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# F R E E D O M of E X P R E S S I O N and the M E D I A



b a s e l i n e  
s t u d i e s

'Everyone has the right to freedom of expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.'

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# FREEDOM OF EXPRESSION AND THE MEDIA IN INDONESIA

*part of a series of baseline studies on  
seven Southeast Asian countries*

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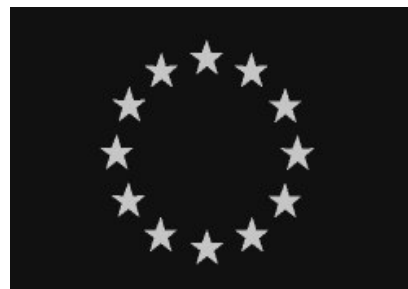
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## 1. INTRODUCTION

Since the fall of President Soeharto in 1998 and the subsequent development of democratisation and the reform movement in Indonesia, Indonesians and the media in particular have experienced greater freedom of expression than ever before. While once under constant government control, legislation, such as the new Press Law, has been introduced that provides the media with a greater degree of protection from government interference. The relaxation of strict licensing and other regulatory laws has enabled the growth of a vibrant media that is now playing an increasingly critical role in society, especially in exposing high profile corruption cases that involve public officials at all levels. On the other hand, the Indonesian media suffer from commercial pressure and is sometimes characterised by poor professional standards.

Despite the more liberal media environment, major obstacles to securing the right to freedom of expression are still evident. Legislation that unduly restricts freedom of expression and information still exists. For instance, there are archaic defamation provisions that can result in criminal sanctions and excessively high punitive damages, which may prevent discussion or legitimate criticism and result in the imposition of excessively large damage awards and even imprisonment.

The media also face many challenges and harassment from State officials and private actors, resulting in self-censorship.

One of the most prevalent obstacles to media freedom in Indonesia is the lack of pluralism and diversity. Media groups are primarily under the control of a handful of powerful members of the elite, many of whom have links to Soeharto's family or close associates. Foreign media coverage is limited, and community radio, which can be a useful platform for the exchange of views, is largely controlled by public officials and/or influential political figures. These aspects of the media in Indonesia can affect the independence and quality of reporting and stifle opportunities for the free flow of information.

Linked to this issue, the funding of public service broadcasters frequently fails to be secure and transparent, leaving such services to fall victim to political and other influences.

Another hindrance to media freedom in Indonesia is the continuation of a culture of secrecy that exists among State authorities and officials. The functioning of the State has for many years fiercely safeguarded information and this tradition is difficult to overcome. This tendency towards secrecy is exacerbated by the absence of a freedom of



information law, and by the failure of State officials to recognise their duty to provide information and to respect the public's right to know. This situation is compounded by a lack of awareness among the general public, including the media, of their right to know or how to secure such rights.

This study analyses the state of the media in Indonesia today, and the issues facing it. It looks at ownership of the media, and the laws regulating its functioning, with reference to international standards. The report makes a number of recommendations directed both at the media and the government, designed to encourage the development of a diverse and free media environment that promotes and protects free expression.

## 2. KEY RECOMMENDATIONS

### In regards to Press Regulation

#### *To the government and parliament:*

- The maximum fines that may be levied under the Press Law should not be excessively high and should take into account the limited means available in Indonesia.
- The content restrictions in the present Press Law should be reviewed and amended to bring them in line with international and constitutional guarantees of freedom of expression.
- The right of reply in the Press Law should be reviewed to conform with international standards, in particular to ensure that it only applies in relation to a false statement.
- National Security concerns must not be used to unduly restrict media reporting. Independent media coverage of conflict situations, including events in Aceh, must be guaranteed. The maximum fines that may be levied under the Press Law should not be excessively high and should take into account the limited means available in Indonesia.

#### *To the media community and media outlets:*

- A truly self-regulatory press council should be established
- Codes of ethics should be adopted that reinforce good journalistic practices. Measures could include establishing an internal complaints system, strengthening editorial control and providing journalism training.

## In regards to Broadcast Regulation

### *To the government and parliament:*

- The legal framework for broadcasting should be expanded through the development of comprehensive, progressive licensing and content regulation systems. This framework should provide for limited or no licence fees for community broadcasters and existing community broadcasters should, in principle, have their licences guaranteed. A definition of a community broadcaster should also be developed.
- Measures should be taken to enhance the independence of the broadcasting regulatory body (KPI - Komisi Penyiaran Indonesia), for example by providing for sufficient funding and administrative support.
- The government should not be involved in the process of issuing licences to broadcasters, including determining licence application procedures.
- A comprehensive law on public broadcasting should be developed, which conforms to international principles.
- Severe restrictions on the funding of community radio stations should be removed.
- Provisions relating to content restrictions should be reviewed and amended to conform to international standards and avoid vague and overly broad restrictions.
- The national government should encourage the provincial governments to set up broadcasting commissions at the provincial level.


### *To the media community and media outlets:*

- The media should respect the law and assist and guard the implementation of the Broadcasting Act.
- The media should support and help to strengthen the KPI.

## In regards to Defamation

### *To the government and parliament:*

- Defamation laws should be reviewed to bring them in line with international standards. In particular public officials should not benefit from special protection under defamation laws; public bodies should not be able to bring defamation suits; and no one should be held liable in defamation for statements which are true.

- 
- Defamation law should distinguish clearly between expressions of opinion and expressions of fact, and should specify that the former cannot be classed as defamation. At a minimum, opinions should benefit from a high degree of protection against defamation actions. Defamation law should recognise a defence of reasonable publication.
  - Criminal Defamation should be repealed;
  - If, contrary to the above, criminal defamation is retained, the following should apply, in addition to the rules set out above:
  - The available penalties should be reduced to ensure that they are strictly proportional to the harm done. In particular, in view of the extreme and always-disproportionate nature of imprisonment for defamation, all provision for prison sentences for defamation should be removed from the Penal Code.
  - Articles 311, 317, 318 and 316 of the Penal Code should be repealed.
  - Non-monetary remedies should, wherever possible, be prioritised over pecuniary awards.
  - A fixed ceiling for non-material harm for defamation should be established and fine is to be awarded in only the most serious of cases.
  - The judiciary should apply freedom of expression principles when interpreting the Penal Code.

***To the media community and media outlets:***

- Journalists and media should improve their professionalism and understand their right to freedom of expression and its guarantee under international standards and Indonesian law. They should also understand the weaknesses in the latter, such as the risk of being prosecuted for defamation.

***To the public:***

- The public should use their right to respond first before using defamation sanctions.

**In regards to Access to Information**

***To the government:***

- Priority should be given to the adoption of a freedom of information law over a new Official Secrets Act;

- A systematic programme of training and awareness raising activities for public officials should be implemented immediately to break down the culture of secrecy.

***To the media and civil society:***

- Public support for the adoption of a freedom of information act should be built by raising awareness of the importance of the right to information through an active media campaign;
- Networks of the FOIA coalition should be enlarged to include more civil society organisations, linking the right to information with issues that are of interest to the public, such as environmental and health issues.
- Civil society groups should monitor the implementation of the local government regulations on transparency and participation.

**In regards to Informal Restrictions on Freedom of Expression**

***To the government and public officials:***

- Officials should not harass, threaten or otherwise interfere with the media or journalists exercising their right to freedom of expression. Where such measures do take place, the authorities should immediately act to counter them.
- Officials, public figures and the community should demonstrate tolerance of criticism and the exercise of the right to freedom of expression by journalists and the media.

***To the media community:***

- The media should abide by the professional code of ethics.
- The Press Council and the media have a responsibility to educate the public about their right to respond.
- The media should abide by the Press Council's recommendations and respect people's right of reply.



### 3. BACKGROUND

#### 3.1. History

Indonesia's history has been dominated by a long period of colonialism. The Portuguese, Spanish and Dutch first arrived in Indonesia in the early 16<sup>th</sup> century. However, by the 17<sup>th</sup> century, the Dutch had emerged as the most powerful influence in the archipelago; the only exception to Dutch rule was the eastern part of Timor Island, which the Portuguese controlled until 1974.<sup>1</sup> Between 1602 and 1800, Indonesia was governed by the East Indies Trading Company and with only two brief exceptions, the Dutch colonised Indonesia for more than 300 years. The first exception to this Dutch rule was between 1811 and 1816, when the colony was handed over to the British Empire and ruled by Sir Stanford Raffles, and the second was during World War II when the Japanese occupied Indonesia.

Indonesia, as an entity, is a concept that emerged in the early 20<sup>th</sup> century with a rise in nationalism in the 1920s leading to a movement for independence. When Japan entered Indonesia, they promised to assist Indonesia in gaining independence from the Dutch. Towards the end of World War II, the Japanese sponsored a committee to prepare for independence. Soekarno, who became the first president of the Republic of Indonesia, declared the country's independence on 17 August 1945. This declaration sparked off a violent struggle with the Dutch attempting to resume control over Indonesia after the Second World War. The war for independence lasted from 1945 until December 1949, when the Dutch government finally acknowledged Indonesia's independence and Soekarno as President.

In 1967, General Soeharto became the second president in the aftermath of an alleged communist coup known as the G-30S/PKI incident.<sup>2</sup> In the civil war that followed Soeharto's ascent to power, hundred of thousands of people were killed or imprisoned. Soeharto's administration stretched over three decades and is commonly known as the New Order era.

The New Order era was the epoch of economic growth, which occurred in conjunction with an increasing economic gap between classes and widespread corruption and cronyism. Economic growth was one of the primary justifications for Soeharto's grip on power, but this was

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<sup>1</sup> Indonesia annexed Timor-Leste in 1975 and made it one of its provinces. In 1999, amidst international pressures, the Indonesian government agreed to a referendum in Timor-Leste, which resulted in its independence.

<sup>2</sup> Six high-ranking generals were abducted and murdered, allegedly by a communist group.

significantly weakened during the economic crisis between 1997 and 1998.

1997-1999 was an especially difficult period for Indonesia, when the economic crisis evolved into a much more complex and multi-faceted period of disturbance. Civil unrest erupted in many parts of the country, launching the reform movement that would eventually oust President Soeharto in May 1998. In the period between 1998 and 2001, Indonesia had three presidents: BJ Habibie, Abdurrahman Wahid and Megawati Soekarnoputri, the daughter of Indonesia's first president. The current president, Susilo Bambang Yudhoyono, took over the presidency from Soekarnoputri after his victory in the 2004 election.



Sending text message (Photo: ARTICLE 19)

### **3.2. Social and Political Context**

Indonesia is an archipelago consisting of 18,108 islands, of which 6,000 are inhabited. The five major islands are Kalimantan (a.k.a. Borneo), Java, Sulawesi, Sumatra and Papua (a.k.a. New Guinea). Within this diverse group of islands, there are more than 700 local languages and dialects. However, the official language is Bahasa Indonesian, which is taught in schools and spoken by most people throughout the country.

Indonesia has the fourth highest population in the world, with 238 million people in 2004. Less than half live in urban areas and 17 per cent still live below the poverty line. Based on the UNDP's Human Development Report 2004, on a human development index, Indonesia was ranked number 110 out of 177 countries.



Indonesia's population can be roughly divided into two groups. In the west of the country, the people are mostly Malay. In the east the people are Papuan, with roots in the islands of Melanesia. Many Indonesians identify with a more specific ethnic group that is often linked to language and regional origins, such as Javanese, Sundanese or Batak.

Apart from indigenous ethnic groups, there are also descendants of migrants from China, India, the Middle East and people of Eurasian origins. Many Indonesians have mixed ethnic origins.

## Politics

At the State level, Indonesia has two main constitutional bodies: the House of People's Representatives (*Dewan Perwakilan Rakyat* – DPR) and the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat* – MPR). The DPR consists of 500 elected and appointed representatives. Its main function is to legislate and hold the President and his ministers accountable. The MPR has almost 700 members comprising of all DPR members, appointed individuals representing the provinces and other nominees. Constitutionally, the MPR is the supreme State body. MPR issues broad guidelines on State policy (*Garis Besar Haluan Negara* – GBHN) and has the power to amend the Constitution.

The MPR used to elect the President and Vice-President, but recent constitutional amendments stipulate that both are to be directly elected by the public. The 2004 election was Indonesia's first direct presidential election. Retired General Susilo Bambang Yudhoyono won by a large margin against incumbent Megawati Soekarnoputri. Yudhoyono received 60.9 per cent of the vote while Mrs Soekarnoputri received 39.1 per cent.<sup>3</sup>

Apart from the presidential election, 2004 also saw a legislative election. 24 political parties took part in the 2004 election.<sup>4</sup> The Functional Groups Party (Golkar), the party of former President Soeharto, won the most votes. It defeated President Megawati's Indonesian Democracy Party-Struggle (PDI-P), the winner of the 1999 election. Other parties with significant support included the National Awakening Party (PKB) of former President Abdurrahman Wahid, the Development Unity Party (PPP) of former Vice-President Hamzah Haz, the newly-created Democrat Party (PD) of President Susilo Bambang Yudhoyono, the Islamist Prosperous Justice Party (PKS) and the National Mandate Party (PAN) of the former chairman of Muhammadiyah, Amien Rais.

At the local level, Indonesia is a republic divided into 30 provinces and three special districts – Yogyakarta in Central Java, Aceh in Sumatra and

<sup>3</sup> Source: <http://www.wsws.org/articles/2004/sep2004/indo-s28.shtml>

<sup>4</sup> In the 1999 Election, there were 48 political parties participating.



the capital district Jakarta. Each province is administered by a provincial government and is headed by a governor appointed by the President. Each also has a representative assembly (*Dewan Perwakilan Rakyat Daerah* – DPRD). Since the adoption of the regional autonomy legislation in 2001, local governments have been given more autonomy and power, especially in matters related to broadcasting and telecommunications.

The Indonesian military (*Tentara Nasional Indonesia* – TNI) also has an influential role within in the country. Whilst their influence has diminished since the fall of Soeharto in 1998, the TNI still has a “dual function” i.e. a defensive and socio-political function. This doctrine institutionalised the military’s role in Indonesian politics during the New Order era. TNI is also engaged in various military-run businesses and foundations.

## **Religion**

Islam is Indonesia's primary religion, with almost 88.2 per cent (210 million people in 2004) of the population identifying as Muslim, making Indonesia the most populous Muslim-majority nation in the world. The remainder of the population is Protestant (5.87 per cent), Catholic (3.05 per cent), Buddhist (0.84 per cent) and Hindu (1.81 per cent).<sup>5</sup>

The 1980s saw the emergence of radical Islamic groups, which by the late 1990s had grown increasingly militant and powerful, thanks to the support that they enjoyed from the Indonesian military, in an effort on Soeharto’s part to counter the student-led anti-government movement.

Amongst the non-radical and influential Islamic groups, Nadhatul Ulama (NU) and Muhammadiyah are the largest. With 40 million followers, NU is perhaps the largest Islamic group in the world. It was established in 1926 and has a nationwide presence, but its main strongholds are in rural Java. It runs mosques, clinics, orphanages, poorhouses and schools. NU also influences Indonesian politics through the National Awakening Party (PKB), the third biggest political party in the country. Abdurrahman Wahid, Indonesia’s fourth president, was the chairman of NU and the grandson of the NU founder.

The second largest Islamic organisation is Muhammadiyah, which also has branches throughout the country and has 30 million followers. It was founded in 1912 and its activities are similar to those of the NU. Muhammadiyah also supports a political party, the National Mandate Party.

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<sup>5</sup> Central Statistics Bureau, 2000.



## Internal conflict

Indonesia is currently beset by a number of violent conflicts of both a separatist and communal nature. These are the consequences of years of authoritarian and often misguided policies coinciding with processes of political and economic transition in the aftermath of the fall of Soeharto. There have been five major conflicts in Indonesia during the past few years, located in Aceh, Irian Jaya, Poso (Central Sulawesi), Maluku and Kalimantan.

Recently, in August 2005, the Indonesian government and the Gerakan Aceh Merdeka (GAM) signed a peace accord, marking an end of decades of fight for independence in Aceh. Irian Jaya has also seen separatist conflict, with sections of the local population (*Organisasi Papua Merdeka*) struggling for independence for decades. In Maluku and Kalimantan, the conflicts were communal. In Maluku, the breakdown of traditional social structures and the lack of strong “civil” institutions independent of the State, along with patronage and corruption, have created inter-communal tension between Malukan Christians and Muslims. In Kalimantan and Poso, the root of the conflict was misguided transmigration policies that led to rising inter-ethnic tension between the indigenous Dayak people and the Madurese migrants.

These conflicts have claimed thousands of lives over the years. Indonesian security forces have been accused of human rights abuses in Aceh and Papua, and have failed to bring peace in Maluku, Poso and Kalimantan. It is estimated that there are 1.3 million displaced people throughout the country, largely due to internal conflicts.<sup>6</sup>



Demonstration for Independence in Aceh

<sup>6</sup> Data from Refugees International: <http://www.refintl.org/content/country/detail/2898>

## Civil society

In recent years, Indonesian civil society has developed rapidly. In 2002, at least 13,500 non-governmental organisations were registered with the Department of Internal Affairs; many more NGOs remain unregistered.<sup>7</sup> In recent years, NGOs, trade unions, and community groups have enjoyed greater freedoms and have become important advocates for change, as well as delivering and monitoring development programmes.

Civil society's effectiveness and success in urging for legislative reform has, however, been limited by a lack of coordination among organisations and genuine differences of opinion. More conservative interest groups, such as business, have also been influential, leading to considerable polarisation within the civil society sector.

An example of this polarisation concerns the adoption of a new Broadcasting Act in 2002. On this issue, civil Society groups were divided between those who perceived the Act as a threat to freedom of expression and press freedom and those groups that accepted the new Broadcasting Act as it stood.

Other civil society actors, such as the media, also face challenges. The media community is tainted by the growing trend of sensationalism. Some media outlets have also been guilty of intensifying ethnic and religious conflict in several parts of Indonesia. Character assassination within the media has started to flourish along with pornography. The phenomenon of "envelope journalism", whereby corrupt journalists accept bribes and blackmail people, is still prevalent in Indonesian society. This tainted image of the Indonesian media fragments and undermines its ability to influence government, preventing the adoption of a coordinated position on many issues.

## 3.3. Legal System

The Indonesian legal system is very complex due to a confluence of four distinct systems: *Adat* or customary law, religious law, Dutch colonial law and national law. The source of legislation follows the hierarchy below.

- 1945 Constitution (*Undang-Undang Dasar 1945*)
- MPR Resolution (*Ketetapan MPR*)
- Law or Act (*Undang-Undang*)
- Government Regulation Substituting a Law (*Peraturan Pemerintah Pengganti Undang-Undang*)

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<sup>7</sup> "Tidak Baik, Ketergantungan LSM pada Pihak Asing" (NGO Dependence on Foreign Funding is Not Good), *Kompas*, 13 January 2003.



- Government Regulation (*Peraturan Pemerintah*)
- Presidential Decree (*Keputusan Presiden*)
- Regional Regulation (*Peraturan Daerah*)
- Others: Presidential Instruction, Ministerial Decrees (*Keputusan Menteri*) and Circular Letters (*Surat Edaran*)

Since its independence, Indonesia has had four constitutions. On 18 August 1945, one day after the declaration of independence, the new government of Indonesia adopted the 1945 Constitution. This was in effect until 27 December 1949, when it was replaced by the Constitution of Federal Indonesian States. This Constitution was in force for less than a year, as the government adopted a temporary Constitution on 17 August 1950. The adoption of the last Constitution marked the beginning of an era of parliamentary democracy, which ended on 5 July 1959 with a presidential decree announcing a return to the 1945 Constitution. On 10 August 2002, the People's Consultative Assembly adopted a new constitution but kept the same name, the 1945 Constitution.

The Indonesian judicial system is comprised of several types of court, all of which are under the oversight of the Supreme Court (*Mahkamah Agung*). Indonesian courts do not recognise the principle of precedent. In the 2001 constitutional amendments, provision was made for the creation of the Constitutional Court (*Mahkamah Konstitusi*), which has the authority to check the consistency of laws against the “new” Constitution.<sup>8</sup>

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<sup>8</sup> Law No. 24/2003, signed on 13 August 2003, provides a further legal basis for the constitutional court.

## 4. INTERNATIONAL AND CONSTITUTIONAL OBLIGATIONS

### 4.1. The Importance of Freedom of Expression

Article 19 of the *Universal Declaration on Human Rights* (UDHR) guarantees the right to freedom of expression in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.<sup>9</sup>

The UDHR, as a UN General Assembly resolution, is not directly binding on States. However, certain provisions of the UDHR, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948, and are therefore considered to be binding on States.<sup>10</sup>

The *International Covenant on Civil and Political Rights* (ICCPR)<sup>11</sup> imposes formal legal obligations on State parties to respect its provisions and elaborates on many of the rights included in the UDHR. Article 19 of the ICCPR guarantees the right to freedom of expression in terms very similar to those found at Article 19 of the UDHR:

1. Everyone shall have the right to freedom of opinion.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his [sic] choice.

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<sup>9</sup> UN General Assembly Resolution 217A(III), adopted 10 December 1948.

<sup>10</sup> See, for example, *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2<sup>nd</sup> Circuit).

<sup>11</sup> UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976.



Although Indonesia has neither signed nor ratified the ICCPR, it is nonetheless an authoritative elaboration of the rights set out in the UDHR and hence of some relevance here.<sup>12</sup>

Freedom of expression is also protected in all three regional human rights instruments: at Article 10 of the *European Convention on Human Rights*,<sup>13</sup> Article 13 of the *American Convention on Human Rights*<sup>14</sup> and Article 9 of the *African Charter on Human and Peoples' Rights*.<sup>15</sup> The right to freedom of expression enjoys a prominent status in each of these regional conventions. Judgments and decisions issued by courts under regional mechanisms offer an authoritative interpretation of freedom of expression principles in various contexts.

The right to freedom of expression enjoys a prominent status in each of these regional conventions and, although not directly binding on Indonesia, the judgments and decisions issued by courts under these regional mechanisms provide authoritative evidence of the appropriate interpretation of the right to freedom of expression as guaranteed by the UDHR as well as by the Indonesian Constitution.

Freedom of expression is a key human right, in particular because of its fundamental role in underpinning democracy. At its very first session in 1946, the UN General Assembly adopted Resolution 59(I), which states: "Freedom of information is a fundamental human right and...the touchstone of all the freedoms to which the United Nations is consecrated."<sup>16</sup> As the UN Human Rights Committee has said:

The right to freedom of expression is of paramount importance in any democratic society.<sup>17</sup>

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<sup>12</sup> In terms of international human rights treaties, Indonesia has only ratified four of the six main treaties, namely the Conventions on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified in 1984; the Rights of Child, ratified in 1990; the Convention against Torture and other Cruel, Inhuman or Degrading Treatments or Punishments (CAT), ratified in 1998; and the Convention on the Elimination of All Forms of Racial Discrimination (CERD), in 1999. The Indonesian Parliament has included the ratifications of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESR) in the 2005 national legislation programme (a list of legislation that the parliament should pass). In addition to the above UN rights treaties, Indonesia has also ratified the 1949 Geneva Conventions, but not the Conventions' two additional protocols.

<sup>13</sup> Adopted 4 November 1950, in force 3 September 1953.

<sup>14</sup> Adopted 22 November 1969, in force 18 July 1978.

<sup>15</sup> Adopted 26 June 1981, in force 21 October 1986.

<sup>16</sup> 14 December 1946.

<sup>17</sup> *Tae-Hoon Park v. Republic of Korea*, 20 October 1998, Communication No. 628/1995, para. 10.3.

## 4.2. Freedom of Expression and the Media

The guarantee of freedom of expression applies with particular force to the media, including the broadcast media and public service broadcasters. The European Court of Human Rights has consistently emphasised the “pre-eminent role of the press in a State governed by the rule of law”.<sup>18</sup> It has further stated:

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.<sup>19</sup>

As the UN Human Rights Committee has stressed, free media are essential in the political process:

[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.<sup>20</sup>

The Inter-American Court of Human Rights has stated: “It is the mass media that make the exercise of freedom of expression a reality.”<sup>21</sup> Media as a whole merit special protection, in part because of their role in making public ‘information and ideas on matters of public interest. Not only does [the press] have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of “public watchdog”’.<sup>22</sup>

It may be noted that the obligation to respect freedom of expression lies with States, not with the media *per se*. However, this obligation does apply directly to publicly-funded broadcasters. These broadcasters are linked to the State and because of this they are directly bound by international guarantees of human rights. Publicly-funded broadcasters are in a special position to satisfy the public’s right to know and to guarantee pluralism and access. It is particularly important that they promote these rights.

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<sup>18</sup> *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63.

<sup>19</sup> *Castells v. Spain*, 24 April 1992, Application No. 11798/85, para. 43.

<sup>20</sup> UN Human Rights Committee General Comment 25, issued 12 July 1996.

<sup>21</sup> *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 34.

<sup>22</sup> *Thorgeirson v. Iceland*, note 18 above, para. 63.



### 4.3. Pluralism

Article 2 of the ICCPR places an obligation on States to ‘adopt such legislative or other measures as may be necessary to give effect to the rights recognised by the Covenant’. This means that States are not only required to refrain from interfering with rights but also to take positive steps to ensure that rights, including freedom of expression, are respected. In effect, governments are under an obligation to create an environment in which a diverse and independent media can flourish, thereby satisfying the public’s right to know.

An important aspect of States’ positive obligations to promote freedom of expression and of the media is the need to promote pluralism within and to ensure equal access for all to the media. As the European Court of Human Rights has stated: “[Imparting] information and ideas of general interest...cannot be successfully accomplished unless it is grounded in the principle of pluralism.”<sup>23</sup> The Inter-American Court has held that freedom of expression requires that ‘the communication media are potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media’.<sup>24</sup>

The UN Human Rights Committee has stressed the importance of a pluralistic media in nation-building processes, holding that attempts to straight-jacket the media to advance “national unity” violate freedom of expression:

The legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democratic tenets and human rights.<sup>25</sup>

The obligation to promote pluralism also implies that there should be no legal restrictions on who may practice journalism and that licensing or registration systems for individual journalists are incompatible with the right to freedom of expression.<sup>26</sup> In a Joint Declaration issued in December 2003, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression stated:

Individual journalists should not be required to be licensed or to register.

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<sup>23</sup> *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Application Nos. 13914/88 and 15041/89, para. 38.

<sup>24</sup> *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, note 21 on page 19, para. 34.

<sup>25</sup> *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7.

<sup>26</sup> See *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, note 21 on page 19.



Accreditation schemes for journalists are appropriate only where necessary to provide them with privileged access to certain places and/or events; such schemes should be overseen by an independent body and accreditation decisions should be taken pursuant to a fair and transparent process, based on clear and non discriminatory criteria published in advance.<sup>27</sup>

#### 4.4. Public Service Broadcasting

The advancement of pluralism in the media is also an important rationale for public service broadcasting. A number of international instruments stress the importance of public service broadcasters and their contribution to promoting diversity and pluralism.<sup>28</sup> ARTICLE 19 has adopted a set of principles on broadcast regulation. *Access to the Airwaves: Principles on Freedom of Expression and Broadcasting*<sup>29</sup> which sets out standards in this area based on international and comparative law. In addition, the Committee of Ministers of the Council of Europe has adopted a Recommendation on the Guarantee of the Independence of Public Service Broadcasting.<sup>30</sup> A key aspect of the international standards relating to public broadcasting is that State broadcasters should be transformed into independent public service broadcasters with a mandate to serve the public interest.<sup>31</sup> The Council of Europe Recommendation stresses the need for public broadcasters to be fully independent of government and commercial interests, stating that the ‘legal framework governing public service broadcasting organisations should clearly stipulate their editorial independence and institutional autonomy’ in all key areas, including ‘the editing and presentation of news and current affairs programmes’.<sup>32</sup> Members of the supervisory bodies of publicly-funded broadcasters should be appointed in an open and pluralistic

<sup>27</sup> Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 18 December 2003, online at: <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/93442AABD81C5C84C1256E000056B89C?opendocument>


<sup>28</sup> See, for example, the Declaration of Alma Ata, 9 October 1992 (endorsed by the General Conference of UNESCO at its 28th session in 1995) and the Protocol on the system of public broadcasting in the Member States, Annexed to the Treaty of Amsterdam, Official Journal C 340, 10 November 1997.

<sup>29</sup> ARTICLE 19, *Access to the Airwaves*, (ARTICLE 19: London, March 2002).

<sup>30</sup> Recommendation No. R (96) 10 on the Guarantee of the Independence of Public Service Broadcasting, adopted 11 September 1996.

<sup>31</sup> See *Access to the Airwaves*, Principle 34. See also the Declaration of Sofia, adopted under the auspices of UNESCO by the European Seminar on Promoting Independent and Pluralistic Media (with special focus on Central and Eastern Europe), 13 September 1997, which states: “State-owned broadcasting and news agencies should be, as a matter of priority, reformed and granted status of journalistic and editorial independence as open public service institutions.”

<sup>32</sup> Recommendation No. R (96) 10, see note 30 above, Guideline I.



manner and the rules governing the supervisory bodies should be defined so as to ensure they are not at risk of political or other interference.<sup>33</sup>

Furthermore, the public service remit of these broadcasters must be clearly set out in law and must include the following requirements:

1. provide quality, independent programming which contributes to a plurality of opinions and an informed public;
2. provide comprehensive news and current affairs programming which is impartial, accurate and balanced;
3. provide a wide range of broadcast material which strikes a balance between programming of wide appeal and specialised programmes that serve the needs of different audiences;
4. be universally accessible and serve all the people and regions of the country, including minority groups;
5. provide educational programmes and programmes directed towards children; and
6. promote local programme production, including through minimum quotas for original productions and material produced by independent producers.<sup>34</sup>

Finally, the funding of public service broadcasters must be ‘based on the principle that member States undertake to maintain and, where necessary, establish an appropriate, secure and transparent funding framework which guarantees public service broadcasting organisations the means necessary to accomplish their missions’.<sup>35</sup> Importantly, the Council of Europe Recommendation stresses that ‘the decision-making power of authorities external to the public service broadcasting organisation in question regarding its funding should not be used to exert, directly or indirectly, any influence over the editorial independence and institutional autonomy of the organisation’.<sup>36</sup>

## 4.5. Independence of Media Bodies

In order to protect the right to freedom of expression, it is imperative that the media be permitted to operate independently from government control. This ensures the media’s role as public watchdog and that the public has access to a wide range of opinions, especially on matters of public interest.

Under international law, it is well established that bodies with regulatory or administrative powers over both public and private broadcasters

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<sup>33</sup> Ibid., Guideline III.

<sup>34</sup> *Access to the Airwaves*, note 31 on page 21, Principle 37.

<sup>35</sup> Recommendation No. R (96) 10, note 30 on page 201 Principle V.

<sup>36</sup> Ibid.

should be independent and protected from political interference. In the Joint Declaration noted above, the UN, OSCE and OAS special mandates protecting freedom of expression state:

All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members which is transparent, allows for public input and is not controlled by any particular political party.<sup>37</sup>

Regional bodies, including the Council of Europe and the African Commission on Human and Peoples' Rights, have also made it clear that the independence of regulatory authorities is fundamentally important. The latter recently adopted a Declaration of Principles on Freedom of Expression in Africa, which states:

Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.<sup>38</sup>

The Committee of Ministers of the Council of Europe has adopted a Recommendation on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector, which states in a preamble paragraph:

[T]o guarantee the existence of a wide range of independent and autonomous media in the broadcasting sector...specially appointed independent regulatory authorities for the broadcasting sector, with expert knowledge in the area, have an important role to play within the framework of the law.<sup>39</sup>

The Recommendation goes on to note that member States should set up independent regulatory authorities. Its guidelines provide that member States should devise a legislative framework to ensure the unimpeded functioning of regulatory authorities and which clearly affirms and protects their independence.<sup>40</sup> The Recommendation further provides that this framework should guarantee that members of regulatory bodies are appointed in a democratic and transparent manner.<sup>41</sup>

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<sup>37</sup> See note 27 on page 21.

<sup>38</sup> Adopted by the African Commission on Human and Peoples' Rights at its 32nd Session, 17-23 October 2002.

<sup>39</sup> Recommendation No. R(2000) 23, adopted 20 December 2000.

<sup>40</sup> Ibid., Guideline 1.

<sup>41</sup> Ibid., Guideline 5.



## 4.6. Restrictions on Freedom of Expression

The right to freedom of expression is not absolute: both international law and most national constitutions recognise that it may be restricted. However, any limitations must remain within strictly defined parameters. Article 19(3) of the ICCPR lays down the conditions that any restriction on freedom of expression must meet:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

A similar formulation can be found in the European, American and African regional human rights treaties. These have been interpreted as requiring restrictions to meet a strict three-part test.<sup>42</sup> International jurisprudence makes it clear that this test presents a high standard which any interference must overcome. The European Court of Human Rights has stated:

Freedom of expression ... is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established.<sup>43</sup>

First, the interference must be provided for by law. This requirement will be fulfilled only where the law is accessible and ‘formulated with sufficient precision to enable the citizen to regulate his [sic] conduct.’<sup>44</sup> Second, the interference must pursue a legitimate aim. The list of aims in Article 19(3) of the ICCPR is exclusive in the sense that no other aims are considered to be legitimate as grounds for restricting freedom of expression. Third, the restriction must be necessary to secure one of those aims. The word “necessary” means that there must be a “pressing social need” for the restriction. The reasons given by the State to justify the restriction must be “relevant and sufficient” and the restriction must be proportionate to the aim pursued.<sup>45</sup>

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<sup>42</sup> See, *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7 (UN Human Rights Committee).

<sup>43</sup> See, for example, *Thorgeirson v. Iceland*, note 18 on page 19, para. 63.

<sup>44</sup> *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para. 49 (European Court of Human Rights).

<sup>45</sup> *Lingens v. Austria*, 8 July 1986, Application No. 9815/82, paras. 39-40 (European Court of Human Rights).

## 4.7. Indonesia's Constitutional and Legal Obligations

### Guarantee of Freedom of Expression under Indonesian Legislation

Freedom of expression is not a new concept under Indonesian law. All four constitutions mentioned above guarantee freedom of expression. The 1945 Constitution in Article 28 states: "Freedom of association and assembly, of expressing thoughts by speech and writing, and so on, shall be laid down by law."

The 2<sup>nd</sup> Amendment to the Indonesian Constitution, adopted on 18 August 2000, added a number of articles that supported Article 28. These include Article 28E, which provides, in part:

- (2) Every person shall have the right to have freedom of belief, express his/her thoughts and attitudes, in accordance with his/her conscience.
- (3) Every person shall have the right of freedom to organize, to assemble, and to express opinions.

Article 28F, also added in the 2<sup>nd</sup> Amendment, provides:


Every person shall have the right to communicate and to obtain information to develop his/her personality and social environment, as well as the right to seek, to obtain, to possess, to keep, to process, and to convey information by utilizing all available kinds of channels.

Articles in the Consultative Assembly's Decree No. XVII/MPR/1998 strengthens this article on human rights:

Everyone shall have the right to freedom to express his/her opinions and convictions based on their conscience. (Article 14)

Everyone shall have the right to freedom of association, assembly, and expressing opinion. (Article 19)

Everyone shall have the right to communicate and receive information for his/her personal development and social environment. (Article 20)



Everyone shall have the right to seek, obtain, possess, keep, process and convey information by utilising all kinds of available channels. (Article 21)

The right of citizens to communicate and obtain information is guaranteed and protected. (Article 42)

The Indonesian Constitution does provide expressly for restrictions on freedom of expression, as stated in Article 28(J) (2):

In exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society.

In September 1999, Indonesia adopted Law No. 39/1999 on Human Rights. In its preamble, the Law says that Indonesia, as a member of the United Nations, has moral and legal responsibilities to honour and implement the Universal Declaration of Human Rights and other international instruments on human rights. On the right to expression, the law stipulates that everyone has the right to express their opinion in public (Article 25). It also stipulates that every person, group, political organisation, mass organisation, non-governmental organisation, or other civil society organisation, has the right to submit a report on human rights violations to the human rights commission or other institution that has the authority in protecting, implementing and promoting human rights (Article 110). The law does not specifically include the right to information.

## **Ineffectiveness of the Protection of Freedom of Expression**

The adoption of legal guarantee for freedom of expression, as stipulated in the Constitution, does not in itself guarantee the effectiveness of freedom of expression in Indonesia.

For instance, during President Megawati's term, repressive regulations that restricted the right to expression were actively employed, with the imprisonment of at least 18 activists under Article 134 of the Penal Code (*Kitab Undang-Undang Hukum Pidana* or KUHP), for the offence of insulting the President or Vice President.<sup>46</sup> These included two activists, Erni of the National Front for Indonesian Labour Struggle

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<sup>46</sup> Article 134 provides that anyone who insults the President or Vice President is punishable by up to six years in prison, or a fine between four thousand and five hundred rupiah.

(*Front Nasional Perjuangan Buruh Indonesia-FNPBI*), and Ferdian of the National Democratic Students League (*Liga Mahasiswa Nasional Demokrasi – LMND*), who were arrested on 6 January 2003 in Makassar for carrying posters of a blind-folded President Megawati and Vice President Hamzah Haz during a rally against the increase of oil prices. Both activists were accused of insulting the President and the Vice-President and according to the head of the district police office, Makassar Timur, were in violation of Article 134 of the Penal Code.<sup>47</sup> Today, this article continues to be used to restrict the peaceful exercise of freedom of expression.

Constitutional and legal guarantees on freedom of expression remain ineffective for three main reasons. In the first instance, people are not aware of these guarantees or their corresponding rights, a situation compounded by the existence of regulations that impede freedom of expression, which should have been amended or repealed in order to make them consistent with the new Constitution. Secondly, legislation exists that unduly restricts freedom of expression and information, for example the Anti-Terrorism Law (2003) and the Penal Code;<sup>48</sup> and finally, there is an apparent unwillingness on the part of the authorities to protect and fully implement the right to freedom of expression.

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<sup>47</sup> “*Tolak Kenaikan Harga, Mahasiswa Makassar Turun ke Jalan*” (Reject Price Hike, Makassar Students Went to the Streets), *Fajar*, 7 January 2002.

<sup>48</sup> On 23 July 2004, Indonesia’s Constitutional Court ruled that the Anti-Terrorism Law, which had been introduced following the Bali bombing in 2002, could not be applied retroactively. This decision calls into doubt the validity of the convictions for those accused of the Bali bombing who had been tried under the Anti-Terrorism Law.



## 5. MEDIA SITUATION

### 5.1. Print Media

Reforms that followed the fall of the Soeharto regime in 1998 have helped create a more healthy media environment in Indonesia. These reforms included the revocation of the law relating to Publishing and Printing Licensing (SIUPP), meaning that new print media outlets no longer need to apply for a licence, leading to the establishment of many new publications. However, the finite size of the media market has limited excessive expansion and has resulted in the closing of many new media businesses due to the fierce competition in the market place; those that have survived have had to rely on a relatively small and uncharted niche market.

To date, the liberalisation and proliferation of the press has not significantly changed the pattern of overall media ownership, which still tends to be monopolised by big media groups. Since the mid-1980s, these groups have tried to diversify their business and expand their market by creating media empires. They have established new outlets and subsidiaries with different focuses, and acquired local media companies. The owners of the large media empires have argued that media convergence is the result of the processes of globalisation and liberalisation of the press. But when media ownership coalesces around a small cartel, there is a distinct risk to diversity and impartiality in the media, with its concomitant impact upon economic and political democratisation.

At the present time, there are two large media groups in Indonesia: the *Kompas-Gramedia* Group and the *Jawa Pos* Group. In the local media market, these two groups compete directly and vigorously. The *Jawa Pos* Group has had significant successes in penetrating local markets. As an East-Java based company, it has gained control over the media markets in Central Java and part of West Java with its *Radar* newspapers. *Jawa Pos* media outlets have a tendency towards sensationalist journalism, at least in the popular perception.

In contrast, the outlets under the management of *Kompas-Gramedia* Group have tended to undertake more in-depth analytical reporting and a professional writing style. In many cases, this has resulted in a low general circulation. However, the media under the *Kompas-Gramedia* group has been more successful in targeting the upper-middle classes. These differences in style and target market have resulted in significant



differences between the make-up and level of the two companies' income. The *Jawa Pos* Media Group is funded by their large readership but receives relatively little in advertisement revenues. Meanwhile, the media under the *Kompas-Gramedia* Group is supported by its relatively high advertisement revenues, although its distribution level is comparatively low. For more discussion on the major printed media, please see Annex 1.



Magazine stall in Jakarta (Photo: ARTICLE 19)

## Foreign and foreign language media outlets

In 1997 it was estimated that 250 copies of foreign magazines were sold each week in Jakarta. Today, nineteen foreign magazines have Indonesian versions. *Cosmopolitan* magazine pioneered this trend, publishing the first imprint of its Indonesian edition *Kosmopolitan* in 1997, even though at that time regulations were in place banning foreign investment in media. Other big international magazines and newspapers such as *Time*, *Far Eastern Economic Review* and *International Herald Tribune* are available in certain bookshops and newsagents in a number of the big cities.

There are only three English-language newspapers: *The Jakarta Post*, *Indonesian Observer* and *Indonesia Times*, and a few magazines. In 1995, the three English-language newspapers sold a total of 90,000 copies per day. *The Jakarta Post* is the most popular of the three, with 41,049 subscribers in 1998. In spite of the low circulation, these newspapers are important because of influence enjoyed by their target audience—educated members of the elite, diplomats, academics, NGOs



and foreign businessmen. *The Jakarta Post* has an English-language website and stories appearing on their website are linked to the *Economist* and *Far Eastern Economic Review* WebPages. Tempo Interactive, which is the online version of Tempo, is available in Indonesian, English and Japanese. This means that a non-Indonesian speaking audience can now access local Indonesian news stories globally, an important development given increased global interest in Indonesia's internal affairs following the Bali and Jakarta bombings.

## 5.2. Television

Indonesian television tends to be dominated by "infotainment" (information and entertainment) programmes, which include numerous soap operas (*sinetron*), reality shows and quizzes. Television programmes tend not to offer a platform for discussion of matters of public interest.<sup>49</sup>

The boom in Indonesian television started at the end of the 1980s when the government allowed private stations to operate. The first private television station, RCTI, broadcast its first programme in November 1988. Television in Indonesia was, and to a certain extent still is, heavily constrained by a complex and intricate maze of elitism and nepotism remaining from the New Order era. President Soeharto used his position to support his own business interests, as a result of which, the ownership of Indonesia's national television is highly centralised, concentrated in the hands of a small number of financiers. These are primarily comprised of Soeharto's own children and his close acquaintances.<sup>50</sup> At the moment, in Indonesia, there are 11 national, 24 regional and two cable television stations.<sup>51</sup>

Judging from the advertising revenue that these stations receive, television is a lucrative business. Whilst other sectors were hard hit by the economic crisis, broadcast media's income from advertising increased from Rp. 3.75 billion (USD 383,500) in 1998 to Rp 9.7 billion (USD 991,529) in 2001. Meanwhile the public television station Televisi Republik Indonesia (TVRI), which enjoyed a monopoly from the 1960s to the 1980s, cannot withstand competition from private television stations and is on the verge of bankruptcy.

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<sup>49</sup> See "Junk Food News di Televisi Kita (2)":

<http://www.pikiran-rakyat.com/cetak/0904/08/0802.htm>

<sup>50</sup> For further information, see Piliang, Narliswandi, "Televisi di Kantong Segelintir Pemilik" (Television in the pockets of the few), *Pantau*, April 2002, pp. 12-19.

<sup>51</sup> <http://www.pikiran-rakyat.com/cetak/2005/0505/06/0603.htm>

## Ownership of major television stations

Concentration of media ownership in a small number of hands can potentially affect diversity and pluralism of the media and impact upon the independence and quality of reporting. A few Indonesian activists and journalists have voiced this concern in relation to the concentration of ownership of Indonesian television.<sup>52</sup>

There are only a few companies which are not under the control of the Soeharto family or close associates, including several recently established companies. Private television stations have emerged in the regions, including Jawa Pos Televisi (JTV) in Surabaya, Bali TV, Lombok TV and Riau TV. With limited budgets and inadequate technology, they have tried to exploit the niche market ignored by the big national television stations, but up until now have failed to operate effectively as established commercial stations. JTV aside, these stations lack a solid legal foundation, high-quality human resources and good management. Backed up by the big media corporation Jawa Pos, JTV has shown more significant improvements than other local television stations.

## Public television


For decades, TVRI has served as the mouthpiece of the government, particularly under the New Order regime, when it was controlled by the Directorate General of Radio and Television under the Ministry of Information. Examples of this include the fact that no political incident would be broadcast on the TVRI regional stations if it was not accompanied by a comment from government sources. For example, due to the absence of any comment from the local police force, TVRI Yogyakarta did not broadcast a report about the murder of a local journalist, Udin, even though news of his death had made headlines in the printed media and on the national TVRI Bulletin.

In 2000, during President Abdul Rahman Wahid's presidency, Government Regulation No. 36/2000 changed the status of TVRI to a State enterprise, with the view to transforming it into a genuine, independent public service broadcasting company. Its status was subsequently changed again, turning it into a limited corporation based on Government Regulation No. IX/2002 passed, on 17 April 2002. This situation created confusion within the television station, particularly with regard to financing.

As a result of these upheavals, TVRI is on the verge of bankruptcy. When it was still under the responsibility of the Directorate of Radio and Television, it was able to obtain sufficient funding to operate. Now that it

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<sup>52</sup> For instance see Sudibyo, Agus, *Ekonomi Politik Penyiaran di Indonesia*, (Jakarta: LKIS, 2003)



has the status of a limited corporation, it only receives a small amount of funding from the State budget to cover salaries, but nothing for operational costs. According to Sumitha Tobing, the former Executive Director of TVRI, the public television station needs approximately 1 trillion Rupiah (USD 102 million) per year to function effectively, but in 2002 they only received 80 billion Rupiah (USD 8.2 million) from the government.

Meanwhile, other sources of funding such as advertising charges and funds from the public are limited. It was predicted that revenue from advertising and other sources is no more than Rp235 billion (USD 24 million) per year.<sup>53</sup> As a result of the financial difficulty, in 2002 almost 100 of TVRI's transmitters in the provinces were closed. By May 2003, however, many of these transmitters had been back in operation. Nevertheless financial problems still haunt the state television station.

## Regional and community television

The adoption of the 2002 Broadcasting Act has opened the door for the development of community broadcasting, including regional and community television. This opportunity has been seized by local governments and now most of the regional television stations receive the majority of their funds from local government budgets (*Anggaran Pembiayaan Belanja Daerah* – APBD). However, instead of broadcasting programmes on issues of local public interest, these stations tend to broadcast the ceremonial activities of government officials and their wives.

## 5.3. Radio

Despite the growth of printed media and television, radio continues to play an important role in Indonesia, particularly in isolated rural areas. The 1990s was a boom period for radio and by 1995 around 700 radio stations were operating. The latest data shows that usage in 2002 was broadly the same, with 700 local radio stations operating, of which 650 are privately owned. The majority of these stations broadcast programmes in Indonesian, but there are some programmes in local languages. Some foreign stations, such as the BBC World Service, Radio Australia, and Voice of America broadcast programmes in Indonesian.<sup>54</sup>

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<sup>53</sup> As an illustration, in 2003 TVRI was only able to get Rp 3-5 billion of advertisement income per month, whilst private television stations could receive up to Rp1000 billion. (*"Perselisihan Berkepanjangan TVRI Terancam Tutup"* (Long Dispute TVRI on the Verge of Closing Down), *Sinar Harapan*, 1 March 2003)

<sup>54</sup> A survey conducted by SRI in 1997 shows that in 1996, 30.1 per cent of educated Indonesians listened to Radio Australia.

The BBC estimated that by the end of 2004, their Indonesian audience had risen from four million to around six million people.

As with the printed media and television, radio ownership in Indonesia is centralised in the hands of a few rich and powerful individuals.

## **Radio ownership**

As Table 5.1. below demonstrates, each region has its own dominant radio group. The situation of radio ownership in Jakarta is different from the rest of the country. It has the most acute competition between private radio stations.

**Table 5.1. Radio Ownership in the Provinces**

<b>Region</b>	<b>Radio Group</b>
Central Java	Cipta Pariwara Prima (CPP) Radio Net.
East Java	Suzana group (11 FM radio stations)
West Java	<ul style="list-style-type: none"> <li>▪ Nyanyian Irama Sejati/Bens FM Radio Station (dominates the Banten area).</li> <li>▪ Lita Sari Group also has a leading role in the province.</li> </ul>
West Kalimantan	Amirudin Manaf's Volare Group (seven FM and seven AM radio stations).
Northern Sumatra	Dominated by four groups: Bonsita Group, Kidung Indah Selaras Suara (KISS) Group, Kardopa Group and Alnaro Group.

In Jakarta, huge amounts of capital circulate every day, and all the major radio stations that have networks in the provinces have their main offices. The main players are the Masima Corporation, which controls six stations and PT Surya Suara Mediatama, which controls several stations in Jakarta and the provinces.



## Community radio

Recently there has been a huge rise in the number of community radio stations in Indonesia, as a result of the inclusion of community radio in the new Broadcasting Act No. 32/2002. There is no accurate data on the number of community radio stations operating, but two community radio networks—the Voice of Farmers Radio Network (JRSP), in West Java and the Indonesian Community Radios Network have about 550 members between them.<sup>55</sup>

## Public officials and politicians in the radio business

The opportunity to establish community radio has been seized upon by numerous public officials and political figures who use these stations to promote their own political agendas.

Bandung's Bandung News FM, established in early 2002, is owned by Nahdlatul Ulama's National Awakening Party (PKB). Between popular songs and tunes, promotional excerpts from the Nahdlatul Ulama party are often broadcast. In March 2002, local representatives from Partai Bulan Bintang (Crescent Star Party) in Purwakarta openly offered several radio stations financial assistance to cover their operational costs provided they broadcast according to the party's political interests. Members of West Java Community Radio Network, Radio Tiara and Citra Suara Parahyangan refused, but several others accepted the offer. A local activist from the Indonesian Democratic Party of Struggle (PDI-P), Cuk Sukasno, owned Cakra Bhuwana FM for many years, while the owner of Andalus FM in Malang, Saiful Khasbullah, is the former deputy of the National Mandate Party (PAN) in Malang, and while Ratu FM in Jember is not officially under the ownership of Golongan Karya Party, it was established and is still backed by its activists.

Many community radio stations are illegal and operate without licences from the Directorate General of Post and Telecommunications. In August 2002, Endang Sofyan Munawar, head of the Jombang Police Office, launched a series of raids on illegal radio stations in Jombang. One of the radio stations raided was Mega FM, which is owned by an activist of the National Mandate Party. As a result of this raid an influential figure from the party, AM Fatwa, called Mr Munawar to complain. Despite his protest, the complaint went unnoticed.

There are also many local government-owned radio stations which operate without radio frequency licences, under a decision taken by the Minister of Information in 1970 to allow local governments to establish their own radio stations and run programmes on State development.

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<sup>55</sup> Wulandari, Fitri, "A long, winding road for community radio", *The Jakarta Post*, March 9, 2003

There are 136 local-government radio stations in Java alone, including Local Government Radio of Unity (*Radio Kesatuan Pemerintah Daerah/RKPD*) in East Java, Local Government Radio Broadcast (*Radio Siaran Pemerintah Daerah/RSPD*) in Central Java and Local Radio Studio (*Studio Radio Daerah/Sturada*) in West Java. There are also approximately 100 local government radio stations outside of the Island of Java.

The privileged position of these local government run radio stations has caused much resentment among private radio station owners. For in addition to operating without frequency licenses, many of these unlicensed radio stations have traditionally been financed by local government budgets, and their employees have the status of public officials and are able to operate in government buildings. They have also been exempt from taxation, electricity bills and other overhead costs. And yet, despite receiving funding and subsidies for overhead costs, these stations also broadcast commercial advertisements.

As a result of these practices and the resentment generated by them, local government authorities took steps to “privatise” these radio stations;<sup>56</sup> in reality, this “privatisation” amounted to little more than changing the names of government radio stations so that they resembled those of existing private radio stations.

Best FM in Jember serves as an interesting case example of the privatisation of a local government radio station. In 1999, the local government of Jember commercialised the radio station under the new name “Best FM” and the station established its own studio in 2001. However, it still did not have a license and continued to receive billions of Rupiah in local government funding. In this case, the local government itself operated a private radio station without a licence and used the State budget to do so. When the Head of Jember District Samsul, Hadi Siswoyo, called upon the local business community to air their advertisements on Best FM, some members of the business community filed complaints.

Privatisation usually follows one of two patterns. In the first, the existing management “take over” the station and local government officials appoint themselves as directors and managers. The resulting profits of the privatised radio station are either channelled back into the local government body, or end up in the pockets of the officials themselves. In the second, a local business pays a rental fee for the government’s frequency for a certain period of time, resulting in the State frequency being used for a new private radio station. CPP Radio Net uses the second approach as its “modus operandi”; the company has taken over

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<sup>56</sup> In actual fact it was not a real privatisation but simply a process through which the name was changed.



the management of local government radio stations in Jepara, Pekalongan, Kudus, Pati, Salatiga, Magelang and Purworejo.

## 6. PRESS REGULATION

### 6.1. Press Law No.40/1999

Since the fall of Soeharto in 1998, print media have enjoyed a far greater degree of freedom than ever before, and are able to cover sensitive issues and even criticise the government. For example, the press was able to report a series of anti-government protests, in which those who opposed price increases in electricity, fuel, and telephone tariffs called for the president to step down. Coverage of such events would have been unimaginable during the Soeharto era.

In September 1999, Press Law No. 40/1999 was adopted to replace Press Law No. 11/1966.<sup>57</sup> It was developed in the midst of the post-Soeharto reform movement, with the help of international bodies such as the United Nations Educational, Scientific and Cultural Organisation (UNESCO) and ARTICLE 19. Many factors that had previously restricted press freedom, such as licensing regulations and extensive content restrictions were repealed when the new law became effective.

Press Law No.40/1999 is concerned with the rights of the press and captures the spirit of reform. The law provides for protection for press freedom in several places, basing this on the sovereignty of the people, as well as on democracy, justice and human rights (the preamble and Articles 2 and 4(1)). Such protection is clearly important and provides a basis for a progressive interpretation of the Law. However, despite the improvements ushered in by the Press Law, there are some areas of concern. Below are some of the key features of the 1999 Press Law.

### Censorship

Article 4(2) provides that there shall be no prior censorship for either the print or broadcast media, while Article 4(3) provides that the press has the right to seek, acquire and disseminate ideas and information. The law also protects the right of journalists to protect the confidentiality of their

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<sup>57</sup> Press Law No.11/1966 was modified with Law No.1/1967 and amended with Law No.21/1982.



sources of information,<sup>58</sup> although, the clarification of the law notes that this may be overridden where the overall public interest is served for reasons of State safety or public order.

Press protection is also guaranteed by Article 18(2), which states anyone found guilty of hampering press freedom may face up to two years imprisonment and a fine of Rp500 million (USD 51,000).<sup>59</sup> In 2003, when the offices of *Tempo* magazine were attacked and its journalists assaulted, one of the attackers was sentenced to five months' imprisonment and a ten-month period of probation. However, prosecutions such as this are still relatively rare.

## Licensing

During the New Order era, SIUPP, the law relating to Publishing and Print Licensing, took on a dual role. On the one hand, it was used to withdraw press licences from those who were critical of the New Order regime.<sup>60</sup> On the other hand, it was used to give special rights to certain groups to publish news publications, meaning that only those groups close to the authorities were able to obtain licences. This favouritism was obvious when, after the closing of *Tempo* magazine, ex-*Tempo* journalists were denied a license to establish a new magazine. At the same time, a new magazine adopting *Tempo*'s style was started by Bob Hasan, a close associate of President Soeharto's Cendana family.

The current Press Law [Article 15(2)(g)] states that press organisations only need to be registered with the Press Council and do not have to acquire a license. This has been warmly welcomed by the Indonesian press, which had previously witnessed how licences had been used as a means of repression and censorship.<sup>61</sup>

Consequently, with the abolishment of the requirement for licences the number of publications has soared. In the Soeharto era, when licences were still required, the number of publications did not exceed 321. In the period between Soeharto's ousting in 1998 and the end of 2001, 2,033 publications were produced. Of this number, only about 600 printed media outlets are currently active. Despite this, the press is still a growing industry that expands significantly every year.

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<sup>58</sup> See Article 4(4) and the definitions.

<sup>59</sup> Rupiah, or Rp, is the currency of Republic of Indonesia

<sup>60</sup> As happened in 1994 to *Detik*, *Editor*, and *Tempo* magazines.

<sup>61</sup> This applies to the printed press only, as broadcasting services must still obtain a licence to operate. See Chapter 7 below.



## Content restrictions

The Press Law contains a number of restrictions concerning the content of published or broadcast material. Article 5, for example, provides that the media—broadcast as well as the print media—has an obligation to respect religious and moral norms in their reports. Article 13 prohibits the media from degrading the “dignity” of religion or from promoting conflict between religions. A breach of these provisions may lead to a fine of up to Rp500 million (USD 51,000).

These provisions are of concern because they are excessively vague and broad, leaving them open to abuse or to unduly wide interpretation. It is, for example, unclear what constitutes reporting of events with respect to religious or moral norms and the latter, in particular, is also a highly subjective notion. As discussed in Chapter 4, under international law, any restriction on the right to freedom of expression must be clearly and unambiguously stated in law and be a proportionate response to a real threat.<sup>62</sup>

## Right of reply

Article 1(11) of the Press Law defines the right of response (referred to herein by its more common name, the right of reply) as the right of any individual or group to respond to or deny any factual news that is unfavourable to their reputation. Article 5(2) provides that the media are obliged to respect the right of reply and, pursuant to Article 18(2), breach of this obligation can lead to a fine of up to Rp500 million (USD 51,000). The Press Law also provides, at Article 5(3), for a right of correction in relation to inaccurate information. In other words, the press can issue a correction if a report is later considered to be incorrect.

The purpose of a right of reply is to provide an individual with an opportunity to correct inaccurate facts or other statements which affect his or her legal rights, such as the right to privacy or reputation. Advocates of media freedom, including ARTICLE 19, generally suggest that a right of reply should be voluntary rather than prescribed by law.

In any case, these conditions should apply:

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<sup>62</sup> See Article 10(2) ECHR; Article 19 ICCPR, as interpreted by the European Court of Human Rights and UN Human Rights Committee: *Sunday Times v. the United Kingdom*, 26 April 1979, Application No. 6538/74, paras. 45, 49, 59 (European Court of Human Rights); *Lingens v. Austria*, 8 July 1986, Application No. 9815/82, EHRR 407, paras. 39-40; *Observer and Guardian v. the United Kingdom*, 26 November 1991, Application No. 13585/88; *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7 (UN Human Rights Committee).

- the reply should only be available to respond to statements which breach a legal right of the person involved, not to comment on opinions which the reader or viewer does not like;
- it should receive similar prominence to the original article or broadcast;
- it should be proportionate in length to the original article or broadcast;
- it should be restricted to addressing the impugned statements in the original text;
- it should not be taken as an opportunity to introduce new issues or to comment on other correct facts; and
- the media should not be required to carry a reply, which is abusive or illegal.

The right of reply in the Press Law fails to conform to these standards in important aspects. Although it is restricted to factual statements, the only other condition is that the statement be unfavourable to the reputation of the person claiming the right. It is not even necessary that the statement be false. Clearly this is much broader in scope than a right to reply to statements which breach one's legal rights. It is unclear why a right of reply was deemed necessary at all, given that the Press Law already provides for a right of correction.

## **General obligations**

Article 6 of the Press Law places a number of general obligations on the media as follows:

- the media must fulfil the public's right to know [Article 6(a)];
- the media must enforce democratic principles such as the rule of law and the supremacy of human rights, and also respect diversity [Article 6(b)];
- the media must develop public opinion based on factual, valid information [Article 6(c)];
- the media must exercise 'restraint' in relation to matters of public concern [Article 6(d)]; and
- the media must fight for justice and truth [Article 6(e)].

Furthermore, journalists must adhere to the Code of Ethics for Journalists. [Article 7(2)]. These apparent obligations are not, however, subject to any sanction in the case of a breach under the Press Law so their exact status is unclear. It would appear that they are simply general exhortations to the media and journalists to operate in the fashion stipulated.



## Press council

Article 15 of the Press Law establishes a Press Council. Its members include journalists, media managers, public figures and media experts. Members are formally appointed by the president. The press council has a large mandate to protect press freedom, as well as a number of other functions, including:

- ensuring compliance with the code of ethics, including by receiving complaints;
- mediating relations between the media, the government and society;
- promoting higher standards of journalism; and
- registering press companies.

**Table 6.1 Public Complaints  
Submitted to the Press Council  
(May 2000 - December 2002)**

	Type of Complaint	Frequency
1.	Requests to the media to broadcast responses to inaccurate or incomplete news items.	141
2.	Requests for legal protection for journalists or against accusations of attack/harassment /unfair treatment/violation towards the press/journalists by State officials or public groups/members of the public.	30
3.	Requests to the Press Council to provide expert witnesses or become a mediator in cases related to the media/news, or request to judge news coverage.	19
4.	Accusations of violations of the press ethics (for instance, forcing a source into an interview, leaking the name of a source) or violation of the press law or other press regulations.	13
5.	Complaints against the media or reports from members of the public to the police force regarding certain news, for submission to the court.	8
6.	Reports/protests from members of the public of unprofessional or inappropriate behaviour by journalists (only written reports).	7
7.	Accusations against the media of printing/broadcasting pornographic material or provocative or insulting news (only written accusations).	7
8.	Reports of requests for journalists to provide information regarding certain news to the police.	6
9.	Requests to solve cases within the media.	1
	<b>Total</b>	<b>232</b>

Processed from Report and Complaints to the Press Council from the Public, State Officials, and Press, Press Council, February 2002.

The Indonesian Press Council, like most other press councils in the world, does not have the power to enforce its findings. It only has the authority to give recommendations and it is powerless to do anything if these recommendations are ignored. The increase in the number of defamation cases against the press shows that the public, particularly high-ranking officials and powerful businessmen or companies, tend not to use their right of reply to the Press Council, preferring instead to seek high awards for damages in defamation cases.

## **Journalists' association**

The Press Law does however provide more opportunity for freedom of expression by removing the restrictions on who may practise journalism, and gives journalists the independence to choose which journalists' association they may wish to join (Article 7).

During the Soeharto era, the only journalist organisation that the government acknowledged was the Association of Indonesian Journalists (*Persatuan Wartawan Indonesia* - PWI). The Alliance of Independent Journalists (*Aliansi Jurnalis Independent* – AJI), established in 1994 as a form of opposition against the repressive acts of the government, was listed as an illegal organisation. The adoption of the press law provides a legal guarantee for AJI and other media associations.

## **Control of the press**

The 1999 Press Law has provided three ways in which control over the press can be exercised:

### **a. Control by the journalists/media<sup>63</sup>**

The press community now also has a common code of ethics, adopted by 26 media organisations in Bandung on 6 August 1999. This code of ethics was then legalised by the Press Council as the Indonesian Journalists' Code of Ethics (*Kode Etik Wartawan Indonesia*- KEWI). This code contains principles concerning journalists' public accountability, their accountability to sources and the integrity of journalists. As of November 2005, the media community is in the process of drafting new codes of ethics.

In addition to KEWI, there are a number of media and radio organisations that have set up codes of conduct, such as *Media Indonesia*

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<sup>63</sup> The late Mahbub Djunaidi, a cultural commentator and well-known columnist once commented on journalists' code of ethics: "Journalistic ethics is like a self-made policeman."



*Daily*. Its code of conduct is one of the most exhaustive in Indonesia. In radio, the Honorary Board of the Indonesian Commercial Radio Stations Association (*Persatuan Radio Swasta Siaran Niaga Indonesia* – PRSSNI) adopted the Professional Standards of Radio Broadcasting. At least three big media outlets, *Jawa Pos*, *Kompas* and *Media Indonesia*, have also established an ombudsman commission.

Article 7(2) of Press Law No.40/1999 states that journalists are required to obey the Code of Ethics for Journalists. This article is the source of the only controversial part of the Press Law, because it implies that any violation of the code of ethics has a legal consequence. This consequence is very harsh compared to the normal moral and social sanctions for such violations.

### **b. Control by the public**

In the Press Law, public control is guaranteed by the provision for the right to response and the right to correct, as stated in Article 5 (2 and 3) of the Press Law. The Law also provides for public involvement by monitoring the press' performance [Article 17(1) and (2)]. Furthermore, the law allows the public to set up a media-watch over any group. A report by the Press Council says that there are currently 22 media-watches all over Indonesia, but only 11 of them are actively publishing their media monitoring results.

### **c. Control by the press council**

The Press Council represents the public and the media, as reflected in the composition of its membership. The Council was established under Article 15 of the Press Law, and has a mandate to protect press freedom, define and monitor the implementation of the journalistic code of ethics and address complaints made by the public on press related cases [Article 15(2)].

## **Foreign media ownership**

The Press Law contains a number of rules relating to foreigners. Article 9(2) provides that media companies must be Indonesian legal entities. Breach of this rule may lead to a fine of up to Rp100,000,000 (USD 10,200). Article 11 provides that re-capitalisation of media companies by foreign enterprises may be conducted through the stock exchange. This is further elaborated in the Clarification, which provides that foreigners may not be majority shareholders in a media company. Finally, Article 16 provides that the circulation of foreign media, as well as the placement of foreign media representatives in Indonesia, must be in accordance with the law.

These provisions may not be objectionable, but they are also unnecessary. For example, it is perfectly legitimate to produce a small-scale newspaper which is not formally a legal entity. This might be the case, for example, for a small school newspaper. Article 11 implies that foreigners may not be involved in the setting up of a media enterprise, but only in re-capitalising it. Such a stringent prohibition is not warranted and other countries do not impose such limitations on foreign ownership. Furthermore, the main effect of this provision may be to deny the Indonesian media of much-needed foreign capital and expertise. While restrictions on foreign ownership may be warranted in the broadcast media sector, they are far more difficult to justify in the print media sector. There is no reason why foreigners should not own and run small media outlets. Article 16, while formally unobjectionable on its terms, is also unnecessary since there is no need to repeat in a press law that other laws must be obeyed.

### **Incompatibility between the Press Law and Defamation Law**

The existing Indonesian defamation laws are clearly at odds with the principles set out in the new Press Law, however as the Press Law does not specifically deal with defamation, the courts have tended to apply existing, highly-restrictive defamation provisions. As such, consideration should be given to include within the Press Law a regime of defamation which would, in case of conflict, override other related laws. Ideally, provision should be made for the press law to take precedence where any incompatibilities cannot be resolved through interpretation.

## **6.2. Press Freedom after the Adoption of the 1999 Press Law**

### **Government control over the press**

Despite the high expectation for press freedom after the adoption of the Press Law in 1999, many cases of harassment of journalists are still reported. In addition, AJI (the Alliance of Independent Journalists), in its 2002 report, wrote that even though 90 per cent of the harassment cases were reported to the police, there very few were followed up or investigated by the police.

Since the adoption of the Press Law there have been several attempts to try and hand back the control of the press, particularly the broadcasting media, to the State. During Abdurrahman Wahid's presidency (1999-2001), the Ministry of Information, which was responsible for controlling



the press under the New Order regime, was dissolved. This positive step was, however, threatened by the Ministry of Communication, which attempted to exert control over the press when it set up a new version of the Directorate General of Radio, Television and Film that had been abolished along with the Ministry of Information. This broadcasting directorate had the mandate to control, provide guidance, and develop radio and television broadcasting (Article 27 of the Ministry of Communication Decree). Fortunately, this plan to establish a new directorate received strong criticism from radio and television practitioners such as the Association of Indonesian Private Radio Stations (PRSSNI), Indonesian Press and Television Community (KomTeve) and the Association of Indonesian Broadcast Journalists (IJTI) and was consequently abandoned.

However, this Ministry was later revived in President Megawati's term as the Ministry of Information and Communication, and there is a concern among the Indonesian press that this Ministry will now function as the new press controlling body.

Another institution that has made attempts to control press freedom was the Film Censorship Body (*Lembaga Sensor Film* – LSF). It issued Memorandum No. 117/SE/LSF/IX/2000 on 28 September 2000 that contains a paragraph that caused outrage within the media community. The third point of the memorandum stated:

The broadcasting of talk shows covering issues related to politics, society, economy, culture, religion, etc, on any format, must be censored first in order to receive a letter notifying that the programme has passed the censors.

IJTI was especially alarmed by this memorandum and argued that talk shows should be considered a journalistic creation and therefore should be regulated by the Press Law and not the Law on Film (No. 8/1992), and should not be subject to censorship.

The continued attempts by successive governments to control the press culminated in December 2001 in a proposal to amend the Press Law led by the Minister of State for Information and Communication, Syamsul Muarif, with the backing of some members of the House of Representatives (DPR). According to the Minister, the amendment was needed because the Press Law had failed to anticipate the negative effects of press freedom, such as pornography, provocative reporting, character assassination and bogus journalists (*wartawan bodreks*). Fortunately, this proposal failed to gain broad political support and was abandoned. However, criticism of the Press Law and media freedom continue to be voiced by members of parliament and the cabinet.



## Press in conflict zones

### Conflict in Maluku

Events in the provinces of Maluku and Maluku Utara provide examples of how local governments have tried to control the press through exploiting emergency powers. The governments of civil emergency in these two provinces have repeatedly used the authority given to them by Law No 23/1959 to control the press in emergency situations. This law gives unlimited authority to the emergency government, including the power to close down media outlets. This authority has been used, for example, by the Governor of North Maluku, Abdul Muhyi Effendie, to refuse permission for reporters from RCTI and TPI to conduct reports in his area in March 2001. He also required that three local newspapers, *Ternate Pos*, *Fokus Daily* and *Mimbar Kieraha Daily* should not publish “troubling news”, and threatened to close down and ban the distribution of these newspapers in the Province of North Maluku if they did not obey him. Furthermore, he instructed a military taskforce to monitor their activities, although ultimately this threat was not realised due to pressure exerted by the press community, including AJI and SEAPA and local journalists.

### Conflict in Aceh

On 19 May 2003, the Indonesian government declared martial law in Aceh. Shortly afterwards, the head of the military authority in Aceh, Maj. Gen. Endang Suwarya, called on journalists not to report any statements made by members of the Free Aceh Movement (GAM). Major General Suwarya said, as quoted in the Jakarta Post: “I demand that all news reports support the nationalist spirit. The interests of the unitary State must come first.”<sup>64</sup> His statement was in reaction to reports alleging human rights violations conducted by the Indonesian military that had been published in the media.

Since the escalation of the conflict, there have been incidents of attacks against journalists, and several have been killed; these attacks have been attributed to both GAM and the military, as unknown gunmen shot at vehicles that were clearly marked “Press”. Emulating the US and UK media policy in the Iraq war, the Indonesian military has embedded 54 Indonesian (but not foreign) journalists within its forces. These embedded journalists are required to wear military uniforms, thereby making them potential targets for the Acehnese rebels.

All journalists reporting from Aceh require accreditation from the Indonesian military. In 2003, General Suwarya turned down the

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<sup>64</sup> See ARTICLE 19’s statement, “Freedom of Expression under Attack in Aceh”, issued on 5 June 2003, available at [www.article19.org](http://www.article19.org).



applications of about ten foreign-based journalists to report from the province, on the grounds that he felt there was no need for foreign observers in Aceh, given that journalists embedded in the military could provide sufficient media coverage. Syamsul Mu'arif, the Minister of Communication and Information, also faced pressure from Indonesian legislators to impose restrictions on reports from Aceh, and the media have been threatened with legal action over their reporting. Some journalists have also reported that they have been interrogated and threatened by the security forces due to their coverage of military misconduct.

Accordingly, the media coverage of events in Aceh has been limited, through a combination of denial of access and self-censorship.<sup>65</sup>

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<sup>65</sup> Sudibyo, Agus, Bayu Wicaksono et al (ed.), *Abuse Against Indonesian Media*, (Jakarta: 2004), p. 75.

## **Recommendations:**

### ***To the government and/or parliament:***

- A regime of defamation should be included in the Press Law. Ideally, the provision should provide for the Press Law to take precedence where any incompatibilities cannot be resolved through interpretation.
- The maximum fines which may be levied under the Press Law should not be excessively high and should take into account the limited means available in Indonesia.
- The content restrictions in the present Press Law should be reviewed and amended to bring them in line with international and constitutional guarantees of freedom of expression.
- The right of reply in the Press Law should be reviewed to conform to international standards, in particular to ensure that it only applies in relation to a false statement.
- National Security concerns must not be used to unduly restrict media reporting. Full media coverage of conflict situations must be guaranteed.

### ***To the media community and media outlets:***

- Codes of ethics that reinforce good journalistic practices should be adopted. Measures could include establishing an internal complaints system, strengthening editorial control and providing journalism training.



## 7. BROADCASTING REGULATIONS

On 28 November 2002, a new Broadcasting Act was finally passed, following lengthy debate in parliament. Broadcasting Act No. 32/2002 replaces the old Broadcasting Act No.24/1997. Throughout its four-year gestation period, the Act attracted a great deal of controversy, and despite parliamentary approval, it continues to provoke debate.

The Broadcasting Act 32/2002 contains a number of positive features and represents a very significant improvement over the previous Act. It recognises the important role of the three tiers of broadcasters—public, commercial and community, as well as subscription broadcasting services—in ensuring the free flow of information and ideas to the Indonesian public. It also establishes an independent body, the KPI, with responsibility for regulating and providing recommendations in the area of broadcasting.

At the same time, there are a number of concerns with the Act. Despite the fact that it establishes the KPI as an independent body, the Act allocates important powers in this area to the government, contrary to international standards on this issue. The content controls it establishes go beyond what is generally recognised as necessary to safeguard public interest and there are stringent and unnecessary restrictions on foreign broadcasters.

### 7.1. Key aspects of the Broadcasting Act No. 32/2002

#### Regulatory body

The Law establishes an independent regulatory body, the Indonesian Broadcasting Board (Komisi Penyiaran Indonesia – KPI), comprised of two national and regional bodies, with important powers over broadcasting (Articles 7 and 8). Pursuant to Article 10, members of the two bodies are nominated by the People’s Representatives Council (DPR) and Regional People’s Representatives Council (DPRD) after public input and following a fit and proper test.<sup>66</sup> Members are formally appointed by the president and provincial governors, and must meet a number of formal conditions, including having no business interest in the mass media and no political links. Members may be removed by a presidential decree, upon the suggestion of the DPR.

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<sup>66</sup> Individuals and civil society groups can send names of their candidates to the DPR, which then conducts interview with the nominated candidates to decide whether they are capable and suitable to do the job.

Article 8 rules that the KPI has the authority to determine broadcast programme standards, compose regulations and attitude guidance, monitor the implementation of regulations and codes of conduct, and impose sanctions in respect of any breaches.

Much criticism of the articles regarding the KPI stems from the authority exercised jointly by the KPI and the government, such as the issuance of licenses, extensions and criminal sanctions. This has raised questions over the independence of the KPI and concerns regarding increased governmental powers over broadcasting. Another problematic feature of the Act is that it does not provide for an appeal mechanism for the decisions of the KPI.

## **Public broadcaster**

The current act, like its predecessors, contains only two provisions on public service broadcasting. Article 14 establishes a very general mandate for public broadcasters, stating that directors and boards should be determined by the President upon the recommendation of the House of Representatives (or Governor and Provincial House of Representatives for provincial public broadcasters), and that these bodies are responsible to the respective House of Representatives. Article 15 lists a wide range of possible funding options for public broadcasters and requires them to submit annual financial reports.

The main problem with these provisions is that they are too brief to deal with this complex topic. In particular, it fails to:

- define the objectives of public service broadcasting;
- make it clear that the Act applies to the State television and radio stations, TVRI and RRI;
- ensure the Board of Directors and Board of Advisors are independent and to set out clearly their functions; and
- detail precisely the manner of funding or to set out clearly what should be included in the annual report.

The brief provision for the appointment of the directors and boards may be contrasted with the far more detailed treatment this topic receives in relation to the KPI.

Public broadcasting is a complex matter and should be provided for in a specific law for that purpose, consistent with the practices in most countries. Alternatively, a broadcasting act should include far more detailed provisions on this important subject.



## Private broadcasters

### Licensing issues

There are two provisions on licensing in the Broadcasting Act. Article 33 (4), states:

License and license extension will be given by the State after obtaining:

- a. Input and evaluation result of the hearing between the applicant and KPI
- b. Recommendation for operating broadcasting station by KPI
- c. The agreement in meeting forum for licensing between KPI and the Government
- d. Allocation License and radio frequency spectrum utilization are given by the Government based on the recommendation of KPI

Furthermore, in Article 33(5), it says that the broadcasting license is administered by the State through the KPI. It is not clear whether the provincial government and regional broadcasting commissions can issue licenses or not. This should be specified in the implementation guidelines to avoid inconsistency between the Broadcasting Act and the Regional Autonomy Law No. 25/1999, which allows regional governments to issue broadcast licenses.

Article 34 states that radio-broadcasting operation licenses are valid for 5 years, whilst television licenses are valid for 10 years. These can be extended but are not transferable and therefore cannot be sold. The article also regulates the reasons for revoking broadcasting operation licenses.

An example of inconsistency of regulation on broadcasting license is what happened to an FM radio in Maluku. In December 2005, Gelora Tavlul was closed down by order of the Southeast Maluku Regent. The radio had been critical of the government, and previous to its closure had broadcast a story about an alleged misuse of Rp 19 billion in disaster mitigation funds. The order was issued on 13 December, a month after the local government rejected the the radio's request for extension.

The closure has been condemned by the local broadcasting regulator, the Maluku Broadcasting Commission. Izack Tulalessy, a member of the Commission, said: "The government has no right to close down the statio, because according to the broadcasting law, that right is vested in us."<sup>67</sup>

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<sup>67</sup> "KPI slams closure of radio station", *The Jakarta Post*, 19 December 2005.

## Broadcasting content

Several provisions in the Act impose restrictions on the content of what may be broadcast. Article 35 states that broadcasting content must be in line with Articles 2-5, which set out the broadcasting ground rules, objectives, functions and directions.<sup>68</sup> As long as these are understood as general goals rather than specific prescriptions for broadcasters, this may not be too problematic. But like many provisions in other Indonesian laws, the compliance of broadcasting content to these articles can be open to varied interpretation.

Article 5(i), for example, requires broadcasters to provide information that is correct. Even the very best journalists make mistakes in their endeavours to publish information of public interest in a timely fashion. To penalise them for making such mistakes would have a serious chilling effect on freedom of expression and lead to a situation where broadcasters are unwilling to broadcast anything unless they were absolutely sure it was correct, undermining the public's access to timely and comprehensive news.

Article 36 sets out a number of content restrictions. Articles 36(1) and (3) set out a number of very general and vague goals to which broadcasters are required to aspire, such as promoting morality, national endurance and unity, and protecting and empowering the public. Article 36(2) requires broadcasters to carry at least 60 per cent domestically produced programmes.

The background to this provision was the extensive use of foreign programmes by private television stations, because it is cheaper to buy these programmes than to produce new ones. Nevertheless, there are a number of problems with this provision. First, 60 per cent is an extremely high proportion, and it may be difficult for some broadcasters to comply with this and remain operational. The European Convention on Transfrontier Television, for example, sets a requirement of 50 per cent European production for State parties.<sup>69</sup> Furthermore, there are problems with setting rigid standards to which all broadcasters must conform. Certain broadcasters may focus on special niche markets, such as sports programming, where the public has a significant and legitimate interest in foreign programming, for example in the areas of golf, football and formula racing. Rather than set a rigid limit for all broadcasters, it would be preferable to allow the KPI to set different categories for different types of broadcasters. Finally, it is unrealistic to expect broadcasters to comply immediately with this percentage and they should be given time to bring their practice into line with this standard.

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<sup>68</sup> See Annex 2.

<sup>69</sup> E.T.S. 132, in force 1 May 1993, Article 10(1).



Article 36(5) refers to a number of prohibitions, including slander, gambling, drug abuse and hate speech. Article 36(6) includes a number of vague prohibitions, such as neglecting religious values and the prestige of the Indonesian people. A violation of these provisions can lead to imprisonment [Article 57 (d) and (e)]. Furthermore, Article 36 (6) states that broadcast content should not ridicule, insult, molest and/or neglect religious values, the dignity of the Indonesian people, or jeopardise international relations. This is inconsistent with Article 1 (8) of Press Law No 40/1999.<sup>70</sup> AJI, along with other media organisations,<sup>71</sup> consider these to be “rubber articles”, as they are vague and overly broad and therefore subject to varied interpretation, and could provide grounds for censorship.

Article 37 provides that the main language of broadcasting must be Bahasa Indonesian, whilst Article 38 allows the use of local dialects where necessary for local content or to support a programme, and foreign languages can be used if they are required by the programme.

Foreign languages, particularly English, have been used by television and radio stations for a number of years. Most major television stations have English news programmes, and Metro TV even has a news programme in Chinese. Some radio stations in Jakarta, such as Radio Ramako and Radio Klasik FM, use English in some of their programmes.

Radio stations in other cities have used English expressions or words in their slogans and programmes.

Articles 40 and 47 also limit the broadcasting of certain types of programmes. Article 40 (3) limits the duration, types and number of regular programmes originating from a foreign broadcasting institution, and Article 47 states that films can only be released once they have been censored. Whilst, it is legitimate to require films to carry a classification, prior censorship of this nature is unnecessary.

## Ownership

Article 18 (1) regulates the concentration of ownership and domination of private broadcasting institutions. This provision seeks to prevent the centralisation of media ownership in a small number of hands, which took place during the New Order era but it does not specify the limit of ownership by one person or legal entity in broadcasting. It therefore fails to take into account the very wide range of broadcasting outlets, and the

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<sup>70</sup> Article 1 (8) of Press Law No. 40/1999: “Censorship is a forced deletion on part of, or the whole of, information materials that are intended to be published or broadcast, or any threatening warning or notification from any party, and/or obligation to report and to gain license from the authorised body in the practice of journalism.”

<sup>71</sup> Association of Indonesian Private Radios (PRSSNI) and Association of Indonesian Private Televisions (ATVSI)



vast differences among these outlets in terms of influence and potential threats (e.g. market dominance).

The limit as specified by the Anti Monopoly Practice Act is more specific, and should be taken into consideration by the Indonesian government when drafting the implementation guidelines of the Broadcasting Act. The Act clearly states in article 27 (a) that a monopoly occurs when a particular business or market player takes over more than 50 per cent of the share market of a particular field or product.

Article 18 (2) of the Broadcasting Act prohibits any cross ownership between a broadcaster and any other broadcaster or print media outlet. This article also gives authority to the KPI and the government to work out the scope of local, regional and national radio and television programmes and the limitation on ownership and cross ownership. The objective behind the limitation of cross ownership is to create a diversity of ownership as well as diversity of content.

With regards to foreign ownership, Article 17 prohibits foreigners from participating in the establishment of a commercial broadcaster and limits the total foreign ownership to 20 per cent, which must in turn be divided between two shareholders.

## **Broadcasting scope**

One of the problems with the press during the New Order era was that broadcasting was very centralised in Jakarta. To solve this problem, some provisions that limit the broadcasting scope of national broadcasters were included in the Broadcasting Act 2002.

Article 31 (1 and 3) of the act states that broadcasters can either be local or networked. Whether this means that it rules out the possibility of a national broadcaster or not is yet to be clarified. Provisions regarding the operation of a networking station system will be worked out by the KPI and the Government [Article 31 (4)]. There is still scope for the broadcasting industry to contribute to this issue, for example by suggesting that national coverage could reach up to 35 per cent of the total households, as is the case in the United States.

To prohibit national broadcasters would not only be contrary to international law and undermine diversity but it would also contradict the prevailing situation in Indonesia which is characterised by a number of national broadcasters. In practice, it is now clear that only national broadcasters can provide certain types of services, such as comprehensive and detailed news programmes, as well as an alternative for viewers all over the country to the public broadcaster. Furthermore, national broadcasters can help ensure that people in all parts of the country have some choice in broadcasting. Prohibiting national



broadcasters by law undermines the principle of diversity, which is an element of the guarantee of freedom of expression, as noted in Chapter 4. In any case, it is excessively rigid to include a rule of this sort directly in a law; decisions of this nature should be left to the KPI to make through the licensing process.

### **Community broadcasting**

Unlike the old Broadcasting Act, the current Act recognises community broadcasting. However, Article 23 imposes unrealistically severe funding restrictions on such broadcasters. Pursuant to that article, they may not receive start-up funds from foreign sources and cannot run commercials other than public service announcements. Both of these sources of funding are likely to be crucial to the development of community broadcasting and these restrictions cannot be justified.

## **7.2. Implementation of the 2002 Broadcasting Act**

### **Judicial review**

Many private television stations felt disadvantaged by the new Act and launched a campaign to raise their concerns. They aired their grievances on television through talk shows, television polls, news and public service announcements. The message they wanted to get across was that the Broadcasting Act was a threat to freedom of the press and of information.

Six broadcasting organisations applied for a judicial review to the Constitutional Court to consider 22 articles of the Broadcasting Act.<sup>72</sup> Their main complaints regarded the KPI, its role and limits on broadcast ownership. However, the Constitutional Court ruled in July 2004, that the Act was not contrary to the Constitution.

### **Derivative regulation**

As mentioned earlier, the Act requires guidelines in the form of government regulations to be implemented. The government has

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<sup>72</sup> The six organisations are: Indonesian Broadcast Journalists Association (IJTI), Indonesian Private Television Association (ATVSI), Association of Indonesian Private Radio Station (PRSSNI), Indonesian Television Community (KomTeve), Indonesian Advertising Company Association (PPPI) and Indonesian Dubber Association (PERSUSI)

completed all seven of the Government Regulations (*Peraturan Pemerintah*) planned.<sup>73</sup>

The first three regulations (No.11, 12 and 13) deal with public broadcasting services, i.e. public television and radio. They underline a move towards re-imposing government domination over the media, even to the extent that this may conflict with the Act itself. Government Regulation No. 49 on foreign broadcasters requires foreign broadcasters to have permission from ministry in charge for communication and information.

Government Regulation No. 50/2005 on national private broadcaster, signed on 16 November 2005, prohibits regular relay of news originating from foreign broadcasting institutions (article 17.5). This provision is undoubtedly a breach of people's right to information. AJI in its statement dated 2 December 2005 is concerned that provisions in this regulation will be used as basis for granting more power and control over the media to the State Ministry of Communication and Information.<sup>74</sup> On a positive note, this regulation requires private broadcasters to disseminate early warning information on potential natural disaster.

Government Regulation No. 51/2005 on community broadcaster has raised protests from community broadcasters. Community radio operators in West Sumatra requested the central government to revise several articles in the regulation, including the ones on licensing procedures, license extension, broadcasting scope, and the use of Indonesian as the main language of broadcast. In regards to the provision broadcasting scope, the maximum broadcast radius of 2.5 km was considered unworkable for community broadcasters operating in isolated areas of the country, such as Papua.<sup>75</sup>

Judging from these regulations and the government overall treatment of the broadcasting commission, it appears that the government remains unwilling to give the KPI the sole authority to regulate the broadcast media. The government, for instance, maintains the authority to issue license—the KPI is involved in the decision making process but the license is issued by the ministry in charge for communication and information. The government also has the authority to sanction the broadcast media, and to issue further broadcasting regulations (in the form of a ministerial decree, or *Keputusan Menteri*). Yet, all of these

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<sup>73</sup> Government Regulation No. 11/2005, Government Regulation No. 12/2005, Government Regulation No. 13/2005, Government Regulation No. 49/2005, Government Regulation No. 510/2005, Government Regulation No. 51/2005, Government Regulation No. 52/2005 (on subscription-based broadcaster).

<sup>74</sup> "The Alliance of Independent Journalists Refuse the Return of Former Department of Information Function", AJI's press release, 2 December 2005.

<sup>75</sup> "Community stations call for new radio rule to be revised", *The Jakarta Post*, 20 December 2005.



functions, according to the Act, should be conducted jointly between the government and the KPI.

The government also exerts a domineering influence over the KPI by controlling its budget and the level of administrative support it receives. The KPI, like the Press Council, still lacks the funding and support needed to perform its functions effectively.

The on-going domination and interference of the government over the KPI is against the international standards in this area. As explained in Chapter 4, a regulatory body, such as the KPI, should be independent and protected from political interference.

At the provincial level, the local broadcasting commissions (KPID) are facing similar funding problems. They have not received enough funding and support from the local government, and fifteen out of thirty-two provincial governments have not even established KPID.

While the Act was designed to protect the media from political repression and market pressure, there is a widespread worry within the broadcast media and freedom of expression community that further government regulations will only weaken the protection afforded them by the provisions of the Act.



Photo: UNESCO

## **Recommendations:**

### ***To the government and/or parliament:***

- The legal framework for broadcasting should be expanded through the development of comprehensive, progressive licensing and content regulation systems. This framework should provide for limited or no licence fees for community broadcasters and existing community broadcasters should, in principle, have their licences guaranteed. A definition of a community broadcaster should also be developed.
- Measures should be taken to enhance the independence of the broadcasting regulatory body (KPI), for example by providing sufficient funding and administrative support.
- The government should not be involved with the issuance of licences to broadcasters, including determining licence application procedures.
- A comprehensive law on public broadcasting should be developed, which conforms to international principles.
- Severe restrictions on the funding of community radio stations should be removed.
- The provisions relating to content restrictions should be reviewed and amended to conform to international standards and avoid vague and overly broad restrictions.
- The national government should encourage the provincial governments to strengthen the broadcasting commissions at the provincial level.

### ***To the media community and media outlets:***

- The media should respect the law and support and monitor the implementation of the Broadcasting Act.
- The media should support and help to strengthen the KPI.



## 8. LEGISLATION ON DEFAMATION

As described in Chapter 4, the exercise of freedom of expression may be subject to certain restrictions in order to respect the rights or reputations of others and for the protection of national security or of public order, public health or morals.

### 8.1. Defamation under the Penal Code

The Indonesian Penal Code has been in force nationally since independence and is enshrined in Law No. 1/1946. It is based on the Netherlands Indies Criminal Code, which was put into effect in 1918, but incorporates certain amendments promulgated by the revolutionary government in 1946. The Penal Code contains 35 articles dealing with defamation and the protection of reputation. Defamation in the Penal Code is defined as written or oral communication that is against the will of the affected party and that they may find offensive (Article 136bis). It can occur in one of the following settings: in public, in a private setting with more than four people attending or in front of a third person. The vague definitions in the Penal Code are vulnerable to subjective interpretations. Articles containing such vague definitions are common under Indonesian law and are often referred to as “rubber articles:” to be interpreted in accordance with the needs and interests of those in power.

In legal terms, the word “libel” is used for written defamation, whilst “slander” refers to oral defamation. In the Penal Code, however, there is no clear-cut definition of libel or insult. In the Penal Code there are two categories of libellous offences:

1. Articles 310, 311, 315 and 316 of the Penal Code provide for general defamation. Any person who feels that he/she has been defamed could file a complaint against the person who he/she thinks has defamed him/her.
2. Articles 134 and 137 of the Penal Code provide for defamation against public officials, such as the head of State and vice president. Included in this category is slander towards authorities or legal institutions, as provided for by Articles 207, 208 and 209. In addition, Articles 142, 143 and 144 provide for slander of kings, foreign heads of State or representatives of foreign government.

#### Defamation against public officials

The Penal Code contains a number of articles that deal with defamation of public officials (see Table 8.1). It defines “authority” as all State

institutions and State apparatus, including institutions that are enshrined in the Constitution and supporting legislation. All officials, military and civil, including the village head (*lurah*) can therefore benefit from these articles.<sup>76</sup> Defamation cases involving State authorities such as the President, Vice President and State institutions are regarded as “normal” offences: an investigation and examination of the alleged offence can take place even without the person who was allegedly defamed, filing a complaint.

**Table 8.1 Defamation offences on public officials**

Article	Summary of content	Maximum punishment
131	Assault to President or Vice President	8 year imprisonment
134	Insults the President or Vice President	6 years imprisonment or Rp. 4500 fine
137	Disseminates, demonstrates openly or puts up writing or a portrait that insults the President or Vice President	1 year imprisonment or Rp. 4500 fine
141	Assault to king or head of State of another friendly State	7 years imprisonment
142	Insults the king or head of State of another friendly State	5 years imprisonment or Rp. 4500 fine
143	Insults international representatives of a foreign power	5 years imprisonment or Rp. 4500 fine
144	Disseminates, demonstrates openly or puts up writing or a portrait that insults the king or head of State of another country	9 months imprisonment or Rp. 4500 fine
207	Insults an authority or a public body, either orally in writing	1.5 years imprisonment
208	Disseminates, demonstrates openly or puts up a writing or portrait that insults an authority or public body	4 month imprisonment or Rp. 4500 fine

During the Soeharto era, defamation, particularly Articles 134 and 137, was often used to silence the activists or politicians who opposed the government. One well-known case was that of Mr Sri Bintang Pamungkas, a member of parliament for the United Development Party. He was convicted of insulting the President during comments he had made at a lecture at a German university in 1995. In 1996 he was sentenced to two years and ten months imprisonment (violation of Articles 134 and 135). Domestic and international organisations condemned the treatment of Mr Pamungkas. The Inter-Parliamentary



Union stated that the allegations against him related merely to his right to freedom of expression.<sup>77</sup>

A more recent case occurred in 2002 when two student activists were prosecuted for defaming public officials. They had stepped on photographs of President Megawati Soekarnoputri during a rally. On 24 October 2002, the Central Jakarta Court found them both guilty of breaching Articles 134 and 137 of the Penal Code and sentenced Nanang and Muzakir to one-year imprisonment each.

During President Yudhoyono's term, at least two cases of defamation have been recorded. In May 2005, Bay Harkat Jonday Firdaus was charged under article 134 and 135 and sentenced to 5 months imprisonment for burning the photos of the President and Vice President during a rally to protest against fuel price increase. In June 2005, I Wayan "Gendo" Suardana was charged under the same articles and sentenced to 6 months imprisonment for conducting a similar act, setting fire to a photo of President Yudhoyono during a rally against the hike in fuel price.

Whilst international law permits limited restrictions on the right to freedom of expression in order to protect various interests, including reputation, any restriction must meet the strict three-part test discussed in Chapter 4. Accordingly, the sanctions imposed must be proportionate to the harm done and not go beyond what is necessary in the particular circumstances. Disproportionate sanctions for defamation represent a breach of the right to freedom of expression. Criminal sanctions for defamation fall foul of this rule because they are unduly harsh, taking into account the harm caused.

It is also well established that the guarantee of freedom of expression requires States to use the least restrictive effective remedy to secure the legitimate aim sought. This flows directly from the need for any restrictions to be necessary; if a less restrictive remedy is effective, the more restrictive one cannot be necessary. To the extent that civil defamation laws are effective in appropriately redressing harm to reputation, there is no justification for criminal defamation laws. Civil actions are, in any case, better equipped to remedy the harm of defamation than criminal actions, because they are designed to remedy the injury to the victim's reputation by compensation in terms of damages. In contrast, criminal sanctions do not for the most part aim to remedy the actual harm caused to the victim but, rather, to punish the defendant.

The use of the defamation offences in the Penal Code to guarantee special protection to public figures contradicts the basic principle that

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<sup>77</sup> Inter-Parliamentary Union Resolution, [www.ipu.org/hr-e/158/158ids10.htm](http://www.ipu.org/hr-e/158/158ids10.htm)



public officials should tolerate more criticisms, not less, because of their position. This is based on two key factors. First, it is of the greatest importance that public officials, like public bodies, are subjected to open debate and criticism. Second, public officials have knowingly opened themselves up to criticism by their choice of profession.

The defamation offences contained in Article 131 and 141 of the Penal Code, also fail to meet the requirement for there to be any actual damage to reputation and are too vaguely defined and overly broad in their scope to be considered as “prescribed by law”. The prohibition on expression in these articles need only constitute a “factual assault.” This term is undefined and is probably incapable of definition. It is not restricted to false allegations and there is no requirement that the impugned statements even damage the honour or reputation of the protected persons. The term “assault” appears to carry the implication that the prohibited expression must somehow be harmful to such persons, but it is not clear how a critique or comment may constitute an “assault”. No matter how legitimate and factual a criticism is, the speaker or writer can still be subjected to a long prison sentence. These provisions render a vast range of discussions, for instance on world affairs and on Indonesia’s international role, potentially in breach of the Penal Code, if they include references to the President, Vice-President or other world leaders.

Furthermore, Articles 131 and 141 do not require any *intent to defame* on the part of the person expressing himself/herself. An innocent remark, a remark taken out of context, a joke or a light exaggeration might all qualify as “factual assaults”, the expression of which might result in a heavy criminal liability.

Criminal provisions which are open-ended, such as these, are in violation of international law. They breach the well-established proposition that any restrictions on freedom of expression must be established by a “law” which is formulated with sufficient precision to enable the citizen to regulate his conduct.<sup>78</sup>

The unfortunate effects of Article 131 are worsened by Article 165, which imposes criminal liability on any person who has knowledge that someone *intends* to violate certain provisions of the Penal Code, including Article 131, and who intentionally fails to notify the police or “officers of the justice” in a timely fashion. For example, any person who knows that there will be a discussion of world affairs which might involve factual criticism of the President or the Vice-President, whether the discussion occurs in a private or public setting, must notify the authorities right away. In the event that he or she does not do so, and that

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<sup>78</sup> *Sunday Times v. United Kingdom*, 26 April, 1979, Application No. 6538/74, para. 49 (involving a prior restraint on press publication sought to be justified on national security grounds).



a “factual assault” on one of these persons occurs, he or she may face imprisonment or a fine.

## Haatzaai artikelen

In addition to the offence of slander, articles 154-157 and 160-161 in the Penal Code the Penal Code provide for what is known as *haatzaai artikelen* (*sedition*). *Haat*, in Dutch, means seed of hatred, and *haatzaaien* is an act that could provoke the emergence of seeds of hatred.

**Table 8.2 Offences against public order**

Article	Summary of content	Maximum Punishment
154	Publicly expresses feelings of hostility, hatred or contempt against the Government	7 years imprisonment or Rp. 4500 fine
155	Disseminates, demonstrates openly or puts up writing that contains feelings of hostility, hatred or contempt against the Government	4 years imprisonment or Rp. 4500 fine
156	Publicly expresses feelings of hostility, hatred or contempt against one or more groups, ethnic races or religions	5 years imprisonment
157	Disseminates, demonstrates openly or puts up on a wall writing or a portrait that contains feelings of hostility, hatred, or contempt against or among groups of the population	2.5 years imprisonment or Rp. 4500 fine
160	Incites orally or in writing in public to commit a punishable act, a violent action against the public authority or any other disobedience	6 years imprisonment or Rp. 4500 fine
161	Disseminates, demonstrates openly or puts up writing which contains incitement to commit a punishable act, a violent action against the public authority or any other disobedience	4 years imprisonment or Rp. 4500 fine

Article 154, 155 and 156 outlaw “spreading feelings of hatred towards the government” and are punishable with up to seven years imprisonment. Article 160 outlaws incitement to violence and carries a penalty of six years in prison. The wording in these articles is once again too vague and ill-defined so as to serve as a basis for criminal sanction. Phrases such as “expression of enormity, hatred, or libel” are open to subjective interpretation by the judiciary. As a result, these articles can be open to abuse. Moreover, the Haatzai offence in the KUHP does not require the investigator to prove damage caused by an act. It is sufficient for the authority to consider that a certain act or publication shows animosity towards the government.

An example of the enforcement of *haatzaai artikelen* is the court case of Faisal Syafruddin, the Chairman of SIRA (Sentral Informasi Rakyat Aceh – Aceh People Information Centre). On 9 and 12 November 2000, SIRA staged demonstrations in front of the UN representative office in Jakarta, condemning the Indonesian government for their crimes in Aceh. SIRA activists also distributed leaflets describing the government as neo-colonialist, damaging the social fabric and economy of Aceh, and not respecting the human rights and dignity of the Acehnese. The Central Jakarta Court decided that SIRA's actions were a violation of Article 154 of the Penal Code. The chairman, Faisal Syafruddin, was charged with publicly demonstrating animosity and resentment towards the government. The Court sentenced him to one years' imprisonment.

## **General defamation**

Provisions on general defamation (not involving the state or its officials) are regulated under Article 310 – 321 of the Penal Code. The concerns regarding the vague and overly broad nature of the offences and the application of criminal defamation described above, apply equally to these Articles.

An example of the abuse of the defamation laws is the case of Endin Wahyudin, who was sentenced to seven months imprisonment on 24 October 2001.<sup>79</sup> He was charged with defamation under Article 310 and 311 of the Penal Code.

Mr Wahyudin was taken to court by two Supreme Court judges Marnis and Supraptini, whom Mr Wahyudin had accused of corruption. The judges, together with another former Supreme Court judge, had been reported to the Joint Investigating Team Against Corruption (JITAC). Mr Wahyudin claimed that he gave Rp196 million (USD 20,000) to the judges as a bribe in a particular case.<sup>80</sup> The judges denied the corruption allegation and sued Mr Wahyudin for defaming their names.<sup>81</sup>

Mr Wahyudin's corruption charge against the judges was made after the Attorney General Marzuki Darusman issued a letter guaranteeing protection for members of the public who report corruption, collusion and nepotism (whistle-blowers). Mr Wahyudin allegedly submitted his report of corruption after being persuaded by the Attorney General and

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<sup>79</sup> Mr Wahyudin's case is one of the most prominent defamation case involving a whistle-blower. The Indonesian Corruption Watch recorded that there has been at least nine cases in which someone who reported about corruption was sued with defamation. ("Pencemaran Nama Baik, Ancaman bagi Pelapor Kasus Korupsi", Hukum Online, 26 November 2004. [www.hukumonline.or.id](http://www.hukumonline.or.id))

<sup>80</sup> Case No. 560.K/Pdt/1997.

<sup>81</sup> Endin Wahyudin later withdrew his corruption allegation against the judges, but nevertheless the defamation case continued and he was convicted.



head of the now defunct JITAC, Andi Andojo. However, Mr Wahyudin was subsequently convicted for defamation.

## 8.2. Revision of the Penal Code

Currently there is a draft of the revision of the Penal Code circulating, many aspects of which, according to the Indonesian Press Council, may hinder press freedom. The draft is seen by the media as the government's effort to re-impose tight control over the press.<sup>82</sup> For example, there is provision for a maximum penalty of one year's imprisonment for anybody who broadcasts/publishes news that is incomplete, while fully knowing that the news could cause public disturbance (Article 307). Journalists who do so will no longer have the right to work as a journalist (Article 84).

The first article mentioned above is similar to Article XIV in the Indonesia's Law No.1/1946. The concern relating to this revision is that it is overly vague. Many events could be described as "public disturbance" (in Indonesian "*keonaran*") which represent no real or imminent threat to public order and which can be central to the operation of a democratic society. For example, demonstrations, public rallies or protests on political issues could all be described as public disturbances, even though none of these would normally result in public disorder.

The word "*keonaran*" used in the draft could alternatively be translated as "confusion" or "sensation," ambiguous concepts which mean that almost any article addressing a complex, sensitive or controversial issue would breach this provision. Additionally, the clause in Article XV states that: "news that is used with the certainty...that it exaggerates or is incomplete," could also be used to cover an inappropriately wide range of media content.

In October 1995, ARTICLE 19 convened a group of experts in international law, national security and human rights, which drafted the *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*.<sup>83</sup> These principles have been noted by the UN Commission on Human Rights.<sup>84</sup> Principle 6 is particularly relevant to the above articles:

...expression may be punished as a threat to national security only if a government can demonstrate that:

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<sup>82</sup> "*Terancam Kebebasan Berekspresi*" (Freedom of Expression Threatened), *Kompas*, 4 May 2004, <http://www.kompas.com/kompas-cetak/0505/04/Politikhukum/1725245.htm>

<sup>83</sup> ARTICLE 19: London, 1996.

<sup>84</sup> See Resolution 1998/42, preamble.

- (a) the expression is intended to incite imminent violence;
- (b) it is likely to incite such violence; and
- (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

The provision on “false news” in the draft revised Penal Code fails to meet the requirements of this principle as there is no need to establish any causal link to any actual violence or intent to incite such violence, contrary to international standards.

### 8.3. Defamation under the Civil Code

The Indonesian Civil Code was promulgated on 5 April 1848, predating the criminal code, and has some provisions that relate to defamation. Article 1365 of the Civil Code provides: “a party who commits an illegal act which causes damage to another party shall be obliged to compensate therefore.” The link to defamation is forged from there by Article 1372, which provides that a legal claim ‘with respect to an offence shall extend to compensation of damages and to the reinstatement of good name and honour that were damaged by the offence’<sup>85</sup>

A legal claim cannot be made if it appears that there is no intent to offend (e.g. acting in the public interest or necessary defence). This exemption from liability, provided under Article 1376, is welcome, although it does not go far enough in that it fails to provide for other defences such as truthfulness or reasonableness.

Article 1377 provides that a person cannot file a civil defamation relating to a case in which he/she has been found guilty. However, if the accuser continues to intentionally insult him/her, then the accuser can be liable.

Article 1380 provides for a general limitation period for defamation claims of one year. While positive, this provision suffers from the fact that the period commences when the complaint is made, rather than when the alleged defamation occurred.<sup>86</sup> The article leaves open the possibility

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<sup>85</sup> It is not entirely clear to us whether or not the term “offence” here refers to criminal offences, so that this provision would be engaged only where the statements in question would be actionable in criminal defamation, or to something else. We have been informed that this has been held to be the case in at least some court decisions.

<sup>86</sup> There is some ambiguity on this point in the Article, at least in translation. The use of the conjunction “and”, in our view, makes it reasonable to assume that the limitations period begins only when both conjuncts are satisfied: commitment of the act and knowledge by the plaintiff of its commitment. Thus, in effect, the limitations period



that an individual who comes across an allegedly defamatory remark or publication many years after it has been uttered or published may bring suit, even though the remark or publication has long passed from public view.

## Scope of liability

Two articles under the Civil Code have the potential to put editors and publishers in a vulnerable position with regard to civil defamation suits.

Article 1366: An individual shall be responsible not only for the damage which he has caused by his act, but also for that which was caused by his negligence or carelessness.

Article 1367: An individual shall be responsible for the damage which he has caused by his own act, as well as for that which was caused by the acts of the individuals for whom he is responsible, or caused by matters which are under his supervision...Employers and those who have been assigned to manage affairs of other individuals shall be responsible for the damage caused by their servants and subordinates in the course of duties assigned to them...the above-mentioned responsibility shall cease if the...work supervisor can prove that the act for which [he or she] could be held responsible, could not have been prevented.

These articles create a wide scope of liability, assigning vicarious liability to employers so that they will be held responsible for any damage caused by employees in the course of their duties.

The primary problem with these provisions is that they incorporate the overly broad and vague criminal defamation provisions. What may be appropriate in relationship to a general civil wrong may need to be adapted when applied to a statement in order to take into account the importance of protecting the fundamental human right to freedom of expression. Rules in this area may be contrasted with general civil rules, which seek to allocate loss to the party best able to pay or on whom it is most appropriate for this burden to fall.

## Sanctions

Article 1372 instructs the judge, when considering sanctions, to 'have regard to the severity of the offence, also the position, status and financial condition of the parties involved and the circumstances'.

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begins to run *only when* the plaintiff gains knowledge of the committed act.

Article 1373 specifically imports the criminal code offence of slander into civil proceedings, providing that ‘the offended party may also demand a judgment declaring that the offensive act is slanderous or offensive’. In the event of such declaration, the provisions of Article 314 of the Penal Code ‘with regard to punishment for slander, shall apply’. Article 1374 provides that the defendant may ‘prevent the [Article 1373] request ... by offering and providing a public declaration ... that he regrets the act committed; that he therefore apologises and that he considers the offended party to be a person of honour’. However, such declaration, according to this article, would be ‘notwithstanding his obligation to compensate’.

Nothing in the Civil Code provisions limits the amount of compensation awardable in defamation actions, leading to excessively punitive damages being awarded. For example, Tomy Winata, as businessman, was awarded Rp 8.4 billion (USD 858,678) for an allegedly defamatory newspaper article.

Taking into account the negative effects such awards might have on freedom of expression, civil defamation provisions should ensure that damages are strictly proportional to the harm actually caused. Non-monetary awards should be prioritised wherever possible. A fixed ceiling for compensation for non-material harm to reputation should be set out in law and the maximum should be awardable in only the most serious of cases.<sup>87</sup>

The invocation, by Article 1373, of Penal Code Article 314 is particularly problematic. It allows for double penalties, both criminal and civil, to be imposed on defendants. Moreover, as the declaration involved will be made in the civil context, it may only need to satisfy a civil standard of proof, rather than the more exacting criminal standard. At the same time, the declaration would effectively result in a situation where criminal liability was engaged. As a result, Article 1373 appears to create the possibility of “bootstrapping” a criminal conviction based on a civil one. Article 1373 raises the spectre of particularly disproportional penalties for expression.

## **Defences**

### **No liability for true statements**

In accordance with international standards and principles behind defamation law, there should be no liability for statements that are true.<sup>88</sup> However, the Civil Code does not appear to provide for a defence based

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<sup>87</sup> ARTICLE 19, *Defining Defamation*, (ARTICLE 19: London, 2000), Principle 15.

<sup>88</sup> *Ibid*, Principle 7.



on the truth of the statement and the Penal Code allows such a defence only in very limited circumstances.

Even if criminal and civil defamation is restricted to false statements, the burden should be on the plaintiff to prove that those statements are false. The need for this is particularly evident in the context of media reporting where proof of truth ‘can prove exceedingly hard for a media defendant because of the journalistic practice of promising confidentiality to those who provide information....Sources, even if not promised anonymity or confidentiality, may be unwilling to appear in court to testify against a plaintiff’.<sup>89</sup> The UN Special Rapporteur on Freedom of Expression is in accord with this principle, having stated: “The onus of proof of all elements should be on those claiming to have been defamed rather than on the defendant.”<sup>90</sup>

### **No liability for the expression of opinions**

For the most part, Indonesian defamation law does not clearly distinguish between the expressions of *opinions* and the expressions of *fact*. However, in accordance with internationally recognised principles statements of opinion should never attract liability under defamation law.<sup>91</sup>

## **8.4. Press and Defamation**

The press has long been among the “victims” of defamation laws in Indonesia, in particular those relating to insults towards public officials. The interpretation of an act by the press as being insulting or defamatory applies if the alleged act fulfils three characteristics:

1. it is done intentionally, with the intent of public dissemination (broadcast);
2. it is accusative, without being accompanied by proof to support the accusation; and
3. the impact of the defamation damages the honour or reputation of a person.<sup>92</sup>

It is widely recognised that a rule assigning liability for *every* false statement is particularly unfair for the media. Even the best journalists make honest mistakes and to leave them open to punishment for every false allegation would be to undermine the public interest in receiving

<sup>89</sup> McGonagle, M., *Media Law, 2<sup>nd</sup> Edition* (Dublin: Thomson Round Hall, 2003), p. 82.

<sup>90</sup> See *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/2000/63, 18 January 2000, para. 52.

<sup>91</sup> See *Defining Defamation*, see note 87 on page 67, Principle 10.

<sup>92</sup> Press Council and National Information Agency, *Delik Pers dalam Hukum Pidana* (Provisions related to the Press in the Penal Code), (Jakarta: 2000), p.18



timely information. The nature of the news media is such that stories have to be published when they are topical, particularly when they concern matters of public interest. As the European Court of Human Rights has held:

[N]ews is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest.<sup>93</sup>

As a result, an increasing number of jurisdictions are recognising the defence of “reasonableness”, or an analogous defence based on the ideas of “due diligence” or “good faith”. This is due to the harsh nature of the traditional rule that defendants are liable whenever they disseminate false statements or statements which they cannot prove to be true. This provides protection to those who have acted reasonably in publishing a statement on a matter of public concern while allowing plaintiffs to sue only those persons who have failed to meet a standard of reasonableness.<sup>94</sup>

An example of the defamatory laws being used against the press is the case of *Rakyat Merdeka v Akbar Tanjung*. Akbar Tanjung, the chairman of the House of Representatives, sued *Rakyat Merdeka* because the newspaper published an “engineered” photo of Mr Tanjung, on 8 January 2002. The photo shows Akbar Tanjung topless, sweating and looking up with a sad face. Mr Tanjung claimed that the photo had insulted and defamed him. As a result of that publication, Karim Paputungan, the chief editor of *Rakyat Merdeka*, was accused of breaching Article 310 (1) and (2) of the KUHP. Furthermore, he was accused of breaching Article 5 (1) and Article 18 (2) of Press Law No.40/1999. These allegations were based on the press’ obligation to report events and opinions which respect religious and moral norms. The South Jakarta District Court sentenced Mr Paputungan to five months imprisonment.

One of the most prominent recent defamation cases involved the influential businessman Tomy Winata who filed several defamation cases against the press, in particular the chief editor of the Tempo magazine, Bambang Harymurti. Mr Winata filed cases against Harymurti under both the criminal and civil codes. Mr Winata accused Tempo of damaging his reputation in an article published by the magazine in its 3-9 March 2003 edition, entitled “Is Tomy in Tenabang?”, which implicated Tomy Winata in gaining financially from a fire that destroyed a market. The article alleged that Tomy Winata had submitted a proposal to the Jakarta government for renovating the market. Mr Winata claimed that there had been no such proposal and that the article had defamed him. In

<sup>93</sup> *The Sunday Times v. the United Kingdom* (No. 2), 24 October 1991, Application No. 13166/87, para. 51.

<sup>94</sup> On this point, see the European Court’s decision in *Bladet Tromsø and Stensaas v. Norway*, 20 May 1999, Application No. 21980/93. See also *Defining Defamation*, see note 86 on page 67, Principle 9.



September 2004, Bambang Harymurti was found guilty of criminal defamation and sentenced to one year's imprisonment. Mr Haymurti is currently appealing against this ruling.

In conjunction with the above criminal defamation case, on 5 June 2003, Tomy Winata, filed four civil defamation cases under Article 1365 and 1372 of the Civil Code, and demanded huge compensations for all the four cases. *Tempo v Tomy Winata* cases have attracted a lot of national and international attention and could set a precedent for criminal and civil defamation cases against the media in the future. See Annex 3 for the details of *Tempo v Tomy Winata* cases.

### **Alternative measures to address defamation**

Abusive defamatory expression does occur, and both private persons and mass media are sometimes responsible for such conduct. Criminal defamation provisions are always a disproportionate remedy. Civil defamation provisions are routinely abused by the powerful to shun expression which should be encouraged.

At the same time, neither criminal nor civil law provisions on defamation are truly effective in addressing abusive defamatory expression. Both are time-consuming and the harm to reputation may well have run its effective course by the time the problem is remedied. Neither promotes the remedies which really run to the heart of the matter. Criminal conviction leads to imprisonment or fines, neither of which restores the reputation or provides direct benefit to the person who has been defamed. Successful civil cases at least lead to damage awards for the plaintiff but again fail to actually restore the reputation. A further problem with civil defamation is that it is costly. Ordinary individuals who may have been defamed rarely take the issue up.

The most effective remedies are those which can quickly lead to the publication of a retraction, correction or reply. These measures, if applied rapidly, effectively negate the original statement and thus largely eradicate any harm done.

One mechanism, which may lead to the implementation of such measures, is an internal complaints system run by the media outlets. Major outlets in various countries run such systems on a voluntary basis. For example, the BBC in the United Kingdom has a developed complaints system, along with a code of conduct against which such complaints may be measured.

A second mechanism is a formal, media-wide complaints body that develops a code of conduct, reviews complaints, and orders retractions, apologies and the like as appropriate. There are a number of legitimate models for such bodies, ranging from truly voluntary bodies to statutory ones. The UK Press Complaints Commission is an example of the former, while the Danish Press Council is an example of the latter. The Indonesian Press Law is perhaps a hybrid of these two, being statutory in

nature but also essentially self-regulatory. It provides a valuable mechanism for redress to defamatory speech, the use of which should be encouraged.

Self-regulatory bodies have a number of advantages over those that are externally imposed. Since they involve the profession, they have more credibility and moral persuasion. Their decisions are more likely to have wide impact. A peer judgement that one is in breach of professional standards may be far more persuasive than a similar judgement by an external body.

Statutory complaint bodies may be legitimate as long as they meet certain criteria. Perhaps the most important of these is that they should be adequately protected against political or commercial interference. If the law fails to guarantee their independence, they will be under constant threat of being undermined by interference. Their powers should also be appropriately tailored to their role, which is not to substitute civil defamation laws but rather to provide for an alternative, rapid, low-cost, relatively informal mechanism to address media excesses. They should not have quasi-judicial powers. Importantly, they should not be able to impose onerous sanctions, being instead limited in this regard to requiring the media to publish a statement or correction, as the case may be. The Indonesian Press Council conforms to all of these standards.

A third mechanism, common in Europe as well as in other parts of the world, is a right of reply. Advocates of media freedom, including ARTICLE 19, generally suggest that a right of reply should be voluntarily rather than prescribed by law.

## **8.5. Self-regulation and Defamation**

Strengthening the professionalism of the media is another way to tackle the problems of defamation charges faced by the media. The Indonesian Journalists Code of Ethics (KEWI) has been ratified by 14 journalist organisations. Article 4 of KEWI, for instance, states that “Indonesian journalists do not publish or broadcast untrue, defamatory, sadistic and pornographic information, and shall not reveal the identity of victims of indecency.”

In addition to KEWI, there are various codes of ethics issued by different professional associations. AJI, Association of Indonesian Television Journalists (IJTV) and the Indonesian Journalists Union (PWI), have each their own code of ethics. Article 6 of the latter, for example says, “Indonesian journalists respect privacy and shall not publish or broadcast a journalistic product (writing, audio, and audio and visual) that damages people’s reputation, unless it is of public interest.”



## **Recommendations:**

### ***To the government and/or parliament:***

- Defamation laws should be reviewed to bring them in conformity with international standards. In particular public officials should not benefit from special protection under defamation laws; Public bodies should not be able to bring defamation suits; No one should be held liable for statements which are true.
- Defamation law should distinguish clearly between expressions of opinion and expressions of fact and should provide that the former are not actionable in defamation. At a minimum, opinions should benefit from a high degree of protection against defamation charges.
- Defamation law should recognise a defence of reasonable publication.
- Criminal Defamation should be repealed. If the criminal defamation is retained, the following should apply, in addition to the rules set out above:
  - The available penalties should be reduced to ensure that they are strictly proportional to the harm done. In particular, in view of the extreme and always-disproportionate nature of imprisonment for defamation, all provision for prison sentences for defamation should be removed from the Penal Code.
  - Articles 311, 317, 318 and 316 of the Penal Code should be repealed.
- Non-monetary remedies should, wherever possible, be prioritised over pecuniary awards.
- A fixed ceiling for non-material harm for defamation should be established, to be awarded in only the most serious of cases.
- The judiciary should apply freedom of expression principles when interpreting the Penal Code.

### ***To the media community and media outlets:***

- Journalists and media should improve their professionalism and understand their right to freedom of expression and its guarantee under international standards and Indonesian law. They should also understand the weaknesses in the latter, such as the risk of being prosecuted for defamation.

**To the public:**

- The public should use their right to respond first before using defamation sanctions.

## 9. FREEDOM OF INFORMATION AND SECRECY

One of the problems inherited from the Soeharto era, which greatly hinders media freedom, is the culture of secrecy that pervades the mechanisms of State. Transparency and good governance is inextricably linked to the right to know. Indonesia does not have a Freedom of Information law that guarantees the public's right to official information and obliges State institutions to provide such information.

### 9.1. The Practice of Secrecy

A distinction should be drawn between secrecy based on legitimate national security interests and political or bureaucratic secrecy. In Indonesia, categorising documents as "State secrets" and therefore privileged for national security reasons, has frequently been used as a means by which to censor legitimate criticism relating to potentially politically sensitive issues.

For example, the public continues to be denied access to information related to the policies of the Indonesian military and the operations undertaken in connection with the incident on the night of 30 September 1965, when six Indonesian senior generals were murdered. This incident led to the overthrow of President Soekarno, and the transfer of power to Colonel Soeharto, who later ruled the country for over 30 years.

Furthermore, information has yet to be fully disclosed to the Indonesian public regarding the scope of human rights violations during the implementation of the military operation area (*Daerah Operasi Militer* – DOM) in Aceh in the 1980s. Similarly, the public has been denied access to information on the violations of human rights in East Timor that occurred whilst it was under Indonesian rule.

However, it is not just information on human rights violations that is concealed, but also information regarding other matters of public interest. For example, in its report on the forest fires between 1997 and 1998, the government announced that the area of forests burnt was 600,000



hectares. This figure is substantially less than the figure given by the International Forest Fire Management-Deutsche Gesellschaft Für Technische Zusammenarbeit, which stated that 5.2 million hectares in East Kalimantan were burnt. It is common knowledge that close acquaintances of President Soeharto owned the logging companies that reportedly contributed significantly towards the forest fires. It is a widely held belief that this was the reason behind the failure to disclose full information about this incident.<sup>95</sup>

A broad range of secrecy laws are still being used to hinder the public's right to know and consequentially the process of reform in Indonesia. Despite public announcements of a crackdown on corruption by successive presidents, the culture of secrecy within the government of Indonesia appears to be institutionalised.

Indonesian Corruption Watch (ICW), a non-governmental organisation campaigning against corruption, has reported on the ongoing culture of secrecy and unaccountability within the government. In June 2001, the House of Representatives refused to respond to ICW's request for confirmation of news that members of the House had received six million Rupiah's worth of washing machines. In another case, ICW requested audited financial reports of political parties that had participated in the 1999 Election. They did this on the grounds that some of the parties violated the regulation on the maximum financial contribution that they were allowed to receive from the public for electioneering. This request also went unanswered.<sup>96</sup>

In July 2002, the General Election Commission (*Komisi Pemilihan Umum-KPU*) rejected the press's demand that they release the data on the wealth of the individuals standing as legislative candidates in the 1999 Election. In October–November 2002, the Commission for the Investigation of the Wealth of Public Officials (*Komisi Pemeriksaan Kekayaan Penyelenggara Negara – KPKPN*) announced that 88 members of the MPR and 67 members of the House of Representatives still had not submitted the details of their wealth as required. This happened despite KPKPN's numerous requests that the representatives fulfil their responsibility as regulated in Law No. 28/1999 on governance that it be free from corruption, collusion and nepotism.

The practice of secrecy by public officials can be explained by their lack of understanding of the role and function of the government vis-à-vis the public. Many public officials see themselves as servants of the State, not of the people, and therefore they do not consider that they should be accountable to the public.

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<sup>95</sup> "Pemerintah tidak transparan soal kebakaran hutan" (The government is not being transparent about the forest fire), *Suara Pembaruan*, 15 February 1999

<sup>96</sup> Sudibyo, Agus, "Oksigen Demokrasi" (Oxygen of Democracy), *Pantau*, July 2001, pp. 28-34.

This attitude is reflected in a comment made by a local public official in 2002:

If the public feels that they have the right to information, then the government also has the right not to disclose information that they possess or manage. Do not just protect the public's interest, the government's interest should also be protected.<sup>97</sup>

Public officials consider that they do not have any obligation to be open and provide information to the public. The general public, having been subjected to a culture of secrecy for decades, are generally unaware of their right to access public information. Many journalists are unaware of the importance of freedom of information in securing an independent and free press, even though they understand the importance of press freedom. Such a lack of awareness also exists in the NGO community, especially in the outlying regions of the country.

## 9.2. Legislation That Guarantees Secrecy

There are 20 articles in the Penal Code that define what information can be classified as a secret and therefore should not be disclosed. For instance Article 322 (1) of the Penal Code states:

Anyone who intentionally exposes a secret that he/she has to keep due to his/her position or job, current or previous, is punishable up to a maximum of 9 months and chargeable with a fine up to Rp 9000.<sup>98</sup>

Similar provisions can also be found in the Banking Act, Commercial Confidentiality Act, Documentation Act and Public Court Act (see table below). Such acts classify various kinds of information as State secrets, sometimes inconsistently, and impose severe penalties on people who are found to be in breach of them.

This secrecy provisions contained in the Penal Code protects all classified information, even though the classification may be unnecessary and protect no legitimately secret information. International standards note that restrictions should relate to a legitimate interest and that disclosure should only be prohibited where it would actually harm that interest. Furthermore, there should be a public interest override so that

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<sup>97</sup> In order to raise awareness on the importance of FOI, the FOIA Coalition held a series of campaign activities in 2001 and 2002, in a number of provinces, in the form of seminars, talk shows, workshops and public consultations. In these events, public officials were also invited to comment on the draft FOI law, in particular, and on the issues of freedom of information in general.

<sup>98</sup> At the time of writing Rp 9000 equals to USD 0.93



where the public interest in disclosure outweighs the harm, the material should still be disclosed. The provisions relating to official secrets fail to provide adequate protection for whistleblowers. Finally, they also fail to take into account the fact that over time, information that may once have legitimately been classified as secret will over time become subject to disclosure.

In each of these laws, information that is secret is defined very broadly and can be open to subjective interpretation.

**Table 9.1 Legislation that Guarantees State Secrecy**

Penal Code
Law No.14/1970 on Civil Justice
Law No.7/1971 on Archive
Law No.10/1998 on Banking
Law No.36/1999 on Telecommunication
Law No.30/2000 on Commercial Secrecy
Decree No.1/2002 on Combating Terrorism
Decree No. 2/2002 on the Adoption of Decree No.1/2002

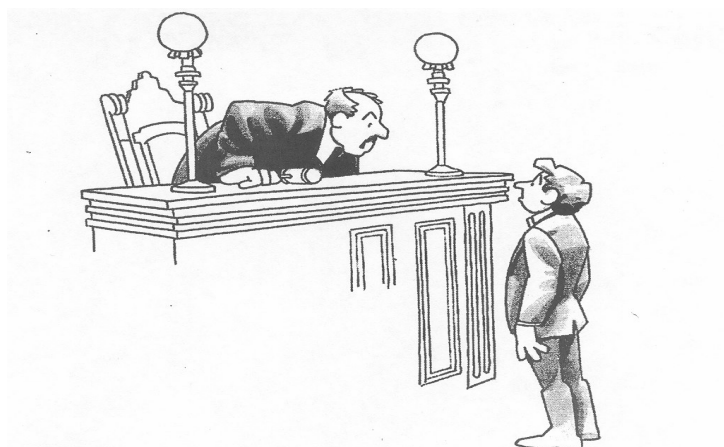
Many people have been caught, over the years, by these vague and overly broad articles. For instance, in 1990, the Bandung State Court charged two geologists for using aerial photos classified as “State secrets”, even though the oil companies were afforded the “privilege” of using similar data. Another example is the case of Suropto, the former General Secretary of the Ministry of Forestry and the head of the Indonesian Institute for Security Studies and Strategic Studies (*Lembaga Studi Pertahanan dan Studi Strategis Indonesia* – LSPSSI). In 2001 he was accused of breaching Article 112 of the Penal Code, which states:

Anyone who intentionally imparts letters, news or information that he/she knows should be kept secret for reasons of national interest, or who intentionally informs or gives such items to a foreign country, is punishable by imprisonment for up to seven years.

Suropto was accused of funding the student movement that called for President Wahid to step down, as well as being involved in riots in Sampit, Central Kalimantan, and of assisting Tommy Soeharto, President Soeharto’s youngest son, to escape from police custody in a helicopter belonging to the Ministry of Forestry in early 2001. Observers linked Suropto’s arrest to his attempts to clampdown on corruption in his department. Such corruption was related to departmental links to many of Soeharto’s close associates, including Bob Hasan, and Probosutedjo. Suropto was also attempting to clamp down on departmental corruption linked to Prajogo Pangestu, one of Indonesia’s wealthiest tycoons.



Whilst there have been few cases brought by the government against the media under these laws between 1998 and 2005, the government was seeking to adopt a new Official Secrecy Act. This draft Act aims to introduce tighter controls on the flow of information, an objective which the media and civil society organisations claim poses a potential threat to freedom of information. Unfortunately, the government appears to have given the adoption of this legislation priority over the adoption of a Freedom of Information Law, thereby reinforcing the view that the government favours secrecy over transparency. (For more information on the Draft Freedom of Information Law see Annex 4).



**"The Freedom of Information Act?...Who told you about *that*?"**

### **9.3. Legal Guarantee to Freedom of Information**

Despite the absence of a law that comprehensively and firmly regulates the responsibility of government institutions to provide information to the public, the public's right to information is legally acknowledged and guaranteed under Article 28F of the Constitution, and articles 20 and 21 of MPR Decree No.XVII/MPR/1998 on Human Rights, which state:

Article 20:

Everyone has the right to communication and access information in order to develop him/herself and his/her social environment.

Article 21:

Everyone has the right to seek, access, own, keep, process and impart information utilising all kinds of channels available.



In addition, Indonesia has 17 laws that regulate different sectors. These are set out in the table below.

**Table 9.2 Legislation that acknowledges the public's right to information**

Law No. 25/1999 on the National Development Program (PROPENAS)
Decree MPR No.XVII/MPR/1998 on Human Rights
Law No.39/1999 on Human Rights
Law No.41/1999 on Forestry
Law No.25/1999 on the Balance of Finance between Central and Local Governments
Law No.31/1999 on Combating Corruption
Government Regulation No.68/1999 on procedures for civil society participation in good governance
Law No.40/1999 on the Press
Law No.8/1999 on Consumer Protection
Government regulation No.27/1999 on Environmental Impact Analysis
Law No.23/1997 on Environmental Management
Government regulation No.69/1996 on the Implementation of Rights and Responsibilities, and the Formation and Procedures for Civil Society's Participation in Area Planning
Law No.24/1992 on Area Planning

However, the clauses on the right to information contained in the above laws are general and limited to recognising the public's right to information without outlining the responsibility of public institutions to provide such information. These laws also do not define the types of information that can be accessed by the public, the procedures and mechanisms that can be used to access information, and other important aspects of the implementation of freedom of information. Thus, without a specific law that guarantees the various aspects of freedom of information, public officials can easily seek to hide behind State secrecy.

## **9.4. Progress of the Freedom of Information Legislation**

The draft Freedom of Information Law and draft Secrecy Law are included in the 2005 Legislative Programme, and there has been significant progress towards the elaboration of both drafts. As note above, the government is giving the adoption of a Secrecy Law priority over a Freedom of Information Law.

Currently the House of Representative (DPR) is deliberating the draft of Freedom of Information Law. At the time this report went to printing in December 2005, the factions in the DPR engaged in a debate over the need for an information commission. Paulus Widiyanto, chairman of the special committee deliberating the draft law, said that the information commission should be the soul of the draft law. As the factions failed to reach a consensus regarding the information commission, there would be two drafts discussed.<sup>99</sup>

The draft Secrecy Law proposes the establishment of a state secrets agency, which has the authority to classify certain information as “classified”. The draft defines confidential information as anything that jeopardises the state’s sovereignty or safety if it fell into the hands of the wrong parties, which is a very vague and broad definition. Furthermore, the draft law provides for a maximum sentence of life imprisonment for leaking, sharing, multiplying, recording and publicising any classified information.

It is important that Indonesia adopts a Freedom of Information Law that would regulate issues of public information. This law would be a logical extension of the constitution and existing laws that in principle guarantee the public’s right to information.

Despite reluctance and slowness at the State level to adopt a freedom of information law, at the local level, at least seven local authorities have adopted local government legislation (*Peraturan Daerah – Perda*) on transparency and participation, which guarantees the public’s right to access information held by the public bodies. For instance, the local government in Solok in the Province of West Sumatra issued a local government regulation on transparency in April 2004 and has been very serious in implementing it.<sup>100</sup>

## **9.5. Role of Freedom of Information in Tsunami’s Relief and Reconstruction Efforts**

The importance of the people’s right to know, was brought into sharp focus in the aftermath of the catastrophic earthquake and tsunami that hit parts of South Asia and Africa on 26 December 2004, causing devastation and loss of life on an unprecedented scale. The Indonesian province of Aceh was most affected by this natural disaster, with over 200,000 people believed to have died and material damage and losses

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<sup>99</sup> “Factions debate need of information commission”, *The Jakarta Post*, 8 December 2005.

<sup>100</sup> In September 2004, the head of the District of Solok (Kabupaten Solok) has been awarded the Bung Hatta Awards for his efforts to combat corruption and improve good governance in the city.



estimated to be 97 per cent of Aceh's Gross Domestic Product.<sup>1</sup> As noted earlier, this is an area that has also been seriously afflicted by a long-running conflict between the Indonesian government and the Free Aceh Movement (GAM).

Amongst the devastation of the tsunami in Aceh, *Serambi Indonesia*, the only local daily newspaper published in Aceh, lost almost half of its staff and the entire printing plant was destroyed. The chief editor, Mr Syamsul Kahar, recognised the need for information to be provided to the community and set up a temporary office four days after the tragedy. This enabled the newspaper to be back in circulation on 1 January 2005. 10,000 copies were printed and were initially given out for free. *Serambi* was able to serve an important function in the immediate aftermath of the tsunami in providing the community with essential information on the scope of the disaster, relief effort and missing persons.

Eleven radio stations were either damaged or destroyed. Four radio stations in the Meulaboh area were completely destroyed. However, local radio stations across Aceh also re-established their broadcasts where possible in order to relay information on missing persons and relief efforts. Radio Komunitas Suara Muhammadiyah 106FM, went on air days after the tsunami struck after receiving equipment from the Jakarta-based Kantor Berita Radio 68H, which provides radio wire news services. They then distributed 40 radios to various refugee camps in Banda Aceh and surrounding areas.<sup>101</sup>

Metro TV, in Jakarta, established a video search service whereby those seeking lost relatives could review their broadcast coverage. The station then tried to identify where the pictures were taken and coordinated with the many humanitarian and command posts that are spread across Aceh to help locate the identified persons.<sup>102</sup>

The extent of the destruction and the consequential relief efforts initially opened Aceh up to foreign journalists and organisations. Previously Aceh was practically out of bounds due to the imposition of Martial Law in May 2003. Foreign journalists, among others, were able to travel to Aceh on the condition that they obtain a pass from local military authorities.

However, by the end of January 2005, the Indonesian authorities were seeking to regain control and they introduced measures to effectively restrict the movement of foreigners in Aceh. Under these measures all foreigners had to register at a foreign affairs desk in Banda Aceh and complete forms detailing their current and planned activities. They also had to state any additional travel plans outside the provincial capital of Banda Aceh, and its suburbs and the devastated town of Meulaboh.<sup>103</sup>

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<sup>101</sup> <http://www.asiamedia.ucla.edu/print.asp?parentid=19604>

<sup>102</sup> <http://www.asiamedia.ucla.edu/article.asp?parentid=19821>.

<sup>103</sup> <http://news.bbc.co.uk/1/hi/world/asia-pacific/4167087.stm>

Some foreign journalists were temporarily detained under renewed attempts by the authorities to restrict their movements and reporting abilities. Michael Lev, the Beijing correspondent for the *Chicago Tribune*, and his Indonesian translator, Handewi Pramesti, were detained overnight by military officials in Meulaboh. Freelance journalist William Arthur Nessen, whose articles on Aceh are published in the *San Francisco Chronicle* and the *Sydney Morning Herald*, was also ordered to leave the country on 24 January 2005 after being detained for one day. Nessen had previously been deported for alleged visa irregularities in 2003.<sup>104</sup>

In the context of a large-scale natural disaster, access to information is vital not only to ensure that assistance is effective and locally relevant, but also to save lives and preserve human dignity. In particular, access to information is important in the aftermath of a disaster situation in order to:

- mitigate the loss of life;
- reduce panic;
- direct people on how and where to get essential services;
- facilitate contact with relatives and friends;
- assist in the discovery of the missing and in burying the dead appropriately;
- provide an outlet for grief and counselling;
- provide watchdog oversight over assistance activities and help guard against corruption; and
- Ensure two-way communication between assistance providers and the affected communities<sup>105</sup>.

Concerns regarding accountability, good management of monies donated, corruption and the effective use of donations are at their very highest in such situations. Accordingly, accountability and transparency within the relief and reconstruction efforts should be made a priority.

An important focus of openness during the relief and reconstruction process should be on providing access to information about both sources and expenditure of funds. This should include information about the amount of money received, the type and amount of other donations received, exact information on how funds and aid are distributed, audited accounts and the progress of project implementation. Available technology, as well as the media and other dissemination systems, should be used to distribute this information.

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<sup>104</sup> <http://www.ifj.org/pdfs/tsunamireport-final.pdf>

<sup>105</sup> ARTICLE 19, "Humanitarian Disasters and Information Rights", March 2005.



## **Recommendations:**

### ***To the government and/or parliament:***

- Parliament should proceed with the discussion on the draft of freedom of information act, taking into consideration not just the government's view but public opinion as well.
- Priority should be given to the adoption of a freedom of information law over a new Official Secrets Act;
- Clauses on secrecy and content restriction in all laws should adhere to these principles:
  - it should relate to a legitimate interest and disclosure should only be prohibited where it would actually harm that interest;
  - there should be a public interest override so that where the public interest in disclosure outweighs the harm to the legitimate interest, the material should still be disclosed;
  - there should be a reasonable time limit for keeping a document confidential.
  - there should be adequate protection for whistleblowers.
- A systematic programme of training and awareness raising activities for public officials should be implemented immediately to breakdown the culture of secrecy.

### ***To the media community and media outlets:***

- Public support for the adoption of a freedom of information act should be built by raising the awareness of the importance of the right to information through a more active media campaign;
- Networks of the FOIA coalition should be enlarged to include more civil society organisations, linking the right to information with issues that are of interest to the public, such as environmental and health issues.
- Monitor the implementation of the local government regulations on transparency and participation.

## 10. INFORMAL OBSTACLES AND HARASSMENT OF THE MEDIA

### 10.1. Forms of Abuse and Harassment Against Journalists

Whilst the press has enjoyed greater freedom since 1986, there are instances of harassment and violence directed towards the media. A culture of impunity persists and few investigations and prosecutions are carried out by the police. In some instances, as the table below documents, the police and military are directly involved in attacks against journalists. Also, as a result of conflict in Aceh, the media continues to face harassment and violence from the Free Aceh Movement (GAM).

**Table 10.1 List of perpetrators of violence  
against the press  
(1998-2003)**

Perpetrators	1998	1999	2000	2001	2002	2003
Police/Soldiers	16	20	28	24	18	4
Government officials	10	8	13	16	10	7
Masses	15	43	59	34	19	1
Parliamentarians	-	-	5	5	13	-
Unknown	1	3	10	16	9	1
Total	42	74	115	95	70	13

Source: Information from the Alliance of Independent Journalist (AJI)

Abuse directed towards journalists can be divided into two forms, physical and non-physical. Physical abuses include beatings, torture, murder, and attacks on press offices or buildings. A non-physical abuse refers to threats, verbal assaults, harassment, orders preventing the dissemination of information and legal suits.<sup>106</sup>

### Attacks

On 8 March 2003, a group of supporters of the tycoon Tomy Winata assaulted several *Tempo* journalists. Around 200 supporters had gathered

<sup>106</sup> The category refers to those mentioned by the Southeast Asian Press Alliance (SEAPA) Jakarta. For more detailed information, please look at Solahudin and Lukas Luwarso in *Buku Komik Advokasi Jurnalis (Journalist Advocacy Comic Book)*, SEAPA, 2001.



outside the magazine's offices to demonstrate against an article implicating Mr Winata in a recent fire in Tanah Abang Market in Jakarta. As a result of these demonstrations, ten of Mr Winata's representatives were invited into the building to discuss the issue with four Tempo journalists.

During the meeting, one demonstrator pressed the journalists to reveal their source of information for the article. This demand was rejected. In anger, one of the protestors threw an object and as a result, a journalist was injured. In response, Bambang Harymurti, the Tempo editor, who had just arrived at the office, escorted two of the journalists and the 10 protestors to the Central Jakarta Police station to resolve the dispute. The harassment continued at the police station but the police refused to intervene.

## Kidnapping

Elyuddin Telambanua—a journalist who worked for the *Berita Sore*, a local newspaper in Nias, Sumatra—has gone missing since 29 August 2005. Before he went missing, Telambanua had been reporting on the local leader election (Pilkada) and alleged corruption at the local election commission.

Dian Budiana, a journalist with the Pulau Batam newspaper *Lantang Post*, was kidnapped and held hostage for a couple of days in 2001. The abduction was allegedly linked to a number of articles written by Dian Budiana, between 16 and 22 February 2001, concerning the pornography video industry. She claimed that a businessman in Batam funded the industry and that many of the teenage girls featured in the films had been forced to appear in the movies against their will.

## Threats

During the conflict between the Indonesian military and GAM following the adoption of martial law in Aceh in May 2003, a number of radio stations received threats from GAM. Radio Andyta, a privately owned radio station in Bierun, ceased transmission as a result of threats from GAM on 23 May. Another privately owned radio station, Radio Nikoya 106 FM, also stopped broadcasting news bulletins on May 24 as a result of similar threats. The events above were not the first cases of harassment of journalists and the media in Aceh. On 20 June 2001, *Serambi Indonesia*, the largest newspaper in the province, was forced to temporarily cease publication following threats made by GAM rebels. They were furious at a report entitled "Corpses Found Spread Throughout Greater Aceh: An entire family Discovered Dead in Lampuk," printed on 19 June. The report claimed that the perpetrators of



the killing was a group of armed men but did not identify them as being from the official Indonesian military mobile unit, which the GAM claimed were behind the killings. The police accused GAM of carrying out the murders. A furious GAM spokesman in Aceh Rayeuk, Ayah Sofyan, threatened to kidnap, torch and kill the editorial team of Serambi Indonesia.

In May 2000, a Front Islamic Defenders mob surrounded the SCTV offices protesting against the transmission of *Esmeralda*, a soap opera that they claimed was an insult to Islam. They were unhappy that a character in the drama was named after the daughter of the prophet Muhammad, called Fatimah, yet was portrayed behaving in a manner deemed totally inappropriate to Islam. Following the protests, STV shelved 14 episodes of the soap.

### **Evictions of foreign press**

Between 2001 and 2002, the department of foreign affairs repeatedly refused to grant a visa extension to Lindsay Murdoch, a correspondent for the Australian-based *The Age* and *The Sydney Morning Herald*. In November 2001, Lindsay tried to extend her visa, which had been due to expire on 10 December 2001. However, the Foreign Affairs Department refused and contacted *The Sydney Morning Herald*, the biggest daily in New South Wales, requesting that Lindsay Murdoch be replaced.

Australian Foreign Minister Alexander Downer and Australian Ambassador to Jakarta Richard Smith brought up the issue during a meeting with the Indonesian Foreign Minister Hassan Wirayuda in Jakarta. Eventually, the government agreed to extend her visa, but only for 3 months, from 10 December 2001 to 10 March 2002.

In March 2002, the Foreign Affairs Department once again refused to extend Lindsay's visa. According to Lindsay Murdoch, government intransigence over her visa was related to articles that she had written criticising the Indonesian authorities. Her article printed in May 2001 claimed that the Indonesian security forces, as part of their ongoing battle against separatists in the region, had allegedly scolded a baby with boiling water in front of its mother. Her husband had been accused of being a member of GAM. Another article written by Ms. Murdoch, published in June 2001 in *The Age* and *The Sydney Morning Herald*, and reported about the plight of a number of East Timorese children who had been forcibly separated from their parents following the country's independence referendum in 1999.



## **Recommendations:**

### ***To the government and/or parliament:***

- Officials should not harass, threat or otherwise interfere with the media or journalists for exercising their right to freedom of expression. Where such measures do take place, the authorities should immediately act to counter them.
- Officials, public figures and the community should demonstrate tolerance of criticism and the exercise of the right to freedom of expression by journalists and the media.

### ***To the media community and media outlets:***

- The media should abide by professional code of ethics.
- The Press Council and the media have a responsibility to educate the public about their right to respond.
- The media should abide by the Press Council's recommendations and respect people's right of reply.

## **Annex 1: Major printed media and television stations**

### **Printed Media**

#### **Kompas-Gramedia Group**

The morning daily, *Kompas*, is the most prestigious and the best-selling newspaper in Indonesia. More than half a million copies were sold everyday in 1995. PK Ojong and Jakob Oetama created the daily in 1965. The Group was established under the auspices of a number of Catholic Parties. This connection with the Catholic parties was abolished in 1971 just before the restructuring of all political parties in 1973. From an initial distribution of five thousand copies, the circulation has increased consistently due to its reputation for quality analysis and journalism.

*Kompas* followed a diversification strategy, making major investments in the 1980s. In the early 1990s, it became a giant corporation that consisted of 38 companies under the *Kompas-Gramedia* Group name. This group is involved with book publishing, radio, travel agency, hotel and supermarket management, insurance, banking, advertising, prawn farming, the rattan-furniture industry, film production, tissue production, telecommunication retailing, English and computer education institutes and other industries.

The *Kompas-Gramedia* Group has dominated the publishing industry over the last two decades. The daily newspaper has continued to gain the majority of national newspaper advertising revenue. Since 1988, as part of its local press division, *Kompas-Gramedia* has acquired various local newspapers. By 1997, this group owned 9 newspapers, 5 tabloids, and 14 magazines. The group entered the television industry by setting up TV7 in 2002.

#### **Jawa Pos Group**

The second biggest publishing company is Surabaya-based *Jawa Pos*. This daily was established as a family business in 1949. In April 1982, when Grafiti-Pers (the owner of the weekly news magazine *Tempo*) diversified, it took over the *Jawa Pos*. Dahlan Iskan, the former *Tempo* Surabaya Chief, was appointed to manage the paper. Within a decade, Iskan led the group to become one of the leading businesses in Indonesia.

In 1987, Dahlan Iskan started to control the majority of the shares of small local newspapers outside Java and revitalised them. In 1992, *Jawa Pos* became the third-biggest newspaper company in Indonesia after *Pos Kota* and *Kompas* with a circulation of 350,000. In 1997, the *Jawa Pos* Group expanded its business throughout Indonesia to 20 newspapers, five weekly tabloids, and four magazines. Additionally, the group included 11 printing companies and a paper factory, along with interests in banking, hotel management, internet services and real estate. *Jawa Pos* was the first newspaper to

become a press conglomerate by exclusively concentrating in provincial markets. In 2001, the *Jawa Pos* Group entered the television business by creating JTV in Surabaya.

## Tempo Group

In 1971, Goenawan Mohamad and several other journalists and professional writers created the weekly magazine, *Tempo*. Initially, the magazine was established to offer professional journalism to society. The magazine is said to have succeeded in bringing an element of professionalism to the print media.

One of *Tempo*'s contributions to the Indonesian press was to pioneer a revolution in journalistic language. It has brought about a breakthrough in linguistics that has nurtured a harmonious relation between the journalistic and artistic world, *Tempo* encouraged the uniting of righteousness (*bonum*), truth (*verum*) and beauty (*pulchrum*) in one form. *Tempo*'s use of language has made a significant contribution to the professionalism of the Indonesian press.

Moreover, *Tempo* has provided a forum for government and society to reflect on and discuss important issues that arise in public life. *Tempo* has always tried to perceive problems in a neutral, objective and multi-linear way. Although it is progressive, populist and critical. It has never adopted an extreme position in a conflict that pitted the people versus the state.

As part of the overall media business, *Tempo* was the magazine with the biggest advertising revenue and largest readership in Indonesia. Until 1993, *Tempo* was top of the national consumer list with 22.5 percent of the total national advertising revenue. In June 1994, before it was banned, the magazine had a circulation of 187,000. For a magazine using a national language, it was one of the most successful in Asia. Circulation was only exceeded by magazines produced in India, Japan, China, Korea and Taiwan, and in the Asia Pacific by US and Russian magazines.

In June 1994, along with the *Editor* magazine and the *Detik* tabloid, *Tempo* was closed down by the authorities. *Tempo*'s mistake was to report the buying of old naval vessels from Eastern European countries by the Indonesian government through the Research and Technology Minister, B.J. Habibie. Whilst it was re-established in 1999, other new media outlets had taken the best of *Tempo*'s human resources and the magazine staffed with new recruits did not achieve the same quality of reporting as it had before. Nonetheless, *Tempo*'s history and name have meant that this magazine is now the most popular weekly magazine.

With diversification, *Tempo* has established the new newspaper *Koran Tempo* and the *Tempo English Edition* magazine. With a circulation of 200,000 readers, *Koran Tempo* currently is the second biggest national daily after *Kompas*.

## Republika Group

*The Republika* daily first appeared on 1 January 1993. The approval of a publishing licence or SIUPP for *Republika* raised a public debate because the Minister of Information, Harmoko previously stated that his department would no longer release new SIUPP approvals because the media market was already saturated.

*The Republika* daily is published by PT. Abdi Massa, a company owned by the Abdi Bangsa Foundation. When *Republika* was established it was supported by several big names, including Madam Tien Soeharto (former first lady who is now deceased), Try Soetrisno (former Vice-President), Bambang Trihatmojo (son of former President Soeharto) and several ministers, generals and tycoons of the day. The Head of the Board of Trustees of the foundation was President Soeharto and the head of the Foundation was B.J. Habibie. These names demonstrate a high degree of political support for the birth of *Republika* at the time.

The launching of *Republika* in the country was entwined with the socio-political currents of the time. It was seen as an event that marked the Islamic Political Movement in 1990s. The name *Republika* itself was the result of a recommendation from President Soeharto to several Central ICMI executives when they told him of their plans for the daily.

The management of *Republika* tried to resolve the problem of how to illustrate Islam's mission in a country that has been heavily "state-centred." In attempting to achieve this from a journalistic perspective, the paper implemented a professional reporting framework whilst not losing sight of its Islamic mission. It aimed to establish itself as an Islamic newspaper without being tied to an explicit partisan attitude.

From the outset, 51 percent of *Republika* was owned by the Abdi Bangsa Foundation, 20 percent by the *Republika* employee cooperatives, and 29 percent was offered for sale to the public. Public-share ownership was restricted to Muslims. Shares once purchased could not be sold without permission from PT. Abdi Masa, the publisher of *Republika*.

Since its launch on 3 January 1993, the number of *Republika* copies sold has steadily increased. Within ten days of its first appearance, its distribution reached 100,000, which was two and half times the target set prior to the launch, of an average of 40,000 copies per day. In the second half the same year, distribution reached 130,000. However, in recent years, the daily distribution has dropped sharply to 50,000. This reduction in circulation has corresponded with an increasing tendency to report only from the perspective of Islamic radical groups.

In its effort for diversification, the management of *Republika* created a number of tabloids: *Tekad* (Jakarta), *Adil* (Surakarta), *Orbit* (Yogyakarta), and *Daulat Rakyat* (Yogyakarta). None of these has been successful and all have since closed down.

## Television

### RCTI, Metro TV and Global TV

Since the early 2000, PT.. Bhakti Investama has become one of the major player in Indonesian television. PT. Bhakti Investama Tbk is an investment company founded de jure by Hary and Rudy Tanosudibyo. It has shares in three national television stations, namely: RCTI (69.8 percent), Metro TV (25 percent), Global TV (70 percent). The company acquired the shares of these stations through PT. Bimantara Citra Tbk, which serves as the umbrella organisation for Soeharto's third child, Bambang Trihatmodjo's seven different business groups ranging from natural resources management to satellite and aeronautics services.

Apart from PT. Bhakti Investama, Surya Paloh controls the majority share of PT. Media Televisi Indonesia (75 percent). Paloh is also the owner of daily Media Indonesia newspaper. He is known to be closely associated with the Golkar party.

### Surya Citra Televisi (SCTV)

The main shareholders of PT. Surya Citra Televisi (SCTV) is PT. Surya Citra Mandiri (SCM), who owns 99 percent of SCTV's shares. Out of SCM's shares PT. Abhimata Mediatama owns 55.86 percent, Citra Sacna 25 percent and the public 19.14 percent.<sup>107</sup> Soeharto's daughter-in-law, Halimah Trihatmodjo, and step brother, Sudwikatmono, used to be among the main shareholders of SCTV. It is not clear how their positions now, with the company's current composition.<sup>108</sup>

### Indosiar (PT. Indosiar Visual Mandiri)

PT. Indosiar Visual Mandiri (Indosiar) became a public company in 2001. Later that year banker Djaja Mulia, managed to secure 49 percent of Indosiar's shares through PT. TDM Management Asset while the rest is in the hands of IBRA (Indonesia's Bank Restructuring Agency). The financier behind PT. TDM is the Salim Group, owned by Soeharto's close friend, Lim Sioe Liong.

### Televisi Pendidikan Indonesia (TPI)

The main shareholder of Cipta Televisi Pendidikan Indonesia (TPI) is Soeharto's eldest daughter, Siti Hardijanti Rukmana. She owns the share as an individual and also through one of her companies PT. Tridan Satria Putra Indonesia. Other TPI shareholders are PT. Citra Lamtorogung Persada, a foundation that runs a museum of souvenirs received by the Soeharto family during his presidential terms, also owned by Siti Hardijanti and Yayasan Purna Bhakti Pertiwi.

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<sup>107</sup> SCM Investor Release, March 2005, <http://www.scm.co.id/news/%20Release.pdf>

<sup>108</sup> Narliswandi Piliang in his article, "Televisi di Kantong Segilintir Pemilik" (see note 67 above, at 34) noted that it is possible that the initial investor is no longer listed as shareholders, but they could still be behind the companies that are now listed as SCTV's shareholders.

## **AN-teve (PT. Cakrawala Andalas Televisi)**

PT. Bakrie Investment along with PT. Hasmuda Internusa owns PT. Cakrawala Andalas Televisi (AN-teve). PT. Bakrie is owned by Nirwan Darmawan Bakrie of the industrialist Bakrie family. PT. Cakrawala is owned by Agung Laksono, a politician from Golongan Karya (Golkar), a ruling political party during the New Order era. Mr. Laksono is also one of the close acquaintances of the Soeharto family.

## **Lativi**

Lativi operates under the flag of PT. Lativi Media Karya. The majority of shares is in the hand of Abdul Latief, the president of ALatief Corporation and an ex minister of manpower during the Soeharto era.

## **TV 7**

This station is owned by the Kompas Gramedia Group and run by one of its companies, PT. Duta Visual Nusantara Tivi Tujuh. Its executive director is August Parengkuan, Kompas senior journalist.<sup>109</sup>

## **Trans TV**

Another newcomer in the television business is Trans TV. This TV station is under the flag of PT. Televisi Transformasi Indonesia, partly owned by Group Para business group. Bank Mega financier Chairul Tandjung owns this group. In Group Para, an ex New Order minister, General Rudini, sits as one of the commissioners.

In conclusion, there are only a few names outside the Soeharto and Salim circles in Indonesia's television landscape: Bakrie Investment, Alatief Corporation, Group Para dan Kompas Gramedia Group. The predominant pattern of ownership and strategy for overcoming the official limitation on television ownership is the use by financiers of different names or companies in order to secure dominant positions over television stations.

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<sup>109</sup> Since 1970s, Kompas Gramedia Group intended to own private television. According to Jacob Oetama and August Parengkuan as mentioned in conversations among media community, they never managed to secure a license. Harmoko, who headed the Ministry of Information at the time of the starting of liberalisation of television sector in Indonesia, required the group to own a radio station beforehand. The group then bought Sonora 100,9 MHz radio station. However, Harmoko then mentioned that President Soeharto was the only one who could issue a TV license. This signified that there was no chance for the Group to have a tv station. See note 70 above.

## Annex 2: Defamation cases: Tempo v. Tomy Winata

One of the most prominent defamation cases involved businessman Tomy Winata and the chief editor of the Tempo magazine, Bambang Harymurti. Mr Winata filed cases against Harymurti under both criminal and civil codes. The criminal defamation case was filed under Articles 310 and 311 of the KUHP. Mr. Winata accused Tempo of damaging his reputation in an article published by the magazine in its 3-9 March 2003 edition, entitled “Is Tomy in Tenabang?” The article states that prior to the fire that occurred in early March in Tenabang market, Tomy Winata had submitted a proposal for renovating the market to the Jakarta government. He claimed that there was no such proposal and that the article had defamed him. In September 2004, Bambang Harymurti was found guilty of criminal defamation and sentenced to a one year imprisonment. Mr Harymurti is appealing against this ruling.

In conjunction with the above criminal defamation case, on 5 June 2003, Tomy Winata, filed four civil defamation cases under Article 1365 and 1372 of the KUHP. The first case is filed against PT. Tempo Inti Media Tbk. (the publisher of *Tempo*), Zulkifli Lubis (Head of *Tempo*), Bambang Harymurti (Chief Editor), Fikri Jufri (CEO), Toriq Hadad (Executive Editor), Ahmad Taufik, Bernarda Rurit and Cahyo Junaedi (the three journalists who wrote the article). Mr. Winata claimed that the article “Is Tomy in ‘Tenabang?’” was untrue and defamatory.

He demanded the rehabilitation of his honour and reputation by withdrawing the article. He also wanted an announcement in the newspapers, weekly magazines, national television and compensation for material and non-material losses of Rp200 billion (USD 20.5 million).

The second case filed by Mr Winata was against Ahmad Taufik and Tempo Inti Media based on Taufik’s article “The Chronology of Tomy Winata’s Attack on Tempo.” This article was written by Taufik following an attack on Tempo’s office and its journalists by Winata’s supporters on 8 March 2003. Winata claimed that the article was slanderous. He demanded compensation of Rp120 billion (nearly USD 12.3 million) and wanted the publication to issue an apology in local, national and international printed and electronic media.

The third case filed was against Tempo newspaper and Goenawan Mohammad, a senior journalist and one of Tempo’s founders. The businessman stated that Goenawan issued a misleading statement on 11 March, after which he met with the Head of Police. He then stated: “This unplanned visit by public figures shows the concern of many people to prevent the Republic of Indonesia from falling into the hands of thugs, and also to prevent it from falling into Tomy Winata’s hands.” Winata accused the newspaper of having bad intentions by assisting Goenawan in conducting a character assassination. For this case, Winata claimed compensation for material and non-material losses of Rp21 billion (USD 2.1 million).

The fourth case filed by Winata regards an article published in Tempo newspaper on 6 February 2003, entitled “Gubernur Ali Mazi Denied Tomy Winata Opens a Gambling



Business”. This time Winata pressed charged against Bambang Harymurti, Dedy Kurniawan (the journalist who wrote the article), and PT. Tempo Inti Media (the publisher of Tempo newspaper). He claimed that the article could lead people to think that he had indeed had the intention of opening a gambling business and that he had the power to influence decision-makers in the province. For this case, Winata demanded compensation of Rp1 billion USD102,000) and USD 2 million and that the accused publish an apology in international and national media over three days.



ARTICLE 19 champions freedom of expression and the free flow of information as fundamental human rights that underpin all others. We take our name from Article 19 of the Universal Declaration of Human Rights. It states:

Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.

ARTICLE 19 believes that freedom of expression and of information is not a luxury but a basic human right: it is central to achieving individual freedoms and developing democracy.

When people are denied freedom of speech or access to information, they are denied the right to make choices about their lives. Freedom of expression and access to information are essential to achieving equality for women and minorities, and to protecting children's rights. They are crucial to respond to the global HIV/AIDS pandemic, to fight against corruption and to ensure equitable and sustainable development.

ARTICLE 19 works to make freedom of expression a reality all over the world:

- ARTICLE 19 works worldwide – in partnership with 52 local organisations in more than thirty countries across Europe, Africa, Asia, Latin America and the Middle East - to lead institutional, cultural and legal change.
- ARTICLE 19 monitors threats to freedom of expression in different regions of the world and develops long-term strategies to combat them.
- ARTICLE 19 undertakes authoritative and cutting edge research and monitoring, advocacy and campaigning work.
- ARTICLE 19 produces legal analysis, set standards, and advocate for legal and judicial changes.
- ARTICLE 19 carries out advocacy and training programmes in partnership with national NGOs to enable individuals to exercise their human rights.
- ARTICLE 19 engages international, regional and State institutions, as well as the private sector, in critical dialogue.

Founded in 1986, ARTICLE 19 was the brainchild of Roderick MacArthur, a US philanthropist and journalist. Its International Board consists of eminent journalists, academics, lawyers and campaigners from all regions of the world. ARTICLE 19 is a registered UK charity (UK Charity No. 327421) based in London with international staff present in Africa, Latin America and Canada. We receive our funding from donors and supporters worldwide who share a commitment to freedom of expression.

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## Alliance of Independent Journalists (AJI)

AJI was the first organisation in Indonesia formed specifically to fight for freedom of the press. Although the state sponsored Indonesian Association of Journalists (PWI) had been in existence for many years when AJI was formed in August 1994, it did little if anything to fight for press freedom. As such, AJI was created to truly represent independent journalists. Prior to the ouster of President Soeharto in May 1998, AJI operated as an underground organisation and the risks of AJI membership in the past were clear. Four of its members were jailed for their role in producing two independent magazines and other AJI membership were sacked from their newspapers or pressured to resign.

During the Soeharto years, AJI was not recognized by those in power, who preferred to support the PWI, as a readily co-opted organisation for journalists. In spite of this, AJI continued to defend both its members and the wider journalistic community. Besides producing the acclaimed *Independen* and *Suara Independen* magazines, AJI provided valuable information through a number of books, seminars and discussions, as well as by supporting those journalists and their families victimized by the oppressive regime. These activities have not gone unnoticed by the international community, which has paid tribute to AJI through a number of awards, including the Rob Baker Award (1996, from the International Federation of Journalists), Committee to Protect Journalists' World Press Freedom Award (1994), Free Media Pioneer '97 (Freedom Forum) and International Press Institute (IPI) Award.

The downfall of Soeharto in May 1998 brought a change for the better in press freedom, but the news has not all been good. A degree of openness never imagined possible is nevertheless balanced by the remnants of three decades of unquestioning journalism. Self-censorship and a degree of continuing government intervention remain problems. Several religious organisations have exploited the current climate to intimidate newspapers with threats of demonstrations. In addition, the same monetary crisis that helped topple Soeharto also threatens many publications.

The relative openness of the previous months has allowed AJI to commence its transition to become a representative journalistic trade union, a shift that will involve a significant expansion of the organisation and necessitate a greater degree of openness to all who want to join. At present, AJI operates out of a subdivided house with only one full-time staff, the slack being taken up by a dedicated committee, who themselves are full-time journalists.

Its trade union ambitions aside, AJI remains vocal on issues of importance to the Indonesian media. It continues to oppose all forms of licensing for both journalists and the print media, while developing a media watch body to monitor ethical and professional issues likely to arise with greater journalistic freedom. It also continues to monitor the drafting of new media laws.

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