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Internet Shutdown in Indonesia:
An Appropriate Response or A Threat to Human Rights?

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Article	Abstract
	In recent years, there has been an increase in the use of harsh censorship in several parts of the globe, notably Africa and Asia. In some cases, the shutdown may be justified, but in other cases, it is driven by the political interest of the regime. The research evaluates the Internet shutdowns in the post-2019 presidential election in Indonesia and during the social unrest in Papua Island. Using normative legal research, which uses statute, case, and comparative approach concludes that although Internet shutdowns in some situations are tolerable, their usage should be less frequent and more restricted. These explanations must be examined using legality, legitimacy, and proportionality principles to limit official arguments for Internet shutdowns because they infringe on human rights. However, since no enforcement mechanism exists, this is only a formality. The Indonesian government's decision to block Internet access to social media platforms during the 2019 presidential election riots and Papua social unrest is not an appropriate response because the decision violates the principles of declaration, proportionality, necessity, and legality, which must be respected even in an emergency situation. Furthermore, the ruling infringed on the civil rights to information controlled by Article 19 of the ICCPR as adopted by Law Number 12 of 2005. It also harmed several industries, including digital-based commerce. The research proffers alternative Internet policy choices for the government in response to the political escalation and social unrest.

INTRODUCTION

One day after the official announcement of the 2019 Indonesian Presidential Election on May 21, the backend servers of Facebook, WhatsApp and Instagram have partially blocked by the government following a protest in front of the Election Supervisory Body (BAWASLU) build-

ing in Jakarta. The government sought to take this measure in response to spreading hoaxes and hateful messages that might worsen the protest. The protest that led to a riot was an aftermath of the April Indonesian presidential election in which candidate Prabowo Subianto accused the election had been rife with cheating favouring the incumbent Joko Widodo. The election was considered divisive, particularly between religious conservatives and liberals. The protest escalated and turned to be a riot at night in several spots, where it took eight people's lives and injured more than hundreds of protesters. For more than three days, until May 25, the whole nation had no access to the mentioned-social media.

Meanwhile, in Indonesia's easternmost island, Papua, the government ordered twice Internet services to be temporarily blocked in the region from August 21 to September 5 and 23 to September 28.[1] This is not surprising news as the Papua provinces have been under strict supervision and restriction for foreigners associated with or ever been in the circle of journalist activities to give it a visit since decades ago.[2] The shutdown by the government to limit access to information from Papua is to suppress the separatist Free West Papua movement fighting for independence from Indonesia.[3] The movement emerged as a response to discontent in the 1969 referendum that voted for Papua to integrate into Indonesia. This incident resembled a similar action done by the Burmese government in the Rakhine and Chin states of Myanmar on June 2019, leaving about one million people unable to access the Internet for months until it partially lifted on September 1, 2019. Recently on February 2020, the authorities issued a surprise order to reinstate the shutdown for three months for the same reason of "disturbances of the peace and use of Internet activities to coordinate illegal activities".[4]

For Papuans, they have been marginalised, endured no regard for human rights through a series of military operations, and exploited the rich natural resources for decades since its integration into Indonesia. In May 2015, President Jokowi promised to lift the longstanding access restrictions over foreign journalists seeking to report. However, they still face challenges and harassment while reporting on the island. When press freedom is limited, the Internet and social media become the alternative in helping journalists collect diverse sources of information from authorities and local residents. Internet access to social media empowers the dissemination of first-hand information from locals more effectively. Therefore, by shutting down access to information, not only has the government disregarded the right of Papuans to express themselves and inform outside about the happening events in the region, but also the right of all Indonesi-

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[1] "Targeted, Cut Off, and Left in the Dark," #KeepItOn, 2019, https://www.accessnow.org/cms/assets/uploads/2020/02/KeepItOn-2019-report-1.pdf.

[2] One of the examples was Belinda Lopez, a former Australian journalist who got deported 24 hours after her arrival at Ngurah Rai International Airport in Bali province for a honeymoon as she was on an official denylist and banned from the country. See further at Phelim Kine, "Indonesia's Papua Media Blacklist Authorities Equate Journalism with Doing 'Something Wrong to Indonesia,'" Human Rights Watch, 2018, https://www.hrw.org/news/2018/08/06/indonesias-papua-media-blacklist.

[3] Free Papua Movement (Indonesian: *Organisasi Papua Merdeka* or OPM) is an umbrella term for the independence movement in the easternmost island of Papua, Indonesia. Established in 1964, the OPM fights to implement the Act of Free Choice by the Indonesian government following economic hardships, racial discrimination, and militarisation on the island. Richard Chauvel and Ikrar Nusa Bhakti, *The Papua Conflict: Jakarta's Perception and Policies* (Washington: East-West Center Washington, 2004).

[4] Phil Robertson, "Myanmar Again Cuts Rakhine State's Internet," Human Rights Watch, 2020, https://www.hrw.org/news/2020/02/05/myanmar-again-cuts-rakhine-states-internet.

ans to know what is happening on the island. Considering these circumstances, the cases were reported to the administrative court in Jakarta.

Before 2019, Internet filtering in Indonesia, be it a shutdown, block, and/or bandwidth limitation, was deemed substantial in the social arena, selective in the political and Internet tools, and no evidence of filtering in the conflict and security arena. The result concluded that Internet transparency in Indonesia was quite high while consistency was low. Some notable filtering in Indonesia before the 2019 incidents were: 1) a block towards media sharing applications named Vimeo, Reddit, and Imgur in 2014 as it was accused of spreading porn online; 2) a famous block towards Telegram messaging application in 2017 as it was accused to spread radical and terrorist propaganda, although it was later unblocked after several agreements made between the government and the management; and 3) censorship towards Vimeo and Tumblr in September 2018 as the government accused them of hosting nudity contents, although Tumblr was put back uncensored on December 17 2018.

To this end, online social media is one most chosen and major sources of sharing information between people every day (See Figure 1). It has been considered as offering a new communication flow and source of information resistant to the control of a state because of its decentralisation.[5] Internet and social media have become a digital communication tool that plays a vital role in protests and assemblies. Not only in Indonesia but many countries have also conducted the internet shutdown. One and foremost example of the Internet shutdown was during the Arab Spring in Egypt, where social media were leveraged to spread information, sustain public protests, and gather people. However, to combat the protest, the Egyptian authoritarian government attempted to dispel it and limit the spread of information by shutting down all access to the network.[6]

Figure 1. 2019 Data of Internet and Social Media Trends in Indonesia (in million)
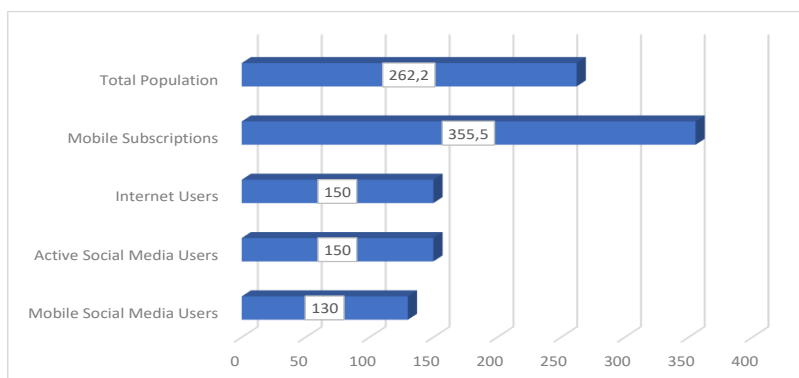
Source: We Are Social, Indonesian Digital Report 2019

Internet shutdown is a common issue which has occurred in at least 22 countries, besides Egypt, over the past decade, including Syria, Nepal, the Democratic Republic of Congo, Burundi, Ethiopia, Iraq, Kazakhstan, Pakistan, Sudan, Uzbekistan Yemen, India, Zimbabwe,

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5   Tina Freyburg and Lisa Garbe, "Blocking the Bottleneck: Internet Shutdowns and Ownership at Election Times in Sub-Saharan Africa," *International Journal of Communication* 12 (2018): 3896.
6   Evgeny Morozov, "The Net Delusion: The Dark Side of Internet Freedom, New York: Public Affairs," 2011, https://www.researchgate.net/publication/231752355_The_Net_Delusion_The_Dark_Side_of_Internet_Freedo m_By_Evgeny_Morozov_New_York_PublicAffairs_2011_432p_2795.

North Korea, Uganda, Bahrain, Bangladesh, Turkey, Cameroon, Gambia, and Myanmar.[7] Although Internet shutdowns can be justified as an act of security or public order for the sake of public interest, many of the cases take place in the context of political rallies, elections, and public assemblies.[8] This justification can be taken for a clear security risk associated with such events. However, it remains an open question of what is being secured and from whom it is being secured. Therefore, it is important to evaluate whether the Internet shutdown is an appropriate response from the government or is a threatening policy to human rights protection.

ANALYSIS AND DISCUSSION
Understanding Internet Freedom and Internet Shutdown
Freedom of information is a concept that has been introduced previously in the international sphere. Internationally, it has been recognised as a part of human rights since the first session of the United Nations Assembly in 1946.[9] As a tool to access information, the Internet has become a free and open means of communication since its founding, as its use has grown exponentially worldwide. Without a doubt, information and the Internet are inseparable, and it empowers freedom of expression by providing individuals with new tools to express their thoughts. On the other hand, decentralisation has made information flow freely and urges content regulation. The attempt to regulate digital content has raised a question on how to define Internet access in terms of public space and protect digital rights of expression. The Internet has built consensus-oriented communication from the bottom up by the users. Furthermore, it bears promising features for strengthening democracy and empowering civil society. A few practical examples are: (1) An Easiness to Get and Spread Messages Out.

As the Internet is developed, a new service for sending electronic messages, mail, and websites is provided. This means spreading news and disseminating information about human rights in the Palestinian territory to the public are done more effectively than before.[10] (2)A New Mean for Suppressed Media. When the government arbitrarily closed the Serbian radio of B92, the station uploaded its programming on the Internet using a Dutch Service Provider. Later, Radio Free Europe, Voice of America and *Deutsche Welle* (German Wave) received the programming and re-broadcasted it to Serbia, giving them a major fightback. In response to this action, the Serbian government released the radio on the air.[11] (3) A Free Space to Discuss. Having difficulty debating in face-to-face sessions due to travel restrictions, citizens of Arab countries and other Palestinian independence supporters use the Internet to debate with Israelis in online chat rooms using any provided Internet services.[12] (4) Censor-Free Information. An incognito source is provided on the Internet for any news to publish and for users to access. The China News Digest (www.cnd.or) published news from non-official sources as the government

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[7]   Ben Wagner, "Understanding Internet Shutdowns: A Case Study from Pakistan," *International Journal of Communication* 12 (2018): 3918.

[8]   Wagner.

[9]   Khairil Azmin Mokhtar, "Constitutional Law and Human Rights in Malaysia," Selangor: Sweet & Maxwell Asia, 2013.

[10] "The Internet in the Mideast and North Africa," in *Human Rights Watch* (New York, 1999), 17.

[11] "Global Internet Liberty Campaign," Regardless of Frontiers, Washington DC: Center for Democracy and Technology, 1998, http://gilc.org/speech/report/.

[12] "The Internet in the Mideast and North Africa."

used to block the site.[13] (5) An Easiness to Access Public Information. Through the official online government website such as www.dpr.go.id, www.mkri.id, and www.mahkamahagung.go.id, Indonesians can always access government updates such as policies, news, events, laws, and decisions. (6) A Space to Access Global Information. As the Internet grew worldwide and international broadcasters provided almost everywhere, such as BBC, CNN and The Guardian, we can access information on other countries' updates from a computer with Internet access. (7) A Tool to Mobilise Civil Society. Swedish climate activist Greta Thunberg and Fridays for Future started the debut when she did *Skolstrejk för Klimatet* (English: The School Strike for the Climate) on August 20, 2018, in front of the Stockholm parliament building, her hometown. Thanks to social media that has made this climate campaign spread all over the world, triggering many people to strike over climate change and demanding state officials take action against it.

Referring to the practical examples above, the openness and decentralisation offered by social media platforms facilitate the potential of individuals and/or groups who become the source of information and receivers in democratic practices. Unlike traditional mass media, this networked platform has reconfigured communicative power relations by giving the users' (citizens') monopoly control over media production and information dissemination.[14] The Internet provides the public with new communication means where individuals can appear and express thoughts, ideas, and opinions. Individuals who play social media can be the information provider and receivers on the Internet. Social media offers a free service and decentralised online platform where the government has limited power to control it. This feature is such a double-edged sword as it gives advantages and disadvantages at the same time. Online space holds the potential for a stronger diversity of opinions and expressions, which is good for democracy, as they exist in society, thus strengthening the public discourse and sphere.[15]

Governments prepared various reasons for Internet interference, prepared many strategies, and endured both costs and benefits.[16] From this perspective, a literal definition of Internet shutdown can be defined as an intentional act of disconnection of digital communications by government authorities due to a certain occasion and/or reason. However, this definition covers no specific Internet platforms such as Facebook, Twitter, YouTube, or Instagram and messaging apps such as WhatsApp, LINE, or Blackberry Messenger. In 2016, a conference called RightsCon was held in Brussels, Belgium, gathering diverse stakeholders, including technologists, policymakers, activists and others, resulting in a clearer and more specific definition of Internet shutdown.[17] The RightsCon conference defines Internet shutdown as an "Intentional

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[13] "Global Internet Liberty Campaign."

[14] Brian D. Loader and Dan Mercea, "Networking Democracy? Social Media Innovations in Participatory Politics," *Information, Communication and Society* 14, no. 6 (2011): 4–5.

[15] Rikke Frank Jørgensen, "Internet and Freedom of Expression," *Raoul Wallenberg Institute of Human Rights and Humanitarian Law-Lund University* 6 (2011): 4–5.

[16] Philip N. Howard, Sheetal D. Agarwal, and Muzammil M. Hussain, "The Dictators' Digital Dilemma: When Do States Disconnect Their Digital Networks," *SSRN Electronic Journal*, no. 13 (2011), https://doi.org/10.2139/ssrn.2568619.

[17] The working group of RightsCon is a conference held by a non-governmental organisation called AccessNow, campaigning #KeepItOn to fight Internet shutdowns worldwide. See further at AccessNow, "No More Internet Shutdowns! Let's #KeepItOn", Retrieved from https://www.accessnow.org/no-Internet-shutdowns-lets-keepiton/.

disruption of the Internet or electronic communication, rendering them inaccessible or effectively unusable, for a specific population or within a location, often to exert control over the flow of information".

Ben Wagner (2018) explains the Internet shutdown through a concept of communicative rupture to approach the social phenomenon.[18] The concept talks about what happens in a society when communication networks are intentionally disconnected. Internet shutdown caused by simple technical failure is not similar to communicative rupture, where there is an aspect of intention from the government to disconnect the networks. The intent aspect plays an important role in determining whether it violates the freedom of expression and how it will affect local populations. Government actors, on certain occasions such as rallies, security threats, counter-terrorism and military operations, usually do an Internet shutdown. However, the Internet is similar to traditional media for broadcasting mechanisms that may be prone to censorship. This exception is included when a need to selectively remove search results, shutting down traffic to certain websites and disconnect access due to traditional ceremonies such as *Nyepi* day[19] in Bali, public gatherings, national events or secretive meetings between top-level state officials.[20]

Notably, world communities are dependent on communication infrastructures. Nowadays, telecommunications, the Internet, and social media have become inseparable parts of social life until it is difficult to live without them.[21] In the context of postmodernity, this type of living has resulted in a new phase of life when everything is digital. There is a shifting activity from posting thoughts to searching for ideas, from making a friend to earning money on a digital-based business. As a part of the democratic pillar, mainstream media have digitalised their products into greener and more efficient products. In this part, the government also utilises this instrument to conduct governmental affairs such as budgeting and disseminating information to the public. Governing the public sphere is seen as a key to building a nation. However, it leads to censorship and restrictive control over communications. Although Internet shutdowns typically refer to a means of censorship, the government tends to overdo it to fight against political opposition. Restrictions over Internet access in practice are related to national security, general election, political activities, and public protest.[22]

Public Interest concerning the Internet

In 2003, the World Summit on the Information Society (WSIS) Declaration of Principles reaffirmed democracy, universality, indivisibility and interdependence of all human rights and fun-

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[18] Wagner, "Understanding Internet Shutdowns: A Case Study From Pakistan."

[19] *Nyepi* Day is an annual spiritual ceremony of the Hindu religion in Bali where people have to be silent and avoid doing any activities.

[20] Espen Geelmuyden Rød and Nils B. Weidmann, "Empowering Activists or Autocrats? The Internet in Authoritarian Regimes," *Journal of Peace Research* 52, no. 3 (2015): 340.

[21] Bank of America, "Trends in Consumer Mobility Report" (New York City: Bank of America, 2014), http://media.bizj.us/view/img/3099551/2014bactrendsinconsumermobilityreportinfographic.pdf.

[22] Summary of a public discussion done by the Indonesian legal aid foundation (*Yayasan Lembaga Bantuan Hukum Indonesia,* YLBHI) on September 3, 2019, at YLBHI Main Office, Jakarta. The discussion was attended by a set of stakeholders, namely: Arip Yogiawan (Head, Campaign and Networking Division of YLBHI), Anggara Suwahju (Indonesia's Institute for Criminal Justice Reform), Damar Juniarto (SAFENet) and moderated by Daniel Awigra (Indonesia's Human Rights Working Group). See further at YLBHI, "Pembatasan Akses Internet: Kebijakan, Batasan, dan Dampaknya", Retrieved from https://ylbhi.or.id/informasi/kegiatan/pembatasan-akses-Internet-kebijakan-batasan-dan-dampaknya/.

damental freedoms. This declaration urges the importance of the right to freedom of expression for the "Information Society".[23] The declaration also wishes for freer access to information through the Internet as the medium. The Internet is the only technology that has ever provided such unprecedented access to knowledge and information as good as the Internet. This conclusion is directly affected by the Internet's value of transparency and accountability. However, today, the privilege brought to society by the Internet threatens the government for political interests. Therefore public interest sometimes becomes the only weapon to curb it.

Public interest generally means the welfare or well-being of the general public and society. It is related to other ideas, such as "common advantage," "common good," "public good," "public benefit," and "general will." However, it also carries legitimacy and justifies coercion, especially when controlling the flow of information by the ruling authorities, therefore violating human rights. If this happens, human rights must be protected and promoted to the greatest extent possible before other interests are even considered.[24] Human rights, especially freedom of expression and information, are necessary to enjoy other rights.

The freedom to express opinions and ideas and the freedom to obtain them as information are universally considered essential at the individual level, contributing to a person's full development and becoming a foundation stone of a democratic society. In this manner, the role of government is undoubtedly vital in ensuring this freedom is upheld, as the government possesses all instruments necessary for human rights enforcement. On the contrary, the Indonesian government shows no interest in democratic reform and has used modern authoritarian methods to fend off government opponents and violate their freedom.

The revolution in Egypt is an obvious example of how social media can initiate a large-scale mass mobilisation, organisation and implementation of a social movement.[25] The Internet has also helped the protesters expose police corruption, sexual harassment, and undemocratic practices.[26] In this context, due to a political escalation, threatened governments usually utilise Internet shutdowns to fight back and control the mass movement. If the Internet is being cut off, the tool to mobilise protesters and spread news can be disabled. This initiative also aims to cut all information out of the country before spreading worldwide. The shutdown can range from a complete blackout of Internet infrastructures to the closure of mobile Internet services or particular application services such as Facebook and WhatsApp.

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[23] The Declaration of Principles stated, "We reaffirm, as an essential foundation of the Information Society, and as outlined in Article 19 of the Universal Declaration of Human Rights, that everyone has the right to freedom of opinion and expression; that 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. Communication is a fundamental social process, a basic human need and the foundation of all social organisations. It is central to the Information Society. Everyone everywhere should have the opportunity to participate, and no one should be excluded from the benefits the Information Society offers."

[24] Yayasan Lembaga Bantuan Hukum Indonesi, "Pembatasan Akses Internet: Kebijakan, Batasan, Dan Dampaknya," *YLBHI* (blog), accessed January 7, 2020, https://ylbhi.or.id/informasi/kegiatan/pembatasan-akses-internet-kebijakan-batasan-dan-dampaknya/.

[25] Nahed Eltantawy and Julie B. Wiest, "Social Media in the Egyptian Revolution: Reconsidering Resource Mobilisation Theory," *International Journal of Communication* 05, no. 09 (2011): 1210, https://doi.org/10.4172/2165-7912.1000275.

[26] Vasileios Karagiannopoulos, "The Role of the Internet in Political Struggle: Some Conclusion from Iran and Egypt," *New Political Science* 2, no. 34 (2012): 158.

There is a major change in political participation and civic engagement from traditional methods to a more modern and digital feature. This has caused the government to adopt an Internet shutdown on the utilisation of the widespread diffusion of Internet access. Traditionally, political acts were conducted offline and centred around electoral activities. However, the scope of political participation has dramatically broadened. Debate and discourse on politics have moved into online methods via available social media, public protests have adopted digital equivalents, and the interactions of government citizens, as well as access to information, have gone through the Internet as a new primary intermediary. This digital space for civic engagement has done more than offer technological shortcuts for an Internet-savvy generation.

The Internet has significantly shaped our democratic life both in structure and culture. Today, access to the Internet is a prerequisite to participate in civic life, and the government found a need to regulate it. Political participation has intertwined with Internet access that if it goes blackout, the public may be unable to enjoy the basic civil rights of receiving and disseminating information. This may lead to negative duties on the government to refrain from restricting Internet access from the entire country, a specific region, or persons only, such as prisoners.[27] Determining this point, if the government chooses to disconnect quite a wide-range Internet access to specific apps only, for example, the 2019 announcement of Indonesia's presidential election, it has violated the rights of others besides preventing protesters from spreading hoaxes or real-time information. Then a question appears, why do governments interfere with the Internet while many people enjoy the creative use of digital media?

Internet Censorship in the World: Common Justification?

Indonesia is one of many countries to ever impose a shutdown over Internet access. The fact that many countries did the same way for many reasons. Most are to control the spread of information in cyberspace and/or to hamper the communication system. The second reason is due to system failure or maintenance, and it is common and legal to justify the censoring done by the government by shutting down the Internet or limiting access for the sake of betterment. Meanwhile, the first reason needs to be revised. On the one hand, censorship controls the spread of unsafe information or content, such as hoaxes and pornography. On the other hand, it is used to silence criticism that commonly happens before, during, or after an election.

AccessNow, which has gathered reports and monitored shutdowns worldwide, notes that there were 931 shutdowns between 2016 and 2021 in 74 countries. The shutdowns were mostly imposed during heightened political tensions, such as public demonstrations relating to social, political or economic grievances. Meanwhile, the rest occurred for the reason of religious festivals and examinations.

Table 1. *Table of Information regarding the Notable Internet Shutdown in the World*

No.	Country	Period	Background
1.	Egypt	January 25 – February 2 2011	2011 revolution demanded to overthrow of President Hosni Mubarak due to his corruption and repression administration. The government demanded the ISPs shut down their network in the act of the "State against the Internet".

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[27] Yohannes Eneyew Ayalew, "The Internet Shutdown Muzzle(s) Freedom of Expression in Ethiopia: Competing Narratives," *Information & Communications Technology Law* 28, no. 2 (May 4, 2019): 208–24, https://doi.org/10.1080/13600834.2019.1619906.

2.	Syria	2011, 2013, 2014	Internet censorship in Syria is extensive as it bans websites for political reasons and arrests people accessing them. The climax was in late November 2011 when the Internet connectivity between the country and the outside world shut down almost totally, and again in 2013 more than ten times and again in March 2014. The government blamed terrorists for the cut-off, while the terrorist denied the act. As no one admitted responsibility for the event, the blackout was accused of intentionally masking an impending military offensive.
3.	Nepal	February 1 2005	The government controlled the Internet in Nepal when the King declared martial law in 2005. The government then cut off the connection. Intimidation is rampant in Nepal. Although Article 115 of the 1990 Nepali Constitution guarantees the freedom of expression, censorship or shutdown are common practices in Nepal.
4.	DR Congo	December 31 2018 – January 20 2019 21 – 23 March 2021	President Joseph Kabila is stepping down after 17 years in office due to the 2016 election that was delayed for two years until 2018. The reason behind the shutdown was likely to dampen speculation about the presidential election results and to safeguard national security in the aftermath of the presidential and legislative polls in the country. The Internet and SMS services were cut a day after the much-delayed presidential election to preserve public order after "fictitious results" began circulating on social media.
5.	Burundi	May 20 2020	The government of Burundi blocked access to social media on election day, including Facebook, Twitter, WhatsApp, and YouTube, to avoid political competition and the potential for violence.
6.	Ethiopia	November 4 2020 – November 4 2022	The Internet was shut down a day after the civil war began on November 3 2020, restricting information on war crimes, human rights abuses, and other horrific acts emerging from the region and hiding the true extent of the violence and atrocities.
7.	Iraq	2018 and October 1 2019	Iraqi authorities responded to the mass anti-government protests that began on October 1 2019, to protest rising unemployment, failing public services, including long power outages, and government corruption by imposing a near-total Internet shutdown, as well as shutting down government offices, introducing a curfew in several cities, deploying thousands of heavily armed security forces, arresting hundreds of people, and engaging in conflict resulting in protester deaths. The authorities blocked Facebook, Twitter, WhatsApp, Instagram and other social and messaging apps, and Internet access was cut off across much of Iraq. Previously it happened in 2018.
8.	Kazakhstan	2-7 January 2022	For six days between 2 – 7 January 2022, the Internet in Kazakhstan was limited and even shut down due to a protest over a surge in gas prices, leading to 225 deaths and thousands of injuries and arrests. The shutdown was accused of responding to widespread civil unrest in the country and covering the state violence.
9.	Pakistan	April 16 2021, and May 25 2022	On April 16 2021, the government ordered an hours-long shutdown of social media and instant messaging platforms after days of violent anti-France protests due to President Emmanuel Macron threw his support behind a satirical magazine's right to republish cartoons depicting Prophet Mohammed, an act deemed blasphemous by many Muslims. On October 25 2022, the government banned and cut mobile service in an attempt to head off major protests by preventing leaders from issuing mass calls for demonstrations, including a call from former president Imran Khan
10.	Sudan	October 25 2022	The government ordered to disrupt of online access following the tens of thousands protesting on the anniversary of a military coup derailing a transition towards democratic governance. On November 11 2022, the Khartoum Court ordered the Internet to be fully restored across all regions in Sudan. The next day, November 12 2022, Sudan's Telecommunication and Post Regulatory Authority ordered the Internet to remain shut down under the emergency state to "preserve national unity and

national security". This comes in defiance of a previous court ruling to restore internet access to all.

11.	Uzbekistan	July 1 2022	The government ordered to shut off of internet access as the protests erupted in response to President Shavkat Mirziyoyev's to amend the constitution and curtail the autonomy of the autonomous region Karakalpakstan. The state of emergency was implemented in the region and set until August 2 2022, denying the freedom of movement of the people. Five hundred sixteen people have been detained, 243 wounded, and 18 people have been killed in attempts to suppress the protests.
12.	Yemen	21-23 January 2022	Three days without Internet after the nighttime airstrike by Saudi and UAE-led hitting the telecommunication infrastructure in Hodeidah. The incident was not the first. Yemen has accounted for at least 26 shutdowns between 2016 and 2020, some of which occurred due to targeted attacks by warring parties in the conflict.
13.	India	August 5 2019 – February 5 2021	The government revoked the special status of its portion of Kashmir, known as Jammu and Kashmir, on August 5 2019, to fully integrate its only Muslim-majority region with the rest of the country. Anticipating major unrest, authorities imposed a communications blackout, cutting off phone and internet connections. The shutdown lasted until February 5 2021. For the record, India shut off the Internet at least 106 times in 2021, the highest number of shutdowns globally for the fourth consecutive year, according to digital rights group AccessNow, costing the economy an estimated $600 million. Of these, at least 85 were in Jammu and Kashmir, largely on security grounds.
14.	Zimbabwe	15-18 January 2019	The government imposed a total internet shutdown in what critics called an attempt to hide growing reports of a violent crackdown on protests against a dramatic fuel price increase. Hundreds of Zimbabweans were arrested during the protests on public order charges
15.	North Korea	December 2014	From 19–21 December 2014, North Korea experienced technical difficulties with Internet access. On December 22, North Korea suffered a complete Internet link failure, resulting in loss of Internet access from outside the country, for which the United States is suspected. On December 23, nine hours after the outage, the country regained Internet access, albeit "partial and potentially unstable with other websites still inaccessible." On December 27, the country experienced an outage on the Internet (the third time of the year) and a mobile network.
16.	Uganda	14-18 January 2021	Uganda blocked Internet and social media access on the evening of the presidential elections held on January 14 2021. Access to the Internet was restored on January 18, but social media remains off-limits. The event shows that digital restrictions are becoming a routine part of Uganda's electoral cycle. The president's justification for the internet shutdown was retaliation for Facebook taking down some pro-government accounts, which is frivolous and vexatious.
17.	Bahrain	23-24 June 2016	On 23-24 June 2016, the government decided to disrupt mobile Internet service to curb a series of street protests over the general economic slowdown and the response to the government's decision to strip citizenship from a prominent cleric, Isa Ahmed Qassim, who is regarded as the spiritual voice of the country's Shiite majority.
18.	Bangladesh	December 29 2018	The country's telecom regulator ordered mobile operators to shut down high-speed mobile internet services until midnight Sunday, December 29 2018, the day of a national election. The decision was taken to prevent rumours and propaganda surrounding the vote. It is argued that the decade-long tenure of Prime Minister Sheikh Hasina was in the hope of retaining power in the elections. The regime was allegedly responsible for mass arrests, the jailing of activists and critics, forced disappearances, and extrajudicial killings.
19.	Turkey	Post July 15, 2016, Coup and Febru-	On February 28 2020, the government blocked its citizens from accessing social media platforms such as Twitter, Facebook, and Instagram after an airstrike in Syria for 16 hours. YouTube and WhatsApp messag-

		ary 28 2020	ing backend servers were partially restricted simultaneously or shortly after. Internet censorship and surveillance are likely to increase further because of new regulations that boost government control. Previously after July 15, 2016, Coup, there were a series of shutdowns ordered by the government to suppress the dissemination of news and information regarding possible civil unrest in the regions.
20.	Cameroon	January 17 – April 20 2017 October 2018 – March 2018	The first Internet shutdown lasted 94 days, starting on January 17 and ending just after the initial lawsuit was filed around April 20 2017. The second lasted from October 2017 to March 2018. The act was taken to quell criticism against the government and to undermine people's ability to peacefully protest, access information, and share their stories, including documentation of police brutality and other human rights abuses.
21.	The Gambia	November 30 2016, and January 4 2021	The government led by President Yahya Jammeh shut down the Internet and international phone calls, announced on the evening of November 30 2016, to further restrict freedom of expression and access to information in The Gambia as the country goes to polls. The government again cut off the Internet on January 4 2021, with an excuse of technical issues on the backup links.
22.	Myanmar	February 1 2021	Since the coup on February 1 2021, the Military's junta has been imposing restrictions on internet access to suppress protests. Shutting down the Internet was one of the army's first moves after it ousted the country's elected government, unleashing a wave of mass protests the Military sought to quell with a bloody crackdown on dissent.

Source: AccessNow (https://www.accessnow.org/keepiton/)

Table 1 shows that most countries were imposing Internet censorship. The shutdown or limitation of access is because of political reasons. Among all, national security tops the list as the most frequently cited justification for the shutdowns globally, while it is also the broadest and most vague. What happens is that the effect of shutdown for the sake of "national security" have the opposite effect. The public tends to feel unsafe when they need help figuring out what is going on, get access to important news, reach emergency services, or lose contact with their loved ones. Another reason to justify the shutdown is to spread hoaxes or control the free flow of information online during an election period is a profound violation of human rights and a threat to democracy. The shutdowns prevent journalists, election observers, and the public from reporting fraud or irregularities during the process. The opposing parties will always be victims of the shutdown as they cannot communicate with their sympathisers.

When a protest occurs, a government sometimes chooses to shut down access to the Internet to quell dissent or stop the action, claiming to restore order or keep people safe. However, imposing an Internet shutdown when people are protesting affects nothing to increase public safety. Even worse, it stops important information from reaching citizens, such as how to find a safe place or contact emergency services when a violent protest happens. The shutdown also will impact the incapability to document human rights violations, such as disproportionate use of force by police or Military. In contrast, an increasingly popular form of the shutdown aims to stop students from cheating on exams. This type of shutdown is a disproportionate practice that violates the freedom of expression of many to stop a few students from cheating. Similarly, the last reason to shut down Internet access is to keep the dignitaries safe during a visit of government officials or foreign political leaders. In this matter, the rationale behind the action is questionable, whether for national security or to censor news about the protest happening at the time.

Justification and Restraints of Internet Shutdown: Legal Theory Perspective

The existence of human rights protection means that the state cannot carry out arbitrary actions to limit the rights and freedoms of every citizen, especially against human rights, which are classified as *non-derogable rights*. There are 2 (two) reasons why restrictions can be placed on the implementation of human rights: (1) The idea of restricting human rights is based on the recognition that most human rights are not absolute but rather reflect a balance between the individual's and society's interests. With this, human rights restrictions may be permanent.[28] (2) To resolve conflicts between rights. For example, freedom of expression. One right may be limited to giving space to exercise another right. There are restrictions placed on protecting the rights and freedoms of others.[29]

Internet network restrictions can be categorised as derogable rights. Internet rights are human or digital rights, which are part of inseparable human rights; these are regulated in UN Human Rights Council resolutions.[30] There are 2 (two) situations or circumstances to answer the ideal human rights law mechanism in carrying out restrictions, namely:

Internet Network Restrictions in an Emergency

A state of emergency originates from the government's declaration to respond to an extreme situation that endangers the country.[31] The characteristics of a state emergency are as follows: (a)There is a danger or disaster, imminent or actual. (b)The danger or disaster threatens the country's life, the citizens' welfare, the state's territorial integrity, or state institutions' functioning. (c)The standard legal measures are insufficient and useless to deal with the current crises (emergency must be used as a last resort). (d)The constitution states that emergency powers are needed on the immediate foundation to resolve the situation. (e)The character of the disaster or threat has to be temporary. (f)The purpose of the emergency proclamation must safeguard the country's life and return, as soon as possible, to the standard legal order.

As a country that has ratified the International Covenant on Civil and Political Rights through Law No. 12 of 2005, it means that Indonesia is subject to the provisions of international human rights law, and Indonesia must carry out the contents article by article seriously. Article 4 of the Covenant on Civil and Political Rights allows states to restrict human rights if the country is in a state of emergency. Restrictions in the state of emergency have also been explained in more detail in the Siracusa Principles.[32] The restrictions and reductions in human rights can only be carried out if the following conditions are met: a) Prescribed by law; b) Necessary in a democratic society; c) Protecting the public interest (public order); d) Protecting public morals; e) Protecting national security; f) Protecting public health (public health); g)

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[28] Dominic McGoldrick, "The Interface Between Public Emergency Powers and International Law," *International Journal of Constitucional Law* 2, no. 2 (2004): 383.
[29] Sefriani, "Kewenangan Negara Melakukan Pengurangan Dan Pembatasan Terhadap Hak Sipil Politik," *Jurnal Konstitusi* 1, no. 1 (2012): 7.
[30] Human Rights Council, Thirty-Second Session, Promotion and protection of all human rights, civil, political, economic, social, and cultural rights, including the right to development, A//HRC/32/L.20, (2016).
[31] Frederick Cowell, "Sovereignty and the Question of Derogation: An Analysis of Article 15 of the ECHR and the Absence of a Derogation Clause in the ACHPR," *Birkbeck L. Rev* 1 (2013): 135.
[32] Kresimir Kamber, "Limiting State Responsibility under the European Convention on Human Rights in Time of Emergency: An Overview of the Relevant Standards," *European and Comparative Law Journal* 5, no. 1 (2017): 63.

Protecting public safety; h) Protecting rights and freedoms of others or the right or reputations of others.

Manfred Nowak explained that states are free to decide to what extent and by what means to restrict human rights provided they meet the conditions outlined in the relevant clauses.[33] Carl Schmitt argues that the one who has the authority to decide a country in an emergency is the sovereign (power holder). In Indonesia, the authority to declare a state of danger or emergency is given to the president.

In Government Regulation in Lieu of Law No. 23 of 1959 concerning The State of Danger, there are 3 (three) criteria used to determine an emergency, namely: (a) Security or legal order throughout the territory or part of the Territory of the Republic of Indonesia is threatened by insurrection, riots, or due to natural disasters, so it is feared that it cannot be overcome by ordinary equipment; (b) War or danger of war or fear of rape of the territory of the Republic of Indonesia in any way whatsoever; (c) The state's life in danger or from special circumstances turns out to be or is feared that there are symptoms that may endanger the state's life. Through this, the state of danger or emergency constitution gives the president the authority to assess whether the country is in danger based on reports submitted by the Commander of the Armed Forces and the Minister of Defense and Security.

In a situation of Martial Law, Article 25 paragraph (2) explains, "The Ruler of Martial Law has the right: to master postal equipment and telecommunications equipment such as telephones, telegraphs, radio transmitters and other means that have to do with radio broadcasting and that can be used to reach the masses." Then in the State of War in Article 40 also spells out restrictions relating to internet networks, Article 40 paragraph (1) reads "The Lord of War shall have the right: to prohibit performances, printing, publishing, announcing, conveying, disseminating, trading and pasting writings of any kind, paintings, clichés and drawings".

The rule explains how the country is in a state of danger and emphasises that restrictions can be imposed on internet networks in their respective categories in such circumstances. States must respect some principles during a state of emergency: (a) The principles of the declaration. The purpose of this proclamation is that the state of emergency must be announced or proclaimed openly to be aware of it.[34] If not stated officially, unusual or extraordinary circumstances will not result in the legitimacy of acts of an extraordinary nature that fall outside the corridors of legal norms that apply in ordinary circumstances.[35] (b) The principles of temporary. The imposition of an emergency must be limited by time, meaning there must be certainty when the emergency begins or ends. This is to avoid abuse of authority. Implementing emergencies also regulates the restoration of restricted or reduced rights. (c) The principle of proportionality. This principle refers to the need to take immediate action because of compelling needs. It requires the necessary actions to deal with or overcome them proportionately. Implementing an emergency aims to overcome all threats and impacts and return the state to its orig-

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[33]   Manfred Nowak, *Introduction to the International Human Rights Regime* (Martinus Nijhoff Publishers, 2005).
[34]   Charles Manga Fombad, "Cameroon's Emergency Powers: A Recipe for (Un) Constitutional Dictatorship?," *Journal of African Law* 1, no. 1 (2004): 72.
[35]   Oren Gross and Fionnuala Ní Aoláin, *Law in Times of Crisis: Emergency Powers in Theory and Practice*, Vol 46 (Cambridge: Cambridge University Press, 2006).

inal state.[36] Therefore, the actions taken are solely intended to achieve the aims and objectives of overcoming the threat and restoring it to its original state. If the goal has been achieved, the action's proportionality is considered fulfilled, so there is no need to continue. If it is continued, that subsequent action can no longer be called a proportional action.[37] Likewise, actions not needed to overcome the situation in question are not included in the proportional definition referred to by this principle. The principle of proportionality is used as a standard of right and justice in legislative enforcement procedures, in civil law, and as an analytical tool meant to assist the humility of the proper relation between the limitation enforced by the disciplinary action and the forbidden nature statute.[38] (d) The principle of necessity. The principles of necessity are a concept used to define the grounds on which the executive power's exceptional acts, intended to preserve justice or maintain basic constitutional values, are held to be lawful even though such conduct may usually be deemed to contravene existing norms or conventions. [39] (e) Principle of Legality. The legality principle is the state of being consistent with the law or lawful in a given jurisdiction. This principle emphasises that the government exercises its power under the laws and regulations of a country.

Internet Network Restrictions in Normal Circumstances

In principle, restrictions are carried out when an emergency occurs, and in practice, restrictions are often carried out in normal situations. In this case, the restriction's context is the internet network's restriction. Suppose internet restrictions related to freedom of expression, the right to seek, obtain and convey information, and other rights used through the Internet are still carried out. In that case, they must meet 3 (three) conditions, namely: (a) Restrictions must be regulated in laws and regulations in the form of laws; (b) The restriction must meet/comply with one of the following purposes: 1) To guarantee recognition and respect for the rights or good name of others, or 2) To meet fair demands following considerations: moral, religious values, security, decency, public order, public health, or in a democratic society. (c) It must be proved that such restrictions are required in proportion. Under international human rights law standards, the act of filtering or inhibiting access to content can only be carried out by order of a court or other independent dispute resolution body after passing the three-stage test known in international human rights law (prescribed by law, a legitimate aim and necessary). A government or a state administrative decision should precede any restriction or disconnection of the internet network in normal situations. This is important because government administrative decisions or state administrative decisions become a legal umbrella in restricting internet networks.

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[36] Filipe Brito Bastos and Anniek de Ruijter, "Break or Bend in Case of Emergency?: The Rule of Law and State of Emergency in European Public Health Administration," *European Journal of Risk Regulation* 10, no. 4 (2019): 617.

[37] Christian Kreuder-Sonnen, *Emergency Powers of International Organisations: Between Normalisation and Containment* (Oxford: Oxford University Press, 2019).

[38] Robert Alexy, "Proportionality, Constitutional Law, and Sub-Constitutional Law: A Reply to Aharon Barak," *International Journal of Constitutional Law* 16, no. 3 (2018): 872–74.

[39] Sanford Levinson, "Constitutional Norms in a State of Permanent Emergency," *Georgia Law Review* 40, no. 3 (2005): 705.

Internet Censorship in Indonesia: A Problematic Policy

Internet filtering in Indonesia is deemed 'substantial' in the social arena and 'selective' in political and Internet tools. Although the government positively uses the Internet as a means for economic development, it eventually becomes a matter of concern over the impact on information access. To further respond to the issue, the government passed Law Number 11 of 2008 on Information and Electronic Transactions (ITE Law) in early March 2008. This ITE Law allows the Ministry of Communications and Information Technology to include supervision of the information flow and the possibility of censorship of online content. It lists vaguely-worded content such as pornography,[40] gambling,[41] hate incitement,[42] threats of violence,[43] misuse of private information and/or false information,[44] , intellectual property, and contents that degrade an individual or group based on a physical or nonphysical characteristic, such as disability. Under the ITE Law, anyone accused of online defamation faces up to six years imprisonment and a fine of up to one billion rupiahs (US$111,000).[45] As of April 2020, there were about 381 reported cases in which people and/or institutions were charged with defamation charges for statements on email, blogs, Facebook, Twitter, Instagram, and any other social media.[46] Prosecutions under ITE Law have led to an increased environment of terror, caution, and self-censorship among Internet users.

The result of Internet censorship ranks Indonesia as a "partly free" country regarding Internet freedom, leaving many restrictions imposed on major social media. Name Telegram, a cloud-based Internet messaging and voice-over IP service was blocked in 2017 by the government as it was used to spread "radical and terrorist propaganda". However, the restriction was lifted after several agreements between the company and the government. One year after Telegram, some websites, including Vimeo, Tumblr, and Reddit, were censored following the spread of content that included nudity. The climax of Internet censorship in Indonesia was imposed mainly following the April 2019 divisive presidential election between the incumbent president, Jokowi, against its previous 2014 presidential election rival Prabowo Subianto. The government had to limit access to social media during post-election protests that later collapsed into riots in the capital city of Jakarta between 22 and 24 May, citing the need to curb the spread of hoaxes and misinformation.

Many have argued that the two presidential candidates' camps allegedly employed online campaign strategists who recruited paid commentators known as "buzzers" and automated accounts to spread political propaganda before the election. One buzzer led a team of 250 fake accounts on major social media platforms, including Facebook, WhatsApp, YouTube, and spam accounts on Twitter, to manipulate and amplify hashtags to benefit certain presidential candidates. Responding to this case, the government decided to shut down nationwide Internet access during the riots to calm down the online stream as it affected the people down on the

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[40] Article 27, paragraph (1) on the Prohibited Acts Chapter.
[41] Article 27, paragraph (2) on the Prohibited Acts Chapter.
[42] Article 27, paragraph (3) on the Prohibited Acts Chapter.
[43] Article 27 paragraph (4) on the Prohibited Acts Chapter.
[44] Article 28, paragraph (1) on the Prohibited Acts Chapter.
[45] Article 45, paragraph (1) on the Sentencing Chapter.
[46] "List of Internet Users Charged with Defamation under the ITE Law," Safenet.id, 2020, https://id.safenet.or.id/daftarkasus/.

streets. The restriction over Internet access returned in August 2019 for weeks when the government imposed an Internet blackout in Papua and West Papua provinces, citing security issues as anti-discrimination and pro-independence protests.

Originally, the ITE Law was meant to regulate the exchange of information and other electronic transactions. It regulates norms of what actions are allowed and banned on the Internet. However, it turns out to be a draconian law in which Internet users may find themselves in trouble if they conduct something that is deemed misleading, misinformed or offensive by the government or other opposed groups. Many scholars have been arguing that the law is biased and can be used to tackle critiques, especially in political matters (see Table 1). The ITE Law 2016 has created a new barrier for social media users to express their thoughts or criticism of governmental affairs and policies. This has resulted in a limitation where people have to be very careful in using social media and commenting online. Alternatively, they might find themselves in trouble, facing draconian laws that could bring them into the courtroom. Of course, no one wants to be in trouble only because of publicising online their ideas or critics against the government or politicians. In fact, Internet use in politics has polarised society, especially in the 2014 and 2019 Indonesian presidential elections.[47]

Indonesia's Democratic Decline and Social Unrest

One defining characteristic of democratic decline is a large threat from the inside rather than an outside democratic government. A common democratic decline occurs when democratically elected leaders with good, strong, and decisive leadership narrow the space for the democratic opposition, bend democratic institutions to their will and gradually transform the country into an illiberal democracy or an authoritarian electoral state.[48] This could be an example of past Indonesia under the authoritarian military regime of Soeharto. After his fall in 1998, Indonesia became a freer and more democratic country than ever.[49] Other examples of this case are Vladimir Putin in Russia and Viktor Orban in Hungary. Reminiscing the 2014 presidential election in Indonesia, the Prabowo Subianto campaign was characterised as a "classically authoritarian populist challenge" which publicly denounced the exploitation of power under corrupt political elites within his surroundings. He then lost a six per cent gap against the current President, Joko "Jokowi" Widodo, bringing a severe threat of authoritarian regression within a whisper.[50]

In late 2016, the former Jakarta's capital city governor of Basuki "Ahok" Tjahaja Purnama, an Indonesian Chinese-descent Christian, convincingly made a blasphemous comment towards a verse in the Holy Qur'an that led to a couple of Islamist rallies against him on September 4 and December 2, 2019. It was reported that millions of protesters take the streets in Jakarta to demand Ahok be arrested for his controversial comment directing Jakarta citizens not to listen to those who said that the Islamic holy Qur'an prohibits Muslims from voting non-Muslims to be a leader. This so-called largest mobilisation in the democratic era was organised by the

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47 Thomas P. Power, "Jokowi's Authoritarian Turn and Indonesia's Democratic Decline," *Bulletin of Indonesian Economic Studies* 54, no. 3 (2018): 333–34.
48 Edward Aspinall and Eve Warburton, "Indonesia: The Dangers of Democratic Regression," *Advances in Social Sciences, Education and Humanities Research* 129 (2017): 2.
49 Aspinall and Warburton.
50 Edward Aspinall et al., 2015, "The moderating president: Yudhoyono's decade in power" in Edward Aspinal, et al. (ed), *The Yudhoyono Presidency Indonesia's Decade of Stability and Stagnation*, pp.1-22

right-wing coalition of Islamist groups and conservative Islamic organisations, with the backing of mainstream political elites – including Prabowo, whose party sponsored the winning of Jakarta's gubernatorial election candidate, Anies Baswedan. At that moment, Ahok was still running for the campaign. However, he was found guilty and sentenced to two years of imprisonment in mid-2017.

The aftermath of Ahok's imprisonment caused a polarisation of social life in Indonesia called *Pancasilais*[51] group and *Agamis*[52] group. These two groups contributed to the sparkle of debates over social media about Pancasila and Islam. This virtual reality ping-pong got worse as much irresponsible information, such as memes, propaganda, and hoaxes, spread everywhere to knock down the opponents. Social media have been occupied with these two groups debating about one another and continued right to the rematch between incumbent President Joko Widodo against Prabowo Subianto in 2019 Indonesia's presidential election.

Reminiscing Indonesia's political lane lately, Prabowo was the one who brought Jokowi to Jakarta's gubernatorial election in 2012, along with Ahok as his running man. Once Jokowi was elected as the seventh president in 2014, Ahok replaced him to be the governor. Until the day Ahok was ousted and jailed for blasphemy after his comment went viral online in 2016, his promotion as the governor was controversial as he is Chinese and Christian at the same time. Having double minority aspects has made him underprivileged and bullied online. This condition has expanded following the 2019 presidential election.

The new coming case is FPI's dissolution. Then the Head of Indonesian Police issued a notice to prohibit anyone from sharing information about *Front Pembela Islam* (FPI/Islamic Defender Front) Number Mak/1/I/2021 as stated below:[53]

> *"Masyarakat tidak mengakses, mengunggah, dan menyebarluaskan konten terkait FPI baik melalui website maupun media sosial;* English translation: people are prohibited from accessing, uploading, and sharing any related content of FPI through any website or social media.*"*

That notice seems against the 1945 Constitution on the Freedom of Information as stated in Article 28F since using the Internet is part of human rights as guaranteed by the constitution and one of the characteristics of democracy. Therefore, today's regime is excessive in using its power to restrict any information that contradicts the government's deeds.

In April 2019, around 192 million Indonesians were eligible to vote in the general election. Having not only one type of election, but Indonesia also held what was "one of the most complicated single-day elections in global history", as presidential, parliamentary and regional elections were all taking place simultaneously on the same day for a day.[54] The presidential election

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[51] *Pancasilais* is a made-up term for the followers of Pancasila, a philosophical norm of Indonesia. This group was established in response to Ahok's blasphemous case that made him go to jail. Literally, *the Pancasilais* group supports Ahok to be free from the charge and asks everyone to follow Pancasila's principles, especially tolerance teaching.

[52] *Agamis* is a made-up term for those who are devoted to the Islamic religion in the context of post-Ahok imprisonment. This group pushes the government to place Ahok guilty of blasphemy deeds as he commented on an Islamic verse in the election context that instructs all Muslims not to vote for non-Muslims to be leaders.

[53] "Polri Sebut Maklumat Kapolri Soal FPI Bukan Untuk Pers Dan Media Massa," Kompas.com, 2021, https://nasional.kompas.com/read/2021/01/03/17355391/polri-sebut-maklumat-kapolri-soal-fpi-bukan-untuk-pers-dan-media-massa.

[54] "The Mind-Boggling Challenge of Indonesia's Election Logistic," Bend Bland, 2019, https://www.lowyinstitute.org/the-interpreter/mind-boggling-challenge-indonesian-election-logistics.

contested only two candidates: Joko Widodo as the incumbent against his long-time rival Prabowo Subianto. In addition to this contest, there are more than 245,000 candidates running for more than 20,000 national and local legislative positions across the country.

One notable moment was the 2019 Presidential Election. It was a blast as it led to many issues before and after the election took place. Long before the election, a series of mass movements occurred against the plan of incumbent Joko Widodo to re-run for the election. It was due to his first presidential term argued by many to be an authoritative leadership style with unclear ideological direction. In short, it led to many demonstrations as Jokowi's policies often against Islamic groups. For example, the issuance of Government-In-Lieu of Law Number 2 of 2017 concerning Community Organization caused the dissolution of Hizbut Tahrir Indonesia, an accused extremist Islamic organisation in Indonesia. This is not only about intolerant Islamic groups becoming further entrenched within the political mainstream but also the enervation and active suppression of opposition.[55]

In the immediate aftermath of the April 2019 presidential election, the challenger candidate Prabowo Subianto and his campaign team claimed the election had been rife with cheating by the incumbent President Joko Widodo and his campaign team. Prabowo's loyal supporters and his team planned to conduct a demonstration at the KPU office on the day of the announcement on May 22, 2019, asking to disqualify Jokowi's candidacy over a cheating claim. Prabowo said he would not accept the election result and requested to stop counting the votes. Amien Rais and Habib Rizieq Shihab then endorsed a "People Power" to oppose the presidential election result and force the BAWASLU to refuse it. As of Wednesday, May 22, 2019, backed servers of WhatsApp and Facebook (here affiliates with Instagram) have been partially blocked in Indonesia.[56]

Meanwhile, the Papua protest began on August 19, 2019, as a series of protests by Papuans in Indonesia and mainly occurred across Papua Island in response to the arrest of 43 Papuan students in Surabaya for alleged disrespect to the Indonesian Red-and-White flag by waving the Morning Star flag.[57] The protests demand that the Indonesian government give the Act of Free Choice or an independence referendum for the whole island of Papua. It then turns into riots in several places, destroying government buildings in Jayapura, Sorong, Nduga and Wamena. This clash between violent protesters against the police has resulted in many injuries and killed over 30 people lives from both sides. In response to this situation, the government blocked Internet access for the affected region.

The Internet blackout is a part of the media coverage to minimise international involvement in the conflict. In part, foreign and some local journalists have found them are in trouble travelling to the Papua region as the government implements strict travel regulations over the

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[55] Power, "Jokowi's Authoritarian Turn and Indonesia's Democratic Decline."

[56] Netblocks, "Indonesia Blocks Social Media as Election Protests Escalate," Netblocks.org, 2019, https://netblocks.org/reports/indonesia-blocks-social-media-as-election-protests-escalate-XADE7LBg.

[57] The Morning Star flag (Indonesian: Bendera Bintang Kejora, Dutch: Morgenstervlag) was a flag used by the Netherlands New Guinea to the flag of the Netherlands as a supplemental fashion. The flag was first raised on December 1, 1961, prior to the territory of the upcoming United Nations Temporary Executive Authority (UNTEA) administration on October 1, 1962. Today, the Morning Star flag is used by the Free Papua Organization and its independence supporter. See further at Leonie Tanggahma, 2012, "A History of the Morning Star Flag of West Papua, West Papua Media, Retrieved from https://westpapuamedia.info/2012/12/02/a-history-of-the-morning-star-flag-of-west-papua/.

social unrest in the region.[58] Some journalists report that they may only visit Papua under strict escorted supervision.[59] President Jokowi had ever promised during his campaign in the 2014 presidential election to open up access to Papua Island.[60] However, the promise stays as a promise, and the president needs to give good signs to lift the restriction from the island. However, the increasing penetration of mobile communications technologies and social media platforms makes it difficult for the Indonesian government to control the flow of information.[61]

Internet Shutdown: A Threat to Human Rights?

Theoretically, international law sees Internet shutdown as not an actual violation of freedom of expression. There are some strict conditions when restrictions upon freedom of expression can be accepted or tolerated. The ICCPR in Article 19 paragraph (2) stipulates that everyone has the right to freedom of expression. However, paragraph (3) mentions two conditions for limiting it. Paragraph (3) states:

> "The exercise of the rights provided for in paragraph 2 of this article carries with its 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 public order, or of public health or morals."

Considering the article above, a restriction on Internet access can be done if a law is regulated accordingly and if it is urgent to do so. This point refers to Article 4 of the ICCPR, which requires two basic conditions must be met to limit human rights, namely: (1) The situation must be an emergency that threatens the life of the nation, and (2) The President must formally determine the country is in a State of Emergency (*Staat van Oorlog en Beleg*) through a Presidential Decree.

Constitutionally, Indonesia is a *rechtsstaat*.[62] Therefore, all conduct done by the government must be based on legal provisions. Practically, in exercising the authority, the government shall consider the Principle of Legality (*Wetmatigheid van Bestuur*) as further regulation of the *rechtsstaat* on Law Number 30 of 2014 on Government Administration. Article 5 of the law postulates: "Government Administration is held based on: (a) Principle of Legality; (b) Principle of Protection of Human Rights; and (c) General Principles of Good Governance."

The Principle of Legality puts forwards the existence or the issuance of a legal basis before a decision and/or action is made by government bodies and/or officials. In short, as a presidential system follower and according to these provisions, the action to shut down Internet access shall be done after the issuance of the Presidential Decree or any governmental decision. Nevertheless, there is a discretionary power carried by the president and the government in which

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[58] Simon Philpott, "This Stillness, This Lack of Incident: Making Conflict Visible in West Papua," *Critical Asian Studies* 50, no. 2 (2018): 263.

[59] Budi Hernawan, "Torture and Peacebuilding in Indonesia: The Case of Papua, Contemporary Southeast Asia," Abingdon: Routledge, 2018.

[60] Maire Leadbeater, "Conflict in West Papua," *Pacific Journalism Review* 21, no. 1 (2015): 231.

[61] Philpott, "This Stillness, This Lack of Incident: Making Conflict Visible in West Papua."

[62] In the fourth amendment of the 1945 Constitution of the Republic of Indonesia, the concept of "State Law" or "*Rechtsstaat*", which was stipulated in the Preamble of the Constitution, is now strictly regulated in Article 1 paragraph (3), which mentions "Indonesia is a State Law". This concept ideally asks for law as the priority over politics or economics in state affairs and likewise follows the principle "The Rule of Law, not of Man".

they may make a decision or action to deal with concrete problems.[63] This is the alternative measure to fill in the lack and weakness of the Principle of Legality.[64] Article 1, paragraph (9) of the Government Administration Law defines:

> "Discretion is a decision and/or action determined and/or carried out by a government official to deal with concrete problems faced in the administration of government in terms of laws and regulations that provide choices, are not regulated, are incomplete or unclear, and/or there is government stagnation"

Execution-wise, Article 22 of the Government Administration Law explains: (1) Discretion can only be carried out by authorised Government Officials. (2) Every use of Government Official Discretion aims to: (a) Streamlining the administration of government; (b) Fill in the legal *vacuum*; (c) Provide legal certainty; and (d) Overcome the stagnation of government in certain circumstances for the benefit and public interest. The word "and" in paragraph (2) indicates that the four objectives are not optional but a unity that must be fulfilled as a goal in every discretionary use. In other words, if one of the four alone is not fulfilled, then discretion fails to meet the conditions of clear objectives as regulated in Article 24 paragraph (1). With this provision, the use of discretion by government officials is not easy and trivial[65].

The Indonesian constitution specifies that the conditions for declaring an emergency and the following measures must be governed by law. As a result, if the government wants to ban internet access, it must declare and implement martial or emergency law. According to Article 28J (2), human rights may be limited by law. If the limitation of human rights is not established by law, it is an abuse of authority that violates the rule of law. As a result, if the government shuts down the Internet, it must proclaim a state of emergency to demonstrate that Indonesia is facing a major threat to national security or public order, necessitating extraordinary measures to address the issue. In addition, the imposition of an emergency must be limited by time, meaning there must be certainty when the emergency begins and ends or ends. This is to avoid abuse of authority.

States maintain their right to exercise sovereign powers over their territory. Because the exercise of this authority entails interferences with human rights, such a measure cannot be discretionary but comply with the principle of legality and proportionality. As a result, state actors can control the national "Internet switch" through telecommunication infrastructure and online intermediaries in their territory to protect public interests like security.

Therefore, when addressing Internet shutdowns, the concern is not only on how these practices might affect human rights but what degree of proportionality could ensure a fair balance between these different interests and, particularly, between the right to freedom of expression and other legitimate (or sovereign) interests. However, internet restrictions and shutdowns showed that the administration refused to adhere to the norms outlined in legislative instruments.

The 1945 Constitution of Indonesia mandates the freedom of information under Article 28F. However, free access to information is actually one of derogable rights according to the

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[63] Arfan Faiz Muhlizi, "Reformulation of Discretion in the Arrangement Administrative Law," *Jurnal Rechtsvinding* 1, no. 1 (2012): 99.

[64] Ridwan Khairandy, *Hukum Administrasi Negara* (Jakarta: Rajawali Pers, 2006).

[65] Muhammad Yasin, *Anotasi Undang-Undang No. 30 Tahun 2014 Tentang Administrasi Pemerintahan* (Jakarta: Universitas Indonesia-Center for Study of Governance and Administrative Reform (UI-CSGAR), 2017).

Article 28J of the 1945 Constitution and is subject to reduction or restriction by the government in certain circumstances. In the case of the Internet shutdown in Indonesia, a clear example of this determination was previously carried out by former President Megawati Sukarnoputri in 2003 to declare a State of Emergency in Aceh.[66] Consequently, the government deployed thousands of armies and policies to secure the region and limited information access. One important thing to be noted, the action to limit human rights must be clearly defined along with measures that do not abuse at the expense of broader interests. In regards to using discretion against derogable human rights, the decisions must rationally be understood to include not only narrowly procedural factors and the deliberate exclusion of private interest, prejudice, and the use of experience in the field but also the determined effort to identify what are the variety of values which have to be considered and subjected in the course of discretion to some form of compromise or subordination.[67]

With the decision's prior announcement and legal provision, the limitation over Internet access to social media and messaging applications is appropriate.[68] Indonesia has specifically regulated the use of the Internet for public interests under the Law Number 19 of 2016 on Information and Electronic Transactions (ITE) Article 40 paragraph (2),[69] (2a),[70] and (2b).[71] Asides from violating freedom of expression, the Internet shutdown disrupts other sectors, such as digital-based business, health services and supply of drugs ordered through online platforms, and Internet-based public services. Back in 2013, during the social unrest in Pakistan, a pregnant patient got a miscarriage due to the disrupted communication over an Internet shutdown that led one gynaecologist to be unable to communicate through cell phone with the patient.[72] Recently in India, the Khyber Hospital, one of Srinagar's leading private medical institutes which gives free healthcare service under a government subsidiary, had to suspend its treatment due to an Internet shutdown that obstructed registration and claim process, leading to delays in life-saving procedures.[73]

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[66] As a result of failure in negotiating peace on May 17 and 18 in Tokyo, Japan, the government of Indonesia then issued Presidential Decree Number 28 of 2003 concerning the Establishment of a State of Emergency in Aceh Province. See further at D. Djohari, "Penerapan Norma Hukum Tata Negara Darurat Serta Kaitannya Dengan Penanggulangan Gangguan Keamanan dan Bencana Tsunami di Provinsi Nanggroe Aceh Darussalam", *Jurnal Ilmu Huku*m, 2, no. 3, (2011): 78

[67] H. L. A. Hart, "Discretion," *Harvard Law Review* 127, no. 2 (2013): 664.

[68] Osgar S Matompo, "Pembatasa Terhadap Hak Asasi Manusia Dalam Perspektif Keadaan Darurat," *Jurnal Media Hukum* 21, no. 1 (2014): 65–70.

[69] The government protects the public interest as the cause of information and electronic transactions misuse, which harm the public order, based on the applicable laws and provisions.

[70] The government is obliged to conduct any preventive means over disseminating and utilising Electronic Information and/or Electronic Documents which contain prohibited contents based on applicable law and provisions.

[71] In conducting the preventive means as mentioned in paragraph (2a), the government is authorised to restrict access and/or instruct the Electronic System Providers to fully terminate access to Electronic Information and/or Electronic Documents which contain prohibited contents by law.

[72] "Pakistanis Question Government's Use of Bans on Cell Phones, Other Tech," The World, 2013, https://theworld.org/stories/2013-01-03/pakistanis-question-governments-use-bans-cell-phones-other-tech.

[73] Swagata Yadavar and Athar Parvaiz, "In Jammu & Kashmir, the Shutdown Has Brought Modi's Pet Health Scheme to a Grinding Halt," Scroll.in, n.d., https://scroll.in/article/936465/in-jammu-kashmir-the-shutdown-has-brought-modis-pet-health-scheme-to-a-grinding-halt.

Figure 2. *Estimated Cost of Internet Shutdown per Day in Indonesia*

Source: NetBlocks Cost of Shutdown Tool (COST)

For digital-based businesses, by using the NetBlocks Cost of Shutdown Tool (COST), Indonesia suffered a loss of more than IDR 2 trillion (USD 146 million) for three days of Internet shutdown over Facebook, WhatsApp, and Instagram during the May 2019 demonstration (see Figure 2).[74] Imagine if the shutdown lasts longer than three days. It will surely leave more losses than what it gives on positive lanes. This data has shown that the initiative to shut down Internet access to fight hoax spreading and misinformation is not a wise choice and brings more disadvantages than positive impacts.

In the case of Papua, two civil society groups, Independent Journalist Alliance (AJI) and Southeast Asian Freedom of Expression Network (SAFEnet), filed the two Internet shutdown cases to the Jakarta Administrative Court under the allegation of violation of Internet freedom in August and September 2019, facing Indonesia's Ministry of Communication and Information and the President of Indonesia.[75] In the court process, the judges considered the interpretation of restrictions on the right to the Internet as set out in Article 40 paragraph (2b) of the ITE Law applies only to electronic information and/or electronic documents which have content that is in breach of the law and does not include termination of Internet access. Further, the use of discretion to slow down and block the Internet was not meet the requirements as regulated in the Government Administration Law and was incorrect in the application[76]. The act also was not under the regulations to restrict human rights as set out in the constitution and human rights conventions. Thus, the court granted a lawsuit and decided that the President and the Ministry's act of limiting Internet access in Papua violated the law.

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[74]   The approximation is made by COST through analysis of the total population, Gross Domestic Product (GDP), and other economic indicator data from the World Bank. Cost of Shutdown Tool (COST) is a tool to measure better the cost of Internet shutdowns created as the initiative of the Internet Society and NetBlocks. See further at https://netblocks.org/projects/cost.

[75]   The lawsuit is registered under case Number 230/G/TF/2019/PTUN-JKT and decided on June 3 2020.

[76]   Policies that limit human rights, such as blocking the Internet, are only permitted by law, not a lower by law, which is inferior. This follows the principle of *Lex Superiori Derogate Legi Inferiori*, meaning the higher laws defeat the lower ones. Indonesia recognises a hierarchy of law as regulated under Article 7 of Law Number 12 of 2011 on Statutory.

The Indonesian Constitutional Court issued a different result in trying the same case but with different judicial authorities. Seven out of nine justices at the court ruled on October 27 2021, that the Government act of imposing Internet shutdowns during the West Papua uprising was lawful. The court argues that if electronic information and documents containing unlawful content have been accessed first before blocking, then the adverse impact will be much more rapid and massive, which within the limits of rational reasoning, can cause an uproar, anxiety and disturbance of public order. For this reason, measuring the government's speed and accuracy is necessary to take preventive actions as soon as possible by terminating access to electronic information and electronic documents containing illegal content. However, the other two justices gave their dissenting opinion that the lawsuit was not intended to nullify the government's authority to impose restrictions on Internet access but rather ensure the procedure. The government must issue a formal decision before imposing the shutdown.[77] However, in the case of the West Papua Uprising, there is no correlation between the spreading of electronic information and unlawful content.

Is Shutdown an Appropriate Response?

Democracy has gone through centuries of development and improvement. Over the long history, democratic governments have undergone extraordinary changes in their scope and institutions. A new and disturbing change seems to have occurred in democratic countries.[78] Many people appear to have lost confidence and trust in political institutions and actors following the abuse of power and authoritarian turn. The loss of honesty and trustworthiness in the juridical and political sectors has not eroded people's support for democracy, which remains surprisingly strong. This brings out a new method in which people can involve in democratic affairs as the innovation of the Internet gives new hope. Nowadays, people worldwide have a new way of supervision and communication in democratic life.

Since the rise of the Internet in the early 1990s, it appealed to a utopian vision of the future in politics and policy.[79] Fast forward to the present time, social media have become an inseparable fact of life for civil society worldwide, involving many stakeholders, namely: citizens, activists, non-governmental organisations, telecommunications firms, software providers, and governments themselves.[80] This has made the communications landscape denser, more complex in practice, and more participatory than ever. The connected society gains greater access to information and more opportunities to engage in public affairs. It enhances the ability to undertake collective actions in political affairs as the protests in Indonesia demonstrated, these increased freedoms have improved the quality of democracy with the help of digital platforms.[81] However, some efforts to restrict this freedom have been made in some countries. With the existence of the Internet and social media in the public sphere, what is therefore threatened?

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[77] Constitutional Court Decision Number 81/PUU-XVIII/2020, dated October 27 2021.

[78] Robert A. Dahl, "The Past and Future of Democracy," Siena: Centre for the Study of Political Change, 1999.

[79] J. A. G. M. Van Dijk, "Digital Democracy: Vision and Reality," Public Administration in the Information Age: Revisited, 2012.

[80] Clay Shirky, "The Political Power of Social Media: Technology, the Public Sphere, and Political Change," New York: Council on Foreign Relations, 2011.

[81] Terje Rasmussen, "Internet and the Political Public Sphere," *Sociology Compass* 8, no. 12 (2014): 1322–25.

The rise of social media has developed a participatory culture characterised by "amateur and non-market production networked collectivities for producing and sharing culture, niche and special interest groups, aesthetics of parody, remix, and appropriation".[82] These are reflected in the 2019 presidential election announcement riot and Internet shutdown in Papua cases; the amount of amateurish live report information devoted to an issue is astounding. This is necessary for fulfilling democracy when the government shuts access to information by blocking the Internet. The information spreading by individuals in the spots where social unrest occurred has contributed to the public consumption of information.[83]

Digital democracy is simply a facility or means to achieve the objectives of running the country through information and communication technology. The main challenge of digital democracy is how to manage, respond to and overcome the negative impacts brought by the Internet and social media use in the public sphere wisely. Digital democracy is neutral and impartial. Using the Internet and social media platforms in the public sphere will not cause any problems so long as their utilisation is in accordance with the legal provision, social and political civilisation, in which it glorifies democracy. On this occasion, the state plays an important role in ensuring that people are still able to access information in any situation. Therefore, if the state limits access to information to tackle disinformation spreading in social unrest, it has indirectly violated democracy and human rights.

CONCLUSION

Although we may accept the reason for the Internet shutdowns in a particular situation, the use of shutdowns must be less frequent and more limited. In order to restrict governmental reasons for Internet shutdowns because they violate human rights, these explanations must be evaluated according to the standards of legality, legitimacy, and proportionality. However, there is no enforcement mechanism in place, so this is only a formality. The decision of the Indonesian government to shut Internet access to social media platforms during the 2019 presidential election riots and Papua social unrest is not an appropriate response because the decision made by the government is not under the principles of declaration, proportionality, necessity, and legality which must be respected even in an emergency situation. In addition, the decision violated not only the civil rights to access information regulated under Article 19 of the ICCPR as ratified on Law Number 12 of 2005 but also disadvantaged many sectors, such as digital-based business. The shutdown also did not satisfy the requirement to conduct a limitation upon freedom of expression as stipulated under Article 4 of the ICCPR to formally determine a State of Emergency (*Staat van Oorlog en Beleg*) through the issuance of a Presidential Decree. Rather than shutting down Internet access to information in social media platforms, the Indonesian government should strengthen independent and reliable information sources for the information society, such as improving the mainstream media credibility to regain public trust. This requires a solid commitment from all stakeholders, including non-partisan journalism by media proprietors and editors. The government must also consistently enforce strict standards of ob-

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[82] Adrienne Russell et al., "Culture: Media Convergence and Networked Participation," MIT Press Scholarship, 2008.
[83] Merlyna Lim, "Many Clicks but Little Sticks: Social Media Activism in Indonesia," *Journal of Contemporary Asia* 43, no. 4 (2013): 138.

jectivity in journalism to maintain trusted and reliable information flows freely. However, the crucial part is the digital literacy of society. This can be achieved by restoring and extending the Information and Communication Technologies (ICT) education in the national school curriculum at an early age. As digital literacy improves, hoaxes and misinformation will significantly be decreased.

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