

Legal protection against a person suspected to be a criminal actor from news digital-media that delivered before the legal process

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Abstract

Antonius Sudirman digital-media that delivered before the legal process who have preceded the legal process. Writing this thesis uses qualitative methods with secondary data in the form of library data in the form of books, research results, laws and regulations, and digital information. As a result, digital media coverage that includes hoaxes, slander, and criminalization against someone without going through a legal process has violated the presumption of innocence, which is one of the fundamental principles in criminal law. To overcome this, of course, media actors, both journalists and media management companies, must obey the law and journalistic code of ethics while refining regulations that specifically regulate online news media, as well as strengthening supervision by relevant ministries of online media.

Keywords: criminal offender, digital media, due process of law, legal protection

1. Introduction

The progress of the world today has been so fast due to the development of science and technology. One of the significant developments is the development in the world of information and communication technology. Don Tapscott (1996) ^[1], an observer of the development of information and communication technology in the United States, in his book entitled *The Digital Economy, Promise, and Peril in the Age of Networked Intelligence*, it has been confirmed that the development of the world economy is changing from the dynamics of industrial societies based on steel, vehicles, and roads to the dynamics of a new economic society formed by silicon, computers, and networking. Or also the prediction and analysis of Alvin Toffler (1980) which states that the human era is divided into three main eras, namely the era of agrarian society, industrial society, and information society. Even today the world has developed beyond the thoughts of Tapscott and Alvin Toffler because the world has entered an era called the era of the industrial revolution 4.0., Intelligence engineering occurs online. In this case, "the internet of things" is the backbone of the movement and connectivity of humans and machines. Industrial Revolution 4.0 has fundamentally changed the way humans think, live, and relate to one another. This era will disrupt various human activities in various fields, not only in the field of technology but also in other fields such as economic, social, and political.

Indonesia as part of the world community, of course, cannot avoid the impact of globalization of global information and communication. The. This is marked by the development of digital information media and the high use of digital media by people in Indonesia. Based on data from the Ministry of Communication and Information of the Republic of Indonesia, in 2018, in Indonesia, there were 43 thousand

online media ^[2] news portals. The number of online media accounts for the number of internet users who recorded an increase in 2018, online from a total population of 264 million Indonesians, 171.17 million people or around 64.8 percent are already connected to the internet ^[3]. This progress is certainly very good and positive because it shows that the Indonesian nation has entered the global information network. However, the problem is that a large number of Internet users in Indonesia and the high frequency of accessing information content and social media does not necessarily guarantee the "maturity" of Indonesian netizens in using the internet. Apart from gaps, various cases of internet abuse are also rife, ranging from internet fraud, addiction or addiction, privacy violations, reality bias, to the most recent is the spread of hoaxes. If examined, a number of these cases boil down to one thing, namely the low digital literacy of the Indonesian people ^[4].

Currently, the development of information and communication technology in the digital media industry has entered a new trend with the presence of a variety of media that combines new communication technology and traditional or converged mass communication technology. This certainly has a very positive impact on society in obtaining more comprehensive, fast, effective, and efficient information. However, these achievements are sometimes undermined by the irresponsible behavior of certain media industry actors who present information without selection and correction and ignore journalistic ethics and norms.

One of the information that is often presented by digital

² https://kominfo.go.id/content/detail/12345/menkominfo-baru-100-portal-berita-online-terverifikasi/0/berita_satker (accessed, November 7, 2019)

³ Berdasarkan hasil studi Polling Indonesia yang bekerja sama dengan Asosiasi Penyelenggara Jasa Internet Indonesia (APJII) <https://tekno.kompas.com/read/2019/05/16/03260037/apjii-jumlah-pengguna-internet-di-indonesia-tembus-171-juta-jawa> (accessed, November, 7 2019)

⁴ Novi Kurnia, dkk, Peta Gerakan Literasi Digital Di Indonesia: Studi Tentang Pelaku, Ragam Kegiatan, Kelompok Sasaran Dan Mitra, Informasi Kajian Ilmu Komunikasi Volume 47. Nomor 2. Desember 2017, pg. 151

¹ AG. Eka Wenats Wuryanta, Digitalisasi Masyarakat: Menilik Kekuatan dan Kelemahan Dinamika Era Informasi Digital dan Masyarakat Informasi, Jurnal Ilmu Komunikasi, Volume 1, Nomor 2, Desember,2004, Pg. 132

media is information on criminal acts that tend to "judge" and "punish" someone on the internet as a criminal act before the actual legal process occurs. This is, of course contrary to the principle of legal certainty and efforts to protect citizens from criminalization, which are not necessarily proven guilty based on court decisions. The principle in the Indonesian Criminal Procedure Law is the presumption of innocence, which means that a person is considered innocent before a strong court decision is made. Therefore, digital media coverage that precedes the judicial process is a deviation from this principle.

Based on the descriptions, this paper is appointed with the aim of (1) providing an overview of the Aspects of Protection of Human Rights in the freedom to convey and obtain information in Indonesia; (2) Describe the legal aspects of digital media coverage of a person who is suspected of being the perpetrator of a criminal offense committed before the due process of law.

2. Method

The approach article used a juridical normative approach. This was a qualitative study based on the analysis of a literature such as books, research articles of Journals, Criminal laws and regulations, and digital information. Data were analyzed with descriptive analysis data.

3. Results and Discussion

3.1. Advances in digital information technology and challenges to the protection of human rights

The development and advancement of digital technology today have two impacts, both positive and negative. The use of various technologies makes it easier for humans with all their activities. But on the other hand, the digital lifestyle will increasingly depend on the use of cellphones and computers.

In the development of digital technology, of course, many impacts are felt, both positive and negative impacts. The positive impacts of the digital era include ^[5]:

1. The information needed can be faster and easier to access.
2. The growth of innovation in various fields that are oriented towards digital technology that facilitates the processes in our work.
3. The emergence of digital-based mass media, especially electronic media as a source of public knowledge and information.
4. Increasing the quality of human resources through the development and utilization of information and communication technology.
5. The emergence of various learning resources such as online libraries, online learning media, online discussions that can improve the quality of education.
6. The emergence of e-businesses such as online shops that provide various necessities and make it easy to get them.

The negative impacts of the digital era that must be anticipated and solutions sought to avoid losses or dangers include:

- a. Threat of violating Intellectual Property Rights due to

easy data access and causing plagiarism people to commit fraud.

- b. The threat of short-sighted thoughts online for children as they are trained to think short and lack concentration.
- c. The threat of misuse of knowledge to commit criminal acts such as breaking into the banking system, etc. (decreased morality).

One of the technological developments is the development of digital information media, from the conventional information media model to the on-line (digital) news model. In McQuail's notes ^[6], there are important changes associated with the emergence of new media, such as:

1. Digitalization and convergence of all aspects of the media
2. Increased interactivity and network connectivity.
3. Mobility and delocalization of sending and receiving (messages)
4. Adapt publication and audience roles.
5. The emergence of various new forms of media "gateway", namely the entrance to access information on the web or to access the web itself.
6. Fragmentation and the breakdown of what "media institutions" they will use and need.

McQuail, then added by Feldman, describes some of the characteristics of new digital information media that distinguish it from conventional models of information media. According to Feldman (1997) quoted by Hastjarjo ^[7], new media has at least five characteristics that we can see, namely:

1. New media is easy to manipulate. This often gets negative responses and becomes contentious, because the new media allows anyone to manipulate and change various data and information freely.
2. New media is networkable. This means that content contained in new media can be easily shared and exchanged between users via the available internet network. We can call this characteristic an advantage because new media allows everyone to connect quickly and provides solutions to the constraints of distance and time between users.
3. New media is compressible. The existing content in the new media can be reduced in size so that its capacity can be reduced. This makes it easy to save the content and share it with others.
4. New media is solid. On line, we only need a small space to store a variety of existing content in new media. For example, we only need one PC connected to the internet to be able to store various information from various parts of the world on that PC.
5. New media are impartial. The content in the new media is not on the side of anyone and is not controlled by just a few people. That's why new media is often called a very democratic media because media capitalization is no longer valid. Everyone can be a producer and a consumer at the same time and every user can be active there.
6. The development and advancement of technology in the

⁶ McQuail, Dennis. *Teori Komunikasi Massa*. Jakarta: Salemba, 2010, pg.141.

⁷ Hastjarjo, Sri, *Literasi Media Baru Berbasis Local Wisdom Jawa* in Titaley, A.Jhon, 2012, *Literasi Media dan Kearifan Lokal-Konsep dan Aplikasi*, Yogyakarta: Aspikom, 2012, pg. 144.

⁵ Wawan Setiawan, *Era Digital dan Tantangannya*, Prosiding Seminar Nasional Pendidikan, Universitas Pendidikan, Suka Bumi, Tahun 2017, ISBN.978-602-50088-0 1, pg. 4.

field of information and communication must, of course, be accompanied by proper regulatory arrangements so that this progress can make a positive contribution to the development of human civilization, not, on the contrary, destroying human civilization or even causing human rights violations.

In Indonesia, the regulation on various information activities through technological means is in Law No. 19 of 2016 concerning amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions. In particular, concerning digital information media (on-line press) it is regulated based on the same norms and code of ethics as conventional press media, namely Law No. 40 of 1999 concerning the Press. This can be concluded based on the provisions in Article 1 paragraph (1) and paragraph (2) which emphasize:

1. Press is a social institution and mass communication vehicle that carries out journalistic activities including seeking, obtaining, possessing, storing, processing, and conveying information in the form of writing, sound, image, sound, and image, as well as data and graphics as well as in other forms. by using print media, electronic media, and all kinds of available channels.
2. A press company is an Indonesian legal entity that operates a press business including print media companies, electronic media, and news agencies, as well as other media companies that specifically organize, broadcast, and distribute information.

The use of the word "electronic media and available channels" indicates that digital or online media is part of the regulation of Law Number 40 of 1999 concerning the Press. Press freedom is one of the real successes of reform. The issuance of the Press Law with Law Number 40 of 1999 illustrates that the state guarantees freedom for the press to become an institution that can provide information to the public as well as control various state policies. Press freedom is a concrete form of respect for human rights. This is strictly regulated in the Indonesian constitution, the 1945 Constitution, namely in Article 28 F, which emphasizes: Everyone has the right to communicate and obtain information to develop their personal and social environment, and the right to seek, obtain, own, store, process, and convey information using all available channels.

Furthermore, it is further elaborated in Law Number 39 Year 1999 concerning Human Rights. Article 14 states:

1. Everyone has the right to communicate and obtain information necessary to develop his personality and social environment.
2. Everyone has the right to seek, obtain, own, store, process, and convey information by using all available facilities.

Press freedom in a human rights perspective based on the provisions of the 1945 Constitution and the Human Rights Law must be viewed from two perspectives, namely: (1) freedom of the press or the press media in conveying information to the public; (2) Citizens' rights to obtain correct and responsible information and protection of citizens' rights from information media coverage such as good name, decency, criminalization of the mass media before the legal process, and so on.

This, of course, has been regulated in the Law on the Press, especially in the explanation of Article 4 it states that:

Press freedom is freedom accompanied by an awareness of the importance of upholding the rule of law carried out by the courts, and professional responsibilities which are described in the Journalistic Code of Ethics and in accordance with the conscience of the press.

Apart from the national legal instruments, the international legal instruments ratified by Indonesia also stipulate restrictions on press freedom in the effort to protect the human rights of citizens. This can be seen in the International Covenant on Civil and Political Rights. In Article 19 point c it states ^[8]:

The exercise of the rights given in paragraph (2) of this article gives rise to special obligations and responsibilities. Therefore certain limitations may be imposed, but this can only be done in accordance with the law and only to the extent necessary to (a) Respect the rights and good name of others; (b) Protect national security or public order or health or public morals.

Based on the aforementioned provisions, two basic restrictions on press freedom can be found. First, based on the awareness that press freedom is limited by the human rights of citizens, both in the aspects of decency and morality. This limitation is moral, namely the obligation to respect the freedom of citizens which is manifested in the form of "self-censorship". Second; based on legal rules made in accordance with the "general will" or made according to a democratic order. Based on the two restriction frames, even though freedom is individual freedom, it cannot be separated from public interests such as security or public comfort. This is what "responsible freedom" means.

The biggest challenge in the development of digital media today is in relation to the protection and respect for citizens' human rights. The tendency of digital information media to convey the news to the public only pays attention to the economic aspects of the business without moral considerations and the protection of human rights. A lot of news that reaches the public that has an impact on the criminalization of a person before the legal process is carried out, violates one's privacy without the confirmation or approval of someone beforehand, information that contains defamation, violates morality and decency in the society.

Actually, violations of citizens' human rights will not occur if the press media actors, including digital media, are consistent in implementing various existing regulations. In Law No. 40 of 1999 concerning the Press actually regulates the obligations and roles of press institutions. This is reflected in Article 5 Paragraph (1) which emphasizes: "The national press is obliged to report events and opinions concerning to religious norms and a sense of public morality as well as the presumption of innocence".

Furthermore, article 6 point b states: "The national press carries out the following roles: upholding the basic values of

⁸Adami Chazawi, 2015, *Tindak Pidana Pers, Penyerangan Terhadap Kepentingan Hukum Yang dilindungi Dengan Mempublikasikan Tulisan*, Penerbit Mandar Maju, Bandung, pg. 259.

democracy, encouraging the realization of the rule of law and human rights, and respecting diversity".

Based on these provisions, it is clear that the press in its reporting must pay attention to the principles of democracy, a sense of public morality, and the presumption of innocence. It aims to protect citizens' human rights.

3.2. Protection for criminals from digital media news that is reported precedes the due process of Law

Indonesia is a constitutional state as regulated in the 1945 Constitution Article 1 paragraph (3). The concept of a rule of law (Rechstaat or Rule of Law) is a concept that places law as the highest supremacy in the implementation of the life of a nation. Based on this, the concept of a rule of law cannot be separated from the state entity as a macro socio-political structure that has power over all citizens in it, including the power in the formation and enforcement of the law as the basis of the state. So, when talking about the concept of a rule of law or the rule of law, we are talking about the concept of the rule of the state laws.

As stated by Bedner^[9], the concept of rule of law is a concept that tends to be difficult to define, and even essentially the concept of rule of law is a concept that is always contested. However, in the absence of a single definition that can cover all views regarding this concept, several general principles can be drawn from the concept of rule of law, and these general principles include two functions of the rule of law, namely: First, to protect citizens from abuse. - Authority of the ruler. Second, to protect citizens from arbitrary actions by fellow citizens.

As the embodiment of a rule of law, the state creates various laws and regulations to provide protection and legal certainty for citizens. Therefore, in Indonesia, there are known types and fields of law, namely criminal law, civil law, constitutional law, state administrative law.

In the context of criminal law theory, the protection of civil law is regulated through the creation of criminal law, both in the form of material criminal law and formal criminal law. Material criminal law contains instructions or descriptions regarding "*strafbare feiten*" (offense, a criminal offense. Criminal acts) and "*strafbaarheid*" requirements (subject to conviction of a person); meanwhile, the formal criminal law regulates how the state, through its officials, uses its right to convict; so it is referred to as criminal procedural law^[10].

In relation to journalistic or press activities, there are at least three aspects of press relations with law enforcement^[11]. First, the press is the object of law enforcement or who is subject to law enforcement. Second, the press as a facilitator of law enforcement. Third, the press is an obstacle to law enforcement.

First, the press is the object of law enforcement or as the object of law enforcement. The press is the object of the law enforcement because the press is a legal subject (*rechtssubject*). The press as a legal subject can be about press actors (journalists, editors, press plembaga owners) or the press as an institution. Law enforcement against the

press occurs because the press violates the law (*wederrechtelijk*), commits acts against the law (*onrechtmatigedaad*); which can include offenses of a criminal, civil, or administrative nature. Criminal offenses can include acts of defamation, slander, violation of privacy, trespassing, spreading state secrets.

Second, the press as a facilitator of law enforcement. One of the functions of the press, as the oldest function, is to provide or convey information to the public. One of the information is various legal events, legal relationships, various legal violations that occur in society (news about murder, violence or persecution, traffic accidents, corruption, theft, fraud, building without permits, disputes over rights, and others). No less important, the function of the press is to convey information to the public about the ongoing legal process inside or outside the judicial process.

Third, the press is an obstacle to law enforcement. One of the most famous expressions is trial by the press. This expression illustrates that either through the news or rubric of public opinion, or the press's own opinion, the press has had a legal opinion or at least encourages the public to argue about a case that has not been decided by the competent authorities (court or outside the court). These methods of reporting or conveying opinions not only violate the presumption of innocence (harm those who are "defeated" cq internet criminals, violate the principle of presumption of innocence), but are also a form of obstructing a fair, fair, judicial process, and impartial (obstruction of justice), even constituting harassment of the judicial order (contempt of court).

With regard to digital media coverage of people suspected of being perpetrators of criminal acts committed prior to the judicial process, for writers it can be categorized as violating provisions in the Indonesian Criminal Code (KUHP), which are related to defamation and criminal defamation and violating the principle of presumption. Not guilty as stipulated in the Indonesian Criminal Code (KUHAP).

The Criminal Code regulates defamation and slander through writing or pictures as stated in Article 310 paragraph (2) and 311 paragraph (1) of the Criminal Code. Article 310 paragraph (2) states:

Anyone who deliberately attacks the honor or good name of a person by accusing something, the intention of which is clear so that it is known to the public and carried out in writing or pictures that are broadcast, shown or posted in public, shall be punished by a maximum imprisonment of one year and four months or a fine. A maximum of four thousand five hundred rupiahs.

Therefore, if someone who commits defamation, is unable to prove the truth, it is considered as slander. In this case, he can be punished under the provisions of Article 311 (1) of the Criminal Code with the threat of a maximum imprisonment of four years.

Apart from violating the provisions of the Criminal Code, the news in digital media that precedes the judicial process has violated the presumption of innocence. The principle of presumption of innocence is one of the basic pillars of law enforcement in a rule of law. There are several forms of the

⁹ Bedner, Adriaan, 2010, "An Elementary Approach to the Rule of Law," Hague Journal on the Rule of Law, 2: 48-51, or compare with Joeni Arianto Kurniawan, Pengakuan dan Perlindungan Eksistensi Masyarakat Adat dalam Kerangka Negara Hukum Indonesia: Sebuah Konsepsi Utopis, Makalah pada acara Konferensi Negara Hukum, Jakarta 9-10 Oktober 2012, pg.3

¹⁰ A. Zainal Abidin Farid, Hukum Pidana I, Sinar Grafika, 1995, pg. 3.

¹¹ Bagir Manan, Pers, Hukum dan Hak Asasi Manusia, 2016, Penerbit: Dewan Pers, Jakarta, pgs. 55-57.

presumption of innocence^[12]. First, a person can only be charged or tried based on the provisions of the criminal law that existed before the indictment or punishment was passed. This principle is known as *nullum delictum nula poena praevia sine lege*. Second, a person can only be convicted on the basis of a punishable error: *geen straf zonder schuld*. Third, mistakes must be proven in a court that is open to the public, fair (fair), trustworthy, and impartial (impartial); Fourth, defendants are given sufficient opportunity as a right guaranteed by law to advance a defense, either by the accused himself or through a lawyer or legal advisor (advocate).

Apart from the KUHP and KUHAP, legal protection for criminals from digital media coverage that precedes the judicial process can also use the provisions of Law No. 40 of 1999 concerning the Press and Law no. 19 of 2019 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions.

The Press Law has been strictly regulated concerning press coverage which must respect the presumption of innocence, namely in Article 5 paragraph (1) which emphasizes: "The national press is obliged to report events and opinions concerning religious norms and a sense of public morality. And the presumption of innocence. The criminal sanctions given to press companies that violate the provisions of Article 5 are regulated in Article 18 paragraph (2) of the Press Law with a maximum fine of Rp. 500,000,000.00 (five hundred million rupiahs).

Furthermore, in the Electronic Information and Transaction Law, victims who feel aggrieved by electronic media coverage can use the provisions of Article 45 paragraph (3) in conjunction with Article 27 paragraph (3) of Law No. 19 of 2019 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions. The provisions of Article 27 paragraph (3) regulate the prohibition of any person intentionally and without the right to distribute and / or transmit and / or make Electronic Information and / or Electronic Documents accessible which contain defamation and / or defamation with criminal sanctions, which is regulated in Article 45 paragraph (3), namely imprisonment for a maximum period of 4 (four) years and / or a maximum fine of IDR 750,000,000.00 (seven hundred and fifty million rupiah).

For the author, this provision can indeed be used to provide legal protection for someone from the criminalization of digital information media that precedes the judicial process. But of course, to provide more legal certainty for digital media so that it can be used as a legal umbrella in all its activities while providing legal protection to the community in the future. For this reason, the authors offer alternative ideas as follows:

- a. Revise Law No.40 of 1999 on the press by rearranging the classification of the press or information media in accordance with current technological developments.
- b. Synchronizing all types of violations or criminal acts committed by digital information media in accordance with the provisions of the Information and Electronic Transactions Law.
- c. Regulate all legal and civil liability due to digital media coverage that is detrimental to society.
- d. Tighten supervision of all digital information as an effort to prevent violations and crimes committed by

digital information media by relevant ministries without prejudice to the principle of press freedom.

Apart from the aforementioned matters, what is urgently needed is the goodwill of law enforcement officials, especially the court, which Laurence M. Friedman classified as a component of the legal structure, to enforce the law properly to create balanced legal protection for all justice seekers (justitiabelen).

4. Conclusion

The current development of information and communication technology has an impact on advances in the field of digital-based or online news media. Much conventional news media (through mass/print) have been abandoned by readers and have switched to online news media.

Online news media that are served with the convergence system attract readers who want news and information fast, anytime, and anywhere. This is very positive in the midst of the demands of an increasingly fast era with an uncontrollable level of individual activity. On the other hand, online news media will have a negative impact when online media actors (journalists and media companies) do not manage them responsibly based on journalistic law and ethics. The impact is the publication of news that contains hoaxes, defamation, and contains criminalization by the media against someone without any legal process. This of course violates the human rights and legal rights of a person based on the presumption of innocence.

To overcome this, of course, media actors, both journalists and media management companies, must obey the law and journalistic code of ethics while making improvements to regulations that specifically regulate online news media, as well as strengthen supervision by the relevant ministries on online media management without reducing the principles of press freedom.

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