

POSSIBILITY TO CORRECT THE FREEDOM OF SPEECH IN INDONESIAN LAW: COMPARISON BETWEEN SINGAPORE LAW AND INDONESIAN LAW ON BROADCASTING

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ABSTRACT

Freedom of speech is a principle that supports the freedom of an individual or a community to articulate their opinions and ideas without fear of retaliation, censorship, or legal sanction. This principle is one of the Human Rights principles that are necessary for the progress of humanity itself. But its existence has always triggered a dispute because of the abuse of the right. The abuse of the rights consists of Hate Speech and Hoaxes. This research is normative legal research that uses a comparative approach and conceptual approach. And also, this research will compare the Freedom of Speech and Broadcasting laws in Indonesia and Singapore, especially law in the broadcasting sector. Theoretically, the benefits of this research are to answer the problem of correcting Freedom of Speech, especially in broadcasting law. Practically, it is helpful for society to know much more about hate speech and hoaxes also the possibility to correct the broadcasting law in Indonesia based on the same regulation in Singapore.

Keyword: Freedom of Speech, Human Rights, Hate Speech, Comparison, Broadcasting

A. Introduction

Freedom of Speech is the right to seek, receive and impart information and ideas of all kinds, by any means.¹ Freedom of Speech is an important principle that strengthens the other principles to allow society to be developed and grow. Freedom of Speech is a fundamental and vital right among the other Human Rights principle.

According to Professor Chris Frost, if someone's views or policies are that appalling then they need to be challenged in public for

fear they will, as a prejudice, capture support for lack of challenge. If we are unable to defeat our opponent's arguments then perhaps it is us that is wrong.² Frost also be concerned with the fascism of a majority (or often a minority) preventing views from being spoken in public merely because they don't like them and find them difficult to counter. Whether it is through violence or the abuse of power such as no-platform we should always fear those who seek to close down debate and impose their view, right or

1 Ana Matronic, Amnesty International UK, "What is Freedom of Speech", <https://www.amnesty.org.uk/free-speech-freedom-expression-human-right>, Accessed at June 23rd, 2021, 6.12 PM

2 Index on Censorship Team, "Why is Free Speech Important?", <https://www.indexoncensorship.org/2016/04/free-speech-important>, Accessed at March 30th, 2021, 12.05 AM

wrong.³

Also, according to Media Legal Defense Initiative, there are a few reasons why freedom of expression is important. One of them is, without the freedom itself, journalism would be restrained and cannot accurately tell the story because of the restraint and censorship applied to the media.⁴ The same source also includes the statement that the importance of freedom of expression also could be used as the discovery of truth where the journalism should deliver accurate information without any kind of cover-ups. Those 3 reasons are concluded in the importance of freedom of speech is to deliver the news as accurately as possible and to help people for making decisions based on the truth that is delivered.

Freedom of speech is also having some principles. Freedom of speech is a fundamental and inalienable right of all individuals. And it follows another principle that said every person has the right to seek, receive, and impart information and opinions freely. The other principles are every person has the right to access information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary, to update, correct it and/or amend it.⁵ Freedom of Speech is a part of numerous rights of the one called Human Rights. Freedom of Speech supports the

other rights to be synchronized and applied as a one single right and not as a separate principle. Freedom of speech is the heart of the Human Rights itself because freedom of speech is strengthening the other rights..

In this modern era, freedom of speech uses radio signal broadcasting to reach more audiences. According to John Durham Peters, broadcasting is the distribution of audio or video content to a dispersed audience via any electronic mass communications medium, but typically one using the electromagnetic spectrum (radio waves) in a one-to-many model.⁶

Broadcasting makes the news spread faster. With broadcasting people can spread the word about everything within a second or two. And that makes the news and entertainment are easier to be accessed. In this field of broadcasting, the freedom of speech principle has a huge role. Broadcasting technology enables people to speak up to express their opinion about something. And to prevent something that could cause a bigger problem, the authorities are commencing the Broadcasting Act, which in Indonesia is known as Broadcasting Act no. 32/2002. The two main issues to be discussed in this paper are: how is Indonesian government implementing the concept of Freedom of Speech regarding Broadcasting Act no. 32/2002? And how is

3 *Ibid*

4 MLDI Team, "10 Reasons Freedom of Expression is Important", <https://10years.mediadefence.org/10-reasons-freedom-of-expression/#:~:text=Freedom%20of%20expression%20is%20a%20core%20value%20in%20the%20democratic,others%2C%20without%20censorship%20or%20reprisals.,> Accessed at March 30th, 2021, 12.43 AM

5 Inter-American Commission on Human Rights, "Declaration of Principles on Freedom of Expression", [https://www.cidh.oas.org/basicos/english/basic21.principles%20freedom%20of%20expression.htm,](https://www.cidh.oas.org/basicos/english/basic21.principles%20freedom%20of%20expression.htm) Accessed at March 30th, 2021, 12.57 AM

6 Peters, John Durham, 1999, "Speaking into the Air", University of Chicago Press, Chicago, IL

Singapore government implementing the concept of Freedom of Speech regarding Singapore Broadcasting Act?

B. Research Methods

The method used in this scientific writing is the normative legal research method that is legal research carried out by examining literature or secondary data.⁷ Secondary materials are book materials on Human Rights, Freedom of Speech, and law regarding broadcasting. Freedoms of speech were born as a concept. And the companion of this concept is necessary for this writing. And the Author would like to put broadcasting as the central theme of this scientific writing. The first Broadcasting Act was created in 1997, registered as Broadcasting Act no. 24/1997 when Indonesia was taking a loan to the International Monetary Fund (IMF) by signing a Letter of Intent.

In order to convince IMF to grant the loan, the Indonesian government was required to make some statutes that asked as the conditions in purpose to fulfill Washington Consensus that consists of three main policies which are liberalization, privatization, and deregulation. The telecommunication sector is the one that should be liberalized in Indonesia. And that is when the idea of the Broadcasting Act was conceived.⁸ And at September 26th 1997, the first Broadcast Act in Indonesia was commenced, called The Broadcasting Act no. 24/1997. That act remains the only legal product that managed the broadcasting, until Suharto announced his resignation from the presidency in 1998.

And the statutes are revised in 2002 into The Broadcasting Act no. 32/2002.

The approaches used in this scientific writing are the comparative approach and the conceptual approach. The comparative approach is a research method that compares one subject with the other, identical or a different object studied as an input for the other subject. Comparative approach or some referred to it as statute approach, is a research method that delivers analyses through the values contained in the statutes or the other law products.

C. Discussion

1. The Law of Broadcasting and Freedom of Speech in Indonesia

Broadcasting is a media that use a radio signal to transmitting sound or images to the receiver media such as radio or television. Broadcasting is the most popular method to spread the news to a larger audience.

In Indonesia, there are no statutes or law products that regulate anything related to broadcasting and press until 1997. Instead, the Indonesian government in 1966, applied a policy that gave the authority to the Department of Information to censor or retract the news to control the media that consists of newspapers, magazines, and broadcasted sources included, in this case, radio and television.

Numerous Criminal Code provisions continue to limit the right to freedom of speech in the press. The Broadcasting Act no. 32/2002 is the significant development

7 Soerjono Soekanto, 2001 Introduction to Legal Research, Jakarta: Rajawali, p. 15

8 Rahayu, Bayu Wahyono, dkk, 2015, "Menegakkan Kedaulatan Telekomunitasi dan Penyiaran di Indonesia", Yogyakarta:PR2Media, p.227

towards a more democratic press signaled by the enactment and commencement of The Broadcasting Act 1997. Under the Broadcasting Act 1997; there are too many limitations to the freedom of speech, such as the centralization broadcasting system.⁹ However, recent cases show that a lot cases of freedom of speech abuse happened because of pressures from the press and community.¹⁰ By bringing defamation charges to the courts under other laws can result in the imposition of harsh criminal penalties and extensive periods of imprisonment. Thus, the freedom of speech needs to be set right and wisely.

The first statute that regulated broadcasting was enacted in 1997, known as Broadcasting Act no. 24/1997. The statute was made with the purpose to receive a loan from the International Monetary Fund (IMF) by signing a Letter of Intent from Indonesian Government to the IMF. The signing and the loan itself required several statutes that supposed to be made to grant the loan, and the broadcasting sector is the one that is affected because the liberalization of the mass media is required.¹¹ In 2002, the statute was renewed by another Broadcasting-related statute called Broadcasting Act no. 32/2002. It changes several Sections that remain irrelevant to the future.

The reason why Broadcasting Act exist

is to regulate the direction and purposes of Indonesia Broadcasting Commission, broadcasting services, and several broadcasting institutions such as the public, private, subscription-based, and foreign broadcasting institution. Also to regulate the licensing of the broadcasting activities in the process.

The problem of press reporting in Indonesia these days is impartial news that only gives an advantage to one individual or group, which could cause disadvantages to each individual or group that was affected by the news. According to Imam Wahyudi, a Chief Officer of Society Complaints of Press Council, quoted from Tirto.id, he said that the only one that broke the integrity of journalism is a media business where news is a commodity to be sold as a product.¹²

And also quoted from the same source, Abdul Manan, a Chief Officer of Independent Journalist Alliance, that problem of the journalism is the excessive intervention from the editor in chief to their journalist to every content that they should write. He said that if the media showing their supports for a particular political choice, they will force their journalist to write everything about that choice and show their supports for that.¹³

Some defiance on Journalism Ethics was found these days. They consist of the exploitation of the news headline, illegitimate

9 Clara Staples, *FREEDOM OF SPEECH IN INDONESIAN PRESS: INTERNATIONAL HUMAN RIGHTS PERSPECTIVE*, Brawijaya Law Journal vol.3 n.1 2016, <https://www.brawijaya.ac.id>, hlm.41-59

10 Naomita Royan, 'Increasing Press Freedom in Indonesia: the Abolition of the Lese Maješte and 'Hate-Sowing Provisions' (2008)10 *Australian Journal of Asian Law* 291, 297.

11 Rahayu, Bayu Wahyono, dkk, 2015, "Menegakkan Kedaulatan Telekomunitasi dan Penyiaran di Indonesia", Yogyakarta:PR2Media, p.227

12 Fadiyah Alaidrus, "Dewan Pers: Yang Merusak Kemerdekaan Pers adalah Bisnis Media", <https://tirto.id/dewan-pers-yang-merusak-kemerdekaan-pers-adalah-bisnis-media-dnAy>, Accessed at April 1st 2021, 2.18 PM

13 *Ibid*

news source, and also the domination of the opinion created by majority society and elites.¹⁴ These problems could make the public opinion about one issue to be polarized and it could be difficult to be undone. Those problems of press freedom to publish news are affecting the Freedom of Speech in general. Freedom of Speech was established as a principle where people could speak and express their opinions freely without any kind of coercion from anyone, but restraining the journalist is against that principle.

Freedom of Speech principle and Indonesian Broadcasting Act no.32/2002 already provide the space for the press to write and publish news independently without any kind of intervention. But, those happen because people with power always want a good image of themselves and they are capable to hire a media to write or broadcast the news. This problem happened because the Indonesian Broadcasting Commission as the authority in charge of the television content in Indonesia, refuse to take action about it, and that makes the law regarding broadcasting and freedom of speech seems polarized, because the pure principle of Freedom of Speech is letting the people speak freely without any surveillance of any kind.

The freedom of speech applied in broadcasting is for the broadcasting company to speak and appear any content. But, as

written in Article 36line(5b) of Broadcasting Act no.32/2002, censorship is applied to the content if it contains aspects, such as sexual content, hoaxes, violence, usage of narcotics. Also, if the contents carry a mockery of any kind regarding race, ethnicity, religion, or groups as written in Article 36 line (5c). The same guidelines regarding the content are also appeared in Article 48 line(4).The Broadcasting Act also regulates the spread of fake news. As written in Article 36 line (5a) that the broadcast should not be the content that contains defamation, incitement, and contains misleading or false information. After all, spreading fake news is a serious one in every aspect.

In this part of the discussion, we could reach a few conclusions regarding this section. The Indonesian government guarantees the freedom of speech as written in their constitution and the Broadcasting Act no. 32/2002, with some boundaries regarding sexual content, violence, and mockery against race, religions, or groups.

2. The Law of Broadcasting and Freedom of Speech in Singapore

Mass media in Singapore is consists of broadcasting, publishing, and the internet that is available in the state. And Singapore Mass Media is under the control of the government.¹⁵ The history of mass media in Singapore is rough. In 1990, the late Prime Minister of Singapore, Lee Kwan Yew, restricted the foreign press movement in

14 Anom, Erman. "Wajah Pers Indonesia 1999-2011." *Jurnal Komunikasi: Malaysian Journal of Communication* 27, no. 1 (2011).

15 Branigin, William, "Singapore Vs The Foreign Press", <https://www.washingtonpost.com/archive/politics/1990/12/17/singapore-vs-the-foreign-press/71642106-d3cb-4ba6-9df9-9542176a0c10/>, Accessed at April 2nd, 2021, 10.55 AM

Singapore to control foreign intervention in the domestic politics of Singapore. Lee said that regardless of the pontifications of foreign correspondents and commentators, it is the values of the elected Singapore government that must and will prevail.¹⁶

And there are no statutes or law products on broadcasting published in Singapore until 1994 when The Singapore Government published the statute regarding broadcasting called "Singapore Broadcasting Act no.15 of 1994". The statute was experiencing some amendments until it reaches its final form in 2016 as "Singapore Broadcasting Act no. 19 of 2016" which is more updated than the previous version. The censorship in Singapore involves the age restriction system for each content based on their demography. Therefore, the censorship regarding sexual content and violence nor narcotic product and tobacco usage is not applied.

According to Freedom of the Press, press freedom in Singapore is 154 of 178 in the Press Freedom Index of the report itself.¹⁷ It is a sign that freedom of speech, especially for the press in Singapore, is rated as not free.

The Singaporean Government published the statute called Protection from Online Falsehood and Manipulation Act (POFMA) or Fake News Law to handle the misleading information and hoaxes that spread on television nor online. The POFMA existence

enables the authorities to tackle the spread of fake news or false information. Though POFMA is suspected as the censorship tool against the freedom of speech principle as raised among the netizens and international community, the Singapore Government response to the critics of the act as a false allegation.¹⁸

3. Comparative Studies Regarding 2 Broadcasting Law Between Indonesia and Singapore

Through these 2 different Broadcasting Law in Indonesia and Singapore, there some differences were found between these 2 laws. The differences are consisting of:

a. Censorships

Indonesian Broadcasting Act no. 32/2002, as written in Article 35 line (5), the broadcast contents with a sexual element, excessive violence, tobacco use, and narcotics are prohibited. Words or visual content containing a mockery of a particular religion, race, or group in the society. The same guidelines are written in Article 48 line (4) of Broadcasting Act no. 32/2002. Singapore Broadcasting Act no. 19 of 2016 does not regulate anything related to content censorships. The act only regulates the administrations regarding the broadcasting institution and broadcast licensing in Singapore for foreign and subscription-based broadcasting institutions, which the same thing did in Indonesia.

16 *Ibid*

17 AFP, "World Press Freedom index Finds Journalism Blocked in Over 100 Countries", <https://www.straitstimes.com/world/freedom-index-finds-journalism-blocked-in-over-100-countries>. Accessed on May 26th, 2021

18 Channel News Asia team, "Singapore Government says Washington Post Article on Online Falsehood Law is "Perpetuating False Allegations", <https://www.channelnewsasia.com/news/singapore/singapore-government-fake-news-pofma-the-washington-post-12188644>, Accessed at April 2nd, 2021, 1.42 PM

But regarding content censorship, instead of inserting the regulation in the Broadcasting Act, Singapore Government form an institution called the Info-communications Media Development Authority (IMDA) to put the contents into a group of age advisory and age restrictions. The age rating for age advisories is General (G), Parental Guide (PG), and PG-13. G is for a general audience that is suitable for all ages. PG is for Parental Guidance that advises parents to accompany their children in watching content that contains a mild reference to violence, drug or tobacco, and sexual. While PG-13 is suitable for a person aged 13 and above but parental guidance is advisable for viewers under 13 because of moderate Besides Age Advisory ratings, IMDA also applies the Age Restricted ratings consists of NC 16, M-18, and R-21. Nc-16 or no children below 16 restrict the contents that may have moderate sexual content, same-sex references, and frightening scenes portraying injuries and gory images without further details. M-18 or mature 18 is for persons 18 years above, for content with frontal nudity and sexual activities, implied same-sex activities, and intense violence that triggers horror. The last one in this category is R-21 that is restricted and only for 21 years and above. The content that contains this rating can only be viewed in Over-the-Top (OTT) streaming services.

b. Fake News Case Regulation

The Broadcasting Act no. 32/2002 provides the regulation regarding the fake news spread as written in Article 36 line (5a). The referred line says that the broadcast should not be content that containing

defamation, incitement, and also containing misleading or fake news. No further records regulating the fake news spread by broadcasting. Instead, more complete regulations regarding fake news in Indonesia is contained in Information and Electronic Transaction Act Article 45A line (1) that says:

“Each people in purpose and without any rights spreading the misleading and fake news would be charges by serving 6 years in prison and fine maximum at Rp. 1.000.000.00 (one billion rupiahs)”

In Singapore, same with the age restrictions and censorships, the regulation is separated through an Act that is called Protection from Online Falsehood and Manipulation Act or commonly abbreviated as POFMA and known collectively as Fake News Law. POFMA enable the authorities to track and arrest the netizens that were suspected or proven to spread the fake news.

Part 2 of the POFMA Act criminalized the communication of false statements of facts in Singapore through Section 7 even if the person communicating it is not in Singapore, and that the false statement is detrimental to “the security of Singapore”, “public health, public safety, public tranquility or public finances”, friendly international relations with other countries, influence the outcome of parliamentary and presidential elections or referendums, incite tension between different groups of people, or diminish public confidence in the public service or general governance of Singapore.

c. The Comparison Handling of current case in Freedom of Speech

Singapore has The Public Order Act (Cap 257A, 2012 Rev Ed) (“the POA”) as a constitutionally valid derogation from Article 14(1) of the Constitution of the Republic of Singapore (1985 Rev Ed).

Based on this act, the Applicant was charged and convicted on one charge under s 16(1) (a) of the POA of having organized and held a public assembly without having obtained the permit for it that the POA required. Art 14 of the Constitution grants citizens of Singapore constitutional rights to freedom of speech, assembly and association, subject to certain restrictions. The regulation of public assemblies under the POA involves two control mechanisms. **The first** regulates which assemblies require a permit. **The second**, where a permit is required, regulates the grounds for refusing to grant such a permit.

As a starting point, permits are required for public assemblies unless they are exempted by the Minister under s 46 of the POA. These include sporting events, celebration of certain festivals, charitable events and some election events. Indoor public assemblies organized by and only involving Singapore citizens are generally exempt from the permit requirement. In this case, a permit was required as Mr. Wong, a non-Singaporean, had been asked to speak at (and did speak at) the Event.

Art 14 rights are not unlimited. These rights are expressly made subject to the limitations that Parliament may impose on them under the powers granted to it by Art 14(2). In determining whether any legislation passed by Parliament to limit any of the Art 14 freedoms improperly derogates

from any of those freedoms, a close examination must be made of the purpose and language of such legislation.

Despite the broad language used in Art 14(2)(b), this does not prescribe a wholly subjective approach. In any law that Parliament passes which restricts the right of peaceable assembly is deemed valid. The earlier decision of the Court of Appeal (for example, *Tan Seet Eng v Attorney-General* and another matter [2016] 1 SLR 779) might be inconsistent with the subjective approach. The key question whether the derogation is objectively something that Parliament thought was necessary or expedient in the interests of public order and whether Parliament could have objectively arrived at this conclusion.

There is no presumption of legislative constitutionality. In the analysis of the constitutionality of any law, the court must bear in mind the following principles:

- a. Each branch of Government has its own role and space. The separation of powers is part of the basic structure of the Westminster constitutional model. The Constitution both confers a constitutional right and permits that right to be derogated from for the purposes listed under Art 14 (2)
- b. It is unequivocally for the judiciary to determine whether that derogation falls within the relevant purpose.

A three-step framework must be applied in determining whether a law impermissibly derogates from Art 14 of the Constitution. First, it must be assessed whether the legislation restricts the constitutional right in the first place. Second, if the legislation

is found to restrict the Art 14 right, it must be determined whether the restriction is one which Parliament considered “necessary or expedient” in the interests of one of the enumerated purposes under Art 14(2)(b) of the Constitution. Third, the court must analyse whether, objectively, the derogation from or restriction of the constitutional right falls within the relevant and permitted purpose for which, under the Constitution, Parliament may derogate from that right. In the final analysis, it is imperative to appreciate that a balance must be found between the competing interests at stake. This is proving that even in Singapore, there is such a restricted way to expressing freedom of speech.

While in Indonesia, the regulation that restricts the right to freedom of opinion and expression is not justified if other ways do not restrict the rights to freedom of opinion and expression. The provisions for defamation are also regulated in the Civil Code but are also regulated in the Criminal Code, considering that punishment is the *ultimum remedium*, then the civil mechanism needs to be put forward, that the 4th principle point (a) Article 19 of the ICCPR recommends countries that have signed the ICCPR to abolish the crime of good name and transfer it to the mechanism of civil law, that in principle 4 point (b), the party who feels that his name has been defamed must prove that it is true that there has been defamation and that there has been a loss he has suffered. Such construction requires the formulation of articles in material form, namely formulating the consequences arising from criminal acts, and that sanctions for criminal acts

of defamation should not be carried out in excessive levels.

Solutions in harmonizing freedom of opinion and expression with Article 310 and 311 of the Criminal Code can be carried out using a proportional application, namely not by imprisonment which is judged from the aspect of rights Human Rights as an exaggeration to deal with the issue of freedom of opinion and expression. The abolition of imprisonment and replacing it with a fine can have a better effect on society. Especially people who work as activists or journalists.

Article libel which is often used to indict perpetrators of defamation is dominated by Article 310 Paragraph (1) of the Criminal Code, then Article 311 Paragraph (1) of the Criminal Code, Article 310 Paragraph (2) of the Criminal Code, and Article 317 of the Criminal Code. Another solution of alignment is decriminalization by doing the change from the criminal realm to the civil domain which is considered more appropriate in the context of human rights and does not burden the parties involved, of course while still upholding proportionality.

D. Closing

The conclusions that can be concluding within these writings are: the Indonesian Government deals with Freedom of Speech within broadcasting is by publishing the Broadcasting Act No. 32/2002 that regulates the content censorships, licensing of the broadcasting activity, and regulate the relationship between broadcasting institutions. Also, the Indonesian government forming the Indonesian Broadcasting Commission as the authority to supervise

the content that is broadcasted on Indonesia television channels.

And the Broadcasting Act provides the space for the press to submit themselves to Journalism Ethics Codes. Singaporean Government also deals with Freedom of Speech within broadcasting by publishing their own Broadcasting Act that is called Singapore Broadcasting Act no. 19 of 2016 that regulating the administration within the broadcasting activity and licensing of the broadcasting institution. And also releasing the statute that is a companion to the Broadcasting Act like POFMA or better known as Fake News Law.

Therefore, for Indonesian government, the authors are agreed that they should done the same by releasing the companion statute for the current Broadcasting Act and renew some sections in the current Broadcasting Act, especially the sections regarding censorship in Indonesia. Therefore, to fight hoaxes and its massive spread in Indonesia, Indonesian government might be considering to compose a Fake News related law like POFMA from Singapore and applied some of its points to this future fake news law product.

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