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## **Implications of Case Resolution Mechanism Due to Press Coverage through Non-Litigation Channels**

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### **Abstract**

Today's news development in the media is very rapid, both traditional and electronic. Following technological developments, people can receive news from media worldwide directly through various means such as television, radio, newspapers, and even the Internet. Therefore, as a democratic country, Indonesia must be able to fulfill its obligation to guarantee press freedom and encourage the press to serve the interests of the public in seeking information. The national press appears increasingly free and unlimited in today's information technology era. For example, news considered harmful by a particular person or group can cause friction between the press and the public, giving rise to disputes over the behavior of press operators and news considered detrimental by certain groups. All disputes can be resolved through arbitration procedures stipulated in Law No. 40 of 1999 (from now on referred to as the Press Law) through mediation through non-judicial channels. However, not all disputes resolved in such a way can satisfy the parties and create legal certainty.

**Keywords:** mass media, news, Non-litigation channel, Press law, pers

### **Introduction**

Today the presence of the press has become an integral part of public life; the press has been considered a complement to people's daily lives as a means of providing the information needed by the community to carry out its morality. Through press products, people can make decisions and eliminate doubts in their minds. In carrying out its profession to educate and disseminate information to the public, the press is protected by the main principle that cannot be separated from a democratic country like Indonesia, namely Freedom of the Press. Press freedom in Indonesia was born in 1999 when the Ministry of Information was closed. Law Number 40 on the Press was born in 1999 (Press Law), which is based on Article 19 of the

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International Convention on Human Rights, which states that "Everyone has the right to freedom of thought and expression; in this case includes freedom of opinion without interference and freedom to seek, obtain and convey information and opinions in any way regardless of limits" and Article 28 of the Constitution of the Republic of Indonesia Year 1945. The development of the press also follows the development of information technology which is increasingly sophisticated (Iwanicz-Drozdzowska et al., 2023). The use of gadgets has now become a dependency for the community with the existence of smartphones. Gadgets and the Internet are a must for millennials, similar to social media, it opens opportunities for face-to-face interaction, boosts user engagement, and makes data utilisation easier (Wono et al., 2023).

If in the past, the press only used one channel; for example, printers only print newspapers; now printers also offer online content for the youth market. Conventional media, such as television, newspapers, and radio, are currently experiencing shift changes with the emergence of online media and social media; this shift gave birth to new journalism, namely online journalism; online media has now become one of the means of communication that increasingly attracts public attention. Its existence began to become a favorite in all circles. The presence of online media speeds up and facilitates the flow of information (Nuarsa et al., 2023).

When a case arises due to press reporting, the Press Council, as an independent body that oversees journalistic activities with the Indonesian National Police, signed a Joint Decree (Memorandum of Understanding) in 2008, which continues to be updated until the last year, 2022 yesterday, the essence of which is When problems arise due to news by the press, the matter is handled by the Press Council first in coordination with the police based on the Mandate of the Press Law Article 5 paragraph (2) to Article 15 paragraph (2) letter d.

The Press Law drafted by the DPR and serves to bind all Indonesian citizens is specifically intended to regulate matters related to the duties, rights, obligations, responsibilities, and roles of the press in journalistic activities (Juniver Girsang, 2007).

The Press Law mandates that cases resulting from press reporting be resolved through non-litigation channels or outside the court, but with the current settlement mechanism arrangements when looking at the regulations in the Press Law, there are problems where if interpreted more deeply, the language used in the Law shows that the out-of-court mechanism is actually not mandatory for the public to apply for the right to answer but is only an obligation for the press only (Vide Article 5 paragraph [2]) of the Press Law here is ambiguous (Ambivalent) because it only requires the press only and does not require the public to show the right to answer. In addition, the obligation to resolve cases due to press reporting through non-litigation channels is only explicitly stated to be *Primum Remedium* only in the SKB between the Press Council and the Indonesian National Police where the SKB is *Beschikking*, not *regaling* so that it has no legal force if reviewed based on Law Number 12 of 2011 concerning Hierarchy or Order of Laws and Regulations (Sujono & Nugroho, 2023).

In addition to the vagueness of the arrangement, settlement through non-litigation channels often continues to the litigation path because the resolution given does not provide satisfaction for justice seekers, so non-litigation settlement here seems to be non-existent and only ceremonial while the actual settlement is carried out at the litigation stage.

## **Literature review**

Bagus, W. Sedia, in his book entitled "Journalism: Technical Reference for Writing News," said the Internet had provided ample space for individuals and social communities to communicate and share information through social media such as Facebook and Twitter. Users can access, write, and even report information quickly and easily through the platform. Now anyone can be a journalist in the sense of covering and reporting events on the Internet. By utilizing social media, Citizen Journalism is getting more substantial journalistic works made by the general public through their accounts, which are increasingly found on the Internet, not just those made by press people alone.

Accepting the presence and role of the press without accepting the freedom of the press is like wanting to feed someone without opening that person's mouth which means vanity, freedom of the press is inherent in its function and role, the two are inseparable. Certain conditions are necessary for the press to function properly (Sukardi, 2009). One of the most important conditions is that the press absolutely needs freedom to carry out its duties, as Mochtar Lubis said, "Freedom of the press is an element in human civilization that is advanced and highly beneficial and that respects human values, and if freedom of the press does not exist then human dignity will be lost" (Lubis, 1980).

However, this freedom often arises both in conventional and online media, where parties are harmed by the products produced, this is because our freedom of expression is not as accessible as it should be, but there are still limits. The limitations mentioned here are those that are also formed by the rights of others, where we social beings must respect each other.

## **Research Method**

This type of research is forensic legal research. According to Professor Peter Mahmud Marzuki, legal research is useful for solving existing legal problems to provide what formula should be used. The type of legal research used in this research is doctrinal legal research.

Doctrinal Research is "*Research which provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules governing a particular legal category, analyses the relationship between rules, explain areas of difficulty and, perhaps, predicts future development*" (Hutchinson & Duncan, 2012).

The purpose of using doctrinal legal research type in this paper is to obtain a systematic explanation of the rules of the Press Dispute Resolution Mechanism by analyzing the rule of Law. The truth achieved in this study is the truth based on legal logic in the analysis of political problems. Therefore, this study analyzes various laws and regulations related to the settlement of press disputes outside the court and also analyzes regulatory issues from existing laws and regulations.

## **Results and Discussion**

### **Non-Litigation Settlement Arrangements**

In Indonesia, in many cases of journalists refusing to be tried using the rule of Law that generally applies to citizens and choosing to take refuge behind the Press Law, they insist on using the Press Law for any wrongdoing. However, the Press Law is not perfect; for example,

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defamation and slander offenses are not regulated in the Press Law. To solve this problem, the Criminal Code is his main weapon; it does not mean that if there is no article in the Press Law that the journalist violates, he does not need to be tried; it is unfair to the community even though it is beneficial to the press.

Regardless of the perspective of press representatives regarding which legal standards can be used to resolve press disputes, basically the performance of journalists is limited by various "journalistic signs" according to Sirikit Syah, including (Syah, 2011):

- a) Journalistic standards or conventions that are universal;
- b) KEJ;
- c) Press Law;
- d) Broadcasting Act;
- e) Broadcasting Code of Conduct and Broadcast Program Standards (hereinafter P3/SPS);
- f) Press offenses in the Criminal Code and the ITE Law
- g) Community Norms and Conscience

Although the Press Law is not perfect, the Press Law still provides protection for press personnel by providing solutions for those who are entangled in problems arising from news reporting to ensure the independence of an entity called the press. therefore, problems arising from press reporting must be resolved through a resolution mechanism regulated in the Press Law, namely through:

- a) Request for the right of answer or correction to the relevant media;
- b) Complaints to the Press Council;
- c) Civil tort.

Although the Press Law does not explicitly state that a press dispute cannot necessarily be resolved directly by a civil lawsuit or report to the police, due to the understanding that a press dispute needs to be resolved out of court since the Supreme Court Landmark Decision No. 3173K/PDT/1991 dated April 28, 1993, the decision between Berita Harian Garuda and Anif.

The Press Law is considered by various non-press groups as a law that only benefits the press but does not protect the subject or object of news and media consumers in general, but there is one article that is very meaningful to the public, namely Article 5 paragraphs (2) and (3) which regulate the Right of Answer and Right of Correction.

The right to answer is the right of a person or group of people (in this case, the entity to whom the message is targeted) to answer or refute a statement that defames them, while the right to correction is the right of everyone. The right to correct misinformation in the media about themselves or others.

There are conditions that must be met by the party who feels aggrieved, namely:

- a) The right of answer is proposed by one person and can also be submitted by a group of people;
- b) The right of answer can be exercised as an answer and/or objection;
- c) Answers and/or objections are conveyed in the message and are facts;
- d) Answers and/or complaints are submitted in the form of premises about reports and damage the good reputation of some individual or group (Selly Nur Rohmaningtyas,

2005).

The Right to Answer has several functions, including:

- a) Fulfil the public's right to accurate information
- b) Respect the dignity and dignity of people who feel offended by the media
- c) Prevent or mitigate the occurrence of serious harm to the public and the press
- d) Forms of public control over the press.

The goal is to fulfill fair and balanced journalistic work as a form of good faith of the press in accounting for its work because now there are still rampant practices of press personnel who are not objective because they are not balanced in making news (not covering both sides of the story).

To regulate the implementation of this right of compensation, the Press Council issued Press Council Regulation Number 9 of 2008 concerning Guidelines for the Right to Indemnity. The law of reciprocity is based on these provisions:

- a) Contains objections and responses from the aggrieved party;
- b) Submission to the competent press and a copy to the Press Council, in the case of a group of persons authorized to give the right of answer;
- c) Written (also digital) and sent to the press officer or sent directly to the editor with proof of identity;
- d) The person entitled to answer shall provide him with information deemed adverse, in whole or in part, with supporting information.
- e) Free counter-notification service
- f) For errors and inaccuracies of incriminating, defamatory and/or false facts, the press shall apologise.

The right of answer is invalid if the infringing party does not request the right of answer two months after the publication of the message without the consent of the parties. The right to answer is exercised proportionately and partially through messages. In addition, the right to the answer can be conveyed in the same place or event as the news or as agreed, also in the form of corrections, interviews, portraits, features, news, talk shows, or other non-advertising formats that must be published in the next edition or no later than in two editions, because the right of the answer is given to the editor.

One of the things that is not widely known is that the press has the right to change the return policy according to the reporting principle, but cannot change the content of the proposed return policy, unless the press can reject the substance of the return policy if:

- a) The length/duration/number of marks of counter-statement material exceeds the respective journalistic work.
- b) Contains facts unrelated to the relevant journalistic work.
- c) Shipping may cause a violation of law.
- d) Against the interests of legally protected third parties.

According to Article 5 Paragraph 2 of the Press Law, the press is obliged to exercise reciprocal rights. Failure to do so may result in a fine of up to Rs.500 million under Section 18 of the Press Act. The parameters used here are to respond appropriately to requests for counter-obligation and to include counter-duty where violations have been proven.

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Furthermore, regarding the right of correction, the media editor is required to make corrections or corrections for the presentation of inappropriate or erroneous media news in accordance with Article 10 of the KEJ; this right of correction can be in the form of errors directed at an opinion, image, or other substance in the news that is not true and can result in causing divisions between groups, defaming individuals and a group, or slander. The application for the use of this right of correction is carried out by making a complaint to the media editor by attaching the identity of the victim and providing a brief and precise description of the substance of the news that needs to be straightened out.

The responsibility of the press is closely related to the application of the professional journalist code (hereinafter referred to as the KEJ), which in the explanation § 4 paragraph 1 of the Press Law states that the professional duties contained in the KEJ Press Law are in accordance with the conscience of the representative press. In the event of an incorrect or incorrect report under Article 10 of the ECE, the journalist shall immediately retract, correct, and correct the report and apologize to readers and listeners. Immediate here means as quickly as possible, regardless of the presence or absence of outside warnings. The meaning of Article 10 of the Press Law is closely related to the right of answer and correction in Article 5 of the Press Law, where usually someone who feels offended by the content of a report by a press person can ask for his right to answer from members of the press.

Conceptually, basically what is stated in the ECR is a professional standard for journalists in carrying out their profession, where if a journalist wholeheartedly carries out his profession obediently and in line with the KEJ, he is professional and responsible in presenting information and can be said to be a journalist who receives legal protection as Article 8 of the Press Law.

The EC is a benchmark for whether the actions of journalists constitute an abuse of the profession that has entered the criminal realm or not. Therefore the Press Council, as an independent institution, is responsible for the final assessment of news, whether there is really a violation of the code of ethics or not, and for the imposition of sanctions carried out by the press company that houses the journalist itself.

Vienna Armada Sukardi argued, but the press must always uphold and obey the rules of journalistic ethics, even though the press is not an immaculate angel. Information that has been presented to the public shows that the press sometimes makes mistakes or omissions that violate the rules of journalistic ethics. Several factors can cause this:

### **Unintentional factors:**

- a. Professional skills are lacking, e.g. al:
  - a. Inadequate efforts to avoid mistakes;
  - b. Lack of thoroughness;
  - c. Not using common sense;
  - d. The ability to collect messages is insufficient;
  - e. Malas in exploring written or comparative materials;
  - f. Use old (outdated) information that is not updated;
  - g. Inappropriate wording or usage
- b. Regarding the time limit, so that negligence occurs unnoticed;
- c. Knowledge and understanding of journal ethics rules are still limited.

**Deliberate factors:**

- a. Know and understand the journalistic code of ethics, but it was not intended well from the beginning;
- b. Lack of knowledge and understanding of the rules of journalistic ethics and bad intentions from the beginning;
- c. As a result of competition in the press world is very tight, the press will unreasonably and irrationally try to attack its partners or competitors who deliberately spread news that violates the journalistic code of ethics;
- d. The press is only used as a shield or camouflage for criminal activities, so it does not really fall within the realm of journalistic work;

If the violation of the journalistic code is caused by random factors, then it belongs to category 2, meaning that there is still room for tolerance. Perfection is a necessity. No matter how big the press environment is, it does not rule out the possibility of intentionally or unintentionally violating the journalistic code of ethics. In the analogy of such a case, the press in question usually promptly corrects itself when there is a notification of errors or misrepresentations and applies the journalistic code of ethics well, even if an apology is required.

A good press is certainly not a press that has never faced the problem of violating the rules of journalistic ethics. However, the press soon understood the insult and did not repeat it again, instead apologizing publicly when necessary. Conversely, intentional violations of the Journalists Law and Category 1 violations constitute serious crimes. Some perpetrators do not even immediately confess to their crimes when acquitted or warned of their guilt. They often make various unrelated claims. Only after the threat of more severe punishment do violators forcibly follow the rules.

**The Dilemma of the Solving Mechanism**

The Press Law offers the best way to solve the problems caused by press reviews and guarantees the fulfillment of reciprocal rights. The use of the right to answer is raised as a provision of positive legal standards and not only as part of the ethics of the Press Law, especially Article 5 (2). Therefore, the most important essence of press law and the best way to resolve issues arising from press review is the service and proportionate and professional exercise of the right to answer. Even if the press company refuses to fulfill the right of reciprocity under Article 18 (2) of the Press Law, the maximum fine is Rp. 500,000,000 (five hundred million rupiah). According to legal concepts known and taught in Criminal Law, on the contrary, means a person or group of people who do not exercise their right to respond to a tip that allegedly damages their reputation does not cause problems.

Ordinary people or those who are not skilled in the field of press law often assume cases due to press reporting can only be resolved by civil lawsuits in court or reports to the police. In the realm of press dispute resolution, there is what is called settlement using the right of the answer, the right of correction, and complaints to the press council. However, not a few people also know the existence of a press dispute resolution mechanism that is indifferent to what is contained in this Press Law. In fact, there is no provision in the Press Law that expressly states that press disputes must first be resolved using the mechanisms contained in the Law.

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Therefore, there are still many press disputes that bypass the non-litigation settlement mechanism and are directly taken to court.

If interpreted logically, Article 5 paragraph (2), which reads "The press must serve the right to answer," here contain several problems, the first of which is that the language interpretation shows that only those who have obligations here are only the press while the public has no obligation to solve problems due to press reporting using the right to answer. The next problem is that the Press Law has not accommodated reporting carried out by online press that is not a legal entity; this can be seen in Article 1 point 6, which states, "The national press is a press organized by an Indonesian press company" which shows that the current regulations are skewed towards the conventional press and have not accommodated unconventional press such as Citizen Journalism. Which has implications if problems arise due to reporting by the unconventional press, settlement using non-litigation channels is not possible.

Indonesian citizen journalism law enforcement is not strictly regulated to protect people who provide information or make the news they broadcast from the results of that information. These are questions and concerns about how responsible and who is responsible for such activities or readers and related objects (Pradana, 2022).

After the issuance of the Press Law in 1999, there were disputes regarding the mechanism for resolving press crimes, either through the courts or first through the retribution court. There are two opinions on this matter, the first from the press and the second from outside the press.

The press believes that the Press Law actually regulates the mechanism for investigating press crimes (Basrawi et al., 2023), namely with the right to answer. If the right of reply is unsuccessful or does not resolve the issue, it will proceed to arbitration proceedings by invoking Press Council arbitration. Even if the efforts of the media in the press council fail, the matter will only be brought to court. Therefore, attempts to sue and/or criminalize directly without an out-of-court mechanism are considered a violation of the provisions of the Press Law. Meanwhile, according to outsiders, the press disagrees, as stated by Zoeber Djajadi who basically said that those who feel offended by a report are not obliged to use the right of answer, there is a distinction between rights and obligations (Fatah, 2019).

The dualism of solving press problems, caused by the indecisiveness of the Press Law, to protect the press as a whole, it is necessary to amend the Press Law, namely by including articles that expressly regulate how the correct settlement mechanism so that there is no more dualism of this perception, for example by adding an article stating "there is no settlement in court before the right of answer and mediation with the press council is carried out."

The written obligation on paper to seek an out-of-court settlement is mentioned in the decree between the Press Council and the National Police only for 2022, only in theoretical terms of naming the decree. SKB is included in the category of decisions (*beschikking*). Even though the contents of the SKB are actually more regulatory in nature, this raised doubts among the public. However, according to Maria Farida Indrati S., one of the conditions and nature of norms (*beschikking*) is individual, concrete, and made once (*einmahlig*), while legal norms are always general, abstract, and fixed (constant). The material contained in the general regulation can be classified as an abstract standard and applied continuously, so it can be said that the general regulation is a regulation.



According to Article 2 (2) of Law No. 12 of 2011, laws and regulations are written regulations that contain standards which are generally binding and are issued or determined by state institutions or authorized officials according to the procedures regulated in laws and regulations. Article 7 (1) regulates the nature and hierarchy of its constituent laws and regulations:

- a) Constitution of the Republic of Indonesia Year 1945;
- b) Decrees of the People's Consultative Assembly;
- c) Government Laws/Regulations in Lieu of Law;
- d) Government Regulations;
- e) Presidential Regulation;
- f) Provincial Local Regulations; and
- g) District/City Regulations

Article 8 (1) regulates laws and regulations other than those referred to in Article 7 (1), which include the People's Representative Council ("MPR"), the People's Representative Council ("DPR") and the Regional People's Representative Council ("DPD"), the Supreme Court ("MA"), the Constitutional Court ("MK"), the Audit Board ("BPK"), the Judicial Commission ("KY"), Bank Indonesia ("BI"), ministers, positions, institutions or commissions equivalent to commissions established by laws or government laws, Provincial parliaments, governors, city administrators/legislative councils, governors/mayors, village heads, or the like.

Furthermore, in Article 8 paragraph (2) which states:

"Laws and regulations as referred to in paragraph (1) are recognized for their existence and have binding legal force to the extent ordered by higher laws or established by authority. "

In the case of the decree made between the Press Council and the Indonesian National Police, based on Articles 7 and 8 it has fulfilled one of the criteria, which is determined by the institution established by law. However, it does not have binding legal force because the basic idea of the decree is to improve coordination so that the resolution of cases due to press coverage is prioritized using non-litigation channels, which although mentioned in the Press Law but the obligation to do so is not mentioned, so in my opinion the decree between the Press Council and The Indonesian National Police does not have binding legal force because its formation is not based on the orders of higher laws and regulations, in this case the Press Law does not order the creation of the decree.

### **Community Discontent**

The resolution given by the settlement of cases arising from press reporting through non-litigation channels that are currently in force does not provide satisfaction for those who seek justice, this can be seen in Press Council Regulation Number 9 of 2008 concerning Guidelines for the Right to Answer, in the guidelines it is stated that the right to answer is carried out proportionally, which is contained in the same place once for each news and must be implemented within time immediately (Ariefulloh et al., 2023). However, in practice the interval between the first news and the loading of the right to answer is very long due to delays in service as occurs in some cases (Jardim et al., 2023). Because the affected person is generally the good name of a person who is due to the long interval, even though the right to answer has been proportionally loaded in accordance with applicable guidelines, the stigma against the

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aggrieved has been formed and is difficult to restore to its original condition if done proportionally.

The public cannot be forced to first use response and redress mechanisms under the Press Law before taking legal action when disputes arise in the press, given that law enforcement requires responses that are often disproportionate and often late to publish, often becoming complaints (Syahriar, 2015). This is a matter of public consideration, especially for entrepreneurs who want to rely on their good name and reputation in doing business and solving problems through civil and criminal channels.

Dissatisfaction with dispute resolution is reflected in the provisions of Article 11 (2) of Press Council Regulation Number 3 of 2017 concerning Procedures for Complaints at the Press Council, where the Press Council resolves complaints through correspondence, arbitration and or awards, then paragraph (5) of the same article states that the Press Council issues a Statement and Recommendation (PPR) if the arbitration does not result in an agreement. PPR can be a recommendation to collect the right to indemnity, so it can be said that the use of the right to indemnity is carried out on the upstream side and also on the downstream side to resolve problems arising from press review, although not juridically. The provisions of Article 18 (2) of the Press Law impose a maximum fine of IDR 0.00 (Five hundred million rupiah) on press companies that do not exercise the right to compensation, but not enough for the injured party because the imposition of fines does not have severe sanctions for press companies. In fact, non-prosecution actually does not talk about severe sanctions, but at least it is necessary to give satisfaction to those who feel aggrieved, such as the temporary suspension of business.

Based on the provisions of the article shows the passive attitude of the Press Council in the sense that the Press Council will not act until there is an announcement. The use of the term "advice" means that the proposals and opinions of the Press Council are non-binding. The bodies that report and receive the opinion of the Press Council may attract attention, carry it out or not carry it out. There are no sanctions or legal consequences for the press or the public if the opinion of the Press Council is not implemented. If executed, it only shows the good faith of the party executing it.

The position of the Press Council which does not have executory power is one of the factors why the majority of the public returns to the green table after the non-litigation settlement mechanism is passed.

## **Conclusion**

Arrangements for resolving cases due to press reporting regulated in the Press Law still have several problems, including no explicit obligation to take the non-litigation mechanism in question. The current formulation of the article only imposes obligations on the press and does not give people who feel aggrieved to exercise the right to answer, so it feels that the framers of the law are ambiguous (ambivalent). Which has implications for the press and the public who are harmed by a report, in addition to the legal umbrella of journalistic activities that do not accommodate unconventional press activities resulting in a legal vacuum (*Recht Vacuum*) which must be immediately corrected due to the practice of *citizen journalism*. This blurring of standards can slow down the development of journalistic activities that in modern times have maximized the benefits of the existence of technological media, especially communication.

In addition to this vagueness, the regulation of resolutions resulting from non-litigation settlement mechanisms is considered unable to meet the satisfaction of the public as justice seekers, therefore lawmakers (Legislators) together with the government should immediately form a revision of the Press Law which explicitly states the obligation to resolve cases due to press reporting through non-litigation channels and accommodates resolution models that can provide satisfaction for justice seekers because the main purpose of non-litigation settlement is to ease the burden on colleagues who are within the judicial scope.

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