

PalArch's Journal of Archaeology of Egypt / Egyptology

PRESS' CRIMINAL LIABILITY AFFILIATED WITH THE NEWS WHICH CONTAINS PORNOGRAPHY

Ryan Setyo Aryo Wibowo¹, Toetik Rahayuningsih^{1}*

1. Department of Criminal Law, Faculty of Law, Universitas Airlangga, Surabaya, Indonesia

**Corresponding Author: Toetik Rahayuningsih, Department of Criminal Law, Faculty of Law, Universitas Airlangga, Campus B UNAIR Jl. Airlangga No. 4-6, Surabaya 60286, East Java, Indonesia. Email: toetik@fh.unair.ac.id*

Ryan SetyoAryo Wibowo, ToetikRahayuningsih. Press' Criminal Liability Affiliated With The News Which Contains Pornography--Palarch's Journal Of Archaeology Of Egypt/Egyptology 17(4), 2536-2541. ISSN 1567-214x

Keywords: Criminal Penalty, Pornography Offense, Press

ABSTRACT:

Press freedom is growing rapidly after the expiration of the new order. The development of printout media each year is increasing for the better. On the other hand, printout media can be a source of financial income, so the press companies compete by violating press ethics, for instance, write about pornographic content. The impact is premarital sexual behavior in adolescents is increasing, so the risk of reproductive disorders is also higher. Discover criminal liability in press companies, which take part in writing pornographic content. By using statute approach and conceptual approach. The material used for this paper is divided into primary material, which is taken form laws and regulations, and secondary material from books and literature. The materials are analyzed using juridical reasoning to provide juristic arguments. The criminal liability in a press company will be imposed on the editor chief in accordance with the regulations of the law No. 40 of 1999 in article 12. Pornography offense in printout media is a criminal act in press. The criminal liability in Indonesia adheres to the "fictitious liability" principle since the one doing the deed is not the editor chief, but rather the journalist. The liability of Press' Law can also be imposed on the press companies.

Keywords: Criminal Penalty, Pornography Offense, Press

INTRODUCTION

The press is media information that consists of three elements; news seekers (journalists), news presenters, and the community (Famaey-Lamon & Van Loon, 1978; Mergenbaevna Zhussupova, 2015; Wilkins, 2009). The three

elements are interconnected and mutually supportive. The press serves as the news presenter, the community as the press observer for the truth of the news. The community's needs for news is increasing in this modern era, whereas the information obtained from the press. The press is a kind of communication device, which carries out journalistic activities include seeking, acquiring, owning, storing, processing and conveying information in both writings, audio, visuals, audiovisuals, as well as data and graphics or other forms using paper, electronic devices, and any kind of media. Indonesian press company is a legal entity that organizes press businesses including printout media companies, electronic media, and news agencies and other companies that specifically host, broadcast or transmit information (Cucchiarelli, Morbidoni, Stilo, & Velardi, 2019).

Journalism closely relates to democracy (Wolfgang, Vos, & Kelling, 2019). The press independence in Indonesia has been guaranteed by UUD 1945 in article 28, which stated; "Independence of association and Assembly, speak one's mind both verbal and written as stated in the law". In the new order period, the independence of the press remained unclear. The regulations regarding the press are governed by law No. 11 of 1966, which was subsequently replaced by law No. 4 of 1967 and replaced by law No. 21 of 1982. The law No. 21 of 1982 governs several things about the press such as the rights of the press to control, critique, and correct constructive corrections. The purpose of the press independence is to conduct social control of the Government in the event of misusing the power such as corruption, collusion, and nepotism and transparency of State administration by the ruler of the state to avoid formation Authoritarian governance (Cucchiarelli et al., 2019).

The freedom itself carries positive and negative impacts. As the press was growing printout media could be a source of financial income. However there some mischievous companies compete to make more profit in a way that violates the law, such as news that contains pornographic elements, hence on 14th July 2008 the Press Council decided to review the contents of the newspaper contains pornographic content. The increasingly growing mass media containing pornographic elements are feared to affect adolescents' reproductive health. The easier they access pornographic information their curiosity will also increase (Cole, 2014; Drozdek, 2015; Weckert, 1998).

Based on the introduction, an in-depth review of press criminal liability regarding the preaching of the pornography content must be done. Reporters must know the essential meaning of "News" because the basic task of a journalist is to look for news, write or compile the news and deliver them to the companies even though the full authority of publication belongs to the editor.

RESEARCH METHODS

This research proposed using statute approach and conceptual approach. The material used for this paper is divided into primary material, which consists of the Constitution of the State 1945, Act No. 1 of 1946 on criminal Law

Regulation, Book of Criminal Law, Act No. 40 year 1999 about the Press, Act No. 11 year 2008 about Electronic information and transactions, law number 44 year 2008 about pornography, law number 19 year 2016 concerning amendment to law number 11 year 2008 about electronic information and transactions, and journalistic code of ethics. The secondary material from books and literature (Marzuki, 2014).

RESULTS AND DISCUSSION

Criminal liability cannot be separated from criminal acts. Criminal acts will always be associated with the behavior, hence the punishment is aimed at the culprit himself. In criminal law, there is a principal of fault term or *geenstrafzonderschuld*, which means no criminal without mistakes. The principle of fault is an unwritten principle in criminal law. To be accountable a person before the criminal law must fulfill the requirements: (1) commit a criminal act; (2) reach a certain age and able to take responsibility, (3) the mistakes either intentional or misconduct and (4) no reason for forgiveness (Moeljatno, 2008).

Criminal acts differ from criminal liability. Criminal acts refer to the mistakes and not the criminal himself. Whether the person who performs the deed is considered as a criminal, depends on the deed that he did, because the principle in criminal liability is "not to be punished if there is no fault (*Geenstrafzonderschuld; Actus non facit reum nisi mens sist rea*)".

Criminal law has two accountability theories; strict liability and vicarious liability. The concept of strict liability or absolute responsibility is different from the general criminal liability system which intentional or misconduct. Absolute criminal liability requires only the knowledge and deeds of the defendant. If the defendant knows or realizes the potential harm to the other party, this is sufficient to sue criminal liability. Vicarious liability is a criminal liability charged to someone for the deeds of others (the legal responsibility of one person for the wrongful acts of another) (Robbani, 2016).

The Indonesian Criminal Code (KUHP) that applies in Indonesia adheres to a system of liability based on fault or error (*schuld*) and concernment (*deelneming*), in which the system of accountability based on fault or error, the liability is an individual responsibility. On the other hand, the crime based on concernment is conducted by a number of people consist of main actors, perpetrators, and participants.

Liability for press companies is not based on the Criminal Code, because the regulation regarding liability for press companies are regulated in the Press Law. A press company that deliberately displays pornographic content has violated the law in Article 5 paragraph 1 of the Press Law, and regarding its accountability can be seen in chapter viii, which explains about criminal provisions in Article 18 paragraph 2 (two):

(2) Press companies that violate the provisions of Article 5 paragraph (1) and paragraph (2), as well as in Article 13, shall be liable to a maximum fine of Rp. 500,000,000.00 (Five hundred million rupiahs).

Explanation of Article 18 paragraph (2):

(2) In the case of criminal offense committed by the press company, the company is represented by the person responsible as mentioned in article 12 explanation.

Article 18 paragraph (2) explains that the person in charge is responsible for the liability. The person in charge of the press company covers the Business field and editorial. In this case, the person in charge as described in article 12 represents the liability of the company.

"Fictitious accountability" is a principle of liability, which stated in press law No. 40 of 1999. It explains that if a lawsuit happens, the one responsible for the news material is the media editor, represented by the chief editor. The responsibility held by the chief editor or the person in charge of the media is "fictitious" because the perpetrator is not the editorial leader, but rather another person (journalist). However, the leader must be responsible or in other words, the person submitted to the Court (especially criminal) is not necessarily the person who immediately commits the alleged criminal offense. It can also be charged to the press company. This kind of answer is known as "*Vicarious Liability*" (Wijaya & Palguna, 2015).

In Article 27 paragraph (1) of the Information and Electronic Transaction Law (ITE) and its accountability, the arrangements are regulated in Article 45 paragraph (1) which reads:

Any person who fulfills the element as referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) is sentenced to imprisonment of a maximum of 6 (six) years and/or a fine of at most Rp. 1.000.000.000, 00 (one billion rupiahs).

The article above explains the liability of press companies that publish news online, is contrary to article 27 paragraph (1). ITE Law Article 1 number 21 explains that a person is an individual, whether he is an Indonesian citizen, a foreign citizen, or a legal entity. This reason causes the press company to be subject to criminal sanctions, namely maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiahs).

Article 4 of the Code of journalistic ethics confirms that: "Indonesian journalists do not write false information, slander, sadistic, and repulsive news". The implications of journalist's norms are based on every journalist's conscience. Any person who writes false information, slander, sadistic, repulsive news, and plagiarism, etc., is considered performing violations of the law. Media or journalists who often violate journalism ethics will eventually get apenalty, whether it is moral or social, such as uninterested consumers and doubting the credibility of the media or reporters (Irman, 2014).

The threat of punishment for ethical violations is very relevant because it forces journalists to work closely considering any news that will be published, critically and ethically (Irman, 2014). The Press Council provides assessments and opinions on violations of journalistic code conducted by reporters or contributors of press media. However, the verdict and the execution of penalties for journalists and contributors because the offense can only be established and run by press companies whose media broadcast their journalistic works. For journalists, penalties could also be given by the organization where the reporter becomes a member.

CONCLUSION

Writing news which contain pornographic element could be counted as criminal liability. In Indonesia, the press criminal liability adheres to the responsibility system that has been described in the press law No. 40 of 1999. Press liability adheres to the principle of "fictitious accountability". The person in charge of the media is "fictitious" because the one who write the pornographic content is not the editorial leader, but rather someone else (journalist). The answering system of the press law may also be charged to the press company. However, the leader must be responsible or in other words, the person submitted to the Court (especially criminal) is not necessarily the person who immediately commits the alleged criminal offense. It can also be charged to the press company.

REFERENCES

- Cole, K. L. (2014). Pornography, censorship, and public sex: exploring feminist and queer perspectives of (public) pornography through the case of Pornotopia. *Porn Studies*, 1(3), 227–241. <https://doi.org/10.1080/23268743.2014.927708>
- Cucchiarelli, A., Morbidoni, C., Stilo, G., & Velardi, P. (2019). A topic recommender for journalists. *Information Retrieval Journal*, 22(1–2), 4–31. <https://doi.org/10.1007/s10791-018-9333-2>
- Drozdek, A. (2015). Media Ethics. In *International Encyclopedia of the Social & Behavioral Sciences* (pp. 42–47). Elsevier. <https://doi.org/10.1016/B978-0-08-097086-8.11017-7>
- Famaey-Lamon, A., & Van Loon, F. (1978). Mass Media and Sports Practice. *International Review of Sport Sociology*, 13(4), 37–45. <https://doi.org/10.1177/101269027801300403>
- Irman, S. (2014). *Law enforcement of the press*. Aswaja Pressindo.
- Marzuki, P. M. (2014). *Legal Research*. Jakarta.
- Mergenbaevna Zhussupova, A. (2015). The Problems of Activation of Creative Potential of a Journalist. *Asian Social Science*, 11(8). <https://doi.org/10.5539/ass.v11n8p133>
- Moeljatno. (2008). *Criminal Law Principles*. Jakarta: Penerbit Rineka Cipta.
- Robbani, V. B. (2016). *Juridical Analysis of Journalists' Responsibility for Defamation of Defamation (A Case Study of Defamation in the Radar Jogja Daily Edition 27 May 2002)*. Universitas Jember.
- Weckert, J. (1998). Sexual Content in Films and Television. In *Encyclopedia of Applied Ethics* (pp. 91–96). Elsevier. <https://doi.org/10.1016/B978->

0-12-373932-2.00407-5

- Wijaya, I. K. O., & Palguna, I. D. G. (2015). Liability for Press Crimes According to Law No. 40 of 1999 in the Criminal Act of Defamation. *Kertha Wicara: Journal Ilmu Hukum*.
- Wilkins, K. G. (2009). Hong Kong television: Same as it ever was? In *TV China* (pp. 56–67). Department of Radio- TV-Film, University of Texas, Austin, United States: Indiana University Press. Retrieved from <https://www.scopus.com/inward/record.uri?eid=2-s2.0-84895589008&partnerID=40&md5=05f054e033672d348b52d6588706e2a7>
- Wolfgang, J. D., Vos, T. P., & Kelling, K. (2019). Journalism's Relationship to Democracy: Roles, Attitudes, and Practices. *Journalism Studies*, 20(14), 1977–1994.