



## Problems in Resolving Press Cases Through the Indonesian National Police

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**Abstract** - This research is motivated by the phenomenon, namely the polemic faced by press personnel against the Police, which is related to the absence of certainty in solving cases in the press even though there has been an MoU made in the National Police and the Press Council relationship. This is indicated by in some cases, even though the press case has been resolved by the Press Council, the police continue to process the case. This study aims to find a problem that has existed between the National Police and the Press Council such as the MoU (Polri and Press Council) which is then questioned for its significance such as its legal strength in resolving press cases. Then give the best advice in resolving press cases by the Indonesian National Police. The research method used is normative juridical, namely legal research based on relevant literature as a source of research. Then it is analyzed with a statue approach. The result obtained from this study is that the MoU between the Press Council and the National Police actually has the same legal force as agreements in general. Then the resolution of cases in the press by the police can be resolved, one of which is using the restorative justice method by using police discretion as an effort to keep press personnel from feeling criminalized and maintain the image of the police.

**Keywords:** Press Council, Police, Journalism

### I. INTRODUCTION

The police according to W.J.S. Poerwadarminta are the government bodies responsible for ensuring safety and public order. This includes arresting people who break the law or state employees tasked with maintaining security.(Poerwadarminta, 1985, p. 763) The police function as public civilian institutions responsible for maintaining order and enforcing the law.(Arif, 2021, p. 95)

Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia regulates the existence of the Police in Indonesia. As a law enforcement institution, the National Police of the Republic of Indonesia has a major role in maintaining internal security. In carrying out their functions, they are required to respect human rights and the rule of law of the country. So that when on duty, the police are expected to act fairly and wisely, and aim to create a safe and orderly atmosphere. The professionalism of the National Police can be seen from how they work, they must then become officers who are fair, wise, and able to create security and order.(Manik et al., 2023, p. 136)

Touching on Human Rights, freedom of opinion is a right protected by the constitution in accordance with Article 28E of the 1945 Constitution. Freedom of speech or expression is a right that allows a person to express their opinion or thoughts without hindrance, except in the case of spreading hate speech or attacking the honor of others. In Indonesia, there are still many violations of human rights (HAM), especially in terms of freedom of opinion. Until now, there are still many individuals who do not respect the free speech rights of others. Many

cases of human rights violations, especially related to freedom of expression, have occurred. Many people who express opinions on social media end up dealing with the law, when they are just expressing their opinions. (Akbar & Jalil, 2019, p. 181) Press media, both print and electronic, have a very important role in people's lives because they help improve the quality of life of their citizens. Apart from being a tool of information and communication, press media also reflects the identity of society, because what is presented by the press media actually reflects the dynamics of the life of the community in which the media operates. (Wahidin, 2010, p. 1)

Press freedom is an indispensable essential element to ensure objectivity and independence in the media industry, so that news can be delivered to the public with the truth without fear of threats or pressure from the authorities, as happened during the New Order era. Freedom of the press is a crucial element in the establishment of a democratic and transparent system of government. (Herlambang et al., 2012, p. 2)

Freedom of the press reflects the protection of freedom of expression both orally and in writing, and in its development, through the medium of television and radio as well, as an effective channel to convey messages to the public. Because it relates to the public, statements spoken or written, which are then broadcast, have a huge influence (Jamaludin, 2022, p. 3)

In Press Law No. 40 of 1999, press freedom is recognized as an effort to protect citizens' human rights in obtaining information. This freedom of the press is manifested as the ability of the mass media to convey information and form opinions without pressure or interference from any party. This law affirms that the press must carry out its functions and roles in a professional manner, which is protected and guaranteed by law. One form of legal protection that is emphasized is the absence of censorship, suppression, or violation of national press broadcasting, in accordance with Article 4 paragraph 2 of the law. (Makal et al., 2019, p. 2015)

Imprisonment of the media does not support the development of a free press, but has the potential to endanger the existence of the press. This is because the regulations in the Press Law have been drafted with the aim of maintaining and strengthening the role of the press as a pillar of democracy and the state based on law. Therefore, the procedures stipulated in the Press Law should have a higher priority compared to other legal regulations. (Herlambang et al., 2012, p. 3)

Regarding the legal system in Indonesia, a Kompas journalist said that the Indonesian legal system does not fully support media freedom, and, more specifically, investigative journalism. This view is also recognized by other research on Indonesia's legal system, which suggests that despite the enactment of the Press Law (which supports media freedom) many other laws still restrict journalistic expression. For example, Indonesia's Criminal Code includes several articles on defamation that may be used by those in power to criminalize critical journalists. Through these articles, governments and non-state parties can sue journalists. (Wijayanto & Masduki, 2023, p. 12)

The Press Council serves as a supervisory body responsible for the implementation of the journalistic code of ethics and as a mediating institution in handling cases of unlawful press. When no agreement is reached between the disputing parties through the Press Council, only then will the case be submitted to the realm of law, usually through the police institution. However, often this procedure is not followed, and those who feel aggrieved by press coverage immediately report the case to the police, so the role of the Press Council in solving cases is reduced. (Herlambang et al., 2012, p. 4) So here it should be the role of the police who can direct the public or if the police have found what is a problem related to the press in its investigation, it should first communicate to the press council to determine whether to proceed with the police or ethical issues which is the domain of the press council.

This is also a problem considering that basically the National Police with the Press Council have made an MoU related to Coordination in the Protection of Press Freedom and Law Enforcement Related to Abuse of the Journalist Profession. In accordance with the substance of the MoU that in Article 4 paragraph (2) if the National Police receives a complaint related to a press dispute, the National Police must direct the disputant to resolve the problem gradually, starting from the right of answer, right of correction, complaint to the Press Council. Then also

in Article 5 paragraphs (1) and (2). There is a case where Muhammad Irvan S, a journalist from *Timurterkini.com*, was later made a suspect and detained by the Southeast Sulawesi Regional Police in May 2022 for alleged violations of article 45 paragraph (3) jo. Article 27 paragraph (3) of the ITE Law related to insult or defamation. The Kendari District Court then sentenced him to prison in September 2022. Nonetheless, the case has previously been handled by the Press Council. (Sasmito, 2023) Moreover, there are at least 3 journalists charged under the ITE Law in the 2019-2020 period. (*Sudah Tiga Jurnalis Dipenjara Di Era Jokowi-Ma'ruf Pakai Jerat UU ITE*, 2021) This can certainly threaten the image of the police in the future.

The article entitled *Settlement of Press Crime Cases Through the Press Council as a Mediation Institution* (Herlambang et al., 2012), Discusses in detail how the Press Council exists as an institution to mediate a press matter. What is different from this article is that the author uses police variables which have not been discussed in the article.

This study aims to find a problem that has existed between the National Police and the Press Council such as the MoU (Polri and Press Council) which is then questioned for its significance such as legal strength in resolving press cases. Then give the best advice in resolving press cases by the Indonesian National Police.

## **II. METHOD**

In this study the author used normative juridical method. Normative juridical research is research that uses relevant documents such as laws, jurisprudence, and so on. (Muhaimin, 2020, p. 45) Then the author uses the *statute approach*. This approach involves a thorough examination of all legal and regulatory regulations related to the legal issue being discussed or researched. (Muhaimin, 2020, p. 56) Sources of legal materials are obtained from literature such as Regulations, in this study the author elaborates several Regulations as research sources such as the MoU between the Press Council and the National Police, the Press Law, and the ITE Law. In addition, the author uses literature such as journal articles, and books relevant to the object of research, with the aim of providing a credible and valid descriptive analysis.

## **III. RESULT AND DISCUSSION**

### **MoU of Press Council and National Police**

The "Memorandum of Understanding," sometimes known as the "First Contract," is what specialists refer to as the "MoU," which is the first stage in the contractual process. Contracts typically result from disagreements or unequal interests held by the parties. As a result, the parties typically engage in a negotiating process before establishing contractual connections. The parties would often prepare a Memorandum of Understanding (MoU) outlining each party's desires and the timetable for obtaining a contract agreement after an understanding or agreement to make one has been reached. (Lutfi, 2017, p. 181) The Indonesian Civil Code's Article 1320 governs the conditions under which an agreement is legitimate, one of which is the consent of all parties. A Memorandum of Understanding may be made legally on the grounds that Article 1338 of the Indonesian Civil Code provides that all agreements are lawful and enforceable against the parties forming them. (Darma et al., 2016, p. 3)

A valid MoU carries legal responsibilities that are fully in line with the principles of *Pacta Sunt Servanda* (agreements must be adhered to). Therefore, the enforceability of an MoU resembles the enforceability of a law, imposing binding and enforceable force, even if it only relates to the substantial issues outlined in the MoU. Therefore, it can be concluded that the legal obligations of a Since an MoU is created by the parties to an agreement who pledge to abide by its terms, it satisfies the requirements for a valid agreement as listed in Article 1320 of the Civil Code. Therefore, an MoU is in accordance with the obligations of an agreement. As a result, as stated in the Civil Code about default provisions, its legal obligations will bind the parties that violate them. (Setiyaningsih & Budhisulistiyawati, 2020, p. 177)

An MoU if it meets the elements in Article 1320 of the Civil Code, then the MoU already has binding legal force like an agreement. So that if in the future there is one party who does

not heed the contents of the MoU, then one party can take this matter to court. (Pratama, 2016, p. 430)

Moreover, quoting from Munir Fuady's book, the MoU is divided into two opinions, namely: (Fuady, 2001, pp. 93–94)

a) Memorandum of Understanding (MoU) sebagai Gentlement agreement

The Memorandum of Understanding (MoU) is merely an informal understanding, according to the first point of view. Therefore, Memorandums of Understanding (MoUs) lack the legal force of conventional agreements, even though they can occasionally be established in a way that makes them legitimate, like when they are backed by a notarial deed. Furthermore, the MoU is not legally binding; rather, it simply has moral force. Violations of the memorandum of understanding are regarded as unethical as a kind of moral pact and can harm an actor's reputation in the corporate sector.

b) Memorandum of Understanding (MoU) sebagai Agreement is agreement

The second point of view holds that every agreement has the same legal weight regardless of how it is delivered—orally or in writing, succinctly or extensively, and primarily regulating its principles. Therefore, it is subject to all of the agreement's legal provisions. Moreover, an agreement is only enforceable with respect to the specific provisions it makes. Similarly, if the attachment is only valid for the duration of the agreement, then that agreement also applies to the attachment. The MoU cannot be followed up with a more comprehensive agreement that the parties are compelled to draft. Parties are prohibited from entering into a comparable arrangement with one another while the agreement is in effect.

Looking at the substance of the MoU of the God of the Press and the National Police, it is in accordance with 1320 of the Civil Code. So that it is a true obligation for both parties, in this case the Press Council and the National Police to obey the contents of the MoU that has been made. In this case, the National Police must pay attention to coordination in terms of concluding alleged press crimes as stated in Article 5 Paragraph (2) of the MoU of the Press Council and the National Police. So, if a matter has been resolved in the Press Council, it should be enough to get there. The fulfillment of the MoU as stated above, wants to be viewed from any perspective, even though there is an assumption that the MoU is only limited to a pre-contractual agreement whose legal binding strength is questionable, even though it does not have legal force as strong as the agreement, but there is a great moral responsibility. Because, the making of the MoU was based on the good faith of both parties. Moreover, according to Gerry Lintang, the MoU made legally has complete legal connections in line with the *pacta sunt servanda* premise. (Lintang, 2015, p. 143) So it has a logical consequence that heeding the contents of the MoU is an obligation both from a legal and moral perspective.

Good steps have also been taken by the Press Council as an effort to overcome possible miscommunication between the Press Council and the National Police, the Press Council has also held an MoU with the National Police Commission. When viewed from Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia, Kompolnas is an institution that has the function of supervising the performance and integrity of police members. Article 7 of the MoU of the Press Council and Kompolnas, regulates the provision of coordination and supervision in terms of preventing the prosecution of the press. Article 7 Paragraphs (2) and (3) explain that Kompolnas will remind the National Police of the urgency of using the Press Law and the MoU of the Press Council and the National Police and assist coordination and cooperation in the implementation of the MoU of the Press Council and the National Police. However, in practice, it seems that the Press Council and the National Police still pay little attention to coordination between the two. This is also a question regarding the effectiveness of the MoU between the Press Council and Kompolnas which was originally designed to protect press freedom.

### **Polemic UU ITE As Policy of Prosecution of Press Matters**

In the case of the press, it is very intersecting with crime, especially that with the development of electronic media, new laws are also present to complement it all such as the

ITE Law, this is to protect the interests of the public so that there is a legal umbrella that overshadows problems related to electronic media such as the spread of fake news (hoaxes), defamation, and so on. However, the use of the ITE Law often causes unrest for members of the press. This is evidenced by data submitted by CNN, that throughout 2019-2021 there were at least 15 journalists charged with the ITE Law. (Indonesia, 2021).

An Indonesian editor expressed confidence that journalist It was challenging to disclose some kinds of stories, particularly those pertaining to sexual offenses, since sources were reluctant to go to the media for fear of being accused of disseminating false information. He claims that victims of sexual harassment are typically unwilling to talk with the media because they are extremely terrified of the ITE law. Professor Azra expressed his opinion that "restorative justice" is merely a "sweetener" and that Indonesians are reluctant to criticize the government for fear of becoming ensnared by the ITE law." (Carson & Gibbons, 2023, p. 1828)

Several Indonesian media outlets have suffered hacks and cyberattacks for posting articles critical of the government, on their news websites by unidentified sources. Even though Tempo, one of Indonesia's news outlets, was never charged under ITE, according to Dhyatmika, the threat increased their vigilance and strengthened their mitigation plan. He continued, "but, we tend to stick to our mission and continue to publish our investigative stories." According to Dhyatmika, the delay happened as a result of a cyberattack that stopped Tempo from timely publishing news. (Carson & Gibbons, 2023, p. 1828)

In an interview, a news editor in Indonesia said that he was "worried" his newsroom would be the focus of ITE, and that doing so would put their media credentials and public credibility in danger. He therefore refrained from publishing the news until it had been thoroughly confirmed. An investigative editor from Indonesia described how one of their reports that was critical of the police was deemed a hoax by the police and disseminated on social media in an attempt to expose the narrative. (Carson & Gibbons, 2023, p. 1829)

Excessive power that is easily abused affects how the professionalism of law enforcement is conducted. The National Police, especially in the face of the Covid-19 pandemic, has been seen to be using excessive power, including digital attacks without accountability and its ability to suppress criticism. This can be seen from a secret telegram numbered STR/645/X/PAM.3.2./2020 issued on October 2, 2020. The letter instructed all police departments in 25 provinces and 300 districts to eliminate demonstrations. In fact, they were authorized to conduct cyber patrols on social media platforms and control the media to shape public views against demonstrations during the pandemic. (Wiratraman, 2023, p. 22)

The enforcement of the ITE Law against journalists, including the use of Telegram letters by the Indonesian National Police (Polri), poses major challenges to press freedom. In an effort to control potential abuse in law enforcement, the government has issued guidelines through a Joint Decree involving the Minister of Communication and Information, the Attorney General, and the Chief of the National Police of the Republic of Indonesia, with special numbers 229 of 2021, 154 of 2021, and KB/2/VI/2021, issued on June 23, 2021. This directive aims to detail implementation guidelines for several articles in Law Number 11 of 2008 concerning Electronic Information and Transactions, which has been amended by Law Number 19 of 2016. However, although they are intended as legal interpretation documents to deal with issues with the ITE Law, this Joint Decision inadvertently poses new challenges. They are prone to multiple interpretations, produce vague and ambiguous laws, and are therefore prone to misuse. In addition, they fail to meet the principles of legal certainty and justice. Furthermore, this directive fails to guarantee protection for digital freedom, including its inability to stop legal proceedings stemming from the ITE Law. (Wiratraman, 2023, p. 23)

In the ITE Law, especially in Article 28 paragraph (1), the element is fake news. Fake news and criticism are two different things. Fake news or hoaxes, Hoaxes or fake news is information that cannot be ascertained because the information itself is a combination of several factual data. (Rahmadhany et al., 2021, p. 30) While criticism according to KBBI, is defined as criticism or response which is sometimes equipped with an explanation of the advantages and disadvantages of a work or opinion. Criticism opens up opportunities for discussion, attempts to convince others, and often contains elements of contradiction.

Criticism is not only about moral values or truths, but must also be based on analytical skills and experiences that others may not yet have in general. (Agleton, 2013, p. 70)

Likewise, the polemic that occurred in Article 27 Paragraph (3) of the ITE Law, that indeed in the article it was not clearly explained which parties were protected from defamation. In the Constitutional Court Decision Number 50 / PUU-VI / 2008, and the Joint Decree (SKB) related to the ITE Law states that the interpretation and application of Article 27 Paragraph (3) of the ITE Law must refer to the defamation provisions as stipulated in the Article contained in the Criminal Code (KUHP), which has clearly explained its elements in a limited manner. Therefore, in this context, law enforcement officials, including the police, need to interpret the Article systematically by considering the norms contained in Article 310 of the Criminal Code as the main form of crime. (Ngiji et al., 2022, p. 29) In Article 310 of the Criminal Code, the subject insulted in the defamation offense is an individual, not a group. Therefore, defamation actions only apply if there is a deliberate attempt to damage someone's reputation or good name by accusing that individual of something specific. (Ngiji et al., 2022, p. 30)

The existence of Article 27 Paragraph (3) of the ITE Law is actually a form of protecting press personnel in protecting freedom of opinion. If you look at the formulation of the article, there are words "intentionally" and "without rights", the word "without rights", should be a shield for press personnel in carrying out their duties and functions. The press is protected in Law No. 40 of 1999 concerning the press, they have the right to provide information as objectively as possible so that, if press personnel perform their duties by upholding the journalistic code of ethics and complying with the Press Law, then they have the right to publish news objectively. This is in accordance with the statement of the Expert Staff of the Minister of Communication and Information for Social Affairs, Djoko Agung who stated that if journalists carry out their duties in accordance with Law No. 40 of 1999 concerning the Press. (*UU ITE Tidak Memblengu Kebebasan Pers Justru Beri Perlindungan*, 2015) From the explanation above, it is important then for the government to change the substance of the ITE Law, especially for rubber articles such as Articles 27 and 28. As well as providing clear limits such as the subject that can be subject to the Article and strengthening the definition of each term that is often considered ambiguous, this is an effort to protect press personnel from being criminalized and protect press freedom.

So that the National Police as the first door in the criminal justice system, has a very central role to determine whether a person's actions are then considered a certain crime and processed through the courts and subject to punishment in prisons, depending largely on how the National Police carry out their duties, authorities, and responsibilities as investigators and investigators. (Santoso et al., 2018, p. 183) This means that the police must have the ability to analyze and filter a case, in this case it is a press case. In addition, good communication with the Press Council must be done to determine whether the case falls into a criminal offense or is only a violation of the press code of ethics.

### **Police Discretion in Restorative Justice as a Method of Resolving Press Cases**

The police are the front gate in enforcing the law in the community, even more than that the police are expected to be able to become pillars of human rights guards. In this expectation, several concrete efforts are needed to make it happen, especially in the context of the press, so police discretion is expected to be used properly.

Referring to Law No. 30 of 2014 concerning Government Administration, discretion is defined as decisions or steps taken by government officials to deal with concrete situations that arise in the implementation of government duties when laws and regulations do not provide complete or clear guidance, or when there is stagnation in government. Furthermore, that Article 18 of Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia, gives authority to the police to exercise discretion. In paragraph 1, it is explained that the police have the right to act according to their own judgment in carrying out their duties with due regard to the public interest. Then in paragraph 2, it is explained that this can be done only if in circumstances that are really necessary and must pay attention to the professional code of ethics of the police.

So, this indicates that the police have great authority. In accordance with Samuel Walker's statement, he stated that discretion is one of the things that describes the power of the police or an institution, where they are authorized by law to act in a situation with the judgment and judgment of the agency concerned. (Siregar & Pakphan, 2017, p. 74) At first glance, it seems that discretion by the police sometimes seems contrary to the law, but it is a form of relaxation that has been regulated by law for the police to increase efficiency and effectiveness in the greater public interest. Thus, discretion should not be abolished and should not be abolished because between discretion and related agencies is an inseparable unity. (Siregar & Pakphan, 2017, p. 74)

Based on the above provisions, in fact, the implementation or even strengthening of restorative justice methods to press personnel is very possible. In the case of the press, generally the offense is a complaint type which means, an act cannot be processed if there is no complaint to the authorities. So that the police actually have the right to be able to dismiss the case if there is a peace agreement in the context of the case with the type of complaint offense. Furthermore, according to Yusuf Siregar and Z. A. Pakphan, the police are authorized to dismiss this case based on the jurisprudence of the Supreme Court Judge's Decision No. 1600 K / PID / 2009 if the perpetrator and the victim have agreed to reconcile and, criminal acts that are criminal in the nature of complaints can be dismissed if there is peace. (Siregar & Pakphan, 2017, pp. 79–88)

In the midst of the polemics that occur, related to the deprivation of press freedom, as well as the criminalization of the press, of course imprisonment is not the right method to solve press cases. The aspect of restorative justice is also an implementation of the principle of ultimate remedium. In addition to keeping the press sphere from feeling criminalized, restorative justice can also then help to reduce police reports related to the ITE Law in an efficient way. Based on information by the Indonesian Cyber Police, there has been a continuous increase in reported cases related to the Electronic Information and Transactions Law. Defamation cases through social media have become the second most reported offense after online fraud. In 2018, there were 1,258 reports, which increased to 1,333 in 2019. In 2020, the number of complaints continued to increase to 1,794. In 2021, from January to September, there was a significant increase by reaching 3,027 reports. (Safitri & Wahyudi, 2022, p. 14) So that the police can consider this aspect in addition to effective and efficient solutions, solutions through this method can improve the image and trust of the public including press personnel towards the police.

#### **IV. CONCLUSION**

A valid MoU contains legal responsibility that fully complies with the principles of *Pacta Sunt Servanda* (binding agreement for the parties). Therefore, the validity of an MoU can be equated with the enforceability of a law, which has binding force and authority, although it is limited to the substantial matters outlined in the MoU. So that in the context of the MoU between the Police and the Press Council also has binding legal force because the basis for making it is in accordance with 1320 of the Civil Code and is based on the good faith of both parties. In the context of the MoU of the Press Council and the National Police, the problem is not in the substance of the MoU, but how both parties, especially the National Police, execute it. On the one hand, as an effort to prevent the criminalization of press personnel, the Press Council has also made an MoU with Kompolnas in which the substance of the MoU in accordance with Article 7 is the provision of coordination and supervision in terms of preventing the punishment of the press. Moreover, Article 7 Paragraphs (2) and (3) explain that Kompolnas will remind the National Police of the urgency of using the Press Law and the MoU of the Press Council and the National Police and assist coordination and cooperation in the implementation of the MoU of the Press Council and the National Police. But it seems that this has not been as effective as it should be.

The polemic over the criminalization of journalists through the ITE Law, including the use of telegrams by the National Police, poses a serious threat to press freedom. Including the substance of Articles 28 and 27 Paragraph (3) of the ITE Law, which has always been a

debate, actually needs a comprehensive interpretation to distinguish whether a news is included in criticism or hoaxes. Article 27 Paragraph (3) of the ITE Law is actually a shield to protect press personnel as long as they comply with the Press Law and the Code of Journalistic Ethics. From this polemic, there is a need for an effective pattern of case resolution and revision of the substance of the ITE Law, especially to several rubber articles including articles 27 and 28, it must be clear regarding the subject that can be punished and clarify definitions, especially between criticism and fake news.

In this case, restorative justice is an effort in this regard. Apart from the many cases reported by the ITE Law, restorative justice can also be an effort so that press personnel do not feel criminalized by the National Police and restorative justice is also an implementation of the principle of ultimate remedium. The police have the right under Article 18 of Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia to exercise their discretion in a matter that they think is important. Moreover, offenses in press cases are usually complaint offenses so that, when there is a peace agreement, the police have the right to dismiss the case.

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