

INDONESIAN PRESS: BETWEEN ESTABLISHMENT OF DEMOCRACY AND GOVERNMENT RESPONSIBILITY IN ARRANGEMENT OF PRESS FREEDOM IN A DEMOCRACY OF LAW COUNTRY

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Abstract

The press is one of the elements in a democratic country, including Indonesia. The role of the press is not only for the manifestation of democracy, but also has a big role in terms of providing informal education in society, because through the press, the media is intended to provide information to the public. This research is aimed at looking at the position or position of the press in the embodiment of the spirit of a democratic rule of law state, as well as reviewing the government's role in the development of the press in a democratic rule of law state. The research was conducted using a juridical-normative method. The results of the study can be concluded that, associated with democracy, the press should be the fourth pillar of democracy to strengthen government, by and for the people. This is a spirit so that the press with all its information media can inform all government policies, and as a public mouthpiece to convey aspirations to the state, in this case the government. On the other hand, the press as the executor of democracy must also be "limited", so that the press does not carry out its unlimited functions, in a rule of law. It must also be clarified, that the press that is included in a press company must still be able to be independent in fighting for the rights to freedom of the press and freedom to obtain information that belongs to every human being. It is necessary to regulate the independence of the press, so that the press is not burdened with the interests of capitalism, political interests and is oriented toward money orientation.

Keywords : Press, State Law, Democracy, Press Company, Government Responsibility

I. Introduction

Indonesia as a democratic country guarantees the implementation of freedom of the press as one of the elements of upholding democracy. Democracy, which is then within the framework of a rule of law, is in line with the spirit of Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which reads, "Sovereignty is in the hands of the people and implemented according to the Constitution", and furthermore is also in line with the affirmation Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which reads, "Indonesia is a country based on law". Strengthening the administration of a democratic state is always in harmony and must be in harmony with the implementation of the Indonesian rule of law. The Republic of Indonesia recognizes and guarantees legal protection regarding press freedom. This is regulated in Article 28 of the 1945 Constitution which stipulates that:

"Freedom to associate and assemble, express thoughts verbally and in writing and so on is stipulated by law".

If Article 28 of the 1945 Constitution reads, we draw specifically on freedom of the press, it means that the Republic of Indonesia wants to uphold press freedom that is democratic, humane and socially just.¹

In the history of state administration, both during the old order and the new order, the obstacles to the implementation of press freedom were the same, namely juridical and sociological constraints. The difference lies only in the variation or predicate attached to it and is determined by the political will that was in power at that time. During the Old Order era, the juridical constraints included the manipulation of the press. This is regulated in the Regulation of the Supreme Warlord (PEPERTI) Number 10 of 1960 which regulates the Publishing Permit for Newspapers and Magazines. Article 1 PERPERTI Number 10 of 1960 confirms that:

"Without prejudice to the provisions referred to in the Regulation of the Supreme War Authority Number 3 and number 5 of 1960, it prohibits the publication of Newspapers or Magazines without prior permission from the regional emergency authority, in which case the implementation is carried out by the Head of the Security Section/ Defense Staff of the Regional Danger State Authority".

Then this regulation was supplemented by Presidential Decree Number 359/HK/1960 which stated that the Press must be cleaned of enemies of the revolution and the licensing system for Newspapers and Magazines was overhauled. Back again related to the implementation or continuity of freedom of the press in the Indonesian legal state, the implementation of this freedom of the press should be within a legal framework that does not only have the value of limiting, but regulating. Regulating in this case determines how the Indonesian press must carry out its obligations as one of the elements of democracy and also how the Indonesian press gets its rights as a media channel of information and all forms of functions it has.

Prof. Bagir Manan said that, in terms of channeling information, the press is seen as a window of knowledge, knowledge, wisdom, progress, dialogue or free exchange of ideas (free

¹ Subandy, Idi Ibrahim. 2011. *Kritik Budaya Komunikasi: Budaya, Media, dan Gaya Hidup Dalam Proses Demokratisasi di Indonesia*. Yogyakarta: Jalasutra.

market of ideas).² The urgency of the press as a channel of information, knowledge, knowledge, wisdom, progress, this dialogue is intended to synergize with the distribution of scientific knowledge or education. The press system in Indonesia is inseparable from the communication system which is influenced by the political system implemented in that country. The theory of the press system put forward by Wilbur Schramm is the theory applied to the press system in various countries in this part of the world, the theory of the press is applied in accordance with the communication system adopted by these countries, although it does not rule out the possibility of developing one theory with another. simultaneously. As for the theory of the press according to Wilbur Schramm, namely the autotarian, the libertarian, the social responsibility and the soviet communist theory.

The Indonesian press is regulated in Law Number 40 of 1999, where this law in Article 1 number 1 regulates the definition of the press as an institution engaged in the social sector, and also used as a vehicle for mass communication. This institution is tasked with carrying out journalistic agendas or activities, namely activities in seeking, obtaining, possessing, storing, processing, as well as conveying information. Information is conveyed in journalistic activities using print, electronic media, and all types of available channels, where information is expressed in the form of writing, voice, images, sound and images, as well as data and graphics as well as in other forms.

The press in Indonesia has experienced a history of ups and downs in the sustainability of the Indonesian democratic state. Freedom of the press is not then easy to obtain. Media companies experience the ups and downs of freedom in a democracy. The existence of the press, which should be one of the supporting elements of democracy, in fact does not always get its freedom of expression and opinion smoothly.

During the Old Order era, the existence of the press started from the independence press as a supporter of the spirit of independence from Sabang to Merauke, to the presence of the press to support and defend the Political Manifesto of the Republic of Indonesia, Presidential Decree 5 July 1959, Guided Democracy with all policies. Furthermore, after the birth of the Basic Press Law of 1966, freedom of the press received a breath of fresh air with the elimination of censorship and banning, but then the articles in the a quo law required a Publishing Permit to be issued. In fact, it is also obligatory for press agencies to be affiliated with political parties. This actually shows that political interests are involved in influencing press freedom in Indonesia.³

The press and political parties are both elements of a democratic country, but they shouldn't be one because they have different functions. The press as an independent institution should not only be a mouthpiece for political parties. The press in a democratic country must be neutral, so that it can report policies and political conditions in a balanced manner. This article then discusses the position or position of the press in a democratic legal state. Then it also discusses the government's role in regulating the press in Indonesia's democratic legal state. The discussion will review based on the provisions of the Indonesian constitution, and regulations related to the press in Indonesia.

² Sudiby. A., 2013. 50 Tanya Jawab Tentang Pers, cet.1. (Jakarta: Kepustakaan Populer Gramedia), hlm. 12.

³ Abdurrahman Surjomiharjo, Hilman Adil, Atmakusumah, A.B.Lapian. Leo Suryadinata, P. Swantoro. 2002. Beberapa Segi Perkembangan Sejarah Pers di Indonesia. Jakarta: Kompas.

II. Method

The research method used in writing this article is a normative juridical method, namely a method that provides a systematic explanation of the regulation of a matter.⁴ The main legal materials used in normative juridical research methods include the main legal materials, namely the analysis of several theories, concepts, and legal principles and laws and regulations related to research.⁵ The research approach used is the statutory regulation approach, which is related to legal issues in this study. In addition, a conceptual approach is also used to analyze the problem by considering the legal aspects or concepts that are used as a reference.⁶ Data analysis in this study uses basic data analysis methods of deductive logic. Namely the method of data analysis by processing general legal material and then drawing it into more specific conclusions.⁷ Furthermore, the data analysis method used later is analytical descriptive. This descriptive research was conducted in order to obtain data as accurately as possible.⁸

III Result and Discussion

A) Position or Position of the Press in a Democratic Law State

In Indonesia, the guarantee for the nation's intelligence has even been included in the Preamble to the 1945 Constitution of the Republic of Indonesia. Efforts to educate the nation cannot only be carried out through formal education alone, education that can be accessed by the wider community more quickly through print, electronic, visual media, audio, which is carried out by members of the press, can be one of the supporters in terms of guaranteeing the goal of realizing national intelligence.

The press or journalism according to MacDougall is defined as the activity of gathering news, finding facts and reporting events. So that the person or party assigned to collect news or information is called a journalist or a person who does journalistic work.⁹ The existence of the press is a space for the public to obtain and convey information that is important to the community. The ontological basis of society in essence can be a starting point in understanding the concept of civil society as it is currently developing.

The rule of law as a basis for the activities of the press regarding what should be done and allowed. Wiener in Haris Sumadiria describes law as a unidirectional control system carried out by a central organ that has power. The Indonesian press is regulated in Law no. 40 of 1999 concerning the Press. The regulation of the law directs the Indonesian press to adhere to the theory of social responsibility press (freedom of the press that is responsible to the public/public interest). In fulfilling this social responsibility, the press has a function which is then regulated in Article 3 of Law no. 40 of 1999 concerning the Press. The function in question is:

⁴ Zainuddin Ali, 2021, *Metode Penelitian Hukum*, Jakarta: Sinar Grafika, hlm. 222.

⁵ I Made Pasek Diantha, 2016, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, Jakarta: Pranada Media Group, hlm. 4.

⁶ Ibid, hlm. 156-165.

⁷ JM. Muslimin, *Logika dan Penalaran: Perbandingan Hukum Barat dan Islam*, Tangerang: Pustakapedia, 2022 hlm.49.

⁸ Nurul Qamar dkk, *Metode Penelitian Hukum (Legal Research Methods)*, Makassar: *Social Politic Genius*, 2017, hlm. 152.

⁹ Sigit Surahman dan Fuqoha, "Mekanisme Penyelesaian Pelanggaran Kode Etik Jurnalistik pada Dewan Pers di Kota Serang", *Etika, Jurnal LONTAR* Vol 5 No 2 Juli-Desember 2017, hlm 54.

1. Functions as a medium of information,
2. Educational function,
3. Entertainment function, and
4. The function of social control

In carrying out the functions of providing information and education, the press should be able to become a medium that provides information with the aim of educating, paying attention to educational, moral, ethical values, both through news, audio broadcasts, audio-visual broadcasts. As connoisseurs of information presented by human beings or the press media, the public must be guaranteed to be presented with accountable information, creating an educational element. Even in terms of the relationship, that the press has the function of providing entertainment, then all activities or events with entertainment content must still be packaged in order to provide educational entertainment, loaded with educational values. Even though the function of education or education cannot be felt directly by the community, the information shared by the media is true information, filled with the spirit of increasing public knowledge, contains educational values, even in content that contains entertainment, provides additional insight, then the packaging of education in such a way is more attractive and easily accepted by the community quickly, effectively, efficiently.

Press products that can be in the form of writing, broadcast audio-visual, audio can be used as a medium of educational information in various fields such as education in the fields of politics, health, culture, morals and other general knowledge. The press as an information medium can also be used for or as a medium for socializing various government policies to the general public. Socialization will be more thorough and quickly right on target, if it is informed evenly. In this case, the government will be more assisted by the existence of the press media to help disseminate policies to the public.

Next is related to government policies which are informed through the press media, this function is also related to the function of social control carried out by the press media as representatives of the community, in terms of controlling the government. In addition, the media also controls how democracy in society can also be carried out as it should. Ensuring that the public as the holder of the highest sovereignty has a position and is rich in information from what is poured in the press in the media.

In other literacy and research conclusions, Widodo said that, there are various functions of the press in society, namely :¹⁰

- a. To Inform : Similar to the meaning of the press as an information medium, the function of the press is indeed positioned to provide information or news to the public or readers, through regular writing, broadcasts and broadcasts to the public, the press provides various kinds of information.
- b. To Educate : As an informal educator, the press is given the task or function of educating the public through various kinds of writing or the messages it gives.
- c. To Controle : The press as a control and balancer, that the function of the press in the midst of society is to provide social control through constructive criticism and input. Minimizing information that is hoax in the community, and controlling the community so that it does not

¹⁰ Widodo, 1997, Teknik Wartawan Menulis Berita di Surat Kabar dan Majalah, Indah, Cet. I, Surabaya, hal. 7-8

spread information that cannot be accounted for, on the other hand it also represents the community in controlling government performance.

- d. To Bridge : The press has a function as a liaison or bridge between the public and the government or vice versa. Aspirations that cannot be channeled through existing channels or institutions can be conveyed through the press. Government policies that have not been socialized, can also be conveyed by the press to the public.
- e. To Entertain : The press also functions for media that provides entertainment or entertainment functions, which are not only funny, but also provide satisfaction for connoisseurs of the media press. Freedom of opinion and protection of the press eventually gave birth to many new media in Indonesia. Along with the increase in media in Indonesia, competition between them cannot be avoided. The press is no longer a tool for disseminating information, but also a venue for profit as a press company.

Competitions that occur slowly result in a decrease in the quality of the media. In order to protect the freedom of the national press and the human right to obtain information, an independent body was formed to oversee and protect the freedom of the national press, namely the Press Council in accordance with Article 15 of the Press Law. The press council decided to establish a Journalistic Code of Ethics which must be obeyed by all press in Indonesia.¹¹

In a democratic country, the press is considered to have a big role with the functions that the press has. Gati Gayatri in the Journal of the Press Council Edition 12, said that the press is the fourth pillar of democracy along with other powers, namely the executive, legislative and judiciary. In carrying out its duties, the press also controls the functions of the three powers or the other three pillars and underlies its performance with checks and balances.¹²

In its position as the fourth pillar of democracy, the press should be independent and stand outside various interests. Even if it is related to the pillars of democracy, then the press should not be sheltered by companies that only prioritize money-oriented interests. It is feared that, with interests that are only oriented towards economic interests, press companies only prioritize how to get a lot of economic benefits, and show their initial function which should be free from various interests, except for the interests and needs of democracy.

On the other hand, Prof. Dr. Bagir Manan stated that the independence of the press as one of the pillars of democracy which is the hope of the people to reveal the truth is now threatened because the economic interests of media owners are more prominent, and the interests of media owners other than the noble values of the journalistic profession also erode the independence of the press. [Ibid., p. 56.] The impact of this is that the press then turns to the interests of capitalism and politics, the press is very dependent on the interests of the owners of capital. The long-term impact is that publishing companies, owners/entrepreneurs of the press, capitalists or investors who come from outside the press industry, politicians, actually see the press as a means of seeking profit or supporting political power. The concept of democracy is an important pillar in protecting press freedom, because one of the principles of democracy is the freedom of the press to explore and convey information to the public and/or society at large. The concept of democracy must of course be supported by the sovereignty of the press which

¹¹ A.S. Haris Sumandiria, *Jurnalistik Indonesia : Menulis Berita Dan Feature*, Cet. Ke-5 (Bandung: Remaja Rosdakarya, 2014).

¹² Gati Gayatri, *Buku Jurnal Dewan Pers Edisi 12*, Jakarta, September 2016, hlm. 5-6.

is guaranteed through legal policies in the form of legislation which forms the basis for the implementation, protection and enforcement of laws arising from press activities.

Is it then wrong to take advantage of the role of the press to inform political interests, and pursue profit goals? The balance of the press as one of the pillars of democracy which functions as checks and balances, should be able to become a means of providing information on political interests in general and comprehensively, meaning that if it is then used to socialize political party programs, the press should be able to be balanced in providing information, not only used by only one political party. Next, because the company is also running with the movement of income, expenses, operational funds, then if the goal is to make a profit, it is permissible, but the position of balance as the holder of power in a democratic country must be considered.

A) The Government's Role in Regulating the Press in Indonesia's Democratic Law State

The spirit of Indonesia as a democratic legal state should also place the press through efforts to regulate the position of the press. The press in its position as the fourth pillar of democracy, should be regulated in such a way that freedom of the press remains within the framework of a rule of law. In order to achieve good government administration, the role of the press which is free of expression and information is needed, which is a form of freedom of the press which is a manifestation of people's sovereignty and is a very important element in creating a democratic life in society, nation and state.¹³

Freedom of the press must be regulated not to restrict, but rather to guarantee its freedom but still within the rule of law state. The function of the press as a "bridge" described in the previous discussion, is considered to be a means of developing political participation and governance. The press is the voice carrier of the people to the government, and the carrier of information from the government to the people.¹⁴ With the increasing communication and critical power of society, the Government cannot deal with society in an authoritarian manner.

According to Oemar Seno Adji, the press in a narrow sense means broadcasting thoughts, ideas or news in written form. The press in a broad sense includes all mass communications that transmit one's thoughts and feelings both in written words and orally.¹⁵ The crucial task which then must be protected by the state, is in guaranteeing the position of the press as the fourth pillar of democracy.

In Indonesia, the press is regulated in Law No. 40 of 1999 concerning the press. The regulation of the press not only regulates its position, but also positions the press in a balanced democracy. Law Number 40 of 1999 concerning the Press stipulates that the press has rights, among others, that freedom of the press is guaranteed as a basic citizen's right, that the national press is not subject to censorship or banning. Or the ban on broadcasting, to guarantee press freedom, the national press has the right to seek, obtain and disseminate ideas and information; In being accountable for reporting before the law, apart from that it is also regulated that journalists have the right to refuse. Through the Press Law, national press freedom is a priority

¹³ M. Djamil Usamy, "Kebebasan Pers dan kaitannya dengan Penegakan Hak Asasi Manusia", Jurnal Ilmu Hukum Kanun, Vol. 24 No. 9, Tahun 1999, Banda Aceh: Fakultas Hukum Universitas Syiah Kuala, hlm. 524.

¹⁴ Rudy S. Mukantardjo, Tindak Pidana Pers dalam RKUHP Nasional, Makalah Disampaikan pada Seminar Nasional Mengurai Delik Pers Dalam RKUHP Nasional, AJI, Jakarta, 24 Agustus 2006, halaman : 1

¹⁵ Adji, Oemar Seno, 1997, Mass Media dan Hukum, Jakarta : Erlangga Press.

as a form of protection in the world of the press. In order to maintain the independence of the national press, an independent body that manages and oversees the national press is formed, namely the Press Council. Among the duties and functions of the Press Council is to uphold journalistic ethics through a journalistic code of ethics as a guideline for journalistic actors, both journalists and press companies. The dynamics that occur, violations of the journalistic code of ethics sometimes create clashes with the public or people who feel aggrieved which creates conflict with the law.

The press, which in the press law is positioned as a social institution and vehicle for mass communication that carries out journalistic activities, includes: seeking, obtaining, possessing, storing, processing and conveying information in the form of writing, sound, images, sound and images, as well as data and graphics. or in other forms, using print media, electronic media, and all kinds of available channels.¹⁶ The existence of regulations and guarantees related to press freedom is closely related to guaranteeing human rights. The freedom to obtain and access information is also owned by each individual in his position as a human being who has Human Rights.

In fact, freedom of the press is closely related to guaranteeing international human rights.¹⁷ This is in line with the provisions of Article 19 paragraph (2) of the International Covenant on Civil and Political Rights, which reads "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." Through this article, the guarantee of freedom of information must be directly proportional to the freedom of the press as a provider of information.

In line with the guarantee of Human Rights regulated in Article 28C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, that "everyone has the right to develop himself through fulfilling his basic needs, has the right to receive education and benefits from science and technology, the arts and culture, in order to improve the quality of life and for human well-being". Next, Article 28F of the 1945 Constitution of the Republic of Indonesia, which stipulates that "everyone has the right to communicate and obtain information to develop his personality and social environment, and has the right to seek, obtain, possess, store, process and convey information. using all available channels.

The Journalistic Code of Ethics in Article 1 stipulates that Indonesian journalists are independent, produce news that is accurate, balanced and not in bad faith and in Article 3 that Indonesian journalists always test information, report in a balanced manner, do not include judgmental facts and opinions, and apply the principle of unbiased presumption. guilty. Contains the formulation of the view of Social Responsibility Theory formulated in the Commission on The Freedom of The Press that the media must present news of daily events that are reliable, complete and intelligent in a context that gives them meaning.

The guarantee that then needs to be considered for regulation is how the guarantee of human rights related to the right to access and obtain information, including through the press media, and freedom of the press itself, must be matched with the guarantee of press

¹⁶ Lihat Pasal 1 Undang-Undang Nomor 40 Tahun 1999 tentang Pers

¹⁷ *Wiebke Lamer*, 2018, *Press Freedom as an International Human Right*, New York: Palgrave Macmillan.

independence. Then it is necessary that the Indonesian press be regulated so that it can emerge as an independent press that is free from interests other than the interests of a democratic rule of law state. Press companies must be able to understand that the press is a pillar of democracy, not a pillar of the interests of certain political parties, or even just to achieve economic benefits with a capitalist view.¹⁸

The state must take part in ensuring that the press is not a mouthpiece for the government, the press is not a mouthpiece for the interests of certain political parties, the press is not a mouthpiece for capitalists. The state, in this case the government, must issue stricter statutory provisions to protect the press in its position as an enforcer of the fourth pillar of democracy.¹⁹

The government also has a major role in controlling the press, in this case journalists and press companies. The government must be neutral by protecting in accordance with the mandate of the law. In this case what is meant by controlling is not arbitrary and its role is to give warnings, intervene, and prevent the press from all threats. Even though the government has the authority to supervise the press, it must also be neutral and not be able to take sides. The press is indeed free but still has to limit it in order to avoid conflict. Apart from the government, the community also has to take part in monitoring the press.

Conclusions

Freedom of the press is a form of people's sovereignty and is an important element in creating a democratic society and nation. Freedom of the press is the freedom to obtain and convey information using all types of available channels as mandated by Article 28F of the 1945 Constitution. Since the issuance of Law Number 40 of 1999 concerning the Press, the press seems to have lost balance in carrying out its social control function. This is because the press feels that they have become a strong and independent pillar of democracy so that the implementation of independence is always not accompanied by social responsibility.

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¹⁸ Sumandiria, A.S. Haris. *Jurnalistik Indonesia : Menulis Berita Dan Feature*. Cet. Ke-5. Bandung: Remaja Rosdakarya, 2014.

¹⁹ Ibid

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