

Universality of Freedom and Responsibility Press in American Legal System and Democracy

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Abstract

The freedom of press has become one of the most fundamental freedom and one of the sacred value in the democracy. As a sacred value which regardless of the sancity of the religious, it is actually derived from the social soul of American people. So, the freedom of press institutionally has been believed to hold the most important role in the social and government's life. It also has been reflected as a system of culture, social, politic and law. The statement of it can be seen in the first Amandement of the American Constitution... Understanding of the limits of press freedom means that would restrict the press freedom itself. It becomes the 4th branch of government which is a symbol that could not be reached by the three brances of government in America. The press responsibility is not a restriction of the press freedom but as "a blanket" of freedom of the press itself... Along with the history of the press, it continues to move forward with the goals and vision of the free press which is responsible and struggle to fulfill the public needs about their right to know all the news that they should be known.

Keywords:Universality; Freedom and ResponsibilityPress; American Legal System; Democracy

1. Introduction

Since the first amandment has been affirmed (Bill of Rights 1791), the freedom of press has become one of the most fundamental freedom and one of the sacred value in the democracy. As a sacred value which regardless of the sancity of the religious, it is actually derived from the social soul of American people. So, the freedom of press institutionally has been believed to hold the most important role in the social and government's life. It also has been reflected as a system of culture, social, politic and law. It is even regarded as *watchdog* and fourth branch of government.

The freedom of press basically excavates, develops, and distributes the public opinion which is running together and holding hands with the democracy. The individual freedom in this sense has become the dimension of the press freedom. If it is deprived, it means that it violates one of the basic rights of human beings. In terms of a democratic system, it is the most taboo in it. In the relation to government perspective, the government is also become the source to arrange the freedom of press. This situation can be drawn in the proverb "*sheeps are obeyed by the shepherd*". In contrast, the press freedom acts as *the savage wolves which ready to pounce*.

Providing an understanding about the limitation of press freedom, it would restrict the freedom of press itself. Basically, it has posed 4 (four) branches, which become the freedom that can not be reached by the other branches of the American government. The responsibility of the press through the freedom does not become a restriction of the press freedom, but it is a blanket for the freedom itself.

2. The Freedom of Press in the American Constitution

The United States of America is one of the modern countries which places the democracy as the ideology of the states and government in the life of society, nation, and state. As the ideology, it is starting with the Declaration of American's Independence, which reads:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.-- That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, ... " (USIA : Seal of the President of the United States, 7).

The American Independence Declaration as mentioned above was prepared by Thomas Jefferson¹. He was an adherent of the Trias Politica thought by Montesquieu and also supporter of John Locke regarding the government on the people basis of consent (Republica). Thomas Jefferson's view in the Declaration of American Independence is a reflection from the American soul in the 17th Century.²

¹He was a lawyer and a talented American politician since he was young. He is also an Englishtened radical philosopher and reformers who opposed the aristocracy. He had spent a few years in France. See also George B. Tindall, *America Narrative History*, Vol. I. 2nd Ed. WW Norton & Company, New York, 1984, p. 295.

² Peter Woll, *American Government; Reading and Cases*, Eight ed. Little, Brown & Company, Boston, 1988, p. 47.

The basic value in the independence's statement is equality, humanitarianism, individualism, progress, majority rule, and minority rights. The basic values then prove that the American independent is built on human rights with the democratic government system. The idea of democracy further is standardized in the US Constitution which was created 11 years later in Philadelphia in the Constitutional Convention which lasted from May 2nd – September 7th 1787 by 55 delegates. The constitution was effective in 1789 when 9 out of 13 states ratified it.

The basic principle of democratic system in the American Constitution includes:

- Government by governed;
- Freedom of expression;
- Sanctity of the individual;
- A free and fair commerce;
- A diversity of political units;
- Separation of powers;
- Equal protection under the law; and
- The rule of law.

It then is reinforced with the basic principles of the Constitution such as:

- People sovereignty;
- Limited government;
- Republicanism;
- Checks and balance;
- Separation of powers;
- Supremacy of national law;
- Federalism; and
- A Dynamic Constitution.¹

In this context, the word “*democracy*” has 2 (two) different connotations but has interrelated among the American people. First connotation is *realistic democracy*. It is a pattern of behavior including such activities as if committee meetings of political parties, seeking for the supporters, and the struggle for getting the positions in between the leader of the party and the debates for winning the idea among the group or pressure group. Second connotation is *romanticism democracy*. It is a set of ideas creating the state's ideology as a “*national faith*”, which actually contains power for the state religion, although it is not recognized. Most of these ideas are as old as the classical Greek. Even though they were quite old, they were not a truly American. The ideas of the configuration of the group is unique.²

To end the debate of the *Anti-Federalist* people furthermore, it was ratified the Bill of Rights 1791 which consist of 10 Constitution amendment, 2 (two) years after the ratification of the Constitution. The Federalist people wanted a Federalist Government which has the widest power. The *Anti-Federalist* people wanted a government which separate the individual freedom. Since that time, the freedom of press in the first amendment has gotten the Constitution protection.

The first amendment firmly stated that “*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or a bridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*”

Apparently, the freedom of press is arranged together in a single amendment with the religious liberty. Indeed, it is associated and discussed to become the basic rights of the people. As stated in the amendment, the freedom of press is one of the most fundamental freedom and has become a sacred value in the life of American democracy. As a sacred value that apart from the sanctity, it is coming from a religious institution. Basically, it is coming from the soul of the social life of the American people. Therefore, the freedom of press and the institutionals are believed to hold the most important role among the people and the presence of the government even placed as a *watchdog* dan branch of government.

In the assessment as stipulated above, the freedom and the press institutional refer to the sense or function of the media as the primary tools in the decision-making process by finding the tangency points of the different parts of the bureaucracy, legislative, and executive (*as the branch of the government*), as well as the government and the people.³ Furthermore, it becomes the reflection of a cultural, social, and political system.⁴ Loss of the press freedom is not only losing the individual freedom, but it also threaten the democracy. This situation will endanger the democracy principles, which become the central of American culture and affected the

¹Albert B., Saye and John Allums, *Principle of American Government*, 10th ed., Prentice-Hall, A Division of Simon & Schuster, Inc., New Jersey, 1986, pp. 51-54.

²Gabriel Ralph H., *American Values : Continuity and Change*, Greenwood Press, Inc., Westport, CT. USA, 1974, p.5.

³Suwardi Harsono, “Mass Media and the Government in the United States of America”, *Journal Study of America*, Vol. VI, Januari – Juli 2000, p.70.

⁴Suwardi Harsono, *The Role of Press in Indonesian Politic*, Pustaka Sinar Harapan, Jakarta, 1993, p. 80.

communities and country.¹

John M Hamilton and George A. Krinsky respond the first amendment. They stated that the first amendment regulates what could not be done by the government (Congress). It does not create a law restriction of freedom of speech and press. The first amendment does not confirm what can be done by the press. The press has been in a form of evolutionary process by social needs, technological progress, and commercial considerations. It is encouraging the press to become a profession or as a professional organizer.²

The principle of the freedom of press in the first amendment gives the rights as much as possible. However, those rights create the responsibility demands for the press as the juridical logic consequence of the boundary between what can or can not be done by the press. There will always grow a conflict from this situation particular the conflict of interest in the reciprocal basis between the press and the government or between the press and the society. In terms of the conflict, it precisely encourages the dynamics and harmonization of the American democracy freedom in the context of implementation the press freedom principles. It also encourages the constructive conflict and do not kill others. As we seen, the democracy indeed is full of conflict.

For the construction of the press freedom as discussed above, the tendency lies through the desire of the government to create and make the press *as sheep* which obey *the shepherd* (proverb) by creating the various law products naturally to demand limitations of press like *a wolf*. Subsequent impact on the pattern of press between its relations and the President are different. It must be in line with between the intensity and personal leadership priorities and the President's interests. However, according to Martha Joynt Kumar³, most of the American President has the press conference room like a huge luxury pool with the vicious sharks. They need to have a preparation before entering the room which is full of reporters who are ready to devour them.

The press conference with the American Presidents under any circumstances always bring an unforgettable impression. Some impression can be seen based on the USA President performances. President John F. Kennedy was the first to broadcast a live the press conference with highly humor. Ronald Reagan with the stunning action action or Bill Clinton always puts the need for facts or Jimmy Carter when he was conducting the first press conference as the president in the press conference East Room on February 8th 1977, he started to talk bluntly about the confrontation among the American president and the press. He saw the confrontation as a counterweight of the things that were sweets and enjoyable for a president.

While since January 2001 in White House, President Bush preferred the unofficial one, making his assistances worried that his boss would make a mistake in his "freestyle" way. Since the first press conference that held by President Woodrow Wilson on March 15th 1913 until present, the press conference considered as a very useful way for the American President to communicate with people. President Eisenhower thought, the press conference is the best way for the people to see their President. The people can see their president's ability to work, also to make them out from the White House.

3. The Press Freedom and its Judicial Insitution

When the confrontation is developed into a dispute between the press and the government, most of the government or president submits the documents to the court until to the supreme courts. The court then holds the most important position in how to bring the doctrine of freedom of the press in anycase. Through its decisions, the American Supreme Court explains the meaning of the press freedom doctrine in case, which applied in only limited cases. There have not created a Supreme Court Jurisprudence which is legally binding and universal regarding the press freedom principles and/or can or can not be done by the press.

There are many cases are taking palce in American press history. However, there are 2 (two) cases that is to be discussed in this paper, as followings:

1. USA vs The Progressive - The H-Bomb Secret Case. This case reflects the American government effort to restrict the press freedom before the publication of the news.
2. USA vs New York Times - Pentagon Papers Case. This case becomes the symbol of the American government efforts to restrict the press freedom after the publication of the news.

In the first case, The H-Bomb Secret,⁴ The Progressive, one of the monthly magazine in Madison, Wisconsin would publish an article written by Howard Morland entitled "*The H-Bomb Secret*" on the front page in April edition 1979. Before it was published, the US government through the Department of Justice filed an objection to the issuance of the plan. The reason of the objection was the information from Morland's article related to the Hidrogen Bomb was not only become the secret of the country, but also could endanger the states' security.

¹Parsudi Suparlan, "The Values of American Culture Sacrely", *Journal Study of America*, Vol. I, No. 2, Juli 1991. pp. 8-9.

²John Maxwell Hamilton and George Krinsky, *Hold the Press*, Louisiana State University Press, USA, 1996, pp.17-18.

³ See daily newspaper "Fajar" Makassar 17 – 18 April 2001.

⁴ See the main sources in Defence the Bill of Rights in action by E. Alderman & C. Kennedy.

Therefore, based on the Law on Atomic Energy 1954, the US Government had the authority to prohibit and prosecute those who would divulge the confidential data that included all design, production or the use of nuclear weapons or nuclear material of certain products. The exception of it did not include the data which was not categorized as a confidential data. The suspects may be fined the maximum fee US.\$ 10.000 and/or imprisonment for a maximum of 10years.

Based on the Atomic Energy Law reasons as mentioned above and the approval of the President Carter, the general prosecutor Griffin Bell had done the negotiation to avoid the publication of the article but it was failed because on March 7th The Progressive notified its determination to publish the article without any changes for the right to publish in the First Amendment. The rejection of the Progressive to still publish the article made the US government filing the claim to the Judge Robert W. Warren from western region of Wisconsin to avoid the publication.

There was a debate on it. Both the Government and the progressive submitted their own experts in their field which had a different point of view. The famous nuclear expert was posed by The Progressive stated that Morland was in a bit careless with his articles, but the information did not become a secret anymore and its publication would not cause a danger. In the opposite way, the US government submitted a written statement from the Foreign Minister, the Minister of Energy, and Minister of Defense, the Directors of Nuclear Design Laboratory and the holders of Nobel Hans Bethe prize. Their statement stated that Morland's article contained an important information that could not be published. It was because it could be a unrecovered losses on the US national security. It could also help the foreign countries to develop their own nuclear weapon and thus it could increase the risk of nuclear war.

The Judge Warren in its decision then granted the demands of the US government regretfully. He stated that "*the US government had the rights to supervise the press and to prohibit the Morland's article with consideration that the errors in opposing the US policy could bring us into nuclear disaster which resulted in the loss of our rights to life*". The legal basis in the Law of Atomic Energy 1954 passed by congress. For Warren's decision, the progressive appealed and promised to pass into the Supreme Court.

Meanwhile, Chuck Hansen, a Californian resident and supporter of nuclear and hydrogen bomb, began the campaign against the US government policy. He held a contest to design a hydrogen bomb in which the winner would be decided to people who his/her invention was categorized as a secret by the Department of Energy. In addition, Hansen also wrote a letter to the Senator Charles Percy and also forwarded another letter to some of the newspaper in the US, which outlining his own version of hydrogen bomb secret, similar to Morland's article.

The Madison Press Connection, one of small newspaper in Wisconsin, felt sympathetic and then loaded the publication on September 16th 1979. On the next day, unexpectedly the government revoked the lawsuit against The Progressive because they thought the secret of hydrogen bomb had been leaked. Finally, The progressive in its issue of November 1979 created a full-page of Howard Morland's article with the headline "*Secrets of Hydrogen Bomb, How to get? Why should we express it?*". The article was the study result of library research and Morland's investigation which was loaded based on the original transcript without any changes but included one correction of some errors that was found during the court process.

The ending of this case (debating) was the government had revoked its claim and the Progressive had itself remainly published the article. However, the effect of this case created tension regarding "the interference" of the government to the press freedom and had occurred since the delay of Morland's article in the issuing date on April until the loading of the article in November 1979 edition. In this case, it can be said that at least the delay was for the fulfillment of the rights to know the society.

In the second case further, Pentagon Papers Case, The New York Times dan Washington Post had published the articles about Daniel Ellsberg's confessions who leaked the secret information about the involvement of the US in the war in Vietnam which famous at Pentagon Papers. In the article, it was loaded about the policy and the planning of the use of military force in such a way that the direct involvement of American troops, helicopters, heavy weapons (including the chemical weapons and napalm). So that in 1965, there was 184.000 of US troops in Vietnam, and continued to increase in 1966 as many as 385.000 troops. In 1969 it reached 542.000 troops of whom 51.000 personnel were killed, 270 wounded-had not been- lost and the cost was US\$ 150 billion.

Actually, the political intervention of the US in Vietnam was because its commitment to steam the spreading of communist influence in the region gradually with using the domino-effect politic. The use of military force was carried out on a large scale which led to the outbreak of *hell-war* which by Daniel Ellsberg, Albert Speer, Milton Mayer, Heinrich Himmler dan Nietzsche, saw it as a war which led America to a crime, brutality, human rights violations and injustice, as well as the impact of historical, political and economic area. The United States government should be responsible.¹

¹ Daniel Ellsberg, *Papers on The War*, Simon and Schuster, New York, 1973, pp. 201, 289, 292.

The government complained to the court and claimed to the New York Times & Washington Post in order to stop reporting about the Pentagon Papers as an act of leaking confidential information which endangered the government. After a lower court, the Supreme Court checked, trailed the case and took the decision that 6 (six) people opposed the government's efforts to stop the publication of the Pentagon Papers, while 3 (three) others were not opposed.

Finally, both of these cases proved that the withdrawal of government's claim against The Progressive on appealing showed the government's recognition as the Executive Institute of the freedom of the press. It was also a Supreme Court decision against the government's efforts to stop the the preaching of the Pentagon Papers by the New York Times and the Washington Post, was a protection against the doctrine of freedom of the press in the First Amendment. The Executive and Judicial attitudes became the symbol of the popular social stability.

Learning of those both cases as mentioned above provides understanding of the limits of press freedom. It means that the limit of the press of freedom would restrict itself. The freedom of press becomes the 4th branch of government which is a symbol that could not be reached by the three branches of government in America. The press responsibility is not a restriction of the press freedom but as "*a blanket*" of freedom of the press itself.

4. The Pattern of Relation between Press and the US President

The press and the government could not be separate and even despite there always occurs the tension between them. The press sometimes fights and protects the public interest to the disclosures of the investigation result to deviate of the government practices or the government uses the press as a vehicle to explain the various programs and the government policies. Even the press can be a partner of one candidate who won the president election.

In this context indeed, there are still many other things that could be packed to become the news which has a selling points to the society. All of those things create a reciprocal relations of the government and media that could not be eliminated. Even, it had felt the ebb according to times, the public, and especially the one who become the super power. Both of the government and the press have interest relationship and they support one to each other. Moreover, mass media indirectly hold the important role to support America as the media country where the media has become one of vital elements of the American public institutions system.

The Media historically plays role and participation in the life of the US society and the US government either in the American Colonies, in the early days of America as an independent nation, or also in the modern era. In the American Colonies, the connection between the press and government has an unbalanced or unhealthy relation where the press is under pressure. In this time, it is a threatening of the Colonies to apply a censorship system and press licencing which applies strictly in the UK. It was not surprising that the first printed of the newspaper in the American Colonies "Public Decurences" held by Benjamin Harris in 1690 had ended fastly. The effect of it, it made the development of the media slowly.

Authoritarian attitude of the government towards the press puts the press was under control to serve the interests of the interest of the government. In the era of the governor Puritan Massachusetts Bay, the press (one or two presses) in the colonies were under the control of the church and religious system. However, due to the need for the press, then inevitably there were also press to adjust and establish partnerships with governments including William Bradford was the first publisher in Philadelphia colony which published laws and almanac that showed all the power control and licenses prior before the publication. John Campbell was also a publisher who managed to establish and publish a private newspaper "*Boston News Letter*" continuously. This success was achieved only because Campbell never interfered the government.

The filling of Zenger to the court colonies in 1735 with the claim of a serious defamation on the other hand showed the willingness of the colonial government to put the control system and licensing to the press at that time.¹ The long drive of press history furthermore characterized by the fight against the authoritarian government with sensor system and licenses. It reflects the struggle of a free and an independent press system as a counterpart culmination of the Bill of Rights, 1791 in which the first amendment was confirmed that "*Congress should not create the legislation that restrict freedom of speech or of the press*".

Since that day of the relationship of the press and the government entered the new phase, the pattern of obstacles are still the same in which one party recognizes the freedom to speak and the freedom of expression, while the other party remains to limit the movement of the press. In some cases after successfully creating and manipulating the media to win the general election, the winner president seems to forget its promise to the press. So that it is rising the tension between them, which often affect the disruption of political stability and the American government. Even it could be dropped from the president's seat or the popularity dropped in the next general election. As the President Washington, wanted the press to report concerning its administration. However, it was strongly opposed by Thomas Jefferson, his ex-cabinet members that resign and found The

¹ William I River, et.al., *The Mass Media and Modern Society*, Holt, Rinehart, and Winston, Inc., New York, 1991, pp.101, 156.

National Gazette which managed by Philip Freneau, a talented journalist who famous as a poet of the revolution. When the President Washington protested to Jefferson on the publication, Jefferson stated that “*in any case, I could control my employees in the employment relationship, but Freneau was the free agent which could edit the National Gazette freely*”.

When Jefferson won the election to be the elected president, he could cleverly arrange the news for the press which was certainly beneficial for its government. On that era, the press became the organ that dominated a politic journalistic thought. The President Jefferson used “the National Intelligence” managed by Harrison Smith to become the source of presidents’ news. Finally, the President Jefferson began to place the restriction over the press. He started on the freedom of expression in which he began to separate the thing that could be controlled or could not be controlled by the government. This implementation of the efficiency system was done by eliminating the president’s conferences and interviews. So, all government’s information was believed and released only by Smith.

In the further development, the pattern of the relationship of the press and the government dominated by the style and the president’s leadership type of each of president characteristic such as President Andrew Jackson who controlled the information in a wide scale by covered himself with the press and promised to pay 12 newspaper. Abraham Lincoln established the government printing office, but declined the offer of some editors as an employee in his journal. So did John F. Kennedy who humorous, dazzling, and dashing. He was the first president that held the live press conference from the television networks. While Lyndon B. Johnson was recorded as the first president that held the informal but mobile press conference in some of places out of the place in White House without the preparation like Haystack, the old White House theater, the spacious East Room or the South Lawn.

Along with the history of the press, it continues to move forward with the goals and vision of the free press which is responsible and struggle to fulfill the public needs about their right to know all the news that they should be known.

5. Conclusion

The doctrine of press freedom in the US has experienced to ups-downs history which was long enough to begin the pro and contra among the government and the press members since the colonial era. It was then embedded in the Declaration of Independence, the Constitution and the First Amendment (Bill of been described in 1791), and the decision – verdict of the Supreme Court in the American media cases.

The press freedom doctrine is strongly associated with the professionalism of the press to fulfill the public’s rights to know every news which should be known, especially about the policies and activities of the government. In the journalists cases, the Supreme court through the judgments has guided the implementation of press freedom doctrine which contain the meaning which also contains in the Constitution and the First Amendment (Bill of Rights 1791). The press freedom doctrine has encouraged the rapid growth of the media industry as put the press as the 4th branch of governments’ authority which separate and independent from the other three branches of government in America. Its presence reinforces the democratic system and harmonization of checks and balances among the executive, legislative and judicial. This is basically the nature of press freedom unearthed and growth in the US as a true doctrine which is universal.

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