



## Criminal Responsibility Analysis In Reporting Of Indicated Defamation Delict By Pers

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**ABSTRACT:** This study aims to analyze how the criminal responsibility of the press against the news that contains defamation, to analyze the factors and characteristics news that can be declared to contain defamation and also to analyze the legal effort that can be taken by someone whose good name is contaminated by the press. This research was conducted at the office of the Alliance of Independent Journalists (AJI). Research method used in this research is normative research method (rule of law), that is law research which put law as normative system. The results of this study indicate how the responsibility of the press against the news that contains defamation may be imposed to: (a) the general leader / editor, (b) the managing editor, (c) the editor, (d) reporter / correspondent, then the number of reporting factors so that can be stated as the news that contains defamation, and explain some of the problem solving press can be pursued by various legal efforts.

**KEYWORDS:** Accountability, Defamation and Print media

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### I. INTRODUCTION

The press is a means of communication and publication, one of its functions as a means of check and balance in the life of the nation and the state, with the press coverage of science and information can be disseminated in the field of law, social, cultural, economic and technological. In addition, the press as a driving tool and stimulate community participation to participate in carrying out development.

The press is the pillar of the Democratic State. Etymologically, the notion of democracy comes from Greek. It consists of two words, demos, meaning people and kratos, which means power / dominion, then can be interpreted democracy means power is in the hands of the people or people in power. In democracy, the people become the determinant of how the pattern of power and its implementation will be done.<sup>1</sup> In order for the voice, desire, and will of the people to be heard by the state organizer, there must be freedom to express an opinion. There is a need for a medium or media to be used in such participation. One of the means by which society can participate in political and governmental participation is the press.<sup>2</sup>

Press freedom is an essential element in the establishment of a democratic, open and transparent state system. The press as a medium of information goes hand in hand with law enforcement to create balance in a country. It is important to maintain objectivity and transparency in the world of press, so that news can be properly poured without fear or threat.

Friction between the press with the community can occur as a result of dish that is considered harmful by a person or a certain group. This requires a fair and acceptable settlement by the parties concerned. The phenomenon of such friction has surfaced in the form of public lawsuits against the press, vigilante action against journalists and

<sup>1</sup> Amien Rais, *Pengantar dalam Demokrasi Dan Proses Politik*, Jakarta: LP3ES, 1986, p: 8

<sup>2</sup> Rudy S. Mukantardjo, *Tindak Pidana Pers dalam RKUHP Nasional*, Makalah Disampaikan pada Seminar Nasional Mengurai Delik Pers Dalam RKUHP Nasional, AJI, Jakarta, 24 Agustus 2006, p: 1

so forth. All of that shows how important it is to create a fair solution when there is a problem between the press and the community.<sup>3</sup>

Based on the background that has been described above, the problems related to why the friction can occur and also how the formulation of the press offense in the rule of law applicable in Indonesia is an important study that attracted the author's attention, the authors lifted the title of thesis on the criminal responsibility of the press with the title Analysis Criminal Accountability in the Preaching of Defamation Letters by the Press Media Press.

### **Research Questions**

In connection with the background of such thoughts, it can be identified the main issues to be discussed, are as follows:

1. How is the accountability of the press against the news that contains defamation?
2. Is the factor and karakteristik press coverage can be expressed as a report that contains defamation?
3. What are the legal remedies that can be taken by someone whose good name is defiled by the press?

## **II. RESEARCH METHODS**

In conducting this research, the authors choose the location of research in the office of Alliance of Independent Journalists (AJI), consideration of the authors choose the location of the study, because there are enough data relevant to the title and issues raised. By conducting the research at that location, it will be great to access the data for the accuracy of the preparation of this thesis.

The research method used in this study is the normative research method, namely observing how the legislation, as well as reactions and interactions that occur when the norm system that works in society, this study is categorized as a legal doctrinal study of law in concerto

Furthermore, the type of normative legal research is conducted by collecting legal materials either primary, secondary and / or tertiary, in order to obtain an answer or settlement of criminal liability issues in the news indicating offense of defamation by press media

## **III. RESULTS AND DISCUSSION**

### **Responsibility Party for Defamation through Print Media**

The subject of human law in the Press Law applies only to those who prevent the independence of the press ie, censorship, banning or broadcasting offenses as provided for in Article 4 paragraph (2) of the Press Law and prevents independence from exercising their right to seek, obtain and disseminate ideas information as provided for in Article 4 paragraph (3) of the Press Law.

Regarding the offenses committed by the press, the legal subject referred to in the Press Law is a corporation. The party appointed as the person in charge of a criminal act committed by the press is the business field and the editorial field. This provision is contained in the explanation of article 18 paragraph (2) of the Press Law, in the case of breach of obligation set forth in Article 5 paragraph (1) and paragraph (2) and Article 13 of Press Law done by press company, the company is represented by the person responsible as referred to in the explanation of Article 12 of the Press Law. The corporation's responsibility in the Press Law, if the offense committed by and on behalf of the company, is responsible for its management. The elucidation of Article 12 and Article 18 Paragraph (2) of UUPers clearly indicates that the legal subject of the Press Law is a legal entity of a corporate press (corporation) represented by business and editorial sectors.

When referring to the Criminal Code, perpetrators of criminal acts in principle only human or people because in criminal law is known the principle of "who does, then he is responsible." Therefore, in a criminal act that the perpetrator is the press is not a legal entity (press company) which should be asked for accountability but those who are the administrators of the legal entity (press companies).<sup>4</sup> Concerning corporate crime, many cause pros and cons among jurists especially criminal law. The doctrine that develops in criminal law is the doctrine of the university delinquere non potest (corporations are unlikely to commit a crime). This doctrine is influenced by the idea that corporations in criminal law are just legal fictions that have no mind, so they do not have a moral value that is required to be blamed in a criminal manner (element of error). Whereas a crime requires the existence of an error (mens rea) in addition to the act (actus reus).

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<sup>3</sup> Samsul Wahidin, *Hukum Pers*, Yogyakarta: Pustaka Pelajar, 2005, p. 4

<sup>4</sup> Wikipedia Bahasa Indonesia, *Ensiklopedia Bebas*, Pertanggungjawaban Korporasi, [http://id.wikipedia.org/wiki/Pertanggungjawaban\\_korporasi](http://id.wikipedia.org/wiki/Pertanggungjawaban_korporasi).

Looking at the process of news publication, it can be seen that the editorial role is so great in the process of news publication in the newspaper. The authority of the editor-in-chief is full authority, since the writings of the journalists to be published must pass the feasibility test of the editor-in-chief. Publication as one of the elements of press offense, can be connected with the role of editor in chief as a selection of information what will be published in the newspaper. In other words, the news can only be published if there is approval by the editor in chief.

Agreement can be interpreted as deliberate by the Chief Editor to publish a story. If the editor-in-chief assumes the news does not need to be published, even if there is a defamation charge, then the news has not been mentioned by press offense. When viewed from his role, editor in chief can be subject to criminal liability as the perpetrator.

The function of the press is contained in Article 3 of Law No. 40 of 1999, the national press has a function as a medium of information, education, entertainment and social control. In addition to the functions referred to in paragraph (1), the national press may be an economic institution. Based on the function of the press, it looks so heavy and the extent of the press responsibilities. In its performance there are often problems related to the position of the press facing the government. What the press says is often judged to be inconsistent with what the government wants. While its interaction with the public, the press often not lower the dish that is considered not in accordance with the facts and violate the privacy of a person that is by deliberately accusing a thing to someone or institution without based on strong evidence, the news distort, mixing facts and opinions, summing up someone's case that there is no fixed legal decision and no fundamental facts or reasons that can be accounted for resulting in defamation and even slander. Concerning the accountability of the press in criminal law is based on the doctrine of error (Schuldleer) and the principle of "inclusion" (deelneming). This principle of inclusion is the basis for criminal liability to journalists, editors or authors themselves. Deelneming is disputed in criminal law because it is based on the frequency of a deli jointly committed by several people. If only one person does a offense, the culprit is called allen dader.

#### **Factors And Characteristics Press Reporting Can Be Declared As A Good News Defamation**

Defamation or defamation or slander spread in writing is known as 'libel', while the pronoun is referred to as 'slander'.<sup>5</sup> In law, there is no precise definition of defamation, so everyone can be free to give their understanding of defamation. The law, in this case the Criminal Code, is more familiar with the term "Insult". The Criminal Code states that insult (defamation) can be done by oral or written (printed). The form of humiliation is divided into five (5) categories, namely:

1. Written Pollution
2. Minor humiliation
3. Slander
4. Defamation of complaint
5. Slander charges

R. Soesilo says that accusations must be addressed to individual persons, so it is not applicable if the offending person is an institution or instinct, but if the allegation is intended for the public interest, that is to avoid harming the rights of the people or on the basis of self-defense, then the accuser can not be punished.<sup>6</sup> While the Criminal Code specifically makes about criminal acts in the form of broadcast false news, and news that is not accurate. Although specially regulated, there is uncertainty about what is meant by false news, so that the articles can potentially be misused. A resource person who does not like the press or the news of him can drag the press to court with allegations of falsifying news or false news.<sup>7</sup>

#### **Legal Efforts to Be Carried Out by Someone whose Name Was Fouled by the Press**

In this research about the legal efforts that can be done by someone whose good name is defiled by the press we need to know in advance in article 8 of Law No. 40 of 1999 About the Press mentioned that "in carrying out his profession journalists can legal protection" it is stipulated that in terms of carrying out his profession,

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<sup>5</sup> Hadiba Z. Wadjo, Pencemaran Nama Baik Dalam Pemberitaan Pers, Jurnal Sasi Vol. 17 No. 2 April – Juni 2011, p. 5.

<sup>6</sup> R. Soesilo, Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komenta-Komentarnya

<sup>7</sup> Eriyanto dan Anggara, Kebebasan Pers Dalam Rancangan KUHP, Jakarta : Aji dan Aliansi Nasional Reformasi KUHP, 2007, p: 26

journalists get legal protection in the form of guarantee protection of government or community to the press in performing its functions, rights, obligations and roles in accordance with the provisions of applicable legislation but behind the protection of the press is still profession suata that has a deficiency that can impact violations of the law.

According to Mustafa, Head of AJI advocacy field, Sul-Sel victims who feel disadvantaged can obtain legal protection by using several ways including:<sup>8</sup>

1. Using right of reply and right of correction
2. Report to the press council
3. Using criminal lane in this case the Police up to the court.

**According to Ronald Ngantung as one of the chief editors of the tribune east states that:**

In the case of attempts by the press and someone who feels harmed by his good name, on average, he has taken the right of reply and correction right provided by the media company after doing so and it is not satisfied to let us report to the press council or investigator in this case the police but the point we as the press stick to Law No.40 of 1990 and also the Code of Ethics of Journalism.

Based on the above explanation, there are several mechanisms or legal efforts that can be taken by someone whose good name is defamed by the press, namely:<sup>9</sup>

1. Using the right of reply and correction
2. Complaints to the Media Ombudsman
3. Complaints to the Press Council
4. Court Institution

#### IV. CONCLUSION

Based on the results of the discussion in this thesis, the following conclusions are obtained: The accountability of the press against the news that contains defamation may be attributed to: (a) the general leader / editor, (b) the managing editor, (c) the editor, (d) the reporter/ correspondent. In the Criminal Code there is no specific offense concerning the Press, for the existence of legal certainty and legal protection for the types of abuse of the function of the press, in relation to criminal offenses set forth in the Criminal Code will be sought a relationship in accordance with this offense, especially the articles on communication, dissemination of information and mass media, consisting of the following types: (a) hate crime, (b) defamatory offense (libel), (c) spreading offense of false news, (d) moral declaration, (e) .the reporting factor so it can be expressed as: (a) the lack of responsibility of a journalist in the title of his profession, (b) the existence of the interests of journalists and press companies, (c) the working atmosphere of journalists pursued at the time of grace, (d) the limitations of intellectual ability or journalist skills, (e) Lack of Journalism. While the reporting of the press so that it can be declared as a news that contains the Defamation, namely: (a) statement through writing in the newspaper related to the honor and good name of a person, (b) unlawful, (c) contains elements of intention / error, d) published to the public through writing in the print media, (e) causing harm to people whose reputations are polluted. The settlement in the press issue is primarily concerned with defamation including: (a) Using the right of reply and right of correction, (b) Complaint to the press council, (c) The press ombudsman, (d) The judiciary.

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