



THE STATE'S RESPONSIBILITY TO THE JOURNALIST PROFESSION: THE PROBLEMS OF JOURNALIST COMPETENCY TEST

Kriswanto¹, Ruetaip Chansrakao²

¹⁾ University of Mathla'ul Anwar, Banten, Indonesia

²⁾ University under the Royal Patronage of Valaya Alongkorn Rajabhat, Thailand

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Abstract

The press or mass media is one of the pillars of democracy that functions as a balancer and means of control for the course of government and social life. This study focuses on the role and position of the Press Council in providing legal protection for the journalist profession who does not have a Journalist Competency Test program certification (Uji Kompetensi Wartawan or UWK). This research is normative legal research. Normative legal research emphasizes the coherence between the concept of law and the rule of law. In addition, this study also uses primary, secondary, and non-legal materials. The approach in this study uses a conceptual approach and a statutory approach. This legal research states that UWK as organized by the Press Council is the general ethical will of the journalist community to be bound by an instrument that targets the determination of competency parameters of the journalist profession. Furthermore, the state's responsibility for journalists who have not followed the UWK is carried out through two legal protection schemes, namely preventive legal protection and repressive legal protection. Thus, even though journalists do not yet have UWK certification, they are still entitled to legal protection from the state; because, freedom of the press is part of the human rights of every human being.

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Corresponding Author:

Kriswanto

Email: kriswanto.kayat@gmail.com

I. INTRODUCTION

The basis for the continuation of democracy requires the role and function of the press as a part that has a control function and a compromise from institutions that have institutional authority (Marijan, 2019). After becoming a tool to examine a problem that became the main topic and an issue as discussed by the community. The information is shared through various mass media channels, such as electronic mass media or print mass media. Advances in technology make information available to the public in a matter of seconds (Setiawan, 2018). The recognition of the Press as the fourth pillar of democracy is following the Decision of the Supreme Court of the Republic of Indonesia Number 1608K/PID/2005 dated February 9, 2006, in its philosophical, legal considerations; based on Articles 3, 4 and 6 of Law Number 40 of 1999 concerning the Press (hereinafter referred to as the Press Law). The position of the National Press has been placed as the fourth pillar in a democratic country,

although the Press Law has not been able to protect press freedom; because of the absence of criminal provisions in the law and the enactment of the provisions of the Criminal Code (*Kitab Undang-Undang Hukum Pidana*).

The continuity of democracy in Indonesia cannot be separated from the press's vital role. The press can carry out a variety of often comprehensive publications regarding legal instruments in force in Indonesia. In the technical aspect, the press plays a role in carrying out the function of control and supervision of the implementation of the provisions contained in a legal instrument. The existence of the press, which is legitimized through the Press Law, has provided space for the mass media to continuously improve its facilities and facilities to create the establishment of freedom of information to the public. Thus, it is not surprising that various mass media channels that have local and national scopes emerge. These various mass media have also transformed into online media as they have become platforms that everyone in this day and age often uses. Various forms of information continue to grow and spread through social media, such as Facebook, Instagram, Twitter, Tiktok, and so on. Nevertheless, press freedom certainly has signed so as not to violate the constitution of the people, as stated in the Indonesian constitution. Aspects of ethics and morality must always be considered in mass media content so that there are no mistakes, both violations of the code of ethics and the law. When the Press Law was published, it certainly had become hope in itself for the aspiration to achieve elaborative independence regarding the development of the press itself. The Press Law provides certainty of protection for various activities related to the press for any intervention efforts from any party. Therefore, implementing these ideals based on existing legitimacy is to form an institution that provides strengthening aspects of the press itself, namely the Press Council institution.

The Press Law provides an aspect of independence to the Press Council, so that no one party - even the government itself - interferes with the authority or activities of the Press Council (Masduki, 2022). The independence aspect gives the Press Council a position as a strategic institution and free from potential that can be used as a propaganda tool by the government, as the government tends to use the press to provide a positive paradigm to the community. Independence will throw away any dictation efforts made by the government or other parties. Thus, efforts to strengthen the press council are to create a free and independent press to carry out its role as a means of information, education, entertainment and social control; as stated in Article 15, Paragraph (1) of the Press Law. These provisions encourage sugar press freedom to promote a healthy press life without any intervention from anyone while at the same time guaranteeing the protection of press freedom itself (Kristina, 2021). The press has become a vehicle for fulfilling the human rights of every citizen to obtain up-to-date information in various forms. Thus, the professionalism of press freedom will be given legal protection based on the existing legitimacy. Of course, the existence of the Press Law after becoming the legal umbrella to achieve press freedom itself. Legal instruments of a technical nature are also issued so that human beings can carry out their duties based on the applicable provisions; as this aims

to maintain the nature and spirit of the task of the press profession itself. One of the rules that embody the values stated in the Press Law is the Press Council Regulation Number 1/Peraturan-DP/X/2018 concerning Journalists Competency Standards (hereinafter referred to as UKW Regulations).

Journalists have become part of the press who are inherent in the progress and development of the dynamics of press freedom in Indonesia. Journalists have an important role as guardians of public policy as well as guardians of the public interest. Journalists encourage various community actions so that they always monitor the policies as set by the government. Therefore, the competence and professionalism of journalists has become vital for every press person to have. Journalists have become part of the press and are inherent in the progress and development of the dynamics of press freedom in Indonesia. Journalists have an important role as guardians of public policy and guardians of the public interest. Journalists encourage various community actions always to monitor the policies as set by the government. Therefore, the competence and professionalism of journalists have become vital for every press person to have (Sahputra, 2022). The competence of journalists has become a parameter of the professionalism of every journalist, so the agreement of the press community encourages competency validation. The competence of journalists is determined by the Press Council, which has authority over all aspects that target press issues in Indonesia. Even so, the existence of the UKW Regulation has the potential to injure the paragraphs of the Indonesian constitution as stated in Article 28 of the 1945 Constitution of the Republic of Indonesia. This is regulated behind the substance of the UKW Regulation, which limits the implementation of journalistic aspects, such as seeking, obtaining, possessing, storing, process, and conveying information in the form of writing, images, sound and images, as well as data and graphics as well as in other forms using print media, electronic media and all types of available channels; as followed up by the obligation of the press community to take the Journalist Competency Test (*Ujian Kompetensi Wartawan* or UKW) by the Press Council. The existence of UKW in the UKW Regulation requires all journalists and all walks of life who carry out activities in the journalistic aspect to pass the competency test.

The above phenomenon triggers the discriminatory treatment of journalists in the implementation of journalism activities; in some cases, there has been the criminalization of journalists who have not taken the competency test. The implementation of UKW through the Competency Standards Examining Agency, as determined by the Press Council, actually also exceeds the authority of the Press Council as stated in Article 15, Paragraph (2) of the Press Law. In the provisions of Article 15 Paragraph (2) of the Press Law, there is no authority from the Press Council to carry out functions to ensure the competency parameter aspects of each journalist. Furthermore, Article 15 Paragraph (2) of the Press Law does not also give the Press Council the authority to establish a reviewing institution that assesses the competence of journalists. Not only that, but the operation of SMEs also has the potential to violate the provisions of Article 18, Paragraph (4) and Paragraph (5) of Law Number 13 of 2003 concerning Manpower. Thus, this legal research aims to

answer two problem formulations, namely: (i) How are the dynamics of the Journalist Competency Test (UKW) program from the Press Council?; and (ii) What is the state's responsibility in providing legal protection to the journalist profession that does not have a journalist competency test program (UKW) certification?

II. RESEARCH METHODS

This research is included in the type of normative legal research. Normative legal research is oriented towards the aspect of coherence between legal concepts and the rule of law (Marzuki, 2017). In addition, this study also uses primary, secondary, and non-legal materials. The approach in this study uses a conceptual approach and a statutory approach. Legal materials as used in this research are inventoried and studied based on the legal issues that have been determined. After that, the prescription analysis is used to get a systematic conclusion so that this research is able to answer the existing legal issues. The reasoning pattern used in this study is a syllogism.

III. RESULT AND DISCUSSION

3.1. Journalist Competency Test by the Press Council: The Problems

Journalists as part of press freedom are the implementation of human rights values as they have been the main principles of human life since they were born. Humans have owned human rights as they are obtained from the grace of God Almighty (Triputra, 2017); then practices that reflect these human rights -including freedom of the press- are one of the rights that cannot be separated from human life (Suhariyati, Haryanto, & Probawati, 2020). The journalist profession has implications for the right to freedom of opinion and expression as part of human rights; everyone has the meaning that the profession is an implementation of the guarantee of freedom to communicate and obtain information (Disantara, 2021). This profession provides space for every press member to obtain, search, manage, store, and publish information through various available media channel schemes. Therefore, it has become an urgency when a country is obliged to have legitimacy through the products of laws and regulations regarding the protection of the press (File, 2019). Moreover, journalistic activities of journalists are closely related to social conditions and existing legal certainty, given the high level of sensitivity to various information that targets criticism of certain parties, including the government (Frantz, Kendall-Taylor, Nietzsche, & Wright, 2021).

As stated in Article 1 Paragraph (4) of the Press Law, the journalist profession states that a journalist is someone who carries out journalistic activities continuously and intensely. Of course, someone who is always in contact with this news has certain qualifications to carry out journalistic activities (Nur, 2020). This is motivated considering that journalism is related to the relationship between the community and other parties (Neff T, 2021). Furthermore, all elements of society need actual and factual information. Thus, in the end, there is a perspective that journalists must have a

competency parameter to be able to carry out various tasks that target the journalistic aspect professionally and adequately (Wardaningsih, 2021). These parameters are expected to be able to support the quality as well as the professionalism of every journalistic person. On the other hand, press companies can provide an elaborative performance evaluation system for all journalists as a moral responsibility always to provide accurate and professional information through journalists with integrity (Nugroho, 2022). Therefore, the UKW Regulation emerged. Suppose a journalist does not take the competency test. In that case, the journalist will be judged not to have the potential that the Press Council has determined through the Journalist Competency Standards Testing Institution.

Journalists also claim that the expectation of the existence of a Parameter has become a common desire or 'general ethical will' (Alhakim, 2022). When it is said with legal theory, the general ethical will is the paradigm that became the idea of Jean Jacques Rousseau (Plunkett & Shapiro, 2017). The result of his thinking is that every human being - including the journalist himself - is a human being who has the ethical authority to encourage himself and others to volunteer themselves to be bound by a legal instrument (Neidleman, 2020). Journalists who are part of the community itself are willing to be bound by a legal instrument by considering the juridical aspect if the law is owned by the public itself so that the validity parameters can be said to be objective ; Although on the other hand, humans have the will always to carry out their activities independently and freely. Moreover, UKW is a form of the general will; not the group will; Thus, the parameters as determined will encourage each individual to live in peaceful and prosperous conditions by considering the aspect of professionalism that can bring the community and the journalist profession to justice and morality. Therefore, mutual agreement from journalists related to the determination of the parameters of journalist competence as well as the necessity to take a competency test are tips to improve the quality of journalistic activities by not violating the public interest and, at the same time, not injuring the private rights of the public. Voluntary action from journalists who are willing to be bound by a legal instrument through these competency parameters is a picture of when the journalist profession is an honor that must be maintained in its professional aspect; Thus, the competence parameter of the journalist is not something that violates human rights either.

Moreover, this competency standard is an element that every journalist must possess to uphold the principles of journalism itself (Hidayat, Chatra, & Arif, 2020). These principles or basic principles are related to understanding, mastery, and awareness and enthusiasm to improve skills and knowledge in the field of journalism (Waluyo, 2018). Therefore, UKW is a formulation of collaborative aspects that support the workability of a journalist and have implications for the practices of their work, as these aspects are the synergy between the knowledge, skills, and work attitudes of each journalist. However, until now, there is no legal instrument that explicitly provides the meaning that journalistic personnel should follow journalist competency standards (UKW). The Press Law does not contain a provision regarding the competency test. Thus, it has become an

important matter regarding the improvement of the Press Law; on the other hand, it is also important to have legal instruments derived from the Press Law so that matters relating to the competency standards of journalists or UKW have comprehensive legitimacy in *expressive verbis*. If UKW is regulated in the press law, the legitimacy regarding UKW is much stronger; because UKW's legitimacy is based on law and ethics - as the journalists themselves want -. Moreover, the existence of UKW itself requires legitimacy from the role and authority and strength of the Press Council. Moreover, suppose the authority and role of the Press Council relating to the determination of the competence parameters of journalists is not contained or listed in existing legal instruments. In that case, this has the potential to lead to the legitimacy of the journalists themselves.

3.2. The State's Responsibility in Protecting the Law of the Journalist Profession: The Case of the Journalist Competency Test (UKW)

If it is related to the journalist profession that does not yet have a UKW professional certification, legal protection can still be implemented comprehensively without fundamental reasons; considering that the Press Law states that the guarantee of protection does not look at journalists who already have certification or journalists who do not have certification. On the other hand, the Press Law still guarantees legal protection for all journalists who carry out their functions, rights, and obligations and their roles following the provisions of the Press Law, including journalists who do not have UKW certification. Thus, there is no fundamental reason why journalists who do not have the UKW program professional certification are not given fair legal protection. The Press Law does not recognize the types or qualifications of competent journalists. Legal protection for journalists who do not have a UKW certification is carried out by various parties and those related to the journalistic aspect, starting from the Press Council, Press Companies, the State, the community, and other elements. This is a shared moral responsibility of all elements of the nation, including the government. As a 'state instrument' that carries out legal protection activities for journalists who do not have UKW certification, the government is always required to understand these journalists' conditions and needs.

Legal protection for journalists who do not have UKW certification can be done in two schemes (Hadjon, 2019). *First*, the preventive legal protection aims to prevent various legal actions against journalists who do not have UKW certification. Such prevention is carried out through the construction of norms contained in the laws and regulations concerning the press and providing limitations for all parties concerned to carry out an obligation. *Second*, the repressive legal protection to enforce the construction of norms in the Press Law or laws relating to the press. This scheme can lead to sanctions, imprisonment, fines, and other penalties if there is a problem, as has been done by someone who violates the provisions. Legal protection from a journalistic perspective can be reviewed in Article 8 of the Press Law as it states that the journalist profession -including journalists

who do not have UKW certification- has guaranteed legal protection from the government and or the community. This protection is given to the obligations, functions, as well as the role of the press. The spirit of these provisions illustrates when press freedom must be applied and enforced continuously by every element of all matters targeting suppression, prohibition, prevention, coercion, and other destructive things. Moreover, the press must obtain, possess, seek, process, store, and convey information in any scheme as legitimized under Article 4 Paragraph (3) of the Press Law itself. Furthermore, legal protection as given to journalists who do not have UKW certification as legal subjects also aims to make all levels of society enjoy the obligations that have become the duties and functions of the press itself.

Then, legal protection for the press is not only in the perspective of the Press Law; However, Law Number 13 concerning Manpower (hereinafter referred to as UUK) also provides legitimacy for legal protection for every legal subject, including the press. Thus, all journalists who do not have a UKW certification get protection from these legal instruments from all forms of blackmail or suppression by several parties who want a reduction in the press's authority. Legal protection for journalists who do not have a UKW certification is oriented to maintaining the honor mentality of every ability human beings possess as they are dignified and quality workers. Legal protection is an integral part of human resource development to create a just and prosperous society with professional competence and integrity in terms of employment. On the other hand, Article 86 of the UUK has provided 'signs' on the rights that will also be obtained by every journalist who does not have a UKW certification, including (1) occupational safety and health; (2) morals and decency; and (3) equal treatment by considering aspects of the dignity and honor of every human being based on religious values. Based on these provisions, several points can be drawn.

First, journalists who do not have a UKW certification must be given legal protection when they become part of a press company. Thus, when a journalist who does not have a UKW certification runs a working relationship in the form of a work agreement with a company, he or she still gets guaranteed legal protection. *Second*, journalists who do not have a UKW certification are given guarantees for their mental and physical health when carrying out a working relationship as this relationship is also a legal relationship. *Third*, journalists who do not have UKW certification are guaranteed security and safety protection from all efforts or actions and those that threaten the survival of journalists who do not have UKW certification. *Fourth*, journalists who do not have a UKW certification are given protection in terms of aspects of support and assistance from each workforce, as this is realized such as compensation, allowances, notification of several conditions; such as work accidents, illness, pregnancy and so on (Afrita, 2015). State responsibility through this law has become the basis of justification for various functions from the journalistic aspect; as we can review the formulation of Article 50 Criminal Law (KUHP) which in principle states that it cannot be punished someone who commits an act to carry out a provision in the legislation. Thus, in the context

of the Press Law, journalists who do not have a UKW certification cannot be punished if they exercise their authority and rights and obligations based on the provisions contained in the Press Law (Bahri, 2020).

Legal protection as provided by laws and regulations as a state responsibility is expected to maintain and maintain a harmonious relationship between entrepreneurs, press companies and journalists. Moreover, welfare and professionalism have a direct and significant relationship, considering that there is a potential when journalists can carry out their duties professionally if the welfare of journalists has a great opportunity to improve their standard of living. Therefore, the state's responsibility through the establishment of legal instruments is actually what is the goal to improve the standard of living of journalists through their professional attitudes based on press freedom that complies with applicable legal instruments. Then, what if journalists who do not have UKW certification get violent actions? In fact, legal certainty for activities targeting press freedom has been described in Article 4 paragraph (1) of the Press Law as in essence Press freedom is a human right, so that protection of this matter is an obligation. In terms of the explanation of these provisions, the press must be free from various acts of violence; as reflected by prevention, prohibition, and/or suppression of obtaining information. Actions that persecute journalistic activities rob the press of freedom, whereas freedom of the press is a reflection of the ideals as well as awareness of respect for the rule of law as implemented by legal institutions with professional responsibilities that are owned by the journalist profession. Thus, in order to prevent things mentioned above, the formulation of the Press Law provides a stipulation that anyone who violates the law with the intention or intention to cause consequences that are inhibiting or hindering the implementation of press freedom -as well as seeking to obtain, in disseminating information ideas-, can be sentenced to a maximum imprisonment of two years or a maximum fine of Rp. 500,000,000,- (Five Hundred Million Rupiah); as stipulated in Article 18 of the Press Law. Thus, if journalists who do not have UKW certification receive all forms of violence from parties, then the state, through its apparatus, is obliged to take firm action against anyone who commits such unlawful acts. Nevertheless, the state has given its responsibility as a party that provides a sense of security regarding various journalistic activities carried out by journalists.

Furthermore, the Human Rights Committee through General Comment No. 34 on Article 19 confirms when (Appludnopsanji, Hari Sutra Disemadi, 2021):

“States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. Paragraph 3 may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights. Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19. Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers. All such attacks should be vigorously investigated in a timely

fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress”.

If a conclusion is drawn, the Human Rights Committee –General Comment No. 34 on Article 19 states that there is an obligation of the state to provide guarantees for the protection of journalists from various efforts aimed at reducing the rights of press freedom. The background of this provision is the tendency for journalists to receive various threats, intimidation and attacks. Thus, the state is responsible for identifying all issues related to the press community, including journalists who have not yet obtained UKW certification.

In fact, with regard to the area of journalistic activity of journalists, but in the case of cases of violence that are not related to press activities, the responsibility remains directly with the state through law enforcers (Wiratraman, 2020). Then, what are the responsibilities of press companies and press councils? The company has several responsibilities which consist of: (a) providing protection to journalists and their families as victims of violence; (b) provide fulfillment of all obligations related to losses suffered by journalists as victims of violence; (c) providing legal assistance as well as collaborating with outside the test as well as professional journalists' organizations as well as law enforcers. Thus, journalists who do not yet have a UKW certification must still be given a form of protection from the state's responsibility and the press company itself. This is done in order to provide a sense of security and fair legal certainty in order to carry out continuous and safe press freedom activities. Accountability from the state and other parties to journalists is actually a noble attitude and reflects the values contained in the Indonesian constitution as well as Pancasila as a source of law and a source of morality from the state. Therefore, legal development by providing various provisions that are able to create legal certainty for matters that are vital for journalists is a top priority to be immediately encouraged for the sake of creating peaceful and prosperous journalists.

IV. CONCLUSION

The issue of the competence parameters of the journalist profession has become an enigma when the provisions regarding ukhuwah are published by the Press Council. This is motivated by various legal problems, as the implementation of UKW is considered contrary to the provisions contained in the Press Law and UUK. Legal materials used in this research are inventoried and studied based on the legal issues that have been determined. After that, the prescription analysis was used to get a systematic conclusion. However, when viewed from the perspective of natural law theory as it gave birth to the paradigm of general ethical will in the press community, the sustainability of the UKW program is a form of journalists' willingness to be bound by a legal instrument that provides a single parameter, regarding the competence aspect of the journalist profession itself. This is motivated by the hope to support the professional aspect of each journalist;

moreover, the journalist profession relates to the public interest in obtaining actual and factual information. Furthermore, the state continues to provide accountability in the form of legal protection for all journalists' qualifications, including journalists who have not participated in the UKW program. There is no doubt about the guarantee of legal protection for every citizen as a legal subject, including journalists who have not participated in the UKW program. This is supported by legitimacy based on various existing legal instruments - especially the Press Law - which guarantees the protection of all journalists' qualifications. Moreover, state responsibility is one of the moral demands so that the state always provides maximum welfare for the survival of journalists. Accountability through the provision of legal certainty protection can be carried out through two schemes aimed at maintaining the dignity and worth of the journalist profession itself. Thus, the state's role through various derivative instruments is the right step to follow up on various issues related to the 'field of journalism'.

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