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Public Interest Law in Criminal Code Article 310(3) as the Basis to Eliminate Crime in Journalism

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Abstract.
In the Republic of Indonesia, legal norms and rules prioritize the public interest over state, group, and individual interests. Article 310 paragraph (3) of the Criminal Code allows for the removal of offenses committed in the public interest. However, using the public interest as a justification for press activities can lead to controversy due to unreliable or false news sources. Law No. 40 of 1999 concerning the Press, and the Press Council, an independent regulatory body established in 1966, protect press freedom and regulate the press according to the Journalistic Code of Ethics. However, due to perceived inadequacies, press violations are often resolved through press releases rather than relying on the Code as a legal basis. A normative legal research method was used to analyze the relationship between the Criminal Code and the Press Law, revealing that press freedom is a fundamental human right protected by the Constitution. The Press Law functions as a Lex specialis of the Criminal Code, addressing issues such as defamation, insults, and ridicule, and resolving disputes within the press while prioritizing the public interest over government interests.

Keywords: Public Interest, Freedom of the Press

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1. INTRODUCTION

In criminal law, crime can take several forms. Among them is the form of intentions, actions, and even a letter. Crime also always increases both in quality and quantity. As a result, currently, there are various forms of new crimes. Likewise with the world of the press. Currently, there is a lot of beta abuse. In fact, with the advancement of the world of the press or mass media, many new forms of news errors have occurred which have harmed the source or person being reported on. For example, news can harm a person's physical and moral condition. "Is the use of the right of reply able to answer the problem?".

Some people think that the Press Law is a specific rule concerning the world of the Press, while the Criminal Code is a general rule. In the context of "Lex specialis derrogat lex generalis", it means that the press who commits criminal acts cannot be charged using the Criminal Code but must use the Press law. Is that opinion true? To test it, let's look at the articles in law no. 40 of 1999 which regulates criminal acts and compares them with criminal articles that are often used to ensnare the press. Law No. 40 of 1999 contains 1 article regarding criminal provisions, namely Article 18, which consists of 3 paragraphs.

The focus of criminal threats here is press companies, not journalists who make news in the mass media. Because the focus is on the company, the penalty that can be imposed is fine. Then, what about journalists who make the news? Legally, Article 18 paragraph (2) cannot ensnare the journalist who writes the news.

In the technique of writing news in the mass media, there are press companies that include directly the name of the journalist who writes the news (by line) and there are those that simply make up the news writer's initials or code. According to the author, these two writing techniques give rise to two different legal consequences. The first pattern, by line, is that the legal responsibility for news content lies with the news writer and the press company, which in this case are represented by the chief editor. While the second pattern, in total responsibility for the content of the news, is on the shoulders of the company.[[?]]

The next legal consequence is that news written in a by-line style cannot be held fully accountable under Law No. 40 of 1999, because this law does not contain personal responsibility as it applies to general crimes. Namely, the hand chops the shoulder; he is responsible. Paragraph (3): "*Press companies that violate the provisions of Article 9 paragraph (2) and Article 12 shall be punished with a maximum fine of Rp. 100,000,000.00 (One hundred million rupiahs)*". This provision constitutes a penalty that can be imposed on a press company that is not a legal entity and does not include the name, address, and person in charge.

Observing Article 18 paragraphs (1), (2) and (3) above, the Press Law does not contain provisions regarding insults and defamation aimed at or seeking legal responsibility for individuals or persons who directly indicate a crime. Humiliation and defamation are only regulated in several articles in the Criminal Code, such as Articles 310-311 and Articles XIV-XV of Law No. 1 of 1946. Thus, of course, the principle of "*Lex specialis derrogat lex generalis*" does not apply. In addition, apart from the analysis above, this press law is not yet independent because many of its articles still state the enactment of other laws. For example, in the elucidation of Article 12, it is written, "*As far as criminal*

liability is concerned, adhere to the applicable statutory provisions." What is meant is of course the Criminal Code.

Then take a look at the explanation regarding general matters which is clearly stated in the last paragraph, "*To avoid overlapping arrangements, this law does not regulate provisions that have been regulated with provisions of other laws and regulations*." That means laws that are enforced lex specialis must be stated clearly, whether it's in the body or the explanation it says emphatically that this law is not lex specialis, so there must be changes if you want to be made "*lex specialis*," one the cause of the rare application of waiver of cases in the public interest is that there is no standard definition and understanding of the public interest.

There is no agreement among legal intellectuals regarding the definition of public interest, nor is there any juridical reference for the notion of public interest which can be used as a basis for a decision maker (attorney general) to realize this opportunity principle. To answer this, it is necessary to formulate a juridical definition of what is meant by "*public interest*". In the Formal Criminal Law, we recognize that the principle of opportunity is applied in Law No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, article 35 (c) which reads: "*The Attorney General has the duty and authority to "override cases in the public interest*".

Then in the explanation, it states "*Public Interest*" as the interests of the nation/state and/or the interests of the wider community. However, this explanation does not specify in a limitative manner what the formulation or definition and limitations of "*state interests*", "*national interests*", or "*wide community interests*" are meant for, thus inviting various interpretations, both among legal practitioners, legal academics, as well as society in general.

The meaning of other meanings is very necessary, and very important (preferred), so the understanding of the interests of one of them is prioritized. The public interest in question is the interest of the state/nation and the wider community. So the public interest here must be interpreted as the interest in all aspects of the state, nation, and society in the broadest sense and which concerns the interests of the wider community's livelihood. In that sense, it will cover aspects including ideology, politics, economy, society, culture, defense and security, education, justice, human rights, and religion, which have a broad scope. So in the public interest (public), not personal/group (private) interests.

In the Criminal Code, several provisions contain reasons that exclude or abolish the punishment. In the scientific literature, the reasons for criminal abolition (*strafuitsluitingsgronden*) are commonly divided into two types, namely:

1. Justification Reason (*Rechtvaardigingsgronden*)

   The justifications for action can negate its unlawful nature, rendering it appropriate and lawful. These justifications, known as "*rechtvaardigingsgronden*," can excuse a criminal act, meaning that even though the behavior goes against criminal laws, it is not considered criminal.

2. Forgiveness Reason / Error Eraser (*Schulduitsluitingsgronden*)

   The factors that absolve the defendant of guilt also absolve the responsibility of the person who committed the actions. Although the actions are still considered unlawful, they cannot be penalized because there is no culpability. The behavior remains a criminal act but cannot be attributed to the individual who committed it.

3. Excuse of Prosecution

   This case does not involve any justifying or excusing factors. It does not consider the nature of the action or the person who committed it. Instead, the government is focused on the utility or benefit to society and believes that it would be more advantageous not to pursue prosecution. The public interest is the primary concern. If the case is not pursued, the individual who committed the action cannot be punished.[(Moeljatno, Asas-Asas Hukum Pidana [Criminal Law Principles], Jakarta: Bina Aksara, 1987: 137.)]

Given the high number of press-related crimes that occur but do not reach the courts, a study was conducted to investigate the application of Article 310 Paragraph (3) of the Criminal Code in Indonesia, which allows for the abolition of crimes in press or journalistic activities in the public interest. With this background in mind, the author is interested in conducting a legal analysis on this topic, specifically examining the relationship between press freedom and responsibility and the concept of public interest. The research question is formulated as follows: 1) How is the Press Law No. 40 of 1999, along with doctrine and jurisprudence, explaining the connection between press freedom and responsibility and the public interest concept? 2) What is the juridical study and application of using the concept of public interest as the basis for the elimination of punishment (*strafuitsluitingsgrond*) in press offenses, as stated in Article 310 Paragraph (3) of the Criminal Code?

2. METHODOLOGY/ MATERIALS

This research is normative legal research.[(Soekanto, S., Penelitian Hukum Normatif : Suatu Tinjauan Singkat [Normative Legal Research: A Brief Overview], Jakarta: Raja

Grafindo Persada, 2001: 6.)] The nature of the research is descriptive.[Marzuki, P.M., Penelitian Hukum [Legal Research], Jakarta: Prenada Media Group, 2007: 93-95.)] The approach used is the statutory approach. The type of data used is secondary data sourced from primary, secondary, and tertiary legal materials.[(Fajar, M., & Achmad, Y., Dualisme Penelitian Hukum-Normatif dan Empiris [Dualism of Legal-Normal and Empirical Research], Yogyakarta: Student Library, 2015: 156.)] Secondary data was collected using library research and field research techniques.[(Zed, M., Metode Penelitian Kepustakaan [Library Research Methods], 2 *nd* Ed., Jakarta: Indonesian Torch Foundation, January 2008: 1.)] The data collection tool is a document study. Furthermore, these data were analyzed using qualitative analysis methods.[(Bungin, B., Penelitian Kualitatif : Komunikasi, Ekonomi, Kebijakan Publik, dan Ilmu Sosial Lainnya [Qualitative Research: Communication, Economics, Public Policy, and Other Social Sciences], Jakarta: Kencana, 2009: 153.)]

3. RESULTS AND DISCUSSIONS

3.1. Implementation of Press Freedom Granted by Law No. 40 of 1999 concerning Press Activities in Indonesia

Freedom to obtain information and express opinions, both orally and in writing or print, is one of the universally recognized and guaranteed values of Human Rights. Freedom of information and freedom of opinion is closely related to freedom and freedom of the press. Often, freedom and independence of the press are one of the implementations of the principles of a democratic country. In a sense, the press is the fourth pillar (the fourth estate) of democracy.

During the reign of the New Order regime, the autocratic powers that appeared in daily life could be seen by the failure to implement Article 28 of the 1945 Constitution seriously. The undemocratic constitutional law system built by the New Order relativized the role and function of the press. Enactment of Law No. 21 of 1982, specifically in article 13 paragraph (5) which states that: "*Every press publication organized by a press company requires a Press Publishing Business Permit, hereinafter abbreviated as 'SIUPP', which is issued by the government. Provisions regarding SIUPP will be regulated by the government after hearing the opinion of the Press Council*."

It was from this legal basis that the New Order developed a censorship policy and institutionalized Publishing Business Permit which curbed the dismissal of the press that was inconsistent with control. With the Regulation of the Minister of Information No.

01/Per/1984; regarding the SIUPP institution, in the practice of constitutional life there has been (a case in point) the closing of the Tempo and Detak Magazines. So that the development process and the implementation of equitable distribution of development results for 32 years cannot be controlled transparently to the public through the mass media.

The government of BJ Habibie started a process of openness for the emergence of democratic pillars, one of which is freedom and freedom of the press. The birth of Regulation of the Minister of Information No. 01/Per/1998 as a replacement for Regulation of the Minister of Information No.01/Per/1984 made it easier to apply for Publishing Business Permit and resulted in the birth of an astonishing number of press, both print and electronic media. Meanwhile, at the level of legislation governing the press, the enactment of Law No. 40 of 1999, instead of Law No. 21 of 1982, lays down guarantees of freedom of independence for press institutions. However, the constitutional legal system during the reform period up to 2003 had not provided full freedom and independence for the press. According to Leo Batubara, there are still 45 articles recorded – in the Criminal Code there are 35 articles, in Law No. 8 of 1999; regarding Consumer Protection there is 1 article, and nine articles in Law No. 32 of 2002; about Broadcasting articles that can curb creativity or looting the extremes of the press community.

During the Reformation period, juridical changes to the existence of the press were a prerequisite for the liberalization of the political system as an effort to create social-political communication media in the life of the state. Transitional periods marked by the opening of spaces for public (community) communication are the embodiment of political rights for every citizen or social group regarding the freedom to obtain information and the right to the freedom to express opinions/ideas orally or in writing or print.

However, the political euphoria in the Reformation era along with the freedom and independence of the press does not automatically have problems in the future. The existence of a press institution sometimes gives the impression of being in a situation of pros and cons in every dynamic of the developing political events, 1998-2002. Even this impression of pros and cons, in an instant, gave rise to a counter-democratic attitude as a supporter of political forces who feel aggrieved by press coverage. The case of illegal occupation and sealing of the SKH Jawa Pos office during the reign of Abdurrahman Wahid or thuggery in the attack on the SKH Tempo office during the reign of Megawati Soekarnoputri.

Departing from this case, freedom and independence of the press is important to be studied further as an effort to build the political infrastructure of a democratic Indonesian constitution. The dilemmatic choices faced by the press in the reform era;

on the one hand, if the press is restrained, the efforts to build a democratic Indonesian state administration will experience an improvement in the direction of reform. On the other hand, freedom and independence of the press without being followed by efforts to transform democratic culture from the press to the reading public are the same as giving birth to anarchism or triggering the birth of horizontal conflicts among the masses of the people.

Essentially the role of the mass media (press) has 2 (two) main functions, namely; first, the institution of the press is a media for the political education of the masses of the people. Second, the press institution is a medium of political communication. The mass media debate must be objectively independent or a very partisan choice of alignment. Because news that seems to take a sideways attitude will tend to be provocative. Coverage in every mass media is enough to influence the development of the nation's personality in the life of the state. The existence of press coverage in covering various Ethnicity, Religion, and Race events is very important and cases of pornography are rampant in press coverage.

In various contexts, the press faces significant challenges. In non-democratic political systems, such as authoritarian or totalitarian regimes, the press is tightly controlled by the state and ruling authorities. On the other hand, in democratic systems, media existence may be influenced by capital interests and the pursuit of market dominance. Strong capital ownership within press companies can lead to news manipulation, where reports prioritize issues that cater to specific market segments (readers) to accumulate capital.

Leo Batubara proposed 7 (seven) roles and functions of the press in Indonesia's democratic constitutional life: *Firstly*, fostering a culture of state administration change. *Secondly*, reforming the national legal paradigm by shifting from criminalizing the press to decriminalizing it, aligning with democratic countries. *Thirdly*, establishing a model for interaction among the press, state administrators, and society based on a free press acting as an early warning provider, a forum for dialogue, and an enlightening force to strengthen democracy. The state administration should learn to listen, respond, and follow up on what the professional press conveys as a reflection of the nation's conscience.

Fourthly, empowering Law No. 40 of 1999 as the legal foundation for press administration. Fifth, enforcing responsive measures against those who perpetrate violence against journalists and the press. *Sixth*, elevating journalists' position as watchdogs akin to red cross officers. *Seventh*, performing the press's social control function through supervision, criticism, and collection of information. Press actors are required

to adhere to the principles of press professionalism and ethical standards. Additionally, law enforcement should be responsive in handling cases involving violence against journalists and the press.

Meanwhile, ideally, the function of control and supervision of the press is regulated in Article 28 and Article 28F of the 1945 Constitution. The control of state power is outside the constitutional state control institutions. It does not rule out the possibility that the press can also play an active role in leading ideas and ideas on every shift in the culture of Indonesian society which is moving towards a democratic social order format. The role of the press as a social function is defined as participatory politically oriented education, formation of the nation's moral values, as well as control over law enforcement and enforcement in public life and government.

The regulations for the press were first established in Law No. 11 of 1966, which was later amended by Law No. 21 of 1982. This original set of laws is commonly referred to as the Old Press Regulation and dealt with basic provisions of the press. As social and legal reforms took place, Law No. 40 of 1999 concerning the Press, which will be referred to as Press Regulation, was introduced on September 23, 1999, as the old Press Regulation was deemed to be outdated. The New Press Regulation replaced the old Press Regulation and declared it invalid. Additionally, Law No. 4 Presidential Determination of 1963, which included provisions on bulletins, daily newspapers, magazines, and periodicals that could disrupt public order, was also declared invalid under Article 2, Paragraph (3).

The press law reform was based on five fundamental considerations, as stated in the considerations section of the law.[(Pandjaitan, Hinca IP., Gunakan Hak Jawab, Hak Koreksi & Kewajiban Anda, Ombudsman Memfasilitasinya [Use Your Right of Reply, Right of Correction & Obligations, Ombudsman Facilitate It], Jakarta: Jawa Pos Group Ombudsman Team, 2004: 4-5.)] *Firstly*, freedom of the press is crucial in creating a democratic society and must be ensured as a manifestation of people's sovereignty and the right to express thoughts and opinions as stated in Article 28 of the 1945 Constitution. *Secondly*, the freedom to express thoughts and opinions and the right to obtain information are essential human rights in promoting justice, truth, public welfare, and national education. *Thirdly*, the press has a significant role as a vehicle for mass communication, information dissemination, and opinion formation based on its professional freedom and must be protected from interference and coercion. *Fourthly*, the national press plays a role in promoting world order based on freedom, peace, and social justice. Finally, the old Press Regulation needed to be reformed as it no longer met the demands of modern times.

The General Explanation of the Press Regulation outlines six primary ideas that were taken into account in creating the law, in addition to the five basic considerations mentioned earlier.[(Ibid.)] To ensure the optimal function of the press under Article 28 of the 1945 Constitution, a Press Regulation must be established. It is believed that in a democratic society, transparency and accountability to the public, as well as justice and truth, are crucial. The press has the freedom to seek and disseminate information and plays an important role in upholding human rights as outlined in the Decree of the People's Consultative Assembly No. XVII/MPR/1998. It is also seen as a tool for social control to prevent corruption, collusion, nepotism, fraud, and other irregularities. In fulfilling its functions, rights, obligations, and roles, the press should respect the human rights of everyone and should be professional and transparent, with public oversight. To avoid redundancy, this Press Regulation does not cover provisions already addressed in other statutory regulations.

Following the five fundamental considerations and the six main perspectives for the enactment of the Press Law discussed earlier, the Constitutional Commission decided to incorporate provisions safeguarding press freedom in the 1945 Constitution at the end of April 2004. This protection will be specified in Article 28 letter G, which was formulated by the Constitutional Commission and will officially become part of the 1945 Constitution. The wording of Article 28 Letter G states that the state is responsible for safeguarding freedom of the press and expression. Press freedom is considered a basic human right that must be recognized and protected by the Constitution. This explicit mention is significant because it prevents the government or parliament from manipulating press freedom protection to suit their political agenda.

As mentioned earlier, the Press Regulation was enacted in 1999, while the CoW approved the inclusion of state protection for press freedom in the 1945 Constitution only in late April 2004. Although the Press Regulation uses the term "*freedom of the press*," and the CoW uses the term "*freedom of expression*," there is no fundamental difference between the two terms. The normative term used is "*freedom of the press*," but in everyday language, "*freedom of expression*" is preferred. Both terms refer to the same thing, and they are guaranteed as a human right that cannot be censored or prohibited. As a guarantee of press freedom, the national press has the right to seek, obtain, and disseminate ideas and information. Explicit mention of freedom of the press will be included in Article 28 Letter G of the 1945 Constitution and the Press Law.

In addition to the legal basis mentioned above, the Indonesian Journalist Code of Ethics is also known. There are seven points of the code of ethics in the Journalist Code of Ethics which are contained in the Decree (SK) of the Press Council No. 1/SK-DP/2000,

dated 20 June 2000. Indonesian journalists who carry out their duties are required to understand and comply with the Journalist Code of Ethics which can be called a disciplinary law for them. The Journalist Code of Ethics is likened to a guiding candle for journalists so they don't fall into failure.[(Ibid.)]

The Decree of the Press Council No. 1/SK-DP/2000, dated 20 June 2000, outlines the seven points of the code of ethics in the Journalist Code of Ethics. These include the following guidelines for Indonesian journalists: 1) respecting the public's right to accurate information, 2) adhering to ethical procedures when obtaining and disseminating information, and identifying sources, 3) following the principles of presumption of innocence, factual accuracy, balance, truthfulness, and avoiding plagiarism, 4) refraining from broadcasting deceptive, slanderous, sadistic, or obscene information, and avoiding mentioning the identity of victims of sexual crimes, 5) not accepting bribes or misusing their profession, 6) having the right to refuse and respect the provisions of embargoes, background information, and off-the-record agreements, and 7) promptly correcting errors and providing the right of reply. These guidelines are established to promote ethical journalism in Indonesia.

Pancasila, the 1945 Constitution, and the United Nations Universal Declaration of Human Rights protect the human rights of freedom of opinion, expression, and press. Freedom of the press serves as a public means of gathering and communicating information, which is essential to meet basic needs and improve the quality of life for humans. While pursuing press freedom, Indonesian journalists take into account the interests of the nation, societal responsibility, diversity, and religious norms. The press upholds everyone's human rights in carrying out their functions, rights, obligations, and roles. Thus, the press must maintain professionalism and transparency, and allow public scrutiny. Ensuring press freedom and the public's right to accurate information is crucial.

The term circulating today is the public's right to know and the responsibility of the press. This implies a theoretical shift in the conception of freedom of the press, namely from being based on the individual to society. Freedom of the press, which everyone considers a universal truth, is now only interpreted as public access, or the public's right to know. It is difficult to say when media administrators began to associate responsibility with freedom. In the past, when they were limited to newspaper publishers, journalism ethics were rarely mentioned. In the following period, when newspaper publishers sided with or formed close ties with certain political groups, the public interest tended to take precedence. However, in the mid-19th century, there was a belief that newspapers had to be neutral, and they had to help make the political climate healthy, not muddy it. Then came publishers such as Henry Raymond of The New York Times who thought

that newspapers could not side with political groups, but could side with certain political ideas to contribute to the general welfare. Next came publishers such as William Rockhill Nelson of the Star in Kansas City who saw newspapers as the spearhead of societal progress. In all of these views, there is an implied recognition that newspapers do indeed carry a certain social responsibility.[(Rivers, W.L., Jensen, J.W., Peterson, T., Media Massa & Masyarakat Modern [Mass Media & Modern Society], Jakarta: Fajar Interpratama Offset, 2004: 102.)]

In the 20th century, more and more newspaper managers spoke about the social obligations of the press as a supporter of efforts to include society. In 1904 Joseph Pulitzer used a 40-page North American review to support his idea for a kind of journalism academy. Over time, many journalists have argued that responsibility is as important as freedom. When newspaper ownership is increasingly concentrating on a few newspapers, editors and journalists are starting to speak out loud about the need for newspapers to pay attention to their social responsibility. The world of film and broadcasting is starting to pay attention to this matter of social responsibility.

The main problem in discussing a press system is the system of freedom. A press system was created precisely to determine how best the press can exercise its freedom and responsibility. The basic concept of the Indonesian press freedom system has an ideal and constitutional basis in Pancasila and the 1945 Constitution. We are all aware of the position and function of Pancasila for the development of the Indonesian nation.

On the one hand, Pancasila is a legal ideal, the interpretation of which is determined in the 1945 Constitution. Here Pancasila is the basis of the state and also the source for all sources of law. In the 1945 Constitution, Article 3, it is stated that "*The People's Consultative Assembly establishes the Constitution and the outlines of the state policy*". It is based on this constitutional provision that the MPR, once every five years, stipulates the Outlines of State Policy. And in the Outlines of State Policy (1983), which is a strategic basis for national development, also includes a strategic basis for the press, which determines the form and content of the Indonesian press freedom system as part of the information and mass media system, or part of the information and communication system.

On the other hand, Pancasila is a moral ideal or a way of life that provides guidelines and demands for the Indonesian nation. To function as a guide for the behavior and life of the nation, the values of Pancasila have been outlined in guidelines, which outline how concretely these values can be lived and practiced as well as possible. For this reason, the People's Consultative Assembly has issued Decree No. II/MPR/1978 concerning Guidelines for the Appreciation and Practice of Pancasila, or P-4.

The constitutional foundation of the Indonesian press system as attached to Articles 28 and Article 33, of the 1945 Constitution, which has the spirit of togetherness, kinship, and cooperation, has spawned a "*partnership theory*" between the press and the government, which is contrary to what is often referred to as an "*adversary theory*" between the Press and the Government in Western countries.[(Atmadi, T., Sistem Pers Indonesia [Indonesian Press System], Jakarta: Gunung Agung, 1985: 48.References)]

This "*partnership theory*" reflects the spirit of togetherness, whose experience has been ingrained since the existence of a national press was recorded in Indonesia. Thus, the theory of "*partnership*" in its manifestation does not highlight "*the conflict between freedom and power, but cooperation or deliberation for the common good of society (and) that the great power given to the Government and the State should not result in state oppression of citizens' rights*".

It was also based on this theory that during the revolution for independence the other day, the term "*grand alliance*" or "*great union*" emerged between the Press, Government, and Society in fighting for the common ideals of the nation. Here it should be noted that this tradition of "*grand alliance*" has actually also been institutionalized in the Indonesian press system, and has also animated the life of the press in terms of institutional, ideal, and business aspects.

Other salient features of the Indonesian press freedom system are as follows:

First, the press, especially newspapers, are publications that sell "*news*" or "*news*" every day. So, if we talk about freedom of the press, what matters is the freedom to seek, write, print, and disseminate the news through the media concerned.

Second, Indonesia's press freedom system is dedicated to "*fighting for truth and justice based on responsible press freedom*", as stated in Article 2, Paragraph 2-c, Press Law No. 21 (1982). Fighting for the truth is a characteristic of the order of life in a democratic society. And this means that to fight for the truth, it is only natural that there are different opinions in society. Criticism is a reflection of the existence of different opinions.

Thus it can be said that the Indonesian press freedom system has a basic philosophical basis, which in essence reflects the nation's cultural values which have been part of its personality for centuries. The legal provisions governing the life of the press fully reflect the soul and spirit of the basic concept and at the same time the strategic basis of the Indonesian press system as contained in the Guidelines for the State Policy.

Indeed, the Basic Press Law can be said to be a "*lex specialist*" which provides guidelines and rules of the game for the life of the national press. The material and

substance as a whole reflect the identity of the Indonesian press, which means that it also reflects the identity of the Indonesian press freedom system.

Of course, as explained above, freedom of opinion, expression, and the press are human rights protected by the Pancasila, the 1945 Constitution, and the United Nations Universal Declaration of Human Rights.

The press plays a crucial role in the public's access to information and communication, which is essential for meeting their basic needs and enhancing their quality of life. In Indonesia, the press and its freedom are governed by the Press Law No. 40 of 1999. The law recognizes the vital functions of the press, including its role as a source of information, education, entertainment, and social control, as well as an economic institution. During the Reformation period, juridical changes to the existence of the press were a prerequisite for the liberalization of the political system as an effort to create social-political communication media in the life of the state. However, the political euphoria in the Reformation era along with the freedom and independence of the press does not automatically have problems in the future.

According to the ideal situation, the press should be controlled and supervised under Article 28 and Article 28F of the 1945 Constitution. This control should be carried out by constitutional institutions that are independent of the state's power. The press can also play an active role in shaping the ideas and culture of Indonesian society as it moves towards a democratic social order. In April 2004, the Constitutional Commission agreed to add protection for press freedom in the 1945 Constitution, which is now regulated in Article 28 letter G. This article states that the State must protect freedom of the press and freedom of expression, as it is a part of human rights that must be acknowledged and defended in the Constitution. To further enhance press freedom and improve the profession, the Press Council was established in 1966, and it is now authorized to determine and supervise the implementation of the Journalistic Code of Ethics.

3.2. Description of Public Interest and Self-Defense as Reasons for Elimination of Crime in Article 310 paragraph (3) of the Criminal Code

One of the legal aspects of the press is criminal responsibility for a press offense. Regarding this legal aspect, there are various kinds, including aspects of constitutional law relating to guarantees for press freedom; aspects of criminal law, including those

related to press offenses; aspects of civil law concerning issues of defamation, defamation, and internal organizational aspects, for example, the Association of Indonesian Journalists, Union of Newspaper Companies or press ethics such as the Journalistic Code of Ethics, Company Code of Ethics and Advertising Code of Ethics. In general, the sanction is moral. The existence of various kinds of legal aspects has also led to the existence of various laws regarding the press in various countries in the world. Therefore, the influence of legislation aimed at the press also differs from one another in each country. Of course, it will depend a lot on the history, ideology (political system), and national temperament of these countries, they may differ from one another.

Legal aspects of the press in the form of responsibility are also found in various systems, including the waterfall system (The Waterfall System). This system is often referred to as the Belgian system, because this system was first carried out in Belgium, based on what is called the single liability, that is, only the author (one person) can be held criminally responsible for one press offense. However, if the author is not present (goes abroad), then the publisher is sued, and if the publisher cannot be brought before the court, then the printer, and if this is also not available, then the distributor. Such criminal liability is called sequential liability.

Another criminal responsibility system is the director of the publication system that applies in France. This system emphasizes that large capital owners have a lot of interest in newspaper companies so they are seen as responsible people. The responsible editor system emphasizes accountability to the editor, where the editor has the right to accept or reject an article published in the newspaper. This accountability system is found in Central Europe, Norway, and Egypt.

In Indonesia itself there are two systems of accountability according to positive law, namely the Press Law No. 40 of 1999 and the current Criminal Code System after the Basic Press Law No. 11 of 1966 and Press Law No. 21 of 1982 was repealed.

Until now, Indonesia recognizes three Press Laws, namely Press Law Number 11 of 1966 (Publishing Permit), Press Law Number 21 of 1982 (Press Publishing Business Permit), and Law Press Number 40 of 1999. Since the issuance of Press Law number 40 of 1999, two press laws have been revoked because they are considered to be no longer by the demands of the times. This reason is clearly stated in the consideration for the issuance of Press Law number 40 of 1999. As is known in the Basic Press Law number 11 of 1966 requires that every print media have a Publishing Permit from the Ministry of Information as contained in Article 20 paragraph 1 which states "*during the transitional period the obligation to obtain a Publishing Permit is still valid*".

Apart from the two articles above contradicting each other, Publishing Permit is still being imposed on the national press, in addition to the suppression/banning of printed media. What is found in Press Law number 11 of 1966 is also found in Press Law number 21 of 1982. Even though the formulation is different, the aims and objectives are the same as stated in article 13 paragraph 5 namely "*every press publication organized by a press company requires a Pers Publishing Business Permit issued by the government (Ministry of Information)*". In addition, no article guarantees the "*non-existence*" of suppression/banning of the national press. Meanwhile, in the Press Law No. 40 of 1999 clearly, there is such a guarantee (Article 4 paragraph 2).

In fact, as a guarantee of freedom of the press, at least three conditions must be met which are clearly stated in the law, namely the absence of Publishing Permit/Press Publishing Business Permit (in any form); no ban; and the absence of censorship, especially preventive censorship which is carried out on print media before the print media is circulated in society (because it is considered undemocratic), except for repressive censorship in the form of restrictions on certain things permitted by law. The articles relating to repressive censorship in the form of restrictions must be clearly defined by law which has previously been approved by the government (executive) and the House of Representatives (legislature). Repressive censorship is more democratic because it is applied to print media after it has been circulated in society. The articles relating to restrictions or repressive censorship are only for certain matters, for example, those concerning insults, defamation, and slander. In other words, the restrictions are not so broad that they will curb the freedom of the press itself

There is a difference between the Press Law No. 40 of 1999 Basic Press Law No. 11 of 1966 and Press Law No. 21 of 1982. In the Press Law No. 40 of 1999, there is no requirement to have SIT and SIUPP from the government as found in the two previous press laws. Thus it guarantees more freedom of the press and the development of print media in Indonesia because there is no banning and censorship. Article 4 paragraph (2) and Article 12 of the Press Law No. 40 of 1999 stipulates that press companies are required to publicly announce the name, address, and person in charge through the media concerned; specifically for press publication plus the name and address of the printer.

Although not explicitly Article 13 paragraph a of the Press Law No. 40 of 1999 also has similarities with articles 281, 282, and 283 of the Criminal Code which regulates delict delicts. Article 13 paragraph (a) prohibits the loading of advertisements that degrade the dignity of religion, disturb the harmony of religious life, and are contrary to the sense of decency in the society. Whereas articles 281, 282, and 283 of the Criminal Code strictly

prohibit writing - writings that violate decency or pornography, and Article 156 of the Criminal Code regulates insulting religion/religious population groups.

The Press Law Number 40 of 1999 explicitly states that it does not regulate criminal violations committed by the press or writings published in communication and print media such as indecency, insults, or slander, as these are already covered in the Criminal Code. Instead, Article 5 paragraph 1 of the Press Law requires the national press to report events and opinions while respecting religious norms, social decency, and the presumption of innocence. The press is also obligated to provide a right of reply (Article 5 paragraph 2). As for criminal provisions, Article 18 paragraph 2 of the Press Law imposes a maximum fine of Rp. 500,000,000,- on press companies that violate the provisions of Article 5 paragraphs 1 and 2, as well as Article 13 paragraph (a). It is important to note that these articles are not directed at individual authors or performers.

In the Criminal Code, some articles regulate violations committed by the print media, including offenses of insult, defamation, and slander which qualify as press offenses. All violations are clearly stated and regulated in certain articles in the Criminal Code.

In the Criminal Code system, there is no successive accountability and there is no fiction in criminal law. This system does not follow the sequential responsibility system which, among others, applies in Belgium. Also don't follow fictitious systems (sometimes the editor is in charge, sometimes someone else). On the other hand, the Criminal Code system is a system based on the "*theory of activity*" (whether they have a role in the writing), meaning only those involved in press offenses such as editors, writers, publishers, printers, and distributors.

In addition, according to the Criminal Code system, a person who can be held accountable for writing before a court must fulfill two conditions, namely the editor must know the contents of the writing in question and he must also be aware of the criminal nature of the writing.

Writing is his responsibility. An article deemed to have a criminal nature is published in a newspaper and the person in charge states that he or she is responsible for the writing. But when the article was published in the newspaper, the person in charge had been abroad for a long time, so he did not know the contents of the article. He only found out the contents of the writing after returning from abroad.

In this case, even though he stated that he was responsible for the writing, according to the law, he cannot be held criminally responsible. It may be morally justifiable, but according to the law, it is not. The writing is considered outside his responsibility. Conversely, even though the words outside the editorial responsibility have been included, if the two conditions above are met, the editor can be held criminally responsible.

In other words, it does not guarantee that sponsorship is the responsibility of the editor and can be held criminally responsible. Because what determines whether or not criminal responsibility can be met is whether or not the two conditions mentioned above have been met. The prosecutor's task is to find people who can be criminally responsible.

4. CONCLUSION AND RECOMMENDATION

The implementation of press freedom serves as a means for the public to acquire information and facilitate communication, thus meeting fundamental needs and enhancing the quality of life. It is imperative to recognize and safeguard press freedom as a fundamental human right in the Constitution. To enhance press freedom and the welfare of the national press, the creation of an autonomous Press Council in 1966 is a vital step that also grants it the authority to govern and supervise the adherence to the Journalistic Code of Ethics. Therefore, there is a pressing need for improvisation in the creation of the Supreme Court Jurisprudence of the Republic of Indonesia, which will allow legal protection for members of the press to be upheld. Additionally, placing the Press Law as a lex specialist is crucial since it has not been able to protect press freedom, particularly in cases of press offenses where no criminal provisions are available.

The Press Law number 40 of 1999, along with doctrine and jurisprudence, emphasizes the importance of balancing the freedom and responsibility of the press with the concept of "*public interest*." The interests of the public should always be given priority over those of the government. The implementation of the concept of "*public interest*" should be based on principles of development that promote equitable and sustainable growth as stated in the Indonesian Constitution. The public interest is also crucial in the eradication of criminal insults and is regulated in Article 310 Paragraph (3) of the Criminal Code as it relates to the press. This doctrine emphasizes that the "*public interest*" is the reason for criminal abolition. In Indonesia's Formal Criminal Law, the "*opportunity principle*" is applied in Law No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, Article 35 letter (c), which exempts cases in the public interest. Therefore, a robust and authoritative journalism organization is necessary.

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