
Probe Method Implementation for Learning Pseudo Trial Press for Enforcers

Dewi Gunawati & Muh. Rustamji

Sebelas Maret University
Jl.ir.Sutami No.36,Surakarta Indonesia
dewigunawatiuns@yahoo.co.id , hatchi_ajie@yahoo.com

Abstract: The study aims to obtain a method for learning pseudo trial press law for law enfocers. The design of this study is action research (participatory research actions) that combines legal research and studies in the education sector. Normative research methods and sociological studies used appropriate phasing in each year. The types of data used in this study include primary and secondary data. Data collection methods are interviews, questionnaires, and literature. Data processing is carried out through the stages of editing, coding, tabulating, analysis technique using inductive and deductive thinking. Observation of actual handling of the case became the foundation for the further utilized to formulate the appropriate method of fictitious court press law. In the first year of this study produced findings: a) identification of two dominant factors typically by law enforcement officials in the press dispute, namely the use of Criminal Code offences and negation case particularities press, b) finding the distinctiveness criteria law enforcement press located on the right to reply and the role of Press Council in the settlement release applied to the fictitious trial methods, c) learned of discrepancies in the prototype method fictitious court press law enforcement against actual practice in the field of press due to the design of learning in the one directions and instructional issues that are not collaborative. Furthermore, the result of this study indicate that a) the dominant factor affecting the typical law enforcement official in the press dispute actually consists of the application of the dominant offense in the Criminal Code as an affroat legal snares for members of the press, and did not understand the uniqueness of dispute settlement in the groove press releases as Act mandated by the press, b) Uniqueness lies in the settlement conference where the submission of the right of reply, complaints to the press council, until the publication of the Press Council recommendation that preceded the litigatif, c) discrepancies prototypoe artificial methods of learning trials with the reality of law enforcement is due to the instructional design of the course and instructional problems that actually can be parsed by the collaborative

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1. INTRODUCTION

Criminal Sanctions of the defamation offense as regulated in Article 310 and 311 of the Indonesian Criminal Code (KUHP) had been deemed too mild. The desire to revise the sanctions on defamation came from the Head of People Representative Council, Marzuki Alie, following the publication of a book entitle 'Dismantling Cikeas Octopus behind the Century Bank Scandal' written by George Junus Aditjondro of which the contents were considered as defamation of the President, Susilo Bambang Yudhoyono (SBY). Efforts to aggravate the sanction were not without causes. This former Secretary General of Democratic Party stated that, 'because the sanctions were minor and the handling processes were long, it made people unwilling to report to law enforcement agencies' (*Harian*

Rakyat Merdeka, December 29, 2009).

Observing this phenomenon, Higher Education Institutions, particularly Faculty of Law has great potential in creating new generation law enforcers who are humanist-technologist (Satjipto Raharjo, tt: 5) having law integrity and idealism to safeguard the freedom and independence of the press. Law enforcers clearly understand the roles and profession certainly will use the offense set out in the Indonesian Criminal Code (KUHP) (R. Susilo, 1996: 2) in encountering press cases, but rather using the mechanism of press settlement as stipulated in Law No. 40 of 1999 on Press. Unfortunately, the opposite is actually the case. Therefore, the method of earlier introduction of press cases becomes essential. It is also required a new approach in legal education which trains legal knowledge

along with the ability to analyze legal skills with the perspective of the press through legal theories, doctrines and basis combining proximity empirically in a pseudo trial learning method apparent in press learning activities for law enforcers and prospective law enforcers (law students).

2. RESEARCH METHODS

This research design was participatory actions research (M. Atwi Supaman. 2005: 38) combining legal research and education research. Therefore, juridical normative or juridical sociology research methods were used in accordance with research staging every year. Implementation of the research in the first year, inductive-deductive study was conducted on dominant factors affecting typical law enforcement by law enforcers in handling press disputes. Inductive-deductive study was also intended to find certain criteria in the analysis of application design of a pseudo trial method in press law learning for students as prospective law enforcers, as well as for law enforcers. Directive to conduct an assessment on the prototype synchronization of pseudo trial method in press law teaching was also carried out with the cooperation of the Press Legal Aid Institute (LBH) Jakarta and the Press Council, on the proceeding practice of law enforcement officers, especially in press law enforcement. This action approach was adapted to the research object in the form of a learning process that took place in quite a long time, this condition required the involvement of the researcher in these activities. To obtain sufficient fulfillment of the data in the preparation of press pseudo trial learning model as defined in the objectives and urgency of research, it was required main location and supporting location representative in conducting the research. The main location was directed from the Press Council, Press Legal Aid Institute Jakarta, Laboratory of Legal Studies at the Faculty of Law incorporated in the Central Java and Yogyakarta Regions, and local Pseudo Trial Community. The types of data the researcher used in this study were from primary data and secondary data. The data collection methods used in this action research were, namely; interviews, questionnaires, and literature study (Mohammad Nazir. 1985: 234). In a

quantitative research, data processing was generally carried out through editing, coding and tabulating (Burhan Bungin. 2005: 25).

3. DISCUSSIONS

3.1. Identification Analysis of Typical Law Enforcement Dominant Factors by Officers in Press Dispute.

Dominant factors affecting typical law enforcement by officers (investigators, prosecutors, and judges) in press disputes actually consist of two dominant factors. On one hand, the dominant factor of defamation offense application in the Indonesian Criminal Code as the punishment for the press, becomes the main factor successfully revealed. The second factor, is being unable to understand the distinctiveness of press dispute settlement the in the press dispute settlement flow as mandated by the press law.

3.1.1. Dominant Factors of Defamation Offense Application in the Indonesian Criminal Code as punishment for the Press

Based on cases dissection, it can be revealed that the tendency to use of defamation, false news and slander clauses are still commonly found in law enforcement in the field of press, showing the first dominant factor that is the use of causes related to defamation offense in the face of freedom of expressing thoughts and opinions through the press. Therefore, the use of Indonesian Criminal Code dominant factor in the later stages is no longer distinguish whether the committed act is an individual act attacking a person's dignity, or even revealing the truth to the general public by the press. At the end, the synchronization between defamation offense and the consistency of protecting freedom of speech is no longer a comparison in the field of law enforcement in the press. In fact, when examined in more detail in order to find the corridor of assuring press freedom and freedom of expressing thoughts and opinions juxtaposed with law enforcement of the press, it will be found two stages of synchronization that is vertically between the laws of positive law (Indonesian Criminal Code, Press Law, Information and Electronic Law) on the Constitution, and horizontal synchronization between the positive law products.

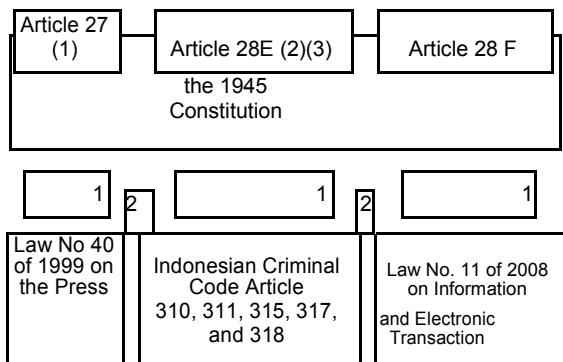


Figure 1. Schematic of Typical Press Cases

With regard to the vertical and horizontal synchronization schematic performed on 1945 Constitution, Indonesian Criminal Code, Press Law, and UU Information and Electronic Law above, it can be seen a variety of synchronization as follows;

a) Based on vertical synchronization elaboration between the Indonesian Criminal Code and 1945 Constitution, it can be seen unsynchronized defamation offense regulations, directed to the press that runs the journalistic function.

b) Considering the relationships pattern which demonstrates the sustainability of the arrangement between the Press Law and the 1945 Constitution, it is not difficult to argue that there is a consistent synchronization pattern between the two law products concerned. It means that in the composition of a vertical arrangement, these two pieces of law products are not diametrically mutually negated in ensuring press freedom and freedom to express thoughts and opinions for citizens as human rights and constitutional mandate.

c) Drawing conclusion of the 1945 Constitution on Information and Electronic Transaction Law, there are two points of Information and Electronic Transaction Law arrangements to guarantee press freedom and freedom to express thoughts and opinions which can be known the part synchronization showing the phenomenon of 'double-edged sword'. It said that the phenomenon of 'double edged sword' reoccurs in the arrangements of Article 27 in conjunction with Article 45 of Information and Electronic Transaction Law because, on the one hand the provisions of Article 27 in conjunction with Article 45 in the body of the Information and Electronic Transaction Law gives the press freedom of expression and opinion, but at the same time the press can be hostage with punishment of imprisonment and / or fines, which are ready to

threaten for a criminal offense committed.

d) Discussing synchronization of Press Law on the Indonesian Criminal Code, it is known that the two norms in two different provisions of the law if they do not take the middle way in enforcement, immediately it can clearly be known the existence of discrepancies that may happen.

e) If assessed the relationship, Information and Electronic Transaction Law and the Indonesian Criminal Code has a good synchronization in the restriction of freedom of expression and thought and freedom of the press.

f) As for the synchronization between the Press Law and the Information and Electronic Transaction Law, there are two level possibilities of synchronization, if the Information and Electronic Transaction Law on Article 27 in conjunction with Article 45 is not aimed at regulating the press activities because it is heading the reporting code of conduct, and does not target the press as a target of arranging the clause concerned, then freedom of the press and freedom of expression and thought are certainly assured. At a later stage, this exception would indicate a harmonious synchronization between the Press Law and the Information and Electronic Transaction Law. But if otherwise, the press is also included in the scope of legal subjects, either individually and as a social entity, education, or business, without any exceptions before the law, then what happen is discrepancy between the two laws products concerned.

3.1.2. Typical Press Dispute Settlement in the Press Case Settlement Workflow

Handling of criminal offenses relating to the press has its own uniqueness and procedures. The handling procedure uniqueness of crime of press criminal offense is examined from the legislation, criminal elements, determination of fault, proving criminal offense, as well as the handling workflow.

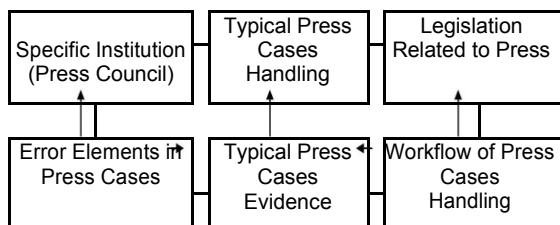


Figure 2. Schematic of Typical Press Cases

Based on the schematic above, the handling of press cases involves special institutions that are not found in law enforcement in other cases, either ordinary or extraordinary crime. The special institution concerned is the Press Council.

Under the Article 5, paragraph (2) of Law No. 40 of 1999 on the Press, Press Council functions include establishing and overseeing the implementation of the Code of Ethics of Journalism and giving consideration and trying to resolve public complaints on cases related to press reports. But if the case concerned has been dealt with by the police, the Press Council will not deal with them.

If there is a complaint, the Press Council will seek consensus between the complainant and the media complained. However, if no consensus is reached, the Press Council will conduct further examination. It is conducted by the plenary session that will result in the assessment and recommendation statements sent to the parties and made public. At a later stage, the press company complained is obliged to obey the Assessment and Recommendation Statements. If such assessment and recommendations are not followed, the Press Council will make further recommendations, among others, that the case is handled by the police or sued civilly by parties who feel aggrieved over reports published.

Through the plenary mechanism by the Press Council, there is typical examination workflow and precedes the law enforcement process as it is known. On the side of the press, there appeared some new evidences that have not been recognized in Article 184 of Indonesian Criminal Procedure Code (KUHAP). Those evidences are, among others; 1) Journalism works published. In this regard the object of press criminal case must be based on the news, print, electronic and Internet media. Therefore, news is the main proof to undertake an examination of evidence. Referring to the provisions of Law No. 11 of 2008 on Information and Electronic Transaction Law, it is known that reporting both in print and via the Internet and recordings, is usable and valuable as evidence. 2) Interview Request. Evidence that can show whether a journalist has sought earnestly confirmation steps against those who feel aggrieved, is requesting an interview. The interview request form can be reached by a variety of conventional ways, such as through an official letter, telephone, short messages (SMS), facsimile, email, or other appropriate means. 3) Interview record, this evidence is intended to show whether the making of a piece of news is based on a clear and confirmed source. 4). Assessment and Recommendations Statements of the Press Council. Statement of the Press Council on a news complaint is authentic evidence because it is decided in a plenary session on the alleged violation of journalistic ethics on journalistic work above mentioned. 5) The right of reply. The existence of the right of reply is used in press case evidence in

connection whether the press making a mistake has been serving the right of reply of those harmed. If it serves no right of reply, it will result in the violation of journalistic ethics and law violation. Therefore, the element of error in press case is not solely related to law violations, but having to do with compliance with regulations of journalism work standards and broadcasting codes of conduct and related provisions of the journalism code of ethics.

3.2. Criteria of typical Press Law Enforcement in Design Analysis of Pseudo Trial Method Application.

Sequentially, the workflow of the press case settlement begins with filing the right of reply, a complaint to the Press Council, until the issuance of recommendation from the Press Council. If the early stage brings up the recommendation of case handling by law enforcement officers, then the actions of inquiry, investigation, prosecution until the examination before the trial, are subsequent law enforcement actions.

The existence of the right of reply submission is the main thing that must be taken by those who feel aggrieved by a reporting. In this regard, the press must serve the right of reply. If the press does not fulfill the right of reply for the aggrieved party, then the aggrieved person may make a complaint to the Press Council. Of the complaint from the party whose right of reply is not answered, the Press Council will mediate between the aggrieved party on the news published, and the press company. If the mediation process does not obtain a solution for the disputed issues, the Press Council will hold a plenary session to issue a statement of the assessment and recommendation on the complaint journalistic work. The next step after it is obtained the statements of assessment and recommendation from the Press Council, there are two possibilities that can be presented. If the assessment and recommendation state that it is not found violations of the Journalism Code of Conduct and compliance of journalism work procedures, then the case is completed. Nevertheless, if the assessment of the press council state that there are violations of the Journalism Code of Conduct in the complained journalism work, then the recommendation in civil and criminal path can be followed to law enforcers in the realm of litigation.

3.3. A Study of Prototype Synchronization of Press Law Pseudo Trial Method on Law Enforcers Actual Practices.

Problem inventory of instructional synchronization in the implementation of press law pseudo trial learning can be actually focused on learning design model that presents lesson plans and learning procedures and their implementation. Based on the research conducted, it is found obstacles lying on one direction of instructional design (teacher oriented) without trying to open up opportunities for learners to achieve the broadest experience in the learning process. The learning design is accumulated further when the latest legal developments are not accompanied by the spirit of learning after completion of legal education in college. In the end, law enforcement is performed by generalizing the handling as stipulated in the provisions of criminal procedure law as outlined in the Indonesian Criminal Procedure Code, without exception in the field of press law.

Therefore, from this phenomenon of legal practice, inventory steps of instructional problems in the implementation of press pseudo trial learning, are directed to include the determination and selection of learning support staff. Collaboration between legal practitioners of the press (Press Legal Aid Institution, the Press Council), as well as the academics is performed. Collaborative measures are taken to overcome potential barriers to the failure of repair process of press law learning based pseudo trial due to constrained teaching staffs who perceive able to teach anything without going to focus and updating information in the field of knowledge. Determination of management control is normative doctrinal in accordance with the legislation of the press synchronized with the procedures and events in the Indonesian Criminal Procedure Code. However, such things become problematic when the renewal of procedural law as in the determination of electronic evidence and probative value, for example. The identification of student population can be helped by the creation of small classes, competitive and focus rivalry atmosphere. The

collection of study materials is known to be propped up by the sophistication of information technology through the Internet that allows data up to date and the law development needed in the case study of press pseudo trial learning. The analysis of instructional 'context' places learners as well as law enforcement officers who are on the actual trial situation by playing role play of pseudo trials in a series of interactive learning, still requiring further assessment.

Conclusion

Having examined the problems and research analysis, it can be concluded three important points in the study, namely

1) Dominant factor influencing typical law enforcement by officers in press disputes actually consists of dominant application of defamation offense in the Indonesian Criminal Code as the punishment for the press, and is being unable to understand the distinctiveness of press dispute settlement the in the press dispute settlement flow as mandated by the press law.

2) Typical press case settlement lies in the existence of the filing of the right of reply, complaint to the Press Council, until the issuance of recommendation from the Press Council preceding the litigation process.

3) Unsynchronized prototype of pseudo trial learning method with by the fact of law enforcement is due to one-way learning design and instructional problems that actually can be overcame by collaborative way.

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