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Press freedom, law and politics in Indonesia : a socio-legal study

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Citation

Wiratraman, H. P. (2014, December 11). *Press freedom, law and politics in Indonesia : a socio-legal study*. Meijers-reeks. Retrieved from <https://hdl.handle.net/1887/30106>

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Title: Press freedom, law and politics in Indonesia : a socio-legal study

Issue Date: 2014-12-11

4 | Press Freedom from the Early New Order to the SBY Administration

4.1. INTRODUCTION

The demise of Guided Democracy was dramatic in all respects and the situation of press freedom was no exception. During the backlash that followed the aborted coup of 30 September 1965, 46 of Indonesia's 163 remaining newspapers were banned indefinitely because of their presumed association with, or sympathy for, the Indonesian Communist Party (PKI) and its allies. Left-wing journalists were expelled from the Indonesian Journalists Association (PWI) and the national news agency *Antara*. Thirty percent of all editorial staff was dismissed. As Hill (1995: 34-35) put it, "the arrests and killing of communist and sympathizing journalists in 1965-66, carried out against a background of large-scale massacres in the country side, cast a very long shadow over the press for a subsequent decade."

Initially, the unstable and chaotic political situation led to strong attacks on the press, but when the New Order took form the situation gradually changed. This chapter starts where the previous chapter stopped. It describes and analyses from a rule of law perspective how press freedom has been shaped and implemented during the periods of the New Order and *Reformasi*, looking at legislation and key cases (i.e. cases which drew much attention).

4.2. FROM HOPE OF RESTORATION OF THE RULE OF LAW TO REPRESSION

Press freedom in Indonesia is the freedom to express and enforce truth and justice, not freedom in a liberalist sense.
(MPRS Decree XXXII/MPRS/1966, 5 July 1966)

During and immediately after the attempted coup of 30 September, the media had an important role in informing the public on how to understand what was happening or had happened. The press and radio also played a significant role in military propaganda, and the military immediately acted to make sure that they could control the flow of information. In the evening of 1 October 1965, Major General Umar Wirahadikusumah, the army commander in Jakarta, released instruction letter 01/Drt/10/1965, which ordered the closure of all publications without special permits. Only the two

army papers *Berita Yudha* and *Angkatan Bersendjata* were allowed to appear.¹ The letter also instructed the police commander of VII/Jaya (Jakarta) to seize all printing houses, except for those of *Berita Yudha*'s and *Angkatan Bersendjata*'s.²

Although the prohibition on publishing newspapers only lasted for five days, it is likely to have shaped public opinion. By monopolising the news, the military could use it for political framing. The control of *Radio Republik Indonesia* (Republic of Indonesia Radio, henceforth RRI) played at least as important a role. The influence of RRI must have been clear to all sides in the coup and counter-coup of 1965. Untung's first public action was to announce through RRI that the Council of Generals' attempt to overthrow the President had been foiled. Then, after the military had occupied the RRI Jakarta studios, Soeharto broadcast that he had assumed personal command over the army, which helped legitimise his rise to power in 1965 (Sen and Hill, 2007: 82-83).

Soeharto's counter-coup operation attacked communist party members, those sympathising with them, and those suspected of such sympathies and their friends and relatives at various levels of society. The communist party and other leftist groups were quickly and easily exterminated by the military and the militias associated with them. This was the start of an official 'depoliticisation' of the country, with the military in a supreme position (Crouch 1979: 576; Crouch 2007). Soeharto's position as military commander received political legitimisation by Soekarno providing him a license to restore order (by the so-called *Supersemar* [Instruction Letter of 11 March 1966]) and by the unanimous authorisation of the same purpose by the Pro-

1 *Berita Yudha* was established on 9 February 1965, chaired by brigadier general Ibnusub-roto. *Angkatan Bersendjata* was founded on 15 March 1965. Both papers were established after most BPS' newspapers were banned in early 1965 (see the previous chapter).

2 The measure was not 100 percent effective, as PKI's *Harian Rakjat* still published an issue on 2 October 1965. According to Peter Dale Scott (1985), this indicates that the CIA and the military were involved in the publication of this issue. Anderson and McVey (1971) have also questioned the authenticity of the 2 October issue of *Harian Rakjat* and argued that it was possibly a "falsification by the army." As they wrote (1971; 1978), "Why did the PKI show no support for the Gestapu coup while it was in progress, then rashly editorialized in support of Gestapu after it had been crushed? Why did the PKI, whose editorial gave support to Gestapu, fail to mobilize its followers to act on Gestapu's behalf? Why did Suharto, by then in control of Jakarta, close down all newspapers except this one, and one other left-leaning newspaper which also served his propaganda ends?" The United Kingdom Embassy document (Southeast Asia Department, Indonesia, D.H. 1015/218, 10 October 1965) in Jakarta also expressed wonder about such a strange publication at that time (Adam 2000). By contrast, Salim Said argued that at that time it was usual that papers were printed a few days before the actual date of publication. The issue of *Harian Rakyat* dated 2 October 1965 would therefore have been printed a few days before the ban, and may even have appeared prior to this date (Salim Said, personal communication, Leiden, 5 December 2011).

visional People's Consultative Assembly's (henceforth MPRS) Decree IX/MPRS/1966 of 21 June 1966.

The change in the political situation gave new hope to detainees, including outspoken anti-Soekarno journalists such as Mochtar Lubis, who believed that their release was imminent. Lubis was indeed released (into 'town arrest') on 17 May 1966, with the obligation to report every Monday to the attorney-general's department (Lubis 1980: 477; Hill 2010: 85-86).

In 1966 two important press regulations were enacted. The first was MPRS Decree XXXII/MPRS/1966 on Press Supervision, enacted on 5 July 1966. Article 2 of this decree states that press freedom is closely related to the responsibility towards God almighty; the people's interest and state security; the sustainability and the achievement of 'the revolution'; morality and decency; and the nation's character. It also stipulated that press freedom in Indonesia is the freedom to express and enforce truth and justice, but not freedom in a liberalist sense (no clarification about this term was offered). Most important was Article 3, which stated that the main objective of the decree was to reinforce press responsibility in promoting and emphasising the *Pancasila* and in rejecting communism, Marxism, and Leninism. The decree contained a provision almost literally taken from Peperti 3/1960 on the Prohibition of Newspapers/Periodicals in a Regional Language not printed in the Latin or Arabic Script; Article 4 of the MPRS Decree stated that the government would allow only one press publication in a non-Latin script. The contents of the decree were clearly influenced by the military and its anti-communist stance.

The second regulation was Press Law 11/1966, signed by Soekarno on 12 December 1966. Although at the time the press was under strict control of the military, several of the law's provisions were remarkably favourable to press freedom:

Article 4: No censorship or banning shall be applied to the National Press.

Article 5(1): Freedom of the press is guaranteed in accordance with the fundamental rights of citizens.

Article 8(2): No publication permit is needed.

The one exception to this rule concerned communism, Article 11 stating that

Press publications on the basis of Communism/Marxism-Leninism, contradicting the *Pancasila*, are prohibited.³

3 Elucidation of Article 11 Law 11 of 1966.

As a sanction for the violation of this article, according to its elucidation, the government could decide to ban the publication. Second, Article 20(1a) of the law stipulated that,

In the transitional period, the requirement for obtaining a Publication Permit (SIT) is still valid, until the revocation of the law by the Government and Parliament.⁴

The legal implication of this provision was that the government could still apply old anti-press regulations from Soekarno's Guided Democracy (see Chapter 3). For instance, a publisher still had to obtain two permits: a 'publication permit' (*Surat Ijin Terbit/SIT*)⁵ and a 'permit to print' (*Surat Ijin Cetak/SIC*).⁶ A newspaper publication without both permits would be seized and destroyed. The government granted many of these dual permits to papers supporting its policies, such as *Harian Kami* and *Mahasiswa Indonesia*, both associated with the militant students whose anti-PKI and anti-Soekarno posture was evident (Hill 1995: 35).

So in spite of the promise of the introduction of more liberating legislation, not much improved in practice. The press had to support the government's position, or at least they had to be "a good partner in accelerating development" (Hill 1995: 36). If the press took an opposing view, either the journalist, the editor or the publisher involved would be jailed, as would often happen during the late 1960s and 1970s. The legal framework in place still made it easy to discipline the press to conform to the government's policies.

Although Soekarno was still formally president, the military under Soeharto controlled the government. Soeharto's position was further legitimised by MPRS Decree IX/MPRS/1966, of 21 June 1966. One day later Soekarno delivered a speech before the MPRS (entitled "*Nawaksara*") to account for his acts, but the MPRS refused to approve. In Decree 5/MPRS/1966, dated 5 July 1966 the MPRS seemed to aim for the replacement of Soekarno as

4 *Dalam masa Peralihan keharusan mendapatkan Surat Izin Terbit (SIT) masih berlaku sampai ada keputusan pencabutannya oleh Pemerintah dan DPR (GR).*

5 During Guided Democracy, at first a publication permit for the press had to be obtained from the military authorities (Peperti Regulation 10/1960). This military regulation was annulled by Presidential Decree 6/1963 on Stipulations regarding the Promotion of the Press; after the annulment the minister of information held the authority to provide a publication permit.

6 This prevention mechanism found its basis in Peperti Regulation 2/1961 on the Monitoring and Supervision of Private Printing Houses and in Presidential Regulation 4/1963 on the Securing of Printed Papers which Disturb Public Order, Especially Bulletins, Newspapers, Magazines, and Regular Publications. They were implemented by the Regional Authority for Emergency Situations and formed a reminder of the pre-censorship system of the colonial period, when publishers were to submit copies to the authorities prior to publication (see Chapter 2).

president.⁷ Although Soekarno still signed the Press Law on 12 December 1966, it was clearly Soeharto's political product.

The legitimacy conferred upon Soeharto by the MPRS, the dominant role of the military in controlling society, and the continued disciplining of the press combined formed the platform for Soeharto's ascent to power in 1966. On 12 March 1967 the MPRS deposed of Soekarno as president through Decree XXXIII/MPRS/1967, thus paving the way for Soeharto to start taking over the leadership of the country in a more formal and legitimate way. Article 3 of the decree stipulated that "Soekarno was prohibited to engage in political activities until the next general elections." The article was quite controversial, as it indicated that there was no freedom of political expression, not even for the former president and founder of the nation Soekarno. If the latter's fundamental rights were legally constrained by the MPRS, it would be even easier to deny them to common people.

4.3. 'PRESS RESPONSIBILITY' AND 'PANCASILA PRESS'

The 1966 Press Law was amended by Law 4/1967, on 6 May 1967. The amendment repealed Presidential Regulation 4/1963 on the Securing of Printed Papers Disturbing Public Order, in response to a PWI campaign against press control.⁸ Yet, this only removed the authority of the supreme prosecutor to prosecute press reporting, but initially left intact the power of the military authority to examine press violations and impose sanctions on the basis of Peperti Regulation 10/1960 on the Publication Permit for Newspapers and Magazines.⁹ Even if the latter was soon replaced by another regulation on the publication permit, which took this power out of the hands of the military (see below), the publication permit remained a powerful instrument of press control.

To the prohibition of promoting communism/Marxism in Indonesia's press, the amended press law added the requirement of 'press responsibility, based on God almighty, the people's interest and state security', and the sustainability and achievement of 'the revolution.' The press was no longer 'an activator of the masses,' but 'an activator of national development'; no longer a 'guardian of the revolution,' but a 'guardian of the *Pancasila* ideology'; and no longer a '*Pancasila* Socialist Press,' but simply a '*Pancasila* Press' (Hill 1995: 62).

7 It was promulgated on the same day as the MPRS Edict on Press Supervision mentioned above. This would later be signed into the Press Law.

8 See the PWI Report on its 13th Congress in Banjarmasin, 17-21 June 1968.

9 Peperti (Supreme Martial Authority) Regulation 2/1961 on Monitoring and Supervision of Private Printing. According to this regulation, the Peperti authority (military) had the power of preventive and repressive monitoring of printing materials.

During the government of the so-called first and second *Ampera* Cabinets, B.M. Diah as a senior journalist and one of the founders of the PWI served as the minister of information (1967-1968).¹⁰ Diah actually felt unhappy about his appointment in the complex situation following the events of 1965, raising the ire of Soekarno by running programmes assigned by Soeharto. These were to promote 'press responsibility'. Diah was also to lead (ex-officio) the new organisation of the Press Council (*Dewan Pers*).

The Press Council, an organisation specifically set up to control the press, was established on 8 July 1967 by Government Regulation 5/1967.¹¹ Its main function was to assist the government in guiding the establishment and development of the national press. To this end the council was to: 1. assist the government in preparing the rules and regulations of the press as well as monitoring their implementation; 2. act as a liaison between the government and press organisations in resolving problems concerning the relationship between the press and government; and 3. assist the government in conducting supervision of journalists and journalist organisations (Art. 2). Although it was officially an autonomous state organ in the Department of Information, the Press Council's composition put it under firm control of the government: the minister of information and the general director of the Department of Information were its chair and vice-chair (Art. 5). Thus, the Department of Information became the central actor in shaping press freedom during the early years of the New Order.

The Press Council became an effective political instrument to transmit the idea of 'press responsibility' under the Soeharto regime and could structurally discipline newspapers, journalists, and associations by using operational regulations, permits, and 'government-press liaisons' as leverage (Hill 2010; Wiratraman 2011). After Soekarno was ousted from the presidency, the press according to Minister B.M. Diah seemed "untrustworthy and uncontrollable" (Kakailatu 1997: 231) and on 24 October 1967 his department warned several and the next day banned eight newspapers by withdrawing their publication permits.¹²

On the other hand, the minister of information allowed the reappearance of several critical newspapers that had been banned by Soekarno. *Indonesia Raya* obtained a publication permit and the essential permit to print (SIC) from the Jakarta commander of the all-powerful command for the restoration of security and order (*Komando Operasi Pemulihan Keamanan dan Ketertiban*

10 Diah was appointed minister of information by Presidential Decree 171/1967.

11 The proposal was recommended by the minister of information, 14 April 1967, 69/SM/67 on Government Regulation Draft on the Press Council.

12 The newspapers concerned were *Andjangsana Pusat*, *Andjangsana Djaja*, *Populer*, *Dharma Bakti*, *Indodjaja*, *Tamsja*, *Warta Minggu* and *Djakarta Minggu*.

or *Kopkamtib*), on 10 August 1968.¹³ This gave much hope to journalists that press freedom was on its way to being restored. In an interview on 13 January 1981, Mochtar told Hill (2010: 89):

I gave full support to Soeharto's government... I accepted the statements of intent of these people for our nation so I supported them because they [said] they wanted to correct all the mistakes, the fatal mistakes under Soekarno. They wanted to develop democracy in Indonesia ... build welfare for the people, ... social justice and political justice.

Hill shows how Mochtar truly believed that the Soeharto government was willing to establish a fairly liberal political system, free from leftist agitation and Soekarno. Given his stature as a very critical journalist, his positive attitude towards the new regime influenced many journalists to adopt a similar view. However, one should take into account that many newspapers and magazines had been banned in 1965-1966, and that the few which remained were inclined to be more obedient to the New Order. Indeed, very few papers published critical news reports (Hill 2010: 89). Those which were brave enough to be critical first focused on the rising corruption. A notable target was General Ibnu Sutowo, who became minister for oil and gas in February 1966, and in 1967 president director of state oil company Pertamina. From the start he became the culprit of student demonstrations on account of corruption and mismanagement. He ran Pertamina without government control and accountability, mainly because the company proved a major revenue generator for the army and the regime. Mochtar's *Indonesia Raya* exposed Ibnu Sutowo's opulent lifestyle, especially in 1969 at the occasion of his daughter's wedding. In a way Ibnu Sutowo became the central target of Mochtar's moral crusade, as Soekarno had been targeted before 1966 (Hill 2010: 100-101).

Indonesia Raya was not immediately subjected to censorship, but pro-army papers, such as *Angkatan Bersenjata* and *Merdeka*, defended Ibnu Sutowo and accused Mochtar of a conflict of interest as chief editor of *Indonesia Raya* and his involvement in consultancy firm *Indoconsult*.¹⁴ This made other news-

13 Mochtar Lubis as chief editor and director of Indonesia Raya Corporation sent two application letters to the minister, on 31 May 1966 and on 11 February 1967. He received his publication permit only on 24 July 1968 (Minister of Information Decree 0632/SK/DIR/PDLN/SIT/1968). *Indonesia Raya* was officially first republished on 30 October 1968.

14 One of newspapers which made a claim about Mochtar's conflict of interests, *Merdeka*, stated that *Indonesia Raya* had received 'foreign' funding to attack Pertamina and destroy Ibnu Sutowo, because his 'tough' oil policies were limiting foreign oil company profits. B.M. Diah, chief editor of *Merdeka* stated that Mochtar had attacked Pertamina because they had rejected a project proposal made by *Indoconsult* (Hill 2010: 102).

papers more hesitant to stand up for Mochtar Lubis.¹⁵ Yet, in August 1970 Soeharto declared that if papers like *Indonesia Raya* and *Nusantara* remained a nuisance, they would be dealt with firmly (Rosihan Anwar in Hill 2010: 103). Eight months later, in April 1971, *Nusantara*'s chief editor T.D. Hafas was charged with disseminating hatred against President Soeharto and his assistants, and sentenced to one year in prison (2 September 1971). Hafas was accused by the public prosecutor of having printed a series of news items, articles and cartoons in 1970 and early 1971 with the intention of disseminating feelings of enmity, hatred and contempt towards the president of the republic and his assistants. The accusation centred on the words "*tidak becus*" (a vulgar expression meaning 'not capable'), used by Hafas when describing the performance of Minister of Information Budiarto, and his comment that Soeharto's 'development' cabinet was "amateurish" (Lee 1974: 30-31).

As a result of these events the press soon became less outspoken. From the start, issues that were considered out of bounds, such as political prisoners and the recent massacres, could not be properly researched by newspapers, including *Indonesia Raya*. Soon, 'critical' newspapers did not cover the news significantly differently from the 'moderate' press or even the New Order militant press (Abdurrahman Saleh, p. 47, in LBH, 1976).

The one year imprisonment sentence for T.D. Hafas in 1971 demonstrates how the Soeharto regime started to use the colonial legal legacy, in this case the *haatzaai-artikelen* from the Penal Code, to restrict press freedom.¹⁶ Journalists and other press workers now found themselves between the Press Law on one side and the Penal Code on the other, both of them with their own apparatus of repression involved. In short, there were two types of press control: first, the Penal Code mechanism (carried out by the police and public prosecutor), and second, the administrative mechanism of the publication permit or SIT (from the minister of information) and the permit to print or SIC (from the *Kopkamtib*).

15 Hill wrote that although the issue of a conflict of interests was not clear-cut, this still had a moderating effect on a number of dailies, such as *Kompas*, *Pedoman* and the student press which had initially backed Mochtar's *Indonesia Raya*. The issue was also used by B.M. Diah to attack Mochtar Lubis after *Indonesia Raya* had published an article about B.M. Diah's involvement in a sex scandal. Later on, Diah was unable to prove his allegations during an ensuing series of court cases, in which Mochtar and Diah sued one another for defamation (Hill 2010: 101-102).

16 Hafas as editor in chief of *Nusantara* was accused of disseminating hatred against Soeharto and his assistants. This case was inseparable from the case of corruption in Pertamina, about which Soeharto gave a statement in August 1970 saying that if *Indonesia Raya* and *Nusantara* continued to make trouble against him, these papers would be dealt with firmly (Hill 2000: 103). The role of mass media in criticising corruption and its relation to politics and the military are discussed in detail in Crouch (2007: 293-299).

One of the key elements of the New Order press policy was a strict control on publication permits. As mentioned above, this was taken out of the hands of the military. On the basis of Article 20(1)a of the Press Law,¹⁷ the minister of information enacted Regulation 03/PER/MENPEN/1969 on the Institution of Publication Permits in the Transitional Period for General Press Publications. This regulation replaced Peperti Regulation 10/1960 and reformulated in detail the mechanism for providing publication permits. It defined 'the transitional period' as the time frame from 30 September 1966 until the next general elections for the People's Consultative Assembly (MPR) in 1971.¹⁸

In fact, this regulation was in clear contravention with another provision of the Press Law, i.e. Article 8. The latter stipulated that "every citizen has the right to publish papers..." and section (2) clearly added that, "in exercising such a right [a citizen] does not need a publication permit letter." Regulation 03/PER/MENPEN/1969 thus violated the legal principle that a regulation of a lower level may not go against a regulation of a higher level. However, it was never submitted to judicial review.

In practice, the mechanism for obtaining permits was quite complicated, and state officials intervened in the process. Permits to publish had to be applied for with the minister of information (Art. 2). The applicant was obliged to abide by a legally permitted company structure as prescribed by a regional police commander (*Komando Daerah Angkatan Kependidikan* or KOM-DAK); he needed recommendation letters from the regional and national level PWI; as well as recommendation letters from the regional and national Newspaper Publishers Association (SPS) (Article 2 (d, e, and f). Each company was only allowed to publish a maximum of three newspapers (Art. 4). The publication permit would be repealed if a publication of a newspaper concerned contravened Article 11 of Law 11/1966, which prohibited any publication involving: (a) communist/Marxist – Leninist thoughts; (2) pornography; (3) cruelty or sadism; and (4) content contravening Pancasila, such as the contravention of religious values, moral dignity, and social justice involving moral responsibility for securing the coming generation. The repeal of a publication permit meant automatically that the newspaper concerned could no longer be published, printed or disseminated.

The PWI also played a role in legitimising New Order's control of press associations. Through Ministerial Decree 02/PER/MENPEN/1969, the Department of Information limited the number of journalist associations and in the end only recognised one single journalist organisation (the PWI). According to Article 3 of the Press Law, "Indonesian journalists are obliged

17 Article 20(1)a. During the transitional period the obligation to obtain a publication permit was still in force, until the government and DPR(GR) decided to revoke it.

18 Point 4 of the General Consideration of Ministerial Regulation 03/PER/MENPEN/1969.

to become members of a journalist association which is recognised by the government.” This was an effective tool for the New Order strategy to discipline and control journalists and their associations. That the restrictions on establishing a journalist organisation and the obligation for journalists to join the PWI violated Article 28 of the 1945 Constitution, which guarantees freedom of expression, freedom of assembly and freedom to unite, was of little concern to the government. It shows how the New Order regime purposively disregarded fundamental requirements of the rule of law.

In summary, the hope for press freedom at the beginning of Soeharto’s New Order regime in 1966 was soon thwarted by bans and suppressive legislation. The Press Law and its amendments were designed to support counter-coup measures and/or to fight communism, but in practice they were used against any critic of the regime. The key terms from the dominant discourse became ‘press responsibility’ and ‘Pancasila press.’ The regime also applied unlawful administrative regulations to force the press to obtain a publication permit, with the minister of information at the centre of control. If deemed useful to counter transgression of the New Order rules, like in the case of T.S. Hafas, the regime turned to criminal prosecution. ‘Self-regulation’ by a single journalist association in combination with co-optation became the final building-blocks of the systematic undermining of press freedom under the New Order.

In short, there was not much of a ‘honeymoon relation’ between the press and the government even in the early years of New Order. It rather showed how the press switched the ‘crocodile pit’ for the ‘tiger cage.’

4.4. A ‘BUREAUCRATIC-AUTHORITARIAN STATE’ AND THE PRESS

Press freedom is the crown of the New Order.¹⁹
(Lieutenant General Ali Moertopo, minister of information, 1978-1983)

Press bans continued to be imposed in the 1970s. Prior to the general elections of 1971 *Harian Kami* and *Duta Masyarakat* were banned for not having respected the so-called ‘week of calm’ (*minggu tenang*) when political campaigns were to be halted. Another example is the revocation of *Sinar Harapan*’s permit to print (SIC) by the *Kopkamtib* in January 1973 for allegedly leaking details of the 1973-74 national budget proposal (RAPBN) (Hill 1995: 38). This example also shows how the military had certainly not lost its power over the press, even after the authority to issue and revoke a publication permit had been moved to the minister of information.

¹⁹ “Kebebasan pers adalah mahkota Orde Baru.” This statement is a quotation from Kakialatu (1997: 224).

The first implementing decree with regard to the permit to print was KEP 063/PK/IC/VIII/1973 of the Special Task Force, Command for the Restoration of Security and Order of Djakarta Raya and Surroundings (*Laksus Pangkoptibda Jaya dan Sekitarnya*). The decree provided the permit to print to a number of publications, including *Indonesia Raya*. The permit given on 1 August 1973 to Mochtar Lubis included the obligation to submit ten printed copies of every publication of *Indonesia Raya* to the Mass Media Task Force Unit of the Command for the Restoration of Security and Order in Jakarta (*Satgas Mass Media Laksus Pangkoptibda Jaya*).²⁰

Military control over the press reflected the power of the armed forces generally during the early period of the New Order. The military held strategic positions in the state bureaucracy, with the Indonesian state becoming more and more centralised and authoritarian in character through the exclusion of political parties from effective participation in the decision-making process and the appropriation of the state by its officials. This character was inextricably intertwined with the regime's economic policy, which stimulated industrialisation and economic growth, and allowed the elites to increasingly appropriate large parts of the benefits which were the result of the economic development of the time (Robison 1986: 105). The regime justified its authoritarian control through the need for rapid economic development and to preserve a fragile social 'harmony' during the complex transition to modernity (Gosh 1996: 36-37). Thus, the Indonesian New Order defined itself as a modernising, developmentalist state, and actually made little pretences of being a democracy. The resulting bureaucratic capitalism sustained a military bureaucratic state and provided officeholders of that state with patronage for themselves, their families, and the political factions to which they owed their authority (Robison 1978: 37).

This political configuration contributes to the explanation of the political riots in 1974 known as the *Malari* (Fifteen January Riots) and the ensuing oppression of the press. When Japanese Prime Minister Tanaka visited Jakarta on 14-17 January 1974, pro-democracy students used the occasion to voice their protests against the New Order's economic policy and in particular against the extractive and manufacturing investments sponsored by Japanese, American and expatriate Chinese capital. The protests led to a violent response by the regime.²¹ Students were molested and arrested by the military, and serious measures were taken against journalists and

20 This decision was signed by Colonel L.S.M. Panggabean, S.H. Actually the permit to print was given five years later, after a publication permit was given by minister of information on 24 July 1968, through its decision 0632/SK/DIR/PDLN/SIT/1968.

21 During the *Malari* riots, at least 11 people were killed, 775 people were arrested, 807 cars and 175 motorcycles were burned, and 144 buildings were destroyed. These riots have been analysed from different perspectives, including as a protest against Soeharto's personal assistants, or as internal friction among military officials (General Soemitro against General Ali Moertopo) (Adam 2003).

newspapers. At least 470 people were arrested, including *Indonesia Raya's* Enggak Bahau'din (who was detained for nearly 11 months) and Mochtar Lubis (detained for two and a half months). Several printing and publication permits were withdrawn because they had reported on the *Malari* events, including *Indonesia Raya*, *Nusantara*,²² *Abadi*, *Harian Kami*, *The Jakarta Times*, *Pedoman* (Jakarta); *Mingguan Wenang*, *Pemuda Indonesia*, *Ekspres*, *Suluh Berita* (Surabaya) and *Indonesia Pos* (Ujung Pandang). Only a few of these were eventually allowed to re-appear under a different name, such as *Pelita* (replacing the *Islamic Abadi*) and *The Indonesian Times* (replacing the English-language *The Jakarta Times*) (Hill 1995: 37).

It was clear that the government held these newspapers responsible for the *Malari* demonstrations. *Indonesia Raya* may serve as an example. Its editorial of 14 January 1974, written by Mochtar Lubis with the title "A Welcome to Tanaka,"²³ analysed Japan's role in Southeast Asia, with critical attention for the impact of Japanese business in Indonesia. On 15 January, *Indonesia Raya's* headline carried news about student detentions, and its editorial asked the authorities not to accuse students of the riots following their demonstrations. Such headlines and editorials continued for four days (15-18 January 1974).²⁴ Later on, in its revocations of their publication and printing permits, the government accused the press of inciting the public to riot. At that time, only *Indonesia Raya* had been openly critical of the Indonesian government's foreign policy.

Indonesia Raya's permit to print (SIC) was thus withdrawn within six months of receiving the permit (on 1 August 1973). The Commander of Security and Order in Jakarta, through Decree KEP-007-PK/I/1974, repealed it on 21 January 1974, considering that:

... (a) *Indonesia Raya* has breached the spirit and core of the norms stipulated in MPR Decree IV/MPR/1973 and Law 11/1966; (b) *Indonesia Raya* has published news which can degrade the authority of and trust in the national leadership; (c) *Indonesia Raya* is considered to have provoked people, which has led to chaos on 15 and 16 January 1974 and which could cause conflict among leaders.

22 *Nusantara* was the first newspaper banned in the context of the *Malari* riots. Its permit to print was withdrawn on 16 January 1974 by the *Kopkamtibda*, together with the banning of three radio stations: *Suara Neggala*, *Radio Arief Rahman Hakim*, and *Suara Radio Kebebasan* (Haryanto 1995: 190).

23 "Selamat Datang Tanaka-san" (Welcome, Tanaka-san), *Indonesia Raya*, 14 January 1974.

24 "Harus Diselesaikan dengan Bijaksana" [This needs to be resolved wisely], *Indonesia Raya*, Editorial Column on 15 January 1974; "Pengalaman dengan Jepang selalu Pahit" [The experience with Japan has always been bitter], *Indonesia Raya*, Editorial Column on 16 January 1974; "Jangan Pamer kekayaan" [Never show your riches], *Indonesia Raya*, Editorial Column on 17 January 1974; "Kita Lihat Pelaksanaannya Nanti" [We'll see the implementation later on], *Indonesia Raya*, Editorial Column on 18 January 1974. Although *Indonesia Raya* still published about the *Malari* riots on 19 January 1974, its editorials were quiet by then. Further details about *Indonesia Raya's* role in the *Malari* riots can be found in Haryanto (1995).

Indonesia Raya's publication permit was also withdrawn, by Decree 20/SK/Dirjen-PG/K/1974, on 22 January 1974. Its considerations were more elaborate:

- a. It is necessary to take action against *Indonesia Raya* by withdrawing its permit to print (SIT) 0632/SK/DirPP/SIT/1968, 24 July 1968-10632/Per/Per/SK/DirPP/SIT/1971, on 18 June 1971, which was given to *Indonesia Raya* Corporation, Bonang 17 Jakarta.
- b. The publication permit's withdrawal is based on the following considerations:
 - (e) *Indonesia Raya* daily has breached the spirit and core of the norms stipulated in MPR Decree IV/MPR/1973 and Law 11/1966;
 - (f) *Indonesia Raya* daily has written things which: 1. in principle lead to attempts to weaken the foundations of national life, by fuelling issues such as foreign capital, corruption, failing dual function of government officials, high-level battles, and *Kopkamtib* personal assistant problems; 2. damage public confidence in the national leadership; 3. provoke sensitivities without giving precise and positive solutions, which may lead to inciting people to rise up and take actions which are liable to cause disruption to public order and state security; 4. create a situation that leads to acts of treason;
 - (g) Although the *Kopkamtib* has given warnings to all media in Bandung since 5 August, [...] nevertheless, the reports and writings of certain newspapers have actually disregarded such warnings.
 - (h) The permit to print was withdrawn by *Laksus Pangkopkamtibda* on 21 January 1974.
- c. The acts of *Indonesia Raya* daily have been contradicting and violating the function and responsibility of the press, as stipulated in MPR Decree IV/MPR/1973, the Press Law, the Journalist Code of Ethics and Ministry of Information Regulation 03/1969, Chapter III, article 7d.
- d. The withdrawal of *Indonesia Raya*'s publication permit does not violate press freedom, but precisely serves to implement press freedom in a concrete way in response to the Pancasila democratic order, with a healthy press as dreamed of by the Indonesian people as formulated under MPR Decree IV/MPR/1973, i.e. a "free and responsible press."

Although more elaborate, these legal considerations are so vague as to give no criteria at all for determining what is allowed and what is not. The two decrees clearly demonstrate that the repeal of *Indonesia Raya*'s permits was not only decided without involvement of the judiciary, but also that the military authority and the minister of information applied a procedure that would not even come slightly near a fair trial. Haryanto (1995: 218) has observed that the decision was taken without first consulting the Press Council. This consultation was actually a legal obligation at that time (GR 5/1967 Article 2(2) and (4) and Article 3(2)).²⁵ In any case, on 22 January 1974 *Indonesia Raya* published its last issue.

25 The relevant articles state that the Press Council's task is to act as a connecting institution (*Badan Penghubung*) between the government and press organisations in resolving problems in their relation, and give advice to the government in helping and protecting the press. Article 3(2) moreover states that the Press Council has the authority to offer advice on institutional policies and acts regarding press companies and their journalists which violate the Press Law or other press regulations.

Three months later, on 9 April 1974, the Council for Political and Security Stabilisation (*Dewan Stabilisasi Politik dan Keamanan*) decided to repeal the publication permit (SIT) of daily *Pedoman* and weekly *Ekspres*. As quoted by *Tempo*, the Minister of Information Mashuri said that:

Such a decision was issued in order to complete the resolution to close down several newspapers and magazines as a consequence of the *Malari* riots.... Now, 12 publications are closed down, 417 workers and journalists in Jakarta and 85 workers in regional offices were dismissed.²⁶

The 1974 bans make clear how the government used the publication permit and the permit to print for limiting press freedom. Yet, the government went further, by also targeting journalists considered as 'offensive'. These were 'blacklisted' by the authorities. When eight journalist who had formerly worked for *Pedoman* and *Indonesia Raya* attempted to join the daily *Cahaya Kita*, the director-general of Press and Printing of the ministry of information announced that all journalists who had been working with banned papers were required to obtain permission, in the form of a 'clearance letter' from the directorate-general, before they could be reemployed by another newspaper (Hill 1995: 38). This added another instrument to the extra-legal repertoire of the government to control the press.

There was little organised resistance to such measures. The PWI hardly responded to the repressive turn of government policy and was absent altogether when it came to advocating for journalists or newspapers. By the end of March 1974, the Ethical Council of the PWI had only pointed at a common statement of the PWI and the Department of Information of 18 June 1973, which stipulated that "the difficulties which currently besiege the Indonesian press need not mean that they disturb or even harm the development of national press quality and sweep aside the responsibility in guiding the nation's and the young generation's morals."²⁷ Such a statement completely disregarded the painful realities for the press and the freedom of expression.

The *Malari* riots badly embarrassed and annoyed Soeharto. The events made him more careful in choosing his aides and in developing policies to sustain his power and position in a more systematic way, including curbing the press. This further entrenched the politics of 'bureaucratic authoritarianism' and its combination of military involvement in politics and the Ministry of Information's role as an executive body for disciplining the press. The press had to do without the protection of a fair judicial process mechanism in facing government and military intervention through 'administrative' measures without a proper legal basis.

26 "Yang Eksit dan Yang Terbit" [Who exits and who publishes], *Tempo*, 20 April 1974.

27 "Yang Eksit dan Yang Terbit" [Who exits and who publishes], *Tempo*, 20 April 1974.

4.5. DISCOURSE AND STREAMLINING ORGANISATIONS AS SOURCES OF CONTROL

One way of disciplining the press under the New Order was framing the proper relation between 'democracy' and the press through a particular discourse (Kitley in Lloyd and Smith 2001: 262-263; Mundayat 2005). In particular Soeharto's speeches were an important source of information in this regard. A good example is his speech of 26 March 1975:

In a democratic society as we wish to develop, there is no doubt whatsoever among us, about the right to have a different opinion, including having a different opinion than the government. Nevertheless, such a difference of opinion must grow from the pure desire to improve oneself, and therefore needs to be accompanied with a better result, while the effort to realise a different opinion as mentioned before should be done in a democratic manner, based on the Pancasila and the 1945 Constitution.²⁸

Two years later, Soeharto started to emphasise 'national stability' as an important issue:

The press should avoid any writing which incites or irritates people and shakes national stability.²⁹

It was the government which defined whether press reporting supported the regime's interests. There was a clear prohibition on exposing the government or government policies in a negative way, especially when they concerned the regime's economic policy and its bureaucratic capitalist network. However, there was a grey area where concepts as 'democracy' and 'national stability' were arbitrarily interpreted by the regime, just as 'Pancasila press' or 'responsible press' under Guided Democracy as described in Chapter 3. No special institution turned these concepts into clear legal standards, and hence a large degree of legal uncertainty remained.

Another way of disciplining the press was the further streamlining of press organisations. In 1975 the minister of information promulgated Decree 47/KEP/MENPEN/1975 to recognise only a single organisation for journalists (PWI) and publishers (SPS). These organisations could be easily controlled by the Soeharto regime, a policy it used in many other fields as well (Hill 1995).

28 "Pers Pembawa Panji-Panji Demokrasi" [Press as Carrier of the Banner of Democracy], Opening remarks for Indonesia's chief editors' meeting in Jakarta, 26 March 1975.

29 "Hindari Pemberitaan yang Membakar dan Menghasut Rakyat" [Avoid News that Heats up and Incites People] Soeharto's speech for Indonesia's editorial chief and PWI in Jakarta, 9 February 1977.

In January 1978, new press banning measures, following student protests against the government's development policies and their involvement of foreign investors, ethnic-Chinese investors and government officials, once again showed the tight limits on press freedom. The *Kopkamtib* arrested 223 students, disbanded all university student councils, and banned seven student newspapers and seven prominent newspapers in Jakarta (*Kompas*, *Merdeka*, *Sinar Harapan*, *Pelita*, *Pos Sore*, *Indonesia Times* and *Sinar Pagi*). Almost similar to 1974, they were accused of provoking people directly or indirectly to engage in activities which threatened national security and public order. Before they could reapply for a permit, the directors of these newspapers had to send a written statement to the president, the minister of information, and the *Kopkamtib* commander, in which they promised to henceforth obey the "norms of a free and responsible press."

President Soeharto responded directly to what had happened during his visit to Surakarta for the opening ceremony of the National Press Monument Building, on 9 February 1978:

Until the end of January 1978, an almost uncontrollable evolution of press freedom endangered national stability. And if there would have been an opportunity for further growth, this would have created a dangerous situation for the state and the safety of the people. For the greater interest, and in order to remove this dangerous situation for the state, the government was forced by the situation to temporarily bridle several newspapers.³⁰

For students, Minister of Education Daoed Joesoef developed a policy of depoliticisation through a special body, the Normalisation of Campus Life/Student Affairs Coordination Body (NKK/BKK).³¹ Undoubtedly, this affected the student press. Several student papers were banned in 1979 and 1980, and on 31 May 1980 the ministers of education and information established the National Supervisory Team for the University Student Press (*Tim Pembina Pers Kampus Mahasiswa Tingkat Nasional*) through joint Decree 0166/P/1980. The supervisory team included officials from both departments and appointed university lecturers. Its tasks were supervising the student press as a tool of education, which as a subsystem of the university should be part of the university government system, and the student press should be 'assisted' by the government in its efforts. The supervisory team could apply pressure to the student press, by the requirement for the latter to hold a sort of permit, the STT (*Surat Tanda Terdaftar* or Letter of Registration) (Supriyanto 1998: 80-84).³²

30 *PWI adalah Kekuatan Perjuangan* [PWI is a Power in the Struggle], Soeharto's speech during the opening ceremony of the National Press Monument Building, in Surakarta, 9 February 1978.

31 NKK/BKK, '*Normalisasi Kehidupan Kampus/Badan Koordinasi Kemahasiswaan*,' was based on Ministry of Education Decree 0156/U/1978 and 037/U/1979.

32 The STT was based on Minister of Information Regulation 01/Per/Menpen/1975.

This 'depoliticisation' through press bans and disbanding student councils, which obviously contravened Article 28 of UUD 1945, was the hallmark of the New Order. The hypocrisy of the regime in this matter can be illustrated by the following quotes from one of Soeharto's speeches:

Fundamental postulates for the press are: improving responsible freedom to maintain dynamic national stability, strengthening national unity and continuity of development. Those should be developed on the basis of the Pancasila and the 1945 Constitution.³³

And in the same speech:

One of the important elements of democratic life is the improvement of freedom of opinion. And the press is one of the channels to freely express one's opinion.³⁴

The period from 1970-1978 was the worst for press freedom during Soeharto's regime, in the sense that there was no court involvement in press banning at all and that the military authorities were heavily involved. In this respect the situation was basically the same as under Soekarno during the period in which martial law applied and the military were in charge of supervising the press (from 1957 to 1965). Rule of law was a far cry from Soeharto's bureaucratic-authoritarianism during these years.

4.6. 'RESPONSIBLE FREEDOM' ACCORDING TO THE NEW ORDER

I am happy, because based on my current observations,
the principle of responsible freedom is more
entrenched in our press society
(Soeharto, 1981)³⁵

There are two sources that illuminate the earth.
The first one is the sun and the second is the press....
(Soeharto 1984)³⁶

In the early 1980s, the press was closely controlled by the state. Not only did the Department of Information and the military exercise full control over press publications, but the Soeharto regime also successfully supervised jour-

33 *PWI adalah Kekuatan Perjuangan*, Soeharto's speech during the opening ceremony of the National Press Monument Building, in Surakarta, 9 February 1978.

34 *Asas Kebebasan yang Bertanggungjawab Harus disadari Pers Sendiri* [The Principle of Responsible Freedom Needs to be Acknowledged by the Press], Soeharto's speech to Indonesia's editorial chief and the PWI in the State Palace, Jakarta, 11 September 1981.

35 *Asas Kebebasan yang Bertanggungjawab Harus disadari Pers Sendiri*, Soeharto's speech to Indonesia's editorial chief and tge PWI in the State Palace, Jakarta, 11 September 1981.

36 *"Ada dua sumber yang menerangi bumi ini. Pertama matahari dan kedua pers...."* Soeharto's speech at the opening session for the Conference of the Ministers of Information of Non-Aligned Countries (COMINAC), Jakarta, 26th-30th January 1984.

nalists through the PWI and press owners through the SPS. The next step was to further internalise control of the press itself. To this end Soeharto addressed the PWI's national congress in 1981, which had the theme "Strengthening Positive Interaction between Government, Press and Society."³⁷ Soeharto's speech emphasised the normative concept for the press known as 'a responsible press.'

Like its predecessors 'democracy' and 'national stability,' the concept of a 'responsible press' was fairly vague. Four years before addressing the PWI congress, on 7 February 1977, Soeharto had already introduced the idea of a 'responsible press,' saying that "The press itself should be responsible to measure whether news or a problem needs to be publicly known, and how to expose it. In this regard, [the press should] exercise ultimate responsibility and carefully estimate this." It never became much clearer than this. 'Development' also remained a central but equally vague concept, as can be illustrated by the following quote of a 1982 Soeharto speech: "In our great activities of national development, the press has a respectable position to light an enlightening torch of explanation, so that society can really understand the direction and purpose of our development."³⁸

In practice, press responsibility and national stability led to strict control of the press, for instance when *Tempo's* publication permit (SIT) was repealed on 12 April 1982. The reason was simply that *Tempo* had posted a news report and a photo about the unrest accompanying the general elections in Banteng Square in Jakarta, which the Minister of Information Decree 76/Kep/Menpen/1982 considered as 'disturbing national stability.' In order to regain its publication permit, *Tempo* should obey the Press Council's directions, which held that (1) *Tempo* should be responsible in securing national stability, safety, order and public interest, and not make matters worse and create tension in society; (2) *Tempo* should exercise self-restraint and prioritise the public interest rather than individual and *Tempo's* interests; (3) *Tempo* should always protect the good reputation and authority of the government and the national leader; (4) *Tempo* should obey the law and rules of the Press Council, the Journalist Code of Ethics, and other regulations stipulated by the government to promote a free and responsible press; (5) *Tempo* should apply 'introspection,' 'correction,' and internal improvements for stabilising a free and responsible press.

37 *Pers Jadilan Pelopor Pemerataan Pembangunan* [The Press Must Become a Protagonist of Even Development], Soeharto's speech at the PWI National Working Conference, Banjarmasin, 9 February 1981.

38 *Pers Mendapat Kehormatan untuk Menyalakan Obor Penerangan Pembangunan*, [The Press Gets Respect for Lighting the Torch for Explaining Development], presidential speech at the inauguration of the Press Council Building, Jakarta, 1 March 1982.

From this case, it is quite hard to find the connection between 'development' as stipulated by Soeharto and the requirement for *Tempo* to fulfil these five requirements. Of the guidelines prescribed to *Tempo* 'securing national stability, safety, order and public interest, and not make matters worse and create tension in society' and 'always protect the good reputation and authority of the government and the national leader' are especially problematic. These issues have been addressed by the international press community, for instance at the Talloires conference in France in 1981.³⁹ The conference observed that governments, in developed and developing countries alike, frequently constrain or otherwise discourage the reporting of information they consider detrimental or embarrassing, and that governments usually invoke the national interest to justify these constraints. By contrast, the Talloires participants held that the people's interests, and therefore the interests of the nation, are better served by free and open reporting. From robust public debate grows better understanding of the issues facing a nation and its peoples; and out of understanding grow better chances for solutions. They also reaffirmed that censorship and other forms of arbitrary control of information and opinion should be eliminated; the people's right to news and information should not be abridged; access by journalists to diverse sources of news and opinion, official or unofficial, should be without restriction; members of the press should enjoy the full protection of national and international law; and also journalists should be free to form organisations to protect their professional interests.

In 1982, in order to promote a 'responsible press,' the Indonesian legislator promulgated Law 21/1982. This new law amended Law 11/1966,⁴⁰ and became the cornerstone of Indonesian press regulation during the 1980s and 1990s. It followed MPR Decree IV/MPR/1978, which described the differences between the Press Law put into place in 1966 and the objectives the New Order regime now sought to realise. While in 1966 the National Press was obliged to 'struggle for honesty and justice upon the basis of press freedom,' the objective now was 'responsible press freedom.' The obligation to be a 'channel for constructive and revolutionary progressive public opinion' was replaced by a 'positive interaction between the government, press and society,'⁴¹ aimed at 'broadening communication and community participation and implementing constructive control by society' (Article 1(6)).

39 The conference adopted a declaration, namely 'the Declaration of Talloires.' This declaration was adopted by leaders of independent news organisations from 21 nations at the Voices of Freedom Conference in Talloires, France, May 15-17, 1981. It contained a statement of principles to which a free world media ought to subscribe, and on which it will never compromise. The conference was attended by 63 delegates from 21 countries.

40 This law was passed on 20 September 1982.

41 The terms 'positive interaction between the government, press and society' were used earlier as PWI's theme of the National Working Conference, Banjarmasin, 9 February 1981.

Article 5 stipulated that the National Press has the following duties and obligations:

- (a) Preserving and socialising the Pancasila as stipulated in the Preamble of the 1945 Constitution [...];
- (b) Fighting for the Implementation of the Message of the People's Suffering based on Pancasila Democracy;
- (c) Fighting for truth and justice on the basis of a responsible press freedom;
- (d) Stimulating the spirit of serving the people's struggle, strengthening national unity, broadening the feeling of responsibility and national discipline, helping to raise the intelligence of the people's living and stimulating the people's participation in development;
- (e) Fighting for the realisation of a new international order in the field of information and communication on the basis of the national interest and the belief in one's own strength in building regional and international co-operation, especially in the field of the press.

This article thus changed Soekarno's revolutionary press into a 'free and responsible press.' This term was always 'connected' to the Pancasila as the state ideology, even if the meaning of this connection was never made clear.

The 1982 Press Law knew five general restrictive articles, revolving around a new permit that replaced the publication permit and the permit to print. This new permit was the 'Press Publication Permit' (*Surat Izin Usaha Penerbitan Pers* or SIUPP, Article 5(1)). Second, each printing house had to be a member of a state-recognised printing organisation (Article 29); third, printing houses were not allowed to print newspapers without a SIUPP; fourth, press companies were required to adjust the form, governance and structure of their corporations as determined by the law and register with the government and the Press Council; and fifth, non-compliance with these provisions could be punished by the sanctions stipulated by Article 19(2). According to this provision, publishing news without a SIUPP could lead to imprisonment for a maximum of three months and/or a fine of as much as Rp. 10 million. All political parties in parliament agreed upon the necessity of the SIUPP, and considered it as an improvement on the previous situation (Simorangkir 1986: 76-101).

The military was thus no longer involved in controlling the press and the minister of information became the single authority to perform this task. Two years later, the minister of information published an implementing regulation of the 1982 Press Law, 1/PER/MENPEN/1984.⁴² It was made operational by Minister of Information's Decree 214A/KEP/MENPEN/1984 on the Procedure and Conditions for obtaining a SIUPP. These regulations

42 Ministerial Regulation 01/PER/MENPEN/1984 on SIUPP was enacted on 31 October 1984.

allowed the minister to ban any paper without allowing recourse to the judiciary or another forum to defend itself.⁴³

Hence, albeit there was no longer any military involvement in processing press permits, the SIUPP turned out to be 'old wine in a new bottle.' The first paper banned after the adoption of the 1982 Press Law was *Sinar Harapan* in 1986, when it reported that the government planned to abolish 44 import monopolies before the government had officially announced its plan (Lubis 1993: 277).⁴⁴ This exposed the way in which the elites drew profits from the New Order business climate. It was unclear from the decision what the basis for the ban was and the case was not taken to court. *Sinar Harapan* reappeared in 2001, after a 15-year close down.⁴⁵

The second case was the weekly magazine *Prioritas*, whose SIUPP was withdrawn in 1987 because it had reported on issues considered too sensitive. In response, *Prioritas*'s chief editor Surya Paloh wrote an open letter to parliament and the People's Consultative Assembly (DPR and MPR) to ask for the annulment of the 1984 Regulation. Paloh also approached Supreme Court Chairman Ali Said to check whether he might bring Minister of Information Regulation 1/PER/MENPEN/1984 before the Supreme Court for review, but he was told that he should address the district court first. As he supposed this was not going to bring any relief, Paloh did not file a claim before the district court. Instead he directly asked the Supreme Court for the nullification of the minister of information's decision to withdraw *Prioritas*' SIUPP. The Supreme Court apparently agreed to consider the issue, but stalled until the March 1993 session of the MPR, when a new president and vice-president were appointed. Eventually, in June 1993 the Supreme Court rejected Surya Paloh's request to challenge the regulation on SIUPP.⁴⁶ The reason was that there was no appropriate procedure for review. Although the court decided to dismiss the *Prioritas* case, this decision brought an important change by stipulating rules of procedure for judicial review of regulations below the level of an act of parliament so that in the future such

43 The minister of information at that time was Harmoko, who would serve until the end of the New Order and became quite notorious. Ironically, Harmoko had a background in the press world, as the founder of Jakarta's big-selling down-market newspaper, *Pos Kota*. He had been a journalist and editor since 1960, working with papers as *Merdeka* and *Angkatan Bersenjata*.

44 About two weeks after *Sinar Harapan*'s banning, the government announced the abolition of 165 import monopolies, none of them controlled by the Soeharto family. Interestingly, Soeharto's son Bambang Trihatmodjo and his brother in law Sudwikatmono expressed their interest in buying *Sinar Harapan*.

45 "Koran *Sinar Harapan* Kembali Terbit" [Newspaper *Sinar Harapan* is Published Again], *Liputan6.com*, 3 July 2001, <http://news.liputan6.com/read/15825/koran-sinar-harapan-kembali-terbit> (accessed on 13 January 2013).

46 Supreme Court Regulation 1/1993.

cases could effectively be addressed by the Supreme Court (Pompe 2005: 144-146).⁴⁷

There were also complaints about the procedure for acquiring a SIUPP. *Monitor*'s chief editor Arswendo once remarked that getting a SIUPP in a 'formal way' was a complicated matter, implicitly commenting on the fact that if one had a close relationship with Minister Harmoko, it was much easier. Such a relation could be constructed, according to Arswendo, by delivering a certain sum of money to the minister: "If the 'deal' had been agreed upon, administrative trivial matters could be easily arranged thereafter. That is the shrewdness of Harmoko, even if dealing with a friend, all administrative requirements must be fulfilled" (*Tempo*, 13 January 2003).

In the early 1990s, Soeharto promoted a policy of 'openness' (*keterbukaan*) that permitted wider public debates in parliament and the press, and restored some hope of a more independent judiciary (Bedner 2001: 6-7; Crouch 2010: 18-19). This 'openness,' the Indonesian equivalent of the Soviet Union's *Glasnost*, intended to create a dynamic and developing society. In the name of 'openness,' controls on the press became more relaxed, demonstrations became possible, student activism started to flourish, NGOs grew in number and influence, and criticism of the government became both more frequent and more trenchant. The establishment of Komnas HAM (the National Human Rights Commission) in 1993 was part of this policy. However, the policy of 'openness' was abruptly ended by one of the most notorious crackdowns on press freedom in Indonesian history.

It concerned the banning of two prominent weeklies: *Tempo*, *Editor* and the daily *Detik*, whose SIUPP were withdrawn by Minister of Information Harmoko.⁴⁸ The Director General of Press and Printed Media Guidance Subrata explained in an official announcement that the three papers had been warned on a number of occasions, but had failed to heed these warnings. In addition, he argued, there had been a 'discrepancy' between what was allowed by the SIUPP and the contents of the publications concerned.⁴⁹

Before the ban was announced, Minister of Information and Press Council Chairman Harmoko conducted a meeting at 9 a.m. in the Press Council office.⁵⁰ Jakob Oetama, the chief editor of *Kompas* and present in his capacity as a Press Council member, later testified before the administrative court

47 Paloh brought his case on 16 November 1992. It will be further elaborated in Chapter 7.

48 The ban was based on Minister of Information Decree 123/KEP/Menpen/1994 (21 June 1994).

49 AFP News Service (*Antara*), "Government Cancels *Tempo*, *Editor* and *Detik* Printing and Publishing Licenses," 21 June 1994.

50 The participants included Jakob Oetama from *Kompas*, Director General of Press and Graphics Guidance Drs. Subrata, and Handjojo Nitimihardjo from *Antara*.

that the Press Council had not found the newspapers concerned to be in contravention of the limitations of a free and responsible press and had certainly not recommended banning them. Nonetheless, Subrata announced the ban at 16 p.m. It seemed that the Press Council meeting was an empty formality and that the decision to ban these papers had long been taken.

Tempo's editorial staff was uncertain about the reason for the withdrawal. According to the minister's decree, several *Tempo* editions "had not reflected a healthy, free and responsible press" and the decision was taken to supervise and develop a national press in accordance with the 1945 Constitution and the Pancasila, as well as to promote 'national stability.' In short, the reasons were utterly vague. Albeit *Tempo* won a legal case against the minister in Jakarta's Administrative Court, both in first instance and on appeal, officially the reasons for the ban remained a mystery.⁵¹

Unofficially, several high ranking government officials referred to news reports related to the purchase of used marine ships from Germany, controversial within the government itself, as the immediate cause.⁵² *Tempo* had already published a cover story on the contested purchase on 7 June 1994.⁵³ The following week *Tempo* reported that the costs of these 39 ships had increased 62-fold.⁵⁴ The press community in Jakarta also believed that this was the main reason for the bans.⁵⁵ However, the absence of any official reasons made it difficult to address the ban on substantive grounds. Without mentioning particular newspapers or magazines, Soeharto stated from a navy ship in Teluk Banten that strict measures should be taken against a whistle-blowing press.

The ban on *Tempo*, *Detik* and *Editor* did not directly lead to public silence and 'national stability.' On the contrary, it was followed by numerous protests in nearly every part of the country (Dhakidae 1994: 54). During protests in Jakarta 53 people were arrested, including well-known performer and poet W.S. Rendra. The situation also led to international outrage. In response, Soeharto simply redefined the concept of openness: "Openness does not mean unlimited freedom, or even worse, the freedom to be hostile, pitting one party against another and unconstitutionally imposing one's ideas."⁵⁶

51 See Chapter 7 for this case.

52 "Jerman Punya Kapal, *Tempo* Ketiban Bredel" [Germany Holds Ships, *Tempo* is Banned], *Tempo*, 13 October 1998. This case is discussed further in Chapter 7.

53 "Dihadang Ombak dan Biaya Besar" [Intercepted by Waves and High Cost], *Tempo*, 7 June 1994.

54 "Jerman Punya Kapal, *Tempo* Ketiban Bredel" [Germany Holds Ships, *Tempo* is Banned], *Tempo*, 13 October 1998.

55 "Jerman Punya Kapal, *Tempo* Ketiban Bredel" [Germany Holds Ships, *Tempo* is Banned], *Tempo*, 13 October 1998.

56 "The Limits of Openness: Human Rights in Indonesia and East Timor," *Human Rights Watch*, 1 September 1994.

Underground journalist associations⁵⁷ and individual journalists throughout the country established a larger network, namely AJI, the Independent Journalists Alliance.⁵⁸ Its main objectives were realising public rights to information, opposing press restraints and rejecting a single organisation for journalists. As only the PWI was recognised by the government, AJI had to operate underground.

The government immediately moved to suppress the AJI. It indicted AJI activists Ahmad Taufik, Eko Maryadi and Danang Kukuh Wardoyo, who were condemned to three years in prison each (Danang received a lighter sentence of 20 months imprisonment). In October 1996, Andi Syahputra, who printed news on behalf of the AJI, was also imprisoned for 18 months. To this end, the prosecutor used Minister of Information's Decree 47/Kep/Menpen/1975, which provided for a single journalist organisation.

During the same period, in 1996, Indonesia was shaken by the killing of journalist Fuad Muhammad Syafruddin, also known as Udin, in Bantul, Yogyakarta. Udin had worked for ten years for the regional newspaper *Bernas*. He had written a number of articles in July 1996 about corruption in Bantul regency, involving illicit land deals and the election of officials.⁵⁹ During the night of 12 August 1996, his house was visited by a number of unknown people. Then, on 13 August 1996, two men (later on identified as Hatta Sunanto, a Bantul parliament member, and Suwandi, a broker) came to the *Bernas* office. After work, Udin went home, and was tortured and stabbed Udin in front of his own house. He died after three days in coma at the hospital in Yogyakarta. The police refused to look at a connection between the killing and his critical articles, and instead focused on an extra-marital affair Udin was allegedly having, arguing that he had been killed by a jealous husband. This version remained the dominant story, but led nowhere and no one was ever brought to trial for the killing.⁶⁰

The Udin case became symbolic of the anti-press attitude of the Soeharto regime, which by now banned and censored both foreign and national publications at will and condoned severe beatings of journalists reporting on demonstrations against the repression of political opposition. This situation also drew attention at the international level. In 1997 UNESCO produced a

57 Independent Journalists Forum (FOWI) Bandung, Yogyakarta Journalist Discussion Forum (FDWY), Surabaya Press Club (SPC) and Independent Journalists Solidarity (SJI) Jakarta.

58 Through the so-called Sirnagalih Declaration, on 7 August 1994.

59 "The Death of a Journalist," *Inside Indonesia*, 52: October-December 1997.

60 In 1997 Amnesty International called on the Indonesian government to re-open the investigation into the death of Udin and for the investigation to be thorough and impartial. AJI Yogyakarta also released a petition for investigation into the death of Udin and to stop violence against journalists ("AJI Yogyakarta: Buka Kembali Kasus Pembunuhan Udin," *Voice of Human Rights*, 16 August 2010).

resolution about violence against journalists, referring specifically to Indonesia. The Committee to Protect Journalists (CPJ), a US-based organisation for press freedom, put Soeharto among "The 10 Worst Offenders or Enemies of the Press of 1997."⁶¹ Although Soeharto seemed to pay little attention, the international support contributed to mounting criticism in Indonesia itself, which was to come to a head after the onset of the financial crisis in 1997.

In short, the closing years of the Soeharto regime saw an ever-tightening press and information control. The regime ignored international pressure to respect press freedom, clinging to its conception of the role of the press as the guardian of the *Pancasila* and the 1945 Constitution, and to its interpretation of 'responsible press freedom.' The discourse of '*Pancasila* press' and 'responsible press' was ambiguous and liable to different interpretations,⁶² which created continuous uncertainty and enabled the government to discipline the media at will as part of its strategy in establishing 'political stability.' This discourse was articulated through laws, the absence of judicial control and violence against journalists, all of them underlining the authoritarian nature of the regime.

4.7. REFORMASI

After Soeharto stepped down on 21 May 1998, there was a tremendous push to liberalise the country and to reform all aspects of social and political life. This led to many new laws, including on human rights, and the ratifying of almost all international human rights law instruments.⁶³ Press freedom was high on the list of the reform movement. AJI immediately seized the initiative through its call to the government to reform the media, in its press release on 23 May 1998. The demands for media reform included, first, removal of a single professional organisation for journalists and publishers; second, permit providers that contravene the press freedom principles and rights of the people should be dissolved, and the SIUPP and broadcasting license should be abolished. 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 Organisation).⁶⁴

61 CPJ (1997) *Enemies of the Press of 1997*, <http://cpj.org/reports/1997/05/enemies97.php#more> (accessed on 4 March 2011).

62 Cf. McCargo (2003: 77-99), who has argued that '*Pancasila* press' was an 'enigmatic discourse.'

63 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.

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

The government swiftly responded to the public concerns. On 5 June 1998 Yunus Yosfiah, the new minister of information, annulled Ministerial Decree 1/1984 on the SIUPP⁶⁵ and 47/Kep/Menpen/1975 and 184/1978, both about the regulation of journalists.⁶⁶ On 26 October 1998, President Habibie enacted Law 9/1998 on Freedom of Expression. According to Article 1, freedom of expression means the right of citizens to express their thoughts orally, in writing, or by other means, freely and responsibly in accordance with existing legislation. Article 3 stipulated that this freedom should take into account:

- (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.

These principles are not further explained in the law, except for proportionality, which is defined as “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 against freedom of expression, this is a rather flexible definition which can potentially be abused by the authorities. The absence of a further definition of the other principles is even more of a problem. For instance, the principle of deliberation and consensus can easily be interpreted as demanding the application of these mechanisms before publication is even allowed.

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

- (a) realising a responsible freedom as a fulfilment of human rights in accordance with the Pancasila and the 1945 Constitution; (b) realising consistent and continuous legal protection in guaranteeing freedom of expression; (c) realising 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 problem with this article is obviously that it does not fully distance itself from the New Order legacy. Pancasila, the 1945 Constitution and the idea of ‘social responsibility’ still feature prominently and carry with them strong connotations of the practice that had developed during the thirty years of the Soeharto regime.

The law also contained articles explicitly limiting freedom of expression. Article 10(3) required a three-day notice to the police for activities such as demonstration or strikes, long marches, and/or other activities using public facilities. If unreported, the authorities held the power to halt such activi-

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

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

ties (Article 15). This provision was problematic in threatening spontaneous actions to call policy makers to account or to protest against unfair decisions. Labour strikes, for instance, for protesting against a managerial decision can seldom be postponed three days, because they would come too late to influence the negotiation process. Likewise, journalists need to be able to stage an immediate protest if they are not allowed to cover a particular event. If this is not possible, it probably means the loss of a resource person or even the news itself.

In practice, in the case of labour strikes, the 'mechanism to report' to the police effectively became a 'permit' to conduct strikes. Strikes without such a 'permit' were easily dissolved by being labelled illegal, with leaders being arrested and punished. These rules about the freedom to express one's opinion remain controversial in their implementation, and such mechanism has been maintained until the present.

More generally, and 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 referendum for independence, as well as the so-called 'Banyuwangi murders'.⁶⁷ These cases caused the international community, including the United Nations, to increase pressure on the Indonesian government, but the weakness of many state institutions in combination with the conflict about secessionist movements made it difficult for the government to respond. In short, the process of democratisation during this early phase of political transition was messy and fragile. Nevertheless, important steps were taken, with the first free national elections since 1955 (on 7 June 1999), in which a large number of parties participated – and with a press reporting freely and critically without being harassed by the authorities.

Government and parliament also enacted two important laws on human rights and press freedom, on the same day (23 September 1999): the Human Rights Law 9/1999 and Press Law 40/1999. Much attention was paid to them, both domestically and at the international level. They were passed to show Indonesia's commitment to reform itself into a democracy under the rule of law.⁶⁸

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

68 The drafting process was organised 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).

Human Rights Law 9/1999 was passed prior to the Constitutional Amendment on Human Rights in 2000 and presents a detailed legal framework for human rights protection in Indonesia. Of importance for the press was that it clearly defined press freedom as a human rights issue. Article 23(2) of the law explicitly guarantees freedom of expression and especially 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 into account religious values, morals, public order, public interest, and the unity of the nation.

The legal framework for press freedom was elaborated in the new Press Law. It provided much better protection of journalists and others working for the press than the previous law (Law 21/1982), even if it also carried several weaknesses. According to Atmakusumah (2007: 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 by *Reformasi*'s euphoria. This explains why the Press Law in the end became more restrictive than what had initially been suggested by the *Reformasi* supporters.

Yet, press freedom was clearly promoted by three important changes compared to the previous situation: (1) censorship was abolished; (2) press banning was no longer allowed; and (3) the press permit (SIUPP) could no longer be revoked. As we have seen, these issues had been extremely oppressive in practice before. In the wordings of Article 4 of the 1999 Press Law:

- (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;⁶⁹
- (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, including by officials, are considered a crime, and punishable by up to two years of imprisonment or a fine of up to Rp. 500,000,000.

Equally important provisions are Articles 7(1) and 8, which provide protection of the freedom for journalists to join journalist associations. Article 9(1) protects the rights of Indonesian citizens to establish press companies and

69 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."

Article 13c determines the same for news agencies. Both articles provide a legal underpinning for Minister of Information Regulations 1 and 2 of 1998.

Nevertheless, as already mentioned, the 1999 Press Law also contains a number of unnecessary or potentially harmful provisions. As pointed out earlier by the AJI, Article 15 is unclear about 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 read as a mere public relations and press facilitating institution, rather than a press freedom defender and monitoring institution for law enforcement (Jamaludin 2009: 28-31). Nevertheless, according to Margiyono, a coordinator of the legal division in the AJI, the Press Council from the start claimed 'effectiveness for its decisions,' and the power to decide on complaints or claims against the press.⁷⁰ Yet, again according to Margiyono, the enforceability of Press Council decisions has remained problematic.⁷¹ Another way for the Press Council to exert influence has been opened up by Supreme Court Circular Letter 13/2008, which puts courts under the obligation to invite a Press Council member as an expert witness in press cases.

A second weakness of the 1999 Press Law is its inclusion of codes of ethics, codes of publication, codes of conducts, and codes of enterprises and law enforcement. A code of ethics should be separate from the law, for it is a form of self-regulation, usually formulated as an agreement by a professional association. A violation of a code of ethics should be examined by the professional association itself, and not by the court. It is not surprising, therefore, that the inclusion of the code of ethics into the 1999 Press Law, instead of having been promulgated by the journalist association itself, has led to confusion. When there is a case, the first legal institution to consider to what extent a journalist has violated the press code of ethics should be the Press Council and/or the journalist association itself.

A third problem concerns the definition of the right to reply (Article 1(11) juncto article 5(2)), which is much broader in scope than a simple right to reply to statements violating one's legal rights. Moreover, the refusal of media to serve such a reply carries a fine of up to Rp. 500 million. However, this does not refer to an obligation to publish a reply. If the reply would affect third parties, contains unethical references, makes unclear statements, or bears no clear relation to the news report it is supposed to respond to, an editor may refuse it. The publication of the reply ultimately depends on the decision of the editor, without any outside interference (Asraatmadja, 2007c).

70 Margiyono, personal communication, 9 March 2011.

71 See Chapter 6 for an elaborate discussion.

The purpose of a right to reply is to provide an individual with an opportunity to respond to and correct inaccurate facts or statements which infringe his or her legal rights, such as privacy rights. NGOs concerned with freedom of expression have therefore suggested that a right of reply should be voluntary rather than prescribed by law, and at least should conform to certain conditions: (1) the reply should only be available to respond to statements which violate a legal right of the person involved and not serve to comment on opinions which the reader or viewer does not like; (2) the way in which it is published should be of the same prominence as the original article or broadcast; (3) the 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). The Indonesian Press Law is clearly far removed from this standard.

Fourth, many journalists, associations, and lawyers have urged for an amendment of the Press Law to make it unequivocally clear that the Press Law is a *lex specialis* to the Penal Code. Now the police, public prosecutor and (lower) courts often apply the Penal Code rather than the Press Law.⁷² 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.⁷³ In fact, the addition of the term *lex specialis* should be unnecessary, because lawyers, including law enforcers, should understand that the Press Law simply is one. Moreover, as will be discussed in Chapter 5, the Supreme Court has confirmed this time and again in its case law. Unfortunately, it seems that an additional article may be needed to convince all involved.

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

4.8. TURNING POINT OF PRESS FREEDOM, FROM ABDURAHMAN WAHID TO MEGAWATI

After the abolition of the SIUPP as a requirement for establishing media, the number of newspapers and magazines increased exponentially. Within

72 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.

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

a few months after Soeharto stepped down, 1,200 new dailies, magazines, or tabloids were started. 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...⁷⁴

Press freedom steadily became more respected, especially during the Abdurrahman Wahid ('Gus Dur') presidency. A major step he took was to abolish the cornerstone of New Order press repression, the Department of Information. Of course, this policy elicited protests of thousands of staff of the Department of Information, as well as former Minister of Information, Yunus Yosfiah, who had a vehement debate with Abdurrahman Wahid Dur in the State Palace. Nevertheless, Abdurrahman Wahid stuck to his decision, which he had long considered:⁷⁵

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.⁷⁶

For the AJI, as an independent journalists movement, the dissolution of the Department of Information in 1999 went beyond what they had proposed the year before in their press release on media reform in Jakarta, on 24 May 1998. A new phase of press freedom started. In 2002, the Press Freedom Index ranked Indonesia 57th, much higher than its neighbouring countries, such as Thailand (65th), Malaysia (110th) and the Philippines (89th). The Abdurrahman Wahid administration showed an unprecedented commitment to human rights and democracy, and its strengthening of press freedom was a logical but courageous step in this context, with immediate results.⁷⁷

The situation changed however when Wahid was impeached in 2001 for allegations of corruption and Megawati Soekarnoputri, his vice-president replaced him. During her leadership, Megawati often criticised the press for being '*njomplang*' (unbalanced), '*njlimet*' (complex), and '*ruwet*'

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

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

76 "*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).

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

(complicated),⁷⁸ and, later on, 'un-nationalistic', or 'un-patriotic'.⁷⁹ These statements addressed the newspapers in general, but most notably *Rakyat Merdeka*, which heavily criticised the policies of Megawati leading to higher fuel prices.

More generally, the way in which Megawati approached the media led to increasing tension. She tended to perceive the media as a 'problem' for her leadership, instead of developing a policy to deal with them. Thus, she refused to talk to the press about several issues that at the time were a cause for public concern, including the fuel price. Neither had she appointed a spokesperson for communicating with the press or the public. And to critics she would respond that it all concerned a 'public misunderstanding,' without any further clarification.⁸⁰ 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, 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.⁸¹

During the Megawati administration, one important piece of legislation related to the press was enacted, providing an important addition to the Press Law. This was the Broadcasting Law (Law 32/2002).⁸² It addressed some issues relevant to press freedom, in particular preventing a monopoly of ownership and supporting healthy competition in broadcasting matters (Article 5(g)).⁸³ This article is connected to Article 41, 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 elucidation of this article, or a specific sanction if it is violated.

78 '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).

79 '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).

80 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.

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

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

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

The agency which is responsible for supervision and enforcement is the Indonesian Broadcasting Commission (*Komisi Penyiaran Indonesia* or KPI). The KPI consists of a central office in Jakarta and branch offices at the provincial level. It has the authority to: (a) determine broadcasting programme standards; (b) formulate regulations and determine the guidelines for broadcasting behaviour; (c) monitor the implementation of broadcasting regulations, guidelines, and programme standards; (d) impose sanctions for violating broadcasting regulation, guidelines, and programme standards; (e) build co-ordination and/or co-operate with the government, broadcasting institutions, and society. The KPI did not exercise its authority to ban a broadcasting station under the Megawati presidency, but as will be discussed later, it did under her successor Susilo Bambang Yudhoyono.

Yet, threats against press freedom started to resurface during the Megawati administration, most notably two cases in 2003. The first concerned *Rakyat Merdeka*, whose chief editor Karim Paputungan was sentenced to five months with ten months probation by the South Jakarta District Court for defamation, violating Article 310 after having insulted Chairman of Parliament Akbar Tandjung. Tandjung was being investigated for embezzling Rp. 40 billion (USD 4.7 million) in state funds and the report concerned showed Tanjung shirtless, crippled, sweating and looking sad with a banner reading “Akbar to be finished soon. Golkar shedding tears of blood” (Paputungan 2011).⁸⁴

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 because of insulting Megawati. Supratman was proven to have violated Article 137(1) of the Penal Code, which prohibits insulting the president and vice-president. The Chair of the Council of Judges, Zoeber Djajadi, stated that “anyone who is sane must be annoyed or offended” by the wordings used in the headlines to a number of articles. This court case was accompanied by threats of ultra-nationalist pro-Megawati groups to kill *Rakyat Merdeka*’s journalists.⁸⁵

Another threat to press freedom came from altogether seven civil and criminal lawsuits against *Tempo*, initiated by business tycoon Tommy Winata after *Tempo* had published an article questioning 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 Tommy for ‘material losses’ and

84 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.

85 “Redaktur Eksekutif Rakyat Merdeka Divonis Enam Bulan” [Executive Editor of *Rakyat Merdeka* Sentenced to Six Months], *Tempo Interaktif*, Senin, 27 October 2003. This case will be further elaborated in the next chapter.

'forfeiture of future profit.'⁸⁶ In the criminal case public prosecutor Bastian Hutabarat used article XIV(2) of Law 1/1946 *juncto* Article 55 (1)-1e of the Penal Code to indict 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 of the precedence the Press Law takes over the Penal Code. The court added that since press freedom is a *conditio sine qua non* in a democratic state based on the rule of law, cases against it should be treated with utmost circumspection.⁸⁷

Although *Tempo* 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 them brought under the 1999 Press Law. There is no doubt that such legal harassment influences journalists and editors. To this we can add the use of violence against journalists and media, and the lack of seriousness of the police in protecting journalists. The attack by Tommy Winata's thugs on the *Tempo* office on 17 May 2004 presents a clear example.⁸⁸ Unlike her predecessor, President Megawati took no steps to improve this situation.

In short, during Megawati's presidency press freedom was reduced in the way in which prosecutors and lower courts applied the law as well as by the use of violence against the press. The state offered insufficient protection against such violence and Megawati herself had a problematic relation with the media. Her lack of responsiveness in addressing attacks on the press can be interpreted as violating press freedom by omission, while her consenting to prosecution of *Rakyat Merdeka* staff she went beyond mere omission.

4.9. SURPLUS FREEDOM OF THE PRESS? THE PRESS UNDER THE SBY ADMINISTRATION

Before reformation, press freedom was jeopardised,
or deficient. But now after reformation, press freedom
is working well, there is even a surplus of it....
(SUSIBY, 3 June 2010)⁸⁹

86 "Court Orders Tempo to Pay Rp. 500 million to Tommy Winata," *LKBN Antara*, 18 March 2004.

87 This case will be further discussed in Chapter 5.

88 "Penyerangan Kantor MBM Tempo" [Attack on MBM Tempo Office], *Tempo Interaktif*, 17 May 2004.

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

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, gained more than 60 per cent of the vote, defeating Megawati Soekarnoputri.

At the start of SBY's presidency, many NGOs expected him to show more respect for human rights, including press freedom, than his predecessor. However, by the end of 2004 he had already disappointed many, and Indonesia dropped even further in the international press freedom ranking.⁹⁰ By the end of 2004 the two most important human rights issues for the government concerned the addressing of the tsunami tragedy in Aceh and the investigation – or rather the lack of it – of the Munir case.⁹¹ Munir was poisoned while travelling from Jakarta to Amsterdam on 7 September, and his death became a major issue in the media. As it quickly became clear that the Indonesian intelligence service had been involved in the killing, the murder on Munir became something of a test case for SBY's stance regarding the protection of human rights and human rights defenders (including journalists) in Indonesia. The fact that the culprits of the Munir killing have never been punished certainly contributed to the eventual disappointment of the human rights movement with SBY.

In 2005, Indonesia seemed to be doing better with regard to press freedom, when it moved from position 117 to 103 in the JPC press freedom index. However, the database of LBH Pers (the Press Legal Aid Institute) demonstrates that state pressure on the press had actually increased, including attacks on the press by government officials, police and military personnel (Tim LBH Pers 2009: 103). The number of violent attacks by thugs had increased even more quickly than those by state security officials, though the former were sometimes organised by state officials.⁹² For instance, the *Palopo Pos* office was brutally 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* reporting about the severance pay for 35 former district parliament members of in total Rp. 1,05 billion, which had angered the district head.⁹³ Similar cases happened in Medan, where a TV journalist was beaten, on 16

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

91 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 one openly accusing the military and intelligence of kidnapping students and activists during the years 1997 and 1998 – which ultimately led to him being murdered.

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

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

April 2005, and in Bogor, where *Radar Bogor* journalist Ahmad Junaedi was tortured by unknown persons in July 2005.

This formed only part of a wider lack of interest from the government in human rights protection and civil society groups were questioning the seriousness of the government in promoting and protecting human rights. Human rights NGO *Elsam* gave its 2005 Human Rights Enforcement Report the title “*Ekspektasi Yang Sirna*” [Expectations that Disappeared].

President SBY denied the allegations and expressed his satisfaction about the level of press freedom. As he said during his ‘End of the Year Speech,’

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.⁹⁴

It was not only the written press that came to face the more repressive policies regarding press freedom. As already 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 2005, but in 2007 came under pressure to halt its activities.⁹⁵ The KPI and the minister of communication and information asked *Radio Era Baru* to stop broadcasting without providing any clear reason, in the end by having the Frequency Monitor Section in Batam release a final letter imposing a broadcasting ban on account of broadcasting in Chinese, on 21 October 2008. The radio station took the case to the administrative court, but lost in first instance and on appeal.⁹⁶ However, the Supreme Court overturned this decision and quashed the banning decision on 5 October 2010. This ended a three-year legal battle between *Radio Era Baru*, and the KPI and minister of communication and information. *Radio Era Baru* thus regained its license and can now freely broadcast in Indonesia.⁹⁷

94 ‘End of Year Speech’ in Cipanas Palace, 31 December 2005.

95 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 news of 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 held evidence about 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). See also Chapter 7 for more details.

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

97 This case is discussed further in Chapter 7.

Press freedom came further under threat after the killing of Herlyanto, a journalist of *Delta Pos*, a daily in Probolinggo (East Java). On 29 April 2006 Herlyanto was found dead, his body covered with wounds. The motive behind this killing related to his report on the corruption of local officials.⁹⁸ In September of the same year, the killer was arrested and testified that the killing had been ordered by the head of a project, who had marked up the government budget concerned. This was the first time since the end of the New Order and the killing of *Bernas* journalist Udin in Bantul that a journalist was actually murdered.

Criminal cases against the press on the basis of the Penal Code instead of the Press Law occurred as well, 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, on defamation against religion. The case concerned the covering of the story of the cartoons considered as humiliating Islam's Prophet Muhammad published in the *Jylland-Posten* in Denmark. Fortunately, the South Jakarta Court judges dismissed the case. The suit against *Playboy Magazine's* Chief Editor Erwin Arnada did not end as well. He was prosecuted under Article 282(3) of the Penal Code, on crimes against decency, with *Playboy Magazine* being considered as pornography. The Supreme Court sentenced Erwin to two years imprisonment (Decision 972K/Pid/2008), but eventually the Supreme Court reviewed its own decision.⁹⁹

Using legal suits against press freedom in Indonesia started to become a trend during this period, not only under the Penal Code but there was also a rise in civil lawsuits against several media and journalists for extraordinary amounts of damages. The case of *Radio Era Baru* is a good example, as the station not only lost its license, but also saw its director prosecuted under the Telecommunication Law for imprisonment for up to six years.¹⁰⁰ The

98 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).

99 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 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). The cases are further discussed in Chapter 5.

100 This indictment was based on the Letter of Radio Frequency Monitoring Agency (Balm-on) 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)). The case is elaborated further in Chapter 7.

other cases in 2007 included a civil suit by Riau Andalan Pulp and Paper (RAPP), which filed a claim for damages against *Tempo Newspaper* and a criminal prosecution in the same case against journalist Bersihar Lubis. Both concerned defamation.

The most notorious judgment against the press was the Supreme Court's 3215K/Pdt/2001, adjudicated on 28 August 2007 in the case of *Soeharto v Time*. Judges German Hoediarso, H. Muhammad Taufiq, and Bahauddin Qaudry overturned the judgments by the first instance and the appellate court and awarded damages to the plaintiff for defamation to the fantastic amount of one quintillion rupiah, on the basis of tort, without any comprehensible legal reasoning. The case drew international attention and further harmed the already tainted image of the Indonesian judiciary. The judgment totally disregarded the Press Law, which Article 18 stipulates a maximum fine of Rp. 500 million.¹⁰¹

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

However, the situation of press freedom grew progressively worse in 2008, with several new criminal and civil lawsuits against the press, such as *Munarman* (coordinator of Islamic Defender Front/FPI) *v Tempo*, and the criminal prosecution of journalist Upi Asmaradhana,¹⁰² of *Tempo's* journalist/editor, Irvansyah and Sunudyanoro, and of Kwee Meng Luan and Khoe Seng-Seng who were convicted because of their letters to the editor.¹⁰³ Moreover, two important pieces of legislation related to the press were enacted. The first one, Law 11/ 2008 on Electronic Information and Transactions (EIT), is the most controversial.¹⁰⁴ Its articles 27 and 28 allow for a criminal suit against journalists for defamation. Article 27(3) determines that

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.¹⁰⁵

¹⁰¹ This case will be further discussed in Chapter 6.

¹⁰² Upi Asmaradhana, a freelance journalist in Makassar, South Sulawesi, was acquitted of a defamation charge.

¹⁰³ These cases will be elaborated in the next chapters.

¹⁰⁴ This law was approved by the House of Representatives on 21 April 2008.

¹⁰⁵ The phrasing of the article is not in line with the basic rules of Indonesian grammar.

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 be more than five years imprisonment, journalists can be taken into custody immediately when accused of violating Article 27(3) and therefore this provision can be used to harass journalists or citizens without judicial intervention.

Such fears of arbitrary use of the EIT Law led a number of NGOs and individuals¹⁰⁶ to challenge Article 27(3) before the Constitutional Court. According to the applicants, this article is contradictory to the following articles of the Constitution: Article 1(2),¹⁰⁷ Article 1(3),¹⁰⁸ Article 27(1),¹⁰⁹ Article 28,¹¹⁰ Article 28C(1) and (2),¹¹¹ Article 28D(1),¹¹² Article 28E(2) and (3),¹¹³ Article 28F,¹¹⁴ and Article 28G(1).¹¹⁵ Article 27(3) of the EIT Law notably violated the rule of law requirement that a provision must be clear, easily understood, and fairly enforced. However, their claim was rejected by the Constitutional Court. In their Decision No. 2/PUU-VII/2009, dated 5 May 2009, the judges argued that the EIT Law is important to secure and protect free-

106 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.

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

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

109 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.

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

111 (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.

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

113 (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.

114 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.

115 Every person shall have the right to protection of him/her, family, honour, 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.

dom of expression, and to give legal certainty, because it not only addresses the press or journalism but also ordinary people.¹¹⁶

In practice, it soon appeared that the EIT Law does effectively threaten freedom of expression. Most notorious in this regard is the case of Prita Mulyasari, an Indonesian woman arrested on 13 May 2009 for allegedly circulating online 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 record. When the doctor refused, Prita complained about this via e-mail to a number of friends, as well as about the fact that she had been misdiagnosed as suffering from dengue fever whereas in August 2008 further medical examination proved that she had mumps. She accused the doctors of unprofessional conduct and warned her friends against visiting this hospital. The 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 this became known it caused a public outrage and a media frenzy, in particular when Prita was taken into custody three weeks ahead of her trial.¹¹⁷

The prosecution indicted Prita for defamation of doctors Hengky Gosal and Grace Hilza Yarlen Nela, in an email sent to twenty people that described the two as unprofessional and impolite. She was indicted by three articles – Article 45(1) jo. 27(3) of the EIT Law, Article 310(2) and 311(1) of the Penal Code –, all of them concerning defamation and insult. The prosecutor demanded a sentence of six months in jail, but the judges at the Tangerang District Court rejected the indictment for unclarity. However, this judgment was quashed in cassation and the Supreme Court convicted Prita to six months in jail with one month probation.¹¹⁸

At the same time, the Omni Hospital brought 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 Arti-

116 This case will be further discussed in Chapter 7. Chapter 5 will further discuss EIT provisions that may endanger press freedom.

117 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).

118 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). This case will be further discussed in the next chapter.

cle 1365.¹¹⁹ This judgment was upheld by the Banten High Court,¹²⁰ 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 quashed the appellate judgment, arguing that such a case could never be qualified as defamation.¹²¹

The Prita case made clear that the EIT Law not only threatens journalists, but also ordinary citizens expressing opinions on the internet. According to Press Council member Agus Sudibyo (2009), “the EIT Law is 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 criminalising citizens.”¹²² Yet, it is clear that online media have most to fear from the EIT Law.

The year 2008 also witnessed the promulgation of other laws introducing new criminal sanctions for the press: the General Election Law 10/2008, the Presidential Election Law 42/2008 and the Pornography Law 44/2008. Article 99(1) of the General Election Law listed the following sanctions:¹²³

- (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.

Those sanctions were to be regulated further by the Electoral Commission (Article 100). The Presidential Election Law held similar provisions and its Article 47(5) added that

Printed papers and broadcasting agencies as stipulated under section (1) during the period of non-campaigning,¹²⁴ 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 the threat of heavy punishment, including the revocation of the broadcasting license and SIUPP (Article 57(1)). In short, these laws seriously endanger press freedom and have raised much con-

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

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

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

122 “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].

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

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

trovery, for one thing because there was hardly any public participation in their formulation (Hendrayana 2009). The only positive thing we can say about these provisions is that they have never 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.

This definition is highly moralistic without setting any clear standard or method for evaluating what 'lewdness' is, in particular because it is so difficult to establish what 'the moral norms of society' are in a normatively pluralistic country as Indonesia. In Bali for instance, some common daily activities based on tradition could very well be categorised as pornography on the basis of this law.¹²⁵ Such unclear standards lend themselves to arbitrary interpretation by state or non-state actors and can be easily used for putting pressure on particular social groups (Wiratraman 2009). The sanctions of the law are moreover extremely serious. As defined 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 danger is evident from the conviction mentioned earlier 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 *Playboy Indonesia* was not a pornographic magazine according to the Press Law, but this could not prevent his conviction.¹²⁶ The far greater leeway the Pornography Law offers is therefore quite dangerous.

125 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.

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

Yet, 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 general elucidation, the PIDL is important as a 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 thus allows the public, including the press, to be better informed and to better participate in decision-making processes and their implementation. 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 say that a document is secret if it has been categorised as a public document, which can only be done in exceptional cases. Yet, in practice, the application of the law has been difficult for several reasons. First, the regional government has been reluctant to set up a minimum operational standard for delivering public information; second, the old paradigm that information 'belongs' to officials is still strong at that level; and third, many officials know little about the PIDL and have no idea how to deal with journalists in giving public information.¹²⁷ This had already been predicted when the PIDL was formulated and in the debates in parliament very little attention was paid to the pervasiveness of the 'old paradigm' and the new law.¹²⁸

4.10. PHYSICAL ATTACKS ON 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 it seemed to become a trend to use the court for attacking the press, and as a result some journalists, editors and media owners became more preoccupied with defending themselves in court than with focusing on providing information to the public. Moreover, the judges or other judicial enforcers did not apply the Press Law as a legal

127 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.

128 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.

source to resolve disputes. Albeit the Supreme Court released an important letter on 30 December 2008¹²⁹ that mentioned the Press Council as an appropriate institution to decide on press cases in the court, the court is still considered as a threat. The relation between the press and the judiciary system is discussed in the next part of this dissertation. This sub-chapter discusses another type of attacks on the press: physical violence against journalists, media owners and press offices.

Unfortunately, press freedom is not only influenced by law and its application. Violence against journalists has taken place under all Indonesia's regimes and journalists have been assaulted by all kinds of actors, both from the state and from society. Such violence ranges from damaging or destroying cameras or other equipment to torture or even murder.

The first Indonesian journalist to be killed in the period post-Soeharto was Sander Thoenes, on 21 September 1999. Sander went to Dili, East Timor, on a reporting mission. That same day, he was brutally murdered by two officers of the Indonesian army, Major Jakob Djoko Sarosa and Lieutenant Camillo Dos Santos on Becora Road in Dili.¹³⁰ According to the Committee for Protecting Journalists (CPJ), Thoenes was the first foreign reporter killed in East Timor since 1975, when six Australia-based reporters were killed during the Indonesian military invasion of East Timor.¹³¹

Yet, the main change after the end of the New Order was that violence no longer came from the state apparatus in the first place, but rather from thugs and similar 'social groups.' The drama is that such violence has almost without exception remained with impunity, while state officials have hardly made any effort to protect the press.

During Susilo Bambang Yudhoyono's administration, *Delta Pos* journalist Herlyanto was killed in Probolinggo, on 29 April 2006, in relation to his report on local corruption. Unfortunately, his case received little attention. This was different for *Radar Bali*'s journalist Anak Agung Narendra Gede Prabangsa, who was found dead on 16 February 2009. He was killed in relation to his reporting on a corruption case in Bangli's education district office.

129 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 emphasises the nature of the Press Law as a *lex specialis*.

130 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).

131 Ibid. "Sander Thoenes: Freelancer."

Initially, it was difficult to get a serious investigation started, because the intellectual perpetrator of the killing, I Nyoman Susrama, was a member of the district parliament and brother of Bangli's district head. However, concerted action from journalist associations, NGOs, political parties, media and wider solidarity networks pushed the police to seriously investigate the case and in the end Susrama was convicted to life imprisonment, while five accomplices received sentences of eight to twenty years in jail.¹³² The attention for this case moreover resulted in a wider campaign to protect journalists.

Nonetheless, during 2009-2010 assaults on and killing of journalists continued. Cases that drew much attention were the torture of *Harian Aceh's* journalist Ahmadi on Simeulue Island, Aceh (18 May 2010),¹³³ and Ardiansyah Matrais in Merauke, Papua (30 July 2010),¹³⁴ and the killing of Ridwan Salamun in Tual, Maluku (21 August 2010).¹³⁵ "Being a journalist in Indonesia is like living in an inhuman jungle!" Ahmadi stated after he was beaten up by military officers on Simeulue Island, because of his reports about illegal logging by the military. All of his equipment was destroyed as well.¹³⁶ Other cases of violence during 2009-2010 were the security guard attack against Imam Abdurrahman (*Megaswara TV*, Bogor, 2 January 2010), the violence against Miftahuddin Halim (*Radar Bali* journalist, 15 January 2010) by Paul Handoko and his gang, the brutal attack on Nurul Iman and Zabur (*Tribun Batam*, 11 February 2010) in Sekupang port, the mob attack on the *Siantar* office after a publication on local politics (25 May 2010), and other physical attacks in various places. In Jakarta, *Tempo Magazine* was intimidated through a Molotov cocktail thrown at its office on 7 July 2010 after it reported about suspect bank accounts owned by police officers.¹³⁷ An even

132 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 Alko-star, Imam Harjadi and Zaharuddin Utama.

133 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.

134 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 Matra'is, Merauke TV," *CPJ*, 2010, <http://www.cpj.org/killed/2010/ardiansyah-matrais.php>, accessed on 21 March 2011).

135 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.

136 Interview with Ahmadi, 5 July 2010.

137 "Rekening Gendut Perwira Polisi" [Fat Account for Retired Police Officers], *Tempo Magazine*, 28 June – 4 July 2010.

worse attack happened on 31 March 2013 when the *Palopo Pos* office in South Sulawesi was burnt down by a mob because of a report about a particular candidate in the local elections.¹³⁸

Two important points can be made about these cases. First, corruption and natural resource exploitation at the local level can be dangerous topics for critical reporting, as indicated by the cases of Ahmadi in Aceh and Ardiansyah Matrais in Papua. This is particularly the case when they write about the connections between local business elites and government officials. Second, the actual violence is performed by non-state actors rather than state officials, whether thugs (*preman*) or ordinary civilians. This differs from the New Order, when state institutions were often directly involved in such violence.

The surge of violence against the press at the regional level cannot be considered separately from the political context of decentralisation. Political gangsters and vigilantes have been major beneficiaries of the decentralisation reforms. The greater autonomy and power of regional governments have turned paramilitary groups and 'political gangsters' into valuable political capital and influential power brokers in their own right (Hadiz 2003). The proliferation of paramilitary and vigilante groups since 1998 represents a manifestation of the decentralisation of violence as a political, social and economic strategy, 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 large, but the pattern has changed from an interaction between state and society, to struggles within society (Romano 2003).

Another fundamental issue for press freedom is impunity. Most cases involving violence against journalists or editors fail to bring justice, either because there is no prosecution at all or because of an inappropriate punishment. In the cases of Udin (1996), Herliyanto (2006), Prabangsa (2006), Salamun (2010) and Matrais (2010), the strong structural connection between political and business elites at the regional level made prosecution difficult or even ruled it out altogether. One of the worst is 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 unidentified attackers sped off. The attack was related to his report linking police to a prisoner sex abuse scandal.¹³⁹ The case remains unclear and so far no judicial prosecution has followed. Violence against journalists combined with weak law enforcement has thus become a major terror for the press.

138 "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.

139 "Wartawan Ditusuk di Jayapura" [Journalist Stabbed in Jayapura], *Viva News*, 3 March 2011.

However, impunity is not merely caused by factors external to the press. It seems that sometimes media owners or even journalist associations suggest to the police and the public prosecutor to drop a case in order not to damage relations. A good example is a case involving an official from national oil company *Pertamina* in Lombok. Head of the Ampenan branch office Sadi-kun Syahroni threatened four local journalists from the *Lombok Post*, *Suara NTB*, *NTB Post* and *Radio Global* by a gun and sickle at an interview about fuel scarcity in West Nusa Tenggara, in Ampenan, 18 July 2007. The case was reported to the police, but no prosecution followed, apparently because the PWI had lobbied the journalists involved to drop the case. In the end they did not dare bring the case to justice, because they were lacking sufficient protective support from the editor and media owner.¹⁴⁰

A similar thing happened in the case of the Adam Malik Hospital in Medan, after an incident on 7 February 2010. The doctor (with a navy background) locked the door when five TV journalists were trying to get an interview on malpractice. The security guard and other paramedical personnel intimidated them, although there was no physical assault. The matter was reported to the police, but under pressure from the media owner ended by an agreement not to further press charges. Other journalists and representatives of journalist associations later privately expressed their anger about this 'win-win solution,' which they considered as undermining law and press freedom.¹⁴¹

Even more disturbing were two cases in East Java in 2012, where it was the Press Council to forge an agreement instead of pressing for criminal prosecution. The first incident, on 25 May 2012, concerned the attempt of several internet and TV journalists to make a report about a fire at the Indospring corporation in Gresik. They were stopped in their activities by corporation manager Paulina Pradini, who ordered security guards to take away their camera, tape recorder and other equipment. The security guards not only took the equipment, but also destroyed it. Gresik's journalist community reported the case to the police, which started an investigation. The case was subsequently accepted by the public prosecutor, who took it to the Gresik District Court. Surprisingly, the Press Council then interfered by starting a mediation process, eventually reaching an agreement with the journalists. The corporation subsequently tried to discontinue the criminal case. However, the court stated that such agreement could not stop criminal legal proceedings before the court and it sentenced Pradini to one-month

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

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

imprisonment. Ironically, the journalists involved in the case expressed their appreciation for the conviction.¹⁴²

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 her reporting about a corruption scandal at Normaluddin's office.¹⁴³ This led to many protests and upon a complaint filed by journalists the police started an investigation, finally leading to a prosecution before the Pamekasan District Court. However, on 11 March 2013, still during the trial, the Press Council held a meeting in Surabaya with the parties involved in order to settle and discontinue the criminal case. The meeting resulted in three points of agreement, one of them being that "parties agreed to resolve the case by apologising to one another and the legal case is considered closed." For Sukma this agreement was hard to accept, but in the end she complied with the policy of her employer.¹⁴⁴ In my opinion, to prioritise a mediation process over a criminal case 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 has received very little attention from the post-Soeharto governments, but compared to the case of Udin it also failed to grasp the attention of the international community. This may be caused by the general impression that Indonesia is now a fairly well functioning democracy. Under Soeharto, violence against journalists was considered part of the authoritarian repertoire to silence the press, whereas at present it is something more 'localised' and 'privatised.' The tendency of the SBY administration to blame the press, calling it 'unprofessional,' 'excessive' or 'partisan' may also lead to institutionalising an anti-press discourse. This may well lead to underestimation of the seriousness of the acts of violence against the press which remain unpunished – by the public, the state and perhaps even by the press itself.

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

143 "Diancam Dibunuh, Wartawan Madura Unjuk Rasa" [Under Threat of Being Killed Madurese Journalists Stage a Demonstration], *Tempo*, 20 December 2012, <http://www.tempo.co/read/news/2012/12/20/058449447/Diancam-Dibunuh-Wartawan-Madura-Unjuk-Rasa> (accessed on 14 March 2013).

144 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).

In addition to this overview of attacks against journalists, it is useful to consider the views of international organisations, especially Reporters Without Borders (RSF), about press freedom in Indonesia. RSF recorded a decrease in press freedom in Indonesia in 2008 with the country dropping from 100th position in 2007 to 111th in 2008. In 2010, RSF ranked Indonesia 117th, the lowest position since 2004, but Indonesia has since continued to slide down even further, to 146th place in 2011-2012. Indicators used by RSF to compile their index include violence and abuse against journalists, the state's role in combating impunity for those responsible for violence and abuse, 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 of new media.

The increasing number of killings of journalists in 2010 contributed to the drop in ranking, in particular because they were not followed by further judicial prosecution to bring the culprits to justice. Physical assaults continued as well, as can be seen from the following table, based on data from the AJI:

*Table 1: Cases of violence against journalists: 2008-2012*¹⁴⁵

	2008	2009	2010	2011	2012
Intimidation	18	1	6	10	15
Eviction and obstruction of access	9	3	7	8	5
Censorship ¹⁴⁶	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	-	-	4	2	2

¹⁴⁵ This table is adapted from the AJI annual reports.

¹⁴⁶ This is a policy or regulation which prohibits journalist from reporting. For instance, the East Jakarta government released a circular letter (*Surat Edaran*) to schools and teachers for not accepting journalists whose identity is unclear, or who have not obtained a recommendation from government officials or the regional parliament.

Indonesia did slightly better in 2013 (139th position), but this does not seem to be caused by changes in government policy.¹⁴⁷ The next table offers a disheartening view of the safety of journalists.

Table 2: Journalists killed in Indonesia: 1996-2012¹⁴⁸

Victim	Date	Location	Perpetrator	Judicial Process (investigation to judicial decision)
Fuad Muhammad Syafruddin, Bernas	16 August 1996	Yogyakarta	Two unidentified assailants	No further prosecution ¹⁴⁹
Muhammad Sayuti Bochari, <i>Pos Makassar</i>	11 June 1997	Luwu, Sulawesi	Unidentified assailants	No further prosecution ¹⁵⁰
Naimullah, <i>Sinar Pagi News</i>	25 July 1997	Pantai Penibungan, Pontianak, West Kalimantan	Unidentified assailants	No further prosecution ¹⁵¹
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

¹⁴⁷ 'Press Freedom Index,' *Reporters Without Borders*, 2011-2012 and 2013, <http://en.rsf.org/>,

¹⁴⁸ 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.

¹⁴⁹ In court, Dwi Sumaji Iwik who previously confessed to killing eventually withdrew his confession. He claimed that he had been forced to confess by police officer Edy Wuryanto in order to protect the interests of the Bantul District Head Sri Roso Sudarmo (Marajo 2007).

¹⁵⁰ Sayuti's death was a result of his reporting on local corruption (Andi Tonra Mahie), but local police said the cause was a traffic accident ("Muhammad Sayuti Bochari," *CPJ*, June 11, 1997, <https://cpj.org/killed/1997/muhammad-sayuti-bochari.php>, accessed on 19 January 2014).

¹⁵¹ CPJ reported that Naimullah was killed for his reporting on police links to illegal logging activities in the area. The police failed to investigate the case, according to local sources, and some journalists suggested that the police may have been involved in the murder ("Naimullah," *CPJ*, <https://cpj.org/killed/1997/naimullah.php>, accessed on 19 January 2014).

Victim	Date	Location	Perpetrator	Judicial Process (investigation to judicial decision)
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 southeastern Tual area	Three suspects were prosecuted, but later acquitted
Alfrets Mirulewan, <i>Pelangi Weekly</i>	17 December 2010	Kisar, Maluku Islands	Risart Salampessy / 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</i> <i>Daily</i>	8 April 2012	Mulia	Unidentified gunmen	No further prosecution ¹⁵²

152 Kogoya was killed when unknown gunmen fired on a small passenger plane landing at Mulia Airport, Papua. Kogoya had travelled to Mulia to report on elections in Jayapura, Papua's capital, for the *Papua Pos Nabire* and the *Pasifik Pos Daily* ("Hunt Begins for Gunmen Who Machine-Gunned Plane in Papua," *Jakarta Globe*, 9 April 2012).

4.11. CONCLUSION

From the start of the New Order until the present, there have been lower and higher levels of press freedom in Indonesia in a direct relation with the character of the political regime – from authoritarian to more democratic and from centralised to decentralised government. Unfortunately, the post-Soeharto era has in the end not fully delivered on its liberal promises regarding press freedom.

The authoritarian Soeharto regime often used legal forms to pressurise the press. The law was used for banning media and the criminal prosecution of journalists and editors. Military rules applied during the emergency situation in the early New Order years, and subverted human rights principles and press legislation. The law was also designed to create a hegemonic discourse through its use of central concepts such as ‘development press,’ ‘*Pancasila* press’ and ‘social responsibility press.’ In this respect the New Order recalled Soekarno’s press policies. These discourses were to serve the interests of the regime and led to much hypocrisy.

The introduction of the SIUPP (publication and printing permit) in 1982 meant a serious administrative threat to press freedom and endangered critical reporting by the media, especially about the government. During the New Order, legislation was used to subvert higher legislation in restricting the press, meaning that the government could impose sanctions without using the court system. Yet, by banning *Tempo*, *Detik* and *Editor* in 1994 the government somehow went too far, in the sense that this became a ‘stepping stone’ for journalists and the public at large to start seriously questioning government policies regarding press freedom. It led to establishing the AJI as an alternative journalist association, and thus to building solidarity outside the control of the government. This likely helped pave the way for the call for democratisation that swept over Indonesia after the start of the economic crisis in 1997 and eventually led to the ousting of Soeharto.

In the early post-Soeharto years press freedom was at a peak. Under President Habibie, in September 1999, a new Press Law was enacted, which abolished the SIUPP and contained important guarantees for press freedom. The peak of press freedom fell during the presidency of Abdurrahman Wahid. He dissolved the Department of Information, which had been the cornerstone of New Order repression of the press. Under Wahid no journalist ended up in jail. According to Wahid “...Information is society’s business, which means it is inappropriate for the government to intervene.” In his wordings and policies Wahid subscribed to the principle that democracy requires well-informed citizens. Their capacity to produce intelligent agreements by democratic means can be nurtured only when they enjoy equal and open access to diverse sources of opinion (cf. Keane 1991: 176).

Unfortunately, this situation of full freedom started to change after Megawati took office as president, and regularly confronted the press by accusations that its reports were 'un-nationalist,' 'un-patriotic,' '*njomplang*' (unbalanced), '*njlimet*' (complex), and '*ruwet*' (complicated). Under Megawati prosecution of journalists and editors started again, including at her own initiative when she felt her reputation was tarnished by cartoons.

Under the SBY presidency the situation has further deteriorated. First, new legislation started to undermine the 1999 Press Law, such as the Pornography Law, the Electronic Information and Transactions Law, the General Election Law, and the Presidential Election Law. At the same time the number of criminal and civil lawsuits against journalists, editors and media owners has continued to rise. Criminal law enforcement under the Penal Code has become common again, despite the fact that the Press Law should take priority. Both criminal and civil lawsuits have put financial stress on the press. On top of this, there has been an increase in violent attacks against journalists and media offices, usually by privately hired thugs and societal groups. Those committing such acts usually avoid any sanction, which adds to the general feeling of impunity for human rights violations. All of this disturbs the processes of democratisation and rule of law formation. When we compare the current situation to the New Order, violence against journalists has become more 'localised' and 'privatised' – usually benefiting elites at the district level rather than the national government. This change is closely related to the decentralisation 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 exposing issues of corruption and natural resource exploitation by regional elites are most likely to lead to violence against the press.

Despite these serious drawbacks, there is still much more press freedom now than under the New Order. There is a constitution which has been amended to clearly guarantee freedom of expression. This freedom is also sustained by the Human Rights Law of 1999 and the Press Law of the same year. New restrictive or even suppressive laws have been enacted, but they are not specifically targeted at the media. Under the New Order the limits of press freedom were moreover never clearly defined and Soeharto's speeches played an important role in their interpretation, whereas today the Press Council and the court articulate the rules.

There are also significant institutional changes that have sustained press freedom. While direct influence of the military on the press through its involvement in licensing was abolished in 1982, similar control was exercised by the Department of Information thereafter. Post-Soeharto there is no military influence and the Department of Information was dissolved during the early 'reformation.' Although it was re-established under the SBY presi-

dency as the Department of Information and Communication, and the KPI became the licensing and monitoring organ for broadcasting media, these bodies lack the power and influence of their predecessor. Measures against the press now at least involve the judiciary and are no longer purely administrative in nature. And finally, under Soeharto press organisations, printing houses and the Press Council were co-opted by the regime. Today there is no longer such co-optation, certainly not at the national level.

The next three chapters will focus on the legal means of limiting press freedom, considering in depth how viz. criminal, civil and administrative law have been used in court cases involving the press and to what extent the courts have supported press freedom.