

The Urgency of Punishment Incrimination Arrangement for the Violence Agent toward Journalist

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Abstract

In Indonesia, there is no special rule on criminal action which the victim is journalist when he does his profession as journalist. The law or rule protecting journalist if he become victim of heavy or light violence is ruled in the Criminal Code. The Statute number 40 of 1999 on Press arranges the criminal action resulting in blocking and obstructing the journalist work.

This study takes title: The urgent of punishment incrimination arrangement for the criminal agent of violence toward journalist who conducting his journalist profession in the Statute Number 40 of 1999 on Press, and the focus revealed are: what the Urgency of Punishment Incrimination Arrangement for the Criminal Agent of Violence toward Journalist who conducting his Journalist Profession in the Statute Number 40 of 1999 on Press are?

Theoretically, the research hopefully becomes discussion material and gives opinion assistance especially on press law, related to punishment incrimination arrangement for the criminal agent of violence toward journalist who conducting his journalist profession. Thus, it achieves legal protection for journalists when they do their job and also obtains the legal certainty. Practically, this research is required to give addition to policy formulation in order to make legal policy protecting the journalists from criminal action when they do the profession.

This study is normative legal research using approaches of statute, comparison, history, and philosophy. The research result and finding covered: The Punishment Incrimination for the criminal Action toward Journalist is necessary to immediately be arranged in the new regulation because until today there is no formulation yet (*Vacum of Norm*).

A. Introduction

Indonesia is a country based on a legal fundamental. One of the purposes of the legal existence refers to give *integration* and coordination toward any interest that may result in contradiction for each party.¹ According to Satjipto Rahardjo, the purpose of legal existence is to give protection toward interest had by any person, by deciding how wide the authority he has.² The authority means a right. One of the right forms, for example, related to profession of journalist³. The national press where the journalist included has right to find news and spread the packaged news to the mass media. The journalist's rights are protected in regulation or statute.

Pancasila as the national ideology, characteristic and fundamental, as well as ideology of the Indonesian Republic, becomes main base of journalist work in find, obtain, and spread information to the wide society. The journalists who work to collect information to provide to the public are guaranteed in Act 19 of the Declaration of Human Right Universal (DUHAM) in 1948 that is:

“Anyone has right of freedom to have and give opinion; in this case including freedom following opinion without getting disturbance, and to find, accept and give information and opinion in whatever the way and without focusing the limitation”.⁴

The Declaration of Human Right Universal (DUHAM) has been ratified in several countries including Indonesia. In the Indonesian Constitution that is the Fundamental Constitution of Indonesia of 1945, Act 1 verse (3) states: “Indonesia is legal country”.⁵ Indonesia has stated that the citizen has equal position in the law, stating in Act 27 verse (1) of the Fundamental Constitution of Indonesia of 1945: “All citizen have the same position in the law and the government and have duty to keep the law and government with no exception”.⁶

In fact, the journalist refers to someone having activity to write news in report form (text). The report then is reported in newspaper, radio, magazine, television, and online media (internet)⁷. The journalist in the

¹Siregar, R.H. dan Ignatius Haryanto, *Membangun Kebebasan Pers yang Beretika*, (Jakarta: Dewan Pers Yayasan Tifa, 2006), hlm.43

²Satjipto Rahardjo, *Ilmu Hukum*, (Jakarta: Citra Aditya, 2008), hlm.17

³Soehoet, Ali Moechtar Hoeta, *Etika dan Kode Etik Komunikasi*, (Jakarta: Yayasan Kampus Tercinta IISIP, 2002), hlm.37.

⁴Pasal 19, Deklarasi Universal Hak Azasi Manusia (DUHAM) Tahun 1948

⁵Pasal 1, Ayat (3), Undang-undang Dasar Negara Republik Indonesia Tahun 1945

⁶Ibid, Pasal 27, ayat (3)

⁷Ach Basuni, *Dasar-Dasar Jurnalistik*, Surabaya, Penerbit Kartika, 2003, hal.67

Statute number 40 of 1999 on the Press means “a person who regularly does journalistic activity”.¹ Whereas journalist in Acts 1 and 3 of the Statute Number 11 of 1966 on Press, it states²: “Journalism is job/activity/ afford related to collecting, calculating and broadcasting in forms of fact, opinion, review, pictures and others to company, radio, TV and film”.

As the person who has job to find and collect as well as spread the information, the journalist is protected by the Law in Act 18 verse (1) of the Statute Number 40 of 1999 on the press:

“Anyone who against the law in purpose to conduct action resulting in blocking or obstructing the regulation implementation of Act 4 verses (2) and (3) is liable with prison sentence maximum 2 (two) years or fine maximum Rp. 500,000,000.00 (Five hundreds millions).”³

Act 4 verses (2) and (3) of the Statute Number 40 of 1999 on the Press state: (2) Toward national press, there is no censoring, muzzling or forbidden broadcasting. (3) To guarantee the press freedom, national press has right to find out, obtain, and spread the idea and information.⁴

In his job, the journalist often faces with individual or institution blocking the job of journalist using violated action. The legal process of the criminal person toward journalist who refers to informational searcher and gives them to public, must be kept strong. The criminal doer deserves for heavy punishment that different from ordinary victim not from journalist. The punishment incrimination toward criminal doer with journalist as the victim becomes necessary to be arranged for the journalist when conduct his job meaning he does the order of the statute and work to media where media is one of four pillars in democratic country.

Moreover, the work of journalist has necessary role in fulfill the right to know what others have. “The journalistic activity means activity of calculating daily report attracting public from the interview to broadcast it to the society”.⁵ The criminal deed toward journalist will give influence to the quality of broadcasting, including decrease the fact might be given to society.

Based on the ontology term, the journalist job refers to profession work specially protected from criminal action in doing his job that full of risk. Thus, there must be protection and legal certainty for journalist plays as the Human Right executor and do his job based on the Statute.

In Epistemology meaning, in purpose to achieve legal protection and certainty for the journalist in their work, it needs more detail and clear regulation or rule. Finally, its axiology or purpose is work protection of the journalist profession and legal certainty will result in maximum work achievement, that the informational access opens and the society right to obtain information fulfill. The juridical problem comes in the form of *vacuum of norm*. Meaning, there is no rule of punishment incrimination for criminal conductor toward journalist when they do the profession of journalist, based on the Statute of press.

B. Formulation of Problem

In line with the above fact, it formulates the problem : What the urgent of punishment incrimination arrangement for the criminal doer toward the journalist conducting his profession in the Statute Number 40 of 1999 on Press.

C. The Research Purpose

The research purposes to describe, and analyze the urgent of arrangement for criminal conduct toward the journalist when he does his job in the Statute Number 40 of 1999 on Press.

D. Research Methodology

This study uses normative legal research, that the research examining the regulation per statutes in a coherent legal arrangement,⁶ of law as positive norm applying in time as a product of certain authority. This normative legal study refers to legal research putting law as a building of norm system, such as bases, norms, regulation principles, court decision, threaty and doctrine.⁷

E. Result of the Research

Based on the previous study, it found some cases in line with blocking and obstructing the journalist in doing his job. Some cases of blocking and obstructing in the form of violence have come into the court and have been decided by the judge, with punishment based on the Criminal Code (KUHP) and some have been decided based on the Statute Number 40 of 1999 on the Press and others did get into the court.

¹Pasal 1 ayat (4) Undang-undang Nomor 40 Tahun 1999 tentang Pers

²Pasal 1 dan 3, Undang-undang No. 11 Tahun 1996 tentang pers

³Pasal 18 ayat (1) Undang-Undang Nomor 40 Tahun 1999 tentang Pers

⁴Ibid Pasal 4 ayat (2) dan ayat (3)

⁵Kustadi Suhadang, Pengantar Jurnalistik, Seputar Organisasi dan Produk, Penerbit Nuansa, Bandung, 2004, hlm 2

⁶Soetandyo Wignyosubroto, Sebuah Pengantar ke Arah Perbincangan tentang Pembinaan Penelitian Hukum dalam Pembangunan Jangka Panjang Tahap II, Jakarta: BPHN Departemen Kehakiman, 1995, hlm. 5.

⁷Mukti Fajar N. D. dan Yulianto Achmad, Dualisme Penelitian Hukum Normatif dan Empiris, Yogyakarta: Pustaka Pelajar, 2010, hlm. 34.

Whereas the case of criminal conduct to the journalist in form of violence resulting in the dead of the victim, it have noted eight person dead since 1996. The eight journalists who dead cover as Muhammad Fuad Syahfrudin or Udin (journalist of daily Daily bernas Yogyakarta died in 1996), Naimullah (the journalist of Sinar Pagi daily, West Borneo died in 25 July 1997), Agus Mulyawan (the Journalist of Asia Press died in Timor-Timur, 25 September 1999), Muhammad Jamaludin (the Journalist of TVRI in Aceh, died on 17 June 2003), Ersu Siregara (the journalist of RCTI died on 29 December 2003), Herliyanto (the journalist of Delta Pos tabloid, died on 29 April 2006), Adriansyah Matra'is Wibisono (the journalist of Local TV local in Merauke, died on 29 July 2010), and Alfred Mirulewan (the journalist of Pelangi tabloid, Maluku, found died on 18 December 2010).

Table

The Threat toward Journalist based on the Violence Types 2008-2012
 Taken and collected from Independent Journalist Alliance (AJI)¹

No	Category/Type of Violence	2008	2009	2010	2011	2012	Total
1.	Murder	-	1	4	1	-	6
2.	Eviction & Forbidden to Cover	9	3	7	8	5	32
3.	Censor	3	2	3	3	1	12
4.	Physical Attack	21	18	16	17	17	89
5.	Legal Claim /Suit	6	7	6	2	2	23
6.	Destruction and Tool holdup	-	-	2	3	9	14
7.	Threat, Terror, intimid.	8	1	6	10	15	50
8.	demonstration & Mass Movement	1	3	2	2	2	10
9.	Attacking Redactor O	-	-	4	2	2	8
10.	Kidnapping/ Locking up	-	1	2	1	2	6
11.	Attack of breaker through		-	-	-	-1	1
12.	Mysteriously dead		-	1	-	-	1
-.	Total	58	36	53	49	56	252

The physical attack still dominates the violence cases suffered by the journalist in Indonesia. For last five years, it has happened 89 physical attack cases suffered by the journalist. Threat, terror, and intimidation place in the second list with 50 cases, while eviction and broadcasting forbidden dominate with 32 cases.

Based on the data result of violence cases suffered by the journalist when doing his job to give the information to any society from 2007 to 2015, the cases of violence toward the journalist had been solved in the court, and obtained decision from the judge covered first, the case of the journalist Fuad Muhammad Syafruddin, the judge decided that the claim of Udin decided to grant as Marsiyem claim. Serma Pol. Edy Wuryanto was decided guilty for having conducted action against the law. Whereas in line with the senior of Serma Edy Wuryanto, the judge was ignored it in the reason that the action of Serma Edy Wuryanto referred to personal and not based on the senior order. Second, the case of the journalist from Radar Bali (Jawa Pos Group), AA Gde Bagus Narendra Prabangsa or called Asa, was decided by the judge that Nyoman Susrama, who was suit for dead sentence by the Public Prosecutor, was liable for life time sentence. Then, Komang Gde ST was given 20 years in prison. Previously the JPU demanded Komang Gde ST with life time sentence. Next, IB Narbawa or Gus Oblong previously demanded for 2,5 years in prison got sentence 5 years in prison minus arrest period.

In line with Act 18 verse (1) of the Statute Number 40 of 1999 on Press, there is term of obstructing interpreted in act 4 verses 1 to 4, stating:

1. The Press Freedom is guaranteed as citizen right.
2. For the national press, there is no censoring, muzzling or broadcasting breaking.
3. To guarantee the press freedom, the national press has right to find, obtain and spread the ideas and information.

¹ (<http://advokasi.aji.or.id/index/data-kekerasan>)

4. In taking the responsibility to the news in front of law, the journalist has right of refuse.

According to Press Committee regulation, blocking and obstructing means violence action conducting by institution or individual toward the journalist who conducting his profession. The Press Committee explains in detail the violence formula as follow: "Violence toward the journalist refers to violence toward the journalist who working his journalist profession or violence resulted from his journalistic product."

The form of violence covers: 1). Physical violence including minor cruel threatment, heavy cruel threatment, torturing, locking up, kidnapping, and murder. 2). Non-physical violence including verbal threat, humiliation, use underestimate words, and insulting. 3). Destruction of broadcasting tools such as camera and recording tool. 4). The efforts to blocking the journalist work to find, obtain, have, keep, calculate and give the information, by holdup the working tools of the journalist or any action that obstructing the journalist job that the journalist cannot process his journalistic duty. 5). Other violence forms toward the journalist are stated in this guidance in line with definition arranged in the Criminal Code and the Statute Number 39 of 1999 on Human Right (HAM).¹

The sociological problem covers the development of journalist society claim for punishment incrimination for violence actor toward the journalist who working his journalistic profession in the Statute Number 40 of 1999 on Press.

According to researcher review, the interpretation of Act 18 verses (1) of the Statute Number 40 of 1999 on Press includes violence action. The writer investigate of minutes of Indonesian Representative Committee (DPR-RI) written in a book *Memorie Van Toelichting* the Statute Number 40 of 1999 on Press, *15 Hari Perjuangan untuk Kemerdekaan Pers*, where including that action to *blocking or obstructing* the journalist work refer to illegal, in the form of violence case, such as hit or arrest someone with no reason.²

The opinions of each fractions of in DPR-RI vary, stated that the word blocking and "*obstructing*" in act 18 verse (1) of the Statute Number 40 of 1999 on Press refers to legal subject conducting action against the law in line with criminal action in the Criminal Code. The forms of criminal action cover: torture, hit, and other action forms.

Whereas, the Press Committee in 2013 stated that the meaning of the word blocking and obstructing, in act 18 verse (1) of the Statute 40 of 1999 on Press, referred to violence action, may be in form of physical or psychological, and the doer may be from individual or institution. The forms of violence existence, still suffered by the journalist in doing his job, include psychological violence or physical one. The physical violence, such as holdup the working tool of journalist; block note, pen, camera and other working tools. The psychological violence includes obstructing the journalist in doing his profession.

Act 18 verse (1) includes the word blocking and obstructing referring to Act 4 verses (2) and (3). Act 4 verse (2) states: "To the National Press, there is no censoring, muzzling, or forbidden of broadcasting". There are three things considered to blocking and obstructing individually or institutionally may be liable for punishment in the Statute Number 40 of 1999 on Press, including:

1. Institution or individual conducting censor.
2. Institution or individual conducting Muzzling.
3. Institution or individual conducting forbidding broadcasting.

Of the three things above, in fact, the forms may be varying, for example censoring, the form is holdup the journalist working tools in location such photos or recorder. Then, the camera or recorded are erased, in order it does not appear in newspaper, radio or TV. The blocking action may be in the form of threat, if the news appear, the journalist will be murder, for example. Also, the journalist gets phone call from the related person in order not to put the event into news by giving money.

The second problem of blocking or obstructing uses muzzling. Today, there is no muzzling case toward the press; muzzling means take the permission or close down the press company. Thus, the effect of obstructing and blocking action hit the press company not the journalist individually. The third action of blocking and obstructing as criminal action is broadcasting forbidden. For example, using threat, *watch out! If the news appears, the journalist will be killed, or tortured*. The concrete form of the fourth blocking and obstructing is stated in Act 4 verse (3) stating: "To guarantee the press freedom, the national press has right to find, obtain, and spread the ideas and information."

Blocking and obstructing indented in Act 4 verse (3), as interpretation or explanation of act 18 verse (1) refers to:

1. Institution or individual blocking and obstructing the journalist or press in collecting news.

¹ Peraturan Dewan Pers, Pedoman Penanganan Kasus Kekerasan Pada Wartawan, Dewan Pers, 2012

² Dyah Aryani, S. H., M. H., dkk., *Memorie Van Toelichting Undang-Undang Nomor: 40 Tahun 1999 tentang Pers*, 15 Hari Perjuangan untuk Kemerdekaan Pers, IMLPC (Indonesia Media Law and Police Centre), Jakarta, 2007, hlm. 493.

2. Institution or individual blocking and obstructing the journalist or press to obtain news.
3. Institution or individual blocking and obstructing the journalist or press in broadcasting the ideas and information in media.

The explanation of the Statute number 40 of 1999 toward act 4 verse (3) is clear enough. However, according to the researcher, the right to find, obtains and broadcast ideas and information belong to the journalist. For the subject who finds and obtains the news is the journalist individually. While the instrument of broadcasting the ideas and information covered by media or press nationally or locally. Thus, the third point refers to right given by the Statute to the institution in this case the media companies and journalist as individual who find and get the news. The writer believes that act 4 verse (3) including the journalist right to find and get the news is quite clear.

The main urgency reveals that journalist as the informer to public. If working to apply the Statute, he get blocking and obstructing action, it is logically the doer as the legal subject get punishment more compared to ordinary people who becomes the victim. Therefore, this dissertation investigates on the Policy of Punishment Incrimination Formulation for Violence actor toward the Journalist who Working his Profession in the Press Statute.

Meanwhile, in order that the criminal action suffered by the journalist will never ever happen, it needs special regulation related to the case. The reason can be in order to prevent the criminal cases toward the journalist happen. Although the special regulation of press already existed, in the form of the Statute Number 40 of 1999, the Statute shows some deficiencies that need to improve especially on punishment incrimination for the criminal actor toward the journalist who working his profession.

F. Conclusion

Based on the research conducted, the conclusion reveals: the arrangement of punishment incrimination for the criminal actor toward the journalist who conducting his profession is necessary to formulate because: this arrangement related to the Statute number 40 of 1999 on Press has not been formulated until today.

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