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Crime News Broadcasting in the Framework of Protection of the Rights of Suspects/Defendants

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Abstract

Crime news broadcasts on television are a part of press freedom to disseminate information to the public through printed or electronic media. Information delivery through electronic media such as television, particularly crime news, presents overviews of criminal events as if the audiences witness it straight from the crime scene. It shows the fact that, one on hand, crime news is broadcast widely on private television stations, while on the other hand there are rules for broadcasting crime news as regulated in Law Number 40 of 1999 on Press and Law Number 32 of 2002 on Broadcasting. Laws on press and broadcasting also regulate the establishment of Press Council that determines 'journalist code of ethics' and the Indonesian Broadcasting Commission (KPI) which sets the 'broadcast program standards and broadcasting behavior guidelines'. These institutions supervise news or broadcasting as well as individuals or broadcasters that violate broadcasting rules or code of ethics. Crime news broadcasting that displays the face and identity of suspects or defendants is a violation to the principle of 'Presumption of innocence', that an individual should be assumed or considered innocent until the court proves that he/she is guilty. Crime news broadcasts impose effects on the suspects or defendants in receiving 'due process of law', and on the public prosecutor and judge investigating the case. Therefore, crime news broadcasting should be sought to not violate the code of ethics or rules as well as the rights of suspects or defendants.

Keywords: Crime; Broadcasting; Crime News Broadcasts.

Introduction

The preamble to the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the 1945 Constitution) declares that 'Independence is the inalienable right of all nations'. This statement shows that Indonesia as a country respects the independence of every nation and, within the independence, it contains the liberty for each of its citizen. This sentence means that human rights in Indonesia honor the freedom of its citizens. In line with this provision, Marjono

Reksodiputro stated that, although a citizen had committed a despicable act, his rights as a citizen are not lost or deprived.¹ For Indonesians, honor and respect to human rights as the explanation of the second principle of Pancasila which reads ‘just and civilized humanity’, contains recognition of equality of rights and duties of human beings, treating people fairly, and upholding humanity with the spirit of the principles of Pancasila.

Indonesia is a State based on the Rule of Laws formulated in Article 1 Paragraph 3 of 1945 Constitution: ‘The State of Indonesia shall be a state based on the rule of law’, is the foundation to state administration that must be held firmly. The meaning of Rule of Law has several elements that can be described in detail in various literature, as well as approaches and the history behind it; however, it is often comparable to the concept of Rule of Law or *Rechtsstaat*.² According to Jimly Asshiddiqie, the elements of Rule of Law are:

1. Supremacy of Law;
2. Equality before the Law;
3. Due Process of Law;
4. Restraint of power;
5. Independent aid organs;
6. Fair and impartial court;
7. Administrative Court;
8. Constitutional Court;
9. Protection of human rights;
10. Democratische Rechtsstaat
11. Function as a means to realize state’s objectives (*Welfare Rechtsstaat*);
12. Transparency and social control.³

In other literature, it is stated more comprehensively and detailed as explained by Adriaan Bedner. He states that there are three categories of Rule of Law as follows:

¹ Mardjono Reksodiputro, ‘Hak-Hak Tersangka Dan Terdakwa Dalam KUHAP Sebagai Bagian Dari Hak-Hak Warga Negara (Civil Rights), (Delivered on One-Day Seminar about KUHAP Held by FHUI)’ (1990).[10].

² Adriaan W Bedner, ‘An Elementary Approach to the Rule of Law’ [2010] Hague Journal on the Rule of Law.[48-74].

³ Jimly Asshiddiqie, *Hukum Tata Negara Dan Pilar-Pilar Demokrasi* (Konstitusi Press 2006).[149].

First category: Procedural elements

- Rule by law;
- State actions are subject to law;
- Formal legality (law must be clear and certain in its content, accessible and predictable for the subject, and general in its application);
- Democracy (consent determines or influences the content of law and legal actions).

Second category: Substantive elements

- Subordination of all laws and its interpretations to fundamental principles of justice;
- Protection of individual rights and liberties;
- Furtherance of social human rights;
- Protection of group rights.

Third category: Control mechanisms (law enforcement agencies)

- An independent judiciary (sometimes broadened to trias politica);
- Other institutions charged with safeguarding elements of the rule of law.⁴

As a state based on the rule of law, respect for human rights and guaranteed equality for all before the law are the elements of Indonesia as a state based on rule of law, as stated in Article 28 D Paragraph 1 ‘every person shall be entitled to recognition, guaranty, protection, and equitable legal certainty as well as equal treatment before the law’.

According to Oemar Seno Adji, the definition of Indonesia as a state based on the rule of law is:

*“Negara hukum (rule of law) is our administrative system. It is described in the 1945 Constitution. The 1945 Constitution contains safeguards regarding human rights that should not be violated, in addition to expressing desires to balance with public interest that is protected as well. It aspires that dignity of man can be enjoyed by the people, it upholds human rights where freedom of opinion and freedom of expression are fundamental and essential for a democratic society under the Rule of Law”.*⁵

Therefore, the enforcement of law supremacy to realize the *rule of law* to achieve human rights enforcement and independent judicial process is exercised in democracy according to the principle of the state based of the rule of law.

⁴ Adriaan W Bedner, (n.2).[55].

⁵ Oemar Seno Adji, *Mass Media Dan Hukum* (Erlangga 1977).[74].

Since the reform era began in 1998, there have been many changes to Indonesia. The multifaceted changes happened in the state administration and other sectors. For instance, the freedom of opinion and freedom of expression that were restricted before the reform era arose, so that Indonesian people have freedom to express their opinion and view as well as their choice; they are free from fear of power of the ruler.

One form of the freedom is press freedom. It is in line with Article 28F of the 1945 Constitution that reads ‘every person is entitled to communicate and to obtain information for the development of his/her personality and social environment, as well as be entitled to seek, to obtain, to own, to store, to process, and to convey information by means of all kinds of available channels’. This freedom affects the delivery of information to the public through existing mass media, both in printed media such as newspapers, magazines, tabloids and electronic media such as television and radio.

Law of the Republic of Indonesia Number 40 of 1999 on the Press (hereinafter abbreviated as UU No 40/1999) in Article 1 Paragraph (1) reads ‘Press is a social and mass communication institution that operates within journalistic activities that include seeking, acquiring, owning, recording, analyzing, and disseminating information, on all forms either in written, sound, picture, sound and picture, with data and graphic in any other forms, by using printing media, electronic media and all kinds of available channel’.

The term ‘press liberty’ in Law No 11 of 1966 (Previous Press Law UU) is amended to ‘press freedom’. UU No 40/1999 Article 2 reads ‘The freedom of the press is one of the embodiments of the sovereignty of the people based upon democratic, justice, and law supremacy principles. The freedom of the press shall promote recognition and guarantee human rights, so it must be corresponding to the enforcement of human rights’.

The press has two meanings, in a broad sense and narrow sense. In the narrow sense, it refers to periodical print media including newspapers, tabloids, and magazines; while in the broad sense, the press does not only refer to periodical

print media, but also auditive electronic media and audiovisual electronic media including radio, television, film, and Internet online media. The press in a broader sense is called as mass media.⁶

This paper discusses dissemination of information through news broadcast on electronic media, which is television, particularly crime news broadcasting. This kind of news is widely broadcast by private television stations, which present interesting crime news to watch live. Below is one of the crime news broadcast on television:

“A crime news broadcasted on television showed a group of criminals busted in a raid while having a drug party at hotel. During the operation, the police cooperated with journalist equipped with camera and other record equipment. Caught red-handed, the people arrested was trying to cover their face, they were ashamed their identity will be revealed by mass media on the news. However, because television journalists wanted to see their faces for broadcasting, the police pull their hands away from their face and asked them to face the camera. Switching to other television channels, they broadcasted similar content, sometimes crueller and more offensive. The cops undercover were long-haired, chasing a thief. On the screen, we can see a police shoots into the air. While running and holding a gun, the television camera followed the chase. On the television, the thief’s face was already black-and-blue and under the pressure of police investigation, he was telling the motive behind his act”.⁷

The illustration above is a scene on television crime news. The content is mostly similar showing the criminals and types of crime committed. The differences between one to other crime news are how the news is delivered, which is at the TV station or aired live from the crime scene, news duration and airtime. Basically, the aim is the same, which is broadcasting crimes to the audience. Information dissemination in the form of crime news broadcast can create unfair condition or trial by the press on the criminals and it indeed affects ‘*due process of law*’ for them.

The term due process of law means fair judicial process, which, according to Tobias and Petersen, derives from Magna Carta (1215), reads: ‘constitutional

⁶ Haris Sumadiria, *Jurnalistik Indonesia Menulis Berita Dan Feature Panduan Praktis Jurnalis Profesional* (Simbiosis Rekatama Media 2005).[31].

⁷ Eriyanto, *Kekerasan Sebagai Hiburan Analisis Tayangan Kriminalitas Di Televisi, Edition I Year II* (JENTERA 2004).[33].

guaranty...that no person will be deprived of life, liberty or property for reasons that are arbitrary...protects the citizen against arbitrary actions of the government', therefore minimal elements of 'due process' are: "hearing, counsel, defense, evidence and a fair and impartial court".⁸

In due process of law, the first principle followed by criminal justice system is presumption of innocence. According to Marjono Reksodiputro, this first principle reminds society (also police, prosecutor, and judge) that an individual is innocent until proven guilty.⁹

Law of the Republic of Indonesia Number 8 of 1981 on Law of Criminal Procedure (State Gazette of 1981 Number 76, Additional State Gazette Number 3209, hereinafter abbreviated as UU 8/1981) defines presumption of innocence: 'A person accused, arrested, detained, prosecuted, or brought before a court of law fall under the presumption of innocent until found guilty by final and binding judgment'.

Basically, this principle states that a person is assumed innocent until he/she is proven to be guilty by a court. It means that, in a judicial process, the defendant must be proven guilty based on the evidence at trial. A fair trial is the right of a suspect or defendant in a country based on law. According to Mardjono Reksodiputro:

"A fair trial must provide an opportunity for the suspect or defendant to have his opinion heard, make a defense, facts must be presented based on evidence, fair and impartial court, and the right to accompanied by a legal advisor (counsel) in dealing with charges".¹⁰

Indonesian laws respect individuals. A person cannot be accused guilty until there is a final court verdict. Prior to such verdict, even though a person is in a trial process, that person must still be respected for his rights to obtain a due process of law.

Law of the Republic of Indonesia Number 32 of 2002 on Broadcasting (State Gazette of 2002 Number 139, hereinafter abbreviated as UU No 32/2002) Article 2 states that 'Broadcasting shall be operated based on Pancasila and the 1945

⁸ Marjono Reksodiputro, *Hak Asasi Manusia Dalam Sistem Peradilan Pidana* (Pusat Pelayanan Keadilan dan Pengabdian Universitas 2007).[27].

⁹ *ibid.*[112].

¹⁰ *ibid.*[112].

Constitution of the Republic of Indonesia by upholding the principles of benefits, justice and equitability, legal certainty, security, diversity, partnership, ethics, independence, freedom, and responsibility'. It indicates that Law of Broadcasting requires broadcasting with freedom and responsibility, and pays attention to other aspects that can be caused by a broadcast, such as aspects of benefits, security, and legal certainty, all of which are in accordance with the values contained in Pancasila and the 1945 Constitution.

Broadcasting behavior guidelines and broadcast program standards (P3 & SPS) regulated in Law No. 32/2002 also impose restrictions on the delivery of broadcast programs that are deemed to bring negative effects or may offend fundamental values shared by various groups or audience.¹¹ Restrictions as stated in Article 40-point c state that journalistic broadcast programs shall apply the principle of presumption of innocence in reporting or broadcasting journalistic broadcast programs and shall not make judgments. Furthermore, in the fifth section on the reporting of court hearing, legal cases and death penalty it is stated in Article 46 that live broadcast programs or prerecorded broadcasts at court hearings must comply with the provisions for classifying broadcast programs as stipulated in this regulation. Likewise, Article 43 regulates broadcast programs containing violence and/or crime in journalistic broadcast programs which must comply with the following provisions: Point f: concealing face and identity of victims of sexual crimes and their families as well as the suspect of sexual perpetrators and their families. Point g: concealing face and identity of the perpetrator, victim and the family of the perpetrator whose perpetrators and victims are minors.

Nowadays, crime news on broadcasts television is a manifestation of freedom, that is the freedom of press to provide information to the public in which the public also has the right to obtain information, including information on the implementation of the criminal justice system. According to the author, the rise of crime news broadcasts by private television stations is because of the

¹¹ Law Of The Republic Of Indonesia Number 32 Of 2002 On Broadcasting 2002.

increasing enthusiasm of viewers who want to obtain interesting and up-to-date information. It is indeed related to economic value, which is then followed by other television stations.

The laws (the 1945 Constitution, UU No 32/2002, Law of Press, UU No 8/1981) regulate the freedom in news broadcasts and also regulate the protection of the rights of suspects/defendants in the judicial process. The 1945 Constitution Article 28 J Paragraph (1) reads 'Every person shall respect human rights of the others in the order of life of the society, nation, and state', Paragraph (2): 'In exercising of his/her rights and freedom, every person shall abide by the limitations stipulated by the laws with the sole purpose of guaranteeing the recognition as well as respect for the rights and freedoms of the others and in order to comply with fair lawsuit according to considerations for morality, religious values, security, and public order in a democratic society'. Therefore, each of these rights must be respected for the right of the freedom of crime news broadcasting and not contradicting the rights of the suspects/defendants and the principles in law, including the principle of presumption of innocence. So, this paper discusses about:

- 1) Review on crime news broadcasting;
- 2) Review on the rights of suspects/defendants in legal process;
- 3) Crime news broadcasting that does not violate the rights of suspects/defendants.

Review on Crime News Broadcasting

UU No 32 / 2002 defines broadcasting as an activity of broadcasting through a transmitter and/or transmission facilities on land, in the sea, or in space by using radio frequency spectrum through air, cable, and/or other media that can be received simultaneously and synchronously by the public with a broadcast receiver.

Broadcasting according to the *Great Dictionary of the Indonesian Language* (KBBI) is a process, method, act of broadcasting. Broadcasting contains messages or series of messages in the form of audio, visual, or audio visual in the form of graphics, characters, whether interactive or not, which can be received through a broadcast receiver. Broadcasting is performed by various types of media, one of

which is through television. Television is a mass communication medium with a view which disseminates ideas and information in the form of audio and visual in general, both open and closed, in the form of regular and continuous programs.

Definition of news according to KBBI is:

- a. report on latest event or incident;
- b. information (especially the official);
- c. press report.

Therefore, the definition of reporting according to KBBI is a process, action, and way of delivering news (reporting, proclaiming; news, announcement). Types of news based on the content can be classified into: religious news, educational news, scientific news, political news, economic news, legal and court news.¹²

Crime news is one of the news that is interesting and has a big audience. People watch or read crime news to find out how the incident happened so that it can be used as a lesson for them to avoid it or at least not become a victim of similar crime. On the other hand, (negative side) someone reads or watches crime news to use it as a 'lesson' for him to become a more advanced criminal. Based on the negative side of crime news broadcasts, many people disagree if crime news describes in detail how the events happened and the consequences following these events.

Conveying information is the right of every individual who is protected by the state. The 1945 Constitution in Article 28 F states that 'Every person is entitled to communicate and to obtain information for the development of his/her personality and social environment, as well as be entitled to seek, to obtain, to own, to store, to process, and to convey information by means of all kinds of available channels'.

Freedom to convey and obtain information is one of the human rights, which is inherent dignity of men, thus these rights are inalienable and inviolable.¹³ According to John Locke, natural rights consist of the rights to life, the rights

¹² Asep Saeful Muhtad, *Jurnalistik (Pendekatan Teori Dan Praktek)* (PT Logos Wacana Ilmu, 1999),[131].

¹³ Marjono Reksodiputro.(n.1).[161].

to freedom, and the rights to private property.¹⁴ These rights are regulated and protected by the state as a condition because the people have given up some of their rights to the state, so it is obligatory to give protection to the human rights. The state does not have the right to revoke the human rights, the right to life, freedom, health and private property because these rights are stronger than the rights of the state. In its development, human rights are further regulated in the Universal Declaration of Human Rights or UDHR, which accommodates the rights to life, the rights to freedom and the rights to private property. In its development, human rights are further regulated in the UDHR, Article 19 which reads ‘Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers’.

Rights of suspects/defendants in criminal justice process

UU No 8/1981 as one of the positive laws in Indonesia which prioritizes the protection of the rights of suspects, defendants, and convicts in a legal process. This is a legal aspect that must be considered by the press, in this case the Television Broadcasting Institution in terms of reporting related to the legal materials. UU No. 8/1981 as a replacement for HIR brought fundamental changes to the justice system in Indonesia. The change from the inquisitor system to the accusator system puts the fundamentals of humanity and human rights as the basis for the criminal justice process in Indonesia. According to Yahya Harahap, the accusator system puts a suspect or defendant as the subject at every level of investigation in the criminal justice process.¹⁵ Therefore, the suspect or defendant is considered the subject of investigation and is given all the rights to defend himself in every judicial process.

The right to be presumed innocent in any judicial process in Article 11

¹⁴ W Friedmann, *Teori Dan Filsafat Hukum, Telaah Kritis Atas Teori-Teori Hukum, Translated by Mohamad Arifin* (Rajawali 1990).[80]

¹⁵ M Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP (Penyidikan Dan Penuntutan)* (Sinar Grafika 2002).[41].

Paragraph (1) stipulates that every person sued with a criminal offense is presumed innocent until proven guilty according to law in an open court where he/she has obtained all the guarantees needed to their defense.

International Covenant on Civil and Political Rights which was later stipulated through ratification into Law of the Republic of Indonesia Number 12 of 2005 (State Gazette of the Republic of Indonesia of 2005 Number 119, hereinafter abbreviated as UU Number 12/2005) on Ratification of the International Covenant on Civil and Political Rights, states in Article 13 that 'the right to the presumption of innocence is for everyone accused of committing a crime'. Article 6 Paragraph 2 states 'Everyone who is sentenced to a criminal penalty can be presumed innocent until proven guilty according to law'. Therefore, a person is not guilty until he is proven guilty according to law, before being proven guilty he could not be deemed guilty.

Law Number 39 of 1999 on Human Rights (State Gazette of the Republic of Indonesia of 1999 Number 165, hereinafter abbreviated as UU No 39/1999), regulates about the rights to protection in Article 29 Paragraph 1 which reads 'Every person has the right to protection of the individual, family, honor, dignity, and property', and Paragraph 2 reads that every person has the right to recognition before the law as an individual wherever he/she is.

Presumption of innocence is also regulated in UU 39/1999 Article 18 Paragraph 1 that 'Every person arrested, detained, or sued for a penal offence has the right to be presumed innocent until proven guilty according to law in a court at which he has had all the guarantees necessary for his defense, in accordance with provisions of the legislation'.

Law Number 48 of 2009 on Judicial Power (State Gazette of the Republic of Indonesia of 2009 Number 157, hereinafter abbreviated as UU No 48/2009), in its explanation asserts that Indonesia is a nation that is based on rule of law. Thus, one of the important principles of the rule of law is the guarantee of an independent judicial power, free from the influence of other powers to exercise justice in order to enforce law and justice. Article 3 Paragraph (1) sets that, in exercising its duties

and functions, judges and constitutional judges are obliged to maintain judicial independence. The meaning of Article 3 (1) 'judicial independence' is free from any interference of external parties and free from any pressure both physical and psychological pressure. It indicates the importance of this principle in carrying out fair and impartial judicial process. This principle provides guarantees for all to be treated equally in the criminal justice process against all types of crimes.

In principle, the presumption of innocence is mentioned in UU 48/2009 Article 8 paragraph 1, which reads: 'Any person who is suspected, arrested, detained, prosecuted, or confronted before a court of law is deemed innocent before there is a decision of court that states his guilt and has obtained a fixed legal force'.

Therefore, the regulation regarding presumption of innocence has been regulated in various laws and regulations as contained in the element of the rule of law, by providing recognition and protection of human rights as stated in the second amendment to the 1945 Constitution: 'For the purpose of upholding and protecting human rights according to the principle of a democratic and law-based state, the implementation of human rights shall be guaranteed, regulated and set forth in laws and regulations'. (Article 281 Paragraph 5 Second amendment to the 1945 Constitution)

Crime News Broadcasting that Does Not Violate the Rights of Suspects/Defendants

Crime news broadcasting depicts live incidents when the defendant is arrested, handed over to the police, interviewed or enquired by the judge. Viewers of crime news can also directly hear, witness events in a trial so that the public will come to their own opinion about the acts committed by the defendant.¹⁶ Criminal news broadcasting at the crime scene or during the examination of cases in court is reported live by journalists from print and electronic media by highlighting the faces

¹⁶ George Kelling Mark H Moore and Robert C Trojanowicz, 'Crime and Policing' [1988] National Institute of Justice, U.S. Department of Justice, and the Program in Criminal Justice Policy and Management, John F. Kennedy School of Government, Harvard University.

of the perpetrators so that viewers can see them directly through news broadcasts on television. Some of the reasons for television broadcasting to reveal the face of the defendant are to give shame punishment or to depict to the public about the crimes committed by the defendant, and to provide information so that the public knows the crimes around them.

The principle in criminal procedural law states ‘the presumption of innocence’, which basically means that every person who is suspected, arrested, detained or confronted in front of a court of law is deemed innocent before there is a court decision that states his guilt and has obtained a fixed legal force. It means that the suspect or defendant is treated as innocent if he/she has not been proven guilty in a trial, thus the defendants or suspects are presumed innocent as the embodiment of a due process of law.

The principle of presumption of innocence respects the human rights of an individual who is suspected of having committed despicable acts or violating the law and he/she also has the right to be proven in a trial and to provide evidence to prove that they are innocent. Unlawful act of the defendant or suspect must be proven first through an examination process in court to determine whether he/she is suspected of committing a crime. Therefore, the presumption of innocence is one of the main principles in criminal law.

Revealing of identity and face of the perpetrator in news will indirectly form an opinion of the audience about the actions committed by the defendant. The words conveyed by a crime news anchor that lead to a conclusion will certainly corner the suspect or defendant. In some crime news, the presenters express opinions in their own words that provide reasons for the crime reported. This way of conveying opinion is not a legal fact, but only an opinion or assumption of crimes based on the results of reporting in the field, which is then aired into crime news with comments from the presenters compiled based on their intuition, which leads to an opinion.

The delivery of crime news has two sides, on one side, it is for the benefit of the public who want to obtain information, but, on the other, the delivery of crime news that reveals the identity and face of the defendant can create ‘trial

by the press' against the perpetrators and can affect a 'due process of law' for the defendant.

In a legal process, a suspect or defendant who commits a crime has the right to be heard, to obtain legal counsel, defense, evidence and a fair and impartial trial.¹⁷ Discussing about the 'due process of law', it is firstly explained that the principle in criminal justice process is the principle of presumption of innocence and then this principle will create a due process of law for the defendant or suspect. The principle of presumption of innocence states that a person is innocent for committing a crime until proven that he/she is guilty. Therefore, in a judicial process, the defendant is considered to be guilty after he/she is proven to be guilty based on the evidence at trial. When the defendant has not proven to be guilty, so he/she must be treated as innocent. Furthermore, a fair trial is the right of suspects or defendants in a country based on the rule of law. So, a fair trial must provide an opportunity for the defendant to have his opinion heard, to make a defense, to submit facts based on evidence, to have a fair and impartial trial court, and to be accompanied by legal counsel in dealing with charges. The explanation of these elements is as follows:

1. *Hearing* means that a person must have his/her statement heard (must have the right to be heard) and is allowed to defend his/her rights through legal assistance,
2. *Defense* is the right to self-defense. Suspects or defendants have the right to file a defense,
3. *Evidence* is to meet complete evidence in declaring guilt on someone,
4. *Counsel* is legal assistance. In each case of criminal procedure, the suspect/defendant not only has the right to be present in the examination until the trial, but also obtain legal assistance,
5. *A fair and impartial court* is the procedure for judicial procedures that cannot be impartial and there should be a rehearing before the judge gives his decision which is carried out in a quick and open proceeding, as well as the right to appeal.

In crime news broadcasts as stated above, the identity of the suspect or defendant who committed a crime is clearly displayed. The identity of the suspect or defendant in crime news broadcasts is clearly and openly a form of violation of the presumption of innocence. The revelation of the identity of the suspect or defendant is a form of

¹⁷ Mardjono Reksodiputro (n 1).

trial by the press, which can be interpreted as a punishment by crime news for the suspect or defendant. This is contrary to the principle of presumption of innocence which assumes the suspect or defendant is innocent, since it has been preceded by revealing the identity of the suspect or defendant in crime news. Therefore, the rights of the suspect or defendant to obtain a due process of law have been violated.

Crime news broadcasting on television nowadays does not protect the rights of the perpetrators and the rights of the public.¹⁸ The right of the public is to obtain more quality information; information that can improve analytical skills qualitatively is also violated. Crime news broadcasting has violated individual rights because, even though that person is a criminal, his rights as an individual should not be forfeited.¹⁹ Therefore, it is still important to protect his rights as a suspect in criminal news reports.

In a liberal, democratic society both are compatible in people's lives, so this is not a problem. However, in a traditional feudalistic society as we have in Indonesia, this is very difficult because the basic idea is different from the idea of our society, regardless its context. If the following event is dictation from the television station to the public, it will be ashamed because the public has never had the opportunity to provide adequate responses.

According to the author, crime news broadcasts should be limited as a filter to avoid excessive broadcasting news on the criminal justice process, such as using initials to convey the identity and blurring the face of the defendant. The defendant whose identity and face are clearly revealed means that the crime news has ignored the legal principle of presumption of innocence for a due process of law.

According to the law, we respect private individuals. A person is treated innocent or cannot be found guilty until there is a fixed court verdict. Therefore, before the judge makes a decision, even though the person is in a trial process, his/her rights must still be respected to obtain a due process of law.

¹⁸ Charis E Kubrin and Jessica M Grosholz, 'Crime in the News: How Crimes, Offenders and Victims Are Portrayed in the Media' (2012) 14 *Journal of Criminal Justice and Popular Culture*. [59]

¹⁹ 'The International Bill Of Human Rights'.

Crime news broadcasting illustrates how law enforcement officers treat perpetrators in handling a case. If what is displayed is chasing the perpetrator with a gun, this gives an image of a very repressive law enforcement that emphasizes violence fights violence and this is not necessary. It is because the apparatus (police) with a new paradigm of serving, protecting the community appears as a ruthless figure, so television needs to filter it out. In broadcasting crime news related to the law, it is necessary to consider whether the news will affect law enforcement. If so, the judicial process should be free from any interference as a measure of intervention. Therefore, the future HAP is expected to be more open, incorporating human rights substances into legal rights so that there is a remedy. For example, to perpetrators who are treated inhumanely during the handling of their cases, there must be a mechanism so that they can remedy their rights if treated inhumanely, violating the human rights that are actually attached to them.

As proposed by Mardjono Reksodiputro in the introductory chapter: 'Even though a citizen has committed a disgraceful or very despicable act (thus causing social unrest), his rights as a citizen are not forfeited or lost (whether as suspect, defendant or convict)'. Therefore, suspects or defendants who commit crimes should be given an opportunity to make improvements to his or her behavior without losing their rights as citizens. The revealing of identity and face of the suspect or defendant in crime broadcasts will give negative excesses to the defendants or suspects.

In Indonesian national law, there are legal instruments that regulate the protection of the rights of suspects and defendants in criminal justice process. In general, it is stated that the function of criminal procedure law is to limit the power of the state in acting against citizens who are involved in the criminal justice process. These provisions protect the rights of suspects and defendants in the criminal justice process, the implementation of human rights and their obligations. The HAP provisions also regulate protection regarding the 'citizen rights' of suspects and defendants contained in 10 principles, which are divided into seven general principles and three specific principles in order to regulate the protection of human rights and dignity.

The general principles are:

1. equality before the law, no discrimination;
2. presumption of innocence;
3. rights to obtain compensation and rehabilitation;
4. rights to obtain legal assistance;
5. rights to appear at court;
6. independent judiciary that is conducted quick and simple; and
7. open court.

While the specific principles are:

1. violation to citizen rights (arrest, detention, search and confiscation) must be based on law and carried out by order (written);
2. rights of suspects to be informed of the suspicion and the charge against him; and
3. obligation of the court to control the implementation of its decisions.²⁰

By paying attention to the principle of presumption of innocence, crime news broadcasting that clearly reveals the identity and face of the defendants violates the rights to be enforced in the criminal justice process in Indonesia, that is providing protection to suspects or defendants by upholding human rights.

As stated above, treatment to be considered innocent until proven guilty according to law in a trial process is contained in the principle of presumption of innocence. The right to be presumed innocent until proven guilty in a trial has been established as one of the core rights of persons who are suspects or defendants in most international instruments.

Even though the defendants or suspects have committed a despicable act, the revealing of the identity and face of the defendants clearly makes the defendants receive discriminatory treatment before the law. Unbalanced news broadcasting also causes unfavorable consequences for the defendant or suspect. For example, two perpetrators who committed the same crime have different news broadcasting because one of the suspects or defendants is a public figure will cause the news

²⁰ Mardjono Reksopidputro, *Hak Asasi Manusia Dalam Sistem Peradilan Pidana (Kumpulan Karang Buku Ketiga)* (Pusat pelayanan keadilan dan pengabdian hukum Lembaga Kriminologi Universitas Indonesia 1994).

to lead to opinions that marginalize the suspect or defendant. This violates the principle of equal treatment before the law, without any discrimination.

Revealing of the identity and face of the perpetrator will indirectly form an opinion of the public in general about the actions committed by the defendant. Thus, if in the trial process, the defendant is not proven to have committed a crime, this will have an impact on the independent judicial process. Law enforcers will get the spotlight if they decide cases that are not as desired by the public even though they only know the news in parts and it is only based on information from news originating from print media or electronic media.

The section on the right to obtain justice in Law Number 9 of 1999 on Human Rights, Article 18 Paragraph 1 states that every person who is arrested, detained and prosecuted because he is suspected of committing a criminal act has the right to be considered innocent until proven guilty in a court and given legal guarantees that are treated for his defense, in accordance with the provisions of the legislation. Defendants or suspects have the right to be presumed innocent until proven guilty. This implies that defendants or suspects cannot be revealed or broadcast in detail and clearly in regard to their identity and face in a criminal broadcast. This is because of the unfinished judicial process so that, if it is broadcast, it appears that the suspects or defendant are assumed guilty and that means that it precedes the court's decision. Broadcasting of crime news can be carried out as long as what is reported is about clear facts and does not precede the judge's decision as well as news does not clearly and openly reveal the identity and face of the perpetrator.

Provisions for the protection and enforcement of human rights are established to avoid violation. One of the most important parts of the rights of suspects or defendants in the judicial process is the right to be presumed innocent. The UDHR stipulates the presumption of innocent in Article 11 (1) which states that any person charged with a criminal offense is presumed innocent until proven guilty according to law in an open trial and in that trial all the necessary guarantees are given for his defense. This means that everyone has the right to be presumed innocent until proven guilty. Therefore, this right is one of the core rights of the accused person to be presumed innocent.

The Universal Declaration of the Right to Personal Liberties (Article 12) essentially states that no one can be arbitrarily interfered with personal affairs, family, household or correspondence, nor is it allowed to violate honor and reputation. Everyone has the right to be protected by law against such disturbances or violations. Broadcasting the identity and face of the defendants will attack his/her personality and violate his/her dignity and image, as the broadcast is not based on the consent or desire of the defendant.

DUHAM on Chapter 7 regulates equality before the law in Article 7 which states that people are all equal before the law and without any discrimination and are entitled to have equal legal protection.²¹ Everyone has the right to equal protection from any discrimination violating this declaration and from any incitement to that discrimination. As stated by John Locke, Human Rights include:

1. natural right consists of right to life;
2. right to freedom; and
3. right to private property.

Natural rights, the right to freedom and the right to private property are rights that are intrinsically owned, inherent in humans who are bestowed by God Almighty to every human being. These rights are inalienable rights because these rights are natural human rights that cannot be forfeited. Therefore, the state is obliged to provide protection for these rights. The protection that can be provided by the state is by making regulations that protect these rights.

Crime news broadcasts forfeit the right of the suspect or defendant to freedom. Freedom in this case means the right to refuse to be published in the news. The suspect or defendant in a crime report is an object of news so that the news will continue to be pursued and then it can be reported.²² If the news that is broadcast is watched by the audience with enthusiasm, the broadcast will always be awaited.

²¹ UNHR, 'Universal Declaration of Human Rights at 70: 30 Articles on 30 Articles - Article 7' (*UNHR Office of the High Commission*).

²² Chairul Huda, 'Asas Praduga Tidak Bersalah Dalam Praktek Pers' (2010) 2 *Jurnal Dewan Pers*. [33].

The more viewers, the higher the program rating is, but this abdicates the rights of the suspect or defendant not to be broadcast in criminal news. Broadcasting of criminal news must be based on facts; therefore, it is necessary to separate facts and opinions. If the case already has a fixed court decision, then the public is free to make opinions about the case.

In this connection, Robert Haas once said that ‘the press (electronic media) has one obligation that is to make the right report and provide information without prejudice, so people who read, hear or see is enable to have their own opinions’.²³

The freedom of press, according to Prof. Hocking, intersects with two factors, namely rights and freedoms and those who issue (‘the issuer’ and ‘producer’) and those who make these statements. The right of the press to express opinions freely must also pay attention to the rights of the public to get a fair and true report. The fair and true reporting brings the public to a healthy assessment of every general issue that is known through the news.²⁴

The implementation of press freedom (electronic media) for the delivery of crime news has limitations so that human rights to freedom of expression and freedom of information do not conflict with the basic rights of others which are protected by law. Restrictions on freedom of expression and freedom of information, according to Article 10 (2) of the European Convention on Human Rights can be divided into three groups:

- a. restrictions aimed to protect the public interest (national security, territorial integrity, public safety, crime prevention, health or moral protection),
- b. restrictions aimed to protect individual rights (protecting the good name or rights of others, preventing the disclosure of confidential information),
- c. restrictions required to maintain power and neutrality in the judiciary.

Based on the description above, it can be concluded that crime news broadcasting does not violate the rights of the suspect or defendant if the broadcast is carried out without causing prejudice and is conveyed properly. However, if

²³ Robert Haas, *Hak-Hak Asasi Manusia Dan Media* (Yayasan Obor Indoensia 1998).[72].

²⁴ Oemar Seno Adji, *Mass Media Dan Hukum* (Erlangga 1984).[254].

crime news broadcasting displays the identity and face of the suspect or defendant while at the same time leads to a certain opinion that is not based on facts that precedes the judicial process and decision, then the broadcast violates the rights of the suspect/defendant.

For this reason, the delivery of crime news should have certain limitations as a filter to avoid excessive news broadcasting. Revealing the identity and face of suspects or defendants means that the legal principle of presumption of innocence and fair trial is ignored. Our laws respect individual rights. A person must be treated as not guilty or cannot be found guilty until there is a final judge's decision. Prior to the judge's decision, even though the person is in a trial process, the person must still be respected for their rights to obtain a due process of law.

Conclusion

Crime news broadcasting is the delivery of information about an act that indicates criminal acts, conveying information about victims, suspects/defendants of crimes, and law enforcement officers, the delivery of which is packaged in a broadcast using television communication media. Crime news broadcasting shows an overview of crimes that occur around the community and pictures of the suspects/defendants. Then the news presenters state the identity of the suspect/defendant clearly and are packaged into various ways such as re-illustrating the act or broadcasting live from the crime scene added with comments from the news presenter. Delivery of information is one type of rights of 'freedom' that are inherent in human dignity and this right cannot be forfeited or revoked by anyone and the state is obliged to protect these rights as protection for its citizens who have surrendered some of their rights to the state.

There are many laws and regulations regulating the protection of the rights of suspects/defendant in legal proceedings. One of which is the right to be presumed innocent in any judicial process until proven guilty at trial. The regulation regarding the right to be presumed innocent in laws and regulations as an element of the rule of law is to provide recognition and protection of human rights as stated in the

second amendment to the 1945 Constitution, that is to uphold and protect human rights in accordance with the principles of democratic rule of law.

The law respects individuals so that the delivery of crime news should have certain limitations as a filter to avoid excessive news broadcasting. Revealing the identity and face of the suspects or defendants clearly means violating the legal principles of the presumption of innocence and justice. A person must be treated as not guilty or cannot be found guilty until there is a final judge's decision. Prior to the judge's decision, even though the person is in a trial process, their rights to obtain a due process of law must still be respected.

Bibliography

Adriaan W Bedner, 'An Elementary Approach to the Rule of Law' [2010] Hague Journal on the Rule of Law .

Asep Saeful Muhtad, *Jurnalistik (Pendekatan Teori Dan Praktek)* (PT Logos Wacana Ilmu, 1999).

Chairul Huda, 'Asas Praduga Tidak Bersalah Dalam Praktek Pers' (2010) 2 Jurnal Dewan Pers.

Eriyanto, *Kekerasan Sebagai Hiburan Analisis Tayangan Kriminalitas Di Televisi, Edition 1 Year II* (JENTERA 2004).

Haris Sumadiria, *Jurnalistik Indonesia Menulis Berita Dan Feature Panduan Praktis Jurnalis Profesional* (Simbiosis Rekatama Media 2005).

Jessica M. Grosholz CEK, 'Crime in the News: How Crimes, Offenders and Victims Are Portrayed in the Media' (2012) 14 Journal of Criminal Justice and Popular Culture.

Jimly Asshiddiqie, *Hukum Tata Negara Dan Pilar-Pilar Demokrasi* (Konstitusi Press 2006).

M. Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP (Penyidikan Dan Penuntutan)* (Sinar Grafika 2002).

Mardjono Reksodiputro, 'Hak-Hak Tersangka Dan Terdakwa Dalam KUHAP Sebagai Bagian Dari Hak-Hak Warga Negara (Civil Rights), (Delivered on One-Day Seminar about KUHAP Held by FHUI)' (1990).

Mardjono Reksodiputro, *Hak Asasi Manusia Dalam Sistem Peradilan Pidana (Kumpulan Karang Buku Ketiga)* (Pusat pelayanan keadilan dan pengabdian hukum Lembaga Kriminologi Universitas Indonesia 1994).

Marjono Reksodiputro, *Hak Asasi Manusia Dalam Sistem Peradilan Pidana* (Pusat Pelayanan Keadilan dan Pengabdian Universitas 2007).

Mark H. Moore, Robert C. Trojanowicz and GLK, 'Crime and Policing' [1988] National Institute of Justice, U.S. Department of Justice, and the Program in Criminal Justice Policy and Management, John F. Kennedy School of Government, Harvard University.

Oemar Seno Adji, *Mass Media Dan Hukum* (Erlangga 1977).

——, *Mass Media Dan Hukum* (Erlangga 1984).

Robert Haas, *Hak-Hak Asasi Manusia Dan Media* (Yayasan Obor Indoensia 1998).

'The International Bill Of Human Rights'.

UNHR, 'Universal Declaration of Human Rights at 70: 30 Articles on 30 Articles - Article 7' (*UNHR Office of the High Commission*).

W. Friedmann, *Teori Dan Filsafat Hukum, Telaah Kritis Atas Teori-Teori Hukum, Translated by Mohamad Arifin* (Rajawali 1990).

Law Of The Republic Of Indonesia Number 32 Of 2002 On Broadcasting 2002.

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