

INTERNET GOVERNANCE AND *IUS COGENS*

Atip Latifulhayat

Senior Lecturer in International Law and Cyber Law
Padjadjaran University Law School, Bandung-Indonesia
atiphayat@yahoo.co.id

Abstract

One of the important similarities between the development and characteristics of international law and the developing law of cyberspace is the fact that they are global in nature and effect. The similarities between international law and cyberspace stem from the fact that they frequently involve multi-national cross-border transactions. The “Real-World” and “the Cyber or Virtual World” are two dimensions which display the same global and geographically-permeable characteristics, which differentiate them from localized or domestic laws. One of the important consequences of this is that the global nature of the Internet requires global Internet regulation. Proponents of this view support the need for global regulation with examples, such as the lack of effective national measures to combat spam or cybercrime. The main question that may arise is what kind of international norms that applies to the Internet? The paper argues that *ius cogens* is an appropriate norm governing human behavior and transactions on the Internet due to the fact that *ius cogens* is a “norm accepted and recognized by the international community of States as a whole, from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. Some of behaviors prohibited by *ius cogens*, such as piracy, slavery, and genocide cannot be performed via the Internet. Nevertheless, *ius cogens* covers behavior that leads to such violations. Thus, *ius cogens* could be applied in such situations when the Internet is used for promotion or organization of prohibited acts, such as piracy, slavery, and genocide.