

CITIZEN JOURNALISM IN CYBER MEDIA: PROTECTION AND LEGAL RESPONSIBILITY UNDER INDONESIAN PRESS LAW

Vidya Prahassacitta

Business Law Department, Faculty of Humanities, Bina Nusantara University
Jln. Kemanggisian Ilir III No. 45, Palmerah, DKI Jakarta 11480, Indonesia
vidya.prahassacitta@binus.ac.id /prahassacitta@gmail.com

ABSTRACT

Phenomena of citizen journalism had accepted and become part of cyber media. Cyber media owned and managed by press companies had featured citizen journalists' information, critics, opinions, and news. Citizen journalism was part of freedom of expression. However, in Indonesia's press law concept, it was not part of the national press. This created legal issues regarding protection and legal responsibility aspects for both parties. A qualitative research was conducting to solving these issues. Using secondary data from literature study and observation on several cyber media websites, this discovers two conclusions. First, the citizen journalist is part of freedom of the press; it means that a citizen journalist's creation has protected form censor and bans. However, a citizen journalist still has a limitation which shall be complied videlicet Civil Code and Law No. 11 The year 2008 concerning Information and Electronic Transaction. Violation of both regulations means that a citizen journalist shall be legally responsible. Second, protection and responsibility border between a citizen journalist and press company are based on an agreement. Approval of term and condition of general user content in a website from a citizen journalist means that both parties have agreed to enter into an agreement. A press company might be freed of its legal responsibility as long as conducted its obligation to control and manage contents that have been uploaded and published by a citizen journalist. If the company does not take proportional action against citizen journalist' contents that violating the law, the press company shall be requested its civil or criminal legal responsibility.

Keywords: *citizen journalism, cyber media, press law, freedom of expression*

INTRODUCTION

Technology has changed the face of press. In 1600, when the printing machine is invented, the printing media spread the news. In 1894 the radio is invented, and in 1925, television is invented, then the news begins to spread by electronic media as the complement of printing media. The era of cyber media began in 1989 when Tim Berners-Lee invented World Wide Web (Feng, 2009), and in this era, news can easily spread with an Internet connection, people can access the news on their personal computer, laptop or even on their smartphone.

Nowadays people prefer to use cyber media compare to printing or electronic media to access news because it has several advantages. A cyber media is easier, more updated, and more practical media. Subsequently, lots of media companies that are running a printing and electronic media now also running their own cyber media to accommodate this development. In United State, big printing and electronic media such as the Washington Post and CNN have run their own cyber media; they are www.washingtonpost.com and www.cnn.com. It is similarly with what happened in Indonesia. Kompas daily newspaper has running cyber media, www.kompas.com since 2007 and www.detik.com, which are more famous than their printing media; Detik Magazine.

Citizen journalism is one of the results of technology and press changing. Currently, people do not only conduct as a news receiver but also become the amateur journalist. Technology makes people publish any information, critics, and opinions regarding current events to society easier and faster. Furthermore, press companies realize and accommodate this by giving spaces for people to become a “journalist” and to publish the information, critics, and opinions in their media. In United State, CNN has a program for citizen journalism that is called by iReport and can be accessed at www.ireport.cnn.com. In Indonesia, Kompas dedicates a special website for citizen journalism which can be accessed at www.kompasiana.com.

On the other hand, citizen journalism creates new problems. Since citizen journalism is part of freedom of expression, people can easily publish their information, critics, and opinions. However, some of them are misleading information, and several of critics or opinions deliver with impolite or even leading to defamation. Especially after reformation in 1998, Indonesian people do not ready for the freedom of expression concept. Most people do not understand every information, critics, and opinions that deliver in cyber media that are not in private domains anymore but it already in public domains. There is no border between private and public domains in cyber media.

In Indonesia, press defines with two concepts; free and responsible. This is universal concept revealed by the Commission on Freedom of the Press. Two main important foundations are freedom and responsible. First, press with responsible and freedom (*pers yang bertanggungjawab dan bebas*); and second, press with freedom and responsible (*pers yang bebas dan bertanggungjawab*). An approach to both concepts is different. Approach for the first concept is emphasizing on responsible itself, and the freedom is only as additional. When the press is reporting the news, they have to be more responsible, subsequently; censor and ban are part of the press. Commonly social-communism and authoritarian countries apply this concept. Indonesia used to apply those concepts during Soekarno and Soeharto era but with a different approach. When Soekarno ruled, this concept was implemented by using power approach. However, in Soeharto era, this approach changed with the legal approach. It means that law and regulation are legalized to eliminate press freedom. On the other hand, demarcation counties, mostly western countries apply the second concept. Freedom has the first function then responsible as a compliment. Censor and ban are restricted. However, they still have repressive limitation by using press criminal offenses, private and administration law and regulations. Libertarian doctrine with its negative freedom has developed in western countries. It means that no limitation of freedom. The press has privilege rights such as the right to lie as if there is a trustworthy source, right to vilify, right to distort, and right to invade privacy. Even though those rights are still be implemented with responsible (Adji, 2008).

Related to freedom and responsibility of press with citizen journalism, therefore there are two legal problems; they are (1) How do the protection and legal responsibility for the citizen journalists who upload and publish their information, critics, and opinions in cyber media? (2) How do the protection and legal responsibility for Press Company who manage the cyber media? The research is designed as a reference for public and law students. The major purpose of the research for the public is to criticize the position of citizen journalism under the law of press in Indonesia. In particularly, the research will raise new points of view for law students regarding the citizen journalist and press company legal responsibility under the law of press in Indonesia.

METHODS

The research uses normative law research, a process to discover regulations, legal principles and legal doctrines to respond to actual legal issues (Marzuki, 2010). The method is selected to describe and analyze actual problems related to the concepts citizen journalism using press and media law in Indonesia.

Normative law research only uses secondary data from literature study that is used. There are three types of legal materials that are used. First is primary legal material in terms of laws and regulations. Second is secondary legal material in terms of books, journals, and outcomes from previous researchers that clarify the primary legal materials. Third is tertiary law materials such as internet resources that clarify the primary and secondary legal materials. Research begins with manual and electronic searching through regulations, books, journals, previous research related to the concept of extraordinary crime. All collected data is then selected, processed, and analyzed using legal interpretation to produce conclusions.

RESULTS AND DISCUSSIONS

The existence of cyber media in Indonesia as part of the national press does not state clearly in Law number 40 Year 1999 concerning Press (Press Law). With the grammatically interpretation of Article 1 Point 1 Press Law, cyber media shall be part of the national press. Article 1 Point 1 Press Law stated that press is a social institution and a vehicle for mass communication carries out journalistic activities include seeking, obtaining, possessing, store, process and convey information in writing, sound, images, sounds and pictures, as well as data and graphs as well as in the form others using the print media, electronic media, and all types of channels available. The sentence “and all types of channels available” can be interpreted that Press Law could accept cyber media as one of a media type that is conducting, broadcasting or distributing to society.

Then National Press Board also has accepted cyber media as part of National Press. In 2012, the board issued two special guidelines for cyber media regarding Cyber Media News Covering Guidelines both on February 3rd, 2012. The purpose of such issuances is for the professionalism of the cyber media management, and subsequently, they can fulfill the press’s function, right, and obligation in accordance with Press Law and Code of Conduct Journalistic. Cyber media news has specific characteristics; therefore, it needs specific guidelines. One of the characteristics is the nature of cyber media news that is fast. For that nature, the board gives dispensation in verification news process. Commonly, news shall be verified first to fulfill accuracy and balance principles. However, press company that manages a Cyber media may postpone or even override its process with an obligation to feature the result at the latest news. Override of that process can be conducted for certain conditions such as news that contents of urgent public interest, the source of the first news can be referred its identity, credibility, and competence. The subject of news cannot be confirmed due to unknown its existence or do not want to be interviewed, and media gives explanations to audiences that the news shall be verified as soon as possible. These explanations shall be featured at the end of the same news by the script in the bracket and italic font.

As part of the national press, cyber media shall be free but responsibility press. After reformation 1998, Indonesia press moves from a press with responsible and freedom to a free press as stipulated in Article 2 and 4, Paragraph 2, Press Law. Press freedom is the main function with responsible as a complement. However, limitation of freedom is still an important aspect. The limitation is with regulation in administration, private, and criminal law aspects. Therefore in cyber media, censor and ban are prohibited as stipulated in Article 4, Paragraph 2, Press Law. This is the parts of a freedom of the press in Indonesia. The freedom comes out with responsible such as the obligation to correction and response right of news that have been published. In the big scope, such responsible is a mean of obligation to comply with the administrative, private and criminal law, and regulations related.

A citizen journalism product is different with journalist product. According to Shayne Bowman and Chris Willis, citizen journalism is the act of citizens that are playing an active role in the

process of collecting, reporting, analyzing, and disseminating news and information (Jurrat, 2011). Then according to Bentley (2008), the citizen journalism is not a journalistic product from a professional journalist, but some people who try to replace a professional journalist to covering news due to the news only covered the big side. However, for audiences, the minor side of the news is more interesting. Citizen journalist represents the news that is not covered by a major professional journalist.

Citizen journalism is not a new phenomenon. It is first started in 1788 when Alexander Hamilton, James Madison, and John Jay had written their opinions than was published by a newspaper in the United States. Then, this becomes phenomena in the 21st century. When www.blogger.com was invented in 2002, people use Blog as media to publish information, critics, and society's opinion, and it becomes citizen journalism detonator (Bentley, 2008). Cyber media also becomes part of citizen journalism; furthermore, people have accepted this phenomenon. Several websites are specially developed for citizen journalist by the management of cyber media. A citizen journalist can write, upload, and publish what he/she sees, experience, and thinks on that website. Furthermore, cyber media gives an opportunity for citizen a journalist to cover the news which featured on the main page of the cyber media news website.

As part of freedom of expression, it gives positive impacts. According to the Head National Press Board of Indonesia, Ichlasul Amal, the news that is produced by citizen journalism shall educate people. Additionally, a member of National Press Board of Indonesia, Bambang Harymurti adds that citizen journalism gives variations and demarcations news to people. On the other hand, this also creates negative impact due to a journalist become an open profession that means every citizen can be a journalist. Subsequently, it is difficult to distinguish the real journalist especially cyber media journalist and citizen journalist.

Besides that, all positive impacts, citizen journalist also gives a negative impact. Bentley (2008) has stated that citizen journalism is not simply words but also a complex concept that variously seen as either the end of the literate media world or the salvation of disconnected civilization. Mythen (2010) has added that the emergence of various forms of citizen journalism has enabled the public to perform an active role in the process of collecting, reporting, analyzing, and disseminating news and information. Although citizen journalist has considerable implications for, inter alia, news making, political consciousness, the media production process, consumption practices, and the globalization of information.

According to Indonesia law, the citizen journalist is not part of national press even though that news is publishing and featuring cyber media. Press Law does not regulate this. Press Law only regulates regarding journalistic activities by printing, electronic, and cyber media that conducted by a professional journalist. A journalist as stipulated in Article 1 Point 4 Press Law should routinely conduct these activities. The news that is created by a citizen journalist, which is publishing and featuring in cyber media, is not a journalistic product. The statement is based on three aspects; first, based on content or material of the news, citizen journalist's news are mostly about "cookies" or minor side of news which not covered by the conventional news. Second, from the person who covered news, a citizen journalist is not a professional journalist that does not apply to Code of Conduct Journalistic and Press Law. And the last, from process aspect, citizen journalist's news does not through fact verification process, using a direct quote, quote articulation, achievement of copyrights, news source identification, correction, and using pseudonymous (Barret, 2011).

Although under Press Law, citizen journalism is not part of the national Press, National Press Board of Indonesia supports its existence. Bambang Harymurti has stated that this armature journalist has changed Indonesia press into demarcation of information. The power of this people has determined the truth of news. Subsequently, the news does not dominate by certain groups. A lot of events are not covered by the press, but a citizen can cover and publish this event become news.

Tsunami in Aceh Province in 2004 is one of an example. This natural disaster could be refilled fast due to news, which covered by citizen journalists that using their own personal and telephone camera and published to the world. Therefore, on February 3rd, 2012, National Press Board of Indonesia issued Cyber News Coverage Guidelines (*Pedoman Pemberitaan Siber Media*) as a practical guide for citizen journalists to generate news or other information from the Internet or social media (Nugroho *et al.*, 2013).

Freedom of expression is the first generation of civil and politic rights. Article 28E Paragraph (3) of Indonesia Constitution stated that every person should have the right to the freedom to associate, to assemble, and to express opinions, which mean Indonesia has affirmed this civil and politic right. The negative rights mean that require the absence from the state on this right and individual freedom (Smith *et al.*, 2008). Part of its freedom is freedom of the press; a right that is protected by Declaration of Human Rights of United Nation that gives a guarantee to press and information freedoms (Nordenstreng, 2007).

In relation to Press Law, the definition of freedom of expression is divided into two concepts; freedom of press and freedom of speech. In narrow meaning, the press is defined as, “Freedom of the press, in this concept press is broadcasting mind, thought, idea or news in nonverbal.” Furthermore, press in wide meaning is defined as mass communication by delivering thought and feeling in verbal and non-verbal media. Therefore, press in wide meaning equals to freedom of speech. Definition of the press that coverage verbal on non-verbal media is clearly stated by The Commission on the Freedom of Press. According to the commission, it will be understood that we are using the term “press” to include all means of communicating to public news and opinions, emotions and beliefs, whether by newspapers, magazine, or book, by radio broadcast, by television or films. According to Oemar Seno Adji (2008), press and speech are different as stated in Table 1.

Table 1 The Differences between Concepts of Press and Speech

Differences	Press	Speech
Place and time	Words in writing have place and time elements	Words in oral have limitation of place and time
Nature	As modern phenomena so it is produced by machine	Naturally from human
Impact	Less and lack in impacts than what been heard	Additive impact is stronger and deeper than visual
Responsible	Have bigger responsibility	Have less responsibility

Consequently, these concepts create several legal impacts. First, is regarding censor limitation for the press. For those who accepted the narrow concept, the censor only applies for the non-verbal press. Therefore, verbal press such as radio, television, and film are restricted. On the other hand, in wide concept, censor applies for every media verbal and non-verbal. Secondly, legal treatment for conducting libel and slander. In Anglo–Saxon, both are parts of defamatory statements, but they have differences. Libel is conducted by using the non-verbal medium. Contradictory, slander is words that deliver verbally or by the significant gesture. Responsibility for both defamations is also different. Libel gives bigger responsibility because it is more serious violation than slander. In the end, expiate time of libel is longer than slander (Adji, 2008).

In relation to freedom of expression, citizen journalism and cyber media become part of freedom of the press. The product a citizen journalist is part of activities, which broadcasts mind, thought, idea, or news in non-verbal media. Consequently, state’s censor of a citizen journalist’s

product, which features in cyber media, is restricted. Although the censor is restricted, a citizen journalist still has limitation. They shall consider the code of conducts, laws, and regulations.

Practically, a citizen journalist is not a professional journalist. Therefore, a citizen journalist product creates without standard ethics. To solve that problem, Bambang Harymurti has suggested that citizen journalists shall consider four guidelines, which are honesty, fairness, minimalizing other loss, and responsibility. Honesty means that product shall not consist of plagiarism, shall reveal the source of information, shall not manipulative, shall not publish misleading information, and distinguish between opinions, comments, information or facts. Fairness means the news shall be impartial and nonjudgmental. Minimalizing other loss means that a citizen journalist shall consider the impact of its actions to others and minimize harm to the other by publishing news that only important for the public. Last, responsibility means a citizen journalist shall recognize error, conduct correction, apologize with proportionally, explain purpose for publishing the information, explain if there is any conflict of interest, affiliation and personal purpose, avoid special treatment to advertisers or group interests and wary of the source who requested compensation, let the public know if it happen, exposes citizen journalism unethical behavior and treat others as a citizen journalist that wants to be treated by others. Bambang Harymurti has added this guideline should be applied until citizen journalists have its own code of conduct.

Laws and regulations are mandatory guidelines for a citizen journalist. It is due to the censor is restricted, so repressive limitation in law and regulation of civil and criminal law are constitutional and legal. Responsibility is the important part of freedom of expression; therefore, a citizen journalist shall be borne with illegal responsibility if violating the law and regulations.

Exclusively for a citizen journalist, who publishes their news in cyber media, Law No. 11 year 2008 concerning Information and Transaction Electronic (ITE Law) is the main guideline. Article 27 Paragraph (1) has stated that, "Any person who knowingly and without authority distributes and/or transmits and/or causes to be accessible Electronic Information and/or Electronic Records with contents against propriety," and in Paragraph (3) has stated that, "Any person who knowingly and without authority distributes and/or transmits and/or causes to be accessible Electronic Information and/or Electronic Records with contents against propriety." Then, in Article 28 Paragraph (2) has stated that, "Any Person who knowingly and without authority disseminates information aimed at inflicting hatred or dissension on individuals and/or certain groups of community-based on ethnic groups, religions, races, and intergroup (SARA)." Those articles are a limitation for a citizen journalist to draft and publish the news in cyber media. Violation of such articles are a crime and shall be punished as stated on Article 45 Paragraph (1) and (2) ITE Law.

Two articles in Indonesia Civil Code are guidelines for a citizen journalist. Article 1365 Indonesia Civil Code is the first guideline. The article stated that a party who commits an illegal act, which causes damage to another party, should be obliged to compensate, therefore (Subekti & Tjitrosudiobio, 2009). A citizen journalist's product contents elements that prohibited in Article 27 Paragraph (1), (3) and Article 28 Paragraph (2) ITE Law may be suited to court based on Article 1365 Indonesia Civil Code for requesting compensation. Second, Article 1372 Indonesia Civil Code that is especially for tort lawsuit regarding defamation. Based on this article, the defendant may sue for compensation and vindication. Article 1372 Indonesian Civil Code stated as bellow:

The civil legal claim with respect to an offense shall extend to compensation for damages and to the reinstatement of good name and honor that were damaged by the offense. The judge shall, in the consideration thereof, have regard to the severity of the offense, also the position, status, and financial condition of the parties involved and the circumstances.

Citizen journalism has accepted by Indonesian press. Factually citizen journalist's products

are not only uploading and publishing in the personal blog but also uploading and publishing in cyber media's website. Several websites such as www.kompasiana.com, www.ideshot.metrotvnews.com, and www.blogdetik.com are own and managed by press companies.

This phenomenon gives unique legal responsibility for cyber media. According to Press Law, citizen journalism is not part of the national press, but press company who own and manage a website for citizen journalism activity is part of the national press. These unique concepts are based on the interpretation of the definition of press company which regulated on Article 1 Point 2 Press Law. It is stated that, "Press company is an Indonesian legal entity which conducts business includes the company's press print media, electronic media, and news agencies, as well as Other media companies that are specifically organized, broadcast, or distribute information." Part of this press company is press company which directly or indirectly organized, broadcast, or distribute information on their website. Moreover, citizen journalism as part of freedom of press bans any kinds of censor for every citizen journalist's products which upload and publish in cyber media's website. However, there is still a limitation for a citizen journalist for its freedom. In this case, cyber media's management which owns and manage a website for citizen journalist should comply with the limitation as mention on civil and criminal laws as mention before. Therefore the management shall control, check, and edit those citizen journalist's products so the products can be freedom and responsible products. The purpose of this mandatory obligation is in order to deliver an accountability product to society.

In relation with that, National Press Board has issued Cyber News Coverage Guidelines. The main guidelines are about a citizen journalist as a user in user generated guidelines. Point three guidelines regulate regarding term and conditions for user-generated, authority and responsibility of cyber media who manage a website of citizen journalism activity. There are three main guidelines of such term and condition. Firstly it regulates that every cyber media has obligation to announce its term and condition regarding the content of user-generated which not contradiction with Press Law and Journalistic Code of Conduct. Secondly, cyber media obligates for every user to login prior upload and publish any information, critics, and opinions or news. Thirdly it regulates that user shall agree that every information, critic, and opinion or news that uploaded shall not contain: (1) lied, slander, sadistic and obscene; (2) inflicting hatred or dissension on individuals and/or certain groups of community-based on ethnic groups, religions, races, and intergroup (SARA); and (3) teaches violence and does not load the contents discriminate on the basis of sex differences and language, and not degrading the weak, the poor, the sick, disabled people, or disability. The guidelines also regulate regarding author and responsibility of Press Company. There shall be a mandatory obligation for Press Company to correct and delete every users' contents whom not in line with the term and condition. Another obligation is to provide complain report facility for another user to complain or report the violation of such term and condition. Based on that complaint and report, Press Company shall take proportional actions in maximal time of two times twenty-four hours after received it. By conducting those actions, Press Company does not burden with legal responsible of that contents.

Several cyber media apply this guideline, and one of them is www.kompasiana.com that own and managed by Group of Digital Kompas Gramedia, the part of a business group of Kompas Gramedia. All contents in the website are originated by citizen journalists named *kompasianer*. To upload and publish the contents, they shall registration and login at the website, like others website. However, on this website, the term and condition explain clearly what kinds of contents that can be uploaded and published on the website and authority of cyber media management to conducts any legal actions such as edit and delete any contents which not in accordance with the law and regulation. Seven main points are regulated in term and condition such as services, content, usage, article of refutation and report content, alteration, copyright and citizen journalism. First, is regarding services, it regulates all services that *kompasianer* can use after registration and login process. Second is about what kinds of content which shall or shall not be uploaded and published on the website and also how to draft a propitiate content. Then usage is regulating about the limitation of using the contents in website www.kompas.com and *kompasianer*'s responsibility. Next point is the limitation of Group of

Digital Kompas Gramedia and mechanism for contents, which contradicted with law and regulations. Alteration provision is regulated if there is any alteration on website services. Copyrights of content that has been uploaded and published are also regulated in this term and condition. Last is regarding the relation between kompasianer and Group of Digital Kompas Gramedia.

The relation between kompasianer and Group of Digital Kompas is not an employment relation, between journalist and Press Company. It's clearly stipulated on term and condition of the website. Kompasianer conducts citizen journalistic activity based on their personal will, then upload and publish by using their own name, so it is prohibited for kompasianer to call their self as a website journalist or reporter. During conducting journalistic activities, a kompasianer has no right to justified her/his self as an affiliation of website or not allow using www.kompasiana.com name.

In term and condition strictly regulate regarding the content that shall or shall not be uploaded and published on the www.kompasiana.com. The content should include accordance with the value of morality, public order, law, and regulations. Kompasioaner shall not upload and publish contents that (1) violate or infringe the rights of others, including intellectual property rights of others; (2) threatening, defamatory, libelous cheat, cheat, and/or resentment at specific individuals or groups; (3) loading content false information or news or apocryphal deliberately with intent to defraud, deceive or trick the reader portal www.kompasiana.com; (4) insulting, offensive, harassing, demeaning, intimidating breached and/or hostility individuals or groups based on ethnicity, religion, race and class (SARA), gender, sexual orientation, age, or physical disability, violating obscenity, contents elements of obscenity and pornography; (5) advocate or suggest unlawful discharge; (6) content profanity words, images, or other graphical form consenting and / or cause a sense of horror, rough, dirty, and disgust; (7) deploying a particular ideology or doctrine that violates the laws applicable in the territory of the Republic of Indonesia; and (8) contents software viruses or any other computer code, files or programs that may interrupt, destroy or limit the functionality of the software (software) or hardware (hardware) the computer or communication equipment, or to allow the use of a computer or computer network that is not valid.

Uploaded and published content is entirely kompasianer's responsibility. Group of Digital Kompas Gramedia does not have responsibility for accuracy and authenticity of the information and also any direct or indirect impacts on any uploaded or published content. Subsequently, in term and condition, kompasianer shall be agreed that they are freeing Group of Digital Kompas Gramedia of all legal issues including that they cannot be sued civilly and criminally that reported for any uploaded contents. As owner and management of the website, Group of Digital Kompas Gramedia has right and obligation to control and manage all uploaded contents. Report from other kompasianer regarding violating content should be researched then action will be taken by deleting or blocking contents on the account.

Approval of term and condition itself is an agreement between kompasianer and Group of Digital Kompas Gramedia which contending standard clause. It means that this clause has absolutely determined by one side party and other parties have no chosen other to accept that clause. The purpose of this clause is to making the agreement process easier and faster. This clause is regulated by Article 18 Paragraph (1) Law No. 8 The year 1999 concerning Consumer Protection, which prohibited fix clauses for purpose consumer harm. On the second paragraph stated that prohibited from including a standard clause at the place or in the form, which is difficult to see or cannot be read clearly, or under the statement, which is difficult to understand. This law is applied to the relation between producer and consumer. However, it might be adopted in this case especially regarding the placement of standard clause in term and condition. Then regarding the legality of the agreement, it should be referred to the provision of Article 1320 Civil Code which stated that in order to be valid, an agreement must satisfy the following four conditions, they are: (1) there must be consent of the individuals who are bound thereby; (2) there must be capacity to conclude an agreement; (3) there must be a specific subject; and (4) there must be an admissible cause (Subekti & Tjitrosudibio, 2009).

The first of two conditions are subjective conditions, and the rest of it is an objective condition (Subekti, 2008). According to Article 18 paragraph (1) ITE Law, an electronic agreement shall bind on parties. Therefore if such approval has fulfilled all subjective and objective conditions, an electronic agreement between Kompasianer and Digital Kompas Gramedia is legal and shall be bind on parties. According to Cyber News Coverage Guidelines, there is limitation responsibility for cyber media that owned and managed citizen journalist website. This limitation is based on an electronic agreement. However, its limitation is not absolute.

As explain priory, a press company might be requested for its legal responsible if not take appropriate action of the content on their website. This civil and criminal legal responsibility should be applied according to Civil Code and ITE Law. Although in several term and condition, like www.kompasianer.com, has a disclaimer that a user agrees and frees the website's management from all legal issues including cannot be sued civilly and criminally that reported for any content uploaded. This does not apply if website's management does not take appropriate actions to control and manage unlawful contents. The management has obligation to control and manage every content that a citizen journalist has uploaded and published. Any contents that are not in line with term and condition, law and regulation should be corrected or deleted. Furthermore, based on a report from other users, an account might be suspended if the account repeatedly uploads any contents that are not in line with term and condition, law, and regulation. Cyber Media Guidelines issued by The National Press Board has clearly regulated this obligation and responsibility. The failures of these obligations are negligence.

In accordance with civil law, a press company might be sued in district court. This legal action might be taken if a press company has negligence their obligation to control, correction and delete citizen journalist's information, critics, opinions or news which containing violation decency, insult the good name and the cause of hatred or hostility individual and / or a particular group of people based on ethnicity, religion, race, and between groups (SARA). Registration of this lawsuit could be conducted after the injured party after had filed a report and complaint regarding these contents to the management website and no action or appropriate action is taken. In this case tort lawsuit base on the provision of Article 1365 Civil Code and especially for defamation base on the provision of Article 1372 Civil Code.

In criminal law concepts, criminal responsibility might be applied neither to the person who is the top management of a website or a press company. Both might be requested for their criminal responsibility if they with purpose do not control, correction, delete citizen journalist's information, critics, opinions or news which containing violation decency, insult the good name and the cause of hatred or hostility individual and/or a particular group of people based on ethnicity, religion, race, and between groups (SARA) as regulated on Article 45 Paragraph (1) and (2) ITE Law. In this article has stated that any person who satisfies the elements as intended by Article 27 Paragraph (1), (3) and Article 28 shall be sentenced. Based on systematical interpretation of Article 1 point 21 ITE Law which stated that person means an individual, whether an Indonesian citizen, foreign citizen, or legal entity, then words any person shall be interpreted both as an individual and legal entity. The meaning of legal entity in this article includes a corporation, foundation, cooperative, limited partnership, civil union.

Sjahdeini (2010) has stated that there are four types of system in corporate criminal responsibility. First is the management as a criminal so it should be accountable for its criminal. Second is the corporation as a criminal, but the management should be accountable for its criminal. The third is the corporation as criminal and corporation should be accountable for its criminal. Fourth is corporation and management as criminals, and both should be accountable for its criminals. However, only the last three that could be determined as corporate criminal responsibility systems. Based on those systems, which is individual's mens rea that should be represented corporation's mens rea? The doctrine of delegation explains that employee actions should be addressed as an employer

action due to authorities that has been delegated from an employer to an employee. If an employee intentionally does not conduct its obligation which violating the law, then it should be addressed as an employer mens rea. Therefore the employee should be responsible for its criminal action. In this case, the vice president director of a press company has delegated this authority regarding contents of the website to the admin manager. If the manager intentionally does not control, correct, or delete contents which violating the law and the vice president director ignore this, therefore an admin manager and the press company might responsible. Prior the court, vice president director shall act on and behalf the press company.

A press company is not the only party who conducted crimes as mention of Article 45 Paragraph (1) and (2) ITE Law due to participation (deeming) concept in this case. The company act as accomplice of a crime (*medeplichig*), it means that a press company assists in publishing a crime; information, critics, opinions and news containing violation decency, insult the good name, and the cause of hatred or hostility individual and/or a particular group of people based on ethnicity, religion, race, and between groups (SARA) as regulated by Article 45 paragraph (1) and (2) ITE Law. The assistance of a criminal offense itself is regulated by Article 56 Criminal Code (Moeljatno, 2011) as mention below:

As accomplices to a crime shall be punished: First, the person who deliberately aid in the commission of the crime; secondly, those who deliberately provide opportunity, means of information for the commission of the crime.

As mention in Article 56 Criminal Code, their two types of an accomplice of a crime. First is the person who deliberately aids in the commission of the crime, second is the person who deliberately provides opportunity. It means of information for the commission of the crime (Prodjodikoro, 2010). A press company in this case acts as second type concept, which deliberately provide means to a citizen journalist to publish information, critics, opinions and news containing violation decency, insult the good name and the cause of hatred or hostility individual and/or a particular group of people based on ethnicity, religion, race, and between groups (SARA). Without this assistance, a citizen journalist still can upload and publish that information, critics, opinions or news on their personal blog or website. However, by uploading and publishing in a website that manages by Press Company, the information, critics, opinions or news are faster to attract the society attention.

CONCLUSIONS

Based on the research, it can be concluded that citizen journalism's activity does not include as national press. Subsequently protection and legally responsible for a citizen journalist and press company, who feature such information, critics, opinions and news in their cyber media, shall be the difference. As part of freedom of the press, citizen journalist's products are protected from sensor or bans. However, a citizen journalist has the limitation in conducting its freedom, which Civil Code as a limitation in civil law area and ITE Law as a limitation in criminal law area. If a citizen journalist violates such laws, a citizen journalist shall be requested for its civil and/or criminal legal responsibilities.

An agreement is a border for protection and legal responsibility border between a citizen journalist and press company who feature a citizen journalist's information, critics, opinions and news in their cyber media. Approval of cyber media website's term and condition of from a citizen journalist that wants to upload and publish its information, critics, opinions and news in press company's cyber media means that both parties agree to enter into an agreement. Protection for a press company shall be stated clearly in such term and condition. Generally, in term and condition have a

clause stated a citizen journalist should fully responsible for all information, critics, opinions, and news, which upload and publish in cyber media. The clause is not fully applied because a press company has obligation to control and manage information, critics, opinions, and news, which upload and publish in cyber media, including to check, edit, and delete every content which violating the laws. If the press company does not fulfill its obligations, a press company shall be requested for its civil and/or criminal legal responsibilities.

According to the conclusions, there are two suggestions to solve such problems. First, a standard guideline for citizen journalist is required. To create this guideline, an association of citizen journalist shall establish first. National Press Board of Indonesia might facilitate this establishment as one of its function to connecting society, press and government. Second, press companies shall create term and condition as general user content and announced on their website and approve by the citizen journalists. By create, this citizen journalist shall understand their rights and obligations. However the most important of this term and condition is a commitment to strictly to implementing by routinely control, manage and take proportional action for citizen journalist's information, critics, opinions and news which violating the laws by check, edit and delete the contents with or without a report from other user or society.

REFERENCES

- Adji, I. S. (2008). *Hukum dan Kebebasan Pers* (1st Edition). Jakarta: Diadit Media.
- Barret, J. (2011). *Submission to the New Zealand Law Commission: The News Media Meets 'New Media': Rights, Responsibilities and Regulation in the Digital Age* (IP27). Retrieved October 18th, 2013 from http://www.lawcom.govt.nz/sites/default/files/publications/2012/04/2_dr_j_barrett_open_pol_ytechnic.pdf.
- Bentley, C. H. (2008). *Citizen Journalism: Back to the Future?* Discussion paper presented at the Carnegie-Knight Conference on the Future of Journalism, Cambridge, MA June 20- 21, 2008. Retrieved October 18th, 2013 from http://citizenjournalism.missouri.edu/researchpapers/bentley_cj_carnegie.pdf.
- Feng, C. (2009). *A World Wide Web Server With Embedded GIS*. Kansas: University of Kansas.
- Jurrat, N. (2011). *Mapping Digital Media: Citizen Journalism and the Internet*. London: Open Society Foundation.
- Marzuki, P. M. (2010). *Penelitian Hukum*. Jakarta: Kencana.
- Moeljatno. (2011). *Kitab Undang-Undang Hukum Pidana*. Jakarta: Bumi Aksara.
- Mythen, G. (2010). Reframing Risk? Citizen Journalism and The Transformation of News. *Journal of Risk Research*, 13(1), 45-58.
- Nordenstreng, K. (2007). Myths About Press Freedom. *Brazilian Journalism Research*, 3(1), 16-30.
- Nugroho, Y., Siregar, M. F., & Laksmi, S. (2013). *Memetakan Kebijakan Media di Indonesia*. Jakarta: Centre for Innovation Policy and Governance.

- Prodjodikoro, W. (2010). *Asas-Asas Hukum Pidana di Indoensia*. Jakarta: Refika Aditama.
- Sjahdeini, S. R. (2010). *Pertanggungjawaban Pidana Korporasi*. Jakarta: Grafitipres.
- Smith, R. K. M, et al. (2008). *Hukum dan Hak Asasi Manusia*. Yogyakarta, Indonesia: PUSHAM UII.
- Subekti, R., & Tjitrosudibio, R. (2009). *Kitab Undang-Undang Hukum Perdata*. Jakarta: Pradnya Paramita.
- Subekti. (2008). *Hukum Perjanjian*. Jakarta: Intermasa.