

The Interpretation of Inhibiting and Obstructing in the Act 18 of the Law Number 40 of 1999 on the Press

Zainal Arifin¹ I Nyoman Nurjaya² Prija Djatmika³ Nurini Aprilianda³

1. Doctoral Candidat of Criminal Law, Law Faculty of Brawijaya University , Malang

2 Professor of Antropology of Law, Law Faculty of Brawijaya University , Malang

3. Associate Professor of Criminal Law, Law Faculty of Brawijaya University , Malang

Abstract

This study on the interpretation of inhibiting and obstructing in the Press Law appears as the result of, till today, many law executors have not yet applied the Law of Press to give decision any conducts that block and obstacle done by individual or institution toward the journalist who in duty of his journalist profession. For that reason, the writer takes the problem statement on: The interpretation of inhibiting and obstructing in the Act 18 verse 1 of the Law Number 40 of 1999 on Press. The study purposes to find out and analyze the real meaning of the words inhibiting and obstructing in the same Act. The research uses method of normative legal study. Having conducted the study, some conclusions were found: the meaning of inhibiting and obstructing in the Act 18 verse (1) of the Law Number 40 of 1999 on Press till today has not been formulated precisely and correctly, therefore it is still uncertain or vague.

Keywords: The interpretation of inhibiting and and obstructing, the Press Law

A. Introduction

The Act 28 E verse (3) of The Indonesian Fundamental Constitution of 1945 has guarantee everyone freedom to follow organization, and give opinion. The press including printed media, electronic media and online, becomes one of intruments to give opinion for the Indonesian people. The function of giving opinion maximumly via medias and freedom of press are needed because the press freedom refers to one of people integrity forms and necessary element in democratic society, country and state life. In the democratic life, responsibility to the people can be guaranteed, when the system of conducting the country is transparent and justice and truth reveal.

The press having freedom to find and give information is necessary to create Human Right in Indonesia guaranted using the Decision of People's Consultative Assembly of Indonesian Republic Number: XVII/MPR/1998 on the Human Right, stating that: Everyone has right to communicate and obtain information. The guarantee is in line with the United Nations Charter on the Human Rights Act 19 stating: "Everyone has right on freedom to have and give opinion; including freedom to have opinion without any bother, and to find, accept, and give the information and idea via any kind of medias and not limited by areas borders".¹

The press freedom becomes one of people democratic forms and ecessial element to create democratic society, country and state life. The democratic society, country and state life, freedom to give idea and opinion based on the deepest heart and the right to obtain information, belong to the truth of human right, needed to keep the justice and the truth, develop the general welfare, and educate the national life. The national press as the place of mass communication, informational spreader, and opinion crator must be able to do its fundamental, function, right, responsibility, and role in better way based on the professional press freedom, thus it needs guarantee and legal protection, as well as freedom from any influences and forces.

According to Act 18 verse (1) of the Law Number 40 of 1999 on the Press, it states that:

"Everyone who legally againts the law by conducting action that result in inhibiting and obstructing the implementation of Act 4 verses (2) and (3) is condemned with in prison sentence maximum 2 (two) years and fine maximum Rp. 500,000,000.00 (Five hundreds millions rupiah)."²

The Act 4 verses (2) and (3) of the Law Number 40 of 1999 on Press states: (2) Toward the national press, it does not applied censoring, bans or restriction broadcasting. (3) To guarantee the press independence, the national press has rights to search, obtain, and broadcast ideas and information.³ In the Law Number 40 of 1999 on Press, it does not explain in detail and certain on the meaning of inhibiting and obstructing, thus the understanding on the Act 18 verse (1) is still vague.

B. Problem Statement

Based on the above explanantion, it formulates the problem statement: What the meaning of inhibiting and obstructing being stated in the Act 18 verse 1 of the Law Number 40 of 1999 on Press?

¹ Act 19, *The Universal Declaration of Human Right* (DUHAM) of 1948

² Act 18 verse (1) *The Law Number 40 of 1999 on Press*

³ *Ibid* Act 4 verses (2) and (3)

C. Research Purpose

This study purposes to find out and analyze the real meaning of inhibiting and obstructing in the Act 18 verse 1 of the Law Number 40 of 1999 on Press.

D. Research Method

The research uses normative legal study as its method.

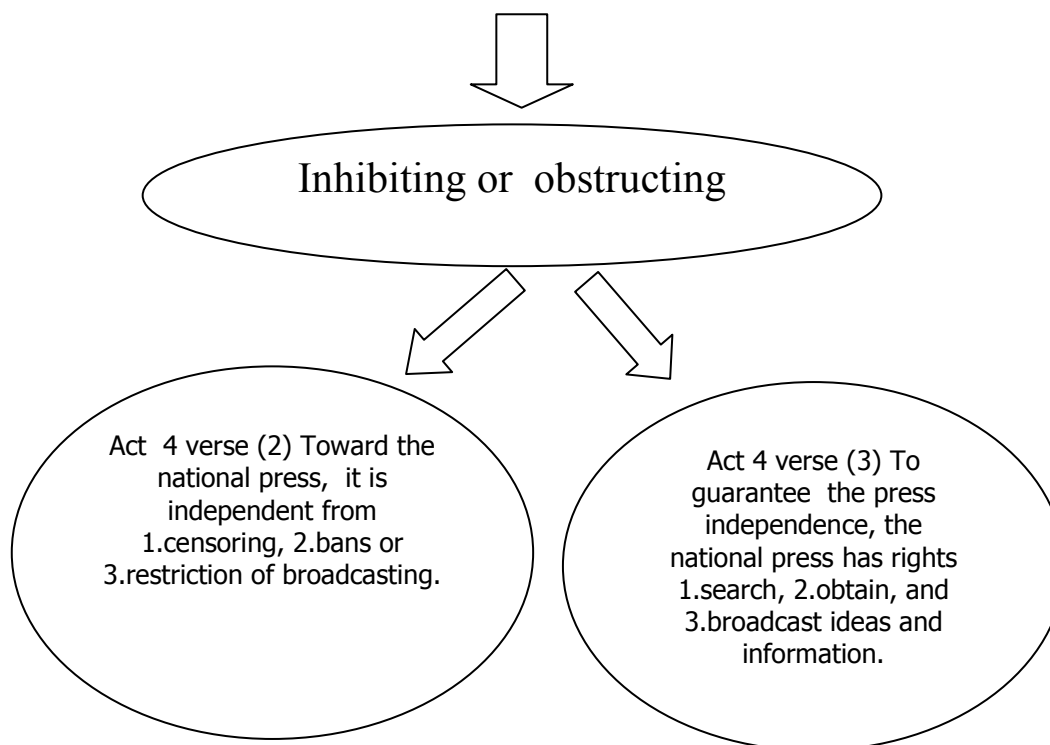
E. Research Findings

The Law Number 40 of 1999 includes several penal regulation that arranged in Chapter VIII, Act 18 verses (1), (2), and (3) of the Law Number 40 of 1999 stating as follow:

- a. Everyone legally againts the law by conducting action that result in inhibiting or obstructing the implementation of Act 4 verses (2) and (3) is condemned with prison sentence maximum 2 (two) years or fine maximum Rp 500,000,000.00 (Five hundreds millions rupiah).
- b. The Press company that againts the regulation Act 5 verses (1) and (2), and Act 13 is condemned with fine maximum Rp 500,000,000.00 (Five hundreds millions rupiah).
- c. The Press company that againts the regulation Act 9 verse (2) and Act 12 is condemned with fine maximum Rp 100,000,000.00 (A hundred million rupiah).

The understanding of Act 18 verse (1) of the Law Number 40 of 1999 on Press can be searched in the minute of hearing. The following is the understanding path of the penal act.

"Everyone legally againts the law by conducting action that result in ***inhibiting or obstructing*** the implementation of Act 4 verses (2) and (3) is condemned with prison sentence maximum 2 (two) years or fine maximum Rp 500,000,000.00 (Five hundreds millions)."¹



Explanantion: 1.National Press: Press conducted by the National Press company.

Forms of inhibiting and obstructing:

- | | | |
|----------------------------|--------------|--|
| 1.Censor | Press Rights | Journalist Rights |
| 2.Bans | 1.Have | 1. Right to search |
| 3.Broadcasting restriction | 2.Analyze | 2. Right to obtain |
| | 3.Keep | 3.Spread idea /Information. |
| | | 4.Right to reject revealing the News Sources |

The meaning of inhibiting or obstructing in the explanation of Act 18 verse 1 has been written clearly, however, in fact the act is vague, what if a question reveals on where the position of the journalist in the act. The one who should be protected is the journalist, meaning that the institution. It is strengthened by the issue of Act 1 of the Law Number 40 of 1999 on Press stating:

“Press is a social institution and mass communicational place conducting the journalistic activities including search, obtain, have, keep, analyze, and spread the information in the written, voice, picture, voice and picture, and data and chart or other forms using medias of printed, electronic, and any kinds of available channels”¹.

The journalist is someone who regularly conducts the journalistic activities, that include: search, have, keep, analyze, and spread the information. In the Act 4 verse (3), the journalist has three rights 1. To search, 2. To obtain, 3. To spread the idea and information. In the Act 8, it states that the journalist gets legal protection, meaning that the protection on the three rights as stated before plus the right to refuse, as what stated in the Law Number 40 of 1999 on Press, Act 4 verse (4): “In giving his responsibility of broadcasting in front of the law, the journalist has right to refuse”. The right to refuse then stated in the Law Number 40 of 1999 on Press, Act 1 verse (10) : The Right to Refuse is the journalist right to refuse name and or other identities of the news sources that must be kept in secret. Then, what about the other rights to 1. have, 2.keep, 3.analyze, other acts do not explain about them.

What if the journalist in conducting his profession *being hit or persecuted*? There is no clear protection. In the Act 18 verse (1), it writes **result in inhibiting and obstructing** of the implementation of Act 4 verses (2) and (3). In other words, the act still has **Uncertain Meaning (Vague of Norm)**

Forms of inhibiting or obstructing:

- | | |
|------------------------|------------------------------|
| 1. Censor | Hak Pers / Wartawan |
| 2. Bans | 1. Search |
| 3. Forbid to broadcast | 2. Obtain |
| | 3. Spread idea/ information. |
| | 4. Right to refuse. |

What if the journalist being hit or persecuted or kidnapped when he does his journalistic profession? Till now, this item is arranged in the Criminal Code.

The journalist demand if there is journalist who conducts his profession being persecuted, the doer is condemned with the Act 18 verse (1) of the Law Number 40 of 1999 on Press. The question is Can this happen? Because it states clearly that anyone who **result in inhibiting and obstructing** (Censor, bans and forbid to broadcast). These three things are considered as inhibiting and obstructing.

Censoring in the Law Number 40 of 1999 on Press on Act 1 verse (8) is stated: Censoring is forcibly elimination a part or whole informational material being issued or broadcasted or warning action or warning with threatening purpose from any parties and or responsibility to report and get the permission from party in charge in conducting the journalistic activities. Whereas, in the law Number 40 of 1999 on Press in Act 1 verse (9), it states: Banning or forbidding to broadcast is stopping publishing and circulation or broadcasting forcibly or against the law.

In the minute of hearing discussing the meaning of **inhibiting and obstructing, it runs difficultly**. Each fraction gives idea using different argumentation.

The Decision of Working Meeting **1 September 1999**
 Page.831 The Minute of Hearing Book

N0.	The Law Draft	The Decision of Meeting
23	3) Any conduct result in inhibiting or obstructing the implementation of press function as stated in the verses (1) and (2) are forbidden.	Formulation Team Note : 1. Discussion of the verse (3) is moved, together with "act of forbidden". 2. The word "conduct" is discussed or eliminated/changed.

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¹ Act 1 The Law Number 40 of 1999 on Press

NO.	THE LAW DRAFT	THE MEETING DECISION PANJA	FIRST FORMULA
92.	(2) anyone who againts the rule of Act 4 verse (1), Act 6 verse (2), Act 7 Verse (2), Acts 10 and 12 is fine for at least Rp. 10,000,000.- (ten millions rupiah) and maximum Rp. 100,000,000.- (ten millions rupiah).	TIMUS Note : 1. The substance and formula have been agreed by eliminating the minimum penal fine, the addition words "againts the law". 2. The appropriatness of pointing the act	(2) Everyone who againts the rule Act 4 verse (1), Act 6 verse (2), Act 7 verse (2), Act 10 and Act 12 is fine for maximum Rp 100,000,000.- (ten millions rupiah).
93.	(3) The reductor who is againts the law act 4 verse (2) is fine with minimum Rp. 10,000,000.- (ten millions rupiah) and maximum Rp. 100,000,000.- (ten millions rupiah).	TIMUS Note : The substance and formula are agreed with elimination of minimum fine.	(3) The reductor who is againts the law, act 4 verse (2) is fine with maximum Rp. 100,000,000.- (ten millions rupiah).
94.	(4) Everyone who is againts the Law acts 8 and 9 is fine with minimum Rp. 100,000,000.- (ten millions rupiah) and maximum Rp. 1,000,000,000.- (one billion rupiah).	TIMUS Note : The substance and formula are agreed by elimination of minimum fine.	(4) Everyone who is againts the law acts 8 and 9 is fine maximum Rp. 1,000,000,000.- (one billion rupiah).

The Meeting Desicion 1 September 1999
 Page.831 The Book of the Minute of Hearing

N0.	The Law Draft	The Meeting Desicion
23	3) Every action resulting in inhibiting or obstructing the implementation of the press function as stated in the verses (1) and (2), is forbidden.	Formulating Team Note : 3. The Discussion of the verse (3) is moved, together with "Act of forbidden". 3. The word "action" is discussed or eliminated/ changed.

82.	Act 14 (1). Everyone who in purpose bonducts action resulting in inhibiting or obstructing the implementation of Acts 2, 3 and 5 is condemned with sentence minimum 1 (one) month and maximum 1 (one) year and fine minimum Rp. 10,000,000.- (ten millions rupiah) and maximum Rp 100,000,000.- (ten millions rupiah).	The formulating team Note : The substance and formula are agreed by eliminating the minimum fine.	Act 14 Everyone who inpurpose legally conducts action resulting in inhibiting or obstructing the implementation of the law Acts 3 and 5 is condemned with sentence maximum 1 (one) year and fine maximum Rp 100,000,000.- (ten millions rupiah).
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The Material meeting of Small Team 3 September 1999, Page 1037

The elimination of minimum sentence are recorded in the minute of hearing of The Representative Committee (DPR). The decision that the formula of Act 14 by the small team considered quite clear. It showed from the book of the minute of hearing page 1078 line 26 and 27.

Then, it followed with the fifth meeting on discussion of Problem Filling List (DIM) dated 8 September 1999. In the Comittee meeting (panja, the Act 14, not discused). Next, the fourth Meeting on 9 September 1999 at 10-12 am., the argumentation on Chapter IV of the Criminal Law was given by Aryasa from Fraction of ABRI.

In the Page 1174, Aryasa stated: "Act 18 verse (1) everyone who in purpose legally conducts action

resulting in inhibiting or obstructing the implementation of the law act 4 verses (2) and (3) is condemned with sentence maximum 2 years in prison or fine maximum 500,000,000.- (five hundreds millions Rupiah)”¹

Usman Umayah from FPP stated that act 18 explanation of verse 1 is quite clear. The precess of understanding Act 14 keeps continuing in the last opinion of Fraction gfraski on 9 September 1999. The last opinion of the Fraction Fraksi PDIP stated that everyone who in purpose legally inhibits or obstructs the Press independence, by doing censoring, banning of inhibiting (Act 4 verse 2) or blocking the rights to search, obtain, and spread the ideas and information (Act 4 verse 2), is condemned with sentence maximum 2 (two) years in prison or fine maximum Rp. 500,000,000.- (five millions rupiah).²

Several fractions stated that the product of the press laws had equality between Libralist and limitations of national press. What should be note from the writer is that all fractions agree on the formulation of the laws although small part of them cannot understand clearly the point being arranged.

However, in the Perspective of FPDI, they confessed that the Press Law still has weakness including in protection of the journalist in duty, accomodated in Act 8 of the Press Law, the note covered 7 items, one of them discussed on the legal protection in third note. “The journalist in conducting his profession gets legal protection (Act 8), in the explanantion, discussed that “The meaning of the legal protection here is protection guarantee from the government and or society to the journalist in doing his fuction, right, duty and role in line with the law. The law is still in general meaning where the fact in the certain case, the journalist becomes the target and victim, such as in the case of Udin in Jogya, the journalist in Aceh who died to the case in East Timor who being taken the photos, and threatred his safety. Hopefully, the future president and DPR can formula a specific and strict regulation on the protection forms.”³

From the opinion of F PDI, it is clear that in the Press Law considers incomplete and unspecific. Whereas the journalist protection and the criminal rule, according to the F ABRI via Arysana, the same as ordinary citizen. This opinion stated in the last statement of the last meeting on 9 September point 3 and 4:

“The problem of protection on journalist profession. In the discussion in the level of Working Committee, it agreed on the additional opinion that ask to include in the Act of Law Draft on protection toward journalist profession by the country. The Fraction of ABRI suggested that the protection is given to the journalist the same as protection given to the citizen in general, thus the formula becomes the journalist in doing his profession obtain the law protection. 2. The criminal law. The Fraction of ABRI suggested that the criminal law toward those who conducting the violation whether press society or others, becomes wise decision because it has accomodated the implementation of citizen right on protection to the press, and society protection in a whole.”⁴

The meeting chairman, Soenarto explained that the opinion from the fraction ABRI to recheck to formulation Acts 2 and 3:

“It is better to check as the Fraction ABRI suggestion on the Acts 2 and 3, and Act 5, can we agree? It can be considered from justice side, do we agree? Ok, here states every one who in purpose conduct action, Act 2 has been agreed its nimus Act 2 states verse (1) “The national press has functions as media of information, education and intertainment”, verse (2) “Besides the functions in verse (1) the national press also has function as economic institution”, verse (3) **“Every action resulting in inhibiting or obstructing the implementation of press functions as stated in the verses (1) and (2) is forbidden”**, thus, the verse (2) is princplely prohibition toward action that inhibit the press function as media of information, education and entertainmnet and others, such as economic institution. Indeed, one thing we should take for consideration is that a formula, a criminal action must have clear elements, for example whether what considered inhibiting press function as entertainment media or not.”⁵

The fraction FKP through Bambang Sadono, states:

“I just want to give little correction that yesterday the formulas had been completed, thus the developing completeness is that national press has function as media of information, education, entertainment and social control has been agreed, in fact from the beginning FKP wanted to be the function of entertainment even education eliminated because they have included in function of information, it of course has effect on the sanction, that as if the nasional press felt guilty when it does not have function as entertainer, that what we see, and FKP give this opinion felt clear cut to place it. However, it had been agreed, and it may be discussed in Formula Team. It is just whether it unchanges or for example if the idea of FKP may be accomodated in the Formula Team , of

¹ Risalah Sidang Hal 1174

² Risalah sidang 1210

³ Page 1212

⁴ Page 1219

⁵ Ibid

course we would be glad, that what we want to reveal. Also, the verse (2) as given by FKP yesterday to just eliminate, because it does not matter. Thus, if it is agreed, it may result in any problem, because if there is anything confronting, it results in sanction, it was yesterday in the economic institution, if any campus press insists not to do the economic function, he does not want to do business, he does not want this, Thank you sir.¹

Toward the sanction or inhibition and obstruction, the fraction ABRI keeps searching the meaning of inhibiting and obstructing.

“Maybe, there is a solution as stated by FKP if there is any act or verse though it has included but we do not agree to fulfill the sanction, then it has to make it clear, for example the sanction put into Act 2 verse (1), for verse (2) there is no sanction, though the verse (1) still has confrontation, for example item of entertainment, whether it results in confusion or not depends on what happens in the Formula team. We think that there is sanction behind it because it already exists in verse (3), because there is inhibition then results in sanction. Perhaps, take a look at this case, I think we can limit only in this verse. The meeting chairman please to fraction ABRI giving addition through Isnawan, he adds:

“We want clear explanation from the concept of the government, thus when we pay more attention to the verses (1) and (2), the sentence minimum one year, oh sorry, minimum 1 month and maximum 1 year and not or, and fine minimum 10 millions and maximum 100 millions, so I take it the minimum, sentence one month in prison and fine 10 millions as stated in verse (1) and verse (2) for which action, for how inhibition. Yesterday, everytime we said every action, what is the meaning of every action, we need a clarification, I myself do not understand, I am afraid that in the future we just say such as, I do not want to include, in my magazine related to economic problem, then it is considered to be inhibiting, I do not want to include this entertaining kind, it is inhibiting, of course we get dizzy.”

Toward the demand of Fraction, the government through IGK Manila states:

“First, there was rather different understanding such as FKP asking if there was any campus media that did not want to be economic media, he got the it in reverse. These medias can be economic, entertainment, or information, but in their ways he is searching something in line with informational aspect, entertaining aspect or any other aspects that inhibit, that he may get the sanction, not the medias. Thus, everyone in purpose conducts action resulting in inhibiting or obstructing these media implementation, not only economic medias, any kinds medias, sport media, art media health media and many others. However, in the way he searches something, find information using other Acts being inhibited by someone, by group of people, that the person gets the sanction, it is the past understanding, sir. It is only reversed that then there is press that does not look for economy at all, of course it will not be included, but this is about anything that inhibit the press, press with its informational characteristic, its party give information that he searches for certain information, being inhibited, no, I cannot give information by other Act, of course it can get sanction of this Act as the penal sentence, thus we have little reversed on the understanding, it is not the media that we will arrange that they must be economic, they must include this, no. Such as permission, till today it may be vary, there is sport tabloid, certain art, share prices, of course they are allowed. But, in searching something related to the media, if there is anyone who inhibits, that the person gets the sanction. Therefore, it is the definition. Next, the second one, we have agreed that the numbers of years and the rupiah are the same and we from the government understood already, in that time, we focused on the nominal in order that the person get cured and would not do it again. If the nominal consider to be too high, let's talk about it, that whether the problem agreed or not let the Formula Team decide it, yet what we explain in this verse is that everyone who inhibits the media activity, whether it is informational media, educational media, entertainment, economic and social, he looks for someone mistake, being inhibited. It also related to one postponed we discussed yesterday as the trial by the press, but we 'have not decided yet, sir, if it not given this number, it results in someone violation with of course in different way, cannot say the complete name, cannot take a camera fully in front of the person and many others, interview with the person being covered the face, the sound may be and others. There are what we need to discuss, it rather different to see not the media, being arranged but the person who inhibit the media activity with many kinds of fields .”²

F. Summary

Based on the research conducted, it concludes that: The arrangement of criminal action toward the journalist when he does his profession needs to be formulated because: the arrangement referred to the Act 18 verse (1) of the Law Number 40 of 1999 on the Press has not been formulated precisely and correctly and seemed to be

¹ 737

² 739-740

unclear or vague, especially on the meaning of inhibiting and obstructing.

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