile-based electronic information dissemination systems, have dramatically changed communication practices around the world.11 In particular, the legal framework regulating the mass media should take into account the differences between the print and broadcast media and the Internet, while also noting the ways in which media converge.[12]

As a State party to the ICCPR, Indonesia must ensure that its laws, policies and practices regulating electronic and Internet-based modes of expression and content comply with Article 19 of the ICCPR, as interpreted by the HR Committee.

Indonesia was one of 82 States that supported a landmark resolution of the HRC on the promotion, protection and enjoyment of human rights on the Internet.13 In this resolution, adopted on 05 July 2012, the HRC reaffirmed that people have the right to freedom of expression online just as they do offline.

Finally, in their 2011 Joint Declaration on Freedom of Expression and the Internet, the four Special Rapporteurs for the protection of freedom of expression highlighted that regulatory approaches in the telecommunications and broadcasting sectors cannot simply be transferred to the Internet.[14] In particular, they recommended the development of tailored approaches for responding to illegal content online, while pointing out that specific restrictions for material disseminated over the Internet are unnecessary.[15] They also promoted the use of self-regulation as an effective tool in redressing harmful speech.[16]

Restrictions to the right to freedom of expression

In regard to freedom of expression and content-related regulations, any restriction must meet the strict criteria provided in international and regional human rights law. While the right to freedom of expression is a fundamental right, it is not guaranteed in absolute terms. Article 19(3) of the ICCPR permits the right to be restricted in the following respects:

> 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, or of public health or morals.

Any restriction to the right to freedom of expression must meet a strict three-part test. This test, which has been confirmed by the HR Committee, requires that restrictions: (i) are provided by law; (ii) pursue a legitimate aim; (iii) conform to the strict tests of necessity and proportionality.[17]

Provided by law: Article 19(3) of the ICCPR requires that restrictions to the right to freedom of expression must be provided by law. In particular, the law must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.[18] Ambiguous or overly broad restrictions to freedom of expression are therefore impermissible under Article 19(3).

Legitimate aim: Any interference with the right to freedom of expression must pursue a legitimate aim as exhaustively enumerated in Article 19(3)(a) and (b) of the ICCPR. It is impermissible to prohibit information dissemination systems from publishing material solely on the basis that they cast a critical view of the Government or the political social system espoused by the Government.[19] Similarly, a restriction to the right to freedom of expression cannot be a pretext for protecting the Government from embarrassment or having any wrongdoing exposed, for concealing information about the functioning of its public institutions, or for entrenching a particular ideology.

Necessity: States party to the ICCPR are obliged to ensure that legitimate restrictions to the right to freedom of expression are necessary and proportionate. Necessity requires that there must be a pressing social need for the restriction. The party invoking the restriction must show a direct and immediate connection between the expression and the protected interest. Proportionality means that if a less intrusive measure is capable of achieving the same purpose as a more restrictive one, the least restrictive measure must be applied.

The same principles apply to electronic forms of communication or expression disseminated over the Internet. The HR Committee said in its General Comment No. 34 that:

> Any restrictions on the operation of websites, blogs or any other Internet-based, electronic or other such information dissemination system, including systems to support such communication, such as Internet service providers or search engines, are only permissible to the extent that they are compatible with paragraph 3. Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3. It is also inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government.[20]

These principles have been endorsed by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, in a recent report dated 10 August 2011.[21] In that report, the Special Rapporteur also clarified the scope of legitimate restrictions on different types of expression online.[22] This is examined in more detail below

Online content regulation

With the exponential growth of the Internet and its ever increasing number of users, governments have become increasingly uneasy about the availability of a wide variety of online content which they cannot control. Indeed, the Internet enables its users to gain access to information and ideas beyond the confines of the country where they live. As different countries have different views on what content is illegal or may be deemed 'harmful' in line with its cultural, moral or religious traditions, online content regulation has become an important focus of governments across the globe.

By and large, States have been concerned with the availability of terrorist propaganda, content containing incitement to hatred, sexually explicit content including child pornography, blasphemous content, content critical of the Government and its institutions and content unauthorised by intellectual property rights holders.

However, as the UN Special Rapporteur has rightly noted, these different types of content call for different legal and technological responses.[23] In his report of 10 August 2011, the UN Special Rapporteur identified three different types of expression for the purposes of online regulation:

(i) expression that constitutes an offence under international law and can be prosecuted criminally;

(ii) expression that is not criminally punishable but may justify a restriction and a civil suit;

(iii) expression that does not give rise to criminal or civil sanctions, but still raises concerns in terms of tolerance, civility and respect for others.[24]

In particular, the Special Rapporteur clarified that the only exceptional types of expression that States are required to prohibit under international law are:

(a) child pornography;

(b) direct and public incitement to commit genocide;

(c) incitement to hatred;

(d) incitement to terrorism.

He further made clear that legislation criminalising these types of expression must be sufficiently precise and that there must be adequate and effective safeguards against abuse or misuse, including oversight and review by an independent and impartial tribunal or regulatory body.[25] In other words, these laws must also comply with the three-part test outlined above. For example, legislation prohibiting the dissemination of child pornography over the Internet through the use of blocking and filtering technologies is not immune from the requirements or the three-part test.

Similarly, laws targeting incitement to hatred online must be unambiguous, pursue a legitimate purpose and respect the principles of necessity and proportionality. In this regard, the Special Rapporteur has highlighted his concern that a large number of domestic provisions which seek to outlaw this form of expression are unduly vague: this is in breach of international standards for the protection of freedom of expression. He

includes provisions such as "combating incitement to religious unrest," "promoting division between religious believers and non-believers," "defamation of religion," "inciting to violation," "instigating hatred and disrespect against the ruling regime," "inciting subversion of state power" and "offences that damage public tranquillity."

The Special Rapporteur has also clarified which online restrictions are, in his view, impermissible under international law. In particular, he has called upon States to provide full details about the necessity and justification for blocking a particular website, stressing that:

> [D]etermination of what content should be blocked should be undertaken by a competent judicial authority or a body which is independent of any political, commercial, or other unwarranted influences to ensure that blocking is not used as a means of censorship.[26]

Finally, the Special Rapporteur has highlighted that all other types of expression, such as defamatory comments, should not be criminalised. Rather, States should promote the use of more speech to combat offensive speech. In this regard, it is worth mentioning that with new Web 2.0 types of applications, including the comment section on newspaper websites, blogs, online chat rooms etc., it is now possible to respond to online derogatory comments almost immediately at no cost. For this reason, the Special Rapporteur has remarked that the types of sanctions available for offline defamation and similar offences may well be unnecessary and disproportionate.[27]

Intermediary liability

Intermediaries, such as ISPs, search engines, social media platforms and web hosts, play a crucial role in relation to Internet access and the transmission of third party content. They have come to be seen as the gatekeepers of the Internet. For Internet activists, they are key in enabling them to exercise the right to freedom of expression, facilitating the free flow of information and ideas worldwide; for law enforcement agencies, they are considered central to any strategy to combat online criminal activity.

Given the huge amount of information that is available on the Internet, and that could potentially be against the law, including copyright laws, defamation laws, hate speech laws and criminal laws for the protection of children against child pornography, Internet intermediaries have a strong interest in seeking immunity from liability on the Internet.

In many western countries, Internet intermediaries have been granted immunity for third-party content, whether as hosts, mere conduits, or for caching/storing information.[28] They have also been exempted from monitoring content.[29] However, when acting as hosts, they have been made subject to 'notice and take-down' procedures, requiring them to remove content once they have been informed by private parties or law enforcement agencies that a particular piece of content is unlawful. This system can be found, for example, in the E-Commerce Directive in the EU and the Digital Copyright Millennium Act 1998 (the so-called 'Safe Harbor' scheme) in the USA.

A number of problems have been identified in relation to such 'notice and take-down' procedures. In the first place, they often lack a clear legal basis: for example, a recent OSCE report on Freedom of Expression on the Internet highlights that:[30]

> Liability provisions for service providers are not always clear and complex notice and takedown provisions exist for content removal from the Internet within a number of participating States. Approximately 30 participating States have laws based on the EUE-Commerce Directive. However, the EU Directive provisions rather than aligning state level policies, created differences in interpretation during the national implementation process. These differences emerged once the provisions were applied by the national courts. Aware of such issues, the European Commission launched a consultation during 2010 on the interpretation of the intermediary liability provisions.

Furthermore, these procedures lack procedural fairness: rather than obtain a court order requiring the ISP to remove unlawful material (which, in principle at least, would involve an independent judicial determination that the material is indeed unlawful), ISPs are required to act merely on the say-so of a private party or public body. This is problematic because intermediaries tend to err on the side of caution and therefore take down material that may be perfectly legitimate and lawful. As the UN Special Rapporteur on freedom of expression recently noted:[31]

> 42. [W]hile a notice-and-takedown system is one way to prevent intermediaries from actively engaging in or encouraging unlawful behaviour on their services, it is subject to abuse by both State and private actors. Users who are notified by the service provider that their content has been flagged as unlawful often have little recourse or few resources to challenge the takedown. Moreover, given that intermediaries may still beheld financially or in some cases criminally liable if they do not remove content upon receipt of notification by users regarding unlawful content, they are inclined to err on the side of safety by over censoring potentially illegal content. Lack of transparency in the intermediaries' decision-making process also often obscures discriminatory practices or political pressure affecting the companies' decisions. Furthermore, intermediaries, as private entities, are not best placed to make the determination of whether a particular content is illegal, which requires careful balancing of competing interests and consideration of defences.

Accordingly, the four Special Rapporteurs on freedom of expression recommended in their 2011 Joint Declaration on Freedom of Expression and the Internet that:

(i) No one should be liable for content produced by others when providing technical services, such as providing access, searching for, or transmission or caching of information;[32]

(ii) Liability should only be incurred if the intermediary has specifically intervened in the content, which is published online;[33]

(iii) ISPs and other intermediaries should only be required to take down content following a court order, contrary to the practice of notice and takedown.[34]

Similarly, the UN Special Rapporteur on freedom of expression has stated that:

> [C]ensorship measures should never be delegated to a private entity, and that no one should be held liable for content on the Internet of which they are not the author. Indeed, no State should use or force intermediaries to undertake censorship on its behalf.[35]

He has further recommended that in order to avoid infringing the right to freedom of expression and the right to privacy, intermediaries should:[36]

> [O]nly implement restrictions to these rights after judicial intervention; be transparent to the user involved about measures taken, and where applicable to the wider public; provide, if possible, forewarning to users before the implementation of restrictive measures; and minimize the impact of restrictions strictly to the content involved.

Finally, the Special Rapporteur has emphasised the need for effective remedies for affected users, including the possibility of appeal through the procedures provided by the intermediary and by a competent judicial authority.[37]

The right of access to the Internet

The Internet has become an essential medium for the exercise of freedom of expression. It is also essential to the meaningful exercise of other rights and freedoms, such as freedom of assembly. States are therefore under a positive obligation to promote and facilitate access to the Internet. The UN Special Rapporteur on Freedom of Expression, Frank La Rue, recently stated:[38]

> Given that the Internet has become an indispensable tool for realizing a range of human rights, combating inequality, and accelerating development and human progress, ensuring universal access to the Internet should be a priority for all States.

The Special Rapporteur recommended that States should draw up concrete policies involving all stakeholders with a view to ensuring universal access, i.e. making the Internet widely available, accessible and affordable to all segments of the population. In particular, he suggested that States should work in partnership with the private sector to ensure Internet connectivity in all inhabited localities, including remote rural areas. He further noted that States could subsidise Internet services and low-cost hardware.

Similarly, the four Special Rapporteurs on freedom of expression have articulated a number of principles in relation to access to the Internet in their 2011 Joint Declaration on Freedom of Expression and the Internet, which reads as follows:

6. Access to the Internet

(a) Giving effect to the right to freedom of expression imposes an obligation on States to promote universal access to the Internet. Access to the Internet is also necessary to promote respect for other rights, such as the rights to education, health care and work, the right to assembly and association, and the right to free elections.

(b) Cutting off access to the Internet, or parts of the Internet, for whole populations or segments of the public (shutting down the Internet) can never be justified, including on public order or national security grounds. The same applies to slow-downs imposed on the Internet or parts of the Internet.

(c) Denying individuals the right to access the Internet as a punishment is an extreme measure, which could be justified only where less restrictive measures are not available and where ordered by a court, taking into account the impact of this measure on the enjoyment of human rights.

(d) Other measures which limit access to the Internet, such as imposing registration or other requirements on service providers, are not legitimate unless they conform to the test for restrictions on freedom of expression under international law.

(e) States are under a positive obligation to facilitate universal access to the Internet. At a minimum, States should:

  (i) Put in place regulatory mechanisms – which could include pricing regimes, universal service requirements and licensing agreements – that foster greater access to the Internet, including for the poor and in 'last mile' rural areas.

  (ii) Provide direct support to facilitate access, including by establishing community-based ICT centres and other public access points.

  (iii) Promote adequate awareness about both how to use the Internet and the benefits it can bring, especially among the poor, children and the elderly, and isolated rural populations.

  (iv) Put in place special measures to ensure equitable access to the Internet for the disabled and for disadvantaged persons.

(f) To implement the above, States should adopt detailed multi-year action plans for increasing access to the Internet which include clear and specific targets, as well as standards of transparency, public reporting and monitoring systems.

From a comparative perspective, it should also be noted that some western countries have expressly recognised a right of access to the Internet in their national legislation or otherwise. For example, the French Conseil Constitutionnel declared that Internet access was a fundamental right in 2009. In Finland, a decree was passed in 2009 which provides that every Internet connection needs to have a speed of at least one megabit per second. Access to the Internet has also been recognised as a basic human right in Estonia since 2000.

Protection of the right to freedom of expression in domestic law

Indonesia's legal system is based upon three sources of law: adat law, which can be loosely translated to mean "customary" or "traditional" law; Islamic law; and Dutch colonial law.[39] Adat courts were formally dissolved in 1951;[40] however certain adat laws are still recognised by the Government as legitimate,[41] particularly as a means of dispute resolution in villages. After Indonesia gained independence from the Netherlands in August 1945, its Constitution was based on Indonesian precepts of law and justice;[42] Dutch laws remained in force unless they were found to be inconsistent with the Constitution.[43]

Decree No. XVII/MPR/1998 and Law No. 39 of 1999

The Decree of the Consultative Assembly No. XVII/MPR/1998 concerning human rights protects the right to freedom of expression in the following terms:

- Everyone shall have the right to freedom to express his/her opinions and convictions based on their conscience (Article 14);
- Everyone shall have the right to freedom of association, assembly, and expression opinion (Article 19);
- Everyone shall have the right to communicate and receive information for his/her personal development and social environment (Article 20);
- Everyone shall have the right to seek, obtain, posses, keep, process, and convey information by utilising all kinds of available channels (Article 21);
- The right of citizens to communicate and obtain information is guaranteed and protected (Article 42).

Furthermore, in September 1999, Indonesia adopted Law No. 39 of 1999 on Human Rights.[44] The preamble of this law states that Indonesia, as a UN member, has moral and legal responsibilities to honour and implement the UDHR and other international instruments on human rights. Regarding the right to freedom of expression, the Law stipulates that everyone has the right to express his or her opinion in public (Article 25).

The Constitution

The 1945 Constitution was amended four times between 1999 and 2002, and provisions on human rights were incorporated during the second wave of amendments in 2000. Although laws relating to human rights already existed at that time, human rights advocates argued that stronger constitutional protections were necessary.[45]

The provisions protecting human rights were largely drawn from the UDHR[46] and are stipulated under Chapter XA, Articles 28A to 28J, covering the right to freedom of religion (Article 28E(2)), the right to freedom of expression (Article 28E(3)), the right to freedom of association (Article 28E(3)), the right to access information (Article 28F) and the right to freedom of association (Article 28E(3)).[47]

Laws and practices relating to the regulation of online content in Indonesia

Content restrictions

The main instrument for the regulation of online content is Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law), adopted on 21 April 2008,[48] the first law of its kind in the country.

Chapter VII of the ITE Law lists all prohibited acts; these include knowingly and without authority distributing, transmitting or causing to be accessible in electronic form records containing:

- material against propriety (Article 27(1));
- gambling material (Article 27(2));
- material amounting to affront and/or defamation (Article 27(3)); and
- extortion and/or threats (Article 27(4)).

Additionally, Articles 30-37 of the ITE Law prohibit unlawfully accessing electronic systems; obtaining through illegal means electronic information and records; hacking, breaching or trespassing into security systems; unlawful wiretapping or interception of electronic information; unlawful altering or deletion of electronic information; releasing confidential information to the public; unlawfully obstructing the functions of electronic systems; and unlawfully producing and selling or transferring of information.

Chapter XI of the ITE Law stipulates the penalties, with maximum prison terms ranging from six to twelve years depending on which prohibited acts have been committed. Penalties for offences relating to Article 27(1) of the ITE Law can be increased by a third if the act involved exploitation of children, and penalties for offences related to Articles 30 - 37 can be increased by up to two-thirds if directed at the Government, public services, or strategic bodies (e.g. banking institutions, international institutions).

Moreover, Law No. 36 of 1999, the Telecommunications Law[49] applies to "any transmission, emission and/or reception of signs, signals, writings, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems" (Article 1(1)). Although the Telecommunications Law does not refer to the Internet specifically, it is covered by this definition. Article 21 of the Telecommunications Law prohibits telecommunication operators from "engaging in telecommunications operations business, which violates the public interest, morals, security or public order": violations of this kind can be punished with "licence revocation."[50] In other words, the Government can withdraw licences if ISPs fail to comply with the Act.[51]

Further content regulations are contained in specific laws, as described below.

Pornography

The availability of pornographic material online has engendered significant controversy in Indonesia. The dissemination of content containing pornographic elements is prohibited in multiple laws, including the ITE Law and Law No. 44 of 2008 on Pornography (the Anti-Pornography Law).[52] As noted above, Article 27(1) of the ITE Law prohibits the distribution and/or transmission, or causing to be accessible of contents "against propriety." This extremely vague provision has been used repeatedly to convict the distributors and users of pornographic and provocative content on the Internet.

Individuals have been charged with a range of broadly drafted offences under the Anti-Pornography Law, which defines pornography as "drawings, sketches, illustrations, photographs, text, voice, sound, images, motion, animation, cartoons, conversations, gestures, or other forms of message through various forms of communication media and/or performing in public, which contain obscenity or sexual exploitation that violate the norms of decency in the community."[53] Article 4 of the Anti-Pornography Law describes pornographic material as one that contains intercourse, sexual violence, masturbation, nudity, genitalia or child pornography.

Article 1(2) of the Anti-Pornography Law explicitly mentions the Internet as a medium by which pornographic services can be provided, and Article 5 bans the downloading of pornography. Violations of the Anti-Pornography Law are met with punishments that can range from 6 months to 15 years imprisonment and/or fines of between 250 million to 7.5 billion Rupiah, depending on which articles are violated.

Pornography is further prohibited under Article 21 of Law No. 36 of 1999 Regarding Telecommunications (the Telecommunications Law), and Article 282 of the Indonesian Penal Code.[54] As noted above, the Telecommunication Law prohibits telecommunications operators from engaging in telecommunications business that is contrary to public interest, morals, security or public order. It was made clear by the Ministry of Communication and Information Technology (ICT Ministry) that ISPs considered to be spreading pornography would have their licences revoked.[55]

Additionally, the Penal Code provides that:

> [A]ny person who either disseminates, openly demonstrates or puts up a writing of which he knows the content or a portrait or object known to him to be offensive against decency […] shall be punished by a maximum imprisonment of one year and four months or a maximum fine of three thousand rupiahs.

The penalty can be increased to two years and eight months or a fine of five thousand rupiahs "[i]f the offender makes an occupation or a habit of the commission of the crime."[56]

The aforementioned provisions have been applied in a number of cases leading to a number of further developments:

– The most prominent case involving online pornography is that of pop singer Nazril Irham (also known as 'Ariel'), whose homemade and explicit videos were circulated on the Internet against his consent in June 2010.[57] Irham was convicted under the Anti-Pornography Law and sentenced to three and a half years in prison and a fine of 28,000 USD.[58] Irham was released on parole on 21 September 2012 after serving two-thirds of his prison sentence.[59] Irham's conviction exemplifies the Indonesian authorities' commitment to curbing the circulation of content they consider inappropriate.

- The Irham case led to many government officials vowing to put tougher controls on the Internet in order to protect 'morality'. However, campaigns targeting 'inappropriate' electronic content have had a significant impact on the right to freedom of expression within the country and have led to serious crackdowns, such as police raids in high schools in East Java to search for pornographic content on students' mobile phones.[60]
- The Irham conviction also prompted an Internet filtering campaign by ICT Minister Tifatul Sembiring to block access to pornography websites during the holy month of Ramadan in 2010.[61] In a news conference announcing the campaign in August 2010, Sembiring noted that 200 ISPs in Indonesia had already agreed over the past month to block sites containing sexual content and nudity.[62]
- The authorities have continued their efforts to block access to material they deem pornographic on the Internet ahead of Ramadan each year.[63] They have also put pressure on providers such as Research in Motion (RIM) Ltd. to commit to filtering content on mobile phones.[64] After unrelenting pressure from the Indonesian government, RIM Ltd. announced in January 2012 that it would filter pornographic content for its Blackberry smartphone users in Indonesia.[65]

Incitement to hatred

The regulation of incitement to hatred is another area of concern from the point of view of both the legislation and its implementation.

Incitement to hatred is prohibited broadly in the Indonesian Penal Code. Article 156 of the Penal Code stipulates:

> The person who publicly gives expression to feelings of hostility, hatred or contempt against one or more groups of the population of Indonesia, shall be punished by a maximum imprisonment of four years or a maximum fine of three hundred Rupiahs.

Key terms in the prohibition, such as "feelings of hostility" or "contempt" are not defined. The word "group" in the article refers to parts of the Indonesian population that differentiate themselves from other parts of the population, based upon race, country/place of origin, religion,[66] descent, nationality or constitutional condition. The punishment can be increased to five years if someone who publicly expresses or commits an act that has the character of hostility, abuse or desecration against a formal religion practised in Indonesia (Article 156a).

Furthermore, Article 157(1) of the Penal Code refers to the dissemination, or open demonstration, of any writing or portrait in public that contains a statement where feelings of hostility, hatred or contempt against or among groups of the population are expressed. Committing a crime under Article 157(1) could lead to a maximum penalty of two and a half years imprisonment. Further prohibitions are contained in the ITE Law.[67]

There have been several cases that demonstrate the problems of implementing these laws. For example:

The case of 'Koboy Cina Pimpin Jakarta'[68]: On 12 August 2012, a video containing threats directed against Chinese-Indonesians, warning them not to vote in the second and final round of gubernatorial elections in Jakarta was uploaded on YouTube. In the video, a masked man insinuated that life for Chinese-Indonesians would be as disastrous as the violent May 1998 riots[69] should they participate in the 2012 elections. According to the Government, the individual behind the video is liable under Articles 27 and 28 of the ITE Act;[70] however, they have not been able to identify its creator. At the urging of the ICT Ministry, Google removed the video on 23 August 2012[71].

– The Ahmadiyah case: Law enforcement authorities are often unwilling to examine cases where religious and ethnic minorities are targeted. For example, in February 2008, Sobri Lubis, the General Secretary of the fundamentalist Islam Defenders Front (FPI), preached to hundreds of followers and called upon them to kill members of the Ahmadiyah, a minority Islamic sect that has been repeatedly harassed and attacked by Islamist militants.[72] A video of this speech was widely circulated over the Internet. However, this incident passed without any action or investigation from the Indonesian authorities.

Defamation

Provisions and penalties for defamation are provided for under both the ITE Law and the Penal Code (under Articles 207-208, 310-21, and 335). Public officials have used these particular provisions to silence critical voices, including complaints or reports of government corruption and misconduct.

Article 27(3) of the ITE Law criminalises anyone who makes available or distributes defamatory information electronically and, if convicted, penalties can reach a maximum of six years in prison.

The Penal Code criminalises acts of slander[73], libel[74] and calumny.[75] These provisions are also used for online speach.

The Prita case: One of the most prominent online defamation cases has been the prosecution of Prita Mulyasari, a Jakarta-based housewife and mother, based on a lawsuit by the Omni International Hospital.

In 2009, Prita communicated her disappointment with Omni Hospital's service to her friends by email. The email was forwarded, circulated on electronic mailing lists and posted online. The directors of the Hospital then filed a case against Prita, accusing her of defamation.[76] Prita also had a criminal case brought against her under Article 27(3) of the ITE Law and Article 311 of the Penal Code. There was significant public outcry about Prita's case, leading to a Facebook campaign entitled "Satu juta dukungan untuk Prita" (A million to support Prita). During Prita's trial, five NGOs jointly submitted an amicus curiae brief to the Tangerang District Court hearing the case.[77] The court had initially found Prita liable in the civil case and ordered her to pay Rp. 204 million Rupiah (approximately USD22,000) to Omni International.[78] The public held an online

fundraising campaign, "Coins for Prita", to help her pay the fine.[79] Prita appealed to the Supreme Court and was later acquitted of all civil charges in September 2010.

At the same time, Prita underwent criminal proceedings: she was eventually found guilty in June 2011 and given a suspended sentence of six months' imprisonment contingent upon good behaviour.[80] However, upon appeal in 2012, the Supreme Court finally overturned the lower court's decision and quashed the criminal charges.[81]

The Musni Umar case: in 2011, Musni Umar, a former chairman of a school committee at a leading state high school in Jakarta, was charged with defamation under Article 27(3) of the ITE law and Article 310 of the Penal Code.[82] Musni wrote in his blog that there was no transparency and accountability about the way in which the school's money was spent,[83] and he made allegations that senior management officials had embezzled several million rupees a month from school funds. Musni suggested that the Principal had embezzled Rp 1.2 billion of school money.[84] The case is still ongoing.

Blasphemy

Several Indonesian laws prohibit blasphemy or "defamation of religions". These include Law No. 1/PNPS/1965 concerning the Prevention of Religious Abuse and/or Defamation[85] (the Presidential Decision); Article 156(a) of the Criminal Code, created by the Presidential Decision (Article 4); and the Joint Decree by the Minister of Religious Affairs, Attorney General and Minister of Internal Affairs of the Republic of Indonesia on the Warning and Instruction to Followers, Members and/or Leaders of the Jemaat Ahmadiyah Indonesia (JAI) and Members of the Community[86] (the Joint Decree), adopted pursuant to Article 2 of the Presidential Decision.

Article 1 of the Presidential Decision prohibits:

> [E]very individual … in public from intentionally conveying, endorsing or attempting to gain public support in the interpretation of a certain religion embraced by the people of Indonesia or undertaking religious based activities that resemble the religious activities of the religion in question, where such interpretation and activities are in deviation of the basic teachings of the religion.

The Presidential Decision also creates a new provision, Article 156(a) of the Criminal Code which imposes a five year prison sentence "for whosoever in public intentionally express their views or engage in actions: a. that in principle incite hostilities and considered as abuse or defamation of a religion embraced in Indonesia."

In addition, the Joint Decree states in Article 3:

> [W]arn[s] and instruct[s] the followers, members and/or leaders of the … (JAI), provided that they profess to being believers of Islam, to cease the propagation of interpretations and activities in deviation of the teachings of Islam, that involves the propagation of an ideology that believes in the presence of a prophet along with his teachings after the Prophet Muhammad.

Furthermore, in Article 4, it seeks "to warn and instruct members of the community to maintain and safeguard harmony among believers of different religions as well as unity in public order within a community by not engaging in violation of the law against the followers, members and/or leaders of the … (JAI)" (Article 4). Failure to comply with these provisions would result in sanctions in accordance with the Criminal Code.

ARTICLE 19 submits that these provisions are fundamentally incompatible with Indonesia's international human rights obligations on freedom of expression, freedom of thought, conscience and religion and equality. International human rights standards do not and should not protect religions per se but rather individuals and groups from discrimination and harassment on the basis of their religion or ethnicity. Belief systems themselves should not be exempt from debate, commentary or even sharp criticism, whether internal or external. Furthermore, these laws are counterproductive and prone to being abused, used against the religious minorities they purport to protect.

These laws have also been used frequently to target online speech. For example:

The Fitna case: In April 2008, the Indonesian Government requested that YouTube remove the video Fitna,[87] a film which sparked considerable controversy in Indonesia. The film was discussed on several blogs that contained or embedded links to the video, despite some sections of Indonesian society considering it to be blasphemous and offensive. After YouTube refused to remove it,[88] the ICT Minister of that time, Muhammad Nuh, called for the Indonesian ISP Association (Asosiasi Penyelenggara Jasa Internet Indonesia, APJII) to coordinate the blocking of access to any websites and blogs on which the film had been published by all ISPs in the country.[89] Failing to comply would lead to the withdrawal of the ISPs' operating licence by the Ministry.[90] The request was eventually lifted a few days later and the Vice Chairman of APJII was reported as saying that only the specific pages carrying the offending film would be blocked.[91]

The Cartoon case: In 2008, cartoons of the Prophet Muhammad were posted on a blog hosted by Wordpress.[92] According to the ICT Ministry, the cartoons insulted Islam and the Ministry asked Wordpress to block it.[93] The Indonesian Ulema Council (MUI), Indonesia's top Muslim clerical body, also condemned the blogger.[94] After much protest, Wordpress closed the account due to a "violation of [its] terms of service."[95] However, in 2009, the cartoons reappeared on a blog hosted by Blogspot.[96] The ICT Ministry wrote a letter requesting ISPs to block access to the blog,[97] claiming that the blog contained hate speech, insults and false information about Islam.

In May 2010, the ICT Ministry requested ISPs in the country to block a Facebook page entitled 'Everybody Draw Mohammed Day '(EDMD), which was considered to be insulting to Islam.[98]

The Innocence of Muslims case: In 2012, the Indonesian Government ordered ISPs to block access to the trailer of the anti-Islamic Innocence of Muslims film, posted online in July 2012, which had prompted violent reactions across the Muslim world.[99] On 13 November 2012, the ICT Ministry further announced that YouTube had blocked sixteen links to the video.[100]

The Alexander Aan case: In 2012 Alexander Aan, a civil servant in the Regional Planning Body of the Municipal of Dharmasraya, West Sumatra, was charged under the Penal Code and Article 28 of the ITE Law for spreading atheism via a Facebook group and a fan page titled Ateis Minang (Minang Atheist), which he administered. The fan page was created as a space to facilitate communication amongst atheists living in the West Sumatra.[101] In June 2012, he was sentenced to two and a half years' imprisonment for "defaming Islam and insulting the Prophet Muhammad", in violation of Article 28(2) of the ITE Law, along with Article 156a(a) and Article 156a(b) [102] of the Penal Code.[103]

The requests to block sites in the aforementioned cases show that such measures are more likely to result in greater interest in the material than it would otherwise attract. For example, the same day the Indonesian government requested YouTube to remove the Innocence of the Muslims video, searches for the movie skyrocketed.[104]

Legislative challenges ahead

Apart from existing legislation, there are also a number of draft laws and regulations that – if adopted - could affect freedom of expression online in Indonesia, including the Government's draft Cybercrime Bill and the draft Telematics Convergence Law. While some of the problematic provisions were removed from the drafts as a result of protests, there are ongoing concerns about the current version (as of February 2013) of these laws and their potential impact.

Draft Cybercrime Bill

The Indonesian Government has prioritised tackling cybercrime[105] and, currently, there are two draft cybercrime bills pending.

- The first is the draft from the Global Internet Policy Initiative (GIPI) submitted to Parliament in March 2003.[106] The status of the GIPI draft remains unclear.
- The second proposal is the draft submitted by the Government. It was produced by inter-departmental teams formed by the ICT Ministry in 2008[107] with the underlying premise that existing Indonesian law is insufficient to deal with cybercrime. There is serious concern that the bill proposed by the Government will be more repressive than provisions under the ITE Law.[108] The draft bill has been listed in the National Legislation Program (Prolegnas) 2010-2014,[109] which means that it will be discussed jointly by Parliament before it is released to the public.

Draft Telematics Convergence Law

The draft Telematics Convergence Law[110] was developed to replace the 1999 Telecommunication Act, the ITE Law and the 2002 Broadcasting Law as an overarching law governing telecommunications and ICT in Indonesia. There are concerns that the draft Telematics Convergence Law will be used to place online content and information produced by the public under strict government control due to an especially broad definition of "telematics."[111]

Most worryingly, Article 13 of the draft Law provides that the implementation of telematics, which includes telematics network facilities, telematics network services and telematics application services (i.e. content providers),[112] is subject to permission from the Minister.

The draft Telematics Convergence Law is currently being reviewed by ICT Ministry.

It is evident that online expression considered to be morally 'inappropriate' or religiously offensive is particularly targeted in Indonesia. Restrictive laws place online users in a vulnerable position whereby the mere expression of their opinions – such as in the cases of Nazril Irham, Prita Mulysari or Alexander Aan - can result in criminal convictions. The existence of these laws and the prominence of the cases highlighted in this report have had a chilling effect on the free expression of all online users in Indonesia and are encouraging them to practise self-censorship.

Recommendations:

- The ITE Law should be amended to comply with international freedom of expression standards;
- All content regulation, including regulation covering pornography, hate speech and defamation, should be revised for compliance with international freedom of expression standards. In particular, Indonesia should decriminalise defamation and revise prohibitions of incitement to hatred to comply with international standards in this area;
- The Government should repeal all blasphemy and defamation of religions provisions in their entirety;
- The Government should drop criminal charges against online users prosecuted under restrictive and overly broad laws, in particular those on defamation and pornography; and
- The draft Cybercrime Bill and draft Telematics Convergence Law should be made publicly available to allow stakeholders to contribute to the drafting and commenting process before the bills are discussed in Parliament. Both drafts should also be reviewed for their compliance with international freedom of expression standards and any provisions that violate these standards should be removed.

Regulation of bloggers and citizen journalists

Indonesia has one of the largest online populations in the world with consistently high numbers of people regularly using social media. It has the fourth largest number of users on Facebook with 47,165,080 million users, behind the United States, Brazil and India.[113] Similarly, there were 29.4 million Indonesian users on Twitter by July 2012, placing the country fifth highest in the world for the number of Twitter user profiles.[114] Presently, Jakarta is shown to have the most active Twitter users in the world (based on the number of posted tweets), and Bandung, Indonesia's second largest metropolitan area, ranks sixth in the world for Twitter user activity.[115]

At present, Indonesia's largest blogging directory, Direktori Blog, contains a network of approximately 5.3 million blogs in the country.[116] Blogs and social networking sites are amongst the top 20 sites most frequently accessed by Internet users in Indonesia.[117] Facebook, Google, Twitter, Blogspot and YouTube are some of the top domains used for the distribution of information online,[118] and bloggers also use sub-domains of mainstream online media, such as Kompasiana, a sub-domain of www.kompas.com.

The explosion in the number of citizen journalists and bloggers has been possible due to the fact that Indonesia has no specific measures regulating citizen journalists and bloggers, a situation which ARTICLE 19 commends. At the same time, Indonesian bloggers and citizen journalists are particularly vulnerable to penalties under the ITE Law, which, according to the ICT Ministry, was intended for bloggers and citizen journalists.[119]

ARTICLE 19 believes that bloggers should only be regulated using the same civil and criminal liability laws that apply to others (although, as indicated in the previous chapter, there is a need for general reform of these laws). In particular, bloggers and citizen journalists should not be registered as accredited media organisations and should not be made subject to the same editorial controls as media organisations.[120]

However, we also believe that the definition of journalism should be sufficiently broad so as to encompass bloggers and citizen journalists and afford them the same rights and legal protection as journalists.

Legal protection

In general, ARTICLE 19 believes that citizen journalists and bloggers should be afforded the same legal protections that are available to professional media organisations in defamation proceedings, including the defences of honest opinion, truth and public interest. Most defamation laws are expressed in general terms and do not single out journalists as the beneficiaries of such legal protections, although in practice, defamation laws may have been applied mainly to statements made by media organisations.

Furthermore, given the increasing importance of the Internet as a source for news and information, ARTICLE 19 believes that it would be unrealistic to limit the scope of defences, and legal protections generally, to paid journalists only. This, in our view, also applies to the protection of sources.

Several citizen journalists and their outlets have already sought the protection that is available to journalists under the Press Law.[121] For example, Suara Komunitas,[122] "Community Voice," filed for legal status as a 'citizen journalist' organisation to gain protection under the Press Law, and to gain access to certain events where press accreditation is an entry requirement. Each member of Suara Komunitas is issued a press card by the organisation.[123] Suara Komunitas also holds its members to the Indonesian Journalist Code of Ethics, which was created by the Press Council and 29 journalist associations.[124]

The Association of Indonesian Citizen Journalists (PPWI/pewarta-indonesia.com), which works to provide sources and media to enable citizen journalists to publish their information, also filed for legal status to gain protections under the Press Law.[125] In addition, PPWI intends to launch a program called Kantor Berita Rakyat (People News Office) as an electronic bank of information from, by and for the people.[126] PPWI has offices in nine cities throughout Indonesia and their members are also entitled to a press card.

However, for bloggers or citizen journalists working independently, or for those with limited resources, it would be difficult to gain the status and privileges afforded to Suara Komunitas and PPWI.

Recommendations:

- Bloggers and citizen journalists should continue not to be specifically regulated; and
- Bloggers and citizen journalists should benefit from the protection of sources.

Internet filtering and blocking in Indonesia

Indonesia does not have any laws that would mandate online filtering. Filtering efforts have been unsystematic and inconsistent, with certain ISPs filtering more than others.[127] For instance, according to available information, the Indonesian government asked the global search engine Google to remove content only five times between July 2009 and June 2012, one of which was through a court order: this is a low figure if compared to countries such as the USA with 273 requests in January to June 2012 itself.

However, government efforts to censor the Internet have risen in Indonesia and it appears that national ISPs, or foreign service providers with customers in Indonesia, are increasingly being pressurised by the authorities to censor their users. The main websites targeted are those containing content such as pornography or other adult content, sex education, LGBT issues, provocative attire, free speech advocacy, and those using circumvention software.[128]

Government censhorship

As noted earlier, the authorities have sought to remove content considered blasphemous (or insulting to religions) and pornographic. Reacting to the sex tape case of Nazriel Irham, ICT Minister Tifatul Sembiring said that the Internet has become a threat to the nation and vowed to issue a decree to filter negative content.[129]

Triggered by this case, the ICT Ministry developed its own key-word filtration[130] and database system, called Trust Positive.[131] The database consists of a "black-list" of websites considered illegal and a "white-list" of approved websites.[132] The purpose of this database is to function as a basic reference tool for ISPs to use in carrying out their own online censorship. At present, the database is said to list around one million websites[133] and the filtration system is already in use on many government computer networks.[134]

Private censorship

Public authorities are not the sole prescribers of restrictions on online content. Social media platforms often remove content on the basis of their own terms and conditions and internal policies. Automated filtering is not unheard of.

For example, Nawala is a well-known, free and voluntary DNS filtering service in Indonesia. Nawala came out of the "Nawala Project," which began in 2007 as an initiative by the Association of Indonesian Internet Cafés (AWARI). Originally intended for Internet cafes, it was later developed for wider use by individuals, families, agencies, ISPs and other service providers to filter websites that contain 'harmful' content such as pornography or gambling. Nawala also blocks sites that are considered dangerous or to be in violation of laws and regulations, this includes fraudulent sites, malware and phishing.[135]

Nawala is designed to receive direct input from the Internet community and public on harmful content, and the Nawala Project team then determines whether or not the flagged website should be filtered or not.[136] Internet users, ISPs and other service providers can opt in to the Nawala filtration system by setting their DNS to the Internet protocol address.

On 17 November 2009, TELKOM, the biggest telecom operator and largest ISP in Indonesia, signed a cooperation agreement with Nawala.[137] On 7 August 2012, APJII signed a similar agreement with Nawala, committing to provide five servers and operational costs to the project, while Nawala will, in return, provide the database of domain names containing harmful content.[138]

Although the use of Nawala is not compulsory for APJII members, who include around 250 ISPs, APJII Chairman Sammy Pangerapan recently remarked that, under the ITE Law, ISPs are responsible for online content.[139] Therefore, APJII members are pressurised to use the service to block harmful content.[140] This is compounded by the fact that, as stated earlier in this report, ISPs are required to comply with the Telecommunications Act, as well as the ITE Law and the Pornography Law[141] in order to obtain a licence from the ICT Ministry,[142] The Government can thus withdraw licences if ISPs fail to comply with one of those laws as well as other administrative requirements.[143]

The problem with filtration systems such as Nawala and Trust Positive is that there is a high likelihood that websites without harmful content will be blocked. In the first week of February 2012, a number of ISPs in Indonesia blocked the website of the human rights movement, International Gay and Lesbian Human Rights Commission (IGLHRC.org).[144] When the website was blocked, it was announced that the site contained pornography but without offering any further explanation. It has been widely assumed that the reason for the block was that the site contained the words ‘gay’ and/or ‘lesbian’, which, in Indonesia, tend to be associated with deviant sexual behaviour rather than a person’s right to choose his or her sexual orientation. The Lesbian Gay Bisexual and Transgender (LGBT) Forum in Indonesia sent a formal letter of complaint to APJII about its members’ blocking practices on October 6, 2012.[145] In particular, the LGBT Forum complained that at least three ISPs (Telkomsel, Indosat and LintasArta) blocked the LGBT websites IGLHRC.org and ILGA.org. Telkomsel and Indosat have since unblocked access to the sites.

Internet access, broadband and digital inclusion

Internet access

Use of the Internet is increasing rapidly in Indonesia. Data from the Indonesian Cellular Telecommunications Association,[146] collected from 10 telecommunication providers, shows that by the end of 2011 the number of cellular subscribers (not unique users) in Indonesia had reached more than 240 million phone numbers. Of those, 70 million numbers have been used to access the Internet.[147] However, that figure does not represent the actual number of Internet users since one user can have more than one number.

According to APJII, the number of Internet users in Indonesia in 2012 reached 63 million with a penetration of 24.23%.[148] However, Internet use is still most prevalent in major cities and had reached an average penetration of over 57% of the urban population by the end of 2012.[149] The large disparity in urban-rural Internet penetration rates is due largely to Indonesia's telecom infrastructure. In 2010, approximately 65% of 66,778 villages across the country remained unwired with a telecom density of 0.25%, whereas urban areas had a telecom density of approximately 25-35%.[150] The number of Indonesian Facebook users grew by more than 10 million users in 2012 alone. The majority of Facebook users in Indonesia (50.5%) are in the 18-24 years age range, followed by 25-34–year-olds (25.8%).[151] As already stated, there are currently 29.4 million Twitter users in Indonesia and the country is ranked fifth in the world, with Jakarta having the most active users in the world.[152]

The vast majority of Internet users in Indonesia take part in social networking (96.2%), reading the news (72%), reading blogs (37.7%), and accessing online videos (31.7%).[153] Only a small fraction of Indonesians have Internet access in their homes; most Indonesians access the Internet on their mobile phones or in Internet cafés.[154]

Broadband Internet access

In the third quarter of 2012, the average speed of the Internet connection in Indonesia was 1.2 Mbps, ranking 115 out of 188 countries.[155] It is the lowest of the Southeast Asian countries surveyed. Indonesia also had one of the lowest levels of broadband adoption among Southeast and East Asian countries, at 1.8% respectively; however, this figure reflects a 123% growth from the previous quarter.[156]

The low level of broadband adoption can be explained by Indonesia's archipelagic geography, making it difficult and costly to extend cable infrastructure.[157] Although lagging, Internet speeds are increasing year-on-year in Indonesia. Compared to the third quarter of 2011, the average speed of Internet in Indonesia rose by a staggering 58%.[158]

Global Rank	Country/ Region	Q3 12 Avg.Mbps	QoQ Change	YoY Change
1	South Korea	14.7	3.3%	-12%
2	Japan	10.5	-2.1%	18%
3	Hong Kong	9.0	0.9%	-14%
32	Singapore	4.9	-3.5%	12%
39	Taiwan, Province of China	4.4	16%	7.1%
40	Australia	4.3	-2.5%	19%
46	New Zealand	3.9	1.8%	-1.7%
58	Thailand	2.9	-6.3%	-14%
71	Malaysia	2.2	2.0%	18%
94	China	1.6	11%	18%
112	Philippines	1.3	6.0%	13%
113	Vietnam	1.3	-21%	-19%
115	Indonesia	1.2	54%	58%
120	India	1.0	2.5%	11%

(Average Measured Connection Speed by Asia Pacific Country. Source: Akamai.com)

The Indonesian Government, through the ICT Ministry, has been trying to increase broadband coverage in Indonesia. The ICT Ministry has established the Palapa Ring Project, a telecom infrastructure project focused on the construction of optical fibre cables across Indonesia, consisting of seven small circular optical fibres for Sumatra, Java, Kalimantan, Nusa Tenggara, Papua, Sulawesi and Maluku.[159]

The Palapa Ring Project, also known as the 'Nusantara Superhighway Project', aims to answer the country's IT infrastructure problems by creating a nationwide fibre optic network which will form the backbone of the country's ICT system, increasing significantly broadband speed as well as lowering costs for communication and online access. The system will cover 33 provinces and 440 regencies with a total of 57,087 km of both undersea optical fibre and underground fibre optics that will link into existing networks. By February 2012, the project was 80% complete with a total of 46,000 km already laid out. The project is predicted to be completed in 2013. The ICT Ministry hopes that this will have an immediate impact on Internet penetration with the aim of 30% by 2014.[161]

Digital inclusion

Digital inclusion is a crucial component of the right of access to the Internet. Digital inclusion means that individuals should be given the necessary computer skills and education about the benefits of the Internet to enable them to make full use of its potential. In Indonesia, a number of digital inclusion programs and initiatives have been implemented but these programs are still partial and not fully integrated. In 2006, the ICT Ministry started to build Internet infrastructure in rural areas through a scheme called Community Access Point (CAP). The CAP scheme aims to build Internet community centres in areas that have difficulty accessing the Internet and aims to be completed by 2014.[162]

In 2010, the Universal Service Obligation (USO) funded a larger program called Pusat Layanan Internet Kecamatan (PLIK), meaning District Internet Service Centre, and Mobile PLIK (MPLIK),[163] or more easily known as District Internet Service Centre Car.[164] The USO fund is collected from telecommunications operators and is equal to 1.25% of the total company revenue per year. From 2010 to 2012, 5748 PLIK units and 1907 MPLIK units have been built.[165] The implementation of this program includes training the managers and citizens using PLIK in capacity building. However, the program has drawn criticism from various parties, due to the ineffectiveness of such programs in many locations given various constraints such as a lack of power sources,[166] difficult local conditions, [167] alleged corruption in procurement,[168] and problems with socialisation and coordination in the field.[169] Along with these government initiatives, there are also a number of IT training programs and initiatives for digital inclusion being undertaken by civil society organisations, such as universities,[170] blogger communities,[171] Linux user groups,[172] and volunteer organisations.[173]

Recommendations

- The Government should address the structural challenges of digital inclusion policies; and
- The Government should sustain efforts to ensure universal broadband service throughout the country, including remote areas.

Conclusions

Over the last few decades, the advance in information and communications technologies has revolutionised human interaction and expression. The Internet has become a powerful tool for seeking and disseminating information and plays a key role in the exchange of ideas and opinions in the twenty-first century. Despite the Internet being a formidable vehicle for free expression, its potential can be stifled by restrictive legislation targeting both online and offline speech, by inappropriate policies, and by the repressive implementation of such laws and policies.

As the Internet is a crucial component of economic, political, social, scientific and cultural progress, Indonesia's policy choices in this area are likely to be decisive for its development. At the same time, Indonesia must ensure that it meets its obligations under international law. With 63 million Internet users, Indonesia is at the forefront of the Internet debate within Southeast Asia and the world. How Indonesia chooses to navigate information and communication technologies in the coming years will have great influence over the trajectory of Internet freedom worldwide.
This report has outlined some of the main challenges to freedom of expression online in Indonesia, including new forms of censorship, restrictive draft legislation regarding the Internet and the digital divide. We have also indicated ways in which these can be addressed in line with international standards of freedom of expression. Indonesia shows promise, and should these challenges be overcome, the country can position itself as a positive example for Internet freedom.

Sound Internet policy can only take place with the full participation of all those concerned. Civil society, in particular, has a leading part to play in ensuring the protection of digital freedom in Indonesia.

It is hoped that this report will contribute to shaping the debates that are currently taking place so that the Internet remains an open, pluralistic, and vibrant space in Indonesia.

Acronyms

APJII	Asosiasi Penyelenggara Jasa Internet Indonesia
AWARI	Association of Indonesian Internet Cafés
CAP	Community Access Point
DNS	Domain name system
HR Committee	UN Human Rights Committee
HRC	UN Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICT	Information and communication technology
ISP(s)	Internet service provider(s)
ITE Law	Law No.11 of 2008 on Electronic Information and Transactions
LGBT	Lesbian Gay Bisexual and Transgender
MPLIK	Mobile PLIK
PLIK	Pusat Layanan Internet Kecamatan
RIM	Research in Motion
UDHR	Universal Declaration of Human Rights
UN	United Nations
USO	Universal Service Obligation

End notes

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[3] UNDP on Indonesia, op.cit.

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[21] UN Special Rapporteur on Freedom of Expression, A/66/290, (10 August 2011) para. 16; available at http://www.ohchr.org/Documents/Issues/Opinion/A.66.290.pdf

[22] Ibid., para. 18

[23] Ibid., para. 18

[24] Ibid., para. 18

[25] Ibid., para. 22.

[26] Ibid., para. 38.

[27] UN Special Rapporteur on Freedom of Expression, A/HRC/17/27 (16 May 2011) para. 28; available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/a.hrc.17.27_en.pdf

[28] See for example, the Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, the 'E-commerce directive' in the EU. See also the Communications Decency Act 1996 in the US, and in Singapore, the Electronic Transaction Act 2010 which gives strong protection to innocent providers.

[29] Article 15 of the E-commerce directive. In the recent case of SABAM v. Scarlet Extended SA, the Court of Justice of the European Union (CJEU) considered that an injunction requiring an ISP to install a filtering system to make it absolutely impossible for its customers to send or receive files containing musical works using peer-to-peer software without the permission of the rights holders would oblige it to actively monitor all the data relating to each of its customers, which would be in breach of the right to privacy and the right to freedom to receive or impart information. The court noted that such an injunction could potentially undermine freedom of information since the suggested filtering system might not distinguish adequately between unlawful content and lawful content, with the result that its introduction could lead to the blocking of lawful communications.

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[121] The Law No. 40 of Year 1999 on Press (the Press Law) covers national press, that is the press companies incorporated within Indonesia. It applies to professional journalists working for established media houses in printed, electronic or online news. Should a case arise regarding information provided by any citizen journalist, the case is not referred under the Press Act and an appeal cannot be made to the Press Council. The Press Council was created under the provisions of the Press Act and deals only with professional journalists.

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