

2013 Year End Note of The Legal Aid Center for The Press “Free Press from Violence and Frequency Abuse”

I. Introduction

Corresponding with the vision of the Legal Aid Center for the Press (LBH Pers) namely the materialization of a democratic nation by the legal assistance and protection on the Press Freedom, the LBH Pers has given a series of defenses. The defenses are given by legal assistance and advocacy on the governmental policies related to the continuation of the press freedom, i.e. defense patterns based on the mission of the LBH Pers. The defense patterns are the direction of defenses, i.e.: 1) Legal defense for press freedom cases, 2) Legal defense for violence on press, 3) Legal defense on the press labour, 4) Advocacy on policies related to press.

Protection for the journalists' safety in performing their professional duties is the obligation of the international world. Indonesia as the member of the Human Rights Council of the United Nations, has signed a resolution dated 27th September 2012. Such resolution states the importance of journalists' safety as the fundamental element in the freedom of expression. The LBH Pers recorded in 2013 that there is no violence case which causes a journalist die. However, other forms of violence still exist and the number is quite significant. It is due to minor protection for journalists. In addition, 2013 is marked by regulations and drafted regulations which are potentially limiting the press freedom.

II. 2013 PRESS FREEDOM CONDITION

Violence on Journalists

According to the LBH Pers's note, the number of violence on journalists in 2013 is 50 cases. Forms of violence suffered by journalists are:

No	category	Quantity
1	Threat/terror	10
2	Expulsion and prohibition to cover news	3
3	Censor	2
4	Physical attack	24
5	Lawsuit/demand	1
6	Closing down/prohibition to publish	1
7	Regulation	2
8	Demonstration and mass utilization	1
9	Office destruction	5

10	Equipment destruction	1
Amount		50

Protection for Journalists

The increasing violence shows the minor protection for journalists, particularly them working on the conflict and vulnerable area. The minor protection should be:

A. Protection from the employer

- 1) No sufficient safety training for journalists working on the vulnerable and conflict area or covering sensitive topics, such as environmental, corruption or local general election issue.
- 2) No safety protocol prepared as a standard procedure for sensitive news coverage. Meanwhile, the safety protocol is very important to reduce risks on journalists who work on the vulnerable area or cover sensitive issue.
- 3) Some employers do not give an insurance facility for their journalists. No insurance means journalists, who are the violence victims, have no financial protection for their family.
- 4) Most of mass media companies do not provide personal protective equipment for covering news on the vulnerable area, among others, bulletproof vest, metal hat, life vest, global positioning system, and many more. Actually, the equipment is very vital to rescue journalists from possible risks.

B. Protection from the Government

The impunity, or no action on perpetrators, is the cause of the increasing violence on journalists. The government does not take any legal actions on the perpetrators, so it causes the violence on journalists increase. It is due to no punishment for perpetrators and education for people in order to prevent violence. From the LBH Pers's note, only several violence cases are investigated and tried. In addition, the government, particularly the National Police of the Republic of Indonesia, still owes to fully investigate and try the murderer of some journalists, specifically the Bernas Yogya's journalist, Fuad Muhammad Sjafruddin. It is very urgent as it will be immediately expired in August 2014.

III. Media Regulations and Policies

A. Criminalization of the Freedom of Expression via Online Media

In 2010, the Ministry of Communications and Information issued a policy to limit the freedom to use internet. Such policy is the Draft of the Ministerial Regulation on Multimedia Contents. Its name is then changed to be Draft of the Ministerial Regulation on Negative Internet Contents Report Handling. Up to now, the Ministry of Communications and Information has not enacted such Draft of the Ministerial

Regulation, but it issued a circular to internet service providers to filter and block pornography contents in the internet.

Such circular causes a problem because there is no clear definition on pornography. Up to now, the definition of pornography refers to Law No. 44 of 2008 on Pornography, which formulates pornography in a broad sense. The unclear definition of pornography is a threat for non-pornographic contents which have a slight difference with pornography. Moreover, the decision on blocked contents is on the hands of ISPs, which of course do not understand journalism contents. It causes not only a blockade threat but also damage the network neutrality, which is the principle of the internet law. The ourvice website blockade case is one of the examples.

In addition, the application of Article 27 of Law on Electronic Information and Transaction is still a fearful threat for the users of Online and Social Media in Indonesia. Such Article charges a very serious sentence, i.e. 6 years of imprisonment. It is one of the most fearful threats and it can be easily applied. No wonder that there are 12 criminalization cases in 2013 which are related to the freedom of expression in online media and indicted by the Law on Electronic Information and Transaction. One of the examples is the Beny Handoko case. He was reported by Misbahkun and the case is still on trial at the South Jakarta District Court.

B. Frequency Abuse for the Interests of Media Company Owners

In order to guarantee the diversity of ownership and news content and prevent a private broadcasting institutions to concentrate, centralize and sell the broadcasting institutions and permits, Article 18 paragraph (1), Article 20 and Article 34 paragraph (4) shall be further explained in PP No. 50 of 2005. This provision governs that a broadcasting institution is not allowed to have more than 1 (one) broadcasting permit in one broadcasting area. The Verdict of the Constitutional Court dated 3rd October 2012 also supports such regulation. However, in fact, the government does not perform the regulation which governs itself. Therefore, the concentrated ownership is still ongoing.

As a consequence of the concentrated ownership, we often see the utilization of a frequency at the interests of the media company owners, who are also a politician and competing to get public sympathy related to the 2014 General Election. The media company owners should realize that they can own a media company but it does not mean that they are the frequency owner too. Thus, it is expected that the frequency is not utilized for their personal interests.

In addition, the LBH Perss also thinks that it is necessary to supervise several drafts of laws, which are the prioritized programme of the 2014 national legislative programme, i.e.:

- 1) Revision of the Law on Broadcasting. There are several crucial debates related to the revision of the Law on Broadcasting, among others, the role of the Indonesian Broadcasting Commission as the broadcasting regulator; the end of the national broadcasting and substitution of a network broadcasting system; the existence of a community broadcasting institution; the merger of RRI

(National Radio of the Republic of Indonesia) and TVRI (National Television of the Republic of Indonesia); etc. The revision of the Law on Broadcasting should be closely observed, so the existing broadcasting democracy is not declining.

- 2) The Draft of the Law on Telematics Convergence. This Draft of Law will govern the merger of telecommunication, internet and broadcasting sectors (convergence), which is certainly triggering the birth of new media. The government has publically tested the Draft of the Law on Telematics Convergence from 2010. Nevertheless, the draft has not been discussed by the People's House of Representative. Substantially, there are several matters in this Draft of the Law on Telematics Convergence to be criticized, particularly its contents. The Draft of the Law on Telematics Convergence requires all telematics application industries, including contents, to be approved by the minister. If this provision is applied, all online media shall obtain a Ministerial approval. Therefore, substantially, this Draft of the Law on Telematics Convergence will take online media back to the New Order era in which a ministerial approval is required. Meanwhile, according to Law No. 40 of 1999 on Press, the press is not required to have a SIUPP (Press Publishing Permit). The permit obligation for all telematics applications also threatens the citizen journalism, as it is not possible for every citizen journalist having a permit. Moreover, the permit is only issued to a legal entity.

- 3) Revision of the Law on Electronic Information and Transaction (Law on EIT)

The People's House of Representative has stipulated the Law on EIT as the 2010 prioritized national legislative programme. However, it has not been conducted up to now. The Government has not submitted the revised text to the People's House of Representative, so it may not be discussed until now.

- 4) Revision of the Indonesian Criminal Code. Draft of the Indonesian Criminal Code (KUHP) is also the priority of 2013 national legislative programme. However, it has not been discussed on the People's House of Representative. This Draft of the KUHP will substitute the existing KUHP, which is the legacy of a Dutch colonial government. Observing its substance, there are positive and negative sides of the new draft of the KUHP. One of the positive side is this draft considers the value of human rights. However, there are many negative sides of this new draft of the KUHP. Many articles can be applied to criminalize the press and they are not deleted yet, but the number is increased. The articles on defamation, fabricated news, and many more are the substance of this draft.

IV. Cases Handled by the LBH Pers

From December 2012 to the end of 2013, the LBH Pers handled 18 cases, among others: 1) Criminal: 6 cases; 2) Civil: 5 cases; 3) Labour: 7 cases and it is dominated by labour cases, i.e. unilateral employment termination. The examples are the cases of Luviana vs Metro TV and right dispute cases (the dispute of Collective Employment Agreement (PKB) between the SWA Employee Forum and SWA Magazine Management). It shows that media companies are still ignorant in fulfilling their employees' rights and unfair to their employees.

V. PROJECTION OF THE PRESS FREEDOM IN 2014

2014 is a very important year for the democracy in Indonesia because a general election for the People's House of Representative, Regional Representative Council, Local People's House of Representative and Presidential Election will be held. In 2014, Indonesia will have a new national leader, who will determine the development of Indonesia for the next five (5) years.

In 2014, all political forces will compete to get a political position. Thus, there will be a high potential on resources contest in order to be involved in such process. It may trigger a conflict and also corruption. In this case, as an organization which has a social control function, the press must serve its role well.

As the concrete part of the participation of the LBH Pers in terms of the Press freedom protection in the 2014 election year, the LBH Pers and its network in 8 areas will open a complaint Center for violence on journalists and observation Center on the journalistic code of ethics related to news.

VI. RECOMMENDATION:

Based on the above data, in order to give press freedom and freedom of expression guarantee in Indonesia, the Legal Aid Center for the Press submits these following recommendations:

To the Government:

1. Materialize protection in terms of journalists' safety in performing their journalistic duties in accordance with the resolution of the Human Rights Council of the United Nations dated 27th September 2012. Such resolution states the importance of journalists' safety as the fundamental element in the freedom of expression.
2. Apply the Law on Broadcasting and Verdict of the Constitutional Court dated 3rd October 2012 to prevent the continued broadcasting media ownership monopoly and information monopoly, and guarantee the diversity of information.
3. Ensure that the drafted regulations must guarantee the press freedom and freedom of expression.
4. Do not intervene the press, so it may serve its role as the fourth pillar of the democracy.

To the Parliament/Legislative Body (People's House of Representative of the Republic of Indonesia):

1. Allow a large-scaled participation for communities in every drafting and discussion of a draft of a law
2. Improve the control function on the government to protect the press freedom in Indonesia

3. Ensure that the drafted regulations must guarantee the press freedom and freedom of expression.

To the Law Enforcers (Judges, Police, Public Attorneys and Advocates):

1. The National Police of the Republic of Indonesia must perform the legal proceeding on violence on journalists, as a part of an initiative to protect journalists. Thus, a safe environment for journalists occurs and they can perform their duties independently and it can prevent the impunity.
2. Use the Law on Press to settle some problems related to press.
3. Perform the Memorandum of Understanding between the National Police of the Republic of Indonesia and the Press Council, in enforcing the law and protecting the press freedom.

To Media Companies:

1. Give a wide space to journalists in order to increase their professionalism
2. Demand media companies to respect their employees' rights related to the freedom of union and assembly
3. Demand private media companies to apply Article 57 of Law No. 32 of 2002 on broadcasting, in order to give a chance to their employees having the company's shares and give company's profit

To Journalists:

1. Maximize the strategic role of media in eradicating corruption
2. The media/press and journalists must continuously socialize the Law on Press.
3. Try to improve professionalism in performing the journalistic work
4. Journalists are urged to write on the basis of KEJ and Law on Press of 1999, in order to prevent legal process and/or civil lawsuit.
5. Perform the press's role and function by supervising, criticizing, correcting and suggesting matters related to public interests
6. Consolidate in order to fight violence on journalists and policy threatening the press freedom.

To Communities:

1. Announce to the parties objected/suffered from losses due to the news content so they can undergo a mechanism as governed in the Law on Press No. 40 of 1999, i.e. apply an answering right or send a complaint letter, file a complaint to the Press Council and journalistic organization.

Jakarta, 31st December 2013

Yours faithfully

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