

Study of the Legal Accountability System for Press Companies Based on the Press Law and the Criminal Code

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Abstract

This study aims to examine the legal liability of media companies under the Press Law and the Criminal Code, as well as to analyse the obstacles and policies relating to the legal liability of media companies. The study employs a normative legal research design with a descriptive-analytical approach, discussing existing legal phenomena and issues and testing them against applicable legislation and legal norms. The results of this study indicate that the legal liability of press companies under Law No. 1 of 2023 on the Criminal Code is regulated in Articles 45 to 50 concerning the legal framework for corporations as subjects of criminal offences. Meanwhile, under Law No. 40 of 1999 on the Press, as set out in Articles 9, 12 and 18, it is stipulated that every press company in Indonesia must be a legal entity and must specify the name of the person in charge. Challenges regarding the legal liability of press companies stem from conflicts between legal norms, the attribution of fault, the large number of press companies that lack legal entity status, and the fact that corporations cannot be sentenced to imprisonment. Legal policies to address these challenges include: optimising inter-institutional cooperation and restorative justice, harmonising the application of additional penalties under the Criminal Code, and establishing standards for absolute editorial liability.

Keywords: Liability, Media Companies, Press, Criminal Code

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Introduction

Law Number 40 of 1999 concerning the Press states that press freedom is a form of people's sovereignty based on the principles of democracy, justice, and the rule of law, therefore the state and society must respect and guarantee the independence and independence of the press in carrying out its journalistic duties. The national press as a vehicle for mass communication, information dissemination, and opinion formation must be able to carry out its principles, functions, rights, obligations, and roles as well as possible based on professional press independence, besides that the press must also receive legal guarantees and protection, and be free from the intervention of any party [1].

The implementation of the press not only faces operational and journalistic ethical challenges, but also faces the risk of criminal law liability when its journalistic products (news) are contrary to norms and morality and violate the provisions of criminal law. The press criminal accountability system in Indonesia has undergone significant developments from time to time, starting from Law Number 11 of 1966 concerning the Main Provisions of the Press which adheres to the *waterfall system*, to finally Law Number 40 of 1999 concerning the Press [2]. This change in the system reflects the evolution of legal protection of press freedom, but it also raises law enforcement problems due to the difference in approach between the specific Press Law and the general provisions in Law Number: 1 of 2023 concerning the Criminal Code [3].

The Criminal Code adheres to a system of accountability based on guilt and participation, where every individual involved in criminal acts can be held accountable. Meanwhile, the Press Law adheres to a corporate accountability system where if a dispute occurs, the press company must be responsible through its person in charge (Article 12 of the Press Law). This fundamental difference gives rise to overlapping accountability mechanisms in determining the legal subjects to be held criminally responsible [4].

A press company as part of a corporation (limited liability company) where legal action is represented by the person in charge or the editor-in-chief. In the context of criminal acts committed by the press related to news (news containing defamatory slander), there are four main points, namely:

1. Press companies as corporations can be considered to have committed criminal acts directly;
2. Although the news is written by a journalist, the act also involves the role of the editor-in-chief as well as the policies of the press company;
3. The journalist/editor's mistake must be proven to be charged to the corporation;
4. The person in charge (Editor-in-Chief/management) is responsible for the actions of the press company [5].

The legal liability of press companies in Indonesia is currently faced with complex juridical problems, mainly stemming from the tension between the commitment to protect press freedom and criminal law enforcement. Normatively, Law Number 40 of 1999 concerning the Press has projected a *lex specialis*-based dispute resolution system that prioritizes the mechanism of the right of reply, and mediation of the Press Council. However, this rule is often overridden by law enforcement officials who tend to use the provisions of the Criminal Code or the ITE Law to ensnare the press with general criminal acts, such as slander and defamation [6].

This criminalization is exacerbated by doctrinal inconsistencies in determining the limits of corporate *criminal liability*, there is a bias in separating the personal mistakes of individual journalists from corporate institutional errors based on the doctrine of *vicarious liability* [7]. In addition, the existence of digital media that does not meet the requirements of a legal entity according to Article 9 of the Press Law creates legal problems, thus blurring the separation between legitimate journalistic products by press companies and pure violations of the law by individuals. Therefore, clear legal regulations and policies are needed related to the accountability system of press companies [8].

Research Methodology

This research uses a juridical normative approach that focuses on analyzing legal rules, jurisprudence, and norms in society. A descriptive-analytical method with the main purpose of collecting data systematically, factually, and precisely on the issues reviewed from the perspective of applicable laws and norms, as well as conducting analysis based on existing laws and regulations [9]. The data collection technique is carried out through literature research, which is by collecting information from various legal sources such as laws and regulations, government regulations, scientific books and journals, as well as other supporting sources such as magazines, newspapers, and articles [10].

Discussion

Legal Accountability of Press Companies in the Press Law and the Criminal Code

Article 1 Paragraph (2) of Law Number 40 of 1999 concerning the Press states that a press company is an Indonesian legal entity that conducts the press business, including print media companies, electronic media, and news agencies, as well as other media companies that specifically organize, broadcast, or distribute information. In criminal law, a corporation is one of the legal subjects (supporters of rights and obligations) where the corporation can carry out legal acts through the intermediary of the management or the person in charge [11].

The existence of corporations as the subject of criminal law raises fundamental questions about how criminal liability can be imposed on corporations that do not have their own soul, will and intentions (*mens rea*). The three main doctrines used to analyze corporate criminal liability are: Vicarious Liability, Direct Corporate Criminal Liability, and Strict Liability [12].

a. Law Number 40 of 1999 concerning the Press

In Law Number: 40 of 1999 concerning the Press, the regulation on the accountability of press companies is regulated in several articles, including:

Article 9 Paragraph (2)

Every press company must be in the form of an Indonesian legal entity.

Article 12

Press companies are required to publicly announce the name, address and person in charge through the media concerned, specifically for press publishing plus the name and address of the printing press.

Article 18 Paragraph (3)

Press companies that violate the provisions of Article 9 paragraph (2) and Article 12 are punished with a maximum fine of Rp.100,000,000.00 (one hundred million rupiah).

The reality of the criminal accountability system The press in Indonesia currently still adopts the *waterfall accountability system*, which is the doctrine of legal accountability in stages to determine who must bear the blame for a violation of the criminal law of the mass media [13]. The mechanism flows from top to bottom like a waterfall which is described as follows:

1. Criminal responsibility is first fully charged to the Editor-in-Chief as the main person in charge;
2. If the Editor-in-Chief cannot be held accountable (e.g. due to permanent disability, death), the responsibility is transferred to the level below him, namely the Managing Editor;
3. If the Managing Editor cannot be held accountable, the legal burden will fall on the Journalist/News Writer [14].

Meanwhile, press companies are often untouched by the law in this matter, because policies related to news are regulated and determined by the Editor-in-Chief. This condition must be straightened out, because in every journalistic product that is in dispute, both criminal and civil, the press company as a legal entity must remain responsible, especially for paying a fine or committing a certain act (for example, apologizing or clarifying publicly) [15]. The legal

consequences of news coverage cannot be fully imposed on journalists as writers, because before a news story is published, it must first be checked, edited and declared worthy of publication by the Editor-in-Chief with the writing standards and policies set by the press company [16].

b. Criminal Liability of Press Companies in the Criminal Code

Article 1 Number 20 of the 2023 Criminal Code defines a corporation as an organized collection of people and/or property, both legal and non-legal entities, so that press companies in the form of PTs or non-PTs are still classified as subjects of criminal law. The provisions of corporations as the subject of criminal law are regulated in Articles 45 to 50 of the Criminal Code.

Article 45 Paragraph (1)

Corporations are the subject of criminal law.

Article 45 paragraph (2)

Legal entities in the form of PTs, foundations, cooperatives, SOEs, BUMDs and/or equivalents, as well as associations both legal and non-legal entities, business entities that include firms, limited partnerships, or similar to them in accordance with the provisions of the law.

The basis for corporate criminal liability is regulated in Article 48 of the Criminal Code which stipulates five elements, namely:

1. Including within the scope of business, activities as regulated in the corporation's articles of association;
2. Profiting corporations unlawfully;
3. Accepted as corporate policy;
4. Corporations do not take steps to prevent and ensure legal compliance to prevent crime from occurring;
5. Corporations allow criminal acts to occur [17].

Meanwhile, the determination of parties who can be charged with criminal liability is regulated in Article 49 of the Criminal Code which reads that liability for criminal acts by corporations as intended in Article 48 is imposed on corporations, administrators who have functional positions, givers of orders, control holders and/or beneficial owners of corporations [18]. Based on this explanation, related to criminal acts in the news, the legal liability is charged to:

1. Administrative sanctions (freeze, revocation of temporary permits to permanent dismissal) are imposed on corporations;
2. Fines and/or damages are imposed on the corporation;
3. The person in charge (editor-in-chief, managing editor and journalist) can be subject to corporal punishment (imprisonment) [19].

An example of a case of accountability of a press company in the Central Jakarta District Court decision Number 59/Pdt.G/2008/PN. Jkt.Pus, between PT. Asian Agri against PT. Tempo Inti Media Tbk (Tempo Magazine), where Tempo Magazine was declared proven to have committed an unlawful act because it conducted *a trial by the press* in the news (judgmental news). Tempo Magazine (a press company) was sentenced to pay material damages of Rp50 million and was required to publish a public apology to PT. Asian Agri in several national print media.

Obstacles and Policies in the Legal Liability of Press Companies

In general, there are a number of obstacles or obstacles faced related to the legal liability of press companies for violations or criminal elements of reporting, namely:

1. Norm conflict: Inconsistencies between the *lex specialis* of Law No. 40 of 1999 concerning the Press and the Criminal Code, related to the mechanism for resolving press disputes that should be through the right of reply and mediation of the Press Council, are actually processed with articles of the Criminal Code and the ITE Law on defamation, defamation and spreading false information;

2. Attribution of error (*Identification Doctrine*): The fault of a legal entity relies on the actions of the management acting for and on behalf of the corporation. However, in the press industry, the boundary between individual error (journalists' negligence in writing and verifying data) and institutional error (editorial policy of the Editor-in-Chief) is often biased. The Editor-in-Chief as the person in charge of news often shifts responsibility to journalists as news writers based on the waterfall accountability system [20];
3. Many media (Press) are not incorporated: The rise of digital news portals that are not legally incorporated as mandated by Article 9 paragraph (2) of the Press Law creates anomalies. Such an entity cannot be categorized as an official press company, making it difficult to apply administrative and criminal corporate sanctions;
4. Corporations cannot be sentenced to prison: Press companies as legal entities that carry out legal actions based on intermediaries (persons in charge) cannot be sentenced to corporal punishment (imprisonment). Press companies can only be subject to administrative sanctions and damages/fines, while corporal punishment must be borne by the person in charge (editor-in-chief) and journalists who are legally and convincingly proven to have committed a criminal act in reporting [12].

To overcome the above obstacles, the direction of formal and material legal policies must be oriented towards the following policies:

1. Inter-institutional optimization and restorative justice: Affirming the position of the Press Law as the main law (*lex specialis*) through the strengthening of the Memorandum of Understanding (MoU) between the Press Council and law enforcement institutions (the National Police, the Prosecutor's Office, and the Supreme Court). News disputes must first be resolved through the Press Council's right of reply and mediation before touching the realm of criminal justice SEMA Number 13 of 2008 concerning Requesting Expert Information from the Press Council [21];
2. Harmonization of the application of additional crimes of the Criminal Code: Press companies that are legally and convincingly proven to have committed the crime of news can be subject to additional penalties that are corrective. The application of additional penalties such as in Article 120 of the Criminal Code, such as reparations due to criminal acts (restitution) and the announcement of court decisions, is much more effective to provide a *deterrent effect*, without having to kill the continuity of the press industry through extreme sanctions such as dissolution and revocation of company licenses;
3. Absolute editorial responsibility: Establishes strict juridical restrictions that all journalistic products that have passed the editing and publication process are the full legal responsibility of the press company represented by the Editor-in-Chief (Article 12 of the Press Law). This policy is important to eliminate the doctrine of *the waterfall system*, in order to protect journalists in the field from the diversion of criminal sanctions [22];
4. Constitutional Court Decision Number 145/PUU-XXIII/2025: This decision states that Article 8 of the Press Law is interpreted conditionally, namely the application of criminal and/or civil sanctions against journalists who carry out their profession legally can only be carried out after the mechanism of the right of reply, the right of correction, and the assessment of alleged violations of the journalistic code of ethics through the Press Council does not reach an agreement, not through criminal or civil channels directly. This decision provides a strong legal basis that law enforcement officials are obliged to refer to Law Number 40 of 1999 concerning the Press, not directly use the Criminal Code or the ITE Law, in handling news disputes [23].

Accountability for defamatory reporting can be imposed on journalists, editors-in-chief, and press companies according to their respective roles. Journalists are responsible for the collection and writing of news, especially if it is unverified, contains false allegations, or is done in bad

faith. The editor-in-chief is responsible for ensuring that the material published is in accordance with the journalistic code of ethics and legal provisions, because all news generally goes through an editorial process before publication, so the editor-in-chief also has the responsibility to ensure that the content of the news is in accordance with the journalistic code of ethics and applicable legal provisions [24].

Press companies can be held accountable as legal entities that publish and profit from the news. Responsibility for defamation cases is collective and proportional according to the level of involvement in the publishing process, thus balancing the protection of good name and freedom of the press. Criminal sanctions in news disputes are only used as an ultimatum remedium when administrative and civil settlements are inadequate [25].

Conclusion

The Legal Accountability of Press Companies in the Criminal Code is regulated from Articles 45 to 50 concerning the regulation of corporate law as the subject of criminal acts. Meanwhile, the Press Law is regulated in Article 9, Article 12 and Article 18, it is stated that every press company in Indonesia must be a legal entity and list the person in charge of the company. The Press Law is a *lex specialis* of the Criminal Code, so that all forms of disputes, losses, and violations of the law due to journalistic products must be resolved first through the mechanism of the right of reply or mediation of the Press Council. Press companies as legal entities are subject to criminal law that can be sanctioned according to the provisions of the law.

Obstacles in the legal accountability of press companies are caused by norm *conflicts*, attribution of errors (*Identification Doctrine*), many press companies that are not legal entities, and corporations cannot be sentenced to prison. Legal policies to overcome these obstacles include: inter-institutional optimization and restorative justice, harmonization of the application of additional crimes of the Criminal Code, absolute editorial accountability standards, and the implementation of the Constitutional Court decision Number 145/PUU-XXIII/2025.

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