

DEVELOPMENT OF PRESS REGULATION IN POST-REFORM INDONESIA 1998

SUFMI DASCO AHMAD

Universitas Pakuan, Bogor, Indonesia. Email: sufmi.dasco@gmail.com

Abstract

Press regulation follows a political format that prevails for a period of time. In the era of the authoritarian New Order government under Suharto, the press was so strictly regulated not only through laws and regulations, but also in the form of government policies that did not provide wiggle room for a free press life. This research shows that the change in the political format that is more democratic after the fall of the Soeharto Government in 1998 gave more space to the press. This study uses normative legal research meetings with written documents, laws and regulations and court decisions as the main source of this research.

Keywords: Press, freedom of the press, regulations, politics, media.

I. Introduction

The press is one of the instruments for the implementation of freedom of expression as stipulated in the 1945 Constitution.¹The constitutional guarantee for free speech hints at the recognition of free speech is a fundamental right for every citizen.²The arrangement in the constitution hints at the importance of guaranteeing the freedom of expression of opinion both orally and in writing. Freedom of opinion actually itself has a broad aspect, because it is not limited to issuing opinions orally and in writing, but also to the right to communicate both receiving and conveying thoughts, criticisms, and dissenting opinions.³

The important role of the press is undeniable in realizing freedom of opinion and the right to communicate. The intense relationship between press freedom and freedom of thought is described as the destruction of press freedom means also the destruction of freedom of opinion.⁴Freedom of the press itself means the freedom to convey information impartially. The impartiality of the press is very important, because if the press takes sides then the first victim is society. Therefore, the freedom of the press in the future is limited by professional ethics and laws and regulations governing the press. This regulation of the press is a phenomenon that is encountered in almost every country, including those that glorify individual freedoms as in England through Licensing Art 1662.⁵Press-related arrangements in the country are also made through laws that do not specifically regulate the press, for example the Defamation Act of 1952.

The free press, which freely accesses public information, can be the social capital of the presence of a greater responsibility: "educating the life of the nation" according to the state's purpose in the Preamble to the 1945 Constitution. However, the idea of free press is not easy in its implementation. During the New Order period, according to Lubis, the press experienced very strict control from the government. Starting from the control system of the Issuance Permit (SIT) which is valid in Law Number 11 of 1966 concerning the Press. Until the Press Issuance

Business License (SIUPP) which is based on Law Number 21 of 1982 concerning the Press. As a result, according to Lubis, the right to freedom of speech and press is understood as a right given by the state rather than inherently owned by citizens from birth.⁶ For those who are not in rhythm, the threat of reprimanding (both in the form of revocation of SIT and SIUPP) always looms. The fact is true. For example, in the case of Indonesia Raya, Tempo Magazine and Tabloid Detik.

Related to the function of the instrument for the implementation of free speech, the role of the press has become very important in the development of democracy. Because of the importance of the role of the press, it then puts the press in a noble position, namely as the fourth pillar of democracy. The importance of the press was described by a journalist writing that "Journalism exists for democracy."⁷ The role of the press is shown through the function of the press to provide around government activities and thoughts that develop in society about a policy or government activity that affects the field of life of the community in general. The role of the press is again described as "journalism exists to fulfill the rights of citizens."⁸

The regulation of the press is carried out through a code of professional and legal ethics. The regulation of the code of professional ethics is determined by the professional organization of the press, which can be both internal and external regulatory. The existence of external aspects of the press code of ethics is caused because press products intersect with the interests of society. This means that there is open public space to make corrections to a news report that is considered detrimental to a member of the public or parties outside the press. While the legal arrangements relate that the issuing institutions of the press and the press itself are legal subjects who have rights and responsibilities. This legal arrangement is based on both criminal and state administration. Criminal arrangements are related to criminal offenses that arise when a report is considered to be detrimental to other legal subjects, such as defamation offenses. The legal side of the country's administration is usually related to the process of issuing a press publishing business. Both the side of state administrative law and criminal law can be found in legal products that specifically regulate the press and general statutory provisions such as the Book of Criminal Law.

In this section, press arrangements will be discussed in three eras of government, namely the Old Order Era under President Soekarno, the New Order Era under President Soeharto, and in the post-government period of President Soeharto or the Reformation Era. This section is important to critically examine how far the legal arrangements contribute to nourishing press freedom or otherwise shackling press freedom. This regulation of the press is important in nature, because regulation will provide a legal frame for the recognition and protection of the press and the public interest. The external relations of the press are also related to the government and the public. This legal regulation of the press is a universal phenomenon and as an inevitability.

II. Result and Discussion

1. The Old Order Era (1959-1966)

The birth of Law Number 11 of 1966 concerning Basic Provisions on the Press was originally considered an important milestone for the life of the national press, because this law provided a place for the press in accordance with the spirit of its time and this law was the first umbrella rule for the press.⁹The press is no longer only related to the aspect of reporting information that should be neutral of any interest. However, through this law, the press is given the function not only as an instrument of illumination on a general scale, but the press is also charged with a role of a political nature.¹⁰

In accordance with the spirit of the times in the era of the Soekarno Government at that time, the press was said to be the guardian of the revolution¹¹who brings devotion to organizing Pancasila Democracy actively and creatively. To achieve this goal, the press has the role of "a tool of revolution, a tool of social control, a tool of educators, a tool of channeling and shaping public opinion and a tool of mass mobilization." Law Number 11 of 1966 defines the function of the press as "an active, dynamic, creative, educational and informatory mass media and as a driver and fostering critical and progressive mind power throughout the lives of Indonesian people."

Law Number 11 of 1966 cannot be separated from criticism because there is a contradiction between the guarantee of press freedom on the one hand and the issue of licensing for press publishing.¹²This law does provide guarantees for press freedom as part of the human rights of citizens.¹³ Strictly speaking; this law also guarantees that there will be no censorship and no closing of the national press.¹⁴However, the implementation of the guarantee of press freedom seems to be eliminated in connection with the necessity of the press is also a tool of revolution.

The necessity to obtain a Publication Permit (SIT) for the press became a target of criticism for Law Number 11 of 1966. Later on, the necessity of obtaining the SIT and its revocation process without judicial proceedings became an obstacle to press freedom. The necessity to have an SIT for the press was then reaffirmed through the Regulation of the Minister of Information of the Republic of Indonesia Number 03 of 1969.

In Law Number 11 of 1966, the Press Council was infiltrated.¹⁵This institution is given the function of assisting the government in fostering the growth and development of the national press. By looking at the management structure of this institution, it is proven that this institution is not independent, because this institution is headed by the Minister of Information. The position of the Minister of Information as Chairman of the Press Council is not through an election as benefits an organization, but is appointed directly through this law. Lawmaker No. 11 of 1966 had anticipated that the Minister of Information would not be able to concentrate on the position of Chairman of the Press Council; therefore it required the Daily Chairman of the Press Council. The membership of the Press Council consists of representatives of press organizations and experts in the field of press. This law does not provide for the requirements and number of members of the Press Council as well as the duties and mechanisms of work

and organization of the Press Council, because it will further be regulated in a Government Regulation.

Law Number 11 of 1966 guarantees government assistance to the survival of the press.¹⁶Government assistance will be in the form of assistance from press publishing facilities. The explanation of Article 12 of the law states that assistance government is given in the event of an economic condition that does not allow the publication company of the press to be able to meet its own needs without the assistance of the government. The assistance is emergency only, because the publication of the press must in principle pursue the efforts of the press itself.

Law Number 11 of 1966 also regulates in general terms the professional standards for journalists.¹⁷This standardization of the journalistic profession is left to the press professional organizations and the mass media where journalists work. This standardization of the journalistic profession is also related to educational institutions where prospective journalists are produced before they start journalistic work.

An important aspect that is also regulated in Law Number 11 of 1966 is press responsibility, which consists of editorial responsibilities and legal responsibilities.¹⁸Editorial accountability is shouldered by the editor-in-chief. Therefore, the editor-in-chief has an obligation to exercise the right of reply and the right of correction to news that is considered harmful to a third party or proven wrong. The general leader has a broader responsibility than the editor-in-chief, which is responsible for the overall publication both in and out of the press publication. However, this legal responsibility is like a waterfall, because it can be moved in tiers down.¹⁹The general leader may transfer legal responsibility to the editor-in-chief with regard to the content of the news (editorial). The editor-in-chief can transfer legal responsibility to the managing editor. The managing editor may transfer the responsibility to the editor of the news field concerned. Finally, the editor can also transfer his legal responsibility to the reporter. Because the transfer of legal responsibility has decreased downwards, therefore this legal accountability system is called the waterfall liability system. However, this law does not explain to what extent this decrease in responsibility can be derived at what level in the organizational structure of the publication of the press.

The Face of the Criminal Law Press

The downward tiered legal accountability system (waterfall) is considered unfair, because the work of the press is collective through correctional mechanisms and decision-making to reduce a news story.²⁰If only this waterfall accountability system were used for the whole case, then it would be the press workers at the very bottom of the position who would bear the brunt of responsibility, even though it was these workers who had the least authority in the organizational structure of the media. Thus, there is an injustice and imbalance between rights and obligations in the mechanism of accountability in the waterfall system.²¹

In the context of company issues, the general leader can also transfer legal responsibility to the company leader. This aspect of accountability is also unfair, because in the mechanism of work of the press company, the final decision-making rests with the general leader. Company

decisions are also taken collectively through the mechanism of meeting company leaders. That is, legal responsibility remains in the system of collective responsibility.

2. The New Order Era (1966-1998)

Law Number 4 of 1967 did not bring much change to Law Number 11 of 1966, because it only added one new paragraph in Article 21 of Law Number 11 of 1966.²² The addition of the new provisions signals relatively greater press freedom, due to restrictions on the circulation of the national press in the form of bulletins, newspapers and periodicals.

Law No. 4 of 1967 explicitly does not repeal Law No. 11 of 1966. That is, the political policy of press law still refers to Law Number 11 of 1966.

A fundamental change in the regulation of the press only occurred when Law Number 21 of 1982 concerning Amendments to Law Number 11 of 1966 concerning Basic Provisions of the Press was enacted as amended by Law Number 4 of 1967. This change in the press law was initially met with enthusiasm in line with hopes of improving press freedom. However, this hope ended with the provisions on the regulation of the obligation to have a Press Issuance Business License (SIUPP)²³ as a substitute for the obligation to own a License to Issue (SIT) as stipulated in Law Number 11 of 1966.²⁴ Article 13 paragraph (5) of Law Number 21 of 1982 requires that every legal entity must first have a SIUPP to publish media. Provision Article 13 subsection (5) *acontrario* can be interpreted that if the government cancels the SIUPP of a media, then the media must stop its publishing business activities.

The obligation to have a SIUPP and its cancellation mechanism that is never transparent is a shackle of press freedom.²⁵ In addition to control mechanisms through the Press Council or "telephone agencies",²⁶ the press has its own mechanism for self-imposed-censorship. The self-censorship is mainly on news that contains elements of SARA²⁷ (likes, between groups, races and religions) and alluded to government policy. This phenomenon of self-censorship has resulted in the emergence of alternative mass media, namely a form of publishing without SIUPP managed by pro-democracy groups driven by students and independent journalist organizations.²⁸

The presence of Law Number 21 of 1982 is substantively insignificant for the advancement of press independence compared to Law Number 11 of 1966. Changes in some provisions in Law Number 11 of 1966 are only adjustments to the times. For example, the change of some ideological notions infiltrated in Law Number 11 of 1966, for example, "tool of revolution" to "tool of Struggle National"; The "guardian of the revolution" became the "guardian of the ideology of Pancasila"; "Pancasila Socialist Press" became "Pancasila Press"; the "three frameworks of the revolution" became the "National Development Goals"; "progressive" was changed to "constructive-progressive"; "counter-revolution" became "against Pancasila"; "treasonous against the revolution" becomes "treasonous against the National Struggle"; "guided family mutual aid"; to be "jointly based on the principle of kinship"; "revolution" became "National Struggle"; and the "Pancasila revolution" became the "ideology of Pancasila."

Fundamental changes to the equality relationship of government and press council. The formulation in Law Number 11 of 1966 which reads "The Government together with the Press Council" was changed to "The Government after hearing the consideration of the Press Council." With this change, the function of the Press Council is only limited to being heard for its consideration of a press issue, no longer being a party that is jointly with the government to decide an issue.

3. The Reformation Era (Since 1999 until now)

The fall of Soeharto's government on May 21, 1998 brought hopes of change to the life of the press. President B.J. Habibie as Suharto's successor immediately realized the hope of press independence both through the policies of the Minister of Information Muhammad Yunus Yosfiah and amendments to Law Number 21 of 1982. The policies made by Yunus Yosfiah are considered by many to be the beginning for the return of press freedom. The minister made the SIUPP licensing process easier and promised that there would be no more cancellation of the Press Issuance Business License.

In the days of reform, the life and dynamics of the press were much better. Law Number 40 of 1999 concerning the Press was issued which no longer requires the press to have a Press Issuance Business License. The press is quite incorporated. In Article 4 paragraph (2) of the 1999 Press Law, it is emphasized that against the national press there is no censorship, suppression or prohibition of broadcasting. This brings a breath of fresh air to the institutionalization of democracy, especially regarding access to information submitted by the press. Press freedom in the reform period although there has been a lot of progress compared to the New Order period, it still has challenges that are not easy. Particularly to embody the non-partisan press. The independent press serves the public optimally.

A very fundamental change for press life in Indonesia in the reform era was the enactment of Law Number 40 of 1999. The reform movement that brought down the Soeharto regime in 1998 has had a profound impact on the life of the Indonesian press. In Habibie's time, through the Minister of Information Muhammad Yunus Yosfiah, it had given birth to a deregulation package in the field of lighting. In it there is a policy, among others, to abolish the single forum of journalists' organizations, which was originally in the hands of the Indonesian Journalists Association as stated in the Decree of the Minister of Education No. 47 of 1975. After the repeal of this provision there are now 32 professional organizations of the press.

In the reform period, the New Order regime's pressure on the press was no longer visible. But there are other challenges that are not easy to overcome. One of them is the question of the independence of the press in democratic times. Bagir Manan wrote about how the press placed the question of independence. He highlighted that the press is often divided. As in the cases of elections. Part of the press became partisan because it positioned itself as an integral part of competing political forces. One of the participants' results was that the press became a machine and carried out various politicking, no longer just at the level of the right to dissent but differences that unwittingly contained a conflict approach. This approach tends to be on the basis of being completely wrong. Its form, intolerance and punishing competitors. Partisan

behavior greatly interferes with the value system contained in the principles of the press such as the principle of independence, upholding the code of ethics so as to reduce professionalism.²⁹ Jalaludin Rahmat also criticized the press in the reform period as horses escaped from the stables. There is a tendency for the post-reform press according to Sofyan Lubis, former Chairman of the Indonesian Journalists Association, a super free press without regard to the code of ethics.³⁰

In addition to the policy of eliminating a single container for journalists, there is also a policy that relaxes the need for press issuance using a Press Publishing Business License. The regulation of the Minister of Information Number 01 of 1984 concerning Press Issuance Business Licenses was also finally revoked. Then anyone can publish a press publication. In that year also came out the Decree of the People's Consultative Assembly Number XVII/MPR/1988 concerning Human Rights. Article 20 of the Decree of the People's Consultative Assembly states, "Everyone has the right to communicate and obtain information in order to develop his personal and social environment." A year later, Law No. 40 of 1999 on the Press was born. This law is considered very reformist, because it has abolished the regulation of the Press Issuance Business License. That's when the press in Indonesia became free.

To show the progress of press regulation that provides great space for press freedom, the following will describe some of the points of thought of this law that are considered to strengthen press freedom, namely:³¹

- 1). Article 2 of Law Number 40 of 1999, which states that "press freedom is the embodiment of popular sovereignty based on the principles of democracy, justice and the rule of law;
- 2). Article 4 paragraph (1) of Law Number 40 of 1999, which states that "press freedom is the essential human right of citizens in order to uphold the truth, as well as promote and educate the nation."

The two provisions in Law Number 40 of 1999 mentioned above have expanded the meaning of press freedom which is not only related to the internal circles of the press, but more fundamentally in the form of recognition of press freedom as a manifestation of people's sovereignty and the human rights of citizens.

The influence of press law reforms also penetrated the field of publishing. The enactment of Law Number 40 of 1999 has opened the corridors of freedom for the press to be wide open. Press freedom in the form of freedom to publish media with an easier process of obtaining permits has sharply increased the number of mass media since 1999. By Union of Newspaper Publishers,³² i.e. recorded 1687 publications in 1999 and became 1935 in 2001.

III. CONCLUSION

Regulation of the press field follows the pattern of the political system of government. The legal products of the press are responsive and pro-open whenever the system of government practiced is democratic. That correlation is important between politics and law. Legislation is

a political product, because it is born through the political process and by political institutions. The political situation greatly influenced the birth of a piece of legislation.

Regulation in the Era of the Old Order or the Era of Guided Democracy 1959-1966 under Soekarno initially brought hope to the development of the press and press freedom. The birth of Law Number 11 of 1966 concerning Basic Provisions on the Press was originally considered an important milestone for the life of the national press, because this law provided a place for the press in accordance with the spirit of its time. A press that was supposed to carry out the functions of the press only, but was then given a political burden, that is, the press was said to be the guardian of the revolution. Press has the role of "tools of revolution, tools of social control, tools of educators, tools of channeling and shaping of public opinion as well as tools of mass mobilization."

Law Number 11 of 1966 gave birth to two sides that are different from each other, namely on the one hand there is a guarantee of press freedom on the one hand. This law does provide guarantees for press freedom as part of citizens' human rights. The law also guarantees there will be no censorship and breidel of the national press. However, on the other hand, it requires that there be a permit for press publishing. The implementation of the guarantee of press freedom seems to be eliminated in connection with the necessity of the press is also a tool of revolution.

Many expected fundamental changes to occur after Sukarno fell and Suharto came to power in 1966 after the failed coup d'état of the Indonesian Communist Party which became known as the 30 September 1965 Movement of the Indonesian Communist Party. Greater freedom of the press is also expected to occur in the era of the Soeharto Government, or The New Order (1966-1998).

However, history records that Law Number 4 of 1967 did not bring much change to Law Number 11 of 1966, because it only added one new paragraph in Article 21 of Law Number 11 of 1966. The addition of the new provisions signals relatively greater press freedom, due to restrictions on the circulation of the national press in the form of bulletins, newspapers and periodicals.

Law No. 4 of 1967 explicitly does not repeal Law No. 11 of 1966. That is, the political policy of press law still refers to Law Number 11 of 1966.

A fundamental change in the regulation of the press only occurred when Law Number 21 of 1982 concerning Amendments to Law Number 11 of 1966 concerning Basic Provisions of the Press was enacted as amended by Law Number 4 of 1967. This change in the press law was initially met with enthusiasm in line with hopes of improving press freedom. However, this hope ended with the provisions regarding the regulation of the obligation to have a Press Issuance Business License as a substitute for the obligation to own a Publication Permit as stipulated in Law Number 11 of 1966. The provisions of article 13 paragraph (5) of Law Number 21 of 1982 require that every legal entity must first have a Press Issuance Business License to publish media. If the government cancels a press publishing business license of a media, then the media must stop its publishing business activities.

In the post-anniversary era of the Soeharto Government on May 21, 1998, there was an important change in the world of the press. A very basic change for press life in Indonesia in the reform era was the enactment of Law Number 40 of 1999 concerning the Press. Law No. 40 of 1999 is considered very reformist, because it has abolished the regulation on Press Issuance Business Licenses. The law is a milestone in press freedom.

DAFTAR PUSTAKA

Abidin, Wikrama Iryans, *Politik Hukum Pers Indonesia (The Legal Politics of the Indonesian Press)*, Jakarta: Grasindo, 2005.

Armada, S.A., Wina, *Wajah Hukum Pidana Pers (The Face of The Criminal Law Press)* Jakarta: Pustaka Kartini, 1989.

De Tocqueville, Alexis *Democracy in America*, with introduction by Alan Ryan, London: everyman's Library, 1994.

Henkin, Louis., et.,al., *Human Rights*, New York: Foundation Press, 1999.

Kovach, Bill dan Tom Rosenstiel, *Elemen-elemen Jurnalisme, Apa Yang Seharusnya Diketahui Wartawan dan yang Diharapkan Public (The elements of Journalism, What Newspeople Should Know and the Public Should Expect)*, terjemahan Yusi A. Pareanom, cetakan kedua, Jakarta: Institut Studi Arus Informasi, 2004.

Lembaga Kajian Hukum dan Teknologi Fakultas Hukum Universitas Indonesia, *Pengkajian terhadap Pelaksanaan Undang-undang Nomor 40 Tahun 1999 tentang Pers untuk Pengembangan Pers Indonesia (Institute for Legal Studies and Technology, Faculty of Law, University of Indonesia, Assessment of the Implementation of Law Number 40 of 1999 concerning the Press for the Development of the Indonesian Press)*, Jakarta: 2004, research report not published).

Lubis, Todung Mulya *In Search of Human Right, Legal-Political Dilemmas of Indonesia's New Order, 1966-1990*, Jakarta: Gramedia, 1993.

-----, *Mencari Hak Asasi Manusia: Dilema Politik Hukum Indonesia Masa Orde Baru 1966-1990 (In Search of Human Right, Legal-Political Dilemmas of Indonesia's New Order, 1966-1990)*, Yogyakarta: Circa, 2021, hlm.355-359.

Wade, E.C.S. dan G. Godfrey Phillips, *Constitutional Law, an Outline of the Law and Practice of the Constitution, Including Central and Local Government and the Constitutional Relations of the British Commonwealth*, fifth edition, London: Longmans, Green and Co, 1957.

Susilastuti, "Kebebasan Pers Pasca Orde Baru (Freedom of the Press Post The New Order)", *Jurnal Ilmu Sosial dan Politik*, Vol.4 No.2 November 2000