

Human Rights in Southeast Asia Series 1

**BREAKING THE
SILENCE**

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Human Rights in Southeast Asia Series 1: Breaking the Silence

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DOES POST-SOEHARTO INDONESIAN LAW SYSTEM GUARANTEE FREEDOM OF THE PRESS?

R. Herlambang Perdana Wiratraman

In the early years of the post-Soeharto era, press freedom in Indonesia was at its peak. It was deemed progressive, especially after the adoption of human rights and guaranteed freedom of expression into the amendment of the 1945 Constitution (during 1999-2002). In 1999, articles against revocation of press permits, press censorship and press banning were adopted by the new Press Law.

This article analyzes press freedom during the post-Soeharto era using the rule of law point of view. It aims to questions whether these changes really guarantee freedom of press in reality. Also analyzed is whether changes in governance and judiciary system can effectively realize the freedom of the press, especially in relation to democratization and human rights protection. This article, however, assumes that the law system and law enforcement are not really effective. Therefore, it simply inquiries whether freedom of press in Indonesia during the post-Soeharto era has really brought about a better and freer environment than that of the Suharto era.

This paper begins with a short overview on freedom of press in the early parts of the independence time (1945-1949), during Soekarno's regime (1949-1967), and during Soeharto rule (1967-1998). Then, this paper continues to analyze freedom of press during the post-Soeharto era.

1. Introduction

Since the fall of former President Soeharto in 1998, Indonesia has been deemed as an emerging democratic State that promotes human rights and freedom of the press. Several indicators appear to this claim, such as the adoption of human rights into the amendment of the 1945 Constitution (during 1999-2002), the formulation 'human rights-friendly' legislations, decentralization of governance, freer election system, and the explicit guarantee for the freedom of expression. Freedom of press has been strengthened by two legislations (the Press Law of 1999 and the Access to Public Information Law of 2008). These legislations stipulate protection of journalists and press freedom through the abolishment of censorship, bans and official permits to establish media personalities and activities. These legislations also promote and strengthen public participation in a more democratic manner. They also promote accountability in governance. Not surprisingly, these laws have influenced the decentralization processes and the economic-political democratization at the local levels.

Nevertheless, the *realpolitik* of decentralization during the post-Soeharto era has fundamentally changed the local political configuration in Indonesia. Many new press companies appeared along with the wider freedom for the media. Facing an apparently progressive development, this article explores whether the proliferation of press companies really represents a better situation for press freedom as well as for democratization and human rights protection in Indonesia.

This article inquires whether the law system actually guarantees adequately the freedom of press, through the governance and judiciary point of views. Moreover, it assumes that the law system and the law enforcement have not been effective. To answer this question, this article employs field research in seven provinces in Indonesia (performed in 2009 and 2010). Data from this research was used to analyze the application of press law and its roles to represent the public or society in criticizing government policies at the local level.

This article begins with a short overview on the freedom of press in the early independence (1945-1949), during Soekarno's rule (1949-1967) and Soeharto's regime (1967-1998). It continues by analyzing the freedom of the press post Soeharto period, especially understanding press freedom from governance and judiciary point of view.

2. Freedom of the Press during the early parts of Independence (1945-1949) and the Soekarno Period

Freedom of press in Indonesia was heavily regulated in a number of legal documents during the early parts of its independence. The government adopted the laws of the former *Netherlands East Indies*. This continuation of law was clearly stated in Article II of the Transitional Rule of UUD 1945, which stated that "All the existing state institutions

and regulations persist, as long as the new ones have not been established according to this Constitution.” This provision was slightly changed by Presidential Decree (*Maklumat President*) No. 2 of 1945 (10 October 1945), which stated that “All the state institutions and regulations are still applicable as long as they do not contradict the Constitution.” This transitional provision was also adopted into the Article 192 RIS Constitution and Article 142 UUDS 1950 (both “temporary” Constitutions).

Such transitional provision became a legal basis to retain all existing State institutions and laws during the Dutch administration, including numerous legislations related to the press such as the criminal code (*Wetboek van Strafrecht*, amended in Law No. 1 of 1946) that had a number of articles pertaining to press regulation and the curtailment of freedom of expression.

During this period, the visions of the national leaders to free the new republic from colonial law and customs were not easily feasible. The modern system of law, such as administration, organs, procedures, doctrines, principles, and the legal enforcement process, has been adopted as a legacy from the Netherlands Indies administration which was hard to uproot within a short period of time.

According to Lev (1985: 57) and Benda (1966), the new government could not wipe out the past legacies. Wignyosoebroto (1994: 187) believed that it was almost impossible to develop a set of national laws from scratch because this new configuration still needed to undergo trials and errors. Meanwhile, the educated people who learned Dutch law would be likely to think and act based on this European tradition or school of thought. Therefore, Wignyosoebroto (1994: 188-9) explained that these strata preferred to push the type of positive law system as the Netherlands Indies legacy, as supported by the 1945 Constitution’s transitional provisions.

This situation worsened during the Soekarno’s administration, especially when the Government enacted the Anti-Subversion Law. This law discouraged critical or different views on the government and its policies. A more serious event arose when Soekarno enacted the Emergency Law in March 1957 (a Martial Law, or termed as the State of War and Siege). This law was later revoked by the Government Regulation No. 23 of 1959. These Anti-Subversion and State of Emergency Laws had undermined freedom of press and democracy in Indonesia because they favoured the ruler over the public’s critical opinion.

During the parliamentary years, the press enjoyed a rather liberal situation, especially during 1950 to 1959. Most newspapers in Indonesia echoed the voices of political parties or organizations. The newspapers that time represented the political parties’ position and views which aimed at “solving” societal problems in Indonesia. This liberal situation was evident from the news, editorials, and political caricatures. Among these newspapers, some (*Harian Merdeka and Indonesia Raja*) were even able to develop an independent

publication system (or without the supports of political parties). According to Said (1988: 94), aside from the newspapers based in Jakarta, the general press condition was very poor.

The situation worsened during the guided democracy which began in 1959. In the end of 1960, the Government strongly required the journalists to sign a “*dokumen kesetiaan*” (loyalty statement), which contained 19 articles. The statement provided only two choices for the journalists, i.e. to sign or to stop their publication.

A journalist’s signing of this statement indicated a vow to actively support government policies and programs (Smith 1983: 10). Rosihan Anwar, the well-known chief editor of *Pedoman*, signed this agreement. He argued to the journalists association (IPI) that in the transitional state into democracy, the implementation of freedom of the press was understandably difficult. In that transitional context, the main task of media was to publish and to survive. Some other journalists like Tasrif from Abadi and Mochtar Lubis from Indonesia Raya refused to sign this agreement. Mochtar Lubis pointed to Rosihan Anwar’s “mistake” to sign the loyalty statement because the signatories were chained under the government’s control. Eventually Rosihan Anwar was temporarily banned from the journalist association’s (IPI) membership (Smith 1983: 10).

Soekarno always claimed the connection between the press and its commitment to the struggles as an important tool of the revolution. Soekarno said in front of the *ANTARA* (National News Authority) staff in Jakarta (14 October 1962) that “many journalists argued that the press are able to provide all the ways of thinking, although these would contradict the revolutionary spirit.” On another occasion, Soekarno complained, “[Journalists] argued that this is a press democracy. I don’t want to see ANTARA to become such an institution.

Thus, *ANTARA* should be a revolutionary tool that refuses all counter-revolutionary thoughts” (Indonesian Observer, 15 October 1962, p. 1, in Smith 1983: 12). He repeated a similar statement when he inaugurated the Monitor Agency of *ANTARA* News in the Presidential Palace on 18 December 1962. He said, “Objective reporting during the time of revolution is impossible.” The President saw that the liberal journalists argued that the news should be objective. “I don’t want the news (press) to be objective but it has to be committed to our revolution and to be instrumental to the fight against the enemies of the revolution” (Indonesian Observer, 19 December 1962, p.1, in Smith 1983: 12).

By setting his thought on the so-called ‘revolutionary press’, Soekarno arbitrarily threatened journalists, especially those who criticized him, his administration, or his leadership. In February and March 1965, 29 newspapers were forcibly closed down due to their support for an anti-Communist bloc (necessarily anti-Soekarno as stated by Soekarno’s opponents). It was the worst year for freedom of the press. Following this series of banishments by Soekarno, after the political chaos after 1 October 1965,

banishment of press became a common method. Shortly after October 1965, 46 out of the 163 remaining newspapers were banned indefinitely by the post-Soekarno government because of their presumed association with, or sympathy for, the Indonesian Communist Party (PKI) or its allies (Hill 1995: 19).

3. Freedom of Press during Soeharto Era

A rather similar pattern of press control with a slight deviation appeared after the Soeharto rule formally began in 1967. Soeharto paid some attention to the limitation of or control over the press under his administration. Besides the use of the Dutch Penal Code's *hatzaai artikelen* (hatred article) to limit freedom of the press and access to information, his government produced numerous draconian policies against the press.

Despite an existing press law, i.e., Law No. 11 of 1966, Soeharto's New Order reduced freedom of the press, particularly through numerous security restrictions and suppressive provisions. It was true that in paper the press law assures that 'No censorship or bridling shall be applied to the National Press' (Article 4), 'Freedom of press is guaranteed in accordance with the fundamental rights of citizens' (Article 5.1), and 'No publication permit is needed' (Article 8.2). In fact, this press law was passed by the 4th General Session of MPRS in 1966, especially through its decision of No. XXXII/MPRS/1966 concerning the Press Assistance. The MPRS Sessions in 1966 stated that expressing opinion and thought through press media was a citizen's right. The People Representative Board's willingness to have legislation for the press, implicitly containing recognition for freedom of press, however, had its limits. The press, in turn, were expected to be responsible to the Almighty God, people's interests and State safety, and the revolutionary spirits. In this spirit, the press were set to achieve the three pillars of revolutionary purposes, moral and social norms, and national identity.

During the early years of the Soeharto's New Order, the term 'press responsibility' was conceptualized. It meant that the press was accountable for those considerations. The press was no longer deemed as the 'mover of the masses' but the 'mover of national development'; no longer as a 'guardian of the revolution' but a 'guardian of the *Pancasila* ideology'; no longer a '*Pancasila* Socialist Press' but simply a '*Pancasila* Press' (Hill 1995: 62).

This press law also was ambiguous and has mocked the principles of a free press. The rule for 'transitional period' (Article 20.1.a), for example, demanded two interrelated permits to be secured by the media publishers: 'Permit to Publish' (*Surat Ijin Terbit/SIT*) from the Department of Information and 'Permit to Print' (*Surat Ijin Cetak/SIC*) from the Military Command for Security and Order (*Kopkamtib*). A publication is not allowed to be disseminated and printed legally without both of these permits. Practically, these permits had effectively legitimated the New Order regime's controlling of media publications.

This constraining 1966 law was later amended by the Law No. 4 of 1967. To discipline the journalists further, the Department of Information's Ministerial Decree No. 02/PER/MENPEN/1969 had also forbidden journalists to establish any organizations. As described in the Article 3(1), 'Indonesian journalists are obliged to become members of an Indonesian Journalists Organization which is recognized by the Government'. Purposively, there was only one organization recognized by the government, which was the Indonesian Journalists Association (PWI or *Persatuan Wartawan Indonesia*).

The Law No. 21 of 1982 concerning Amendment of Law No. 11 of 1966 was the primary legislation governing the Indonesian press during the 1980s and 1990s. The differences between the earlier 1966 pre-New Order law and the new 1982 law were mainly shifts in terminologies. The term "active", often pertaining to partisan press of the early years of independence was turned into the "moderate" media under the New Order. If in 1966 the National Press was obliged to 'struggle for honesty and justice upon the basis of press freedom', in the 1980s it was tamed to be 'responsible press freedom'. The previous obligation to be a 'channel for constructive and revolutionary and progressive public opinion' was replaced by a 'positive interaction between the government, press and society', aiming at 'broadening communication and community participation and implementing constructive control by society' (Article 1.6 Law No. 21 of 1982).

The press industry generally accepted the new legislation with discontent. On top of this struggle, the controversial Minister of Information's Regulation of 1984 (known also as *Peraturan Menpen*, No. 1 Tahun 1984) was then enforced. This regulation demanded for the implementation of the Act, specifically regulations referring to the revocation of the SIUPP (Permission Letter for Press Publication). This regulation gave the Minister the power to revoke the given Permission Letter for Press Publication or *SIUPP* and thus banned any "transgression" publication, without recourse to trial or public defence. Hill said that this SIUPP-revocation legislation was apparently the brainchild of the former Minister of Information and the New Order intelligence officer, who was a civilian whose appointment was widely regarded as lacking any justification (Hill 1995: 49-50).

The Minister of Information's Regulation of 1984 was challenged by Surya Paloh, who wrote an open letter to the Parliaments (DPR and MPR) demanding for a Supreme Court judicial review over the possibilities of the Ministerial regulation's contradicting the Laws No. 11 of 1966 and No. 21 of 1982. The Supreme Court apparently agreed to consider the issue but stalled the process until the March 1993 session of the MPR (People Representative Board/Upper House), which was assigned to appoint the President and Vice President.

The Supreme Court responded eventually in June 1993 only to reject Surya Paloh's request to challenge the Ministerial regulation on the basis of "no known formal procedure for such judicial review". This demand by Surya Paloh was the first of such request in the

Indonesian legal history, although no such procedure had been settled down afterward. Amidst its failure, it became the precedent to the future demands for judicial reviews not only for the regulations on Press and SIUPP, but also for other legislations (see Supreme Court Decision Regulation No. 1 of 1993).

The most controversial ban against the media took place in 1994, when the magazines *Tempo*, *Editor* and *Detik* were purged by the Ministry of Information. A repressive method was applied by the Government in “disciplining” the press and limiting the public from other access to information. In these cases, government policies and regulations were heavy-handedly interpreted as the upholder of the roles of the press and the guardians of Pancasila and the 1945 Constitution, as well as the gatekeepers of ‘responsible freedom of press’.

Pancasila as the ideology of the press was vaguely defined. It was an enigmatic discourse because the government had steered the media as an agent of political stability (McCargo, 2003: 77-99). This move was played through numerous arbitrary policies rather than through parliamentary legislations.

The Government called those involved in the press industry to serve for ‘national development’ through a discursive practice of “responsible freedom of the press” in Indonesia for more than three decades of the New Order in power. What we could learn from the New Order’s legislations was the praise of Pancasila as a legitimate political support for the maintenance of Soeharto’s authoritarian regime. It was heavily manifested through a series of systematic and structural means which had led to the purging of the freedom of press.

4. The Freedom of Press during the Post-Soeharto Era

In order to understand the current situation of Indonesian press, this part starts by questioning what we have learned from the Soekarno and Soeharto eras in relation to the struggles of the press and what have changed after those regimes.

Under the quasi-dictatorial presidency, the freedom of expression and press were gagged by numerous draconian regulations. These regulations allowed press banning, press censorship and press publication permit. The implementation of those regulations was done through a coercive structure of governance, with the involvement of the military, to limit the press and media ownership. In terms of the judicial system, its processes had been run by the police and State prosecutors. The courts seemed to have served the regime’s interest rather than to realize press freedom.

This interest was served through the ideological setting from the jargon of ‘revolutionary press’ to ‘*Pancasila* press’ which had tremendously manipulated public opinion. Press life had been predominantly controlled by the anti-democratic regimes.

This situation was generally changed into the better one after 1998. After Soeharto stepped down in 21 May 1998, the euphoria of liberation for rights and reforms in various levels of social and political life came into reality. In the early years of the so-called “Reformation Era”, a number of new laws was formulated and enacted. These included several human rights laws, either as proposed by civil society or ratified from the international human rights law instruments. During this period, Freedom of the press was deemed to have reached its golden age, especially after President Abdurrahman Wahid (or known as Gus Dur) dissolved the Department of Information and stopped the practice of sending journalists into gaols. Gus Dur said that “... information is a business for society, which is inappropriately done if the government interferes.”

New legislations on human rights appeared in the form of Law No. 9 of 1998 concerning the Freedom of Expression in Public Sphere, Law No. 39 of 1999 concerning Human Rights Laws, or Law No. 26 of 2000 concerning Human Rights Courts. The Government also passed legislations through the ratification of international treaties, such as Law No. 5 of 1998 concerning Convention against Torture and other Cruel, Inhuman, or Degrading Treatments or Punishments, Law No. 29 of 1999 about Racial Discrimination Convention, Law No. 11 of 2005 about Economic, Social and Cultural Rights Convention, and Law No. 12 of 2005 concerning Civil and Political Rights Convention. By pursuing these legislations, the Indonesian government appeared to be taking the great responsibility in promoting, protecting and fulfilling human rights. These are indeed “progressive” legal developments in the context of transition into a more democratic society.

During the early years after 1998, the Indonesian government passed a new legislation concerning the press, which was Law No. 40 of 1999. This law actually promoted the protection of journalists and press workers. The boosting spirit for freedom of the press was reflected by this law that disallowed revocation of press permit (*Surat Izin Penerbitan Pers*), censorship practice, and press banishment (Dutch: *persbreidel*). This law was seemed to be supported by the enactment of Law No. 14 of 2008 concerning Public Information Openness. This newer law clearly guaranteed people’s access to public information as mandated by the Article 28F of the 1945 Constitution. This law guaranteed the government could no longer withhold an ‘official or state secret document’ if it was categorized as a public document. From this set of facts, it seemed that press freedom gained more protection and guarantee by the legal system.

Nevertheless, at the same time, the government and parliament also passed numerous legislations that tremendously threatened freedom of the press, especially by setting heavy criminal sanctions against “defamation” by press workers. Ironically, these legislations were not directly interrelated to the media law. These legislations included the following: the Law No. 10 of 2008 (General Election of Parliament), the Law No. 42 of 2008 (Presidential Election), the Law No. 44 of 2008 (Pornography), and the Law No. 11 of 2008 (Electronic Information and Transaction).

These laws, unfortunately, were the carbon copies of the Dutch's Criminal Code that are still being used until today. From 2003 until 2008, State prosecutors filed 59 cases related to "defamation", which were charged against the press workers through the Criminal Code rather than through the real press law (Margiyono 2009: 16-17). The ancient "defamation article," for instance, was still applied to charge journalists such as in the case of Tomy Winata versus the Chief Editor of Tempo Magazine and Tempo journalists. This case was charged against *Tempo* Magazine's news about a fire accident in a factory allegedly set by Tomy Winata in Tanah Abang, Jakarta. Although the journalists lost in the verdict by Jakarta District Court, they were acquitted by the Supreme Court.

General election laws like the Law No. 10 of 2008 were also potentially threatening the media and press workers. This law prohibited election-related reports and publication during the pre-election 'quiet days' (*hari tenang*) and allowed press banishment if the press violated these rules. It was eventually repealed by a Constitutional Court decision on 24 February 2009 (See Constitutional Court Decision No. 32/PUU-VI/2008).

The Pornography Law (Law No. 44 of 2008) also contravened the press law. This law potentially threatened press workers in reporting news related to pornography, whose terms were not so sufficiently explained. The issue of pornography was actually regulated through the Law No. 40 of 1999 (see Articles 5.1 and 13), and it was thus considered as a '*lex specialis*' (specific, higher law) of pornography regulation in the media publication. Also, this regulation was adopted into the Article 4 of the Journalist Ethics Code.

The possible charge of "criminal defamation" offence against journalists was also provided by the Law No. 11 of 2008 concerning Electronic Information and Transaction (EIT), especially in Articles 27 and 28. This law adopted a cyber defamation offence that charged offending journalists with six years of imprisonment for "offensive" online media. Because the criminal charge was more than five years of imprisonment, the State apparatus could immediately detain the suspects, a practice of which would pose serious threats to journalists. The Pornography Law and EIT Law have been challenged by journalists and civil society groups because both were deemed contradictory to the 1945 Constitution's freedom of expression and the guarantee of Press Law. Nevertheless, the Constitutional Court deferred a decision on this issue and also on the General Election Law case. The Pornography Law and EIT Law were later considered by the Constitutional Court as important legislations to protect public interest. Both laws are still applicable until the present, and journalists felt that these laws could be potentially used against them.

These facts stood as clear messages for press workers that they could be legally restricted by numerous legislations outside the media or press laws. This expansive legislation became a new trend in the context of ten years of reformation after the fall down of Soeharto that sadly did not bring this trend to an end. Aside from these working legislations, there were other several drafts of law or revised drafts that might also threaten freedom of the

press and freedom of expression such as the draft for the State secrecy law, the revised draft for the criminal code, and the press law.

The draft for the State secrecy law claimed a kind of wide-ranging secrecy because Article 6 of this draft determined a very wide and flexible range of definitions for “State secrecy”. The term “State secrecy” covered not only information on defence, intelligence, foreign relations, and diplomatic function but also institutional secrecy such as bureaucracy secrecy, official secrecy, and other secretcies that had actually been defined by other legislations. This draft was equally unclear about the limitation on the authorized officials who would be responsible to close or disclose information. The jail term charged by this draft was also quite serious (six to twenty years or maximum imprisonment term). Although the draft of the state secrecy law was finally cancelled, the government started to propose a new draft of national security law which also contained the possible attack against the press freedom.

Although the level of Press Law (Law No. 40 of 1999) was similar in legal hierarchy with the EIT Law, Anti-Pornography Law, and also General Election Law, but these anti-press freedom laws could be arbitrarily misused by the judicial system to suppress the press, especially by denying the Press Law. These anti-press freedom laws could be repealed or reviewed only by the Constitutional Court. The other lower laws below the “Law” status, such as Presidential Decree, Government Regulation, and Regional Regulation could be reviewed by the Supreme Court. In spite of the mechanism of judicial review provided by Indonesian legal system, the anti-press freedom legislations were perceived as ‘a legalized repression’ against the journalists and other press workers. The press activities could be easily restricted through various policies and decisions as formulated and applied by the government, parliament, or even the district courts as if the anti-press freedom legislations still exist.

From the judiciary system point of view, this paper has examined the freedom of press through several legal cases, administrative laws, criminal laws and private laws, which portray the freedom of press situation in post-Soeharto Indonesia. The case of administrative law was represented the Government’s (through KPI or Indonesia Broadcasting Commission) banning Radio *Era Baru* FM, a radio station based in Batam Island. The station had been broadcasting since 2005 before the radio was forcibly closed down in 2007. KPI and Minister of Communication and Information stopped the radio’s broadcasting without any clear reason when the Frequency Monitor Section in Batam released a final letter to call off the broadcasting on 21 October 2008. The pressure to close down this radio broadcasting was originally initiated by the Chinese government towards the Indonesian government through the KPI and the local Batam authorities. The ‘language matter’ as a reason to close down was proposed by the KPI. Raymond Tan and Gatot Supriyanto (Directors of *Radio Era Baru*) explained that some Chinese officials visited the KPI in 2007, asking the Indonesian government to shut down the radio station because it had been airing criticisms of Beijing’s human rights records,

including the news about the suppression of the Tibetans, Uyghurs, and Falun Gong practitioners. The letters were sent by the Chinese officials to the Ministry of Foreign Affairs, the Ministry of Internal Affairs, the Department of Espionage, the Department of Communication and Information, and the KPI. Raymond Tan showed the letters from the Chinese Embassy and the news of Chinese officials' visit to the KPI, as well as the letter dated 8 March from the KPI that demanded the radio station to shut down (personal communication with Raymond Tan and Gatot Supriyanto in Jakarta, 22/10/2010).

The station contested these letters in front of the administrative court. However, *Radio Era Baru* was defeated in administrative and appeal court decision. The Supreme Court eventually overturned the decision to favor *Radio Era Baru* (see Administrative Court decision No. 166/G/2008/PTUN-JKT, 14 April 2009). This decision was given on 5 October 2010, and it ended after three years of legal battle between the station versus the KPI and the Minister of Communication and Information. *Radio Era Baru* regained the broadcast license and could freely broadcast in Indonesia. In this case, the Broadcasting Law was indeed produced during Megawati's presidency, although its implementation had been done some time after the end of her term.

Nevertheless, the threats against freedom of the press also occurred during the Megawati administration, most notably the two cases regarding the case of criminalization of *Rakyat Merdeka* newspapers and Tommy Winata's charge against *Tempo* magazine. Both cases were related to the issue of the Penal Code application against the freedom of press in 2003. Karim Paputungan, chief editor of *Rakyat Merdeka*, was sentenced with 10 months imprisonment by Central Jakarta District Court for insulting Chairman of DPR, Akbar Tandjung. Another editor, Supratman, was also sentenced with six months imprisonment and 12 months of suspension because of an offending article against President Megawati. In the case of Megawati's hatred article, the newspaper's editor was convicted as a violator of the defamation law because of its "offensive" articles concerning President Megawati's policies (like "*Mulut Mega Bau Solar*" of Mega's Mouth Smells like Diesel Oil on 6 January 2003), "*Mega Lebih Kejam dari Sumanto*" (Mega Crueler than Sumanto—a convicted cannibal), "*Mega Lintah Darat*" (Mega Loan Shark) and "*Mega Sekelas Bupati*" (Mega Act [lowly like] District Head). The illustrations of the news also showed resident Megawati and her 'ugly' policy in oil price hikes. President Megawati was very upset and then charged the newspapers with defamation articles to District Courts. In the streets, pro-Megawati mobs publicly threatened the journalists working in *Rakyat Merdeka* newspaper.

Another criminalization was thrown through Courts against *Tempo* magazine after its reporting of the notorious "Tanah Abang fire". Business magnate Tommy Winata has filed at least seven lawsuits against *Tempo*, mostly based on the articles appeared which on pages 30 and 31 of *Tempo Magazine* in its 3-9 March 2003 edition (with headline "*Ada Tommy di Tenabang?*" or Tommy Mastermind of Tanah Abang [Fire]?). The Central

Jakarta District Court ordered Tempo to compensate IDR 500 million for damages to Tommy Winata. Soenaryo, one of judges in the court, said that, “We sentence the defendant to pay IDR 500 million in damages for the material losses and forfeiture of future profit that the plaintiff has suffered. The money shall be taken from the assets of PT. *Tempo Inti Media* (Tempo’s Publishing Company)” (*LKBN Antara*, 18 March 2004). The criminal proceeding was also ordered by the state prosecutor. Prosecutor Bastian Hutabarat used Article XIV section 2 of Law No. 1 of 1946 *juncto* Article 55 section (1)-1e of the Penal Code to charge Bambang Harymurti with nine years of imprisonment. *Tempo* was accused of spreading ‘libelous’ reports and intentionally initiated a chaotic situation in society. By using the Penal Code, Central Jakarta District Court sentenced a year of prison term for Bambang Harymurti (16 September 2004).

Then on 14 April 2005, Jakarta High Court supported the previous decision of the District Court. Surprisingly, on 9 February 2006, the Supreme Court overturned the lower courts’ decisions by using the Press Law of 1999, stating that Editor Chief Bambang Harymurti was not guilty based on his report, “*Ada Tomy in Tenabang.*”

The interesting part of this case was the verdict consideration of the Supreme Court. The Supreme Court offered two considerations. First, since protection of freedom of the press was not an impossible purpose, the courts need to improve law enforcement in press offenses through jurisprudence that could accommodate and respect the Press Law as a *lex specialist*. Second, since the freedom of press is a *conditio sine qua non* (a condition without which something cannot exist) in a democratic state and the rule of law, the court action on the freedom of the press shall not be harmful to the pillars of democracy and the rule of law as parts of efforts in establishing such pillars.

Although *Tempo* magazine was acquitted, the lawsuits and criminal proceedings were still deluging against the freedom of press. *Tempo* and its employees, for instance, had been confronted by at least nine legal suits, and none was settled under the Press Law of 1999. Those cases, surely, would be influential to the journalists and would later affect the practice of freedom of the press in Indonesia. Moreover, violations against journalists’ and media’s freedom had often occurred without serious protection by the law enforcement agencies such as the Police.

A very clear case took place when Tommy’s henchmen brutally attacked *Tempo* journalists and their employees at *Tempo* office on 17 May 2004 (*Tempo Interaktif*, 17 May 2004). This attack happened while Megawati was the President, and yet she failed to take serious steps or responses to such dire threats against the freedom of press and journalists.

Unfortunately, the criminalization against the press without the guidance of the Press Law had continued during Susilo Bambang Yudhoyono’s administration with the cases of *Rakyat Merdeka Online* and *Playboy Magazine*. Editor Chief of *Rakyat Merdeka Online*, Teguh Santosa, was indicted as to have breached Article 156a of the Penal Code concerning

contempt against religions. However, South Jakarta District's judges decided the indictment was unacceptable (in Dutch, *Niet ontvankelijk verklaard*). Also, Erwin Armada, Editor Chief of *Playboy Magazine* was prosecuted by the use of Article 282 section (3) of the Penal Code, concerning crimes of "indecenty." The Supreme Court decision No. 972K/Pid/2008 sentenced Erwin with two years imprisonment (*Primair Online*, 6 September 2010).

The judicial process through the court system had shown a trend of restrictions against freedom of the press in Indonesia. The trends appeared not only through the habitual usage of the archaic Penal Code but also through the civil lawsuits that burdened journalists or media publication with unreasonably disproportional fines. The case of *Radio Era Baru* radio station was an example by which a radio station had to deal with judicial processes for license both in the administrative court as well as with the Telecommunication Law against its director with a severe imprisonment of up to 6 years. The other cases in 2007 were the legal charges by *Riau Andalan Pulp and Paper* (RAPP) against *Tempo* newspapers (using civil lawsuit) and criminal prosecution against Bersihar Lubis (using criminal law).

The Constitutional Court decision concerning the repeal of *haatzai artikelen* (hatred article, No. 6/PUU-V/2007, 17 July 2007) and the Supreme Court decision on Time Magazine versus Soeharto (Decision No. 3215K/Pdt/2001, adjudicated on 28 August 2007) were two interesting cases in 2007. The Constitutional Court decided that Articles 154 and 155 of the Penal Code were contradictory to the spirit of 1945 Constitution of the Republic of Indonesia and therefore those articles had lost their legal value. More than 90 years since the enactment of *Wetboek van Strafrecht voor Nederlandsche Indies* (the Penal Code of Netherlands Indie) in 1914, this decision of the constitutional court ended the history of suppression against freedom of expression and press in Indonesia. Undoubtedly, this decision also had become an important move to protect journalists, editors, and media owners from criminalization.

The criminal case against Erwin Armada (Chief Editor of *Playboy Indonesia*) is a good example. After he was charged with the Penal Code (Article 282 section 3) concerning crimes against public "indecenty", the Press Council had blatantly stated that *Playboy Indonesia* was not a pornographic magazine (according to the Press Law). Notwithstanding this good argument, the Penal Code was still applied to send Erwin Armada into jail in 2010 (*Kompas*, 9 October 2010). Since the Anti-Pornography Law had provided similar loopholes as seen in the Penal Code, these gaps allowed the law enforcement agencies to prosecute a journalist.

Beside the issuance of suppressive laws, there were also several legal cases that had severely damaged the freedom of the press such as the civil cases against *Tempo Magazine* by Asian Agri-Corporation and *Tempo Newspapers* by Munarman (Coordinator of Islam Defender Front or FPI), or the criminal cases against journalists (Upi Asmaradhana, filed by South Sulawesi Police Chief Insp. Gen. Sisno Adiwino; *Tempo* journalists/editors Irvansyah and Sunudyantoro, filed by Munarman; and also Kwee Meng Luan and Khoe Seng-Seng (senders of readers' mails) convicted for their readers' mails (*Surat Pembaca*) in newspapers).

In 2008, the use of the Court became as a habitual mechanism to threaten the freedom of journalists and press workers. The journalists and media owners, as the result, were concentrating more to respond to a flood of legal cases rather than focusing on delivering fair information to the public. Moreover, the judges or other legal enforcement agencies refused to apply the Press Law of 1999 as a legal basis to resolve the civil or criminal charges.

Unsurprisingly “Reporters without Borders” ranked Freedom of The Press in Indonesia lower in 2008 (rank 111) than its rank in 2007 (100). This reduced ranking showed that freedom of that press in 2008 had been damaged since many suppressive laws and anti-media cases were brought into the courts.

Later in the same year, the Supreme Court released an important letter on 30 December 2008. The states the selection of the Press Council as an appropriate institution to be the referee in media cases in the Courts (Supreme Court Circulation Letter No. 14/Bua.6/Hs/SP/XII/2008 concerning Asking Information of Expert Witness). This letter supported freedom of the press because it considers the Press Law of 1999 as the *lex specialis* (specifically, higher law).

Nevertheless, this Supreme Court letter did not mean automatic protection for journalists and media. From time to time, journalists have been repeatedly harassed by various actors. Acts of harassments included destruction of cameras and other journalistic tools and maiming or even murdering journalist like in the case of Radar Bali’s journalist Anak Agung Narendra Gede Prabangsa (well known as the Prabangsa Case). Prabangsa was killed because his news report exposed corruptions in Bangli’s Educational District Office.

The situation of freedom of the press worsened during 2009-2010 after the anti-media legal cases (civil law suits and criminal charges), beating, torture and murders against journalists had risen in number with higher variety in the types of perpetrators. In 2010, sensational stories of suppression against the freedom of press heightened with the maiming of *Harian Aceh*’s journalist, Ahmadi, in Simeulue (18 May 2010), Ardiansyah Matrais in Merauke, Papua (30 July 2010) and also the murder of Ridwan Salamun in Tual, Maluku (21 August 2010). These atrocities became more ironic and serious since the law enforcement system had failed to bring full justice, manifested in the lack of proper punishment or failures to prosecute the violators.

Many field journalists revealed that freedom of the press in Indonesia was facing a perilous situation. Moreover, media owners or journalist associations had dropped some legal cases in order to reach a simpler route to solve conflicts. The case of *Pertamina* (state oil company) officer versus journalists in Mataram was an example of such intervention. Four local journalists from Lombok Post, *Suara NTB*, *NTB Post* and *Radio Global* who attended a press conference regarding fuel scarcity in West Nusa Tenggara were

intimidated by Sadikun Syahroni (Head of *Pertamina* in Ampenan) with pistol and sickle during the press conference in Ampenan on 18 July 2007. The intimidation case was reported to the police, but there was no further prosecution against Sadikun Syahroni. A journalist said that the role of PWI (Indonesian Journalists Association) in lobbying for the immature closing of this case was the main reason for the failure of the judicial process (Personal communication with two journalists [anonym], and interview with them in Mataram, 24/06/2010).

A similar outrageous story happened in Adam Malik Hospital in Medan after the hospital's doctors, paramedics, and security guards attacked and confined five TV journalists into a room (7 February 2010). The doctor, who was also a navy personnel, locked the door when the journalists were trying to get interviews concerning medical malpractice in the hospital. Security guards and other paramedics also intimidated the purged journalists. This case was reported to the police, but this case ended by an agreement among those concerned. Some other journalists and also press associations claimed that the pressure from the media owners to forge a 'win-win solution' came as a shock. It was because the attack against the journalists usually ended in a compromising manner. This has indeed undermined the law and degraded the protection of freedom of the press (personal communication with a journalist, anonym, in Medan on 29 June 2010).

The reality of freedom of the press during Susilo Bambang Yudhoyono's (SBY) presidency had provided vivid pictures on the depressing context of the press in recent years. Journalists without Border ranked Indonesia at 117 in 2010, which was also the State's ranking in 2004. Nevertheless, despite the real situation and adverse international assessment on Indonesia's position on the freedom of press, SBY had offered an anomalous proposition,

"We fully support the freedom of press. The freedom of press is important for democracy.... Before the reformation, freedom of the press had been fettered, or deficit. But now after the reformation has been running for some time, freedom of the press is working well, even surplus...." (*Detik News*, 3 June 2010).

5. Conclusion

During the authoritarian rule of President Soeharto, laws had been abused to curtail freedom of the press. These pressures manifested in various ways. First, banning of the media and criminalizing the journalists and editors were commonly used. Second, the martial law had been arbitrarily imposed in emergency situations without even considering higher laws, human rights principles, or the Press Law. Third, the law was also designed to create a hegemonic rule through various discursive propaganda moves such as 'development press', '*Pancasila* Press' and 'press with social responsibility'.

This creation had similarities with President Soekarno's 'enigmatic' discourse on press, such as 'revolutionary press'. These discursive practices were simply serving the interest of political regime rather than protecting the rights and freedom of the press or journalists. In short, such discursive practices had been predominantly arranged and interpreted by the regimes. At the end of the day, these only revealed hypocrite policies.

In the early years of the post-Soeharto era, freedom of the press was claimed to have reached its peak. President Gus Dur dissolved the oppressive Department of Information, and no journalists were sent to gaol. In this context, Gus Dur's idea to dissolve the Department of Information was really close to Keane's proposition (1991: 176) that democracy could only be nurtured when the people enjoyed equal and open access to diverse sources of opinion. In this context, the Press Law of 1999 became an effective means to liberate freedom of the press after 32 years of dire situation.

Nevertheless, such freer situation had disappeared since President Megawati leadership was negatively confronted by the media. She accused of being 'un-nationalistic', 'un-patriotic', '*njomplang*' (unbalanced), '*njlimet*' (complex), and '*ruwet*' (complicated). Megawati charged *Rakyat Merdeka* Daily because she felt offended by the paper's cartoon sketch.

Indonesia's 1945 Constitution guaranteed the freedom of expression, and stronger provisions after its amendment in 1999-2002 and the Press Laws from 1966 to 1999 declared that the press was not subject to 'censorship or ban' and 'freedom of the press is guaranteed in accordance with the fundamental rights of citizens'.

The extrajudicial media gag during Soekarno's Guided Democracy, the requirement for publication permits and the ministerial unlimited authority during Soekarno's New Order regime, and spreading criminal charges against the freedom of press through both non-media or media laws had been a perennial feature in the set of processes to undermine these constitutional rights.

Unsurprisingly, the lower level of regulations and laws also contributed to the lack of practice of freedom of expression in Indonesia. This was not only about the flaws of technical legislation but also about the ideological influences of the rulers. The view of *legisprudence* on the press law had clearly showed that behind the rules there had been vested interests represented by the regime's ideology. This was the reason for the reoccurrence of the hypocrite media policies by the governments.

The situation grew worse since many criminal charges and lawsuits were thrown onto the media and journalists. Moreover, law enforcement agencies often applied the Penal Code instead of the newer and more detailed Press Law to prosecute the journalists. The judicial processes had been misused to paralyze freedom of the press by imposing unreasonable fines against the journalists and sending them to gaol. Human rights violation also deluged the media and journalists, and these violators were not only the

state but also paramilitary (*preman*) or social groups. Sadly, the criminals who assaulted the journalists seemed to be immune from justice's hands.

These facts were potential disturbances to the democratization process and were sources of escalation of repression against public spheres.

Since SBY became President in 2004, freedom of the press had worsened compared to the situation in the previous regime. First, suppressive legislations had potentially posed threats against the press. Such legislations were reminiscent of the trauma of gross censorship which took place during President Suharto's authoritarian regime. Second, human rights violations happened repeatedly. These were manifested in beating, destructing, torturing and even assassination against journalists and editor. Third, the lack of enforcement of rule of law created futility against the protection for the journalists at work.

There are also apparent differences in the contexts of freedom of the press during the Soeharto and Post-Soeharto eras. During Soeharto's rule, the laws and regulations were clearly set to limit freedom of the press. In the post-Soeharto regimes, especially during the SBY administration, restrictive or suppressive laws were more deliberately scattered into various non-media laws rather than in specific laws on the press or media.

In this regard, this article would offer two lines of argument. First, the challenges for strengthening the freedom of press in Indonesia during the post-Soeharto era were similarly as complex as the situation during the Soekarno and Soeharto regimes. Freedom of the press in the post-Soeharto was crippled by the reproduction of draconian legislations, widespread criminal charges, lack of political commitment, and the growing number of violence by non-state actors going against the press workers.

Secondly, the freedom of press in Indonesia during the post-Soeharto was not considered as free as the previous regimes, especially by the adverse situation that had been worsened by the government not willing to protect journalists and the press, and to remedy the absence of law enforcements.

This article ends with a quotation from a Papuan Indigenous Council (DAP) chairman, Forkorius Yaboisembut. He stated that "...without journalist, democracy in Papua will die. The press workers are important tool to monitor democracy system in a country." This statement is supported by Bagir Manan, head of the Indonesian Press Council, "there is no democracy without press freedom!"

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