

Application of the Right of Refusal and Legal Liability in Journalistic Cases

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ABSTRACT

This study aims to analyze the application of the right of refusal by journalists and the legal liability arising in journalistic practice in Indonesia. The right of refusal is the right of journalists to protect the identity of sources who provide confidential information. Although regulated in Law No. 40/1999 on the Press, implementing the right of refusal often faces challenges, especially in criminal and civil law. This research uses a normative juridical approach by analyzing laws and regulations, case studies, and relevant court decisions. The results show that law enforcement officials have not fully recognized and respected the right of refusal, and they often force journalists to reveal the identity of sources. In addition, journalists often face lawsuits for their journalistic work, even though they have met the standards of professionalism and the journalistic code of ethics. This study concludes that protecting the right to refuse and legal certainty for journalists needs to be strengthened through revision of regulations, increased legal awareness, and consistent enforcement of the code of ethics. Thus, press freedom can be guaranteed without overriding balanced legal responsibility.

Keywords: Right to Reject, Journalist, Legal Liability.

I. Introduction

The right of refusal by the press refers to the media's ability not to publish information deemed inaccurate, potentially harmful, or violating journalistic ethics. This is part of the responsibility of the press to ensure the integrity and truthfulness of the information conveyed. In the application of the Right of Refusal by the Press in Indonesia, it can be seen that the Right of Refusal, or the right not to disclose the identity of the source, is very contrary to the values or rules that exist in Indonesian Criminal Law (Virgiawan et al., 2024). When examining the impact of the application of the Right to Refuse, it can be seen that there is a conflict between the application of the Right to Refuse and other legal principles, so this must be taken seriously by the government so as not to reap the pros and cons that can lead to legal uncertainty in the application of the Right to Refuse by the Press in Indonesia.

Applying the right of refusal and legal liability in journalism is an increasingly important issue amid the challenges journalists face in the modern information age. Journalists often face a dilemma between protecting the identity of sources who provide crucial information and fulfilling legal responsibilities to present accurate and ethical news (Prasetya & Mardijono, 2024). In Indonesia, where press freedom is often threatened by political and social pressure, the right of refusal protects journalists and news sources. However, uncertainty regarding applying this right can inhibit sources' courage to share important information,

impacting society's transparency and accountability. These issues create an urgent need to understand how the right of refusal and legal accountability can be applied synergistically in journalistic practice.

Existing literature shows that while the right to refuse is recognized in various international conventions, its implementation is often hampered by ambiguous regulations and pressure from authorities. Previous research has often focused on one aspect alone without considering how the two can complement each other. This study explores and analyzes the dynamics between the right of refusal and legal liability in journalism in Indonesia, focusing on the practices and challenges journalists face. Through qualitative methods that include interviews with media practitioners and analysis of relevant regulations, this research aims to provide new insights into how journalists can navigate these challenges and suggest better policies to support ethical journalistic practices. By understanding the relationship between the right to refuse and legal responsibility, it is hoped that solutions can be found that increase public trust in the media and ensure the sustainability of responsible journalistic practices. Based on this study, we argue that a more vigorous application of the right of refusal and a better understanding of legal liability can improve the quality of reporting and public trust in the media. This research makes a significant contribution to the development of journalism science. It offers practical recommendations that can assist journalists and policymakers in creating a more conducive environment for press freedom. As such, identifying this research's problem and objectives is crucial to understanding the complex interactions between the right to refuse, legal responsibility, and journalistic integrity in Indonesia.

II. Research Method

The research method applied is normative legal research, which focuses on tracing and analyzing the applicable law. Data collection techniques are carried out by collecting legal materials through searches and studies of books, literature, laws, and regulations, as well as the results of previous research and documentation relevant to the issues studied.

III. Result and Discussion

3.1. Application of the Right to Reject in Cases

Applying the Right to Reject in journalistic cases is a grant of special authority that cannot be debated. In practice, this authority has been guaranteed by legal certainty regulated in various laws and regulations, both higher and lower (Priambudi & Oktavia. 2021). Indonesia follows the Continental European legal system, where the regulations are organized hierarchically. All regulations made are based on one main rule that serves as the basis for drafting laws, which in turn aims to provide legal certainty on issues that arise in society. Therefore, applying the Right to Refuse by the Press has been regulated in legislation that aligns with Indonesia's essential legal source (the 1945 Constitution of the Republic of Indonesia). Because the Indonesian state is a state of law, which means that every relationship between the government and society, government and individuals, government and government, society and society, society and individuals, and individuals and individuals all have a clear legal basis in order to achieve the guarantee of legal certainty in Indonesia (Labolo, 2023). In connection with this, the rules must contain rights and obligations as a government, community, group, and individual. This is because every rule or legislation must be based on fundamental law and basic principles (Grundnorm) as well as on the state philosophy (Pancasila), which contains rights and obligations in the state. Also, by Stufenbau's theory, which Hans Kelsen conveys, every law below must not conflict with the law above. Then, the so-called *Lex superior derogat legi inferiori* means that higher laws override lower laws. Automatically, every law with a lower position must be compiled or made in line with the higher law. Let us look at the application of the Right to Refuse by the Press in Indonesia. It can be based on Article 28 letter F, letter G paragraph (1), and on letter I paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD 1945 NRI), which reads:

The application of the Right to Refuse by the Press in Indonesia is by what is stipulated in Article 4 of the Press Law, namely;

- Press freedom is guaranteed as a fundamental right of citizens;
- The national press is not subject to banning, gagging, or broadcasting restrictions;
- To guarantee the independence of the Press, the National Press has the right to seek, obtain, and disseminate ideas and information, and
- When it comes to accountability before the law, journalists have the Right of Refusal.

The application of the Right of Refusal by the Press is also one of the press codes of ethics, which in this case is by what is in Article 15, paragraph (2) letter c of the Press Law, stating that the Press must establish and supervise a code of ethics so that the Press is bound by its code of ethics which can apply its Right of Refusal as the Press. The press code of ethics was established as an operational guideline for maintaining public trust and upholding the integrity and professionalism of the press itself. Which contains the rights and obligations of the Press, one of which regulates the Right of Refusal. Because the Press is bound by the Press code of ethics, in maintaining its integrity as a member of the Press, the Press must prioritize the code of ethics before anything else. Applying the Right to Reject by the Press in Indonesia is very easy to fall into the manipulation of the Press, which is not responsible for the information or news disseminated (Rohman, 2020) also because Article 5 paragraph (1) of the journalistic code of Ethics for journalists in Indonesia requires journalists to be news sources who do not want to be identified. Thus, in carrying out its journalistic activities, the Press does not want to reveal the source's identity for any reason because it is bound by the journalistic code of ethics or the Press code of ethics as a profession. Therefore, the application of the Right to Refuse by the Press in Indonesia, when viewed from the operational side of law enforcement in Indonesia, cannot be accepted, especially in criminal law concepts.

3.2. Legal Liability in Journalism Cases

Legal liability in journalistic cases is the obligation of a journalist or mass media to take responsibility for his actions by applicable law, whether criminal, civil, or even administrative, in carrying out his journalistic activities (Mustafa, 2022). This accountability also refers to the legal obligations that individuals and press institutions must fulfill in their journalistic activities by complying with applicable rules and codes of ethics. The following are the legal grounds for liability in journalistic cases, namely:

1) Law No. 40 of 1999 on the Press

This law is the fundamental law governing the press in Indonesia. It covers the rights and obligations of journalists, the right to exercise the journalistic profession, and regulates the establishment and management of mass media.

- Article 3 Paragraph 1 reads, "The national press functions as a medium of information, education, entertainment, and social control."
- Article 8 reads, "In carrying out their profession, journalists receive legal protection. Journalists or the press when carrying out their profession".

When carrying out their profession, journalists or the press are bound by the obligations and limitations regulated by the Press Law. They must respect religious norms, decency, and the presumption of innocence, serve the right to reply and correction and apply other provisions as part of their duties. However, the Press Law provides guarantees such as those in Article 8.

2) Criminal Code (KUHP)

The Criminal Code provides for criminal liability for offenses committed in journalism, particularly defamation and slander. Articles 310 and 311 deal with defamation and slander. Article 310 deals with defamation, an act that attacks a person's honor or good name in an untruthful manner. Article 310 consists of 2 (two) paragraphs, namely:

- Any person who deliberately attacks a person's honor or good name by alleging something, with the apparent intention of making it public, shall, being guilty of contamination, be punished by a maximum imprisonment of nine months or a maximum fine of three hundred rupiahs.
- If this is done using a writing or portrait broadcast, exhibited or affixed in public, it shall, being guilty of libel, be punished by a maximum imprisonment of one year and four months or a maximum fine of three hundred Rupiahs.

Article 311 deals with defamation, spreading false news or accusations against a person to harm and damage his character. Article 311 reads, "Whoever commits the crime of slander or defamation in writing if he is required to prove the charge and if the charge is made while he knows that it is untrue, shall, being guilty of slander, be punished by a maximum imprisonment of four years."

3.3. Law No. 11/2008 on Electronic Information and Transactions (ITE Law)

The ITE Law regulates the use of information technology and electronic transactions. ITE Law aims to create order and security in the digital world. ITE Law has provisions relating to the protection of personal data, especially in the context of electronic transactions. Several things are regulated in the ITE Law, namely:

- Prohibition of spreading false and misleading news that harms consumers in electronic transactions.
- Prohibition of distributing electronic information that violates decency, gambling, insults, and/or defamation.
- Prohibition of transmitting information that aims to cause hatred or hostility.
- Journalists or online media that spread false information or harm other parties can be charged under Article 27 Paragraph 3 on defamation.

3.4. Journalistic Code of Ethics (KEJ)

The journalistic code of ethics is a collection of professional ethics that journalists must adhere to in their duties. It serves as a moral and ethical foundation and regulates the rights and obligations of journalists. The journalistic code of ethics aims to make journalists responsible for seeking and presenting information and maintaining public trust in the media and news content.

3.5. Indonesian Constitution Law 1945

- Article 28F of the 1945 Constitution reads, "Everyone has the right to communicate and obtain information to develop their personal and social environment, and to seek, obtain, own, store, process and convey information using all available channels."
- Article 28F affirms everyone's right to communicate and obtain information, which is the basis for freedom of the press. Freedom of the press. This freedom must be balanced with social responsibility, where the press must respect prevailing norms and not disseminate information that could harm others.

Types of Legal Liability in Journalistic Cases:

1) Criminal Law Liability

Criminal law liability is a sanction imposed on journalists or media who broadcast the law through reporting, such as spreading slander or false news (Sanjaya, Sugiarta, & Wirawan, 2023). For example, a media outlet spread the news that a government official was involved in a drug case without clear evidence. The official reported the media to the authorities, and journalists can be subject to criminal sanctions for spreading false news.

2) Civil Law Liability

Civil liability is the responsibility that arises from the harm caused by journalistic acts, which can result in compensation to the injured party. For example, suppose a reporter writes an article stating that a businessman is involved in corrupt practices without sufficient evidence. In that case, the businessman sues the journalist and the media for defamation and asks for compensation for his losses.

3) Administrative Law Liability

Administrative legal liability is a sanction imposed by a government agency or regulatory body on media that violates established regulations. For example, suppose a television station broadcasts a program that violates broadcasting norms and ethics. In that case, the Indonesian Broadcasting Board imposes administrative sanctions in the form of fines and revocation of broadcasting licenses for some time.

4) Ethical Legal Liability

Ethical legal liability is the responsibility of journalists to adhere to journalistic codes of ethics, such as accuracy, balance, and fairness in their reporting. Example: A newspaper publishes an article that does not include transparent sources and does not give the right to reply to the reporting party. The journalism organization reprimanded the media for violating the code of ethics.

5) Moral Legal Liability

A journalist's moral and legal responsibility is to convey correct, fair, and helpful information to society. For example, a journalist interviews natural disaster victims but only prioritizes the sensational aspects without considering the victims' emotions. Considered insensitive and morally irresponsible, the journalist was criticized by the public.

3.6. Relationship between the Right to Refuse and Legal Liability in Journalistic Cases

The right of refusal and accountability in journalistic matters have a close relationship. The right of refusal is the right that journalists have not to reveal the identity of sources that must be kept confidential, which is important to protect sources of information, especially in the case of sensitive news. This is regulated in Press Law No. 40 of 1999 and the Press Council guidelines (Suryana, 2022). Meanwhile, legal accountability in journalism explains that journalists and press companies must be responsible for what they report. If there is a violation such as defamation, the press company is responsible, not the individual journalist. The relationship between the right of refusal and liability depends on protecting sources of information and responsibility for the accuracy of the news. Although journalists have the right to maintain the confidentiality of sources, they are still responsible for delivering accurate information (Effendi et al., 2023). The right of refusal must be done carefully because journalists and press companies can face legal sanctions if abused. Therefore, journalists should be careful to use the right of refusal to protect sources while being mindful of their political responsibilities.

IV. Conclusion

Applying the right of refusal in journalism in Indonesia is very important to protect the identity of sources and maintain press freedom. The right of refusal gives journalists the authority not to reveal the identity of sources who provide important information. Although the press law regulates it, challenges in its implementation remain, especially related to the potential for abuse and the legal liability journalists face. Therefore, journalists must understand the right of refusal and legal responsibility to maintain professionalism and integrity in journalistic practice. By understanding the right of refusal and legal responsibility, journalists can better understand the challenges and contribute to transparency and accountability in society.

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