

The Construction of Legal Protection for Journalists Unaffiliated with Press Companies in the Industrial Revolution 4.0 Era

Budi Santoso¹, Aidul Fitriadi Azhari², Absori^{3*}

^{1,2,3}*Doctoral Program in Law, University Muhammadiyah Surakarta, Surakarta, Indonesia; E-mail: abs154@ums.ac.id*

Abstracts: This paper aims to: (1) analyze the legal protection for journalists unaffiliated with press companies and (2) formulate a construction of legal protection for journalists unaffiliated with press companies in the Industrial Revolution 4.0 era in Indonesia. This normative legal research applied the statute and conceptual approaches. Results showed that: (1) Journalists unaffiliated with press companies only obtain protection from the state based on Article 8 Law of the Press although they do not feel the benefit of such a protection and (2) The construction of legal protection for journalists that are unaffiliated with press companies has an emphasis on the revision of Article 8 Law of the Press which should explain the type of legal protection obtained, considering that more journalists use online media to publish their work. Multi-interpretable articles of the Amended Law on Electronic Information and Transaction should also be revised to prevent the criminalization of journalists.

Keywords: Legal Protection, Journalists, Freelance, Media, Industrial Era 4.0, Indonesia.

1. INTRODUCTION

In its formulation, the Republic of Indonesia's Law No. 40 of 1999 on the Press was based on the objective to achieve the independence of the press. It provides a guarantee of protection for the press from any intervention in carrying out their role. One of the efforts to achieve this was to strengthen the Institution of the Press Assembly. Former regulations put this institution under the control of the government. But Law No. 40 of 1999 on the Press places it as an independent institution. The Press Assembly is no longer dictated by the government by placing the Minister of Enlightenment as the head. Thus, the government can no longer meddle with the membership of the Press Assembly (Cohen-Almagor, 2014).

The Press Assembly which is free from the meddling of the government has a strategic role in managing the relationship pattern between the state and the press. The press is hoped to no longer become a tool of propaganda that is used to manage the socio-political aspect so that it always aligns with the government's expectations (Mochtar, 2016). This became the main goal in strengthening the Press Assembly, namely to achieve a press that is independent and free in carrying out its function as a media of information, education, entertainment, and social control. This design was illustrated in Article 15 clause (1) of the Law on the Press which stated that the existence of an independent press aims to develop the freedom of the press and to improve the life of the national press. Further, Article 15 clause (2) letter a on the Law on the Press states that the Press Assembly functions to protect the independence of the press from the involvement of other parties (Arliman, 2019).

Reporters experience many events while undergoing their tasks. For instance, when making a news report in an area or when making a news report on a mass demonstration, it is not seldom that the press must suffer the impacts of mass violence. Sometimes, there are occurrences of abuse against the press (Papadopoulou & Maniou, 2021). Violence and abuse often happen and it is not seldom that they make reporters suffer from trauma. Apart from that, there is a very high chance that reporters are inflicted with legal issues in lawsuits from sources of news who could not accept the published or broadcasted news. These news sources may be public figures, political figures, or even the government. This happens even though the press must obtain protection from the state or the government. Article 8 of the Law on the Press states that in carrying out their profession, reporters obtain legal protection. The Regulation of the Press Assembly No. 5/Peraturan-DP/IV/2008 on the Standard of Protection for the Profession of Reporters (hereinafter called the Regulation of the Press Assembly No. 5 of 2008) regulates in detail

that this legal protection must be given to reporters from the state, society, and press companies (Sodiq, Wardiono, & Inayah, 2013).

Concerning the freedom of the press, Bill Kovach stated that press companies have direct responsibility over reporters. Kovach stated that the relationship between the two is internal. Press companies have full responsibility for the news and in cases of legal issues. Further, Kovach stated that press companies must decisively determine their rules on reporters to guarantee legal protection in the absence of intervention of the press companies in the news. This is so that the products or news produced are free from intervention and so that they are according to the conscience and the journalistic ratio of the reporters (Kovach & Rosientil, 2007).

In the aspect of its characteristics, journalists and press companies have a private relationship, just like the characteristic of the legal relationship between employers and employees. This relationship was based on the employment law that is part of civil law (A. Wijayanti, 2019). The employment relationship which happens between labor and owners must at least contain elements such as the existence of work, orders, and wages (Husni, 2018).

The legal protection of journalists is always related to journalists who work at or who are affiliated with the press companies. Explanation of the Regulation of the Press Assembly No. 5 of 2008 stated that apart from being given to the state and the people, legal protection is also given to press companies. Apart from that, Article 8 of the Law on the Press only regulates that journalists obtain legal protection. This stipulation does not explain whether the legal protection is only given to journalists who work in press companies or is also given to freelance journalists unaffiliated with press companies. Legal protection should also be given to journalists who are not affiliated with press companies which may be in the form of an agreement of safety between individual journalists and media journalists (Relly & Bustamante, 2014).

The Industrial Revolution 4.0 era encourages the development of information technology usage. The Indonesian government responded to this by issuing the Law No. 11 of 2008 on Electronic Information and Transaction (hereinafter called the Law on EIT) which was amended into Law No. 19 of 2006 on the Amendment of Law No. 11 of 2008 Electronic Information and Transaction (hereinafter called the Amended Law on EIT). The objective of Law on EIT that was changed into Amended Law on EIT was to give legal protection to users of digitalization, including freelance journalists. Unfortunately, its implementation often causes confusion in its meaning and misinterpretation by the law enforcing apparatus in following up on a case, thus criminalizing actions that should not be criminalized (Sidik, 2018). Some of the criminalization victims of the Law on EIT are journalists and freelance journalists who expressed their critical thoughts (Syahriar, 2021). They are often criminalized through the multi-interpretable Article 27 clause (3) of the Law on EIT on Defamation/Insults and Article 28 clause (2) of the Law on EIT on Hate Speech.

Based on the report from SAFEnet, it was found that there were 16 efforts of criminalization towards 14 journalists and 7 media using the multi-interpretable articles of the Law on EIT from 2008 to December 2018 (Indonesia Judicial Research Society, 2021). The usage of blurred and subjective articles will restrict the human rights and freedom of the press in the journalism sector. This happens even though the legal protection of freelance journalists is strongly related to the freedom of the press which is a reflection of the essence of democracy (Manan, 2016). Even, the freedom of the press becomes an important pillar in a democratic country because the presence of the media and the press gives meaning that this country is independent and that it does not apply dictatorship (Suwardi, 2013) with the stipulation that the opinions of the freelance journalists do not aim to insult, spread hate, or defame someone. The freedom of having opinions and the freedom of expression will become a basis for the manifestation of the freedom of speech and the freedom of the press (Muslimin, 2018).

Concerning attacks on journalists, the Human Rights Committee stated that perpetrators of attacks on journalists must further be investigated. Then, the criminalization victims must make an adequate effort to recover (Handayani, 2016). This is according to the mandate of the Council of Europe: Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors which was born due to the factor of the increasing number of media actors that were harassed, intimidated, physically attacked, had their freedom

suppressed, or even killed (Declaration of the Committee of Ministers on the Protection of Journalism and Safety of Journalists and Other Media Actors, 2014).

Therefore, it can be said that the Law on the Press and Law on EIT that was changed into the Amended Law on EIT should provide legal protection to freelance journalists or those who are not affiliated with certain press companies (*das sollen*). But in reality, these laws still cannot provide legal protection to freelance journalists or those who are unaffiliated with certain press companies (*das sein*). Even, it is as if the Law on EIT that was changed into Amended Law on EIT is ready to criminalize freelance journalists or those who are not affiliated with certain press companies if they are deemed as spreading hate speech to the government/the authority.

Based on the phenomenon above, this research aims to: 1) analyze the legal protection for journalists unaffiliated with press companies and (2) formulate a construction of legal protection for journalists unaffiliated with press companies in the Industrial Revolution 4.0 era.

2. RESEARCH METHOD

This was normative legal research that was conducted using secondary data. It used literary materials as the main source of data (Dimiyati & Wardiono, 2004). This research focuses on arranging the construction of legal protection for journalists who were not affiliated with certain press companies in the Industrial Revolution 4.0 era. This research employed the juridical-conceptual approach, which was a statute approach and a conceptual approach in the form of the Industrial Revolution 4.0 concept.

In collecting the data, researchers reviewed literary materials both extensively and intensively. The literary research aimed to review, analyze, and browse secondary data in the form of national and international legal materials related to the press and legal protection for journalists (Waluyo, 2011).

The data analysis conducted is divided into two. The first is descriptive analysis which describes the portrait of the current legal protection journalists that are not affiliated with certain press companies. The second analysis conducted is the critical analysis which holds on the analysis results of the first issue. Then, a critical review is carried out so that various weaknesses and advantages are found. From these weaknesses and advantages, a legal construction is arranged for the legal protection journalists that are not affiliated with press companies in the Industrial Revolution 4.0.

3. RESULTS AND DISCUSSION

3.1. Legal Protection of Journalists Unaffiliated with Press Companies

Stipulations written in Article 8 of the Law on the Press only state that journalists have legal protection. This stipulation does not state whether the protection applies to all journalists that comprise including printed media journalists, electronic media journalists, etc. This is because when talking about legal protection for journalists, it is always related to journalists who work for or are affiliated with press companies. This was because, in the explanation of the Regulation of the Press Assembly No. 5 of 2008, it was explained that apart from being given to the state and society, legal protection is also given to press companies. Stipulations of Article 8 of the Law on the Press do not explain whether such protection is only given to journalists who work at press companies or if it is also given to freelance journalists who are not affiliated with press companies. In reality, it can be said that legal protection for the press is only given to journalists who are affiliated with press companies.

In its practice, the legal protection for journalists is only given through the Press Assembly and press companies. This happens even though in the Industrial Revolution 4.0 era; many people have professions as freelance journalists that are unaffiliated with any press companies. The media used is not limited to conventional media such as printed media and television, but it has spread to YouTube, social media, podcasts, etc. (Agboola, 2014). For instance, Youtubers are actually journalists or press workers, it is just that they use online media as a facility to work. But in reality, journalists who work in online media have not obtained legal protection. The cases that

happened to Denny Siregar, Ade Armando, Permadi Arya, etc. showed that they do not have any legal protection at all. Ironically, in several countries, these online media actually have the capability to become an alternative media for society. Even, in some cases, they compete against the existence of conventional journalism, in this case, television programs, newspapers, and radio stations (Rohman, 2020). Some examples are the *ohmynews.com* blog from South Korea which is effective in voicing its people's aspirations, *stomp.sg* from Singapore, and *malaysiakini.com* from Malaysia which is said to be a news media that opposes the government.

Aside from the issue of freelance journalists and journalists that are affiliated with press companies, it was stated that the enactment of the Law of the Press was a form of legal protection for journalists in carrying out their jobs. In other words, in performing their tasks, journalists have legal protection which is so far the hope of all journalists and press workers in Indonesia.

If the rights of journalists are violated by news sources, society, or other legal subjects, the perpetrators may be imposed with criminal sanctions. Every person who intentionally violates the law by carrying out actions that lead to the inhibition or hindering of the application of Article 4 clause (2) and (3) of the Law of the Press is imprisoned for a maximum length of two years or is imposed with fines with a maximum amount of Rp 500 million. Therefore, in carrying out their job, journalists have clear legal protection.

Journalists have the right to object, as regulated in Article 4 clause (4) of the Law of the Press which states that in being accountable for their news in the face of the law, journalists have a right to object (Sembiring, 2005). This right aims to give journalists the right to protect sources of information by refusing to mention the identity of confidential sources. Although the right to object is acknowledged, it can be said that this right is not absolute. Rather, it is relative. There is a chance for the restriction of this right if the related case regards the security of the state. In this case, the Indonesian law is sourced from the Pancasila (the Five Principles that make Indonesia's state ideal) which aims to create a balance between personal and public interests in the form of its legal protection, such as what is stipulated in Article 28 of the Republic of Indonesia's 1945 Constitution, i.e., the freedom to express or state thoughts and opinions (Adji, 1990).

In carrying out their profession, journalists require legal protection (Article 8 of the Law on the Press). But currently, due to some factors such as a lack of understanding and respect for journalists or due to a bad perception of them, a condition arises where journalists' movement and scope are limited. Even worse, journalists are chased and overshadowed by anxiety and fear in carrying out their tasks (Arpan, 1970). Because of that, there needs to be legal protection for journalists in carrying out their profession. In this case, legal protection is a guarantee from the government and/or society towards journalists in carrying out their functions, rights, obligations, and roles according to the applicable stipulations of the legal regulations. Here, the freedom of journalists must be simultaneous with a feeling of full responsibility in seeking the right information on certain news that is based on facts, rather than made-up news by the journalists.

The emergence of the civic journalism movement is a reaction towards conventional journalism which ignores the obligation to represent the interest of the readers, and at some point solely becomes a tool to obtain profits (McNair, 2003). The civic journalism carried out by the mass media cannot last long as their news programs require great funds. In 2003, the pioneer of civic journalism, the Pew Center of Civic Journalism was dissolved (Pradana, Budiarta, & Arthanaya, 2022). This civic journalism opened doors for the growth of civic journalism, where citizens who have news and photographs can directly send them to blogs or some accommodating mainstream media such as the websites of BBC (www.bbc.co.uk), CNN (www.cnn.com), etc. Since then, civic journalism has been born and it has developed up to now (Khan et al., 2020).

Decades after the domination of printed and electronic media, a new channel emerged. With its superiority, it penetrated space and time. This new channel is online media/the Internet. Its presence made printed media concerned. Even up to now, printed media is still worried about online media (Franklin, 2013). This is proven by the fact that many printed media have started to put their information online. The current development of online journalism in Indonesia can even strengthen the development of citizen journalism (Suyatna, 2012). In citizen

journalism, people can discuss things in various aspects that are currently 'hot' in society. Society's interest in online journalism is ever-increasing. Online journalism has become a priority for society in accessing information (El-Nawawy & Khamis, 2016). This leads to the increasing development of citizen journalism (Irawan, 2014). Online journalism does not only function as a tool to obtain information, but it also encompasses a media to exchange information among its users where its users are heterogeneous (Annur & Yudhapramesti, 2020). This situation can be a strength of citizen journalism (Trianto & Astuti, 2019).

Based on the discussion above, it can be stated that Article 8 of the Law on the Press states that in carrying out their tasks, journalists obtain legal protection. If what is meant by the legal protection in the law is that it is from the state, freelance journalists who are not affiliated with the press companies do not feel that they obtain legal protection from the state when they face issues in carrying out their tasks. Meanwhile, if they desire to obtain legal protection from the Press Assembly, freelance journalists must become a member of an acknowledged press organization. Freelance journalists do not know the form of state protection stated in the Law on the Press. Thus, freelance journalists can only hope for protection from the Press Assembly.

3.2. The Construction of Legal Protection for Journalists Unaffiliated with Press Companies in the Industrial Revolution 4.0 Era

There are often occurrences of violence against journalists, both during and outside of their work as journalists. In this case, the violence includes verbal violence (intimidation, threats, etc.) as well as physical violence (obstruction, abuse, etc.), it is not seldom that such violence ends in murder. The various risks that threaten the profession of journalists are certainly something that threatens the application of democracy. The sense of insecurity, threats, and such great risks can degrade and even eradicate the criticalness and courage of journalists in carrying out their journalism tasks in escorting power. At this point, the legal protection and guarantee to journalists in carrying out their tasks become crucial to exist not only at the formal level but also at the implementation level. The protection of journalists is an essential thing for the protection of the rights of all citizens for reliable information (Malang, 2014).

Apart from traditional journalists who are affiliated with press companies, currently, there are also freelance journalists or journalists who are not affiliated with press companies. These freelance journalists tend to use social media or internet media for their journalism activities. The freelance journalists who use the media of the Internet emerged after decades of printed and electronic media dominance. The emergence of the internet allows fast access to information by all citizens of the world. The Internet also encourages and supports the emergence of freelance journalism. Society can write or report news via online media or the Internet at any time. This is the era where freelance journalists use online media such as YouTube, TikTok, podcasts, etc. This era allows everyone to easily carry out journalism tasks. They only need to take pictures, type, and upload their news, and it will be spread across the globe. Thus, everyone can now become a journalist. Compared to its predecessors, the internet has a very different logic. In the past, only well-off people could afford to produce printed media and electronic media. However, this does not apply to the online world. Anyone – whether rich or poor – can post things online. As long as they have phones or computers that are connected to the internet, they can spread information all over the globe.

As an effort to answer the challenges of the Industrial Revolution 4.0, Indonesia has issued a Law on EIT that was changed into an Amended Law on EIT. Unfortunately, its enactment often criminalizes actions that should not be punished (Muldani, 2022). Journalists became victims of criminalization in expressing their critical ideas based on the Law on EIT that was changed into the Amended Law on EIT (Alhakim, 2022). Based on the results of SAFEnet's report, there were 16 criminalization efforts towards 14 journalists and 7 media using the multi-interpretible articles of the Law on EIT that were changed into Amended Law on EIT from 2008 to December 2018. The use of these blurred and subjective articles restricts human rights and the freedom of the press in the journalism sector.

The existence of the Law on EIT that was changed into the Amended Law on EIT is hoped to become a regulation that provides legal justice for Indonesians (Anggraini, 2020). But this expectation is contrary to reality, as

the Law on EIT that was changed into Amended Law on EIT provided room for criminalization, thus restricting the freedom to speak and to express opinions online. Based on the report from the Coalition of Civil Society, from 2016 to February 2020, the rate of criminalization was 96,8% (744 cases) with an 88% rate of imprisonment (676 cases) on cases with multi-interpretable articles, namely Articles 27, 28, and 29 of the Law on EIT that was changed into Amended Law on EIT (Institute for Criminal Justice Reform, 2021). Further, these blurred articles have the potential for overcriminalization and restriction of people's democratic freedom, especially the journalism profession. These multi-interpretable articles start from Article 26 clause (3) of the Law on EIT that was changed into Amended Law on EIT on the Eradication of Electronic Information, where the establishers of the electronic system are obliged to eradicate irrelevant information based on the decision of the court. This stipulation has a great chance of overlapping with several regulations, such as the Law on the Press and the Law on the Transparency of Public Information. The unclear definition of irrelevant information leads to questions, such as, what are the limitations of media information that are deemed irrelevant and therefore subject to eradication (Darmika, Dewi, & Widyantara, 2022). In its application, this article is used to undergo censoring, eradicating, and derivative activities towards the contents of journalists or press media. The phenomena of crime impunity related to severe cases of human rights violations, sexual violence, and corruption open opportunities for perpetrators, including state officials, to propose the eradication of negative information about themselves in the media (P. T. Wijayanti & Kharisma, 2022).

Then, Article 27 clause (3) that was changed into Article 45 clause (3) of the Law on EIT that was changed into Amended Law on EIT on Defamation is rather a popular article to be used as a basis for filing a report of a case. The extensive definition of insults in Law on EIT that was changed into Amended Law on EIT is not based on Articles 310 and 311 of the Criminal Code. Thus, criminalization can be carried out by companies or state institutions (Jamal, 2020). Article 28 clause (2) that was changed into Article 45 clause (2) of the Amended Law on EIT on Hate Speech also often targets people and journalists that criticize institutions with valid expressions, thus becoming criminalized by the authorities (Sisca & Alhakim, 2022). This article also shuts down critiques of activists and journalists towards the president, although the regulation on insults against the president has been eradicated by the Constitutional Court as it was deemed unconstitutional (Ramdan, 2020).

Stipulations of articles concerning the spread of hoaxes, fake news, and defamation in the multi-interpretable Law on EIT that was changed into Amended Law on EIT is deemed to have the potential to be used to criminalize journalists that carry out their journalistic work, especially in the investigative journalism sector. These multi-interpretable articles may potentially be used to criminalize journalists, especially those who are not affiliated with the press companies. This was concluded from the results of the *Forum Group Discussion* carried out by Keluarga Cemoro group of Universitas Muhammadiyah Surakarta with the theme of "Construction of legal protection for journalists that are unaffiliated with press companies in the Industrial Revolution 4.0 era" in Tawangmangu, July 23-25, 2022. The results of the discussion concluded that the stipulations of articles in the Law on EIT that was changed into Amended Law on EIT that regulate the spread of hoax, fake news, and defamation is still multi-interpretable, thus they can be used to criminalize journalists. Therefore, these multi-interpretable articles need to immediately be revised.

CONCLUSION

The state guarantees legal protection for journalists according to stipulations of Article 8 of the Law on the Press, including journalists that are unaffiliated with press companies. However freelance journalists do not feel the presence of legal protection from the state when facing issues in carrying out their profession. This was because the journalists that are unaffiliated with press companies need to register to press organizations that are acknowledged by the state to obtain legal protection from the Press Assembly. This happens although both freelance journalists and those that are affiliated with press companies should obtain legal protection from the state and the press companies.

The construction of legal protection for journalists that are unaffiliated with press companies in the Industrial Revolution 4.0 era has great emphasis on the revision of Article 8 of the Law on the Press to further explain the said legal protection that should encompass journalists that are affiliated with press companies as well as freelance

journalists or those that are unaffiliated with press companies, considering that in the industrial revolution 4.0 era, more and more freelance journalists use online media to work. The writers suggest that the Law on EIT that was changed into Amended Law on EIT should also be revised, especially its multi-interpretable articles that are often used to criminalize journalists. Concerning the prohibition of exclusive broadcasting of investigative journalism in the Bill on Broadcasting, its article's formulation has not given clear meaning. Thus, if the formulation is not made clearly, it may cause confusion in its interpretation. Apart from that, concerning the newly enacted Criminal Code, the writers suggest that its articles that limit the freedom of the press need to be reviewed as they may potentially fail to protect the profession of journalists.

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