

## Amendments to Law of the Republic of Indonesia Number 40 of 1999 Concerning the Press: Between Needs and Obligations

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### Abstract

Amendments to the law, as a manifestation of legal politics designed to promote public contentment is inevitable. The theory of law stipulates the significance of developments that are deemed highly necessary. Problems arose when the government of Indonesia's agenda to amend Law Number 40 of 1999 concerning the press raised concerns about the threat of oppression in the media. This study aims to determine the urgency of amending the Press Law to realize press freedom in Indonesia. This study used a qualitative method through literature studies and interviews with practitioners. The results of this study showed that Law Number 40 of 1999 concerning the Press is a legitimate tool for press freedom at this time. It can be stated that the substance of Law No. 40 of 1999 regarding the Press is still relatively accommodating democracy in terms of ensuring freedom of opinion as human rights. However, the dominance of the media company as the capital owner will limit press freedom, necessitating a structure that can finally separate the company from the press product. In the end, the success of Law Number 40 of 1999 pertaining to the Press must be evaluated based on institutions, enforcement, and the legal culture of the society.

**Keywords:** The press; Amendment; Law of the press; Democracy; Indonesia

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### Introduction

The Press Law No. 40 of 1999 has been in effect for 23 years. For Indonesia's standards, it is considered 'durable' as it has not been subjected to changes for at least 30 years, particularly when compared to a number of political legislation packages that are routinely implemented every five years. After all, the press law is classified as one of the legal products that is widely utilized in people's daily lives.

In Indonesia, changing or replacing legal products, such as laws, is often like a state rite due to the rapidity of change (Manan, 2012). Laws that change nearly every period of government power include general election laws, laws on organizing general elections, laws on political parties, laws on regional expansion, laws on regional government, and laws on composition and position for the *Majelis Permusyawaratan Rakyat* (People's Consultative Assembly), *Dewan Perwakilan*

*Rakyat* (The House of Representatives), *Dewan Perwakilan Daerah* (Regional Representatives Council), and *Dewan Perwakilan Rakyat Daerah* (Regional Legislative Council). There are many other laws and regulations.

Most of the materials unchanged; what is the difference is the interests of legislators and politicians accommodated. The political interests are those of veteran politicians who wish to increase their share or those of new politicians who have not been accommodated. This was pointed out by Mohammad Mahfud Mahmudin who stated that laws are the crystallization of political wills that interact and compete with each other. Laws, as legal products, are essentially contestation scenes in which all political forces' interests and aspirations are accommodated in political decisions and become laws (Mahmodin, 2009). This is based on the emergence of Progressive Law Science, which contends that law cannot be sterile or isolated from changing circumstances (Sayuti, 2013), implying that the process of legislation and legal products is a political process because it is not sterile from existing political interests. Therefore, the fundamental concept of law in the form of "baselines of legal policy established by a legal community" (Hidayat & Arifin, 2019) becomes susceptible to being distorted by political forces that are ever-present.

A number of laws that are frequently amended after every new government takes office are easily included in the national legislation program (*Program Legislasi Nasional* or Prolegnas) list and are soon deliberated to endorse them. On the contrary, the laws related to the livelihood of the people at large receive less attention. It is difficult for legislators to agree on the laws concerning the affairs of the people they represent. For example, the plan to reform the Criminal Code, which has been discussed since the 1960s, has not been settled. The president has changed many times, but this draft law has not been completed. Likewise, efforts have been made to reform civil law, agrarian law, and many others. In fact, the law, which has not been fully discussed, is to meet not only the structural needs of the state but also the welfare of the people. It can be concluded that law is a political product based on utilitarianism. This was first coined by Jeremy Bentham (Bentham & Mill, 2004) with his philosophy of thought in the form, "the greatest happiness of the greatest

number is the foundation of morals and legislation" (Ratcliffe, 2018). In other words, the law aims to provide the greatest benefit and happiness to as many people as possible.

The function of law in the sense of legism in the form of written laws (Manan, 2012) cannot be measured by the age of validity, whether young or old, but by how effective it can work and prosper the community. In order to achieve its goals, a law must fulfill three basic elements of its formation: juridical, sociological, and philosophical (Rahardjo, 2014). These three parameters can be a measure of whether it is time for a law to be changed, replaced with a new one, or if it is still worth defending.

Radbruch (1961) Stated that the purpose of law has three basic values, namely to obtain: (1) justice (*Gerechtigkeit*); (2) legal certainty (*Rechtssicherheit*); and (3) expediency (*Zweckmassigkeit*). Meanwhile, its implementation, according to Bruggink (1996), can be viewed for factual/empirical, normative/formal and evaluative purposes. The press law has undergone several changes since the first press law was passed in 1966 until the end of the New Order government in 1998. Law Number 40 of 1999 concerning the Press that is currently in effect replaces Law Number 21 of 1982 concerning the Basic Provisions of the Press. Whereas Law Number 21 of 1982 was the result of amendments to Law Number 4 of 1967 concerning basic provisions of the press, and Law Number 4 of 1967 was the result of amendments to Law Number 11 of 1966 concerning main provisions of the press.

Essentially, the presumption can also be developed in such a way that laws are modified regularly because these regulations are significant or frequently used in people's lives. According to Jimly Asshiddiqie, all forms of legislation actually contain legal norms that are abstract and general as a whole (Asshiddiqie, 2018). This means that the law has the function of regulating the life of society as a whole. Amendments to a law will be determined by its efficacy in society. Instruments in the form of political power are required as the primary resource in the processes of formation, legislation, and enforcement (Anggoro, 2019). Therefore, amending or replacing laws is a judgment of legal politics that is in accordance with the political system at the time when the press was active and developing.

Law Number 21 of 1982 is the end product of the amendment to the first press law. After that, it was replaced by Law Number 40 of 1999 which is currently in force. Law Number 21 of 1982 is considered to be no longer in line with Pancasila values, because it has given the government authority to control the press system. Whereas Law Number 40 of 1999 does not delegate authority to the government, it delegates control to the community through Article 15 paragraph 1 and Article 17 (Saptohadi, 2011). Amendments to laws always keep a common thread that cannot be replaced by the substance of the previous laws. The press law, which has been amended several times, has never eliminated the substance of press freedom.

Only in the last amendment from Law Number 4 of 1967 to Law Number 21 of 1982 there was an article "smuggling", which contradicted the articles on freedom of the press. In paragraph 5 of Article 13 of Law Number 21 of 1982, the press must have a Press Publishing Business Permit (SIUPP). This was exacerbated by the emergence of a regulation from the Ministry of Information, No. 01/Per/Menpen/1982 which allows the revocation of SIUPP if the issuer does not comply with government regulations (Zulianto et al., 2016). These two regulations eventually resulted in an authoritarian press system and restrictions on press freedom through press bans, or the cancellation of SIUPP (Saptohadi, 2011). Whereas in the previous article, it was clear that press freedom was guaranteed without a permit and would not be prohibited or censored. This is because there are interests in power that want to regulate the press and interfere in press freedom.

In addition to being a question of freedom, the press also bears other interests that decide its existence and demise. The press cannot survive and thrive solely on its freedom. The press, as stated in Law Number 40 of 1999, not only serves as a social institution and a means of communication (Article 1 paragraph 1), but also carries out educational and entertainment functions as well as economic functions. Therefore, the press operates and functions like an industry in general, which must earn profits supported by elements of advertisement, circulation, and other sales. Advertising is a source of income to keep the press industry running. That is, a press without advertising is almost impossible to run and

survive. Even the Chairman of the Press Council (2010-2016), Bagir Manan, acknowledged this and said only a fake press could survive without advertisements. Even so, through advertisements, which are the source of life for the press, there is actually an opening to influence the ethical principles of the press so that press freedom will be hampered. Laws with clear and thorough lines as regulations are required to prepare for this so that press freedom is guaranteed while advertisement continues to play a role among press freedoms.

It is implied that the function of the law is actually greatly influenced by external factors. As a result, the environment determines the role and function of law more than the law itself. In fact, even if an imperfect law is enacted, it will be beneficial, and vice versa. In line with Cardozo and Kaufman (2010), who stated that, "There is no guarantee of justice except the personality of the judge." The justice to be reached in the form of freedom of the press in the end cannot be borne by the rules or people who have the potential to influence. The most important thing is how the law can be implemented properly.

Soekanto (2004) stated that the effectiveness of a law will be determined by five factors, namely: (1) the law itself; (2) law enforcement, namely the parties that make up or implement laws; (3) means or facilities in enforcing laws; (4) community, in the form of the environment where the law applies and is applied; and (5) culture, namely as a result of work, creativity, and taste based on human will in social life.

Based on this opinion, there are not any factors related to how long a law must be changed or replaced. As long as the law is still able to carry out its functions and is accepted by society in an effort to create order and prosperity, it is still worth defending. Efforts to change Law Number 40 of 1999 concerning the Press have been made several times since the new law was only 2 years old, it was still the beginning of the euphoria of press freedom. At a meeting held on February 20, 2004, the Minister of Communication, Syamsul Muarif, and Commission I of the DPR agreed to revise the Press Law so that it was included in the DPR's National Legislation Program (Prolegnas list). This step was built in the previous agreement to include press law in the five-year law discussion program, ranking

220th out of 284 targeted laws to be discussed (Jamaludin, 2009).

The steps toward revising the Press Law were even more aggressive when Sofyan Djalil was the Minister of Communication and Information. Dozens of press organizations together with editors-in-chief of the mass media, and the leadership of the Press Council gathered and met with the minister. At the meeting, the minister highlighted the reasons for the need to amend the Press Law, although this step was not completed until his term of office ended. In the following period, the Minister of Communication and Information, Muhammad Nuh, held a meeting with the Press Council on June 8, 2007. During the meeting, he emphasized that he would not revise the Press Law. However, after the meeting, a draft press bill was circulated and was ready to be sent to the DPR. This was clearly contrary to the attitude of the minister, who stated he would not revise the Press Law (Dewan Pers Indonesia, 2007). Negative reactions emerged from the press which called for demonstrations to protest the plan. Irwan Waris, as a socio-political observer at Tadulako University in Palu, stated that the presence of sentiment towards the New Order would cause concern for the press if the government initiated the revision of the Press Law (Burhani, 2009). The Press Law was also included in the Omnibus Law package to be changed. When the press reacted against it, the government, as the proponent, reacted quickly by withdrawing the draft package containing the draft press law before it was discussed with the DPR.

Some members of the press were genuinely aware of the press law's shortcomings in protecting the press. They acknowledged that the basic framework for drafting the law, which is being constructed in a haphazard manner, was incomplete. Likewise, legal drafting was not coordinated with various other legal substances. Not to mention the substance of the law, which was the result of a combination of various legal provisions in the administrative, civil, corporate, criminal, etc laws (Jamaludin, 2009). In addition, there are implications of the post-law reform, namely triggering a glut of press products without being filtered at all. In terms of democracy, the growth of the media, which was extraordinarily fast compared to before, is indeed a sign of very well-developed press freedom. However, it appears to be a social burden when the press

media is created without professionalism. The number of print media before the reform was only 289, and a year after the Press Law was passed, the figure soared to 1,687 (Batubara, 2007). Freedom of the press should not only be a matter of quantity but also of quality. Many press products on the early days of the reform tended to be liberal, in that anything was shown without adhering to the norm. News was published with minimum filtering and confirmation, loaded with pornographic photos and images containing provocative positions. Tjipta Lesmana noted that the post-New Order press seemed to use overly exaggerated style of news reporting (Dewan Pers Indonesia, 2007).

The existence of various interests in press law often creates anxiety among the press community. When there was an attempt to change Law Number 40 of 1999 concerning the press, suspicion did not easily go away, leading to protests. Moreover, the public's perception of the work ethic of legislators as representatives of the people is often questioned, among others, by members of the press. They do not fully believe that the laws governing the press that enter the parliament will undergo changes. Even though it is acknowledged that the press law is dated and behind the times, the present revisions are uncertain. In general, there are concerns about the presence of "stowaway" in changes to laws that have detrimental effects on organizations, institutions, and the press itself. Based on these reasons, this research raises the following research question: how is the urgency of amending the Law Number 40 of 1999 concerning the Press in an effort to realize press freedom in Indonesia in the face of the fast-paced development of information technology? The aim of this research is to determine the best format for effective legal norms that can be implemented for a free press in Indonesia. This study is important because the existing literature and debates on the urgency of amending the Law Number 40 of 1999 are limited. This study is therefore intended to contribute to existing knowledge and literature on the subjects of law and communication science.

### **Theoretical Framework**

Public policy and communication have a very broad spectrum. Different policies provide opportunities for different communication strategies to achieve efficient results. As one of the axiologies in political communication,

public policy is a concept studied by academics of communication science (science communication) stated that the main focus of the study of communication science has shifted to understanding what factors are related to willingness, the type of communication goals, and the convenience of communication scientists as a whole to communicate. This situation has led to the finding in the recent literature that scientists are more likely to communicate their thoughts in a certain way when they feel their behavior will lead to significant change.

Besley (2020) states that there are five limitations to identifying a communication strategy, namely: (1) the main purpose of communication, (2) communication goals, (3) communication tactics, (4) strategic use of communication knowledge, and (5) access to communication expert. This can cause problems in communication if the communicator is unable to properly convey the message to the communicant, resulting in misinformation and negative reactions. The behavior desired by the communicator towards the communicant becomes inappropriate, for example disagreeing, rejection, loss of the communicant's trust in the communicator, and so on. Therefore, several recent studies of communication science try to understand and direct more scientists to engage in public outreach communications using the Theory of Planned Behavior (Besley, 2020).

Theory of Planned Behavior (TPB) is a development of the Theory of Reasoned Action (TRA). The theory states that individual behavior can actually be predicted from the behavior of a person's interest (Ajzen, 2020). However, a person's behavior is sometimes difficult to express even though the decision should be fully controlled by his will. There are several incidents where a person has limitations in controlling his will so Ajzen undertook the development of the TRA study into TPB to accommodate these theoretical limitations.

Referring to Ajzen's theory of planned behavior, human action is directed by three considerations, namely: (1) Behavioral beliefs. Confidence based on the calculation of the final result of behavior and its evaluation. Beliefs in behavior produce pleasant or unpleasant attitudes or actions according to what a person feels: (2) Normative beliefs. Beliefs about normative expectations, obligatory rules of action, and motivation to comply with those

rules. Normative beliefs will result in social pressure or subjective norms that are felt by someone; (3) Control beliefs. Beliefs about the existence of factors that can facilitate or inhibit the performance of the behavior and the perceived strength of the above factors. Control beliefs will lead to perceived behavioral control, or perceived behavioral control.

### **Materials and Methodology**

This study employed a qualitative method to describe the reality in the field. The approach used is qualitative by trying to understand social aspects that are difficult to capture through statistical figures (Neuman, 2006). This study was descriptive analytical with a conceptual and statutory approach. This research uses a theory of planned behavior. This theory is useful to analyze the relations between public policy and communications. Sources of data were obtained through several stages, namely literature study and initial observation, preparation of data collection instruments, and collection of data and information. After that, it proceeded with data processing and analysis, up to the preparation of research results. The data collection was carried out through a literature study, namely by reading and comparing the first press law to the others, followed by discussions with practitioners about to which extent press freedom is implemented. Likewise, articles in both national and international journals, books, legal documents, and other legislation were also sources of reference to enrich references, especially regarding the implementation of press freedom in the past and at present.

Data for this study was also obtained through interviews with press figures who once held or currently hold key positions in the organization or main organization of the press, the Press Council, through structured interviews. Even though the researchers have already had an interview guide, the interview process did not depend on the guide that had been prepared. The interviews revolved around the laws governing the press and their implementation, as well as to which extent the laws concerning the press will possibly be reconstructed. In the interviews, a logic in practice technique was developed, namely, developing research questions based on the results of field data to anticipate the possibility of anything that had not been discussed in the questions. The data analysis was carried out

using verbatim analysis, namely data analysis based on the results of interviews recorded with a tape recorder. Interview data and secondary legal materials would then be combined with the analysis process through data categorization according to the perspective of community-based corrections as a theoretical basis.

### **Result and Discussion**

Law is a political product since it is not devoid from existing political interests. This statement implies that law in the sense of legism, as used by Montesquieu (1989) as a form of law, is a legislative product. Sometimes laws contain not only the rules needed to fulfill the interests of society, but also the specific interests of the makers. The legislature is a collection of members of political parties tasked with enacting laws. Each conveys a message, represents the vision and mission of the party that assigned him/her, and frequently fights for his/her own personal interests and benefits. It becomes commonplace when laws that are enacted no longer function solely to regulate, protect, and prosper the public interests, but also the interests of certain people or certain groups although public good should be the goal of legislators in producing law. According to Jeremy Bentham, the general benefits of law should be the basis for reasoning in order to determine the true good of society.

Law Number 40 of 1999 concerning the Press is basically one of the busiest laws regulating people's life in Indonesia, especially for the benefit of communication. Humans need communication as the essence of life, so it is only natural that the laws that regulate it are mostly used, either directly or indirectly. In terms of time, the age of the "busy" press law governing public behavior for 23 years is commonplace to be a source of concern to make changes. The rapid development of information technology must at least be balanced with regulations that can move nimbly and agilely, one of which is the press law.

Unfortunately, the movement to change laws in Indonesia often causes public trust to decline. Instead of changing the law, changing the constitution is a lot of worry so that the original constitution can hardly be recognized because in principle it has changed completely (Mahendra, 2010). Changes to laws in Indonesia are sometimes not based on objectives, but because of certain interests. Legislators solely consider that the legislative

process is their authority without thinking about the will of the people. Even though the people should also have the right to know the legislative process that is taking place in the DPR. This argument was reinforced by Zainal Arifin Mochtar, who stated, "We cannot see only how the law is formed, how the formalities have been fulfilled." However, the fundamental substance is whether the language of the public's wishes can be conveyed" (Arfana, 2021). The purpose of the law for the welfare of society has not become the main part, compared to the interests of the parties that have the authority to make it. It is not an exaggeration to say that when the Chief Justice of the Supreme Court (2001-2008) and Chair of the Press Council (2010-2016), Bagir Manan, said that changing laws in Indonesia tends to look like a ritual. Especially for laws that contain the interests of certain groups, it is like distributing the cake of power to perpetuate power.

A number of laws have been drafted and enacted as though they were merely slicing the pie of power (Prayitno, 2019). This includes, but is not limited to, the discussion and ratification of laws on presidential and vice-presidential elections, laws on elections, laws on political parties, laws on regional governance, laws on the composition and position of the DPR, MPR, DPD, and DPRD, etc. On the other hand, there are many laws that have received little attention from the authorities when they were amending or drafting them. In fact, many laws are directly related to the interests, justice, and welfare of the people such as the Criminal Code, the Civil Code, the Criminal Procedure Code, the Agrarian Law, and others.

If the reason for amending the press law that is currently in place (Law No. 40 Year 1999 Regarding the Press, 1999) is to obtain press freedom, then it raises questions. Since the articles in the law have guaranteed that freedom, press law has guaranteed freedom, even since it was first formed. The same is also true with the current law. Juridically, the guarantee of press freedom is well maintained, so that the primary challenge is how to implement it. Moreover, the press is not easy to avoid the social and political influences under which the press lives and develops.

The current condition of the press, which not only serves as a means of social control but also carries out economic functions, must work

for profit. So, whatever guarantee of freedom is given by the law, economic and social factors that surround it will influence it. Juridically, the freedom of the press is now highly strong with constitutional and statutory guarantees. Even the first Press Law No. 11 of 1966 provided this guarantee. Likewise, the first amendment (to Law Number 4 of 1967) and the second amendment (to Law Number 21 of 1982) did not eliminate the substance of the articles on freedom of the press especially after the reform with the passage of Law Number 40 of 1999 concerning the press.

Despite this, there are still members of the press who are not reassured by the fact that press freedom is protected by law. The press legislation guarantee is considered insufficient to ensure press freedom (Manan, 2012). They are campaigning for freedom of the press to be properly included in the constitution. The Indonesian Press and Broadcasting Society (*Masyarakat Pers dan Penyiaran Indonesia* or MPPI) wanted US-style press freedom. When the first amendment to the US Constitution was adopted in 1791, it guaranteed freedom of the press. The 1945 Constitution, which regulates press freedom, is implicitly deemed insufficient. Moreover, there is an assumption that the press law has not protected journalists, writers, and sources from the possibility of extrajudicial action from the authorities (Muis, 2000).

Many countries included freedom of the press in their constitutions, but in reality it is not easy to implement it as stated in the constitution. World history proves how many constitutions (*Undang-Undang Dasar* or UUD) are simply a series of dead letters (*de dode* letters, the dead letters) because they are not enforced, including in Indonesia (Old Order and New Order) (Manan, 2016). Although, admittedly, the implementation of press freedom in Indonesia is still generally superior. Power and politics have a great impact on the dynamics of the press. On the other hand, the press is a political instrument. In contrast, large press organizations in Indonesia are currently dominated by conglomerates that are also politicians. They are party leaders and owners of press companies that are influential as well as part of the government (Adam, 2018). This situation has the potential to become a threat in the form of the emergence of a Press Lord or Press Baron who can dominate the world of the press in the form of a monopoly on all

information and developing media (Rodgers, 2020).

The history of the Indonesian press has indeed had a long and stressful journey since the Old Order and New Order governments. During the Old Order era, the opposition to press freedom was so strong. The President has stated several times that what is needed during the revolution is the commitment of the entire nation to achieve and maintain independence, not freedom of the press. President Soekarno understood the importance of the role of the press in the ongoing revolutionary agenda and political manifesto, so that the press was finally controlled very tightly and required every publisher to be registered nationally through a Publishing Permit, or SIT (Sari et al., 2021). The president finally has the power to regulate everything, including the life of the press, on the basis of national stability, as stated by the president:

"Objective reporting during a revolution is also impossible. I want the news to be broadcast not to be objective, but to be clearly in favor of our revolution and hit the enemies of the revolution" (Smith, 1986).

Likewise, in the era of *Orde Baru* or New Order, pressure on the press remained intense for a longer period of time. The principle of freedom of the press contained in the law is processed again by the authorities and raised in the form of entertainment slogans. For example, the Minister of Information (1978-1983) and Head of Special Operations, Ali Moertopo famously stated: "Freedom of the press is the crown of the New Order." But in truth, it was Law Number 21 of 1982, which required the press to have a Press Publishing Business License, or SIUPP, that was secured (Rahmawan, 2019). Law Number 11 of 1966 does not require SIUPP, but when changes are made, SIUPP becomes mandatory. It is completely contradictory to the official's slogan, so the press receives a rusted crown (Hill, 2011). It can be seen that the "freedom" of the press that occurred during the New Order regime was very short-lived, and the repression was carried out under another name.

The strength of the Old Order and New Order regimes on the media began to weaken at the start of the Reformation in 1998, or shortly before the collapse of the New Order regime. At the same time, Suharto's weak legitimacy as President of Indonesia weakened the grip of the country's political power on the press. The

national turmoil that continued until mid-May 1998 finally led to a power void so that the owners of press companies did not intervene in the reporting process (Solihutaufa, 2022). The power of society and the press ultimately weakened the legitimacy of the New Order regime, and Indonesia moved into the Reformation period. The reform resulted in Law Number 40 of 1999 concerning a press that is democratic and guarantees freedom (Batubara, 2007). Press freedom was further strengthened by the dissolution of the Ministry of Information and Technological Advancement in the early 2000s (Munugar & Tiarawati, 2022).

As time passed, many voices began to emerge in favor of changing the law, even though within the internal community the press itself was not yet unanimous. They were concerned that the freedom they have felt would return to the past, when the press was suppressed and controlled by the powers that be. History records that the change from Law Number 11 of 1966, during the New Order era, to Law Number 21 of 1982 was a disaster for press freedom. The amendment that included an article requiring the press to have a Press Publishing Permit (SIUPP) was like the defining moment for press freedom. Not only were permits at risk, but obtaining SIUPP was also difficult and complicated.

Changes to a law are common things to happen, even though they always contain interests. The first change, namely, from Law No. 11 of 1966 to Law No. 4 of 1967, had a more political impression as an attempt by power to embrace the press. The amendment only adds one article regarding the invalidity of Presidential Decree (Penpres) Number 4 of 1963 concerning the security of printed matter. Previously, Presidential Decree No. 4/1963, which was declared invalid, also lacked significant impact on press freedom. Evidently, both before and after Presidential Decree Number 4 of 1963 was enacted, the government still freely suppressed the press. Smith (1986) in his book entitled "Banning of the Press in Indonesia," has noted that there have been 541 suppressions of press freedom since May 1952-1963. Two years later after Presidential Decree 4 of 1963 was issued, there were still at least 20 cases of prosecution against the press or in total between 1952-1965 there were 561 acts of suppression against the press.

In the second amendment to Law Number 11 of 1966 and Law Number 21 of 1982, freedom of the press was suppressed by the inclusion of an article on the obligation for the media to have a Press Publishing Business License (SIUPP). Even though it is in the same law, it is very clear that there are articles that guarantee freedom of the press by prohibiting censorship, banning (Article 4), and free publishing licenses contained in Article 8 paragraph 2 (Muis, 2000). More than that, Law Number 21 of 1982, which contains Article 13 paragraph (5) regarding the obligation of the press to have SIUPP, has actually ignored Article 28 of the 1945 Constitution (Hill, 2011).

Moreover, the issuance of Regulation of the Minister of Information (Permenpen) Number 01 of 1984 as a follow-up to this article further legitimized the actions of those in power to control the press. Article 33h of the Permenpen gives the authorities the freedom to take action against the press without proving a single charge in court (Muis, 2000). Even so, the authorities still position themselves as coaches of a good press under the pretext of advancing a civilized nation through entertaining jargons such as to realize the Pancasila Press, the Development Press and others. Surya Paloh has taken legal action against this regulation, but in 1993 the Supreme Court (*Mahkamah Agung*) rejected it.

The treatment of the New Order rulers by the oppressive and authoritarian press (Batubara, 2010) left a negative stigma that had a long-lasting impact that was not easily forgotten when the Indonesian government attempted to change the law. Moreover, the prevalence of group and individual interests in the legislative process has discouraged the press from advocating for a change in the law. Many press groups and organizations still lack professional idealism in accordance with the Journalistic Code of Ethics, which has an impact on the emergence of press crimes, or press offenses (Ahmad, 2013; Lubis & Koto, 2020). Some examples of the impact of this press are the pragmatic actions of the press, such as (1) fake news or hoaxes, (2) news buying and selling, (3) news contracts, (4) covert advertising, and so on. Incidents like this have the potential to be exploited as loopholes by groups that have an interest in achieving changes to laws regarding substances, according to orders (Ritonga, 2021).



In this situation, generally, efforts and steps in the form of changes to the press law currently in effect are not an urgent choice. The interview on July 29, 2021, which was conducted with Bambang Sadono, as a member of the DPR Panja regarding the press bill in 1999, gave an indication for the press community to be patient in waiting for the upcoming legislative formations, including press fighters, like at the beginning of reform. Those who disagree with changing the press law believe that now is not the best time to make changes to the press law. Without accusing anyone, some of the press community disagrees with the changes to the press law at this time because they don't trust members of the DPR who will discuss it later. They feel that they are not willing to let the press law that is currently in force be changed in the current atmosphere of the DPR.

For the press community, the current atmosphere of press freedom is much better compared to the Old Order or New Order eras. Therefore, changing laws that still function properly is not without risk. To discuss laws, it is necessary not only for members of the DPR who are persistent without being burdened by personal or group interests, but also for people who are persistent outside the DPR building, such as during the discussion of the 1999 press law.

This argument is strengthened by an interview on February 16, 2021, with the Deputy Chairman of the Press Council, Hendry Ch. Bangun, who believed that the current law is still able to accommodate the aspirations of press freedom. Precisely no one has ever been more willing to improve his/ her condition as they are now. It is not impossible that numerous missions are included in the substance of the law. The current era is one where the media is in power, prompting many to take part through laws that regulate the press. The Chairman of the Alliance of Independent Journalists (2014-2017), Suwardjono, also stated the same thing in an interview on December 10, 2019. Suwardjono remarked that the current press law is still sufficient. If changes are made now, the results will not necessarily be better. Suwardjono agreed that the law needs to be changed, but the time is not yet right.

"The current law can still accommodate aspirations regarding press freedom, so even if you want to change it, it's not now. If what

you are looking for is press freedom, the law already guarantees press freedom; what else do you want to change?" (Interview with Suwardjono, Chairman of AJI, 10 December 2019).

Changing the legislation or even repealing it in an attempt to expand press freedom can potentially backfire. Given that it isn't impossible for the contrary to occur, the press can return to its previous state.

"There is not a single article that hinders freedom of the press at this time. "If you feel that the press is not free, that is an internal problem for the press itself, not because of a law." (Interview with Rajab Ritonga, Director of the Central PWI Journalist Competency Test, February 18, 2021).

Not all members of the press or the public reject changes to the current press law. A number of parties support changes to the law as soon as possible on the grounds that the press is more professional with adequate regulations. Several times the draft for changing the press law has been circulated and has even reached the DPR RI, although it has not yet had time to enter into discussion. Members of the DPR in charge of the press have also conveyed to Bagir Manan (Chairman of the Press Council) that his institution should initiate changes to Law Number 40 of 1999 in one brief meeting. Unfortunately, the DPR member did not state his reasons, so Bagir was actually worried that if he obeyed the DPR member's wishes, the contents of the new press law might actually be backwards (Manan, 2012).

"It was included in the omnibus law package, but it was issued after members from the press questioned it. It appeared that the government did not wish to engage in a debate with the media." (Interview with Rajab Ritonga, Director of the PWI Central Journalist Competency Test, February 18, 2021).

The press law currently in effect was also included in the 2020 Omnibus Law package for discussion. Nevertheless, amid opposition from various press circles, it was ultimately deleted from the legislative package. Interviews with Rajab Ritonga provide insight into how the Indonesian government initially considered changes to the Press Law. However, the stakeholders, namely the press, feel that this is not necessary. This was discussed by Manan

(2016) who stated that in one theory of legislation, there is an imposing meaning that it should not be too easy to replace or change laws. If you have to do it, it's enough to change it if it's really necessary. As long as it can still be revived by practice, let practice actualize a rule. Meanwhile, Jhering (1999) stated that laws are part of the soul of the nation and require rational and systematic management to evolve into positive law. As a result, adoption from outside elements is required, either as a result of association with other nations or because they truly have interests in outside elements.

Law Number 40 of 1999 concerning the Press continues to meet the conditions established by this theory. Law Number 40 of 1999 legally still provides protection and guarantees freedom of the press. It is normal for each law and regulation to have flaws due to implementation constraints. No regulation is perfect and can cover everything, including new laws.

In the sociology of law, there is a reasonable viewpoint stating that, essentially, no single law is born perfect. Therefore, if you expect every law to be flawless, Indonesia will never have laws in any field (Trisnadi, 2017). Any imperfection in the law must be used as a guide to obtain legal certainty. Since law enforcement is dependent on both the law and efforts to implement it. As Satjipto Rahardjo stated, the law cannot simply be left to a law (including the Press Law) only to law, especially laws that are carried out in a normative-dogmatic manner. Therefore, as interested stakeholders, the public and society must ensure that laws that are flawed can still achieve positive results.

Even if changes have to be made, it is enough to adjust the additional material needed; there is no need to debate the material that is still relevant. Likewise, do not disregard opinions that think it is not the right time to make changes. Due to the numerous competing interests, anxiety around the existence of "stuffer" in amending the law has become stressful. Incorporating the five-year ritual with the approaching political year necessitates that a large number of individuals require a means of communication to achieve political objectives. It is reasonable for the press to be worried if changes are made at this time, because it is not impossible that it will actually bring the press back to the dark era (Ruswandi,

2004). Freedom of the press, which has been operating according to Law Number 40 of 1999, is still evident in journalistic practices that are free from censorship. It has never been heard of an agency banning the press from broadcasting its news to the public.

"Anything can be reported, and if it is not, it is due of the media's own decision, not because of laws or authorities that forbid it" (interview with Rajab Ritonga, Director of the Central PWI Journalist Competency Test, 18 February 2021).

The freedom of the press that is guaranteed by law still has limits, not unlimited freedom, as a form of respect for the legal rights and human rights of others. A Muis provides a limitation on press freedom that is purely characterized by being limited by law through the power of the judiciary, not limited by political power such as the executive or bureaucratic institutions (Muis, 1996). In any country, absolute freedom of the press will not be obtained. Unlimited freedom will only produce actions that lead to anarchy. The desired freedom of the press is not unlimited, unconditional, or absolute freedom (Adji, 1973).

The current press law (UU 40/1999) does not provide the slightest gap for the government to intervene, including making regulations related to the press, including government regulations as the executor of the law. As a result, this press law is the only one that lacks government regulations to ensure that the articles of the law are followed. Even though people may not like it or not, government regulations are one way to maximize the function of law in the form of laws so that they can work effectively for the benefit of society.

In Hans Nawiasky's theory, which is called theory von stufenaufbau der rechtsordnung, the implementing regulations are in the fourth order of the arrangement of norms as follows: (1) state fundamental norms (*Staatsfundamentalnorm*), (2) basic state rules (*Staatsgrundgesetz*), (3) formal laws (*formell gesetz*), and (4) implementing regulations and autonomous regulations (*Verordnung en autonome satzung*). Once again, government regulations should not be seen as a gap in the power to intervene in the press, but have other functions with a theoretical basis (Hanafi & Firdaus, 2022).

Government regulations are not solely intended by the powers that be to intervene in press affairs. The function of government regulation is as an instrument that becomes a tool to make further arrangements in implementing laws (Redi, 2018). Mastorat also mentions that the function of government regulation is to further regulate the provisions in the law and carry out further regulation of other provisions in the governing law, which must not be mentioned (Mastorat, 2021). Article 1 paragraph (5) of Law Number 12 of 2011 concerning Formation of Legislation emphasizes the function of government regulations by stating: "Government Regulations are Legislations stipulated by the President to carry out the Act as it should."

Thus, government regulations do not always have to be seen as potential interventions; there are also other interests that make laws more effective. Since the constitution requires rules in the context of affirmation, not only do laws require elaboration and confirmation with other regulations. Because of that, the constitution, in principle, only regulates the main things, and it is impossible to regulate everything in detail. Thus, operational regulations are needed to ensure that legal products in the form of laws and constitutions do not become obsolete quickly. This is affirmed in the following elucidation of the 1945 Constitution:

"Don't make the Constitution obsolete (*verouderd*). What is important in government and the life of the country is the spirit of the state administrators, the spirit of the government leaders. Even though a Constitution was drafted, which, according to his words, is family in nature, if the spirit of the state administrators, the government leaders, are individuals, then the Constitution is meaningless in practice. On the other hand, even though the Constitution is not perfect, if the spirit of the administrators of government is good, then the Constitution will certainly not hinder the running of the country." (The 1945 Constitution of the Republic of Indonesia, according to the State Gazette of the Republic of Indonesia Number 75 of 1959)

Therefore, a law or a constitution is not a matter of good or bad, complete or not, but what is most important is the enthusiasm of the organizers in implementing the law. Implementation of the same law will be related to how the executors carry out their respective

functions. This is because basically it is not due to the law but the executor. The freedom of the press is guaranteed, but do the executors, including the press itself, exercise this freedom in accordance with the legal provisions in the existing law? Because the function of law in Indonesia is currently not working effectively, as a result, it is often manipulated and even becomes a tool for hoarding power (Mohammad, 2010). So the main aspect that must be corrected first is the parties related to the law.

Law Number 40 of 1999 has guaranteed freedom of the press, at least free from pressure from power. Unlike in the past, various pressures threatened the media. Even though freedom of the press is free from power control, there are new temptations in its post-reform implementation that come from inside. If previously the pressure came from outside the press, namely power, now the temptations come from the owners of capital. The owners of press capital really determine all directions of press policy, so that even though freedom of the press is guaranteed by law, the freedom to broadcast news is determined by the owners. A construction is needed so that it can ultimately separate companies from press products. This way it will be easy to filter which interests belong to the companies and the press. This is because the press cannot just rely on public taste without thinking about other interests.

In the preparation and amendment of the law after it has been ratified, what is needed is not perfection, but the enthusiasm of the executors of the law. Changes to the law are part of the process of legal development, which aims to improve and facilitate legal life. Legal development cannot exist in isolation; it must be connected with the development of other fields in a sustainable and synergistic manner. Legal development is basically not always synonymous with changes in statutory regulations, but in a broad sense, that refers to the system. Not only does it cover the development of legal materials; but also institutions, law enforcement, and legal culture so that they influence each other and are carried out simultaneously (Wijayanto, 2014).

## Conclusions

The existence of a law is not determined by the age of the regulation, but by how effective the law is able to reach and work to realize people's welfare. Qualitative research

conducted through interviews showed that changes to Law Number 40 of 1999 concerning the Press in an effort to realize press freedom in Indonesia in the face of the fast-paced development of information technology can in fact be considered less urgent. Law Number 40 of 1999 concerning the Press is considered capable of guaranteeing press freedom and protection in Indonesia. The development of information technology has provided new challenges and obstacles for the press, however, the strengthening of institutional and law enforcement factors in this case is more crucial to improve. Changes should not only be based on the substance of the law but also on the relevance and desire of stakeholders to understand whether or not the changes are necessary, including the atmosphere of the legislature.

This research found that there are concerns from the internal press community that they do not agree with the current amendment to Law Number 40 of 1999 as there is still anxiety about the ongoing political order. The press community is concerned about the changes which could actually threaten the freedom of the press which is currently in place. It is feared that partisan elements that are very strong in the legislature and very prominent in political mechanisms will play a role in advancing their political interests, thereby threatening freedom of the press as a means of democracy and guaranteeing human rights at this time.

Everyone agrees that at the right time there needs to be a change to adjust to developments so that the law will be more effective in creating the people's welfare. Therefore, this study suggests that there should be any effort to improve the substance of the regulations that separate companies from the press in the future. In addition, law enforcement against the press should also be improved so that no media companies will violate the Journalism Code of Ethics. The combination of these two suggestions will eventually result in the realization of freedom of the press from the oppression of capital owners as well as the growth of freedom for a responsible press.

## References

Adam, A. (2018, February 9). Konglomerat Media di Indonesia via Jalur Media TV & Cetak. *From Tirto*. Id: <https://tirto>.

*Id/8-Konglomerat-Media-Di-Indonesia-via-Jalur-Media-Tv-Cetak-CEv7*

- Adji, O. S. (1973). *Mass media dan hukum*. Erlangga.
- Ahmad, I. F. (2013). Persoalan Yuridis Undang-Undang No. 40/1999 Tentang Pers. *Kanun Jurnal Ilmu Hukum*, 60(15), 357-366.
- Ajzen, I. (2020). The theory of planned behavior: Frequently asked questions. *Human Behavior and Emerging Technologies*, 2(4), 314-324.
- Anggoro, S. A. (2019). Politik hukum: mencari sejumlah penjelasan. *Jurnal Cakrawala Hukum*, 10(1), 77-86.
- Arfana, N. T. (2021, August 5). Zainal Arifin Mochtar Sebut Pelanggaran dalam Pembentukan UU Cipta Kerja. *Mahkamah Konstitusi Republik Indonesia*.
- Asshiddiqie, J. (2018). *Konstitusi keadilan sosial: serial gagasan konstitusi sosial negara kesejahteraan sosial Indonesia*. Penerbit Buku Kompas.
- Batubara, S. L. (2007). *Menegakkan kemerdekaan pers: Kumpulan makalah, 1999-2007*. Dewan Pers.
- Bentham, J., & Mill, J. S. (2004). *Utilitarianism and other essays*. Penguin UK.
- Besley, J. C. (2020). Five thoughts about improving science communication as an organizational activity. *Journal of Communication Management*, 24(3), 155-161.
- Besley, J. C., O'Hara, K., & Dudo, A. (2019). Strategic science communication as planned behavior: Understanding scientists' willingness to choose specific tactics. *PLoS One*, 14(10), e0224039.
- Burhani, R. (2009, June 29). Komunitas Pers Tolak Revisi UU Pers. *Antara*. [www.antarane.ws.com/berita/68282/komunitas-pers-tolak-revisi-uu-pers](http://www.antarane.ws.com/berita/68282/komunitas-pers-tolak-revisi-uu-pers)
- Cardozo, B. N., & Kaufman, A. L. (2010). *The nature of the judicial process*. Quid Pro Books.
- de Montesquieu, C. (1989). *Montesquieu: The spirit of the laws*. Cambridge University Press.
- Dewan Pers Indonesia. (2007, January 24). *AJI Nilai UU Pers Belum Perlu Direvisi*. Dewan Pers Indonesia. [www.dewanpers.or.id/berita/detail/550/AJI-Nilai-UU-Pers-Belum-Perlu-Direvisi](http://www.dewanpers.or.id/berita/detail/550/AJI-Nilai-UU-Pers-Belum-Perlu-Direvisi)

- Hanafi, M. F., & Firdaus, S. U. (2022). Implementasi Teori Hans Nawiasky dalam Peraturan Perundang-Undangan di Indonesia. *Sovereignty*, 1(1), 79–83.
- Hidayat, A., & Arifin, Z. (2019). Politik Hukum Legislasi Sebagai Socio-Equilibrium di Indonesia. *Jurnal Ius Constituendum*, 4(2), 147–159.
- Hill, D. T. (2011). *Pers di Masa Orde Baru*. Yayasan Pustaka Obor Indonesia
- Jamaludin, J. (2009). *Menguji Ide Revisi UU Pers: Hasil Kajian dan Usulan AJI Soal Undang-Undang Pers*.
- Lubis, T. H., & Koto, I. (2020). Diskursus Kebenaran Berita Berdasarkan Undang-Undang Nomor 40 Tahun 1999 Tentang Pers dan Kode Etik Jurnalistik. *De Lega Lata: Jurnal Ilmu Hukum*, 5(2), 231–250.
- Mahendra, O. (2010). Perubahan Undang-Undang Dasar: Antara Harapan dan Kenyataan. *Jurnal Legislasi Indonesia*, 7(1), 95–108.
- Manan, B. (2012). *Politik publik pers*. Dewan Pers.
- Manan, B. (2016). *Pers, hukum, dan hak asasi manusia*. Dewan Pers.
- Mastorat, M. (2021). *Pengantar Ilmu Perundang-Undangan*. Scopindo Media Pustaka.
- Mohamad, M.M.D. (2009). *Politik hukum di Indonesia*. Raja Grafindo Persada.
- Mohamad, M.M.D. (2010). *Membangun Politik Hukum, Menegakkan Konstitusi*. Raja Grafindo Persada.
- Muis, A. (2000). *Titian jalan demokrasi: Peranan kebebasan pers untuk budaya komunikasi politik*. Kompas.
- Munugar, A. N., & Tiarawati, V. (2022). Peranan Delik dalam Fungsi dan Perkembangan Pers Menurut Undang-Undang Nomor 40 Tahun 1999 Tentang Pers. *De Juncto Delicti: Journal of Law*, 2(1), 49–59.
- Neuman, W. L. (2006). *Workbook for Neumann Social research methods: qualitative and quantitative approaches*. Allyn & Bacon.
- Prayitno, A. (2019, September 19). Revisi UU MD3 dan Oligarki Politik Kekuasaan. *Detik*. [www.news.detik.com/kolom/d-4712768/revisi-uu-md3-dan-oligarki-politik-kekuasaan](http://www.news.detik.com/kolom/d-4712768/revisi-uu-md3-dan-oligarki-politik-kekuasaan)
- Rahmawan, T. I. (2019). Karakteristik Produk Hukum Pers dan Prospek Konsolidasi Demokrasi. *WASKITA: Jurnal Pendidikan Nilai dan Pembangunan Karakter*, 2(2), 1–16.
- Ratcliffe, S. (2018). *Oxford Essential Quotations*, viewed 12 May 2021.
- Redi, A. (2018). *Hukum pembentukan peraturan perundang-undangan*. Sinar Grafika.
- Ritonga, R. (2021). Rontoknya independensi pers cetak dan online di Kota Medan. *Jurnal Kajian Komunikasi*, 9(1), 26–39.
- Rodgers, J. (2020). ‘Russia is all right’ British newspaper reporting of the Russian Revolution of February 1917. *Media History*, 26(4), 424–436.
- Ruswandi, A. (2004). Menakar Kadar Kebebasan Pers Indonesia. *Mediator: Jurnal Komunikasi*, 5(2), 265–274.
- Saptohadhi, S. (2011). Pasang surut kebebasan pers di Indonesia. *Jurnal Dinamika Hukum*, 11(1), 127–138.
- Sari, R. W., Winarti, M., & Darmawan, W. (2021). Perkembangan Surat Kabar dalam Pusaran Politik: Kajian Surat Kabar Sinar Harapan 1961–1986. *FACTUM: Jurnal Sejarah dan Pendidikan Sejarah*, 10(2), 51–60.
- Smith, E. C. (1986). *Pembredelan Pers di Indonesia, 1949-1965*. Pustaka Grafiti Pers.
- Solihutaufa, E. (2022). Pers dalam Demokratisasi di Indonesia: Kajian Tentang Peranan Pers dalam Peristiwa Revolusi Mei 1998. *Jurnal Dialektika Politik*, 6(2), 152–174.
- Wijayanto, D. (2014). *Problematika Hukum dan Peradilan di Indonesia*. Komisi Yudisial Republik Indonesia.