

## Press Freedom and Its Relevance to the Theory of People's Sovereignty In the Indonesian Legal Regime

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Submitted: 26 October 2024 | Reviewed: 29 March 2025 | Revised: 1 May 2025 | Accepted: 25 June 2025

### Abstract

*Press freedom in Indonesia intersects closely with the doctrine of popular sovereignty, yet its boundaries vis-à-vis state authority remain contested. Adopting a normative-juridical methodology with qualitative descriptive analysis, the research reviews constitutional provisions, statutes, judicial decisions, and scholarly commentary. Findings show that Indonesia's normative commitment to a free press resonates with Jean-Jacques Rousseau's concept of popular sovereignty, under which the state may regulate public life without extinguishing civil liberty. Second, despite guarantees in Article 28F of the 1945 Constitution and Law No. 40 of 1999 on the Press, journalists face political intimidation, media-ownership concentration, and insufficient legal protection and conditions that chill independent reporting. Consequently, press freedom functions as a barometer of popular sovereignty; an informed populace can exercise self-government only when information circulates freely, objectively, and responsibly. To bridge the gap between constitutional promise and daily practice, the article recommends amending the Press Law to strengthen newsroom independence, define interference penalties, and expand the Press Council's authority to enforce ethical standards and safeguard journalists. Such reforms are essential to balancing state regulation with citizens' right to reliable information and reinforcing Indonesia's status as a constitutional democracy rooted in the people's sovereignty.*

**Keywords:** Freedom of the Press, People's Sovereignty, Rule of Law

### INTRODUCTION

The media is the most effective means of communication for accelerating progress towards a democratic society. Since the reformation period or "Reform" era began in



Indonesia in 1998, many changes have occurred in all aspects of life. The initial door for these changes is the amendment of the 1945 Constitution.

This paper discusses the freedom of the press from Article 28F of the 1945 Constitution of the Republic of Indonesia, which affirms that "Everyone has the right to communicate and obtain information to develop his or her personal and social environment, as well as the right to seek, obtain, possess, store, process, and convey information using all types of available channels."

Freedom of the press is one component of people's sovereignty based on democracy, justice, and the rule of law.<sup>1</sup> This contains the understanding that the people want this freedom. The phrase "the manifestation of people's sovereignty" is different from the norm under Law No. 11 of 1966 on "Basic Provisions of the Press," which does not include the phrase "people's sovereignty" and only positions the press as a tool of revolution.<sup>2</sup> From the perspective of the theory of people's sovereignty, Jean Bodin viewed that sovereignty is an undivided power and belongs to the people.<sup>3</sup>

The "press" in this article refers to a social institution and a vehicle for mass communication that carries out journalistic activities.<sup>4</sup> Meanwhile, freedom of the press, as described initially, is a form of people's sovereignty. "Freedom of the press" is not a new term that only appeared in the Reform era. Three iterations of the Indonesian Constitution (the 1950 Constitution, the 1949 RIS Constitution, and the 1945 Constitution before amendment) have used the word "independence" to guarantee citizens the right to freely express their thoughts and opinions. The 1950 Constitution, for example, used the term "independence" eight times. The RIS

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<sup>1</sup> See 'Law No. 40 of 1999 on the Press' (n.d.) Art. 2.; 'Decree of the People's Consultative Assembly of Republic of Indonesia No. XVII/MPR/1998 on Human Rights' (n.d.) Art. 19., among others: "everyone has the right to communicate and obtain information in line with the United Nations Charter on Human Rights". Article 19 of the charter reads, "Everyone has the right to freedom of speech and expression; This right includes freedom to have opinions without interference, and to seek, receive, and impart information and thoughts through any medium and without regard to territorial boundaries."

<sup>2</sup> See 'Law No. 11 of 1966 on Basic Provisions of the Press' (n.d.) Art.2. affirms that the National Press is a tool of revolution and is a mass-media that is active, dynamic, creative, educational, informative and has a social function that drives and fosters the power of critical and progressive thinking covering all manifestations of the life and livelihood of Indonesian society.

<sup>3</sup> David Held, *Demokrasi dan Tatahan Global: Dari Negara Modern Hingga Pemerintahan Kosmopolitan*, trans. Damanhuri, 1st ed. (Yogyakarta: Pustaka Pelajar, 2004), 47, [https://books.google.com/books/about/Demokrasi\\_tatanan\\_global.html?id=DY6atQEACAAJ](https://books.google.com/books/about/Demokrasi_tatanan_global.html?id=DY6atQEACAAJ).

<sup>4</sup> This definition is the terminology of the press contained in Law No. 40 of 1999 on the Press Art. 1.

Constitution included the word six times, while the Preamble to the 1945 Constitution includes the word six times. In the body, the word independence can also be found four times.<sup>5</sup> Outside the three constitutions, "freedom or freedom of the press" also includes an "independent press."<sup>6</sup>

From the perspective of the Constitution, press freedom cannot be separated from freedom of speech related to the political system or freedom of democracy. Democracy, as understood in various political literature, is a system that supports the sovereign people, and to realize their will, the people need channels, namely the press or mass media. In the era of democratization, the press has played a significant role as a pillar of democracy. Even the presence of the media can undermine public trust in authoritarian power. One of the many cases where the press has positioned itself as a pillar of democracy is the case of Rempang Island and Galang Island, Riau Islands Province, which occurred in early September 2023. The partiality of the press and public media supported the residents, causing the Government to postpone its plan to relocate residents to Rempang Island.

In the case of the relocation of Rempang and Galang residents, the press not only conveyed news in a valid, accurate, and balanced manner but also revived democracy, maintained the rule of law, and oversaw the enforcement of human rights. Borrowing from Bagir Manan, the press has become a guide, the right direction to remind state administrators of the goals of the nation and the State.<sup>7</sup> On a broader level than just carrying out its role and function, the press has positioned itself as a party that seeks to prevent all forms of deterioration and demoralization of the nation's life in the political, social, economic, and cultural fields. Whatever happens around the community, the press must, without restraint, provide information and frame all facts surrounding impactful events. This situation contrasts with the conditions in the New

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<sup>5</sup> Syafriadi, *Hukum Pers Dalam Ketatanegaraan Indonesia* (Yogyakarta: Suluh Media, 2017), 79.

<sup>6</sup> See Law No. 11 of 1966 on Basic Provisions of the Press Art. 5 Par. (1), Art. 5 Par. (2). Contains: (1) Freedom of the Press in accordance with the fundamental rights of citizens is guaranteed; (2) This freedom of the press is based on national responsibility and the implementation of Article 2 and Article 3 of this law.

<sup>7</sup> Bagir Manan, *Politik Publik Pers*, 1st ed. (Jakarta: Dewan Pers, 2012), 39.

Order era, when the media, which could not cooperate with the Soeharto Government, were immediately banned.

This research discuss press freedom in two parts: first, its relevance to the theory of people's sovereignty from the perspective of the *rechtsstaat* (rule of law), and second, the extent to which the law can guarantee press freedom as part of ensuring people's sovereignty.

Several previous articles have been written by Syahnan Harahap, who posited that to avoid disturbances to press freedom, it is necessary to revise several regulations that threaten press freedom.<sup>8</sup> In a different article, Harahap also conducted a study on press freedom from the perspective of the political system. The discussion in these two articles is very different from the study that the author has conducted, namely, analyzing press freedom from a constitutional perspective with the primary focus on press freedom and its relevance to the theory of people's sovereignty from the perspective of the Indonesian legal State.<sup>9</sup> This article also reviews press freedom from a human rights point of view, so this paper can contribute to improving regulations related to the press.<sup>10</sup>

Stefan Obadja Voges also published other writings.<sup>11</sup> In the conclusion of one article, Voges argued that the change in the government system also affected press freedom in Indonesia. The same is the case with Andi Andri, who concluded that the sovereignty of the people is the highest power that lies with them and can be realized by providing education so that the people are aware of their sovereignty.<sup>12</sup>

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<sup>8</sup> Muhammad Syahnan Harahap, 'Tinjauan Hukum Peran Pers Guna Menegakkan Hak Asasi Manusia Di Indonesia', *Jurnal Ilmiah Hukum Dirgantara* 4, no. 1 (September 2013): 28, <https://doi.org/10.35968/jh.v4i1.85>.

<sup>9</sup> Muhammad Syahnan Harahap, 'Kemerdekaan Pers Pada Orde Reformasi', *Jurnal Ilmiah Hukum Dirgantara* 9, no. 2 (9 October 2019): 142, <https://doi.org/10.35968/jh.v9i2.358>.

<sup>10</sup> Harahap, 35.

<sup>11</sup> Stefan Obadja Voges, 'Kemerdekaan Pers Dalam Perspektif Hukum Pers Indonesia', *Lex et Societatis* 2, no. 9 (December 2014): 53, <https://doi.org/10.35796/les.v2i9.6386>.

<sup>12</sup> Andi Andri, 'Kemerdekaan Dan Kedaulatan Rakyat Dalam Perspektif Mohammad Hatta Dan Islam', *Jurnal Manthiq* 2, no. 2 (November 2017): 147, <http://dx.doi.org/10.29300/mtq.v2i2.668>.

## METHODOLOGY

This research applies a normative juridical method with a qualitative descriptive approach based on a literature study of laws and regulations, legal documents, and relevant scientific literature. Which is based on the legal principles contained in laws and regulations, namely the 1945 Constitution, especially Article 28F, Law No. 40 of 1999, which affirms "Press Freedom as a form of people's sovereignty, and the Press is guaranteed as a citizen's human right" and its relevance to the theory of people's sovereignty. From these norms, a qualitative analysis was carried out based on theories in the legal literature.

## RESULTS AND DISCUSSION

### Press Freedom and Its Relevance to the Theory of People's Sovereignty

The press or media is an institution in a democratic country that functions within the community as a forum to channel thoughts and opinions. The press develops along with the development of society. In the current era of digitalization, the scope of the press's work is not only to convey information and form opinions disseminated through news, images, and voices, but the press also appears to be an effective legal guardian. At the same time, it serves as a supervisory institution that examines the implementation and potential abuse of political power.<sup>13</sup> Therefore, press freedom is fundamental to holding the government accountable and shaping public opinion.<sup>14</sup>

Democracy allows people to actively participate in the decision-making process and the government system. In this context, the press is often seen as one of the main pillars of democracy.<sup>15</sup> As a buffer for democracy, the press plays a strategic role in maintaining

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<sup>13</sup> Melinda Quintos De Jesus, 'Responsible Media, Democracy, and Inclusive Growth', in *Building Inclusive Democracies in ASEAN*, by Ronald U Mendoza et al. (World Scientific, 2019), 405–16, [https://doi.org/10.1142/9789813236493\\_0024](https://doi.org/10.1142/9789813236493_0024).

<sup>14</sup> Dobrochna Ossowska-Salamonowicz, 'Public and Social Interest in Journalistic Activity', *Archiwum Filozofii Prawa i Filozofii Społecznej*, 1 October 2020, 118–26, <https://doi.org/10.36280/AFPiFS.2020.3.118>.

<sup>15</sup> Bruce E Drushel, 'Politically (In)Corrected: Electronic Media Self-Censorship Since the 9/11 Attacks', in *Language, Symbols, and the Media*, ed. Robert E Denton, 1st ed. (New York: Routledge, 2017), 240, <https://doi.org/10.4324/9780203787601>.

openness, accountability, and social control – a role that Jacob Oetama calls ‘democracy in the making’, a democratic process that continues to grow and develop.<sup>16</sup>

Along with the advancement of digital technology marked by the presence of new media (social media), the meaning of democracy in the context of freedom of expression is repeatedly abused.<sup>17</sup> In many social media, many irregularities have led to criminal acts such as fake news (hoaxes), defamation, and hate speech. This phenomenon indicates that digital-based technology has pushed expression toward free participation and minimal responsibility.<sup>18</sup> The development of information technology also has implications for the patterns, behavior, and existence of the press, including its journalist resources. The community now plays a role not only as information users but also as information producers. This trend is evident through various social media platforms that present multiple types of content from different perspectives. The emergence of terms such as netizen journalism, YouTubers, Facebookers, and TikTokers indicates that the public space is no longer exclusive to traditional journalists as publishers of journalistic works; netizens have widely and productively used these platforms to convey information. This can decrease inclusivity, diversity, trust, and accountability if these technologies are not applied carefully.<sup>19</sup>

As a country that adheres to democracy, applying the principle of *trias politica* – the separation of executive, legislative, and judicial powers as stated by Montesquieu – requires the existence of press freedom for democracy to grow and develop. Press members are professionals who work seriously to support the establishment of democracy. Only in a climate of press freedom can the flow of information and social, economic, and political dynamics occur healthy and balanced. The goal of a

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<sup>16</sup> Jacob Oetama prefers to use the word *democratization* rather than *democracy*. *Democratization* according to Jacob Oetama associates dynamics, movements continue to run; while democracy is associated with nouns, stagnation, read: St Sularto, *Syukur Tiada Akhir: Jejak Langkah Jakob Oetama* (Jakarta: Penerbit Buku Kompas, 2011), 432, <https://ebooks.gramedia.com/id/buku/syukur-tiada-akhir-jejak-langkah-jakob-oetama>.

<sup>17</sup> Syafriadi, *Demokrasi Dan Kebebasan Pers* (Jakarta: Bina Karya (BIKA), 2023), 131, <https://repository.uir.ac.id/22249/>.

<sup>18</sup> Rikki Dean, ‘Participatory Governance in the Digital Age: From Input to Oversight’, *International Journal of Communication* 17 (2023): 3562–81.

<sup>19</sup> Aikaterini Katmada, Garyfallia Katsavounidou, and Christina Kakderi, ‘Platform Urbanism for Sustainability’, in *Distributed, Ambient and Pervasive Interactions*, ed. Norbert A. Streitz and Shin’ichi Konomi, Lecture Notes in Computer Science (Cham: Springer Nature Switzerland, 2023), 35–52, [https://doi.org/10.1007/978-3-031-34609-5\\_3](https://doi.org/10.1007/978-3-031-34609-5_3).

democratic state is to foster people's sovereignty<sup>20</sup> and many countries worldwide have embraced this system as a model for opening up space for people to participate.<sup>21</sup> Moreover, Indonesia is a democratic country that renewed the liberal press system in the Reform era to encourage the realization of people's sovereignty after the authoritarian press system was imposed during the autocratic New Order regime.<sup>22</sup>

Jean Jaques Rousseau was one of the thinkers who helped to create the theory of people's sovereignty (*volks soevereniteit*). In Rousseau's view, humans need an orderly and safe existence as creatures with civilization. This thinking is based on the conception that man is a wolf to mans (*homo homini lupus*) whose lives are constantly changing. From this conception of stigma, a mutual agreement is called a social contract to establish a state. In the social contract, Rousseau divided the sovereignty of the people into two parts: first, the power is transferred to the rulers so that the rulers appear as sovereign persons; and second, sovereignty remains in the hands of the people.<sup>23</sup> From Rousseau's perspective, the law is the property of the public, and therefore, the law must be an object because the law is essentially a *volonté générale*. For the law to reflect the public will, according to Rousseau, a legislative institution is needed to represent the people's interests. It is under the direct supervision of the people themselves. Thus, sovereignty remains in the hands of the people.<sup>24</sup>

The press is a pillar of democracy that gives power to the people to control the legislative institutions. Hence, democracy runs according to the general public's will.<sup>25</sup> As Lord Acton once expressed in his essay, "power tends to corrupt, absolute power corrupts absolutely." Thus, according to Rousseau, only the press has the ability to

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<sup>20</sup> Syafriadi, 'Undang-Undang Cipta Kerja Pasca Revisi Kedua Undang-Undang Nomor 12 Tahun 2011', *Jurnal Hukum Ins Quia Iustum* 30, no. 2 (1 May 2023): 278, <https://doi.org/10.20885/iustum.vol30.iss2.art3>.

<sup>21</sup> Ayon Diniyanto, 'Penundaan Pemilihan Umum Di Negara Hukum: Kajian Demokrasi Konstitusional', *Jurnal Negara Hukum* 13, no. 2 (November 2022): 235, <https://doi.org/10.22212/jnh.v13i2.3365>.

<sup>22</sup> Dedi Sahputra, 'Implementasi Hukum Pers Di Sumatera Utara', *Jurnal Penelitian Hukum De Jure* 20, no. 2 (12 June 2020): 264, <https://doi.org/10.30641/dejure.2020.V20.259-274>.

<sup>23</sup> Sahputra, 114.

<sup>24</sup> Spencer McKay, 'Plebiscites, Referendums, and Ballot Initiatives as Institutions of Popular Sovereignty: Rousseau's Influence on Competing Theories of Popular-Vote Processes', *The Review of Politics* 85, no. 1 (2023): 23–47, <https://doi.org/10.1017/S0034670522000912>.

<sup>25</sup> In political philosophy Jean-Jacques Rousseau *the volonte generale* is defined as the general will that represents the collective will of a political body formed through a social contract, see: Christopher McMahon, 'Rousseau's General Will and the Will of All: A Present-Day Perspective', *The Journal of Ethics*, 28 March 2025, <https://doi.org/10.1007/s10892-025-09517-9>.

address the irregularities committed by the legislature. The view expressed by Rousseau is in line with the norms contained in Law No. 40 of 1999 on the Press, which positions the press as a tool of social control that prevents abuse of power. In this context, the position of the media as one of the embodiments of people's sovereignty becomes very relevant to Rousseau's theory that the people are the rightful holders of sovereignty. In line with this, the 1945 Constitution of the Republic of Indonesia guarantees the freedom of every citizen to obtain and convey information through various channels, including the mass media. According to Hans Kelsen, the basis of democracy lies in the principle of self-determination, in which individuals form a social order to guarantee that citizens are free and subject to that social order.<sup>26</sup>

As stipulated in the 1945 Constitution of the Republic of Indonesia, the guarantee of freedom is not absolute. This follows Immanuel Kant, who argued that freedom is limited by law.<sup>27</sup> Laws are regulatory tools that the people enact through their representatives, whose membership is determined through elections. In the Indonesian Constitution, Kant's theory is embodied by the House of Representatives, which has the authority to form regulations, including regulating press freedom and freedom of expression, several laws, such as Law No. 11 of 2008 on Information and Electronic Transactions (ITE Law) and its amendments. Thus, freedom of the press as a manifestation of people's sovereignty in a democratic system can be interpreted as limited freedom. Restrictions on press freedom are intended to prevent infringements on expression while protecting the rights and freedoms of other citizens.<sup>28</sup> Some countries, including India, Pakistan, and Bangladesh, also provide guarantees of freedom to citizens in the Constitution, but subject to legal restrictions.<sup>29</sup>

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<sup>26</sup> Sandrine Baume, 'Hans Kelsen and the Requirement of Self-Determination: How the Austrian Jurist Takes Inspiration from Rousseau and How He Emancipates Himself from the Swiss Philosopher', in *Hans Kelsen and the Natural Law Tradition*, ed. Peter Langford, Ian Bryan, and John McGarry (Brill, 2019), 188–214, [https://doi.org/10.1163/9789004390393\\_007](https://doi.org/10.1163/9789004390393_007).

<sup>27</sup> Fajlurrahman Jurdi, *Hukum Tata Negara Indonesia*, 1st ed. (Jakarta: Kencana, 2019), 134.

<sup>28</sup> Waleed Kathem Hussein and وليد العاصمي, 'Constitutional and Criminal Basis for Restrictions on Media Freedom', *Res Militaris* 12, no. 2 (2022): 6653–64, <https://doi.org/10.13140/RG.2.2.17853.95206>.

<sup>29</sup> M. Ehteshamul Bari and Safia Naz, 'Criminalisation of Media Reporting on the Government Response to the COVID-19 Pandemic in India, Pakistan and Bangladesh: Freedom of Press in Peril', in *Human Rights During the COVID-19 Pandemic*, ed. M. Ehteshamul Bari and Uday Shankar (Singapore: Springer Nature Singapore, 2024), 89–99, [https://doi.org/10.1007/978-981-97-1480-3\\_6](https://doi.org/10.1007/978-981-97-1480-3_6).



In addition to being a pillar of democracy, press freedom is central to enforcing human rights because it can encourage open access to information and ensure freedom of expression, transparency, and accountability in government administration. Restrictions on press freedom from a human rights perspective must be based on legitimate objectives, such as protecting the rights and freedoms of others or following human rights and constitutional principles.<sup>30</sup> Human rights are fundamental rights inherent in every individual from birth, are universal, inalienable, and apply throughout life. The State must protect, respect, and fulfill these rights, including from potential violations by any party, even by the State itself.

The conception of human rights was born from the school of legal thought known as “natural law”, pioneered by Thomas van Aquinas (1224-1274) and Hugo de Grotius (1583-1645). This doctrine also encouraged the emergence of several human rights charters, such as the Magna Charta (1215), the Human Rights Petition (11628), and the English Human Rights Act, known as the English Bill of Rights (1689). This conception of Aquinas and Grotius then developed drastically over the centuries and significantly shaped the human rights framework.<sup>31</sup> The same is true of John Locke, whose ideas also influenced modern liberal thinking on human rights. Locke argued that everyone has the right to live, and God ordained universal freedom.<sup>32</sup> A government that fails to protect human rights will lose its moral and political legitimacy before the people. In a democratic system, such failure can be the basis for the people to attract support and even replace the government through legitimate and constitutional mechanisms.<sup>33</sup>

The state's policy of recognizing and protecting human rights is embodied in the constitutions of democratic nations. In France, for example, through the slogan *liberté*,

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<sup>30</sup> Nabilla Arsyafira, Fitra Arsil, and Ryan Muthiara Wasti, ‘A Normative Analysis of the Limitation of Human Rights: Assessing the Constitutionality of Press Freedom in Indonesia’, in *Challenges of Law and Governance in Indonesia in the Disruptive Era II*, ed. Heru Susetyo, Qurrata Ayuni, and Universitas Indonesia, Asian Political, Economic and Social Issues (International Conference on Law and Governance in a Global Context, New York: Nova Science Publishers, Inc, 2021), 3–17, <https://scholar.ui.ac.id/en/publications/a-normative-analysis-of-the-limitation-of-human-rights-assessing->.

<sup>31</sup> Hendrik van Eikema Hommes, ‘Grotius on Natural and International Law’, in *Grotius and Law*, ed. Larry May and Emily McGill, 1st ed. (London: Routledge, 2017), 457–67, <https://doi.org/10.4324/9781315093376>.

<sup>32</sup> John Locke, ‘Toleration and Government’, in *Ideals and Ideologies*, by Terence Ball, Richard Dagger, and Daniel I. O’Neill, 11th ed. (New York: Routledge, 2019), 87–101, <https://doi.org/10.4324/9780429286827-17>.

<sup>33</sup> Richard J. Arneson, ‘Locke and the Liberal Tradition’, in *A Companion to Locke*, ed. Matthew Stuart, 1st ed. (Wiley, 2015), 528–45, <https://doi.org/10.1002/9781118328705.ch27>.

*égalité, fraternité*, the structure of the protection of human rights is carried out by incorporation through constitutional and jurisprudential arrangements influenced by the European Convention on Human Rights.<sup>34</sup> The same is true of the United States, which places the basic principles of human liberty as individualistic rights. Historically, the United States has associated the protection of human rights with foreign policy, where the country imposes economic sanctions on countries that do not protect human rights.<sup>35</sup> Indonesia maintains a similar constitutional framework. The conception of the rule of the law as stated in the 1945 Constitution of the Republic of Indonesia joined hands with the understanding of people's sovereignty, which is placed in one article with two paragraphs, namely Article 1, paragraphs (2) and (3) which affirm that "sovereignty is in the hands of the people and is implemented according to the Constitution." Then followed by the next affirmation, "the State of Indonesia is a state of law." The inclusion of human rights norms in the Indonesian Constitution results from historical awareness and national political consensus.

However, in the process, the recognition of the norm has experienced ups and downs that are loaded with political content as seen in various phases of the constitution that have been in force – starting from the 1945 Constitution (original text), the 1949 RIS Constitution, the 1950 Provisional Constitution, back to the 1945 Constitution, to the Fourth Amendment in 2002. It was only through the amendment to the constitution in 2002 that the regulation of human rights was comprehensively recognized, with a universal, material scope in line with international human rights instruments. According to Wiratraman, this was a response to persistent political and economic pressure, which prompted the birth of Law No. 39 of 1999 on Human Rights as a concrete form of strengthening human rights in the national legal system.<sup>36</sup> The

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<sup>34</sup> Mads Andenas et al., eds., 'The United Kingdom, France and the European Convention on Human Rights', in *Tom Bingham and the Transformation of the Law: A Liber Amicorum* (Oxford: Oxford University Press, 2009), 209–20, <https://doi.org/10.1093/acprof:oso/9780199566181.001.0001>.

<sup>35</sup> George A. Lopez, 'Mobilizing Economic Sanctions for Preventing Mass Atrocities: From Targeting Dictators to Enablers', in *Reconstructing Atrocity Prevention*, ed. Sheri P. Rosenberg, Tibi Galis, and Alex Zucker, 1st ed. (Cambridge: Cambridge University Press, 2015), 379–92, <https://doi.org/10.1017/CBO9781316154632.018>.

<sup>36</sup> Lopez.

following are the articles contained in Chapter XA of the 1945 Constitution of the Republic of Indonesia:

| Article                                         | Norm                                                                                                            |
|-------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| <b>Civil and Political Rights</b>               |                                                                                                                 |
| Articles 28A and 28I paragraph (1)              | The Right to Life                                                                                               |
| Article 28D paragraph (1)                       | The Right to Fair Legal Recognition, Guarantee, Protection, Certainty, and Equal Treatment before the Law       |
| Article 28D paragraph (3)                       | The Right to Equal Opportunities in Government                                                                  |
| Article 2D paragraph (4) and 28E paragraph (1)  | The Right to Citizenship Status and Right to Move                                                               |
| Article 28E paragraph (1) and 28I paragraph (1) | Religious Freedom                                                                                               |
| Article 28E paragraph (2) and 28I paragraph (1) | The Right to Freedom of Belief, Expression of Thoughts and Attitudes in Accordance with One's Conscience        |
| Article 28E paragraph (3)                       | Freedom of Association, Assembly, and Expression of Opinion                                                     |
| Article 28F                                     | The Right to Communicate and Obtain Information                                                                 |
| Article 28G paragraph (1)                       | The Right to a Sense of Security and Freedom from Threats                                                       |
| Article 28G paragraph (2) and 28I paragraph (1) | Free from Torture                                                                                               |
| Article 28G paragraph (2)                       | The Right to Obtain Political Asylum                                                                            |
| Article 28I paragraph (1)                       | The Right Not to Be Enslaved                                                                                    |
| Article 28I paragraph (1)                       | The Right to be Recognized as a Person before the Law                                                           |
| Article 28I paragraph (1)                       | The Right Not to be Prosecuted on the Basis of Retroactive Law                                                  |
| Article 28I paragraph (2)                       | The Right Not to be Treated Discriminatorily                                                                    |
| Article 28B paragraph (1)                       | The Right to Have Offspring                                                                                     |
| <b>Economic, Social and Cultural Rights</b>     |                                                                                                                 |
| Article 28B paragraph (2)                       | Children's Rights                                                                                               |
| Article 28C paragraph (2)                       | Fulfillment of Basic Needs and Education                                                                        |
| Article 28C paragraph (2)                       | The Right to Advance itself Collectively                                                                        |
| Article 28D paragraph (2)                       | The Right to Work and to be Rewarded and Treated Fairly and Decently in Employment Relationships                |
| Article 28E paragraph (1)                       | The Right to Choose Education and Teaching                                                                      |
| Article 28E paragraph (1)                       | The Right to Choose a Job                                                                                       |
| Article 28H paragraph (1)                       | The Right to Live a Prosperous Life in Birth and Mind, to Live and to Get a Good and Healthy Living Environment |
| Article 28H paragraph (1)                       | The Right to Health Services                                                                                    |
| Article 28H paragraph (2)                       | The Right to Convenience and Special Treatment to Obtain Equal Opportunities and Benefits                       |
| Article 28H paragraph (3)                       | The Right to Social Security                                                                                    |
| Article 28H paragraph (4)                       | Property Protection                                                                                             |

|                                             |                                                                                 |
|---------------------------------------------|---------------------------------------------------------------------------------|
| Article 28I paragraph (3)                   | Cultural Identity and Rights of Traditional Peoples                             |
| <b>Civil and Political Rights</b>           |                                                                                 |
| Article 28                                  | Freedom of Association and Assembly, Expressing Thoughts Orally and in Writing  |
| Article 29, paragraph (2)                   | The Right to Religion and Belief                                                |
| <b>Economic, Social and Cultural Rights</b> |                                                                                 |
| Article 18B paragraph (2)                   | Recognition of Traditional Customary Rights and Laws                            |
| Article 31                                  | The Right to Education                                                          |
| Article 32, paragraph (1)                   | The Independence of the Community in Maintaining and Developing Cultural Values |
| Article 33, paragraph (3)                   | The Right to Access Natural Resources for the Welfare of the People             |
| Article 34, paragraph (1)                   | The Right to Welfare for People with Low Incomes and Children                   |
| Article 34, paragraph (2)                   | The Right to Social Security                                                    |
| Article 34, paragraph (3)                   | The Right to Social Services                                                    |

Source: Constitution of the Republic of Indonesia of 1945

The position of the press from the perspective of human rights can be understood through the foundational philosophy of freedom of expression, both oral and written. To explore this, the author will first outline the philosophical underpinnings of human rights, particularly as they relate to the freedom to express thoughts. As previously discussed, the press serves the dual function of disseminating information and upholding human rights, grounded in the principle that every individual has the freedom to express opinions, whether verbally or in writing. At the core of human rights philosophy lies the concept of freedom of expression – an essential component of liberty and a natural right inherent to all individuals, rather than one granted by the state. This view is reflected in the ideas of classical thinkers such as John Locke, Voltaire, and Immanuel Kant. Kant, in particular, defined freedom as the capacity to act autonomously while remaining accountable for the consequences of one's actions toward others.<sup>37</sup> Freedom is also an essential trait that distinguishes humans from other creatures.<sup>38</sup> From Kant's perspective, the press is considered a means by which everyone can exercise their rights freely and widely.

<sup>37</sup> Dai Heide and Evan Tiffany, eds., *The Idea of Freedom: New Essays on the Kantian Theory of Freedom*, 1st ed. (Oxford: Oxford University Press Oxford, 2023), <https://doi.org/10.1093/oso/9780198860563.001.0001>.

<sup>38</sup> Helga Varden, 'Immanuel Kant – Justice as Freedom', in *Philosophy of Justice*, ed. Guttorm Floistad, vol. 12 (Dordrecht: Springer Netherlands, 2015), 213–37, [https://doi.org/10.1007/978-94-017-9175-5\\_13](https://doi.org/10.1007/978-94-017-9175-5_13).

Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia states, "The State of Indonesia is a state of law." All state actions, including those of the government and citizens, must be based on the law and state actors are accountable under the law. One of the main characteristics of the rule of law is the constitutional protection of human rights. In the body of the 1945 Constitution of the Republic of Indonesia, the provisions regarding human rights are listed in several articles, including Articles 27 through 34. Each of these articles reflects the recognition of various categories of human rights, such as personal rights, property rights, political rights, rights of equality before the law, social and cultural rights, and procedural rights. Meanwhile, Article 28 affirms, "Freedom of association and assembly, expression of thoughts orally and in writing, and so forth, is stipulated by law."

This norm was then expanded through Article 28F, which states that everyone has the right to communicate and obtain information to develop their personal and social environment and seek, obtain, possess, store, process, and convey information using any available channels. Further regulation of these rights is codified in various legislation, including the Press Law, the Broadcasting Law, the Law on Human Rights, and the Law on Public Information Disclosure.

In the consideration part of the Press Law, it is also emphasized that press freedom is a form of people's sovereignty and an essential element to create a democratic life in society, nation, and state. As stated in Article 28 of the 1945 Constitution, the freedom to express thoughts and opinions must be guaranteed. Furthermore, it must be underscored that within the framework of a democratic society, nation, and state, the freedom to express thoughts and opinions according to one's conscience – along with the right to access information – is a fundamental human right. These rights are not merely privileges granted by the state, but essential components of a just and open society. Upholding them is critical to ensuring the administration of justice, the pursuit of truth, and the promotion of public welfare. Moreover, they serve as key instruments in fostering an informed and participatory citizenry, thereby contributing to the intellectual and moral development of the nation. In this context, there exists a profound and inseparable connection between freedom of the press, the functioning

of democracy, and the protection of human rights. A free and independent press acts as both a watchdog and a platform for diverse voices, enabling transparency, accountability, and the robust exchange of ideas—cornerstones of any healthy democratic system. This correlation is explicitly stated in Article 4 paragraphs (1), (2), (3), and (4) of Law No. 40 of 1999 on the Press, which states:

- (1) Freedom of the press is guaranteed as a human right of citizens;
- (2) The national press shall not be subject to censorship, banning, or broadcasting bans;
- (3) To ensure press freedom, the national media has the right to seek, obtain, and disseminate ideas and information; and
- (4) In accounting for news before the law, journalists have the right of refusal. The following graph illustrates the close correlation between fundamental human rights principles and democracy and freedom of the press as a form of the right to freedom of expression and access to information.”<sup>39</sup>



Figure 1. concluded that press freedom is not only an instrument for the press

<sup>39</sup> Law No. 40 of 1999 on the Press Art. 4.

Based on the figure above, it can be concluded that press freedom is not only an instrument for the press but also an essential human right for realizing a democratic state that upholds the rule of law.

### **Guarantees of Freedom of the Press**

The legal guarantee of press freedom aims not only to uphold democracy but also to optimize the function and role of the press as an institution for distributing information, social control, and public aspirations. Luis R. Maurice argues that “freedom of the press, hand in hand with the freedom of expression, emanates from and at the same time complements another right that is as vital in a democracy, the right of the people to know or to be informed. An informed citizenry is a prerequisite to a viable democracy. If democracy is government by the people for the people, then it follows that the people can only be sovereign if they are informed. Otherwise, how would they be able to take part intelligently in the democratic process – the process that involves the formulation of policies having to do with fundamental questions on the state and/or the selection of public servants who are to carry out such policies?”<sup>40</sup>

Maurice's perspective provides an understanding that press freedom and freedom of expression are inseparable links like two sides of a coin; on the one hand, there is freedom of the press, and on the other hand, there is the freedom of citizens to express opinions. Both freedoms are part of human rights, which can be said to be the pillars of democracy. Through freedom of the press and freedom of expression, everyone can discuss anything and exchange ideas about politics, law, society, culture, and government.<sup>41</sup> Freedom of the press is not absolute. Still, it is carried out by balancing freedom with other interests, such as national security and privacy owned by different people or institutions/institutions.<sup>42</sup> Legal studies on press freedom and freedom of

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<sup>40</sup> Luis R. Maurice, ‘Freedom of the Press: The Philippine Experience’, in *Press Laws and Systems in ASEAN States*, ed. Abdul Razak, 1st ed. (Jakarta: The Confederation of ASEAN Journalists, The Garuda Metropolitan Press, 1985), 83–84.

<sup>41</sup> Wojciech Lis, ‘Legal Comparison of Freedom of Expression and Freedom of the Press in the Republic of Armenia and in the Republic of Poland’, *Studia Iuridica Lublinensia* 29, no. 1 (29 March 2020): 145, <https://doi.org/10.17951/sil.2020.29.1.145-159>.

<sup>42</sup> Hussein and وليد العاصمي, ‘Constitutional and Criminal Basis for Restrictions on Media Freedom’. Jihyun Park and Dodik Setiawan Nur Heriyanto. (2022). In Favor Of An Immigration Data Protection Law In Indonesia And Its Utilization For Contact Tracing, *Prophetic Law Review*, 4(1), 1–21. <https://doi.org/10.20885/PLR.vol4.iss1.art1>, 15-20.

expression in the Republic of Armenia and Poland give the idea that in both countries, there are standards for freedom of the press and freedom of expression of content disseminated to the public. Therefore, in applying freedom in both countries, although the standards are clear, it is sometimes difficult for journalists to break through public awareness in implementing those freedoms. In the Republic of Armenia, the implementation of freedom of expression and freedom of the press must first consider the problems, risks, and threats that will occur.<sup>43</sup>

In Indonesia, the constitution guarantees freedom of the press and expression. Through Article 28F of the 1945 Constitution of the Republic of Indonesia, it is expressly stated: "Everyone has the right to communicate and obtain information to develop his or her personal and social environment, and has the right to seek, obtain, possess, store, process, and convey information using all types of available channels." This reflects that there should be no discrimination in obtaining information. Information is also the main prerequisite for every citizen to participate in government, and therefore, everyone has the right to access information as an infrastructure of people's sovereignty. The state is tasked with providing facilities for its citizens to access information without any restrictions, except for specific information that is indeed excluded from being disseminated to the public. Law No. 40 of 1999 on the Press as a derivative regulation of Article 28F of the 1945 Constitution of the Republic of Indonesia also strengthens guarantees for press freedom in several articles, including Article 2, which reads: "Press freedom is a form of people's sovereignty based on the principles of democracy, justice and the rule of law." Then Article 4: (1) Freedom of the press is guaranteed as a human right of citizens; (2) The national press shall not be subject to censorship, banning, or prohibition of broadcasting; and (3) To ensure press freedom, the national press has the right to seek, obtain, and disseminate ideas and information.

It is not easy to translate the norms contained in Article 28F of the 1945 Constitution of the Republic of Indonesia and Articles 2 and 4 of the Press Law, especially if these

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<sup>43</sup> Lis, 'Legal Comparison of Freedom of Expression and Freedom of the Press in the Republic of Armenia and in the Republic of Poland'.



norms are implemented in resolving legal problems related to the function and role of the press. Don R. Pember and Clay Calvert offer several theories that can be used to define and understand press freedom and freedom of expression. First, in the Absolutist theory, Pember and Calvert affirm that the government cannot censor the press for any reason. There are no exceptions. Second is the ad hoc balancing theory, which states that freedom of expression must be weighed on an *ad hoc* basis (case by case) against other interests, such as national security, public order, or public morality. Third, the Prepaid Position Balancing Theory states that freedom of expression gets a preferred position over other rights or interests. This means that restrictions on expression must be strict and justified. Fourth, Access Theory explains that freedom of expression means the absence of censorship and includes real opportunities to access media or information channels.<sup>44</sup>

In the Indonesian context, Pember and Calvert's theories have different challenges. Normatively recognized, both the 1945 Constitution and the Press Law have guaranteed press freedom and freedom of expression. However, implementing freedom faces many structural, political, and cultural obstacles. The study conducted by Utamo, Laksanto found indications that during the Covid-19 pandemic, there was a criminalization of all freedom of expression in the media and in the public domain, which has led to violations of the ITE Law, particularly breaches of Article 27 which considers all freedom of expression as slander and hate speech.<sup>45</sup> The rise of social media in the digital era is also a challenge to the development of press freedom and freedom of expression because, in reality, the media gives birth to many criminalization acts such as defamation, hate speech, misleading propaganda, and fraud.<sup>46</sup> Apart from these challenges, what is no less significant is the appearance of media oligarchs. The press, which is touted as the fourth pillar of democracy, has

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<sup>44</sup> Don R. Pember and Clay Calvert, *Mass Media Law*, 2005th–2006th ed. (Boston: McGraw-Hill, 2005), 43–46, <https://www.amazon.com/Mass-Media-2005-2006-Text/dp/0072879289>.

<sup>45</sup> Laksanto Utomo, 'Criminalizing the Freedom of Expression by State during COVID-19 Pandemic in Indonesia', *International Journal of Criminal Justice Sciences* 16, no. 2 (July 2021): 415–25, <https://doi.org/10.5281/zenodo.4756085>.

<sup>46</sup> Edmon Makarim, Muhammad Brata, and Nabilla Arsyafira, 'Limitation of Rights as a Manifestation of Duties and Responsibilities Pertaining to the Freedom Expression in Digital Communications', *Indonesia Law Review* 9, no. 3 (31 December 2019): 278–95, <https://doi.org/10.15742/ilrev.v9n3.586>.

collaborated to become a big business that is at the same time used by oligarchs for political and economic interests. Alex Carey states that "the twentieth century has been characterized by three developments of great political importance: the growth of democracy, the growth of corporate power, and the growth of corporate propaganda as a means of protecting corporate power against democracy."<sup>47</sup> From this perspective, it can be concluded that a free press can be a tool of power and power if it is controlled by the forces of two great powers, namely politics and economics, which can ultimately undermine the idealism of the press. Some of the cases occurred in Russia, where media owned by oligarchs lost their independence after Putin shut down several television and other channels for demanding press freedom.<sup>48</sup>

Drawing on the experience of this phenomenon, the guarantee of press freedom in the law has not received legal protection, especially when press coverage intersects with power, and the weak protection results in journalists potentially facing criminalization. This phenomenon is undoubtedly contrary to the theory of people's sovereignty, which states that people are free to obtain information objectively and independently. Likewise, when the press is restrained, the political space as a means of democracy is distorted. Therefore, in the future, adaptive and protective regulations are needed for the press that guarantee freedom not only normatively but practically. Law No. 40 of 1999 on the Press still contains many weaknesses, especially since the law does not have operational regulations, so the articles are challenging to translate concretely. From a democratic perspective, the guarantee of press freedom is not merely a legal issue but a manifestation of the people's right to know and control the course of government.

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<sup>47</sup> Alex Carey and Andrew Lohrey, *Taking the Risk Out of Democracy: Corporate Propaganda Versus Freedom and Liberty*, 1st ed., History of Communication (Urbana: University of Illinois Press, 1997), 18, <https://www.press.uillinois.edu/books/?id=p066160>.

<sup>48</sup> Rick Simon, 'Media, Myth and Reality in Russia's State-Managed Democracy', *Parliamentary Affairs* 57, no. 1 (1 January 2004): 169–84, <https://doi.org/10.1093/pa/gsh014>.

## CONCLUSION

Freedom of the press as a fundamental instrument in realizing people's sovereignty closely correlates with the theory of people's sovereignty pioneered by Jean-Jacques Rousseau, who asserted that the source of supreme power lies with the people. In this context, the state does not have the authority to arbitrarily limit or curb press freedom, as such freedom manifests the human rights guaranteed in the principles of a democratic state of law.

Article 28F of the 1945 Constitution of the Republic of Indonesia guarantees press freedom and has been strengthened through the provisions in Law No. 40 of 1999 on the Press. However, in practice, press freedom in Indonesia still faces various structural challenges, such as political pressure, dominance of media oligarchy interests, and weak legal protection systems for press personnel. As a result, the press often experiences limitations in functioning as a mouthpiece for the people's aspirations and a tool of social control over power. In the context of a democratic state of law, this condition shows that press freedom in Indonesia does not fully reflect the principle of people's sovereignty substantively. Strengthening press freedom as a manifestation of the principle of people's sovereignty, as stipulated in Law No. 40 of 1999 on the Press, must be carried out through normative and interpretive steps. Concrete steps to strengthen can be taken by adding new norms in the form of articles that explicitly regulate the limits and ethical responsibilities of the journalistic profession, so that they do not cause multiple interpretations of the right to freedom of the press. In addition, it is necessary to add an explanation of the article to the norms in Article 4, paragraph (1), which states that "press freedom is guaranteed as a human right of citizens." The explanation contained in the current Press Law tends to be preventive and is more aimed at the provisions of Article 4 paragraph (2), namely, "press freedom is guaranteed as a human right of citizens is that the press is free from preventive, prohibition, and/or suppression measures so that the public's right to obtain information is guaranteed." It is recommended that the explanation of Article 4 paragraph (1) be enriched with a substantive meaning, that the phrase "freedom is

guaranteed as a human right" must be interpreted as freedom of the press in carrying out journalistic functions professionally.

## ACKNOWLEDGMENTS

The author expresses his most profound appreciation and gratitude to the Rector of the Islamic University of Riau, Prof. Dr. H. Syafrinaldi, S.H., M.C.L., and the Dean of the Faculty of Law, Islamic University of Riau, Dr. M. Musa, S.H., M.H., for all forms of moral and institutional support that have been provided during the process of this research. The author also expressed his appreciation to the Director of the Directorate of Research and Community Service of the Islamic University of Riau, Dr. Arbi Haza Nasution, B.I.T., M.I.T., for the facilitation and funding support that have allowed this research to be carried out correctly. Thank you are also addressed to all parties who have contributed, either directly or indirectly, in supporting the smooth running of this research process.

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