

Legal Reforms for Improving the Freedom of the Press in Indonesia¹

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Abstract

The political transition from Suharto's authoritarian regime has been marked by significant decentralization which has seriously threatened journalism in Indonesia. Extra-judicial killings, physical violence, the criminalization of certain types of journalism, and a lack of support within the judiciary, have created a dangerous atmosphere for members of the press and have impeded the journalistic process. Under this decentralized model, violence against journalists is now very often perpetrated by members of regional and local political organizations as opposed to agents working on behalf of the national government. Unfortunately, law enforcement has proven ineffective in protecting journalist and the legal system offers little recourse in cases where violence has occurred. In fact, the courts themselves have been used as a tool to censor the media, silence opposition, and intimidate members of the press. The research presented in this paper shows that it is those media institutions which operate under a standard of journalistic professionalism and have attempted to produce honest, unbiased news, which are most often targeted by unjust lawsuits and criminal arraignments. This article also shows a new configuration of political imperium which combines of free press, dominant ownership over media, and the context of illiberal democracy which shapes press freedom in the country.

Keywords: *Indonesia, Freedom of the Press, and Human Rights*

I. EARLY YEARS AFTER THE FALL OF SUHARTO

After the then president of Indonesia, Suharto, stepped down on 21 May 1998, there was a tremendous push for liberalization and reforms affecting all aspects of social and political life. This led to the creation of many new laws, including a number centered on human rights, and the ratification of almost the entirety of the then recognized international human rights norms and standards.² Press freedom was a top priority of this reform movement. On 23 May 1998, Independent Journalist Association (called as AJI) immediately seized the initiative through its call for government to reform the media. Its demands included the removal of the co-opted journalist and publisher organization, the dissolution of press permit offices which hindered the freedom of the press and the public's right to

¹ This article is rewritten and based on author's PhD Thesis, "Press Freedom, Law and Politics in Indonesia: A Socio-Legal Study" (Zutphen: Wohrmann, 2014). Author also thanks to Prof Yuzuru Shimada for improving discussion about the role of Press Council, as our collaboration study during my visit as visiting professor at Graduate School of International Development, Nagoya University, Japan. This article was also presented in Workshop "State, Constitutionalism and Citizenship in Southeast Asia", 18-20 November 2016, Faculty of Law, University of Jember.

² Law 5/1998 on the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, Law 29/1999 on the Racial Discrimination Convention, Law 11/ 2005 on the Economic, Social and Cultural Rights Convention, and Law 12/2005 on the Civil and Political Rights Convention.

information, and the abolition of the SIUPP (printing and publishing license and broadcasting license law. These demands pushed the government and parliament to review the Press Law (21/1982), Minister of Information Regulation 01/Per/Menpen/1984 (on the SIUPP), Minister of Information Decree 47/Kep/Menpen/1975 (on the PWI and SPS Organization).³

In a rather swift respond to the public concerns On June 5 Yunus Yosfiah, the new minister of information, annulled the Ministerial Decree 1/1984 of the SIUPP⁴ and provisions 47/Kep/Menpen/1975 and 184/1978, which both dealt with the regulation of journalists.⁵ On 26 October, President Habibie enacted Law 9/1998 regarding the Freedom of Expression. According to Article 1 of this law, freedom of expression was defined as the right of citizens to express their thoughts verbally, in writing, or by other means, freely and responsibly in accordance with existing legislation. However, Article 3 of the same law stipulated that the following principles should be taken into account regarding the freedom of expression:

- (a) the principle of balancing between rights and duties; (b) the principle of deliberation and consensus; (c) the principle of legal certainty and justice; (d) the principle of proportionality; and (e) the benefit principle.

With the exception of “proportionality” further explanation or clarification for these principles were not included. “Proportionality was explained to mean “that any activity must be in line with its context and purpose, whether conducted by citizens or the government's institutions and apparatus, based on individual ethics, social ethics, and institutional ethics.” While not necessarily precluding the freedom of expression, this is a rather flexible definition which could potentially be abused by authorities. The absence of a further elaboration regarding the other principles posed even more of a problem. For instance, the principle of “deliberation” and consensus” could easily be construed as demanding the application of these principles before publication of media was allowed.

According to Article 4, the aims of regulating freedom of expression were:

- (a) realizing a responsible freedom as a fulfilment of human rights in accordance with the Pancasila and the 1945 Constitution; (b) realizing consistent and continuous legal protection in guaranteeing freedom of expression; (c) realizing a conducive climate for improving participation and creativity of all citizens as rights and responsible fulfilment in democratic life; (d) establishing social responsibility in society, the nation and the state's life, without ignoring individual and group interests.

The most obvious issue with this article was that it failed to develop enough distance from policies of the New Order. Pancasila, the 1945 Constitution and the idea of “social responsibility” were still featured prominently and carried with them strong connotations of the practices which had developed during the thirty year Suharto regime.

The law also contained articles explicitly limiting freedom of expression. Article 10(3) required a three-day notice be provided to the police before activities such as demonstration, strikes, long marches, and/or other activities which utilize public facilities.

³ AJI press release about media reform, 23 May 1998.

⁴ By Minister of Information Regulation 01/PER/MENPEN/1998 on SIUPP.

⁵ By Minister of Information Regulation 02/PER/MENPEN/1998 on Journalists.

If unreported, the authorities retained the power to halt such activities (Article 15). This provision was problematic in that it threatened spontaneous calls for government accountability or protests against unfair decisions. Labour strikes, for instance, in protest against an unpopular managerial decision, can seldom be postponed three days, as they would take place too late to influence the labour negotiation process. Similarly, journalists need to be able to stage immediate protests they are forcibly prohibited from covering a particular story or event. If they are unable to do so, they may lose valuable sources, leads, or the entire story itself.

In practice, particularly in the case of labour disputes, the obligation to “report” to the police became, in effect, an obligation to obtain permission to conduct strikes or protests. Strikes without such “permits” were easily be deemed illegal and dissolved, and very often the leaders these illegal demonstrations were arrested and punished. The implementation of the regulations outlining the freedom to express one’s opinion remain controversial, as, to this day they have yet to be changed.

In a broader sense, despite many advances, 1999 was a problematic year for human rights in Indonesia. It was marked by gross human rights violations, most notably the crimes against humanity committed in East Timor before, during, and after the fledgling nation’s referendum on independence, as well as the so-called “Banyuwangi murders.”⁶ These events caused the international community, including the United Nations, to increase pressure on the Indonesian government. However, the weakness of many state institutions, in combination with the conflicts associated with a number of secessionist movements, made it difficult for the government to respond. In short, the process of democratization during this early phase of political transition was messy and fraught with complications. Nevertheless, important steps were taken towards liberalization, such as the first free national elections since 1955 (on 7 June 1999), in which a large number of parties participated – and which the press was allowed to report on freely and critically without harassment by the authorities.

On September 23, 1999, Indonesia’s parliament enacted two important laws regarding human rights and press freedom: the Human Rights Law 9/1999 and Press Law 40/1999. These laws garnered both domestic and international attention. They were passed in order to demonstrate Indonesia’s commitment to reinvent itself as a democracy which values the rule of law.⁷

Human Rights Law 9/1999 was passed prior to the Constitutional Amendment on Human Rights in 2000 and, as the name implies, it present a detailed legal framework for human rights protection in Indonesia. Of particular importance to the press is the fact that it clearly defines press freedom as a human rights issue. Article 23(2) of the law explicitly guarantees freedom of expression, especially the freedom of the press:

“Everyone is free to have, impart, and disseminate his opinion according to his conscience, either orally or in writing, through print or electronic media while taking

⁶ The ‘Banyuwangi murders’ refer to the killing of persons who were suspected of being *Dukun Santet* (persons using black magic). There were at least 117 people killed, 80 of them followers of the Islamic mass organization Nahdlatul Ulama. The case was suspected to be connected to an intelligence operation in Banyuwangi, involving military agents and local officials.

⁷ The drafting process was organized by the Minister of Information and involved legal academics, journalist associations and media practitioners. The draft was delivered to parliament on 7 July 1999 (President Instruction, R. 33/PU/VII/1999), and was formally approved by parliament on 13 September 1999 (Parliament/DPR Decree 8/DPR-RI/I/1999-2000).

into account religious values, morals, public order, public interest, and the unity of the nation.”

This legal framework for press freedom was expanded in the Press Law which was passed the same day. Despite several inherent weaknesses, when compared with the previous press law (Law 21/1982), it provided much broader protection of journalists and others working for the press. According to Atmakusumah (2007a: xxxiv), the 1999 Press Law was passed in the context of a continued battle between those still clinging to the “old” New Order paradigm and those supporting the liberal paradigm which flourished under *Reformasi*'s euphoria. This explains why the Press Law ultimately became more restrictive than what had initially been intended by supporters of the *Reformasi*.

Yet, when comported with the *pre-reformasi* situation, press freedom had been strengthened in three vital areas: (1) censorship had been abolished, (2) press banning was no longer allowed, and (3) press permits (SIUPP) could no longer be revoked. These practices, which had previously been extensively used to suppress the media, are clearly addressed by Article 4 of the 1999 Press Law, which states:

1. Press freedom is guaranteed as a fundamental citizen's right;
2. No censorship, banning or broadcast prohibition can be imposed on the national press;⁸
3. In order to guarantee press freedom, the national press has the right to seek, acquire, and disseminate ideas and information;
4. In accounting their reporting before the law, a journalist has the right to refuse (*hak tolak*).

Interestingly, any violation of these provisions, by government officials or otherwise, was punishable by up to two years of imprisonment or a fine of up to Rp. 500,000,000.

Articles 7(1) and 8 are similarly important provisions, as they provide protection journalists right to form and join journalist associations. Article 9(1) protects the rights of Indonesian citizens to establish press companies and Article 13c addresses similar rights for news agencies. Both articles provide the legal underpinning for Minister of Information Regulations 1 and 2 of 1998 (Regulation on Press Publishing Licence and Regulation on Journalist).

Nevertheless, as has already been mentioned, the 1999 Press Law also contains a number of unnecessary and potentially harmful provisions. As pointed out earlier by the AJI, Article 15's wording is unclear concerning the institutional status, position, and competence of the Press Council, in particular in dealing with complaints about the press. The role of the Press Council can be interpreted as a mere public relations and press-facilitation institution, as opposed to a defender of press freedom and law enforcement monitoring institution (Jamaludin 2009: 28-31). Nevertheless, according to Margiyono, a coordinator of the legal division in the AJI, the Press Council claimed from the start a prerogative concerning “effectiveness for its decisions,” and the power to preside over complaints or claims against the press.⁹ However, Margiyono also states that the

⁸ Article 1(6) said “the national press is the press which has been established by Indonesian press corporations. This definition includes the local and regional press as long as they are owned by an Indonesian corporation.”

⁹ Margiyono, personal communication, 9 March 2011.

enforceability of the Press Council's decisions has remained problematic., especially dealing with legal enforcement of such decisions. Therefore, the Press Council exerts influence was derived by Supreme Court Circular Letter 13/2008, which mandates that courts must invite a Press Council member as an expert witness in cases involving the press.

Another weakness of the 1999 Press Law is the inclusion of a code of ethics, publication code, code of conducts, and codes for enterprises and law enforcement. The code of ethics should be separated from the law, as these codes are generally forms of independent self-regulation, usually formulated as an agreement by a professional association of journalists. Ethics code violations should be examined by said professional association, not by the court. It is not surprising, therefore, that the 1999 Press Law's inclusion of such a code has led to confusion.

Compounding these issues are problems concerning the definition of the "right to reply" (Article 1(11) juncto article 5 (2)), which can be construed as much broader in scope than a simple right to reply or right to respond to statements violating one's legal rights. Moreover, the refusal of media to serve or publish such a reply carries a fine of up to Rp. 500 million. Therefore, a journalist could be fined due to his or her failure to respond appropriately to a reply or complaint. Furthermore, in some instances press organizations might be obliged not to publish a complaint or reply if doing so would affect third parties, or would require unethical practices, the publication of unclear statements, or statements with a lack of focus. Such instances are not always relevant to said organizations "responsibility to publish," or "responsibility to pay heed to the right of reply." The publication of a reply or complain ultimately depends on the decision of the editor, without any external interference (Asraatmadja, 2007b). The purpose of a right to reply is to provide an individual with an opportunity to respond to and correct inaccurate facts or statements made by the press which infringe upon his or her legal rights (i.e. privacy). NGOs concerned with freedom of expression have therefore suggested that a right of reply should be voluntary rather than prescribed by law, or at the very least there should be limitations to the law's power. These limitations should include the following: (1) replies should only respond to statements which violate an individual's legal rights, not serve as a platform for mere comments on opinions which readers or viewers do not like; (2) a reply should be held to the same standard and published with the same prominence as the original article or broadcast; (3) a reply should be proportionate in length to the original article or broadcast; (4) it should be restricted to addressing the contested statements in the original text; and (5) it should not be taken as an opportunity to introduce new issues or to comment on other correct facts (ARTICLE 19, 2004: 10-11). Unfortunately, the Indonesian Press Law is clearly a far cry from this hypothetical standard.

Finally, many journalists, press associations, and lawyers have urged for an amendment to the Press Law in order to make it unequivocally clear that the Press Law is a *lex specialis* to the Penal Code. At the present, police, public prosecutors and (lower) courts often apply the Penal Code rather than the Press Law.¹⁰ Bagir Manan, chairman of the Press Council from 2010 to 2013, has argued that the Press Law is "supreme" when it concerns cases involving the press (*lex suprema*), meaning that other laws are only supplementary to it.¹¹

¹⁰ The statement is from Abdul Mutholib, director of the Makassar Legal Aid Bureau, 1 February 2010; Amir Syamsuddin (lawyer of seven media against Raymond Teddy), interview, Jakarta, 15 June 2010; Andi Siahaan, TV contributor in Pematang Siantar, 10 July 2010. Yemris Foutuna, *Jakarta Post's* journalist, Kupang, 20 July 2010.

¹¹ Bagir Manan (the Press Council chairman), interview, Leiden, 26 March 2010.

In fact, the addition of the term *lex specialis* should be unnecessary; lawyers and law enforcement officials should understand that the Press Law simply is a *lex specialis*. Moreover, the Supreme Court has confirmed this time and time again through numerous legal decisions. Unfortunately, it seems that an additional article may be needed to convince all involved of this fact.

In summary, despite the limitations of the 1999 Press Law, its introduction signified an important step forward, and we may conclude that in the early post-Suharto years several important legislative steps were taken to support freedom of expression and press freedom.

II. A TURNING POINT: FROM ABDURRAHMAN WAHID TO MEGAWATI

After the abolition of the requirement for an SIUPP when attempting to establish a media organization, the number of newspapers and magazines in Indonesia increased exponentially. Just a few months after Suharto stepped down, 1,200 new dailies, magazines, and tabloids were launched. However, as Atmakusumah remarked,

“When I was chairing the Press Council in 2000-2003, about half or 600 of the 1,200 printed media were quickly closed down during one and half years only. In this regard, I have seen that citizens are already critical and smart in choosing media, they can differentiate between media which are more or less informative and educative. This forms a public punishment for untrue and unprofessional media...”¹²

The idea of press freedom steadily gained more respect, especially during the Abdurrahman Wahid presidency. Wahid took a major step in abolishing the Department of Information, the cornerstone of the New Order’s press repression regime. Of course, this action elicited protests by the thousands of employees who worked for the Department of Information, as well as from the former Minister of Information, Yunus Yosfiah, who personally presented his complaint to Wahid at the State Palace. Nevertheless, Wahid stuck to his decision, stating that...¹³

“Already too long have the common people been suffering at the hands of the government, so I am trying to correct this situation, including restructuring, promoting efficiency, and dissolving the Department of Information. Information is the business of society, and it is inappropriate when the government intervenes. The existence of the Department of Information will only provoke the common people to oppose the government if it always forces to regulate the exchange of information.”¹⁴

¹² Atmakusumah, personal communication, 30 March 2010, Leiden.

¹³ “Gus Dur-Yunus Yosfiah Bersitegang” [Tension Arises between Gus Dur-Yunus Yosfiah], *Republika*, 29 October 1999. Also see: Hidayat, 2007, p. 63.

¹⁴ “Membredel Sang Raja Bredel” [Silencing the Silencing King]. <http://majalah.tempointeraktif.com/id/arsip/1999/11/01/MD/mbm.19991101.MD97591.id.html>, *Tempo Online*, 1 November 1999 (accessed on 10 March 2011).

For the AJI, as an independent journalist's movement, the dissolution of the Department of Information in 1999 surpassed what they had proposed the year before in their 24 May, 1998 press release on media reform in Jakarta. The abolishment of the Department of Information began a new phase of press freedom. In 2002 the Press Freedom Index ranked Indonesia 57th, much higher than neighbouring countries like Thailand (65th), Malaysia (110th) and the Philippines (89th). The Wahid administration showed an unprecedented commitment to human rights and democracy, and its strengthening of press freedom, though still courageous, was in keeping with this trend and had immediate results.¹⁵

However, the situation changed when Wahid was impeached in 2001 for allegations of corruption, and replaced by Megawati Soekarnoputri, his vice-president. During her term as president, Megawati often criticized the press for being "*njomplang*" (unbalanced), "*njlimet*" (complex), and "*ruwet*" (complicated),¹⁶ and, later on, "un-nationalistic", or "un-patriotic."¹⁷ These statements addressed the newspapers in general, but were especially targeted towards *Rakyat Merdeka*, which heavily criticized Megawati's policies which had caused higher fuel prices.

More generally, the manner by which Megawati approached the media led to an increase in tension. She tended to perceive the media as a "problem" for her administration. Therefore, she refused to talk to the press about several issues that, at the time, were major public concerns, such as the high price of fuel. Nor did she appoint a spokesperson for communicating with the press or the public. To critics she would respond that all issues were a result of a "public misunderstanding," without any further clarification.¹⁸ According to Arismunandar (*Kompas*, 23/1/2003), Megawati's responses to criticism were often disproportional, and she took them personally, instead of seeing them as criticism of her policies as the head of government. Moreover, her political communication with the general public was inadequate, an issue which caused serious problems for her presidency. Yet, despite the deteriorating relationship between Megawati and the media, during her presidency no bans or institutional pressure were imposed on the press.¹⁹

During the Megawati administration, one important piece of legislation related to the press was enacted which provided an important addition to the previously passed Press Law; the Broadcasting Law (Law 32/2002).²⁰ This law addressed a number of issues relevant

¹⁵ Gus Dur received awards from numerous organizations and universities because of his commitment to promoting human rights and democracy. This included the Tasrif Award on Press Freedom which was awarded to him by the AJI on 11 August 2006.

¹⁶ '*Njomplang*,' '*njlimet*' and '*ruwet*' were terms used during her speech before the PDI-P (Indonesian Democratic Party for Struggle) in Jakarta, 21 January 2003 (*Kompas*, 22 January 2003).

¹⁷ 'Un-nationalistic' and 'un-patriotic' were used during a meeting between Megawati and the Press Council in 2001, soon after she had become president (Press Council 2003, "Answering Questions from Commission I of Parliament in Public Hearing Session: Press Council Explanation," Jakarta, 30 January 2003).

¹⁸ During 2002-2003, the government policies on R&D (Release & Discharge) for debtors, the divestment of stock shares of Indosat Incorporation, and also the most controversial policy regarding fuel prices, electricity prices and the telephone tariff were not preceded by any adequate communication.

¹⁹ This opinion is also based on the Press Council explanation during the Public Hearing Session in Parliament, Jakarta, 30 January 2003.

²⁰ The Broadcasting Law (Law 32/2002 replacing Law 24/1997) was enacted on 28 December 2002.

to press freedom, in particular preventing a monopoly of ownership and supporting healthy competition among broadcasting companies (Article 5(g)).²¹ This article is tied to Article 41 of the Broadcasting Law, which states: “Broadcasting institutions can engage in co-operation to broadcast together as long as this does not turn into an information or opinion making monopoly.” However, there is no further clarification of this article, nor is there a specific sanction mentioned in cases of its violation.

The agency which is responsible for supervision and enforcement of the Broadcasting Law is the Indonesian Broadcasting Commission, or KPI (*Komisi Penyiaran Indonesia*). The KPI consists of a central office in Jakarta and numerous branch offices at the provincial level. It has the authority to: (1) determine broadcasting program standards; (2) formulate regulations and determine the guidelines for broadcasting behaviour; (3) monitor the implementation of broadcasting regulations, guidelines, and program standards; (4) impose sanctions for violating broadcasting regulation, guidelines, and program standards; (6) build co-ordination and/or co-operate with the government, broadcasting institutions, and society. The KPI did little to exercise its authority to ban a broadcasting station under the Megawati presidency, but as will be discussed later, this was not the case under Megawati’s successor, Susilo Bambang Yudhoyono.

Threats against press freedom started to resurface during the Megawati administration, most notably involving two cases in 2003. The first of these concerned *Rakyat Merdeka*, whose chief editor, Karim Paputungan, was sentenced to five months imprisonment and ten months’ probation by the South Jakarta District Court for defamation. It was found that he had violated Article 310 after having insulted Chairman of the Parliament Akbar Tandjung. Tandjung was being investigated for embezzling Rp. 40 billion (USD 4.7 million) in state funds and *Rakyat Merdeka*’s piece showed Tanjung shirtless, crippled, sweating and looking sad with a banner reading “Akbar to be finished soon. Golkar shedding tears of blood” (Paputungan 2011).²²

In another legal case against *Rakyat Merdeka*, editor Supratman was sentenced by the South Jakarta District Court to six months imprisonment and a 12-month suspension for insulting Megawati. Supratman was found to have violated Article 137(1) of the Penal Code, which prohibits insulting the president or vice-president. The Chair of the Council of Judges, Zoeber Djajadi, stated that “anyone who is sane must be annoyed or offended” by the wording used in several article and newspaper headlines. This court case was accompanied by death threats against *Rakyat Merdeka*’s journalists from ultra-nationalist, pro-Megawati groups.²³

Another threat to press freedom came in the form of seven civil and criminal lawsuits against the magazine *Tempo*. These lawsuits were initiated by business tycoon Tommy Winata after *Tempo* had published an article implying his involvement in a market fire in the Jakarta district of Tanah Abang. The Central Jakarta District Court ordered *Tempo* to pay Rp. 500 million in damages to Winata for “material losses” and “forfeiture of future profit.”²⁴ During the criminal court proceedings, public prosecutor Bastian Hutabarat cited

²¹ This article is related to Law 5/1999 on the Prohibition of Monopolies and Unhealthy Competition Law.

²² Paputungan lodged an appeal with the Jakarta High Court, but I have not been able to find any information about the subsequent proceedings and their outcome.

²³ “Redaktur Eksekutif Rakyat Merdeka Divonis Enam Bulan” [Executive Editor of *Rakyat Merdeka* Sentenced to Six Months], *Tempo Interaktif*, Senin, 27 October 2003.

²⁴ “Court Orders Tempo to Pay Rp. 500 million to Tommy Winata,” *LKBN Antara*, 18 March 2004.

article XIV(2) of Law 1/1946 *juncto* Article 55 (1)-1e of the Penal Code as grounds to sentence *Tempo's* chief editor, Bambang Harymurti, to nine years imprisonment. *Tempo* was accused of “libel” and of intentionally creating “a chaotic situation in society.” On 16 September, 2004, the Central Jakarta District Court sentenced Bambang to one year imprisonment, a verdict confirmed by the Jakarta High Court on 14 April 2005. However, the Supreme Court overturned the latter decision on 9 February, 2006, on the basis that the Press Law takes legal precedence over the Penal Code. The court added that since, in any democratic state based on the rule of law, press freedom is a *conditio sine qua non*, cases against it should be treated with utmost care and diligence.

Although *Tempo* ultimately won this case, it appears that in legal practice there are serious threats to press freedom. *Tempo* and its employees, for instance, faced at least nine lawsuits, none of which related to the 1999 Press Law. There is no doubt that the threat of such legal harassment influences the actions of journalists and editors. Compounding this issue is the added threat of the use of violence against journalists and media, and a lack of seriousness by police to protect journalists. The attack by Tommy Winata's thugs on the *Tempo* office on 17 May 2004 presents a clear example of this.²⁵ Unlike her predecessor, President Megawati took no steps to improve this situation.

In short, during Megawati's presidency press freedom was curtailed by the way in which prosecutors and lower courts applied the law, as well as by the wanton use of violence against journalists and media organizations. The state offered insufficient protection against incidences of violence, and Megawati herself maintained an antagonistic relation with the media. Her lack of responsiveness in addressing attacks against the press can be interpreted as a violation of press freedom by omission, while her consenting to the prosecution of *Rakyat Merdeka* staff can be considered a much more active violation of press freedom.

III. A SURPLUS OF PRESS FREEDOM? THE PRESS UNDER THE SBY ADMINISTRATION

Before reformation, press freedom was jeopardized, or deficient. But now after reformation, press freedom is working well, there is even a surplus of it...

(SBY, 3 June 2010)²⁶

Parliamentary elections were held on 5 April, 2004, and for the first time in Indonesian history they were followed by direct presidential elections. Susilo Bambang Yudhoyono, better known as SBY, received more than 60 percent of the votes, easily defeating Megawati Soekarno Putri. At the start of SBY's presidency, many NGOs expected him to show more respect for human rights, the freedom of the press, than his predecessor. However, by the end of the year he had already disappointed many, and Indonesia's position in the international press freedom ranking dropped.²⁷ At the end of 2004 two human rights issues of paramount importance faced the Indonesian government: the addressing of the tsunami

²⁵ “Penyerangan Kantor MBM Tempo” [Attack on MBM Tempo Office], *Tempo Interaktif*, 17 May 2004.

²⁶ “SBY: Kebebasan Pers Harus Disertai dengan Tanggung Jawab” [SBY: Press Freedom Must Be Accompanied By Responsibility], *Detik News*, 3 June 2010.

²⁷ The IPJ's Press Freedom Index ranked Indonesia at 110th in 2003 and at 117th in 2004.

tragedy in Aceh, and the investigation of, or rather lack thereof, the Munir case.²⁸ Human rights activist Munir Said Thalib was poisoned while travelling from Jakarta to Amsterdam on 7 September, and his death subsequently became a major news story. As it became apparent that the Indonesian intelligence service had been involved in the killing, the murder of Munir became something of a test case for the SBY administration regarding the protection of human rights and human rights defenders (including journalists) in Indonesia. The fact that Munir's murderers have, to this day, never been punished certainly contributed to the human rights community's eventual disappointment with SBY.

In 2005 the press freedom situation in Indonesia improved slightly, and it moved from 117 to 103 in the JPC press freedom index. However, the database of LBH Pers (the Press Legal Aid Institute) shows that state pressure on the press had actually increased, including attacks against the press by government officials, police and military personnel (Tim LBH Pers 2009: 103). Furthermore, the number of violent attacks committed by "thugs" surpassed those committed by state security officials, though the former were sometimes organized by state officials.²⁹ For instance, the *Palopo Pos* office was attacked and destroyed by thugs sent by the district head of Palopo (South Sulawesi) on 19 January 2005. *Palopo Pos* chief editor Mukhramal Azis was severely beaten and a journalist, Jusriadi, was strangled. According to Mukhramal, the reason for the attack was *Palopo Pos's* reporting on the 1,05 billion rupiah in severance pay received by 35 former district parliament members, a report which had angered the district head.³⁰ Similar attacks occurred in Medan, where a TV journalist was beaten in April of 2005, and in Bogor, where *Radar Bogor* journalist Ahmad Junaedi was tortured by unknown persons in July of the same year.

These attacks, and the lack of adequate response, formed only part of what could be considered an overall lack of interest on the part of the government to protect human rights, prompting many civil society groups to question the government's seriousness in the endeavour to promote rights in general. As case in point, human rights NGO *Elsam* titled its 2005 Human Rights Enforcement Report "*Ekspektasi Yang Sirna*," or "Expectations that Disappeared."

President SBY denied allegations of human rights abuses and expressed his satisfaction regarding the level of press freedom, stating during his "End of the Year Speech" that:

"We should also be grateful that democratic life in the country is developing. People are more accustomed to different opinions. The number and quality of criticism in society is steadily increasing, with sustained press freedom."³¹

It was not only the written press which was the target of repressive policies regarding press freedom. As has already been mentioned, in 2007 the KPI for the first time used its authority to ban *Radio Era Baru* FM in Batam. This station had been broadcasting since

²⁸ Munir was a public interest lawyer of YLBHI, and the founder of well-known human rights NGOs KontraS, Imparsial, and Voice of Human Rights. He was extremely courageous and the only person to openly accuse the military and intelligence services of kidnapping students and activists during the years 1997 and 1998 - which ultimately led to him being murdered.

²⁹ The term 'thugs' (*preman*) in this context comes quite close in meaning to 'gangster' in the sense of organized crime.

³⁰ Interview with Mukhramal Azis, Makassar, 3 February 2010.

³¹ 'End of Year Speech' in Cipanas Palace, 31 December 2005.

2005, but in 2007 came was pressured to cease its activities.³² Without providing any clear reason why, the KPI and the Minister of Communication and Information requested that *Radio Era Baru* stop broadcasting, and in the end they had the Frequency Monitor Section in Batam impose a broadcasting ban for the station's broadcasting in Chinese, on 21 October 2008. The radio station took their case to the administrative court, but lost both in the initial trial and on appeal.³³ However, the Supreme Court overturned this decision and repealed the ban on 5 October 2010. This ended a three-year legal battle between *Radio Era Baru*, the KPI, and the Minister of Communication and Information. As of the present, *Radio Era Baru* has regained its license and can now freely broadcast in Indonesia.

Press freedom was further threatened by the killing of Herlyanto, a journalist for Probolinggo-based daily *Delta Pos*, (East Java). On 29 April, 2006, Herlyanto was found dead near forest area in Tarokan village, Banyuwangor, Probolinggo, his body covered with wounds. The motive behind his murder is believed to have been related to a report he wrote on corrupt local officials.³⁴ In September of the same year the killer was arrested and testified that the killing had been ordered by the head of a government project who had been implicated in the embezzlement of fund. This was the first time since the end of the New Order, and the killing of *Bernas* journalist Fuad Muhammad Syafruddin (Udin) in Bantul, that a journalist had not simply been attack, but had been murdered.

During this period a number of criminal cases which cited the Penal Code, instead of the Press Law, were brought against the press, such as those against *Rakyat Merdeka Online* and *Playboy Magazine*. Chief Editor of *Rakyat Merdeka Online*, Teguh Santosa, was indicted for violating Article 156a of the Penal Code, which relates to defamation against religion. The case concerned the coverage of the fallout after Danish paper *Jylland-Posten* published potentially offensive cartoons of Islam's Prophet Muhammad. Fortunately, the South Jakarta Court judges dismissed the case. However, the suit against *Playboy Magazine's* Chief Editor Erwin Arnada did not end so well. He was prosecuted under Article 282(3) of the Penal Code, which deals with crimes against decency, and *Playboy Magazine* was subsequently considered pornography. The Supreme Court sentenced Erwin to two years imprisonment (Decision 972K/Pid/2008), but later reviewed and repealed this decision through Review of Court Decision (*Peninjauan Kembali*) process.³⁵

³² The pressure to close down *Radio Era Baru* originally came from the Chinese government. It was the KPI which decided to use the broadcasting language as the official reason to close down the station as a way to hide the true reasons. Raymond Tan and Gatot Supriyanto (director of *Radio Era Baru*) said that Chinese officials visited the KPI in 2007, asking the government to shut down *Radio Era Baru*, because it had been airing criticism of Beijing's human rights conditions, including reports on the suppression of Tibetans, Uyghurs, and Falun Gong practitioners. Letters to this extent were sent to the ministers of Foreign and Domestic Affairs, the Department of Espionage, the Department of Communication and Information and the KPI. Tan presented evidence in the form of the letters from the Chinese Embassy and news of Chinese officials visiting the KPI, as well as the letter of 8 March from the KPI, asking the station to halt its activities (personal communication of Raymond Tan and Gatot Supriyanto in Jakarta, 22 September 2010).

³³ Administrative Court judgment 166/G/2008/PTUN-JKT.

³⁴ The AJI investigation concluded that the killing was related to news involving numerous village authorities ("*AJI Malang Yakini Herlyanto Tewas Akibat Pemberitaan*" [AJI Malang Is Certain That Herlyanto Was Killed as a Consequence of Reporting], *Gatra*, 8 October 2006).

³⁵ Erwin Arnada, through his lawyer, Todung Mulya Lubis, requested a review (*peninjauan kembali*) of this Supreme Court decision ("*Pimred Playboy Ajukan PK Dan Penangguhan Eksekusi*" [The Chief Editor of Playboy Requests Review and Suspension of his Sentence], *Primair Online*, 6 September

The use of lawsuits as a tool to suppress press freedom in Indonesia became a trend during this period. In addition to criminal case brought under the Penal Code, civil lawsuits were initiated against several media organizations and journalists, often demanding extraordinary amounts in damages. Criminal lawsuits included the case of *Radio Era Baru*; the station not only lost its license, but its director was prosecuted under the Telecommunication Law and sentenced to imprisonment for up to six years.³⁶ Civil suits include the 2007 case initiated by Riau Andalan Pulp and Paper (RAPP), which filed a claim for damages against *Tempo Newspaper*. A criminal suit was filed in the same case against Bersihar Lubis (a Tempo journalist). Both concerned defamation.

The most notorious ruling against the press freedom was the Supreme Court's decision 3215K/Pdt/2001, adjudicated on 28 August 2007 in the case of *Suharto v Time*. Judges German Hoediarso, H. Muhammad Taufiq, and Bahauddin Qaudry overturned the decisions of lower level and appellate courts and awarded the plaintiff defamation damages of the fantastic amount of one quintillion rupiah, simply on the basis of tort and without any comprehensible legal reasoning. The case drew international attention and further harmed the already tainted image of the Indonesia's judiciary. In so deciding, the court completely disregarded the Press Law, which, in Article 18, stipulates a maximum fine of Rp. 500 million.

However, 2007 also witnessed an important milestone in the fight for press freedom. First, the Constitutional Court decided that *haatzaai artikelen* 154 and 155 of the Penal Code were contradictory to the constitution and were therefore no longer legally binding (Number 6/PUU-V/2007, 17 July 2007). After over 90 years since the enactment of the Netherlands Indies Penal Code (*Wetboek van Strafrecht voor Nederlandsch-Indië*) in 1914, this Constitutional Court decision did away with an important symbolic reminder of the suppression of freedom of expression and press freedom in Indonesia.

However, the press freedom situation grew progressively worse in 2008, as several new criminal and civil lawsuits were brought against the press, such as *Munarmanto* (coordinator of Islamic Defender Front/FPI) *v Tempo*, and the criminal prosecutions of journalist Upi Asmaradhana,³⁷ *Tempo* journalist and editor Irvansyah and Sunudyantoro, and of Kwee Meng Luan and Khoe Seng-Seng, property consumers who were convicted after writing letters to the editor. Moreover, two important pieces of legislation related to the press were enacted. The first, Law 11/ 2008 on Electronic Information and Transactions (EIT), was the most controversial.³⁸ Its articles 27 and 28 allow for the initiation of criminal suit against journalists for defamation. Article 27(3) states that:

2010). Then, the Supreme Court's review ended up in favour of Erwin's position, and he was released on 24 June 2011 ("Mantan Pemimpin Redaksi Playboy Dibebaskan," *Tempo.co.id*, 24 June 2011).

³⁶ This indictment was based on the Letter of Radio Frequency Monitoring Agency (Balmon) Batam - Directorate General Post and Telecommunication, Ministry of Communication and Information Technology number 65/IIc/b.II.BTM/II/2011. According to the aforementioned letter the criminal case files were considered complete (P21) by the public prosecutor ("Criminalization of Director of *Radio Era Baru* Continues": Press Release of *Era Baru*, 17 February 2011, signed by Rachmat Pudiyanto (general manager)).

³⁷ Upi Asmaradhana, a freelance journalist in Makassar, South Sulawesi, was acquitted of a defamation charge.

³⁸ This law was approved by the House of Representatives on 21 April 2008.

“Any person who knowingly and without authority distributes and/or transmits and/or causes to be accessible Electronic Information and/or Electronic Records with contents of insult and/or defamation.”³⁹

while Article 45(1) states that:

“Any person who satisfies the elements as intended by article 27 section (1), section (2), section (3), or section (4) shall be sentenced to imprisonment not exceeding 6 (six) years and/or a fine not exceeding Rp. 1.000.000.000 (one billion rupiah).”

Because the sentence can exceed five years imprisonment, journalists can be taken into custody immediately if accused of violating Article 27(3) and, therefore, this provision can be used as a means to harass journalists or citizens without judicial intervention.

Fears of the arbitrary use of the EIT Law led a number of NGOs and individuals⁴⁰ to challenge Article 27(3) before the Constitutional Court. According to the applicants, this article is contradictory to the numerous human rights articles of the Constitution: Article 1(2),⁴¹ Article 1(3),⁴² Article 27(1),⁴³ Article 28,⁴⁴ Articles 28C(1) and (2),⁴⁵ Article 28D(1),⁴⁶ Articles 28E(2) and (3),⁴⁷ Article 28F,⁴⁸ and Article 28G(1).⁴⁹ Article 27(3) of the EIT Law notably violated constitutional regulation that a provision or law must be clear, easily understood, and fairly enforced. However, the claims of these NGOs were rejected by the Constitutional Court. In Decision No. 2/PUU-VII/2009, dated 5 May, 2009, the judges argued that the EIT Law was important to secure and protect freedom of expression, and

³⁹ The phrasing of the article is not in line with the basic rules of Indonesian grammar.

⁴⁰ The Indonesian Association of Legal Aid and Human Rights (PBHI), the Alliance of Independent Journalists Indonesia (AJI), the Legal Aid Centre for the Press (LBH Pers) Edy Cahyono, Nenda Inasa Fadhilah, and Amrie Hakim.

⁴¹ Sovereignty is in the hands of the people and is implemented according to this constitution.

⁴² The State of Indonesia shall be a state based on the rule of law.

⁴³ All citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions.

⁴⁴ The freedom to associate and to assemble, to express written and oral opinions, etc., shall be regulated by law.

⁴⁵ (1) Each person shall have the right to develop him/herself through the fulfillment of his/her basic needs, the right to get education and to benefit from science and technology, arts, and culture, for the purpose of improving the quality of his/her life and for the welfare of the human race; (2) Every person shall have the right to improve him/herself through collective struggle for his/her rights to develop his/her society, nation and state.

⁴⁶ Every person shall have the right of recognition, guarantees, protection and certainty before a just law, and of equal treatment before the law.

⁴⁷ (2) Every person shall have the right to the freedom to believe his/her faith, and express his/her views and thoughts, in accordance with his/her conscience; (3) Every person shall have the right to the freedom to associate, to assemble and to express opinions.

⁴⁸ Every person shall have the right to communicate and to obtain information for the purpose of the development of his/her self and social environment, and shall have the right to seek, obtain, possess, store, process, and convey information by employing all available types of channels.

⁴⁹ Every person shall have the right to protection of him/her, family, honor, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right.

to provide consistency under the law, because the EIT Law applies to both the press and ordinary people alike.

In practice, it soon became a parent that the EIT Law is itself a threat to freedom of expression. This fact was made clear in the case of Prita Mulyasari, an Indonesian woman arrested on 13 May, 2009, for allegedly using online media to circulate defamatory statements against Alam Sutera Omni International Hospital in Serpong, Tangerang (Banten). Prita had been a patient at the Omni International Hospital, and had asked her doctor for her medical records. When the doctor refused, Prita complained via e-mail to a number of friends, and further claimed that she had been misdiagnosed as having contracted dengue fever, though in August of 2008 further medical examination proved that she had mumps. She accused the doctors of unprofessional conduct and warned her friends against visiting the hospital. Her e-mail was circulated through various mailing groups and eventually came to the attention of the Omni Hospital. The hospital filed a complaint with the police and Prita was sued for defamation. When the details of this suit came to light it caused public outrage and a media frenzy, which were exacerbated when Prita was taken into custody three weeks ahead of her trial.⁵⁰

The prosecution indicted Prita for the defamation of doctors Hengky Gosal and Grace Hilza Yarlen Nela, in an email which she had sent to twenty people and which described the two doctors as both unprofessional and impolite. She was indicted on three articles of the legal code- Article 45(1) jo. 27(3) of the EIT Law, and Articles 310(2) and 311(1) of the Penal Code -, all of which concern defamation and insults. The prosecution demanded a sentence of six months in jail, but the judges at the Tangerang District Court rejected the indictment due to a lack of clarity. However, this ruling was overturned by the Supreme Court, which convicted Prita to six months in jail with one month probation.⁵¹

At the same time, the Omni Hospital initiated a civil suit against Prita, and she was found guilty of defamation and ordered to pay Rp. 204 million to the hospital by the Tangerang District Court on the basis of tort, Civil Code Article 1365.⁵² This judgment was upheld by the Banten High Court,⁵³ which forced Prita to appeal to the Supreme Court (Wiratraman 2010). Here she finally received justice, when judges Harifin A Tumpa, Rehngena Purba and Hatta Ali overturned the appellate judgment, arguing that such a case could never qualify as defamation.⁵⁴

The Prita case made it clear that the EIT Law not only threatens journalists, but can also be used to prohibit ordinary citizens from expressing their opinions on the internet. According to Press Council member Agus Sudibyo (2009), “the EIT Law is

⁵⁰ The case led to public outrage, with tens of thousands joining a Prita support page on Facebook, and other social media. That the case invited such huge public sympathy was at least in part because it exposed the injustice and corruption within the country’s judicial system. Many took part in the action ‘Coin for Prita,’ and altogether an amount of Rp. 317,639,105 was raised (“Coin for Prita Sums up to 317 Million Rupiahs,” *Kompas*, 17 December 2009, <http://english.kompas.com/read/2009/12/17/14380167/Coin.for.Prita.Sums.up.to.317.Million.Rupiahs>, accessed on 15 January 2010).

⁵¹ This case was registered as 1269/PID.B/2009/PN.TNG. At the time of writing, this case is under review (*peninjauan kembali*) by the Supreme Court (“Tolak Status Terpidana, Prita Ajukan PK” [Refusing the Status of a Convict, Prita Requests Review], *Detik.com*, 01/08/2011).

⁵² Tangerang District Court Decision 300/Pdt.G/2008/PN.TNG, 11 May 2009.

⁵³ Banten High Court Decision 71/PDT/2009/PT.BTN, 8 September 2009.

⁵⁴ Supreme Court Decision 300 K/Pdt/2010. The criminal case was decided by a different panel of judges.

strange. Other countries really wish to regulate cyber-crime, but in Indonesia the purpose of this law is merely restricting the freedom to information and criminalizing citizens.”⁵⁵ Given this precedence, it may be argued that online media has the most to fear from the EIT Law.

The year 2008 also witnessed the promulgation of other laws which introduced new criminal sanctions against the press: General Election Law 10/2008, Presidential Election Law 42/2008, and Pornography Law 44/2008. Article 99(1) of the General Election Law listed the following sanctions:⁵⁶

“(a) a written warning; (b) temporary suspension of a problematic programme; (c) reducing time and duration of election campaign news, broadcasting, and advertisements; (d) fines; (e) termination of activities regarding election campaign news, broadcasting, and advertisement for a certain period; (f) revoking the broadcasting license or publication permit.”

These sanctions were expanded upon in the Electoral Commission (Article 100), since it contained heavy punishment and even closure the press. The Presidential Election Law included similar provisions and, in Article 47(5), added that:

“Printed papers and broadcasting agencies as stipulated under section (1) during the period of non-campaigning,⁵⁷ are prohibited to broadcast news, track records of candidates, or other forms promoting the interest of a campaign which are beneficial or detrimental to the candidates.”

This provision is followed by a threat of heavy punishment, up to and including the revocation of broadcasting licenses and SIUPPs (Article 57(1)). In short, these laws seriously endanger press freedom and have resulted in considerable controversy, not the least of which being due to there being hardly any public participation in their formulation (Hendrayana 2009). The only positive thing we can say about these provisions is that they have never actually been applied.

This is different for the third law threatening press freedom introduced in 2008. Article 1.1 of the Pornography Law defines pornography as:

“...any pictures, drawings, illustrations, photographs, writings, voices, sounds, moving pictures, animation, cartoons, conversation, bodily movements, or any other form of message through the media of communication and/or demonstrations in public, which depict lewdness or sexual exploitation which violates the moral norms of society.”

⁵⁵ “*Kebebasan Berpendapat Janganlah Direduksi*” [Never Reduce Freedom of Opinion], *Kompas*, 4 June 2009, kompas.com/read/xml/2009/06/04/03091447/kebebasan.berpendapat_janganlah.direduksi [accessed on 5 January 2010].

⁵⁶ They refer to Article 98(2), which refers to Articles 93, 94 and 95, all of them concerning media campaign advertisement.

⁵⁷ This is a period of three days immediately before the elections when campaigning is no longer allowed (Article 40(2)2).

This definition is highly moralistic and fails to set any clear standard or method for evaluating what “lewdness.” This lack of clarity is particularly troubling in light of how difficult it is to establish what “the moral norms of society” are in a normatively pluralistic country like Indonesia. In Bali for instance, some common daily activities based on tradition could very well be categorized as pornography on the basis of this law.⁵⁸ Such unclear standards lend themselves to arbitrary interpretation by state, or non-state, actors and can be easily used to place pressure on particular social groups (Wiratraman 2009). Moreover, the sanctions applied in violation of this law are extremely serious. As stated in Article 29:

“Anyone who produces, makes, reproduces, duplicates, disseminates, broadcasts, imports, exports, offers, sells, leases, and provides pornography as stipulated in Article 4 Section 1 shall be punished with imprisonment of no less than 6 months and exceeding twelve years and/or a fine of at least Rp. 250,000,000 (two hundred and fifty million rupiahs) and a maximum of Rp. 6,000,000,000 (six billion rupiahs).”

The dangers of these provisions are evident upon examination of the aforementioned conviction of Erwin Arnada (chief editor of *Playboy Indonesia*), who was convicted for crimes against decency on the basis of Penal Code Article 282(3). In 2007 the Press Council explicitly stated that, according to the Press Law, *Playboy Indonesia* was not a pornographic magazine, yet this did not prevent his conviction.⁵⁹ The broad and overarching powers outlined in Pornography Law makes it, therefore, quite dangerous.

However, there also was a positive development for press freedom in 2008. This concerned the enactment of the Public Information Disclosure Law (PIDL) 14/2008, which guarantees access to public information as mandated by Article 28F of the constitution. According to its opening statement, the PIDL is an important legal basis for:

“(1) the right for everyone to access information; (2) the duty for public agencies to provide information quickly, on time, at low/proportional cost, and in a simple way; (3) that exceptions are strict and limited; (4) the duty for public agencies to improve documentation and information service systems.”

The law therefore allows the public, including the press, to be better informed and to more actively participate in both public decision-making processes and the implementation of their results. For journalists, the PIDL provides a new “weapon” besides the Press Law to force public officials to disclose information. A government official can no longer claim that a document is classified if it has been categorized as a public document. Yet, in practice,

⁵⁸ A respected Hindu high priest, Ida Pedanda Gede Ketut Sebali Tianyar Arimbawa offered such an argument, reminding that sexual organs were important parts of the religion’s sacred iconography. Lingga and Yoni, the three-dimensional images of a phallus and a vagina, are the sacred symbols of divine creation and sustenance, fertility and creativity. The full breast of Kali or Durga is also the symbolic representation of their motherly compassion in nurturing the universe. Sexual organs and nudity are often the primary characteristic of sacred objects of worships. “Balinese culture and belief had never considered sexual organs, nudity and sensuality as filthy, morally reprehensible and offensive things,” scholar I Ketut Sumarta said.

⁵⁹ “*Dewan Pers: Playboy Indonesia Tak Porno*” [Press Council: Playboy Indonesia is not Porn], *Kompas*, 9 October 2010.

the application of this law has been difficult for several reasons. First, the regional government has been reluctant to develop a minimum operational standard for delivering public information; second, the old paradigm that information “belongs” only to the officials is still widely held by those in power; and third, many officials know little about the PIDL and have no idea how to deal with journalists, even when attempting to provide public information.⁶⁰ These issues had been predicted during the creation of the PIDL, though during parliamentary debates very little attention was paid to the pervasiveness of the “old paradigm” in the context of the new law.⁶¹

IV. PHYSICAL ATTACKS AGAINST THE PRESS

“Journalists in Indonesia like living in an inhuman jungle!”
(Ahmadi, journalist from *Harian Aceh* newspapers, 2010)

As discussed in the previous section, in 2008 a trend developed whereby courts were used to attack the press, and, as a result, some journalists, editors and media owners became preoccupied with defending themselves in court as opposed to focusing on providing information to the public. Moreover, the judges and law enforcement officials failed to apply the Press Law as a legal reference in the resolution of disputes. Despite the fact that the Supreme Court released an important letter on 30 December, 2008⁶², that mentioned the Press Council as the appropriate institution to preside over legal cases involving the press, the court can still be considered as a threat. While the relation between the press and the judiciary system will be discussed further, first we must examine a different threat to the freedom of the press: physical violence against journalists, media owners and press offices.

Unfortunately, laws, and the application of the laws, are not the only factors which affect the freedom of the press. Violence against journalists has occurred under every one of Indonesia’s political regimes, and journalists have been assaulted by state actors and private citizens unaffiliated with the government. This violence has ranged from the damaging or destruction of cameras or other equipment, to torture and even murder.

The first journalist to be killed in Indonesia’s post-Suharto era was Sander Thoenes, who was murdered on 21 September, 1999. Thoenes had traveled to Dili, East Timor, on a reporting assignment. The day he arrived, he was brutally murdered by two officers of the Indonesian Army, Major Jakob Djoko Sarosa and Lieutenant Camillo Dos Santos, on

⁶⁰ These views were expressed in interviews by journalists and public interest lawyers: Anton Muhajir (AJI Bali and Sloka Institute, Denpasar), interview in Denpasar, 27 July 2010; Paul Sinlaeloe (anti-corruption division staff of PIAR, NTT), interview in Kupang, 22 July 2010; and Rika Yoez (coordinator of AJI Medan), interview in Medan, 28 June 2010.

⁶¹ Personal communication of Ignatius Haryanto (director of the LSPP/Institute for Press and Development Studies, Jakarta), during a discussion on the right to information, Demos Jakarta, 8 January 2010.

⁶² Supreme Court Circular Letter No. 14/Bua.6/Hs/SP/XII/2008 on Asking Information from Expert Witnesses. This letter supports press freedom, because it emphasizes the nature of the Press Law as a *lex specialis*.

Becora Road in Dili.⁶³ According to the Committee for Protecting Journalists (CPJ), Thoenes was the first foreign reporter killed in the region since 1975, when six Australia-based reporters were killed during the military invasion of East Timor.⁶⁴

A major difference between this era and the era after the fall of the New Order was that violence against journalists was no longer openly perpetrated by government employees or military personnel, but rather by thugs and violent “social groups.” Attack of this nature has, almost without exception, gone unpunished, while state officials have hardly made any effort to improve the protection of the press.

During the Susilo Bambang Yudhoyono administration, *Delta Pos* journalist Herlyanto was killed in Probolinggo, on 29 April, 2006, in retaliation against his report on the corruption of local officials. Unfortunately, his murder received relatively little attention. The situation, however, was different for *Radar Bali* journalist Anak Agung Narendra Gede Prabangsa, who was found dead on 16 February, 2009. He had been killed after reporting on a corruption case in Bangli’s education district office. Initially, it was difficult to initiate a serious investigation, as the alleged mastermind of the murder, I Nyoman Susrama, was a member of the district parliament and brother of Bangli’s district head. However, the concerted efforts of journalist associations, NGOs, political organizations, and a solidarity movement among concerned citizens forced the police to take the case seriously. In the end, Susrama was sentenced to life imprisonment, while five accomplices received sentences of eight to twenty years in jail.⁶⁵ What is more, the attention garnered by this case resulted in a widespread campaign to better protect journalists.

Unfortunately, during 2009 and 2010 violent attack against journalists continued. Notable cases include the torture of *Harian Aceh* journalist Ahmadi on Simeulue Island, Aceh (18 May 2010),⁶⁶ and the torture of Ardiansyah Matrais in Merauke, Papua (30 July 2010),⁶⁷ as well as the murder of Ridwan Salamun in Tual, Maluku (21 August 2010).⁶⁸ After being beaten by military officers in retaliation for his reports about illegal logging being conducted by the military, Ahmadi stated that “being a journalist in Indonesia is like living

⁶³ After a thorough investigation by the Serious Crimes Unit of the United Nations, it became clear that Sander had been murdered in cold blood. He was executed lying on the ground, after he had fallen off the back of a taxi motorbike he was riding to visit the Becora district, where he was going to gather some quotes of people in the street (“Sander Thoenes: Freelancer,” *Committee for Protecting Journalists*, <http://cpj.org/killed/1999/sander-thoenes.php>, accessed on 16 January 2014; “Documentary revisits murder of FT journalist in East Timor,” *Financial Times*, 30 October 2013, written by John Aglionby). Ibid. “Sander Thoenes: Freelancer.”

⁶⁴ In September 2010, the Supreme Court confirmed the judgments of the district and the high court. Nyoman Susrama was sentenced to life; I Nyoman Wiradnyana, I Komang Gede, and I Komang Gede Wardana to twenty years; and I Dewa Gede Mulya Antara and I Wayan Suecita to eight years. The Supreme Court council consisted of Artidjo Alkostar, Imam Harjadi and Zaharuddin Utama.

⁶⁵ Former military intelligence officer Faizal Amin was convicted of grievous assault against Ahmadi. The Iskandar Muda Military Court in Banda Aceh sentenced him to ten months in jail.

⁶⁶ Matrais, a reporter for the local broadcaster *Merauke TV*, had been covering plans for a large agribusiness development in Merauke. In the week before his death, he had received threatening text messages similar to those sent to at least three other local journalists. “To cowardly journalists, never play with fire if you don’t want to be burned. If you still want to make a living on this land, don’t do weird things. We have data on all of you and be prepared for death” (“Ardiansyah Matrais, Merauke TV,” *CPJ*, 2010, <http://www.cpj.org/killed/2010/ardiansyah-matrais.php>, accessed on 21 March 2011).

⁶⁷ Ridwan Salamun, 28, a correspondent for *Sun TV*, was filming violent clashes between local villagers in the southeastern Tual area of the Maluku Islands when he was stabbed repeatedly.

in an inhuman jungle!” In addition to this beating, all of Ahmadi’s equipment was destroyed as well.⁶⁹ Other cases of violence during the period between 2009 and 2010 include an attack against Imam Abdurrahman (*Megaswara TV*, Bogor, 2 January 2010) by numerous security guards at department store, an attack against Miftahuddin Halim (*Radar Bali* journalist, 15 January 2010) by Paul Handoko and his gang, a brutal attack on Nurul Iman and Zabur (*Tribun Batam*, 11 February 2010) in Sekupang port, and the mob attack on the *Siantar* office after a publication on local politics (25 May 2010). On 7 July, 2010, *Tempo Magazine’s* Jakarta office was bombed by a “Molotov cocktail” after it reported on suspect bank accounts owned by police officers.⁷⁰ An even worse attack occurred on 31 March, 2013, when the *Palopo Pos* office in South Sulawesi was burned down by a mob due to a report about a candidate in the local elections.⁷¹

Two important points can be taken from these cases. First, both corruption and natural resource exploitation at the local level can be dangerous topics for journalists to cover, as indicated in the cases of Ahmadi in Aceh and Ardiansyah Matrais in Papua. This is particularly true when journalists write about the connections between local business elites and government officials. Second, violence against journalists is now perpetrated by non-state actors as opposed to state officials. This differs from the New Order era, where state institutions were often directly involved in committing such violence.

It can be argued that the surge of violence against the press at the regional level is a direct result of political changes due to decentralization. Vigilantes and so called “political gangsters” and have been major beneficiaries of the decentralization reforms. The greater autonomy and power granted to regional governments has transformed paramilitary groups and gangs into valuable political actors and influential power brokers in their own right (Hadiz 2003). The proliferation of these groups since the 1998 reforms represents a manifestation of the decentralized use of violence as a political, social and economic tactic, leading to a loss of state control (Wilson 2006). This has changed the political culture in which the press operates: The role of the state in shaping and influencing press freedom is still significant, but where once the most prominent threat to the freedom of the press was the dichotomous relationship between the state and society, now threats to press freedom more often originate from struggles within society (Romano 2003).

Another fundamental issue impeding press freedom is impunity under the law for those who commit crimes against journalists. Most cases involving violence against journalists or editors fail to produce just resolutions, either because there is a total lack of prosecution, or because of inadequate sentencing. In the cases of Udin (1996), Herliyanto (2006), Prabangsa (2006), Salamun (2010) and Matrais (2010), connections between political officials and business elites at the regional level made it difficult or impossible to punish the responsible assailants. To reinforce this point, one need only look at the case of *Jakarta Globe* journalist Banjir Ambarita, who was stabbed in the chest and stomach by two assailants on a motorbike on 3 March, 2011. The attack was allegedly in response to Ambarita’s report linking police to a prisoner sex abuse scandal.⁷² The case remains unsolved and to this day no judicial prosecution has been made. Violence against journalists

⁶⁹ Interview with Ahmadi, 5 July 2010.

⁷⁰ “*Rekening Gendut Perwira Polisi*” [Fat Account for Retired Police Officers], *Tempo Magazine*, 28 June - 4 July 2010.

⁷¹ “*Palopo Pos Dibakar Massa dengan Tabung Gas dan Bom Molotov*” [Palopo Pos Burned Down by Gas Stove and Molotov Bomb], *News Detik.Com*, 31 March 2013.

⁷² “*Wartawan Ditusuk di Jayapura*” [Journalist Stabbed in Jayapura], *Viva News*, 3 March 2011.

combined with weak enforcement of the law has therefore become a major concern for the press.

However, impunity under the law is not only a result of external factors. It seems that sometimes the owners of media organizations, and even journalist associations, collude with the police and public prosecutors in order to have certain cases dropped so as to maintain mutually beneficial relationships with those in power. A notable example of this involves the case of a national oil company official in Lombok. Head of the Pertamina Company's Ampenan branch office, Sadikun Syahroni, threatened four local journalists from the *Lombok* with a gun and sickle at a press conference on fuel scarcity in West Nusa Tenggara, on 18 July, 2007. The threat was reported to the police, but no charges were brought against Syahroni, apparently because the Indonesian Journalist Association (PWI) had pressured the journalists involved to drop the case. In the end no one dared bring the case to trial, as there was a lack of sufficient support and protection from the owners and editors of the media organizations involved.⁷³

A similar incident occurred at Adam Malik Hospital in Medan, on 7 February 2010. A doctor (with a navy background) locked five TV journalists out of his office when they attempted to interview him on malpractice complaints. A security guard and other medical personnel then harassed and intimidated them, though there was no physical assault. The incident was reported to the police, however under pressure from the owner of the news station resulted in an agreement not to press charges. Following this resolution, other area journalists and representatives of regional journalist associations privately expressed their anger about this "win-win solution," which they claimed undermined the law and press freedom.⁷⁴

Even more disturbing than these incidents of threats were two cases which occurred in East Java in 2012 where the Press Council itself colluded with the government to stop criminal prosecution. The first incident, on 25 May 2012, concerned an attempt by several internet and TV journalists to make a report on a fire at the Indospring plant in Gresik. They were stopped by plant manager Paulina Pradini, who ordered security guards to confiscate their cameras, tape recorders and other equipment. After taking the equipment, the security guards then destroyed it. Again, this incident was reported to the police, which opened an investigation. The case was subsequently accepted by the public prosecutor, who took it to the Gresik District Court. Surprisingly, the Press Council's response was to initiate a mediation process, and eventually an agreement was reached with the journalists. However, though the Indospring tried to discontinue the criminal case, the court stated that such extra-legal agreements could not stop criminal legal proceedings. Pradini was later sentenced to one-month imprisonment. Ironically, the journalists involved in the case later expressed their satisfaction with the conviction.⁷⁵

A similar case occurred after an incident on 15 December, 2012. Head of Pamekasan's Religious District Office, Normaluddin, threatened to kill journalist Sukma Firdaus after she reported on a corruption scandal at Normaluddin's office.⁷⁶ This led to widespread

⁷³ Personal communication and interview (Mataram, 24 June 2010) with two journalists (anonymous).

⁷⁴ Personal communication with a journalist (anonymous), Medan, 29 June 2010.

⁷⁵ "*Kekerasan Wartawan Gresik, HRD Indospring Divonis Satu Bulan*" [Violence against Gresik Journalists, HRD Indospring Convicted to One Month], *Gresik.co*, 9 November 2012.

⁷⁶ "*Diancam Dibunuh, Wartawan Madura Unjuk Rasa*" [Under Threat of Being Killed Madurese Journalists Stage a Demonstration], *Tempo*, 20 December 2012,

protests and, after a number of journalists filed a complaint, the police began an investigation, which resulted in a prosecution by the Pamekasan District Court. However, on 11 March, 2013, as the trial was ongoing, the Press Council held a meeting in Surabaya with the parties involved in order to settle and discontinue the criminal suit. This meeting resulted in a number of agreements, and the "...parties agreed to resolve the case by apologizing to one another and the legal case [was] considered closed." For Sukma this agreement was hard to accept, but in the end she complied with the policies of her employer.⁷⁷ To prioritize mediation over the legally required punishment and prosecution of crimes leads to a form of impunity which fails to send a clear message to those threatening or using violence against journalists.

This problem of impunity under the law has received very little attention under the various post-Suharto governments, and unlike the Udin case, it has failed to gain much international attention. This may be caused by the general impression that Indonesia is now a fairly well developed and functioning democracy. Under Suharto, violence against journalists was considered part of the authoritarian status quo, whereas, at present, it is seen as more of a "localized" and "privatized" issue. The tendency of the SBY administration to blame the press, claiming that it was "unprofessional," "excessive," and "partisan," may also have led to an institutionalization of anti-press discourse. This may well lead to an underestimation of the seriousness of the acts of violence against the press which remain unpunished – by the public, by the state, and perhaps even by the press itself.

In addition to this overview of attacks against journalists, it is important to consider what international monitoring organizations, like Reporters without Borders (RSF), have concluded about press freedom in Indonesia. RSF recorded a decrease in press freedom in Indonesia in 2008, with the country dropping in the RSF World Ranking from 100th position in 2007 to 111th in 2008. In 2010, RSF ranked Indonesia 117th, the lowest position since 2004, and Indonesia has since continued to slide even further down the list, reaching 146th place in 2011-2012. The Indicators used by RSF in the compilation of their index include violence against journalists, the state's role in combating impunity for those responsible for said violence, censorship and self-censorship, media control (regarding questions of ownership), media legislation, pressure from the administration and the judiciary, pressure from business, and freedom on the internet and other new press mediums.

The increase in the number of journalists killed in 2010, as well as the fact that these killings were often not followed by judicial prosecution, contributed to Indonesia's drop in the RSF ranking. The number of physical assaults remained high as well, as can be seen in the following table, based on data compiled by the AJI.

Table 1:

<http://www.tempo.co/read/news/2012/12/20/058449447/Diancam-Dibunuh-Wartawan-Madura-Unjuk-Rasa> (accessed on 14 March 2013).

⁷⁷ Sukma said, "[...] in my heart, I would like the case to be brought before the court. An agreement could be necessary after the court has given its judgment first. Since I am working at a press company, of course I have to obey the company policy, otherwise if I disagree with this policy, it would surely influence my career as a journalist. Hence, I do not have any choice. To me, discontinuation of the legal process is an injustice for a journalist. Nonetheless, this case may provide a learning process for the violator, since he has admitted his fault and promised not to repeat his act to put a journalist under pressure [...]" (Sukma Firdaus, interview, 2 April 2013).

Cases of violence against journalists: 2008-2012⁷⁸

	2008	2009	2010	2011	2012	
Intimidation	18	1	6	10	15	
Eviction and obstruction of access	9	3	7	8	5	
Censorship	3	2	3	3	1	
Physical assault	21	18	16	17	18	
Prosecution and legal suit	6	7	6	2	2	
Demonstration	1	3	2	2	2	
Hostage	1	2	-	1	2	
Killing	-	1	3	1	-	
Mysterious deaths	-	-	1	-	-	
Attack of a press office	-	-	1	2	2	

Though Indonesia's rank improved in the following years, the pattern of systemic violence against the press did not (139th position in 2013, 132nd position in 2014, and 138th position in 2015). Therefore, it can be argued that Indonesia's ranking does not seem to be influenced much by changes in government policy.⁷⁹ The next table presents the disheartening reality of the security situation for journalists between 1996 and 2012.

Table 2:
Journalists killed in Indonesia: 1996-2012⁸⁰

Victim	Date	Location	Perpetrator	Judicial Process (investigation to judicial decision)

⁷⁸ This table is adapted from the AJI annual reports. For 2011-2013 there is no such report, but the AJI did record at least forty cases of violence against journalists and media outlets in 2013. Even so, this number actually indicates a decline compared to 2012 when Indonesia saw 51 cases of violence ("AJI: Kekerasan Masih Menjadi Ancaman Bagi Jurnalis" [AJI: Violence Still Poses a Threat to Journalists], *Suarasurabaya.net*, 24 December 2013).

⁷⁹ 'Press Freedom Index,' *Reporters Without Borders*, 2011-2012, 2013, 2014, and 2015. See: <http://en.rsf.org/>.

⁸⁰ This data is gathered from various sources. The baseline is made by the Committee to Protect Journalists (CPJ), added are the two columns listing the perpetrator and the ensuing judicial process.

Fuad Muhammad Syafruddin, Bernas	16 August 1996	Yogyakarta	Two unidentified assailants	No further prosecution
Muhammad Sayuti Bochari, <i>Pos Makassar</i>	11 June 1997	Luwu, Sulawesi	Unidentified assailants	No further prosecution
Naimullah, <i>Sinar Pagi News</i>	25 July 1997	Pantai Penibungan, Pontianak, West Kalimantan	Unidentified assailants	No further prosecution
Sander Thoenes, <i>Financial Times</i>	21 September 1999	Dili, East Timor	Indonesian army, Major Jakob Djoko Sarosa and Lieutenant Camillo Dos Santos	Under investigation of UN Serious Crimes Unit, but murderers were never brought to justice
Ersa Siregar, <i>Rajawali Citra Televisi</i>	29 December 2003	Aceh	Killed during a gun battle between Indonesian military forces and the Free Aceh Movement	No further prosecution
Herliyanto, <i>Radar Surabaya</i>	29 April 2006	Probolinggo, East Java	Seven assailants, led by Abdul Basyir	Three assailants were prosecuted, but Abdul Basyir and three of his men were never brought to justice

Anak Agung Gede Prabangsa, <i>Radar Bali</i>	11 February 2009	Bali	I Nyoman Susrama and five of his men	Susrama was convicted to life imprisonment, while five accomplices received sentences of eight to twenty years in jail
Ardiansyah Matrais, <i>Merauke TV</i>	30 July 2010	Merauke	Unidentified assailants	No further prosecution
Ridwan Salamun, <i>Sun TV</i>	21 August 2010	Tual, Maluku Islands	Killed during violent clashes between local villagers in the south-eastern Tual area	Three suspects were prosecuted, but later acquitted
Alfrets Mirulewan, <i>Pelangi Weekly</i>	17 December 2010	Kisar, Maluku Islands	Risart Salampeppy/Ris, Markus Sahureka (the Maluku Water Police Directorate), Imanuel Belly/Bima, Thomas Pukeey and Risam Augusten	They were sentenced, the sentences varied from three to nine years
Leiron Kogoya, <i>Papua Pos Nabire</i> and <i>Pasifik Pos Daily</i>	8 April 2012	Mulia	Unidentified gunmen	No further prosecution

V. THE COURT: FROM IGNORANCE TO HOSTILITY

Since 1999 press bans have no longer been allowed in Indonesia, but civil and criminal lawsuits have still been brought against journalists, editors and the owners of media organizations. Therefore, the judicial protection of the press has remained an important issue for press freedom in Indonesia. Just like during the New Order, inconsistencies in the legal interpretation of press law are still commonly encountered today.

There are three possible factors which have led to these inconsistent court rulings. First, the records of court rulings are often unavailable to the public or quite difficult to obtain. Legal information is better accessible now than it was under the New Order (Churchill 1992: 1), but in the situation has not changed much regarding the release of court decisions. While it is true that the Supreme Court now publishes its decisions online, its website is not well-organized and finding documents pertaining to a particular topic is very difficult. Regarding judgments of lower courts, the situation seems not to have changed at all. Therefore, the reliance on legal precedent has been almost discontinued in Indonesia, which obviously negatively effects uniformity in adjudicating similar cases (Bedner 2013).

The second reason for this judicial inconsistency is that many lower court judges seem unable or unwilling to understand the special mechanism of the 1999 Press Law, which clearly requires that press cases be handled by the Press Council before they end up in court. This is remarkable given the Supreme Court's consistency in its judgments in prioritizing the Press Council mechanisms. It is to be hoped that ultimately these lower court judges will conform with the Supreme Court on this issue. Perhaps the appointment of former Supreme Court Chairman Bagir Manan as Chairman of the Press Council will facilitate this process. It might also be necessary to connect the idea of achieving a "real legal certainty", as stipulated theoretically by Otto (2002). Such idea is more based on the implementation of 'law in action' rather than 'law in the book'.

Thirdly, several cases have demonstrated that the judicial process is influenced by political or economic interests (Wiratraman 2014). Under the New Order this political influence was centralized in order to serve the regime's interests. Today, political and business interests are more diverse. That this influence is significant is sustained by the widely held belief that corruption in the judiciary is still rampant.

Ultimately such inconsistency leads to legal uncertainty. In fact, while there is inconsistency between the rulings of lower courts and the Supreme Court, there are discrepancies within the Supreme Court itself. In *Suharto v Time* (2000) the Supreme Court overturned and changed its own decision, and in the criminal defamation cases against *Tempo's* Bambang Harymurti (2003) and Risang Bima Wijaya (2006) the Supreme Court made completely contradictory rulings - acquitting Bambang and sentencing Risang, even though the facts presented in each case were strikingly similar.

Interestingly, there are also several press cases where journalists dropped their charges or ended legal proceedings themselves. It seemed that many journalists are wary of the state legal system as an effective form of protection. Journalists, and editors in particular, are often inclined to settle or "lump" after incidences of violence, rather than report them to the police. They fear retaliation and continued violence as a result of pressing charges. What is more, Criminal proceedings are inconvenient, time consuming, and stressful affairs with no promise of justice. Another reason for this preference in seeking private extralegal agreements is that the majority of newspapers in Indonesia have no lawyers to assist their journalists in cases of harassment or assault. These "peace agreements" (*kesepakatan*

dama) often involve professional associations, such as the medical association at the Adam Malik Hospital in Medan, and the taxi drivers' association in Denpasar. Journalists have sometimes employed the services of the Independent Journalists Association to this end. Not all journalists agree with this behaviour. They fear that by seeking private settlements instead of pressing charges will ultimately lead to systematic impunity. It may prevent violence in the short term, but on the whole the power of criminal law to deter criminal acts will be diminished. In order to enable journalists to make better informed decisions in such cases, in recent years a number of press legal aid institutes have been established, sometimes with the help of law faculties. This may lead to a shift in preference and a greater reliance on the legal system in the settling of disputes involving the press.

The court has also been used as a weapon to attack professional journalism. Many lawsuits against the press in the post-Suharto era have had neither the intention of protecting public interest nor supporting press freedom, but have merely been aimed at driving certain newspapers or media businesses into bankruptcy. Examples include the cases of Tomy Winata v. Tempo and Raymond Teddy v. Seven Medias. Such cases are reminiscent of the so-called SLAPP (Strategic Lawsuits Against Public Participation), but I argue that they can be better described by a new term: ULAP (Unjustifiable Lawsuits Against the Press). ULAPs have mainly been conducted against newspapers and magazines that are well-known for their high professional standards, reliability, and quality of information.

There are two reasons for introducing this new concept. First, it provides a clearer definition for a particular type of case against the press which, unfortunately, occurs quite often. Second, it is important to have a working theory or concept with which to make clear the difference between "pure" legal action and a form of political suppression through the use of the courts. It may also assist journalists, editors, and even judges in more easily identifying the true reasons behind a case brought against the press.

Indeed, not all lawsuits against the press are considered as ULAP. ULAPs possess several standout features: they target professional journalism, try to drive news media into bankruptcy, and are often motivated by retaliation and revenge. ULAPs are often accompanied by intimidation and/or physical violence against journalists; they are usually inspired by certain political and/or economic interests. ULAPs are typically aimed at silencing investigative journalism and therefore they harm the public interest. In Indonesia's current socio-political atmosphere, where "predatory elites" have gained ascendancy in many regions, public access to reliable and honest news is of great importance and needs to be protected by all means.

VI. CONCLUSION

During the early years of the post-Suharto era, and in particular during the presidency of Abdurrahman Wahid, freedom of the press was at its peak. Wahid dissolved the Department of Information, which had served as the cornerstone of the New Order's organized repression of the press. During Wahid's period no journalists were arbitrarily sentenced to jail. Also, the enactment of the 1999 Press Law set the foundation for a number of important reforms, such as the abolishment of the SIUPP, and contained important guarantees for press freedom. According to Wahid, "...information is society's business, which means it is inappropriate for the government to intervene." As is made clear by the policies he supported and the positions he expressed, Wahid was an advocate of the principle that democracy requires well-informed citizens. The public's ability to

develop intelligent and well thought out opinions with which to contribute to a functioning democracy is only increased when they enjoy equal and open access to diverse sources of information.

During Wahid's administration laws concerning press freedom were radically altered and greater restraints were placed on the state's ability to use coercion in response to criticism made by press. These changes, which signified the initial stages of the development of much broader press freedom in Indonesia, were unfortunately short-lived, as the relationship between the press and Wahid's successor, Megawati Sukarnoputri, was much more antagonistic in nature. Under the Megawati administration journalists and editors were, again, criticized and persecuted by government officials and civil lawsuits, with Megawati herself often decrying the damage the press was doing to her reputation. Furthermore, during Megawati's presidency the criminal courts began to be used as a weapon with which to weaken the freedom of the press.

During the presidency of Susilo Bambang Yudhonothe (SBY) the situation further deteriorated. New legislation, including the Pornography Law, the Electronic Information and Transactions Law, the General Election Law, and the Presidential Election Law, began to undermine the progress made under the 1999 Press Law. At the same time, there was a considerable increase in number of criminal and civil lawsuits which were brought against journalists, editors, and the owners of media organizations. The application of the Penal Code in cases involving the press became commonplace again, despite the fact that the Press Law was expressly created to take pre-eminence in such instances. Since the start of the SBY administration, the increase in criminal and civil lawsuits has taken a significant financial toll on the press. On top of this, there has been a distressing increase in incidents of violent attacks on journalists and media offices perpetrated by privately hired thugs and gangs. Those committing these acts of violence often go unpunished, which further adds to the general lack of confidence in sanctions against human rights violations. The wider implications of these events include the slowing of Indonesia's ongoing democratization process and the weakening of the rule of law. When we compare the current situation to that under New Order, violence against journalists has become more "localized" and "privatized" - it usually benefiting elites at the district level rather than the national government. This shift has mirrored the wider decentralization process. As argued by Heryanto and Hadiz (2005: 261), "freedom of the press continues to be challenged, not by an authoritarian state, but by a variety of vested business interests or by the exercise of societal political violence." One may add that when journalists cover corruption and natural resource exploitation by regional elites they are more likely to become victims of violence.

Despite these serious drawbacks, there is still much more press freedom now than under the New Order. The constitution has been amended and now clearly guarantees the freedom of expression. Freedom of expression is similarly protected by the 1999 Human Rights Law and Press Law. Though there have been laws passed which suppress and restrict the rights of the people, they have not specifically targeted the press and media.

Under the New Order the limits placed on the freedom of the press were never clearly defined and the general policy was primarily derived from Suharto's. Today, however, the Press Council and the court have been given the prerogative to make the rules. This reflects how much the legal system has changed and developed into the nationally recognized authority on press freedom.

The Department of Information was dissolved during the early years of the reformation, and though it was essentially re-established under the SBY presidency as the "Department of Information and Communication," and though the KPI became the

licensing and monitoring authority for broadcast media, these bodies lack the power and influence of their predecessor. Actions taken to regulate the press now are no longer handled unilaterally by the executive offices and now almost always involve the courts. During the Suharto regime, press organizations, printing houses, and the Press Council were co-opted by the state. Today this is no longer the case, at least not at the national level.

Despite these advances, however, the press freedom situation is still rather precarious given the influence and threats from local politics, impunity under the law, powerful media moguls, and legal battles. Therefore, in conclusion, further legal reforms are needed in order to better balance the power of the state, to increase the level of press freedom, and to send a powerful message that Indonesia is committed to continuing the process of democratization and the developing a stronger commitment to the rule of law.

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