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

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## 7.1. INTRODUCTION

Administrative court review is the third form of litigation that is of importance for press freedom. Most of the cases taken to the administrative courts relate to various publication or broadcasting permits. Before the administrative courts were established in 1991 through Law 5/1986 (Law on Administrative Courts or LAC), such cases could be taken to the civil courts on the basis of government tort. In addition, cases against lower legislation of a general nature can be taken directly to the Supreme Court on the basis of Supreme Court Regulation 1/1993. Although there are far fewer administrative law cases concerning press freedom than civil or criminal ones, some of them are very well-known; those of *Prioritas* (1992) and *Tempo* (1994) have perhaps even transformed the public debate about the relation between citizen and state in Indonesia's legal system.

The enactment of the new Press Law in 1999 meant a radical change in the field of administrative law control of the press. The law stated clearly that banning, censorship or permits were no longer allowed. Nonetheless, even if cases concerning the written press have become rare, the new law has not abolished the mechanism of administrative court or Supreme Court review. There are still instances of administrative law intervention in press activities, mostly in relation to broadcasting permits for radio and television. Moreover, the Indonesian Broadcasting Commission (*Komisi Penyiaran Indonesia* or *KPI*), which falls under the Ministry of Communication and Information Technology (*Kementerian Komunikasi dan Informatika* or *Menkominfo*), may impose administrative sanctions which can be challenged before the administrative court. Such interventions and sanctions have indeed materialised into several claims before the administrative court. These constitute the only cases relating to radio or television broadcast in Indonesia, for there have been no criminal or civil cases concerning these media.

This chapter examines whether the legal cases taken to the administrative court have been examined in a fair manner and whether the court has adequately protected the interests of the justice seeker and press freedom. As it concerns relatively few cases nearly all of them will be discussed, starting with the New Order and continuing until the present.

## 7.2. ADMINISTRATIVE COURT REVIEW

Although ideas about establishing administrative courts circulated during colonial times, such courts were not established until 1991 (Bedner 2001: Chapter 2). The basis for the LAC was present in Law 14/1970 on Basic Principles of the Judiciary and the Public Prosecutor's Office, which assigned judicial review of individual acts (or actions) to special courts under the authority of the Supreme Court and determined that regulations below the level of act of parliament could be challenged directly before the Supreme Court.<sup>1</sup> After a failed attempt in 1982 (Bedner 2001: 26-31), the LAC was finally enacted in 1986, but would not come into force until 1991. Its mandate is quite limited, with individual administrative decisions (*keputusan*) as the basic point of departure for jurisdiction and the explicit grounds for review limited to statutory violations and misuse of power, even if in practice the courts also applied principles of proper administration (Bedner 2001: 97-99).

The LAC has been amended twice, by Laws 9/2004 and 51/2009. The first amendment introduced general principles of proper administration as a ground for review<sup>2</sup> and provided a sanction for officials who refused to execute court decisions.<sup>3</sup> Altogether it remains a rather limited system of review because of the limitation to administrative decisions that are "individual, concrete, and final." Nonetheless, the administrative courts have adjudicated some important cases related to press freedom.

## 7.3. ADMINISTRATIVE LAW CASES CONCERNING PRESS FREEDOM PRIOR TO ADMINISTRATIVE COURT REVIEW

Unlike criminal trials and civil lawsuits, cases concerning press freedom of an administrative law nature are very few in number. As already stated above, provisions allowing for censorship, banning and permits were removed from the Press Law in 1999 and the role of the administrative courts, which served to challenge such actions, diminished correspondingly. However, even during the New Order, there were few cases, in spite of the government's extensive use of administrative measures against the press. As noted by Mochtar Lubis, the New Order government perceived the publicity surrounding court proceedings against the press as potentially undermining its legitimacy and preferred to use administrative controls.

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1 Article 10 section (4).

2 The principles of good governance, as stipulated in Article 53 of Law 9/2004, are now based on the definitions of the Anti-Corruption Law (20/2001). This may make their application in an administrative court context problematic (Bedner 2010: 363).

3 Law 51/2009's changes all pertained to management matters which hold no direct relevance for the subject of this chapter.

Newspapers and journals which fell victim to such measures doubted the effectiveness of challenging them in court. When Lubis asked Goenawan Mohamad of *Tempo* why he did not go to court to question the legality of the ban by the government of *Tempo* (see below), Mohamad dismissed this suggestion as politically unrealistic. *Kompas* Chief Editor Jacob Oetama stated that “there is no way for the press to take an adversarial position against the government” (Lubis 1993: 267).

Undoubtedly, the most powerful instrument of press control by the Soeharto regime consisted of permits. As already discussed in Chapter 3, before 1982 the government used two types of permits: the printing permit (*Surat Izin Cetak* or *SIT*) and the publishing permit (*Surat Izin Penerbit* or *SIP*). *Indonesia Raya*, *Abadi*, and *Nusantara* were all banned permanently in 1974 by the withdrawal of these permits. *Kompas*, *Sinar Harapan* and *Merdeka* were banned in the same way in 1978, followed by *Tempo* and *Pelita* in 1982. None of these bans were challenged in court, even if this was possible on the basis of government tort in the absence of an administrative court. The 1982 Press Law and its implementing regulation, Minister of Information Regulation 1/1984, then merged these permits into the one single publishing and printing enterprise permit (*Surat Izin Usaha Penerbit dan Pencetak* or *SIUPP*, henceforth publication permit). As argued in Chapter 3, officially the new publication permit could not be refused or revoked for reasons of censorship (Bedner 2001: 179).

The first press ban after the introduction of the new publication permit was against *Sinar Harapan* in 1986, but the paper took no legal action.<sup>4</sup> This was different in the second case, when in 1987 the minister of information banned the journal *Prioritas* because it ran reports on issues that were considered “too sensitive.”<sup>5</sup> In the absence of an administrative court which he could address directly, *Prioritas* owner Surya Paloh decided to challenge Minister of Information Regulation 1/1984 on the basis that its provisions on the publication permit were in conflict with the 1982 Press Law as well as with the constitutional guarantee of freedom of expression and opinion.<sup>6</sup> Eventually, he did this when the administrative courts were already in place, on 16 November 1992,<sup>7</sup> but then the statute of limitation barred him from addressing the administrative court. This challenge attracted broad public attention and press coverage.

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4 See Chapter 4.

5 See Chapter 4.

6 Surya Paloh was likely following Purwoto S Gandasubrata’s statement who announced in the press that if a judicial review were brought to court, he would consider it (*Media Indonesia*, 3 November 1992, in Pompe 2005: 144).

7 The judicial review application was made on 8 November 1992.

In its decision 01P/TN/1992 of 4 January 1993, the Supreme Court dismissed the claim. The court did confirm its authority to hear such an application of judicial review, as stipulated by Law 14/1970 on the Judiciary *juncto* Law 14/1985 on the Supreme Court. It held that judicial review could be applied in two ways, either indirectly when a plaintiff suffered the consequences from the application of a regulation that was in violation of a higher statute. Such a case could then be taken to the first instance court, with the possibility of appeal and finally cassation to the Supreme Court. Alternatively, the provision concerned could be challenged directly at the Supreme Court. However, in accordance with the legal principle of *'audi et alteram partem'* (hearing both sides to a dispute), in this particular case the Supreme Court considered that a procedure for the review of Minister of Information Regulation 1/1984 should involve the minister of information. Since the application for review did not address the latter as a defendant, the claim could not be further processed. The Supreme Court promised that in future it would provide a procedure for judicial review, to prevent such unclarities.

Surya Paloh was reportedly dejected by the decision, but later on expressed his satisfaction when within two weeks of this ruling the Supreme Court promulgated Supreme Court Regulation 1/1993.<sup>8</sup> According to Pompe, opening up this possibility made both the Supreme Court and the government vulnerable to criticism and forced them to justify their rejection of judicial review actions (Pompe 2005: 146). Thus, the *Prioritas* case had implications that stretched far beyond mere press freedom.

The next press bans concerned *Tempo*, *Detik* and *Editor* in 1994. *Tempo*'s decision to challenge the revocation of its permit led to the first administrative court case in relation to the press, and is still one of the best-known in the history of administrative court cases.

#### 7.4. ADMINISTRATIVE COURT REVIEW OF PRESS BANS

##### 7.4.1. Goenawan Mohamad v. Ministry of Information

The first challenge to a press ban before the administrative court concerned the *Tempo* ban of 1994. The case was brought before the Jakarta administrative court by *Tempo*'s Chief Editor Goenawan Mohamad, and 40 *Tempo* journalists, against Minister of Information Harmoko.<sup>9</sup> As already discussed in Chapter 3, this case evoked a strong societal response, both because of

<sup>8</sup> "Hikmah dari Kasus Prioritas" [Wisdom from the *Prioritas* Case], *Tempo*, 26 June 1993.

<sup>9</sup> Actually, two claims were submitted to the administrative court, one by Goenawan Mohamad and his colleagues, the other by 43 employees of *Graffiti Pers* corporation. *Graffiti Pers* corporation is the owner of *Tempo* and holder of the publication permit. The judges followed their decision in the first case in the second suit.

*Tempo*'s stature as the leading journal in Indonesia and the hope for a change in the political situation. It has moreover been discussed by many political observers and academic scholars, also outside Indonesia.<sup>10</sup>

The case started with the revocation of the publication permits of two of Indonesia's most famous weekly magazines, *Tempo* and *Editor*, and the tabloid, *Detik*, by Minister of Information Decree 123/KEP/Menpen/1994. The decree referred to Minister of Information Regulation (*Permenpen*) 1/PER/Menpen/1984 and Minister of Information Decree on the Procedure and Conditions for Obtaining a Publication Permit 214A/KEP/Menpen/1984. These regulations had always been controversial, because they opened the way for press bans despite the prohibition of such bans by Article 4 of the 1982 Press Law.

The lawsuit brought by Goenawan Mohamad and his colleagues was generally considered as having little chance of success, but against most predictions and despite the 'bureaucratic-authoritarianism' of the New Order state the judges of the Jakarta administrative court decided that the revocation of the publication license had been unlawful.<sup>11</sup> They found that the article that had been used as a basis for the revocation (Article 33 of *Permenpen* 1/1984) was indeed in violation with Article 4 of the 1982 Press Law. Yet, even if Article 33 of *Permenpen* 1/1984 had been valid, the minister had not followed the correct procedure. According to Article 33 the minister can revoke a license only "if in the opinion of the Press Council [...], the press publisher and the publication no longer reflect a press that is sound, a press that is free and responsible," and the Press Council had never stated such a thing. Third, the judges concluded that the decision was arbitrary. The defendant had paid no attention to the opinion of the Press Council, the interests of the publisher, and had not even heard the aggrieved party. Moreover, Mohamad and his colleagues could reasonably have expected that no such measure would be taken, as they had already published 12 issues of *Tempo* after having received a warning in response to the contested publication that eventually led to the revocation of *Tempo*'s license.

The surprising outcome was reinforced when the Jakarta Administrative High Court on appeal confirmed this judgment.<sup>12</sup> The minister then appealed for cassation. In its decision 25K/TUN/1996, dated 13 June 1996, the Supreme Court judges undid all that had been achieved by the judges in first instance and appeal. The council of judges, chaired by Chief Justice Soerjono, and further consisting of Sarwata and Th. Ketut Suraputra, first argued that Article 33 under letter 'h' of *Permenpen* 1/1984 was not in violation with Article 4 of the Press Law, which prohibits press banning. For sup-

10 E.g. Bedner (2001: 179-182); Millie (1999: 269-278); Pompe (1997: 75-78).

11 094/G/1994/IJ/PTUN-JKT, dated 3 May 1995.

12 111/B/1995/PT.TUN.JKT, dated 21 November 1995.

port they referred to the statement of expert witness A. Soekarno, a former official of the Department of Information, that the revocation of a publication permit differs from press banning because a press ban is permanent, while one can always apply for a new publication permit.

The second argument of the lower courts, namely that the procedure had not been followed correctly, was also rejected. According to the Supreme Court judges:

[...] the consideration of the judges in first instance and appeal stating that the Minister of Information in revoking the publication license had not yet heard the considerations of the Press Council as intended in Article 33 letter 'h' for the reasons according to the considerations of the judges in first instance, is not correct and not true according to the Supreme Court, because the Minister of Information in issuing his decision had already heard the considerations of the Press Council which held a meeting on 21 June 1994, and moreover the decision of the Minister of Information does not have to be in accordance with the advice of the Press Council [...] because the power of the defendant to take this decision is a discretionary power of the Minister of Information, and moreover Article 9 of *Permenpen* No. 1 of 1984 says that the Press Council 'may' [which means that it does not have to] give its opinion by providing the Minister of Information with its considerations.

Third, the Supreme Court judges argued that the decision was not arbitrary, as *Tempo* had received six warnings prior to the revocation and had not bothered to address the minister to defend itself "nor shown any concern about the warnings, although between the last warning and the revocation of the publication license about four months had passed." And finally, the Supreme Court stated that on the one hand the judges concerned argued

that *Permenpen* No. 1 of 1984 violated the Press Law and therefore the said regulation had been put aside or eliminated, while on the other hand they still have based their considerations on Article 9 of *Permenpen* No. 1 of 1984 and finally [...] ordered the defendant to issue a new license for *Tempo* magazine, hence still on the basis of *Permenpen* No. 1 of 1984.

Bedner (2001: 179-182) has criticised the Supreme Court judgment as follows. First, the distinction between imposing a press ban and revoking a publication permit made no sense because the defendant had used the revocation of the permit as a ban instead of limiting itself to the grounds for which a publication permit can be refused. This argument is in line with Millie's opinion, who states that the most disappointing aspect of the Supreme Court decision is the 'facile distinction' it makes between the withdrawal of a SIUPP and a ban (Millie 1999: 275).

Bedner's next point is that the Supreme Court's argument of procedure was wrong on both counts. First, the Press Council had not discussed the *Tempo* case during its 21 June 1994 meeting, so the Minister could not claim that he had heard its opinion. Secondly, the revocation of the publication permit was based on Article 33 (h), which does not give the minister discretionary



power, but allows him/her only to quash a publication permit if the Press Council agrees.<sup>13</sup>

Blaming *Tempo* for not ‘actively defending itself’ against a warning made no sense, given that no such response is required. The Supreme Court furthermore disregarded the argument of the first-instance court that the measure had been disproportionate and that *Tempo* should have been heard before it was taken. The Supreme Court did not mention that the six warnings against *Tempo* had been given over a period of ten years.

Finally, Bedner claims – correctly – that the Supreme Court judges demonstrated ignorance of basic concepts of administrative law. The first-instance court never quashed *Permenpen* 1/1984, but declared that its Article 33 (h) violated the Press Law and therefore could not be used as the basis for the litigated decision. The regulation itself remained unaffected. Hence, it could serve as a basis for a new permit, in particular because the issuance of a new permit involved provisions other than Article 33 (h).

I would like to add a few points to those made by Bedner. First, the administrative court judges at first instance or appeal level deserve our praise. They did not succumb to political pressure and produced excellent judgments. Unfortunately, this case bears testimony to Pompe’s thesis that under political pressure the Supreme Court “may relapse into truly absurd reasoning in order to save the government” (Pompe, 1997: 75-78), and therefore the hope that the new administrative courts would better control and balance executive power had been in vain.

Second, the Supreme Court decision focused on issues of formality, especially claiming that the lower courts held no authority to review *Permenpen* 1/1984. While this may seem a problem, as Bedner has argued, the administrative court did not go as far, but considered whether Article 33h was applicable in the case at hand.<sup>14</sup> Moreover, this was not a primary argument of the lower court decisions, which focused on the substantive issue of why *Tempo*’s SIUPP was withdrawn.

Thirdly, I would like to add another argument against the opinion expressed by expert witness, A. Soekarno, who differentiated between press banning (*pembredelan*) with permanent consequences, or the withdrawal of the pub-

13 “... [a] publication permit that has already been given to a press publisher can be quashed by the minister of information after he has heard the Press Council, if [...] according to the opinion of the Press Council [...] the press publisher concerned no longer reflects a press life that is sound, a press that is free and responsible.”

14 The Supreme Court did not refer to its previous decision 01P/TN/1992 [4 June 1993], in *Surya Paloh v Minister of Information*, where it explicitly left open the avenue of indirectly addressing a regulation below the level of act of parliament through the first instance courts.

lication permit, which theoretically could be reapplied for. In my opinion, these actions have similar consequences, as the press can no longer operate and the company must be closed down.<sup>15</sup> This suggests a similarity between the SIUPP and the permit based on the *Persbreidel Ordonantie* 1931. *Soeara Oemoem* was banned on 23 June 1933 by the Governor-General after several warnings. Even if the owner of the newspaper was able to reapply, the withdrawal of the permit was nonetheless called a ban. In general, there are no known cases of successful reapplication for a SIUPP enabling recommencement of publication under the same title as before the withdrawal (Millie 1999: 275). On the other hand, as explained in Chapter 3 and 4 of this book, the term '*breidel*' (banning) itself did not necessarily indicate a permanent prohibition. The ban on *Indonesia Raya* is a clear example. On 23 April 1957, this daily was prohibited from being published by the CPM (Military Police Corps) Commander. Yet, it soon appeared again, until the next press-curb on 30 May 1958, based on Regulation 34/1958. Nevertheless, *Indonesia Raya* appeared again on 26 July 1958. Then *Indonesia Raya* was banned again by the Soekarno regime, until it received a publishing permit from the Minister of Information in 1968 (0632/SK/DIR/PDLN/SIT/1968). Hence, H.A. Soekarno's interpretation of 'once and for all' for '*breidel*' and the possible reapplication for a SIUPP after withdrawal is a-historical and not legally valid.

From *Goenawan Mohamad v Minister of Information* we can conclude that the early administrative court constituted a promising new mechanism for offering citizens protection against the government. However, this was quickly undone by the Supreme Court, which thus further removed public trust in the court system. This can also be concluded from Goenawan Mohamad's statement after the Supreme Court judgment was handed down: "I am not surprised that this happened. The struggle of the press through the law track [procedure] is over, now we turn to the struggle through another track. In the current political constellation we should not expect the Supreme Court to be willing to make a sound and independent decision."<sup>16</sup>

15 Chair of the council of judges in the Jakarta Administrative High Court, Charis Subijanto, stated in response to the Supreme Court decision, "[...] A prohibition to talk or be silenced is similar to banning. Banning to publish or curbing has a similar meaning as the withdrawal of a SIUPP. It means it cannot be published. Hence, according to our opinion in the Higher Court, withdrawing a SIUPP means banning and curbing, not only the editorial team, but also the management of the company is discarded." "*Wawancara Charis Subijanto: Memang Persepsinya Sudah Berbeda*" [Interview with Charis Subijanto: Indeed our Perceptions Differ], *Tempo*, 15 June 1996. <[http://www.tempo.co.id/ang/har/1996/960615\\_4.htm](http://www.tempo.co.id/ang/har/1996/960615_4.htm)> (retrieved on 9 January 2012).

16 "*Pernyataan Goenawan Mohamad: Usaha Melalui Hukum Sudah Selesai Dilakukan*" [Statement by Goenawan Mohamad: The Effort through Law Has Already Been Halted], *Tempo*, 15 June 1996, <[http://www.tempo.co.id/ang/har/1996/960615\\_5.htm](http://www.tempo.co.id/ang/har/1996/960615_5.htm)> (retrieved on 8 January 2012).

#### 7.4.2. Developments regarding Administrative Court Review after 1999

As discussed several times in this thesis, the enactment of the new Press Law in 1999 constituted a landmark in press freedom. This applied perhaps most to the field of administrative controls, which for the written press were lifted altogether. It is presently no longer necessary to apply for a government permit to publish a newspaper or a journal, with only an obligation to register as a legal body (Art. 1(2) *juncto* 9(2) of the Press Law). Despite this regulation, broadcasting media still need to obtain permits and disputes about these have arisen. The permits concerned are defined in Law 32/2002 on Broadcasting (BL), viz. the 'broadcasting permit' (Art. 1.14 *jo.* 33, *Izin Penyelenggaraan Penyiaran* or IPP), and the 'subscription broadcasting permit' (Art. 25(1), *Izin Penyelenggaraan Penyiaran Berlangganan* or IPPB), which should be obtained before one can apply for the former permit. Both must be obtained from the Indonesian Broadcasting Commission (*Komisi Penyiaran Indonesia* or KPI) and the minister of communications and information technology of Indonesia (MOCI).<sup>17</sup>

Just as with the publication permit (*SIUPP*), under the BL a broadcasting permit can be withdrawn. The reasons are specified in Article 34(5):

A broadcasting permit is withdrawn due to, (a) not passing the trial period of broadcasting as predetermined; (b) violation of the use of the radio frequency spectrum and/or broadcasting coverage area as predetermined; (c) not having broadcast for more than three months without any notification to the KPI (Indonesian Broadcasting Commission); (d) transferring [the permit] to another party; (e) violation of the basic plan of broadcasting techniques and the technical requirements of broadcasting tools; (f) violation of the provision of the broadcasting programme standard according to an executable court decision.

Administrative sanctions may also be imposed on broadcasting media, as stipulated in Art. 55(2) of the BL:

Administrative sanctions as mentioned in section (1), can be: (a) a written warning; (b) a temporary sanction of a problematic programme after having gone through certain stages; (c) a limitation of broadcasting duration and time; (d) an administrative fine; (e) suspension of a broadcasting programme for a certain amount of time; (f) no renewal of a broadcasting permit; (g) revocation of the broadcasting permit.

Such restrictions on broadcasting media are not particular to Indonesia – in a 1993 comparative study, Barendt found that broadcasting is generally more heavily regulated by the government than newspapers and other print media. Three reasons account for this: first, the airwaves are regulated as a public resource, and thus the government is authorised to license their use for broadcasting; second, frequencies for broadcasting are limited which further justifies that the government deploys licenses for sharing them; and

<sup>17</sup> KPI (*Komisi Penyiaran Indonesia*) is a new institution established by LB 2002, Article 1.13 *jis.* Articles 7-12. At the lower level, it is named KPID (*Komisi Penyiaran Indonesia Daerah*).

third, the character of broadcasting is distinct from that of printed media, because broadcasting is much more pervasive and also uniquely accessible to children (Barendt 1993: 4-5).

When Indonesian broadcasting media encounter problems related to their permits, they may take such cases to the administrative court. In the next sections I will discuss the two cases I found where journalists indeed applied for administrative court review of administrative decisions relating to their broadcasting permits.

#### 7.4.3. Radio Era Baru v Minister of Communication and Information

*Radio Suara Harapan Semesta* corporation (or also known as *Radio Era Baru*, *REB*) is a local radio station based in Batam, Riau. *REB* is the local affiliate of the Sound of Hope Radio Network, which is closely related to the Falun Gong movement. The station started broadcasting mainly Chinese-language news in Indonesia in March 2005, after having obtained recommendations from the mayor of Batam City (21 June 2004) and the governor of Riau (12 August 2004), as well as a frequency permit from the Riau Branch Office of the Ministry of Telecommunication and Transportation (3 September 2004). At the time it commenced operations *REB* held no broadcasting permit yet, because the Riau Islands Branch Office of the Indonesian Broadcasting Commission was only established in June 2005 and applications for broadcasting licenses (IPP) could only start to be filed in September of the same year. In December 2006 *REB* applied for an IPP.

A complication arose when the *KPI* enacted Regulation 3/2007 on the Change of the Broadcasting Programme Standard, which defined that only a maximum of 30 percent of all programmes broadcast could be in a foreign language. In response *REB* adjusted its offer of programmes to comply with the new standard. Nonetheless, in December 2007 *REB* found out from a newspaper announcement in the *Batam Post* that it had not been recommended to the minister to obtain a permit and on 17 July 2008 the minister of communication and information officially rejected *REB*'s application in decision 162A/M.KOMINFO/VII/2008. Between December 2007 and the refusal in August, *REB* had already received two administrative warnings to stop broadcasting. After it received a third warning in October 2008, *REB* filed a claim with the Jakarta Administrative Court to challenge the refusal of the IPP.

According to their lawyer from the Legal Aid Center for the Press (LBH Pers), the refusal violated several principles of proper administration, particularly the principle of transparency, the principle of legal certainty, and the principle of accountability. Besides, the defendant would have exceeded the time allowed for releasing a decision as stipulated in GR 50/2005 on

Private Broadcasting Institutions, as the decision was taken on 5 October 2007, but the letter of rejection was not sent until 17 July 2008. According to Article 5(2) the decision must be communicated within 30 days rather than nine months and 12 days.<sup>18</sup>

The violation of the principles of proper administration was sustained by the absence of any justification in the decision. This not only created uncertainty for *REB*, but also for others who wanted to apply for an IPP in the future. Furthermore, during one court session it turned out that the minutes of the coordination meeting to prepare for the minister's decision on the application (7 September 2007) showed that at that moment the *KPID* Riau Islands ranked *REB* second out of seven applicants for an IPP. No explanation was provided why *REB* was dropped from this list entirely.

However, the Jakarta Administrative Court could not be convinced and rejected the claim. Judges Wenceslaus, Sri Setyowati and Bonnyarti Kala Lande argued that *REB* had been inconsistent in applying the 30 percent foreign language norm in its broadcasting. This violation of Article 38(2) on the Broadcasting Programme Standard, as stipulated in *KPI* Regulation 3/2007, would suffice to warrant the rejection of *REB*'s application.

The judges found that Article 5(11) of GR 50/2005 had not been violated. The *KPID* Riau Islands had good reasons to take more time in order to prevent problems at a later stage. The judges moreover refused to admit as evidence a letter from the Chinese Embassy in which it complained to the Indonesian government about the activities of *REB*, as it considered this letter a matter of politics and not of law. In other respects too, the processing of the contested decision had been carried out in a careful manner, in accordance to the mechanism stipulated in Article 33(4) BL 2002 *jis* Articles 4, 5(6), 5(10) and 6 of GR 50/2005.

*REB* appealed against this judgment on 24 April 2009, but the Jakarta Administrative High Court confirmed the first instance decision on 20 October 2009. *REB* then appealed to the Supreme Court. We will later provide an analysis of these judgments, but first we will look at another problem *REB* had to deal with in the meantime. This led to another administrative court case, which we will now discuss.

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18 Article 5(12): "The approval or disapproval of the IPP as mentioned in section (10) shall be released by the minister within a maximum of 30 working days after the Joint Meeting Forum agreement."

#### 7.4.4. Radio Era Baru v General Director of Post and Telecommunication (GDPT)

While the Supreme Court continued to undertake the administrative review of the rejection of *REB*'s application for an IPP, *REB* continued receiving warnings from the Monitoring Office of Frequency Spectrum (MOFS) in Batam that it should stop broadcasting.<sup>19</sup> Then, without any legal basis,<sup>20</sup> and before the Supreme Court had passed judgment, on 24 March 2010 the MOFS and the police broke into *REB*'s radio station and seized all broadcasting equipment.<sup>21</sup> The Riau police started an official criminal investigation against *REB* Director Gatot Supriyanto for violating Law 36/1999 on Telecommunication. On top of this, the general director of post and telecommunication (GDPT) provided a Radio Station Permit (*Izin Stasiun Radio* or *ISR*) to *Radio Suara Marga Semesta* (RSMS), better known as *Radio Sing*, by Decision 01386004-000SU/2020092010, on 30 October 2010. The problem for *REB* was that the permit allocated *Radio Sing* the frequency of 106.5 MHz for its broadcasting, which was the same frequency as that had been given to *REB* in 2004 and which it had used since. *REB* only found out about this decision on 15 February 2010, when the MOFS sent a warning letter to *REB* to not use this frequency.

*REB* then filed a claim with the Jakarta Administrative Court, this time against the decision of the general director of post and telecommunication. *REB* argued that after the recommendations of the mayor of Batam and the governor of Riau on 3 September 2004, *REB* was given a permit to use the frequency of 106.5 MHz by the Provincial Office of Transportation (*Dinas Perhubungan*, which also dealt with telecommunication at the provincial level). *REB* had also used this frequency in its application for an IPP. The Certificate of Recommendation (*Sertifikat Rekomendasi Kelayakan*) from the KPID Riau, on 20 June 2009, also assigned *REB* the frequency of 106.5 MHz. *REB*'s lawyer argued that the decision to allocate this frequency to *Radio Sing* was premature and unlawful, whilst the administrative court review of *REB*'s IPP refusal case was still pending cassation. This would be in violation with almost all principles of proper administration, including (1) the principle of legal certainty; (2) the principle of orderly state governance; (3)

19 These warnings were given on 16 December 2009 and 9 March 2010. In response *REB* filed a complaint with the Press Council and the National Human Rights Commission (Komnas HAM) in Jakarta. The Press Council sent a letter to the minister of communication and information and the KPI, requiring an explanation for the rejection of *REB*'s permit application (23 March 2010).

20 The MOFS and police referred to the continued broadcasting as the basis for their action, but there is no regulation allowing seizure in such a case.

21 *REB* disputed the seizure and expropriation in the Batam District Court, but saw its claim rejected for the court argued that it held no jurisdiction to investigate these matters within the limitations of the pre-trial process (*praperadilan*) (this decision was released on 27 April 2010).



the principle of public interest; (4) the principle of openness; (5) the principle of proportionality; (6) the principle of professionalism; and (7) the principle of accountability. In addition it would go against Articles 5 and 7 of GR 50/2005, which prescribe which procedure is to be followed before a frequency can actually be allocated.

The defendant countered *REB*'s arguments by saying that the statute of limitation had expired, and that the defendant was not the right authority to bring a claim against (an '*error in persona*'). Substantively, the main line of defence was that a Certificate of Recommendation gave no right to a particular frequency. This meant that it was exchangeable and could easily be given to another station, in this particular case to *Radio Sing*. The defendant also argued that there was no reason to postpone the implementation of the ISR for RSMS, because there had been no suspension order by the administrative court in the previous case of *REB v Minister of Information* (166/G/2008/PTUN-JKT.) Moreover, even if the Supreme Court would uphold the claim of the plaintiff, this did not create an obligation for the minister to approve *REB*'s IPP. *Radio Sing*, acting as an interventionist in the case, argued that it had followed all requirements of GR 50/2005 and that therefore *REB* had no reason to complain.

This time *REB* proved more successful. On 5 October 2010 the Jakarta Administrative Court upheld the plaintiff's claim (61/G/2010/PTUN. JKT). Referring to Supreme Court judgments 41K/TUN/1994 and 270 K/TUN/2001, the judges argued that the plaintiff's interest had been sufficiently damaged to allow him to bring a claim and that the statute of limitation had not expired because the plaintiff had brought his claim within 90 days from the moment he found out about the allocation of the frequency to *Radio Sing*. The main findings on substantive matters were also in favour of the plaintiff. The basic argument was that indeed the General Director had been too quick in allocating *REB*'s radio frequency to another radio station. The Joint Meeting Forum<sup>22</sup> had violated Article 5(9) of GR 50/2005, because it has no authority to change the frequencies proposed. Second, the court argued that the Joint Meeting Forum had violated article 115 of the LAC, which stipulates that "... [o]nly court decisions which have become final (*in kracht van gewijsde*) can be implemented." As the court case between *REB* and the minister of communication and information had not been decided yet by the Supreme Court the Joint Meeting Forum's decision was premature. Therefore, the defendant had not been sufficiently careful, and it ought to revoke the contested decision.

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22 Proceedings of Joint Meeting Forum No. 01/FRB/KEPRI/10/2007 (particular for private broadcasting institutions in Riau).

This judgment was confirmed upon appeal by 272/B/2010/PT.TUN.JKT, on 24 May 2011 and by the Supreme Court in 285/K/2011. The below table provides an overview of these cases.

Table 11: *Radio Era Baru in Administrative Court*

Year	In opposition to	Object to be reviewed	Decision		
			First instance (PTUN)	Appeal (PTTUN)	Cassation (MA)
2008	Minister of communication and information	IPP Disapproval [Decision No. 162A/M. KOMINFO/VII/2008, on 17 July 2008]	Claim refused	1 <sup>st</sup> instance judgment confirmed	Still in process
2010	General director of post and telecommunication & <i>Radio Suara Marga Semesta</i>	ISR for RSMS [Decision, No. 01386004-000SU/2020092010, on 30 October 2010]	Claim upheld	1 <sup>st</sup> instance judgment confirmed	1 <sup>st</sup> instance judgment and appeal confirmed

#### 7.4.5. Analysis of the REB cases

The two administrative court cases discussed above were quite different in terms of substance of matter. Yet, the fact that the results were so different requires some further explanation. Therefore, I will now first provide a legal analysis, before linking these cases to the broader political context.

The first case, as we have seen, focused primarily on the issue of language in broadcasting or more precisely on the 30 percent limit on the use of a foreign language in radio programmes. Given that *REB* had broadcast for five years in mainly Chinese before this limit was put into place, and given the fact that *REB* had immediately changed its policy after the prohibition was imposed – which it had proven by submitting the minutes of an internal meeting – both the refusal by the government and the rejection by the court legally made no sense.

Even less understandable from a legal point of view was the court's rejection of the argument that the defendant had violated the prescribed procedure by only releasing its decision some nine months after the meeting of the Joint Forum whereas GR 50/2005 prescribed a term of 30 days. Whereas the article concerned leaves no room for digression, the judges merely held that the possibility of problems later on would provide sufficient ground for the minister to go against this procedure.



The second case was problematic as well, though in a less fundamental manner. First, on the main issue, the judges rightly decided that giving the 106.5 MHz frequency to *Radio Sing* after *REB* had been using it for five years already was in violation of the principles of legal certainty and reasonableness, given that the first *REB* case had not been settled yet. Moreover, the procedure to obtain a permit by *Radio Sing* was clearly manipulated by the defendant GDPT and therefore the judges were right in their decision to uphold the claim on this point. The same applied to the legal argument that “no law allows the Joint Forum to change the frequency, the main task of that meeting is to approve or disapprove.” The Joint Forum had clearly exceeded its powers here.

However, on the third point the judgment was highly problematic. The court’s argument that the Joint Forum had violated article 115 of the LAC showed how the court misjudged a basic issue of its own competence. Now that *REB*’s claim in the first case had been rejected twice, the administrative decision had not been suspended and was still of full effect. So it was not a matter of implementing a court judgment, but simply one of implementing the original decision. It is worrying that an administrative court after so many years still makes such elementary mistakes.

Another important feature of this case was the refusal by the Batam District Court to protect *REB*’s property under the pre-trial procedure. This may have been a mistake on the part of the lawyers of *REB*, who could have also filed a government tort case – it is not immediately clear whether the seizure of equipment can also be brought under the pre-trial procedure – but this kind of legal uncertainty weighs heavy on those engaged in such a procedure. This shows how the administrative court can offer only partial protection against the arbitrary exercise of power by the government.

There is little doubt that the key to understanding the *REB* case is the role of the Chinese Embassy and the response of the Indonesian government to its wishes. *REB* indicated in its chronological overview of the case that on 8 May 2007, the website of the KPI made reference to the objection of the Chinese Embassy to the broadcasting of *REB* and its request to the KPI to closely monitor the station because it would allegedly spread political propaganda discrediting the Chinese Communist Party (CCP). The Embassy also accused *REB* of receiving funds from the Falun Gong organisation.<sup>23</sup> Another indication was the copy of a letter obtained by the management of *REB*, addressed to the minister of foreign affairs of Indonesia, the minister of internal affairs of Indonesia, the Indonesian State Intelligence Agency (*Badan Intelijen Negara*, BIN), the minister of communication and informa-

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23 “Kronologi Kasus Radio Era Baru 2005-2011” [Chronology of the Radio Era Baru Case 2005-2011], *Era Baru News*, 1 April 2011, <http://www.erabarufm.com/2011/04/kronologi-kasus-radio-erabar-2005-2011.html> (retrieved on 15 January 2012).

tion and the KPI. This letter asked the Indonesian government to close down *REB*.<sup>24</sup> According to *REB* Director Gatot Supriyanto the closing down of *REB* was a direct result of pressure from the Chinese Embassy. This rendered all attempts by *REB* to adjust to the conditions set by the KPI in vain.<sup>25</sup>

The behaviour of the Indonesian government agencies involved in this case indeed seem to indicate that they were heeding the advice of the Chinese Embassy. To what extent this also influenced the courts is hard to say, but it very likely did. The eventual outcome of the criminal procedure against *REB* Director Gatot Supriyanto consisted of him being sentenced for violation of the Telecommunication Law by the Batam District Court to six months in jail with a probation of one year and a fine of Rp 50 million (Batam District Court Decision 180/Pid.B/2011/PN.BTM).<sup>26</sup>

There are other cases which bear testimony to the susceptibility of the Indonesian government to such pressure. For instance, on 7 May 2011, when a number of journalists were attending and recording the parade on the occasion of the anniversary of the Falun Gong in Surabaya, they were harassed by Surabaya district police officers. The police also forced journalists to stop recording how a colleague was arrested and beaten.<sup>27</sup>

The *REB* case does not provide us convincing evidence of the effectiveness of the administrative courts in upholding freedom of the press in cases about broadcasting permits, but it does show that administrative review is badly needed. The case certainly demonstrates how the Press Law can be (and has been) ignored and how broadcasting permits may be used in a way reminding of Guided Democracy and the New Order, to silence dissenting voices.<sup>28</sup>

24 Ibid., and "Kedutaan China, Ancaman Kebebasan Pers," [Chinese Embassy, Threats to Press Freedom], *Era Baru News*, <http://erabaru.net/nasional/50-politik/255-kedutaan-china-ancaman-kebebasan-pers>, 16 September 2008 (retrieved on 15 January 2012). The international organisation for press freedom RSF also paid attention to this case. "We fear that this obstruction is the result of pressure by China [...]. Media freedom is a constitutional right in Indonesia, so no foreign government should have the right to influence official decisions on such an important subject. If Radio Era Baru is forced to close, it will be a serious violation of the freedom to report news." Vide: "Radio Era Baru Closed by the Police," *Reporters Sans Frontiers (RSF)*, 24 March 2010 <<http://en.rsf.org/indonesia-radio-era-baru-closed-by-the-24-03-2010,36765>> (retrieved on 15 January 2012). Komnas HAM sent a letter of protest to the Chinese Embassy (10 March 2010).

25 Gatot Supriyanto, personal communication, Jakarta, 9 February 2010.

26 "Dirut Radio Era Baru Batam Divoonis Diskriminatif" [President Director of Radio Era Baru Sentenced in a Discriminatory Way], *Kompas*, 6 September 2011.

27 "Surabaya Police Beat Journalists, Regional Police Cover up the Case," *LBH Pers Surabaya: Berita*, 2011, <http://www.lbhperssurabaya.org/?p=134> (retrieved on 15 January 2012).

28 The regulation capping the use of foreign languages also recalls the regime regarding the printed press during Guided Democracy and the early New Order, embedded among others in *Peperti* 3/1960 which prohibited the use of regional languages in Latin or Arabic scripture.

### 7.5. RCTI v KPI

The next administrative review case discussed in this chapter concerns a sanction by the *KPI* against 'Eagle Image Television Indonesia' (*Rajawali Citra Televisi Indonesia* or *RCTI*). The reason for the sanction was a broadcast of *Silet*, an entertainment programme of *RCTI*, about an eruption of the Merapi volcano near Yogyakarta, on 7 November 2010. The programme contained many interviews with locals, paranormals, experts (volcanologist), government officials, etc. One of the paranormals interviewed referred to King Joyoboyo's prediction in the twelfth century that Yogyakarta would experience a more serious disaster than the Merapi eruption on 8 November 2010, so some time after the broadcasting of the programme. Volcanologists confirmed that a more serious disaster might happen, but were less specific on the date than King Joyoboyo. Apparently, the broadcast caused a big stir in Yogyakarta and many people who watched *Silet* tried to leave the city to reach a safer place. In the mean time, more than 1000 people sent a complaint to the *KPI* about the broadcast.<sup>29</sup> Eventually, 8 November passed without much happening and the Merapi volcano's activity slowing down.

The *KPI* acted immediately upon these complaints and found that the contentious *RCTI*'s *Silet* broadcast about the Merapi eruption contained 'fallacies' and 'lies.' This would constitute a violation of the Broadcasting Law, and therefore *KPI*, through its letter 667/K/KPI/11/10, dated 8 November 2010, invited *RCTI* to discuss an administrative sanction. On 9 November *RCTI* attended the meeting in the *KPI* office, which lasted for only about a quarter of an hour. After ten minutes the *KPI* gave letter 669/K/KPI/11/10, also dated 8 November 2010, to the representatives of *RCTI*. The letter repeated that *RCTI* had violated the law by broadcasting fallacies and lies, had been provocative and irresponsible by causing disquiet, fraud, fright, trauma, and more suffering to the victims of the Merapi eruption. Therefore, for the time being the *KPI* prohibited any further broadcasting of *Silet*. The *KPI* also reported *RCTI* to the police, thus subjecting the television station to both an administrative sanction and a criminal prosecution.

Following this meeting *RCTI* stopped running *Silet*, after a final broadcast on 15 November 2010 in which it redressed some of the remarks made during the contested broadcast and in which *RCTI* openly apologised for having caused anxiety to those living near the Merapi volcano. Yet, the television station disagreed with *KPI*'s decision, which it considered unfair, incorrect, and unlawful. Therefore, on 29 November 2010 *RCTI* filed a claim with the Jakarta Administrative Court to challenge *KPI*'s decision. In the words of Arya Sinulingga, corporate secretary of *RCTI*'s mother company MNC Inc.,

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29 By 30 November 2010 the *KPI* had received 1,032 objections, against 40 expressions of support of *Silet* ("*Perseteruan Setajam Silet*" [A Conflict as Sharp as *Silet*], *Tempo*, 4 April 2011).

“... we do not object to the sanction, but to the processes carried out by KPI.”<sup>30</sup> The plaintiff also requested suspension of the sanction, which it obtained on 10 December 2010.

*RCTI*'s lawyers listed nine points to sustain its claim against *KPI*'s decision 669/K/KPI/11/10:

... First, the *KPI*'s decision was incorrect and incomplete [...]. Second, the *KPI* has misused its authority by suspecting and publishing that *RCTI* violated Article 36(5)A of the BL<sup>31</sup> and Article 55 of the Broadcasting Programme Standard (*Standar Program Siaran*),<sup>32</sup> and by sentencing *RCTI* by imposing a sanction based on different articles, Article 56D and E of the Broadcasting Programme Standard.<sup>33</sup> Third, the *KPI* has decided beyond its authority by assessing whether or not a criminal offence has been committed by *RCTI*. Fourth, the *KPI*'s sanction to discontinue *Silet* as a product of journalism violates the Press Law which provides the right to the national press to broadcast information without prohibition to broadcast (press freedom). Fifth, the *KPI* violates Article 71 of the Broadcasting Programme Standard and the principle of formal care and legal certainty by imposing a sanction of temporary cessation without providing the opportunity to *RCTI* to give a clarification and to defend its decision. Sixth, the *KPI* violates the principle of legal certainty and the principle of proportionality by imposing a sanction of temporary cessation without mentioning a clear time frame. Seventh, the *KPI* violates the principle of legal certainty by stating that *RCTI* has violated Article 55 of the Broadcasting Programme Standard and punished *RCTI* by a sanction of temporary cessation. Eighth, the *KPI* violates Article 67 of the Broadcasting Programme Standard, the principle of legal certainty, the principle of proportionality, and also the principle of non-discrimination (equality before the law) by stating that *RCTI* has violated Article 56D and E of the Broadcasting Programme Standard and by imposing a sanction of temporary cessation; and ninth, the *KPI* has acted beyond its authority and violated the principle of legal certainty by imposing a sanction on *RCTI* to demand a statement of apology.

The *KPI* denied all of these points. It maintained that the contested *Silet* broadcast had contained fallacies and lies. Therefore *RCTI* would have violated Article 33 of the Guidelines on Broadcasting Behaviour and Broadcasting Programme Standard (*Pedoman Perilaku Penyiaran dan Standar Program Siaran*, P3SPS),<sup>34</sup> and Articles 55 and 56 of the Broadcasting Programme Standard (of 2009). In the commission's view this required the heaviest sanc-

30 “Dilaporkan ke Polisi, *RCTI* Melawan ke PTUN: Kami Bukan Keberatan kepada Sank-sinya, Tetapi pada Proses-Proses yang Dilakukan KPI” [Reported to the Police, *RCTI* Resists through the Administrative Court], *Viva News*, 1 December 2010. <http://us.showbiz.vivanews.com/news/read/191586-dilaporkan--rcti-adukan-keberatan-ke-ptun> (retrieved on 17 January 2012).

31 Article 36(5)a BL: “The content of a programme is prohibited if: a. it is defamatory, inciting, misleading and/or untruthful.”

32 The *SPS* (*Standar Program Siaran*) is based on *KPI* Regulation 03/P/KPI/12/2009 on the Broadcasting Programme Standard. Article 55: “Broadcasting programmes that cover natural disasters or calamities shall take into consideration the recovery process of the victim, families, and/or communities who are affected by the natural disaster.”

33 Article 56D of the *SPS*: “[...] exposing images of victims or corpses in detail (close up, medium close up, extreme close up); and/or Article 56E: “[...] exposing images of severe wounds, bloody, and/or pieces of body organs.”

34 *KPI* Decision 009/SK/KPI/8/2004 of 30 August 2004.

tion, which is temporary cessation of broadcasting. To support its argument, the *KPI* provided a recorded video of the *Silet* programme on 7 November 2010, and copies of the complaint letters it had received. It moreover argued that in imposing the sanction it had gone through all the steps prescribed for imposing a sanction, starting with examining the evidence of the violation, investigation, an assessment of the violation, and a clarification. All of this had been communicated clearly to *RCTI*. The *KPI* also presented several witnesses in court, who testified to the fear they had experienced by the contested broadcast.<sup>35</sup> Furthermore, the *KPI* denied that *Silet* could be a qualified product of journalism, because the programme lacked any reference to an editor in chief. According to the Press Law and Press Council Regulation 4/Peraturan-DP/III/2008 on the Press Corporation Standard, a press corporation should provide name and address of the person accountable for the contents of a product of journalism openly through its media.

On 23 March 2011 the council of judges, consisting of Bambang Heryanto, Sri Setyowati and Herman Baeha, passed judgment (174/G/2010/PTUN-JKT). The judges upheld the claim by *RCTI*. They argued that the *KPI* had failed to go through the procedure required for imposing the contested sanction, and notably that the *KPI* had already taken its decision on 8 November 2011, before having heard *RCTI*. This was in violation of Article 71(1) of the Broadcasting Programme Standard. Moreover, the *KPI* had acted in violation of Article 70 of the Broadcasting Programme Standard.<sup>36</sup> A violation of Article 55 of the Broadcasting Programme Standard should first be followed by a 'written warning,' and not immediately by a 'temporary cessation.' The judges also checked whether *RCTI*'s *Silet* programme had violated Articles 56D and E, as held by the *KPI*, by watching the recording of the contested programme. They found that indeed victims had been exposed, but that *RCTI* had blurred the images so that exposure of 'severe wounds' could not be assessed. Such images could be found in other television programmes as well. The court further dismissed the testimonies of the victims as irrelevant, because they could not underpin the decision. The judges thus applied a form of 'marginal review,' assessing whether the *KPI* could have 'reasonably' arrived at its decision. They concluded that the *KPI* had acted in an arbitrary manner (*sewenang-wenang*) and thus in violation of the principles of proper administration, as well as of the Broadcast Programme Standard.

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35 The witnesses on part of the *KPI* were Putri Asmarani, Ivony Arti Jiwani and an administrative law expert, from the Indonesian Islamic University (UII), Ridwan. *RCTI* asked Leo Batubara and Abdullah Alamudi as expert witnesses ("*Saksi KPI dalam Sidang PTUN*" [*KPI* Witnesses in Administrative Court Session], 9 February 2011. [http://www.kpi.go.id/index.php?option=com\\_content&view=article&id=2823%3Asaksi-kpi-dalam-sidang-ptun-&catid=14%3Adalam-negeri-umum&lang=id](http://www.kpi.go.id/index.php?option=com_content&view=article&id=2823%3Asaksi-kpi-dalam-sidang-ptun-&catid=14%3Adalam-negeri-umum&lang=id), retrieved on 16 January 2012).

36 Article 70 of the Broadcast Programme Standard details a 'written warning' for several violations, including those in Articles 34, 54, 55 and 56.

The *KPI* was ordered to withdraw its decision, which had become unenforceable as from the moment the judgment was passed.

One day before the Jakarta Administrative Court passed judgment, the police halted its investigation of the *Silet* programme for 'lack of evidence' and not meeting the standards of criminal liability. This was officially laid down in a Letter of Discontinuation of Investigation (*Surat Penghentian Penyelidikan Perkara* or *SP3*).

This did not keep the *KPI* from appealing to the Jakarta Administrative High Court. In its press release on 23 March 2011, the commission regretted the administrative court's judgment as well as the decision by the police. The *KPI* also complained that the court had not considered the letters of objection sent by the governor of Yogyakarta Special Region and the mayor of Yogyakarta.<sup>37</sup> Fortunately for *RCTI* the Jakarta Administrative High Court confirmed the judgment of the court of first instance in 127/B/2011/PT.TUN.JKT.

One of the positive features of this case has been the attitude of *RCTI* to obey the *KPI*'s decision and to challenge it through the administrative court. Only after it had obtained the suspension of the *KPI* sanction did *RCTI* resume the broadcasting of *Silet*. What is really disturbing is that the *KPI* apparently understood so little of administrative court procedure that it complained about *RCTI*'s failure 'to respect the law' and even addressed the matter in parliament.<sup>38</sup> The Jakarta Administrative Court moreover seems to have investigated this case fairly and thoroughly, as confirmed by the High Court. The judges recognised the position and role of the *KPI*, but made clear that it cannot ignore procedures and substantive law.

Most unfortunate is that the *KPI* went as far as to turn the issue into a criminal law case as well. As argued in previous chapters, the use of criminal law is a serious threat to press freedom. That a government institution such as the *KPI* misjudges this matter and files a report to the police is quite disturbing, even more so as the commission itself has the tools to address this issue and since it appeared that the administrative court even found the use

37 "PTUN *Kabulkan Gugatan RCTI Terkait Silet, KPI Banding*" [The Administrative Court Upholds the Claim of *RCTI* about *Silet*, the *KPI* appeals], *Detik News*, 23 March 2011. <http://us.detiknews.com/read/2011/03/23/170600/1599730/10/ptun-kabulkan-gugatan-rcti-terkait-silet-kpi-banding?nd992203605> (retrieved on 16 January 2012).

38 "Munculkan Kembali Silet, *RCTI* 'Kangkangi' *KPI*: Penayangan Kembali Silet Menunjukkan Gejala Pembangkangan Industri TV terhadap Kewenangan *KPI* selaku Lembaga Negara" [*Silet* Reappears, *RCTI* Humiliates the *KPI*: Rebroadcasting *Silet* Points at the Symptoms of a Rebellion by the TV Industry Against the Competence of the *KPI* as a State Agency], *Skala News*, 2 March 2011. <http://www.skalanews.com/baca/news/4/9/90535/sengketa/munculkan-kembali-silet-rcti-kangkangi-kpi.html> (retrieved on 17 January 2012).



of these tools excessive. In fact such cases should be reported to the Press Council, which can examine them using the Press Code of Ethics. More generally, as long as a case is under administrative court review, criminal prosecution should wait.

#### 7.6. CONCLUSION

Even if the number of cases is small, administrative court review has played a significant role in protecting press freedom. Especially in cases of press banning the courts have formed an important avenue for legal protection. While under the New Order this applied to the written press, with the *Tempo* case as the most prominent example, it currently concerns cases about television and radio broadcasts: with regard to the written press, the publication permit was abolished by the 1999 Press Law, but the 2002 Broadcasting Law still requires a permit for radio and television stations.

Here the record of the administrative courts is mixed. The case of *REB* has demonstrated how the licensing regime is of tremendous influence on press freedom and how it is open to abuse by the authorities. In order to obtain a permit, *REB* had to bring two separate cases to the administrative court, one for the broadcasting and the other for the radio station permit. The administrative court judgments in first instance and appeal about the refusal to obtain a broadcasting permit were seriously flawed and demonstrated a serious lack of understanding by the court, including of its own procedure. By contrast, in the case about the radio station permit the courts' judgments in first instance and appeal were up to the standard. Both administrative court cases are currently under review by the Supreme Court, which will hopefully straighten out matters, as it has in so many civil law cases (see the previous Chapter).

The *REB* case furthermore shows how politics still matter in press freedom. It is hard to believe that the Chinese Embassy played no role in the decision taken by the minister of information and communication about *REB*'s broadcasting permit. The subsequent actions by the police against *REB* and the conviction of *REB*'s director by the criminal court add fuel to this interpretation. The role of the government in this case strongly recalls the situation under the New Order, with the minister of information and communication and the Indonesian Broadcasting Commission as a 'reincarnation' of the New Order's minister of information and his department.

The case of *RCTI v KPI* was of a different nature. In this case, there was not as much political pressure as in the *REB* case. This probably made it easier for the administrative court to uphold *RCTI*'s claim, but then the *KPI*'s case was extremely weak. Many aspects of the case indicate that the *KPI* made its decision without following its own procedure or paying attention to the

substantive rules applicable to the matter. The case also showed the importance of a suspension order by the court, for this may limit the financial losses incurred by a television or radio station as a result of an administrative sanction to stop broadcasting.

It seems important that the administrative court carefully considers such a request in view of the need for the sustainability of a particular media as essential to press freedom.

In addition to the findings about the role of administrative court review I would like to argue here that the BL of 2002 should be amended. As demonstrated above, the BL permits can be used against broadcasting media in the same way as the publication permit could be used against the printed press during the New Order. This could be resolved by recognising the Press Council as the proper instance for judging broadcasting media behaviour instead of the *KPI*, which has no expertise in this matter and whose role should be limited to judging technical issues. Thus, prohibitions as those mentioned in Article 36(5)A of the BL, including defamatory and inflammatory language, fallacies and/or lies, religious defamation, attacking Indonesian human dignity, and damaging international relations, should be judged by the Press Council. This would lead to a much more balanced situation.