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Responsibility of Press Institutions for Journalistic Products in Indonesia

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ABSTRACT

Press freedom is an important pillar of democracy recognized and protected by the state, as stipulated in Law No. 40/1999 on the Press. However, this freedom is not absolute and must be balanced with responsibility for the journalistic products produced, especially in cases involving defamation. This research aims to analyze the legal responsibility of press institutions in journalistic products in Indonesia, focusing on the intersection between the Press Law and the Electronic Information and Transaction Law (ITE Law). Using a normative approach through analysis of laws and regulations, legal concepts, and case studies, this research finds that there is legal uncertainty arising from the overlapping authority of the Press Council and the courts in resolving press disputes. The research also highlights the need for regulatory harmonization to protect press freedom while respecting individual rights. Thus, this research provides recommendations to strengthen the role of the Press Council as the main mechanism for resolving press disputes and harmonizing related regulations to create a balance between press freedom and the protection of individual reputation.

KEYWORDS

Freedom of the Press;
Legal Responsibility;
Journalistic Products;
Defamation;
ITE Law.



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INTRODUCTION

Press freedom is one of the important pillars of democracy recognized and protected by the state. In Law No. 40/1999 on the Press (Press Law), it is emphasized that the press has the freedom to convey information, ideas, and thoughts openly to the public.¹ However, this freedom is not unlimited; it must still be carried out responsibly and uphold the applicable laws, including the laws governing journalistic products in Indonesia.²

Journalistic products include various forms of work produced by journalists to convey information to the public. One of the main products is news, which consists of coverage of current events presented factually and accurately. In addition, some articles or features generally review a topic in more depth, providing a broader context and perspective. Editorials and opinion pieces are also journalistic products that feature the views or opinions of writers on certain issues, often representing the editorial stance of a media outlet. All of these products play an important role in conveying relevant information and building public awareness of issues. However, it is not uncommon for these journalistic products to intersect with various cases, from hoaxes to defamation.

Defamation cases involving press organizations often pose a dilemma between press freedom and the protection of individual rights. On the one hand, the press serves as an important social control in society, but on the other hand, news that is inaccurate or tends to defame a person's reputation can cause great harm to the injured party.³ According to data from the Press Council, out of 20,750 journalists, 70 percent work for media outlets that are sick and waiting to die. Their salaries are below Rp 1 million, and many of them even have press cards without being equipped with competencies and professional standards. These CNN journalists may be the ones who roam the society, tarnishing the good name of the press, but mingling intimately with the public, businessmen, and corrupt law enforcers.⁴

Defamation-related offenses by press organizations, whether committed intentionally or through negligence, can trigger lawsuits that impact the relationship between the press and criminal law.⁵ The Press Law provides a legal basis to protect press freedom while regulating the responsibility of press organizations for the news they broadcast. However, the implementation of this law is still often debated in the context of defamation cases. In Indonesia, several defamation cases involving the press have reached the courts, leading to debates on how the boundaries of press

¹ Fathul Hamdani et al, "Media Vs. Law: Which Acts as a Tool of Social Engineering?" (2023) 2:2 *Indones Media Law Rev.*

² Bima Guntara & Ayni Suwarni Herry, "Hak Kebebasan Berpendapat di Media Sosial dalam Perspektif Hak Asasi Manusia" (2022) 4:6 *J Pendidikan dan Konseling* 6945–6961.

³ Mufti Nurlatifah, "The Intersection of Freedom of Expression and Social Responsibility on Indonesian Digital Journalism Regulation" (2020) 22:1 *J Ilmu Pengetah dan Teknol Komun* 77–93.

⁴ Wikrama I Abidin, "Saatnya Menggunakan Hak Jawab", (2007), online: *Dewan Pers* <https://dewanpers.or.id/publikasi/opini_detail/46/Saatnya_Menggunakan_Hak_Jawab>.

⁵ Asrianto Zainal, "Pencemaran Nama Baik melalui Teknologi Informasi Ditinjau dari Hukum Pidana" (2016) 9:1 *Al-'Adl* 57–74.



freedom should be upheld, as well as how legal accountability should be applied to press organizations deemed to have committed violations.⁶

For example, one of the cases of criminalization against journalists in 2020 was related to violations of Article 27 paragraph (3) in conjunction with Article 45 paragraph (1) of the ITE Law, committed by Muhammad Asrul. In this case, the Panel of Judges at the Palopo City District Court, South Sulawesi, stated that the defendant (Muhammad Asrul) was legally proven guilty of violating Article *a quo*.⁷ In response to this case, ICJR believes that the decision of the Palopo District Court to convict Muhammad Asrul threatens press freedom in Indonesia.⁸ This is based, among other things, on the fact that press disputes are not criminal offenses, so their resolution is carried out through the Press Council. In the Press Council Regulation Number: 01/Peraturan-DP/VII/2017, cases handled by the Police or Courts that can threaten and endanger the joints of press freedom and human rights should be handled by the Press Council.

Based on the above case, in addition to the Press Law, there is an intersection between defamation cases and the Electronic Information and Transaction Law (ITE Law), so it becomes one of the important aspects that need to be further elaborated in the context of the legal responsibility of press organizations. The ITE Law, which was first passed in 2008 and has undergone several revisions, has several articles that directly regulate insults and defamation committed through electronic media, including online media, which is often the main channel for press coverage in today's digital era.⁹

The intersection between the ITE Law and defamation cases committed by the press creates new challenges in law enforcement. Article 27 paragraph (3) of the ITE Law specifically regulates the prohibition of distributing or transmitting electronic information containing insults or defamation. This provision is often used by aggrieved parties to file a lawsuit or report against press organizations or journalists involved in online reporting. However, on the other hand, press organizations also rely on the protection provided by the Press Law, which guarantees their freedom to carry out journalistic duties without pressure or legal threats, as long as they comply with the journalistic code of ethics.

The issue becomes more complex when considering the status of journalists who have the right to immunity. According to Article 8 of the Press Law, journalists in carrying out their profession are entitled to legal protection. This means that journalists cannot be convicted in carrying out their journalistic duties as long as the reporting is carried out based on the principles of the journalistic code of ethics, namely by upholding the principles of truth, accuracy, and verification. This right of

⁶ Muhammad Asrun & Mukhlis Muhammad Maududi, *Kebebasan Pers di Era Reformasi (Sebuah Kajian Kritis)* (Bogor: UIKA Press, 2023).

⁷ Admin ICJR, "Pidana 3 bulan Terhadap Jurnalis Muhammad Asrul Bukti Nyata Kebebasan Pers Terancam", (2021), online: *Inst Crim Justice Reform* <<https://icjr.or.id/pidana-3-bulan-terhadap-jurnalis-muhammad-asrul-bukti-nyata-kebebasan-pers-terancam/>>.

⁸ *Ibid*.

⁹ Fadilah Raskasih, "Batasan Kebebasan Berpendapat melalui Media Elektronik dalam Perspektif HAM Dikaitkan dengan Tindak Pidana Menurut UU ITE" (2020) 5:2 *J Equitable* 147–167.



immunity is designed to protect press freedom from criminalization that has the potential to hamper the press's duty as a conveyor of information to the public.¹⁰

However, in practice, the status of journalists who have the right to immunity is often tested in defamation cases, especially when the reporting is considered detrimental to certain parties.¹¹ In some cases, journalists or press organizations reported for alleged defamation may be charged under the ITE Law if the published content is deemed unlawful. This uncertainty often leads to debate among legal practitioners, academics, and press activists, as the ITE Law is often seen as a threat to press freedom guaranteed by the Press Law.¹²

For example, several cases in Indonesia show that the defamation article in the ITE Law is often used by aggrieved parties to attack the press, regardless of whether the reporting has complied with the journalistic code of ethics or not. This raises concerns that the ITE Law is being used as a tool to criminalize the press, which could ultimately dampen the freedom of expression and social control function of the press.

For this reason, this research will also explore how the limitations imposed by the ITE Law and journalists' immunity rights can be harmonized. Whether journalists who have worked by the journalistic code of ethics can be fully protected by the Press Law, or whether there are legal loopholes that allow them to remain ensnared by the ITE Law when reporting that is considered defamatory.

This research is important to dig deeper into how the legal responsibility of press institutions in defamation cases is regulated in legislation, particularly in the Press Law. In addition, this research will analyze whether the law can provide fair protection for both parties - press institutions and aggrieved individuals - in legal disputes related to defamation. Through this research, it is hoped that a balanced solution can be found between press freedom and the protection of individual reputation, as well as clarifying how the role of press organizations in maintaining journalistic ethics and legal liability.

METHOD

To answer the problems described in the background above, this research applies normative research or doctrinal legal research.¹³ The purpose of using normative legal research is to find legal rules, legal principles, and legal doctrines to answer the legal issues at hand. This legal research was conducted using several approaches. The approaches used are the statute approach, conceptual approach, and case approach.¹⁴ The statutory approach is a research that prioritizes legal material in

¹⁰ Dewan Pers, "Kemerdekaan Pers dan Perlindungan Wartawan", (2018), online: <<https://dewanpers.or.id/berita/detail/965/Kemerdekaan-Pers-dan-Perlindungan->>.

¹¹ Haris Jauhari, *Jurnalisme Televisi Indonesia* (Jakarta: Kepustakaan Populer Gramedia, 2013).

¹² Shifa Firdausi Ubaisilfa, *Analisis Framing Tentang Pemberitaan Kasus Ujaran Kebencian dan Pencemaran Nama Baik oleh I Gede Ary Astina pada Media Online Kompas.com* Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2021) [unpublished].

¹³ Mukti Fajar & Yulianto Achmad, *Dualisme Penelitian Normatif dan Empiris* (Yogyakarta: Pustaka Belajar, 2015).

¹⁴ In this type of legal research, often the law is conceptualized as what is written in laws and regulations, or the law is conceptualized as rules or norms that are a benchmark for human behavior that is considered appropriate. See further Peter Mahmud Marzuki, *Penelitian Hukum*, 13th ed (Jakarta: Kencana, 2017).



the form of laws and regulations as a basic reference material in conducting research. Then the conceptual approach is a type of approach in legal research that provides an analytical point of view of solving problems in legal research from the aspect of the legal concepts behind it, or it can even be seen from the values contained in the norming of regulation about the concepts used. The case approach is a study based on decisions that have obtained permanent legal force.

RESULT & DISCUSSION

I. Journalists' Responsibility for Online Media Coverage in the Perspective of Freedom of the Press

Freedom of the press is a basic value in a democracy that guarantees the public's right to receive information without hindrance.¹⁵ Online media provides a broad platform for a plurality of voices and opinions, enabling inclusivity in the digital public sphere. The speed and accessibility of information in online media can accelerate news dissemination and encourage public participation. Freedom of the press can be abused by certain parties to spread false information, tendentious news, or even to spread hate.¹⁶ Therefore, the press must be responsible to the public regarding the news that has been issued. A free press does not violate the provisions of human rights. As an adherent of a democratic system, the government should uphold press freedom. Freedom of the press is a mirror of an ideal democratic system.

Online media has the advantage of providing up-to-date information quickly, but there is a risk that the speed of online media may compromise the accuracy of information, resulting in uncertainty and conflicting information. Online media competition for readers' attention is high, and the drive to be the first to break news can result in violations of journalistic principles such as a lack of verification of sources and facts. The online media environment often forces journalists to produce news very quickly, so the speed of news production and dissemination can increase the risk of disinformation.¹⁷

Technology and online media platforms provide the ability to disseminate information instantly, but high time pressures can hinder the process of verifying information, resulting in news published that has not been fully verified or sometimes based on unreliable sources. When news is presented without adequate verification, there is uncertainty about the veracity of the information. It becomes difficult for the public to distinguish between true news and inaccurate information. This uncertainty can create information conflicts, where different versions of an event can compete in the public sphere, complicating understanding and opinion formation. Speed over accuracy can be detrimental to public trust in online media.

¹⁵ Amira Rahma Sabela & Dina Wahyu Pritaningtias, "Kajian Freedom of Speech and Expression dalam Perlindungan Hukum terhadap Demonstrasi di Indonesia" (2017) 1:1 Lex Sci Law Rev 81–92.

¹⁶ Udiyo Basuki & Hendradi Setyawan, "Langkah Strategis Menangkal Hoax: Suatu Pendekatan Kebijakan dan Hukum" (2022) 2:1 J Huk Caraka Justitia 1–22.

¹⁷ D Wibawa, *Jurnalisme Warga Perlindungan, Pertanggungjawaban Etika dan Hukum* (Bandung: Mimbar Pustaka, 2020).



If people feel that the information presented is often unreliable, trust in the media and journalism can be eroded.¹⁸

The responsibility of journalists for online media coverage is very important. Journalists must be responsible for all the impacts of information and news delivered to the public. Journalists governed by regulations and the Journalistic Code of Ethics must use digital platforms such as Twitter, Instagram, Facebook, and YouTube to increase readership or viewership of their products. However, the existing digital-specific journalistic code of conduct is not anticipatory enough and is outpaced by the emergence of cases of journalist misconduct on these digital platforms.

Codes of conduct for journalists in the digital realm exist but are minimal. For example, the Press Council's Cyber Media Reporting Guidelines and AJI Jakarta's Journalist Code of Conduct govern journalists active on social media. For conventional media that have online media or have moved completely to online media, the Journalistic Code of Ethics established by the Press Council still applies. The Journalistic Code of Ethics can be used as a guide for journalists in exploring the virtual world. For the broadcasting industry, there is the Broadcast Code of Conduct and Broadcast Program Standards (*P3SPS*) of the Indonesian Broadcasting Commission (*KPI*) that oversees all broadcasting content, journalistic and non-journalistic. However, KPI itself does not have a legal basis to regulate over-the-top broadcasting that is uploaded or broadcast directly on digital platforms. Journalists have a responsibility to ensure the accuracy of the information presented, which includes verifying sources and seeking a balanced perspective in reporting.¹⁹ Journalists need to distinguish between verifiable facts and personal opinions. Clear and honest reporting of this distinction helps the reading public understand the context of the information.

Press freedom and journalists' responsibilities are intertwined. Freedom that is not balanced with responsibility can lead to disinformation and manipulation. Responsible journalists can strengthen public trust in online media and maintain the sustainability of press freedom. With responsibility, press freedom can be used as an instrument to voice justice and truth.²⁰

As journalistic ethics, journalists are expected to adhere to a journalistic code of ethics that involves principles such as fairness, truth, independence, and accountability. Journalists' responsibilities include protecting individual privacy and avoiding human rights violations in their reporting.²¹ Journalists should strive to remain neutral and fair in providing information. Avoiding impartiality and ensuring that multiple perspectives are properly presented is an integral part of their responsibilities. Presenting news in a balanced manner by avoiding political, economic, or social bias.

¹⁸ Aulia O Rengganis, *Tingkat Akurasi Pemberitaan Ancaman Resesi Global 2023 di Media Online Detik.com* (Jakarta: Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2023).

¹⁹ Latif Fianto, M Abdul Ghofur & Fathul Qorib, "Implementasi Sembilan Elemen Jurnalisme Bill Kovach dan Tom Rosenstiel Pada Berita Media Online" (2023) 1:2 J Bincang Komun 1–9.

²⁰ A. Richter, "Fake News and Freedom of the Media," *Journal of Media & Entertainment Law* 8, no. 1 (2018): 1–34.

²¹ Karin Buhmann & Roxana Olivera, "Human Rights and Social Media Platforms: the Corporate Responsibility to Respect Human Rights in Regard to Privacy Infringements Involving Photo Posting" (2020) 26:1 Aust J Hum Rights 124–141.



Before spreading the news, journalists must verify information to ensure the truth and avoid spreading false information.²² Choosing reliable sources and basing reporting on facts helps prevent the spread of fake news. Journalists in online media must be committed to in-depth investigative journalism to expose the truth behind an event or issue. If an error occurs in the reporting, journalists have a responsibility to immediately correct the information and provide clarification to readers. Journalists have a responsibility to protect the public's right to accurate and relevant information, presenting information in a way that enables the public to make informed and intelligent decisions.

Online media provides opportunities for direct engagement with readers. Journalists need to be responsive to readers' feedback and questions to build strong relationships with audiences, so journalists' responsibilities also include the ability to deal with criticism and judgment from the public and understand the social impact of their reporting. Reporting should not harm or demean certain groups, and where possible, should empower people with meaningful information.

II. The Intersection of the Authority of the Press Council with the Court in Resolving Press Disputes

The press has a vital role in democracy as one of the fourth pillars tasked with delivering information to the public. However, in practice, the press often faces disputes that can lead to criminal elements.²³ In this context, the intersection of authority between the Press Council and the courts is an important issue to analyze, given the role of each institution in dispute resolution.²⁴ The Press Council has the authority as stipulated in Law No. 40/1999 on the Press, especially in protecting press freedom and handling press disputes ethically and professionally. On the other hand, the courts have the authority to enforce the law, including in criminal cases involving journalistic products.

Regarding legal certainty, this intersection poses a dilemma because the lack of firmness of regulations can create procedural uncertainty for press actors and the aggrieved public. The aspect of legal certainty demands clear rules on which is the priority for resolution, whether through the Press Council or directly to the courts. Meanwhile, from a human rights perspective, disputes resolved through the Press Council mechanism are more in line with the principles of respect for freedom of expression and the right to information. However, on the other hand, human rights also include an individual's right to justice, which can be realized through the courts. Therefore, harmonious arrangements are needed to balance the protection of human rights for journalists and the public in general.

²² Md Mahfuzul Haque et al, "Combating Misinformation in Bangladesh: Roles and Responsibilities as Perceived by Journalists, Fact-Checkers, and Users" (2020) 4:2 Proc ACM Human-Computer Interact 1–32.

²³ Kementerian Koordinator Bidang Pembangunan Manusia dan Kebudayaan, "Peran Besar Pers Sebagai Pilar Keempat Demokrasi", (2020), online: <<https://www.kemenkopmk.go.id/peran-besar-pers-sebagai-pilar-keempat-demokrasi>>.

²⁴ Ernis P Hutabarat, Ampuan Situmeang & Junimart Girsang, "Tinjauan Yuridis Pasal 15 Undang-undang Pers terhadap Fungsi dan Kewenangan Dewan Pers dalam Mencegah Berita Bohong" (2023) 26:1 Al-Qānūn J Pemikir dan Pembaharuan Huk Islam 57–70.



This intersection often arises when a press dispute, such as a defamation case, involves criminal elements. The Press Council has a dispute resolution mechanism through mediation and recommendations based on the Journalistic Code of Ethics. This mechanism aims to resolve disputes amicably without having to go through the judicial process. However, if the aggrieved party still chooses legal channels, the court can process the case based on the Criminal Code (KUHP) or other relevant laws. This raises questions about the prioritization of authority, especially whether a settlement by the Press Council can stop legal proceedings in court.

Some legal experts argue that the dispute resolution mechanism by the Press Council should take precedence as a form of respect for press freedom. This approach is in line with the spirit of the Press Law, which protects journalistic products. However, in practice, many press cases are directly submitted to the court without going through the Press Council, thus creating overlapping authorities that can harm press actors. In addition, different interpretations of what constitutes “criminal elements” in journalistic products are often the main reason disputes move to the courts.

This tension between the authority of the Press Council and the courts can be minimized through stronger collaboration between the two institutions. One step that can be taken is to strengthen the role of the Press Council in providing binding recommendations for cases related to press disputes. In addition, there needs to be a harmonization of regulations that strictly regulate the limits of authority of each party, including mechanisms to resolve jurisdictional conflicts. Thus, it is hoped that not only press freedom will be protected, but also the rights of individuals who feel harmed by journalistic products.

Therefore, the intersection of authority between the Press Council and the courts in resolving press disputes containing criminal elements reflects the need for regulatory clarity and harmonization. Dispute resolution through the Press Council should be a priority, but this does not deny the importance of the role of the courts in enforcing the law. Collaboration and better organization between the two institutions are key to creating a fair and effective system for handling press disputes.

CONCLUSION

The accountability aspect of press organizations towards journalistic products reflects a complex responsibility to uphold press freedom while protecting the public interest. Press organizations must ensure that every journalistic product produced is by the principles of truth, accuracy, and fairness as stipulated in the Journalistic Code of Ethics. The implementation of the right of reply and right of correction is an important mechanism that must be implemented to resolve disputes amicably and avoid escalation to the criminal realm. In this case, the Press Council plays a role as a mediator who can provide recommendations based on the principles of journalistic ethics. In addition, press institutions are also responsible for protecting journalists from criminalization, provided they carry out their duties by journalistic principles. This effort must be accompanied by increasing the competence of journalists through training and education to ensure the quality of journalistic products is maintained. The responsibility of press organizations is not



only limited to presenting quality information but also involves maintaining a balance between press freedom and respect for individual rights.

The press has a vital role in democracy as one of the fourth pillars tasked with delivering information to the public. However, in practice, the press often faces disputes that can lead to criminal elements. In this context, the intersection of authority between the Press Council and the courts becomes a crucial issue. Regarding legal certainty, this intersection poses a dilemma because regulatory uncertainty can create procedural uncertainty for press actors and the public who feel aggrieved. The aspect of legal certainty demands clear rules on which resolution is prioritized, whether through the Press Council or directly to the courts. Meanwhile, from a human rights perspective, disputes resolved through the Press Council mechanism are more in line with the principles of respect for freedom of expression and the right to information. However, on the other hand, human rights also include an individual's right to justice, which can be realized through the courts. Therefore, harmonious arrangements are needed to balance the protection of human rights for journalists and the public in general.

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