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Implementation of Legal Protection for Journalists in Safeguarding Local Democracy

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Keywords: Local Democracy, Legal Protection, Journalists.

Abstract: One of the reasons for the decline in Indonesia's ranking in the freedom of the press and expression was due to the many cases of violence against journalists and the criminalization of those who expressed their opinions. Legal protection for journalists is a guarantee given by the government and the public to journalists in carrying out their journalistic duties. The study used an empirical legal approach or non- doctrinal research. This research was conducted in several media from 2011-2018 in Pekanbaru, Riau, Indonesia. The main findings of this study indicate that the phrase of "protection" in the formulation of Law Number 40 of 1999 concerning the press has given rise to multiple interpretations which resulted in journalists experiencing pressure in carrying out their duties. In conclusion, it is highly recommended that the law should be revised.

1 INTRODUCTION

In Indonesia, the portrait of freedom of the press and expression in 2015 was considered blurry. This was marked by the decline in Indonesia's ranking in the eyes of Reporters Sans Frontieres (RSF), an organization that ranks press freedom and expression . In Southeast Asia, freedom of the press and expression of Indonesia is under Thailand, a country that is currently under the 7th rank. Thailand ranks 134th (?).

In line with the theory of equality before the law, the protection has placed journalists as people who must be privileged. In relation to the rule of law (rechtsstaat), every citizen must be treated fairly by law enforcement officials and the government.

To strengthen the democracy existence, the press has a very strategic role because its position is considered as the fourth pillar of democracy. As a social control, the press is able to strengthen the democratization and governance so that the government runs on the "right and right path".

Democracy has the basic principle of human dignity and human rights that are respected and protected without discrimination. Democracy also has what are called constitutionally guaranteed civil rights, including the right to independence (Oetama, 2001; ?; ?). Freedom of the press is a form of popular sovereignty and an important element in creating a democratic society and state life.

From the study by (Dusterhoft, 2013; ?; Batubara,

2008) in Canada, it will be argued that the legal protections are in fact sufficient and hardly amendable and that therefore, a more practical, hands-on approach to implementation of those protections must be the focus of future actions. This goal can only be achieved by a comprehensive mission jointly pursued by governments, militaries, journalists, media, NGOs and society.

Article 28 of the 1945 Constitution states that "Freedom of association and assembly shall express thoughts through orally and in writing and so forth shall be determined by law". The term "independence" in the formulation of this article contains two meanings, namely first, freedom of speech and second, freedom of the press. The first independence is freedom of expression in public, while the second is freedom of the press. The formulation of the article was expanded in scope by Article 28F which states, "Every person has the right to communicate and obtain information to develop his personal and social environment, and has the right to seek, obtain, own, store, process, and convey information using all types of channels that are available".

Indonesia Law Number 40 of 1999 concerning Press in principle also regulates the freedom of the press, but to determine whether Indonesia has a free press system (free from bans) is very difficult. This is because there are various laws and regulations which can threaten the freedom of the press itself. Besides being found in the Criminal Code, these threats are

also found in Law Number 11 of 2008 or the Information and Electronic Transactions Act which was later changed to Law Number 19 of 2016. Other threats can be found in Law Number 40 of 2007 concerning Limited Liability Companies and the Law 44 of 2008 concerning Pornography.

In a democratic country press freedom is needed as an instrument to convey true information both to the public and to the parties concerned, as an instrument of free exchange of ideas (free market of ideas), as an instrument of change and progress (agent of change), as an instrument of guard social order (public or social order), as an instrument of control over power, as an instrument that helps deliver the ideals of the nation to realize prosperity and prosperity for all people, and as an instrument of spreading human values, building mutual understanding, openness and tolerance.

In Indonesia, the implementation of democracy during the Reform Era was always claimed by the Pancasila Democracy system which was different from liberal democracy in general which prioritized the majority vote in decision making. Pancasila democracy is a unity that cannot be separated from the precepts of Pancasila whose implementation is imbued with popular precepts led by wisdom of wisdom in deliberation / representation, which is in the belief of the Almighty, with a just and civilized humanity, the unity of Indonesia and social justice for wisdom, all Indonesian people. Thus the freedom of the press regulated in the Press Law is guided by this democratic system, and this results in the press not being able to provide information openly (transparency) to the public.

2 METHOD

This study used an empirical legal research method or was commonly known as non-doctrinal research, which reviews and analyzes primary data from respondents juridically. The nature of research used is analytical descriptive, where the data analysis is not only parsing from the acquisition of research data but also analyzing primary data using theory and legislation in Indonesia.

Several legislations which are cited as references include Article 28 of the 1945 Constitution states, Indonesia Law Number 40 of 1999 concerning Press that related to legal protection for journalists. The period of research was conducted on journalists working between 0-5 years, 5-10 years and 10-15 years in five print media, namely the Riau Pos Morning Daily, Pekanbaru Tribun Daily, Metro Riau Daily, Tabloid

AZAM weekly and other journalists who worked in various media including online media.

3 DISCUSSION

3.1 Press and Democracy

The press in this paper is the aggregate of publications issuing from the press, or the giving publicity to one's sentiments and opinions through the medium of printing; as in the phase "liberty of press" freedom of the press is guaranteed by the first amendment (?; Dusterhoft, 2013; Eriyanto, 2001) The term press or press is interpreted as *pressus* (Latin) which means pressure, pressured, crushed, solid. The press in the Indonesian vocabulary contains the meaning "press" (English) connoted as a printing press or media press. In Law Number 40 of 1999 concerning the Press, the terminology is interpreted as a media that has the function of information media, education, entertainment, social control and can also be an economic institution. In Article 1 of the Press Law it is said that the Press is a social institution and a vehicle for mass communication which carries out journalistic activities including searching, obtaining, possessing, storing, processing, and conveying information in the form of text, sound, pictures, sounds and pictures, and data and graphics and in other forms by using print media, electronic media, and all types of available channels.

Legal protection is a guarantee of protection given by the government and the public to journalists in carrying out their functions, rights, obligations and role as a journalist. This guarantee is given because the work habits of journalists are always in a depressed situation because they are pursued by deadlines, their work is very binding and demands for actuality in the delivery of information.

Democracy is a set of ideas about freedom that gives people space to participate in politics. The press is an inseparable part of democratic life, and is a barometer of the successful implementation of democracy. In the climate of independence, the press has a very strategic role to control the running of government by the executive, legislative and judiciary. The democratization of the press is a form of popular sovereignty based on the principles of democracy, justice and the rule of law and its implementation is guaranteed as a human right of citizens.

In an effort to create a sterile press from power, the press should be positioned as a means of exchanging information to build a mindset of an intelligent and critical society. This is based on several considerations. First, the press is still colored by the voice of

the authorities even though the press has a journalistic code of ethics which is the basis of professionalism in carrying out their duties, but in practice journalists are often confronted with the jargon, "a free and responsible press" which puts journalists in a losing position. Second, the public and the authorities have not fully appreciated the professionalism of journalists. Many of the torture, harassment and intimidation that they experience in investigating information by both officials and the public. Third, the presence of the press which is parallel to the history of the birth of the nation played a major role in the independence movement, but after Indonesia's independence the press had not been placed honorably in advancing the nation and shaping the character of the nation's children.

The high demand for professionalism tends to make the press the potential to violate journalistic performance. Such violations are reflected in the ways in which the press presents news that tends to violate the code of ethics. The violation occurred due to credible resources, weak recruitment patterns of journalists and the lack of understanding of the KEJ and the Press Law as guidelines for the implementation of professional duties. This implies that the face of the press often appears partisan and has not been able to position itself as a pillar of democracy, especially in presenting political news such as coverage of general elections, regional elections where the press is actively involved in the political game.

3.2 Guard Local Democracy

The terminology of location democracy is used in this study because the locus is in Pekanbaru, Riau, Indonesia. Pekanbaru is the capital of Riau Province, and the third city on the island of Sumatra with the best economic growth. The implementation of democracy in this city takes place in the election of Mayor and Deputy Mayor, Governor and Deputy Governor, Election of President and Vice President, and Legislative Election which cycle runs once five years as determined by statutory regulations. As the fourth pillar of democracy (the four of estate), the press has a strategic role in guarding the running of local democracy.

The author underlines the importance of institutions outside the government taking the right position so that local democratization runs well in accordance with the principles of fair and just elections. The institution is the local media or press. The press is believed to be the guardian of democracy to prevent the wrong implementation of democracy in violation of the rules. This means that the role of the press at the local level can be as significant as their counterparts

at the central level (Indrakrista, 2015; Esser, 1999; Harahap, 2003).

Carry out duties as a journalist full of dynamics and challenges. Besides requiring interviewing and writing skills, a journalist is also required to understand the Law, comply with various other regulations and obey the Journalistic Code of Ethics. This understanding is needed so that the achievement of information in the media does not lead to legal problems or cause harm to others (Indrakrista, 2015; Kusumaningrat, 2009; Oetama, 2001).

In Pekanbaru, there are 1,256 journalists working in print, electronic and online media. Risks in carrying out the profession are believed by journalists, especially in covering political and criminal news. The observation of 100 journalists as respondents who carry out journalistic activities throughout the years 2011-2018 concluded that as many as 80% of respondents claimed that the journalistic profession was very risky, 12% risky and only 8% of respondents said it was normal, while the other 4% claimed to have never experienced any risk while on duty.

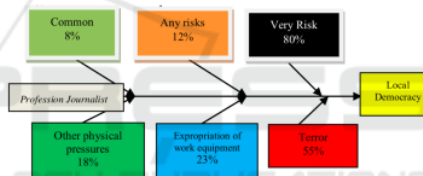


Figure 1: Risk and Experiences of Journalist

In the author's research, among the risks experienced by journalists in carrying out their duties are terror, deprivation of work equipment and other physical pressure (see picture). (Pendidikan, ; Siregar and Haryanto, 2006; Thohir, 2011) Deprivation of work equipment can be in the form of forced taking of photo cameras and video cameras belonging to journalists. Other physical pressure can be in the form of threats received by reporters through cellular channels, sms, whatsapp or other physical pressure that is delivered directly to reporters both while they are interviewing and after the information is presented in the media. The higher the social status of the interviewees, the more relevant they are to serving journalists. The theme of the interview also affects the attitudes and perspectives of the resource persons in opening up to journalists. As for the themes that are central and strategic related to their involvement in certain cases such as corruption, resource persons tend to appear emotion and close themselves, they even have a tendency to find ways so that journalists do not feel at home doing interview work. In the account of the

Indonesian Journalistic Alliance Pekanbaru Branch, only a few cases of violence befell journalists who were concerned or finished up in court.

If in Fried S Siebert's libertarian press theory the press is identical to the principles and values of a liberal democratic state, namely the belief in individual excellence, common sense, truth, progress and ultimately people's sovereignty, then press liberalization in Indonesia in the Press Law is strongly influenced by action the government and the community in carrying out the role and function of the media. In the author's study, such a dependency is tantamount to giving a blank check to the media in carrying out press professionalism. Professionalism only makes the press swayed by the atmosphere of mysticism from the government and society. This is very detrimental to the press in guarding local democracy.

Through observation, the writer also observes the neutrality of journalists in carrying out the professionalism of the press as instructed by the Press Law. This can be seen from their involvement in the success of a team of winning one of the candidate pairs both in the election of mayor and vice mayor, election of governor and vice governor as well as in the election of president and vice president. In addition, they are also involved in being administrators of certain political parties so that the editorial policy of journalist reporting ends in two blades, namely one side wants to be the guardian of democracy on the other hand carrying out professionalism of the press. The phenomenon of these two blades contributes to the breaking of libertarian theory in Siebert's view.

3.3 Effectiveness of Journalist Protection

The freedom of press becomes the main prerequisite for democracy. As a country that embraces democracy, Indonesia also needs press freedom so that democracy can develop and be well maintained. The Press Law provides legal protection for journalistic workers to carry out their profession freely and independently. Such protection is affirmed by Article 8 of Law No. 40 of 1999 which stated, "In carrying out his profession, journalists receive legal protection". What is meant by "legal protection" by this law is the guarantee of the protection of the Government and or the community to journalists in carrying out their functions, rights, obligations and roles following statutory provisions.

Is it true that reporters get legal protection? The question is easily difficult to answer. Because journalists are no different from doctors, advocates, teachers, politicians, academics, bureaucrats and laborers, all

of whom are children of the nation who are protected constitutionally. The same protection is given to the children of the nation in accordance with the principle of equality before the law. The principle of Equality comes from the recognition of individual freedom, one of which was stated by Thomas Jefferson. Jefferson stated that "that all men are created equal" especially in relation to basic human rights. Article 27 Paragraph (1) of the 1945 Constitution confirms that all citizens must have the same position in the law and the government must uphold the law without exception. Thus the concept of equality before the law has been introduced into the constitution. The problem is how to understand the formulation of the provisions of the law. When using the classic 5W + 1H inverted pyramid writing formula, the question of legal protection for journalists revolves around: "What, Who, Where, When, Why and How". Or "What, Who, Why, When, Where and How". This formula which until now has been difficult to translate because Article 8 of the Press Law itself invites multiple interpretations.

The same problem is experienced by journalists in Pekanbaru. In assessing the position of Article 8 journalists have different views. There are those who think the article is able to provide protection in their duties, while others also state that the law is unable to protect them in the field. Survey of writers in a number of Pekanbaru print media said, 73% of respondents felt protected by the Press Law, 19% of respondents said they were unprotected, and 8% of respondents said they did not know.

There are several reasons why respondents feel they are protected by the Press Law. First, the implementation of functions, rights, obligations and the role of the press in the Press Law is more secure than Law No. 21 of 1982. Second, the emergence of public awareness using the right channel of responsibility and the right of correction in the event of an error in media reporting. The use of the right of reply and the right of correction although it is felt by the community is not optimal can restore the good name and can also reduce anti-press measures. Third, there is a Memorandum of Understanding between the Press Council and the National Police in handling reports related to press reporting so that the police do not necessarily process any public complaints. Fourthly, journalists' awareness of obeying journalistic code of ethics (KEJ) emerged.

Respondents who thought that the Press Law had not been effective in protecting them in the field said that the interpretation of Article 8 that stated, "in carrying out their profession journalists receive legal protection", contains multiple meanings so it is difficult

to be concrete imperative. The explanation in Article 8 only states that what is meant by "legal protection" is a guarantee of the protection of the Government and of the community to journalists in carrying out their functions, rights, obligations and roles. However, the formulation of guarantees from the government and the community is not explained by the law. In the theory of Human Rights the protection of journalists is part of human rights related to journalistic tasks, which include the right to seek, obtain, possess, store, process, and convey information (6M). Protection of human rights is not only a guarantee for the state to protect human rights but also to be reactive in taking legal action if violations occur.

Several actions that could interfere with press freedom. First, through legislation, including the Limited Liability Company Law, the Consumer Protection Act, the Copyright Act and a number of articles in the Criminal Code that can make journalists go to jail. Second, through bureaucracy or apparatus, for example excessive apparatus actions such as limiting journalists' space, depriving journalists of equipment, beatings, torture and various actions and behaviors that are hampering the implementation of journalistic tasks. Third, through the act of "vigilante" by various groups in the community when there are news and writings that are considered harmful. Including ways thugs approach the media office, threatening and terrorizing to the destruction of the media office (Siregar and Haryanto, 2006). Terror, appropriation of work equipment and vigilantism are often experienced by journalists when they are on duty in the field. Sometimes these actions are resolved by journalists themselves, some of whom report to the media in charge.

4 CONCLUSIONS

Media managers face a dilemmatic situation between upholding the professionalism of the press and the conditions in the field that hurt press freedom. Injury arises from the public in various actions and deeds, interest groups (economic and political), and well-established groups who feel disturbed by the press and the politicization of the press by journalists themselves who run the politics of reporting two blades.

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