

Human Rights and Peace in Southeast Asia Series 4

CHALLENGING **THE** NORMS

Edited by

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The Southeast Asian Human Rights Studies Network (SEAHRN) is an independent consortium of academic institutions and research centres which provide human rights and peace education through study programmes, research and outreach activities within the Southeast Asian region. The Network, which was established in 2009, currently has 20 members from seven countries: Cambodia, Indonesia, Lao PDR, Malaysia, The Philippines, Thailand and Vietnam.

SEAHRN was born out of a common dream to enhance and deepen the knowledge and understanding of emerging and seasoned scholars, educators, researchers and advocates as well as other stakeholders from the Region about human rights and peace. The goal will be achieved by engaging in collaborative research, improving course curricula and study programmes, sharing of best practices and conducting capacity building training of educators, staff and students. Furthermore, it seeks to strengthen regional academic and civil society cooperation to sustain effective promotion and protection of human rights and peace in the Region. The Network desires to open its doors to interested institutions and individuals who share its vision for human rights and peace in Southeast Asia.

Human Rights and Peace in Southeast Asia Series 4: Challenging the Norms

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FOREWORD

This publication provides a delicate “hors d’oeuvre” of various tensions facing human rights, democracy, and governance in Southeast Asia and their interface with power relations in the political, social, economic and cultural fields. They range from misuse of laws by the State (alias the government of the day), attacking the enjoyment of human rights, to issues of justice/injustice, corruption, cultural relativism, intolerance and the financial seepage competitively polluting the exercise of rights and freedoms. The term “Southeast Asia” aptly invites critical analysis of its inherent heterogeneity, raising concerns for groups and individuals who are negatively affected by the homogenizing identity, policy and practice of the powers-that-be at both the national and local levels. Innately, there is a call for checks and balances against abuse of power, and the need to nurture human empathy through cross-cultural discourse and understanding.

In reality, they tempt us to invite even more analyses, for a fuller and more cathartic exposure in a continuum. A key role for analysts of and from the region (and beyond) who will never be redundant! The reader is challenged by the promise of an evolving, plural narrative – divergent, convergent, emergent.



Vitit Muntarbhorn
Professor Emeritus of Law,
Chulalongkorn University, Bangkok. 2015.

A NOTE OF GRATITUDE

The names of the editors on the cover of this book is misleading. That is not to say that the editors did not do their work; on the contrary the editorial team has strived hard to complete this latest edition to our series. It is misleading because it implies that they are the only ones involved in the process of producing this book. The fact is a large team of people are involved. This is especially true in the screening process where SEAHNRN members collectively go through the many papers that we have and then select the ones we think are most suitable for publication here.

Therefore it is with gratitude and much appreciation that we acknowledge the following people:

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Together we have once again demonstrated the team work that characterises SEAHNRN and what can be achieved with it. Long may it continue!



Azmi Sharom
Chief Editor

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NO ROOM FOR JUSTICE? WHEN THE COURT IS USED TO ATTACK JOURNALISM IN DECENTRALISED INDONESIA

R. Herlambang P. Wiratraman

Freer situation in post Soeharto's decentralised Indonesia does not automatically affect local journalists and press who have been facing brutal attacks or violence. The court for justice is still far away from reaching and protecting journalists. Yet, the internal pressure from media owners or editors to withdraw the case leaves frustrated journalists alone to get more legal protection.

Injustices situation are caused by two major problems, which are the weak judicial protection system and the pressure from political-economy power alliances who secure their vested interest by deploying hired gangsters in attacking the press.

Therefore, avoiding the court is a serious matter for journalists to consider whether or not they bring justice before the judicial system. This is not always related to distrust over the judicial system, but it is more a 'forced situation' (situasi keterpaksaan), and it might lead to the systematic of impunity governance. The paper dissects to what extent avoiding the court could be fairly considered as possible justice for journalist in the context of decentralised Indonesia.

1. Introduction: Decentralisation as Context

Journalists in Indonesia often opt to avoid the court while seeking justice as a form of limitation on their freedom of press. This is happening despite all the talk about increasing press freedom since the end of the Suharto regime in 1998. While journalists should indeed enjoy greater press freedom, they increasingly face substantial risks when reporting critically about the possible monkey business by business people and politicians. In the regions where decentralisation and limited democratic monitoring are supposedly providing greater margins for corruption, journalists often face threats of violence and brutal attacks. On top of that, pressure from media owners and the editors to withdraw cases due to fear leads to a very frustrated working position or journalists and limits their attempt to obtain legal protection. While Indonesia's legal reform is widely acclaimed both nationally and internationally, the fact that justice is still a long shot for many journalists is worrying as it affects the way they work and eventually shapes the content of news reports about developments in the regions.

As a result of the factors above journalists working in the region cannot believe such statements by President Susilo Bambang Yudhoyono that the media is enjoying excessive freedom (*perskebablasan*). On 3 June 2010, during the 4th celebration of *Jurnal Nasional* newspapers, the President stated that "before reformasi, press freedom has been fettered or deficit. But now after reformasi, press freedom is working well, and even enjoys a surplus". At the same time, a communication professor, Tjipta Lesmana, spoke in the major Indonesia daily *Kompas* of an 'overdose' of press freedom. According to Tjipta Lesmana this "overdose' of press freedom is inseparable from the problem with its underpinning law that was drafted during legislation-making when Indonesia, after President Suharto, was intoxicated by freedom" (*Kompas*, 9 December 2010).

In stark contrast with such statements by state officials, journalists see that press freedom is in fact scarce, that it is only offered at a minimum level, and that it is still in many ways perilous. As a result, in the daily practice of their work they often face injustice. This injustice has so much to do with two key problems. The first is the weak judicial protection system and the second is the pressure from political and economic power alliances that are keen to secure their vested interests by deploying privatised gangsters to attack the press. In this situation, instead of seeking justice through the legal system, avoiding courts has become a strategy for journalists to steer free from intimidation and violence.

In this article, I will show that the contemporary limits of press freedom in Indonesia cannot be separated from the politics of decentralisation in Indonesia's during the post-Soeharto era. Due to the devolution of previously centralised state power, political configurations in the regions shifts not only from centralised to decentralised system but also through involvement of powerful coalitions of interests at national and sub-national levels of governance. Hadiz (2007) appropriately labels these coalitions as 'predatory elites'. In practice it means that certain powerful elites engage with 'privatised gangsters' who help

to safeguard a set of local predatory systems of business and political power relations (Hadiz 2010). Wilson (2006) points out that the related proliferation of paramilitary and vigilante group post-1998 is a manifestation of the decentralisation of violence as a political, social, and economic strategy which seriously limits the sovereignty of the state. In relation to the media, Romano (2003) suggests that to understand the Indonesian press, it must be situated in relation to the evolving political culture, which is, as we have seen, heavily influencing press freedom. So while the role of the government in legislating and effecting press freedom has been still intense and strong, the power of predatory elites at local level has been significantly affecting the situation.

In the evolving situation, it is hard for the media to gain access to justice. Instead of accessing justice through the judiciary, journalists tend to avoid the court because journalists distrust the judicial mechanisms and they are aware of the lack of protection system to them provided by the state. However, this paper will argue that avoiding the judiciary does not always relate to distrust over the judicial system, but instead more to what journalists themselves call a 'forced situation' (situasi keterpaksaan). Below I will show that this forced situation leads to systematic impunity and this begs the question to what extent journalists consider avoiding the court as a possible avenue to achieve justice.

2. Courts as a Means of Intimidation

Post-Suharto Indonesia is experiencing gradual political democratisation, especially with respect to electoral processes. This democratisation has led to the progressive adoption of numerous international human rights instruments in newly legislated national laws. The court system has also been subjected to reformasi and as a result many judicial reform programs were focused on the Supreme Court. The judiciary's power structure and its position in society has been changed from being a key instrument in support of the New Order regime to a more balanced executive and legislative power relation to civil society. Yet there are still several problematic issues such as access to court decision and judicial corruption (Pompe 2005a; 2005b). The extent to which these problems affect justice seekers can only be assessed by looking at some concrete cases. In this section I will explore the limits of the provision of justice experienced by journalists to illustrate the effects of a still poorly functioning judiciary in particular the significant margins available to politicians and corporate individuals to affect judiciary processes.

Nearly all journalists in Indonesia would agree that lawsuits against journalists or media firms are a means of intimidation rather than reflection of a fair process of judiciary mechanism. This has been quite often stated by many journalists, reporters, or even media owners in Indonesia.¹ They all share this opinion in response to the lawsuits.

1 Abdul Latief, a Mataram journalist, interviewed on 1 September 2009; Rika Yoez, a Medan journalist, interviewed on 28 June 2010; Tjunding Levy, a Papua journalist, interviewed on 29 April 2010.

There is overwhelming evidence that journalists have been often seriously threatened with this kind of lawfare. As written by Luwarso (2005), Press Council observed that the use of court, although it is allowed by the law, is one of threats against press freedom. Journalists call it ‘gugatan yang tak masuk akal dan sekadarditujukan untuk melawan pers bebas’ or ULAP (‘unjustifiable lawsuit against press freedom’) (Wiratraman, 2014).

The concept of ULAP is inspired on Reporters Without Borders news (2008) on ‘Unjustified lawsuits by church against press condemned’ on 21 February 2008. That news item reported that followers of the evangelical Universal Church of God (Igreja Universal do Reino de Deus) had filed dozens of lawsuits against the media.

Actually none of Indonesia’s journalist mentions about such particular concept; however, they really felt the abuse of lawfare in attacking press. Therefore, this writing introduces ULAP as a concept in defining such situation.

Much earlier, the idea of unjustified lawsuits was coined by Canan and Pring (1988: 507, 515) as SLAPP or Strategic Lawsuits against Public Participation. Canan and Pring (1988) used SLAPP to refer to instances of the court being used as a ‘political retaliation’ instrument or as a weapon in social conflict. Law as a social conflict was originally also written by Turk (1976). Thus, a ‘ripple effect’ from the folklore surrounding SLAPPs may discourage political participation by other citizens and groups (Canan and Pring, 1988: 515). Hence, in the context of press or journalism works, lawsuits against press have a significant influence to restrict and limit its freedoms.

ULAP in the case of Indonesia is clearly an ‘intimidation strategy’ used to silence the press and force the media companies to run its journalism in such a way that it does not disturb the interests of key stakeholders in the region. The ULAP concept is necessary for defining the concept of ‘unjustifiable’ lawsuit, which may help journalist to consider any legal actions, and it looks like not only against the media but also freedom of the press in the country. During the fieldwork that underpins this article, I have identified five elements of ULAP in relation to the way it affects the way journalists conduct their work. The first is that ULAP is directed against professional journalism. Second, lawsuits against journalists are intended to collapse news media or even jailing all press workers. Third, the lawsuit is by and large a threat that has retaliatory motive and is not based on ethical evaluation and lacks a strong moral foundation. Fourth, the lawsuit is accompanied by others acts of intimidation like destroying press offices and/or beating journalist or editor. Finally, the lawsuit mostly originates from the corner of a certain political-economy interest (Wiratraman 2012; 2014).

The court cases of Tomy Winata v. Tempo Inti Media Inc. (2003) and Raymond Teddy v. seven medias (2010) illustrate ULAP in practice. Tomy Winata is a tycoon and (in)famous businessman in Indonesia. Winata owns a number of banks and hotels and he is also the Vice President Commissioner of Artha Graha Bank. One of his many support groups was

mobilised to physically attack Bambang Harymurti, a journalist working for Tempo in a Police Office, on 17 May 2004.² Following that incident Winata filed two lawsuits against Tempo Inti Media Inc (magazine and newspapers). Specifically, Winata sued Tempo in relation to the article entitled “Is there Tomy in Tenabang?” that was published on edition 3-9 March 2003, page 30-31. The article detailed the role of Tomy in burning Tanah Abang market. Winata argued that this is slander, in particular where the allegation is made that Winata was involved in submitting a proposal for the renovation prior to the fire. Winata’s lawyer presented the case on 5 June 2003 and demanded compensation for material losses amounting to IDR100 billion (around AUD9.3 million) and compensation for immaterial losses amounting IDR100 billion (around AUD9.3 million). Undoubtedly, such huge amount could make Tempo collapsed, if the court decision is in favor to Winata’s lawsuit. Therefore, the use of lawfare in this case is part of the way to silence press freedom.

In a slightly different way the case of Raymond Teddy v. seven medias also illustrates the dynamics of ULAP. The seven media’s brought to court here include seven medias included: SuaraPembaruan, Republika, Detik.com, Harian Sindo, Kompas, Warta Kota, and RCTI. Raymond, a businessman, was allegedly ‘injured’ by the media news about him gambling in a star hotel in Jakarta in October 2008. At the time, Raymond was on ‘suspected status’ in a pre-trial process and facing criminal indictment because of involvement in gambling businesses in Jakarta. Raymond fervently disputed the news that he had been arrested by the police and stressed that he was not guilty while the press informed him like he was found guilty. Raymond then filed the rather insulting cases against seven medias into four split lawsuits in four District Courts. He asked the court for compensation from those medias. The amount of compensation varied from one to other medias but was excessive. Suara Pembaruan, for instance, was sued in the East Jakarta District Court and requested to pay USD 3 million for damages. In the South Jakarta District Court, Republika newspapers and Detik.com were sued up for USD3.5 million in damages. Harian Sindo (Seputar Indonesia) was to pay USD2.5 million and was sued in the Central Jakarta District Court. In the West Jakarta District Court, Kompas, Warta Kota and RCTI were sued for USD16 million in damage. At the end of these cases, all lawsuits were refused by the court; and this meant that press was protected by judiciary decision.

As we have seen, the two ULAP cases above were dismissed at all levels in the judiciary. Although the media and thus the journalists won the cases, these lawsuits sent clear message to the media that it was possible to attack professional journalism instead of supporting press freedom in democratising Indonesia. In this respect it is important to note that both cases happened in Jakarta and that in the political environment of the capital the legal position of journalists received strong support from their editor, the director of the media company and from a professional lawyer. At the same time, massive support came from solidarity groups including other journalists, their organisations, and also civil society groups that are keen to support press freedom. This may all sound good, but the

2 “Penyerangan Kantor MBM Tempo”, Tempo Interaktif, 17 May 2004, <http://tempo.co.id/hg/time-line/2004/05/17/tml,20040517-02,id.html> (accessed on 11 October 2013).

mere fact that so many law suits were brought against journalist and media companies by powerful business leaders is indicative of a change in politics and the use of the legal system therein. While the success rate of ULAP to silence critical media may be limited in Jakarta because of the presence of critical, well-organised and powerful civil society, the growing frequency of related law suits is sending clear signals to the media that they have to reckon with business people and politicians who align with them.

In contrast, in the regions outside of the nation's capital we hardly hear of such success stories. There we see a different dynamics of ULPA evolve, especially where elite power alliances strongly shape the political economy. Such power alliances have seen massive growth over the last decade with the growing freedom of investment and politics at the regional level due to reformasi's devolution of central state power. In contrast to the situation during President Suharto's authoritarian regime, Indonesia is commonly, in particular among foreign Indonesia watchers, believed to move towards democratisation, yet on the ground many see that this promise is far from being fulfilled. As seen above, severe attacks by means of court cases and threats with violence against the media are common nowadays. We may conclude that press freedom is in a perilous state. Heryanto and Hadiz support this when they write "freedom of the press continues to be challenged not by an authoritarian state but by a variety of vested business interests or by the exercise of societal political violence"(2005: 261).

In many of the regions where resources heavily affect the political economy ruling elites have become predatory and appear keen to undermine the rule of law and often do not hesitate to deploy gangsters to secure their vested interests (Klinken and Barker, 2009). With respect to what this means for press freedom and the position of journalists is hardly highlighted and appears to be a rather complicated matter. The key elements involved are quite simple: predatory elites use the law and courts as weapons to attack journalists and press. How the picture is more complicated will be discussed in the following section.

3. The Attacks and Impunity

In the regions, the situation of press freedom is really bad. In 2006, the first journalist was killed. Herlyanto, a journalist of Delta Pos daily in Probolinggo, was found dead with stabbing wounds all over his body on 29 April 2006. The motive behind the murder was Herlyanto's report in Delta Pos on corruption by local bureaucrats.³ In September 2006, the murderer was arrested and he turned out to be hired by the head of a project who had marked up government budget for its projects. The next incident is the murder of Radar Bali's journalist Anak Agung Narendra Gede Prabangsa. The case is widely known as the Prabangsa case. Prabangsa was killed because of his news report on corruption issues in Bangli District Government, especially at Education District Office. From the start the

3 Alliance of Independent Journalist (AJI) investigation concluded that the killing was related to news which has involved numerous village authorities ("AJI Malang Yakin Herlyanto Tewas Akibat Pemberitaan", Gatra, 8 October 2006).

case was really complex and it appeared hard to be pushed into legal responsibility. A major factor here was that the actor behind the killing was a member of parliament who is also the brother of Bangli's District Mayor, I Nyoman Susrama. Due to solidarity and support from various levels, not just from journalist associations but also numerous non-governmental organisations, political parties, and media itself supported the unraveling of the Prabangsa case, the police continued its investigation. This eventually led to the sentencing of Susrama while another five other killers were sentenced to imprisonment.⁴ So while the perpetrators in the Herlyanto case still enjoy impunity, the killers of Prabangsa have faced justice.

The case of Prabangsa is clearly an exception to an ever-growing list of acts of violence towards journalists including outright murder. In 2010, the torturing of *Harian Aceh's* journalist Ahmadi in Simelue (18 May 2010)⁵, the intimidation of Ardiansyah Matrais in Merauke, Papua on 30 July 2010,⁶ and the killing of Ridwan Salamun in Tual, Maluku (21 August 2010)⁷ are among the most prominent recent stories that evidence suppression of press freedom in Indonesia. *Harian Aceh* journalist Ahmadi could only bluntly conclude that "journalists in Indonesia live in an inhumane jungle!"⁸ Earlier, Ahmadi was brutally beaten up by military officers in Simeulue Island, Aceh, after reporting on illegal logging business by the military.

These cases raise a number of important points. First of all, besides the issue of corruption, it is necessary to be noted that the issue of natural resources exploitation at local level has become a hazardous subject for journalist to report about. The cases of Ahmadi in Aceh and Ardiansyah Matrais in Papua illustrate this painfully. From this we can conclude that journalists working region rich in natural resources must consider local elite connections between government officials and business actors and the potential risk those alliances may bring to the media. Second, the actors committing violence are 'non-state' actors; the

4 In September 2010, the Supreme Court decision strengthened the decisions by the District Court and High Court. Nyoman Susrama was sentenced for life imprisonment; I Nyoman Wiradnyana while I Komang Gede, and I Komang Gede Wardana were imprisoned for 20 years; and I Dewa Gede Mulya Antara and I Wayan Suecita were punished for 8 years in jail. The Supreme Court judges were chaired by Artidjo Alkostar, with panel members Imam Harjadi and Zaharuddin Utama.

5 Ahmadi has reported illegal logging in Simeulue which involved military personnel, Faizal Amin. He was convicted guilty of grievous assault against Ahmadi. The Iskandar Muda Military Court in Banda Aceh has sentenced a former military intelligence officer to 10 months in jail for such attack.

6 Matrais is a reporter for the local Merauke TV and in his reports he has covered the controversial plans for a large agribusiness development in Merauke. In the week before his death, Matrais received threats in text messages similar to those sent to at least three other local journalists: "To cowardly journalists, never play with fire if you don't want to be burned. If you still want to make a living on this land, don't do weird things. We have data on all of you and be prepared for death" ("*ArdiansyahMatrais, Merauke TV*", CPJ, 2010, <http://www.cpj.org/killed/2010/ardiansyah-matrais.php>, accessed on 21 March 2011).

7 Ridwan Salamun, 28, a correspondent for Sun TV, was filming violent clashes between local villagers in the southeastern Tual region of Maluku when he was stabbed repeatedly.

8 Ahmadi, journalist for the *Harian Aceh* newspapers, interview, 5 July 2010.

acts of violence are never done directly by members of the elites themselves. In short, the violence against journalists in the regions is significantly related to contestations in the political economy, rather than that it has to do with politics in the centre or policies developed at the national level.

While political and economic stakeholders are the main force behind limiting press freedom in present-day Indonesia, the judicial process that ought to be applied to alleged violations of information by journalists is not applied by the press itself. The press in this regard are the media owners, the editors, and the journalists association. In other to explain this reluctance I will discuss three examples: the 2007 case of Pertamina, the state's oil company in Mataram, the case of the Adam Malik Hospital, Medan in 2010, and the case of Kemenag in Pamekasan in 2012.

The first case tells the story of a Pertamina officer who is not happy with the writing of a journalist in Mataram. Sadikun Syahroni, the Head of Pertamina intimidated four local journalists from the Lombok Post, Suara NTB, NTB Post and Radio Global who attended a Pertamina press conference about fuel scarcity in West Nusa Tenggara. Syahroni pointed a gun at them and threatened the journalists with a sickle during the press conference. This misbehaviour was reported to the police, but that this was not producing any prosecution against Syahroni. The journalists said that the role of Indonesian Journalist Association (PWI) is lobbying this case in order to drop or to discontinue judicial process.⁹

The second case is similar to the first in that it also concerns intimidation not followed by legal action. The case is about a doctor working in Adam Malik Hospital, Medan who intimidated five TV reporters, such as from TPI, TVOne, and Trans 7 on 7 February 2010. The doctor, who has a military background, was assisted by a paramedical and hospital security guard. The doctor allegedly locked the door of his office when the journalists were trying interview him on alleged malpractice. While not being able to get out of the office, the security guards and the paramedical intimidated the journalists to prevent them from reporting on the malpractice. Those journalists and several journalist associations reported the incident to the police, but this eventually resulted in an agreement between journalists and their media and doctor and hospital manager to discontinue the judicial process. It was unclear how they could settle the case and discontinue judicial process, since the process was not transparent. A number of other journalists and their media associations argued that the fact that the media was pressured into a so-called 'win-win solution' is shocking because the attack against journalist was too serious to culminate in a compromise. They argued that this undermines the law and degrades press freedom.¹⁰

The third case is about the Head of Pamekasan's District Office of Religious Affairs, Mr. Normaluddin, who threatened to kill journalist Sukma Firdaus after he reported about a

9 Personal communication with two journalists (anonymous), and interview with them in Mataram, 24 June 2010.

10 Personal communication with a journalist (anonym), in Medan, 29 June 2010.

corruption scandal in Normaluddin's office on 15 December 2012.¹¹ Soon after the threat a lot of protest by journalist associations in Surabaya and other regions in East Java against Normaluddin took place. Journalists asked the police to conduct an investigation and to be brought before the court. Nevertheless, in the process of preparing the court case, the Press Council and involved parties organised a meeting in Surabaya on 11 March 2013 during which it was decided to settle an agreement and discontinue the court procedure. The meeting resulted in a three-point agreement. One of the points was that "Kedua belah pihak sepakat menyelesaikan kasus ini dengan saling memaafkan dan kasus hukum di anggap selesai" ("both parties agree to solve the case by apologising to each other and that legal action will not be pursued"). Firdaus found this agreement unacceptable as he saw it as unjust.

In my heart, I would like such a case to be brought before the court. Agreement might be necessary considered if the court decision has been taken first. Since I am working at a press company, I of course have to obey the company's policy otherwise it would ruin my career as a journalist. Hence, I do not have any choice. To me, discontinuation of legal process is a form of injustice to journalists. I hope that this case teaches the violator and is good that he had admitted his failure and that he promised to never pressure journalists again.¹²

This shows that avoiding the court is in principal not an option for journalist, but that it is a situation that journalist are forced to accept. It is an injustice they have to live with. Accepting such injustices is a common element in Indonesia's freedom of press. It leads to complicated dealings between journalists and political and economic stakeholders and does not allow journalist to report to the public what is really happening in their country. At the same time, journalist work for low salaries and hardly enjoy protection while their companies are poorly managed and tend to avoid court process because there are expensive, time-consuming, and unlikely to acquire decisions that favour them.

Impunity for the perpetrators is this not only caused by factors outside of the media; they also result from the attitude in the media. It is now common that the media owner and even the journalist associations interrupt press legal cases and pressure the journalists to discontinue the case and request a settlement of the case before it reaches the court. This puts the journalists in a predicament: he either discontinues the case (gives in to pressure from the boss) or loses his job. We may conclude that their struggle for justice through the state legal system is hopeless.

As I found at the regional level nearly all journalists say that if they make an investigative report on corruption or illegal business they not only to be ready to compromise their professionalism as outlined in the Press Code of Ethics (Kode Etik Jurnalistik) but also

11 "Diancam Dibunuh, Wartawan Madura Unjuk Rasa", *Tempo*, 20 December 2012, <http://www.tempo.co/read/news/2012/12/20/058449447/Diancam-Dibunuh-Wartawan-Madura-Unjuk-Rasa> (accessed on 14 March 2013).

12 Sukma Firdaus, interview, 2 April 2013.

to be ready to face the media company. The promise and likelihood of protection from editors and media owners become important factors to ponder before journalists write about corruption and dodgy business deals.¹³ If their assessment of risk is not done properly and someone is annoyed by the report, journalists and their media companies may face violent attacks.

4. Room for Justice?

As indicated above, journalists in Indonesia feel that since reformasi they should be enjoying more press freedom yet because of growing list of violence against the media to curtail its criticism of politics and business, they have to live with fear. Because bringing those who limit the freedom of the media to court only increases the chance of getting shut down, suffering from violence or even getting killed—which is how far those with vested interested are willing to go—most now consider the court as incapable of providing justice. In light of the legislation on press freedom, the kind of justice sought can be delivered, but the pressure from vested interested prevents it from being dispersed. Justice in this context is both about freedom to work as a journalist according to media ethics as well as the protection of those doing journalistic investigation and reporting to the public.

The case of Adam Malik Hospital in Medan and the case of threatening journalist by showing a gun in Pertamina office in Mataram are instances for avoiding criminal procedure mechanism. It is quite strikingly that journalists or editors as victims hesitantly desire [formal] ‘justice’ in solving press legal cases. Their beliefs actually reflect how they see ineffective legal system that cannot protect them.

My findings overwhelmingly indicate that neither journalist nor editor or the media venture brings the violation of press freedom before the court, because they believe that it would only further deteriorate their freedom. There are two possible ways to explain this. First, journalists believe that the violators are not well educated and thus poorly understand the legal rulings for solving the matter. On the one hand, sentencing them to imprisonment will then only lead to increasingly severe acts of retaliation. On the other hand, it is argued that if they face justice they might learn about the rule of law and come to understand the importance of the press for a democracy that is coming of age. In the practice that is currently evolving we see that the journalists are forced to accept what is often called a ‘peace agreement’ (*kesepakatan damai*), as if there is a war between two belligerent parties. The agreement is on paper and the journalist is forced to sign it to avoid any violence against him. While effectively curtailing the journalist from reporting any further on the case, an act of violence against them by the other party would mean a breach of the agreement which can be brought before the court.

13 Interview with a journalist in Mataram, 24 June 2010 and interview with Damyanus Ola, editor of Pos Kupang, 22 July 2010.

However, and this is the second point, the ‘peace agreement’ is not between the journalist as an individual and the person who threatens him but between journalists and professional entities, groups, firms, government departments, and communities. If an individual journalist sets an agreement in such situation, it has been always found that the media owners were involved in forcing the journalists. For example, in the case of the Adam Malik Hospital recounted above, the agreement that was forced upon the journalist included two key parties: the media company and the hospital. Another example is the case between a taxi driver association and the Independent Journalist Association (AJI Bali) in Denpasar. In that case a number of journalists were beaten up and their cameras were destroyed by taxi drivers. AJI Bali opted for ‘peace agreement’ with the Taxi Driver’s Association since the majority of people in the association feared thought that the agreement would establish friendship with ...and that new relationship would improve press freedom.¹⁴ From these cases we can conclude that in the attempt to preserve press freedom at the regional level in Indonesia, non-legal reasoning is applied to seek some level of justice.

This, however, does not mean that all journalists and all media companies agree with this strategy. Many see it as a compromise and they are in fact aware of and highlight the ineffectiveness of the judicial system and they distrust this system as well. The other factor they discern is or even distrust of judicial mechanism and lack of protection are the most serious problems for journalist or editor to deal with the court or other judicial processes. Avoiding the court proceedings, from this point of view, is deemed as unjust and in fact paving the road to structural impunity for those who do not like their dealings to get exposed by the media. Indeed, if a journalist is being examined as a witness for a judicial proceeding that would take up so much of his time and become very intrusive to his work. Regardless of the issue of a fair or unfair judicial system, engaging in the judicial system particularly when it comes to criminal proceedings is a serious burden for a journalist. Criminalisation of journalist in this context would be a more serious problem for journalists, and that would be detrimental situation for press freedom.

Another interesting aspect of avoiding the court relates to lawsuit mechanisms. Rather different to criminalisation, civil lawsuits are more acceptable to journalists to solve press legal cases, especially after the ‘right to reply’ (the person or persons to give response or rebuttal to the preaching of the fact that adverse name good) or the ‘right to correction’ (a necessity to make corrections or errata to any information, data, facts, opinions, or images that are not true that reported by the press in question) mechanism is applied. Although it is not stipulated explicitly in the Press Law No. 40 of 1999 (Press Law), the civil court mechanism is only the last resort when its mechanism and the mediation process through the Press Council have failed or are unsatisfactory. Hence, the role of the civil court in examining a press legal case is important and necessary. However, at this point the use of private law should reflect its goals and should not just be based on the goals of private law but also on a consideration of the extent to which such goals are important

14 Bambang Wiyono (Nusa Bali daily), interview, Denpasar, 27 July 2010; Rofiqi (Chairperson of AJI Bali), interview, Denpasar 28 July 2010.

in protecting private rights and securing press freedom in its function of control. In this regard, the public dimensions of private law must be considered when anti-press legal cases are examined. If not, the civil court mechanism would allow for a repressive mechanism instead of a protective one.

During the fieldwork that underpins this article, I found several reasons why they journalist felt attacked by the lawsuit.¹⁵ The most serious problem that is also commonly faced by journalist is that the lawsuit is accompanied by a request for a significant amount of compensation money. As most journalists receive low salaries and have limited contractual security, this is stressful. Even for the media companies paying a lot of money for compensation may lead to their bankruptcy.¹⁶ Another reason is that the lawsuit could trap a journalist in a situation of structural threat. According to the Press Law, a journalist is not directly and personally liable, but it would be getting worse situation if editors also divert the burden of responsibility to the journalists. Another reason is that the judicial process mostly takes very long, often become complicated and thus even more time-consuming and costly.

In this respect it is interesting to recount a case of five journalists¹⁷ who were sued by Agus Budiarto, the Head of the Institute for Airport Affairs and Stewardess Education and Training (LPPKP), in Mataram, West Nusa Tenggara, in 2011. The journalists reported that the certificate of the school is not recognized by the Department of Education. Therefore, LPPKP alumni questioned whether they could be recruited by the new International Airport in Mataram.¹⁸ Budiarto alleged that the journalist degraded his reputation and defamed him and reported the matter to the police on 5 July 2011.¹⁹ Besides criminalising the journalists, Budiarto, also a law school lecturer, filed the lawsuit to District Court in Mataram.²⁰ Budiarto demanded that the five journalists pay IDR1 billion (AUD93,000) each. Beside asking for such high monetary compensation, Budiarto required the court to demand the press to apologise in their forums for a period of three months.

15 The lawsuit is considered as an attack since it has many consequences for journalists who do journalism works. Journalist must be dealt with court process which takes time and energy, and of course it would bother their daily works. The situation becomes worse if the media management or editor does not protect them from such lawsuits. Moreover, those journalists who does not have 'permanent status' or 'permanent employer/staff', such as contributor, correspondent, and stringer, they are not fully protected by editor or management (media owner)(interview with group of journalist at AJI Mataram office, Mataram, 25 June 2010. This fact was also mentioned by many journalists when they told their story during "Press Legal Training for Journalist" in Surabaya, 4-5 August 2012 and in Kediri, 11-12 August 2012 (LBH Pers and AJI Surabaya/Kediri).

16 However, learning from these cases above, their asking compensation through civil court mechanism has been likely to be unsuccessful in the end.

17 Febrian Putra (Lombok Post), Aris (Suara NTB), Helmi (TVRI), Ahmad Yani (RRI) and Sudirman (Lombok Post).

18 Puluhan Alumni LPPKP Pertanyakan Kejelasan Nasib", Lombok Post, 10 May 2011. "Lulusan LPPKP Mengaku Tertipu", Suara NTB, 10 May 2011.

19 This was registered in Mataram District Police No. 576/ SPK. Mtr/2011/Res, 5 July 2011.

20 This was registered in Mataram District Court No. 76/PGT.G/2011/PN MTR, 23 June 2011.

Because it soon became apparent that there was not protection for the journalists, this lawsuit led to a shockwave through the world of journalists in Indonesia. One of the affected media companies said that the court process would be too lengthy and too costly, and that it could disturb and create more problems for them. When they were asked whether in principle they agree to solve the case without bringing to the court process, the journalists answered that they did not fully accept the idea of discontinuing such legal case. However, for continuing the private law case they would need to hire a lawyer, make available time, and spend considerable energy on the fight in court.

Eventually the Budiarto's case was discontinued through a 'peace agreement' that was made among parties. Although the lawsuit against journalists was withdrawn, this case indicates that avoiding the court is not a matter of distrust in the judicial processes but about weak protection of journalists, especially in using court as a 'justice room'. This situation is likely similar to the one in India where the main challenge to press freedom seems to be the self-interests of press owners and the lack of financial independence of the press (Yin 2011: 32). In conclusion, press freedom in the period following the end of authoritarian regime of President Suharto is rather vulnerable. Discontinuation of the judicial processes in the context of decentralised Indonesia occurred when the growing numbers of local media have been massively established without increasing its capacity to professional journalism. It may be important as well to see that such illustrated cases were revealing the capital and political configuration rather than the issue of effectiveness of law. Hence, the phenomenon of avoiding the court clearly led to increasing impunity in decentralised Indonesia.

5. Further culture of impunity: Some concluding remarks

Decentralisation in the context of post Soeharto has new implications, which are related to journalism and press freedom in general. Albeit journalists and the media companies have benefited greatly from the 1999 Press Law and the political context of post authoritarian regime where they supposedly enjoy significantly more freedom, journalists, especially those who work at local level, still suffer from injustice.

First, decentralisation makes more possible violence and various attacks against journalist and editors, including the increasing number of lawsuits which are filed to intimidate and even to collapse journalism.

Second, there has been a new phenomenon that journalists prefer to drop cases or avoid courts in order to survive in its journalism works. Actually, avoiding the court is not always acceptable for journalists, since it would do more harm in terms of judicial uncertainty and the possibility of structural impunity. However, bringing justice to the court would also mean more intimidation for them, either pressures from external, especially 'predatory elites', 'privatised gangsters', or internal media, from editors or media owners. The majority of press companies in Indonesia even do not have lawyers on board who could secure

the position of their journalists. Hence, it is not just about distrust of the court process, a factor that is often mentioned in relation to Indonesia's notoriously complicated routes to justice. Avoiding the court is also a consideration because of the fear of tycoons, bureaucrats, and the vigilantes who they can mobilise.

Third, it is rather a fear situation for journalist to bring justice to the court. Because of the lack of protection journalists have to continuously ponder the risks of their work and consider applying self-censorship. It is fair to state that press freedom is deemed by journalist at local level as 'freedom on paper' only (*kebebasan cuma di atas kertas*).

Fourth, while having such legal-political context, several legal cases have been settled by using compromises outside the court or judicial mechanisms. Unfortunately, such settlement allows situation which evolves and continues the extent of alliances between politics and business.

Learning from press legal cases, injustice in decentralised Indonesia has significantly amplified restriction of press freedom in the new pattern, especially with a creation of further culture of impunity.

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At this juncture of imbalances in terms of democratisation and socio-economic development, it is imperative that we remain vigilant in inquiring and assessing structures, cultures and actors who have the power to impact millions of lives in this Region. "Challenging the Norms" is an homage to critical engagements and discourses initiated by those who believe in a more rights and peace-embracing Southeast Asian community.