



NEOCLASSICAL LEGAL REVIEW: JOURNAL OF LAW AND CONTEMPORARY ISSUES

Journal homepage: <https://talenta.usu.ac.id/nlr>



Realizing Justice for Conventional Media in Indonesia through Publisher Rights

Mewujudkan Keadilan bagi Media Konvensional di Indonesia melalui Publisher Rights

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ARTICLE INFO

Article history:

Received 15 March 2023

Revised 9 November 2023

Accepted 13 December 2023

Available online 14 December 2023

E-ISSN: 2964-4011

How to cite:

Syafuruddin (2023). Realizing Justice for Conventional Media in Indonesia through Publisher Rights. *Neoclassical Legal Review: Journal of Law and Contemporary Issues*, 2(2), 33-38.

ABSTRACT

Digital platforms are currently posing a threat to conventional media's ability to remain sustainable. According to remarks made by President of the Republic of Indonesia Ir. H. Joko Widodo on February 11, 2023, during his working visit to Medan City in celebration of National Press Day, digital platforms account for 60% of media advertising spending in Indonesia. Regulations are therefore required to safeguard Indonesia's conventional media sector. The Press Council has taken the lead in proposing a Draft Presidential Regulation on the publisher's rights, or the responsibilities of digital platform companies in supporting quality journalism. With publisher's rights, the media will get royalties for content that is published or shared widely, either on social media, search engines such as Google, or news aggregators. This paper uses a comparative legal method by analyzing the current draft law regarding publisher rights law in Indonesia and comparing it to the Canadian and Australian experience in the introduction of similar regulation.

Keyword: Digital Platform, Journalism, Publisher Rights

ABSTRAK

Keberlangsungan media tradisional saat ini tengah terancam oleh platform digital. Sebagaimana yang dinyatakan oleh Presiden Republik Indonesia Ir. H. Joko Widodo dalam kunjungan kerjanya ke Kota Medan dalam rangka Hari Pers Nasional tanggal 11 Februari 2023 yang menyatakan, 60 persen belanja iklan media di Indonesia dikuasai oleh platform digital. Oleh karena itu, dibutuhkan regulasi untuk melindungi industri media tradisional di Indonesia. Dewan Pers berinisiatif mengusulkan Rancangan Peraturan Presiden tentang Tanggung Jawab Perusahaan Platform Digital Dalam Mendukung Jurnalisme Berkualitas atau yang sering disebut dengan hak penerbit. Dengan adanya hak penerbit, media akan mendapatkan royalti atas konten yang dipublikasikan ataupun dibagikan secara luas, baik di media sosial, *search engine* seperti Google, ataupun *news aggregator*. Tulisan ini menggunakan metode perbandingan hukum untuk menganalisis Rancangan peraturan tentang *publisher rights* di Indonesia dan membandingkannya dengan pengalaman Kanada dan Australia dalam memperkenalkan peraturan serupa.

Keyword: Hak Penerbit, Jurnalisme, Platform Digital



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(10.32734/nlr.v2i2.11525)

1. Introduction

Nielsen Indonesia released a report on advertising spending in the first half of 2022 reaching IDR 135 trillion. This amount increased by 7 percent compared to the same period last year, which was IDR 127 trillion (Pebrianto & Amirullah, 2023). Unfortunately, the President of the Republic of Indonesia, Joko Widodo during a working visit to Medan City on February 11, 2023 during the National Press Day, stated that 60 percent of media advertising spending in Indonesia was controlled by digital platforms. This is

influenced by the disruption that occurs on the internet. Based on the report released by We Are Social, ads on Meta can reach up to 3 billion people, TikTok can reach 1 billion people, and Twitter can reach 500 million people (WeAreSocial, 2023). According to the Economist, the world's digital advertising is divided between Meta and Google and both are expected to reap around \$300 billion in digital advertising revenue this year and make conventional media less competitive. As a response to this situation, the Press Council took the initiative to propose a Draft Presidential Regulation on the Responsibilities of Digital Platform Companies in Supporting Quality Journalism. This article discusses the scope of the draft law which focuses on the rights of publishers. The discussion seeks to do comparison with the existing regulation on the rights in Canada and Australia.

2. Method

This research uses a comparative law approach and uses secondary data in the form of laws and regulations. The research focused on literature study with qualitative data analysis. The analysis was conducted by analyzing the current draft law regarding publisher rights law in Indonesia and comparing it to the Canadian and Australian experience in the introduction of similar regulation.

3. Result and Discussion

3.1. Revenue Deficit in Media Industry

Digitalization has changed the competitive dynamics in the economy, creating new markets and transforming existing ones. This presents diverse challenges for competition authorities and policymakers. They must grapple with uncertainty in rapidly evolving markets, address new forms of infringement, and examine markets whose boundaries remain unclear. At the same time, growing concerns about behavior in digital markets and growing indicators of market power have led to the need for new competition policy tools and more active use of existing ones (OECD, 2022). Meta and Google are reshaping the advertising industry and mass media have been experiencing a revenue deficit since the digital era. Television, radio or print media revenues do not generate as much advertising money as online media in 2015 to 2022. But online media only accounts for the largest advertising revenue at US\$450 billion. Meanwhile, Google and Facebook have revenues of US\$224 billion and US\$113 billion in 2021, and more than 80% of them are obtained from the advertising sector (Purkayastha, 2023).

Therefore, to improve the competitiveness of the mass media industry in the country, the Press Council took the initiative to propose a Draft Presidential Regulation on the Responsibility of Digital Companies for Sustainable Media. The Indonesian President Joko Widodo had hopes that the Presidential Regulation will be finalized shortly before the end of 2023 (Hansel & Lestari, 2023). If the draft presidential regulation is passed, Indonesia will be the first country in Asia to pass a regulation requiring digital platforms to pay royalties to news agencies that have been verified by the Press Council (Haryanto, 2023). Previously, in 2021, Australia had passed a similar regulation through the News Media and Digital Platform Mandatory Negotiation Code (Authority, 2022). The passing of the regulation was objected by Google and Meta. In the authors' view, the regulation was necessary to protect conventional media to remain competitive in the digital era.

3.2. Digital Companies' Responsibility for Sustainable Media

As expressed by the Director General of Public Information and Communication of the Ministry of Communication and Information Technology Usman Kansong: "Whether the cooperation is for advertising revenue, whether the cooperation is in the form of compensation or remuneration, whether the cooperation is in other forms. It could not be in the form of material, but it could be in the form of training or something else. The details will be regulated by the executor, an institution that will be established based on the Presidential Decree" (Kure 2023b). This means that with the publishers rights, there is a cooperative relationship between mass media and digital platforms such as Google and Meta in achieving a sustainable partnership.

3.3. Legal Transplantation

The model of legal political choice that has been applied in the formation of laws and regulations is to choose the model of transplanting foreign law into national law. The Presidential Regulation on Publisher Rights is deemed as a form of legal transplantation. The entry of a legal regulation from one country to another can occur voluntarily, namely by imitating or taking examples from legal regulations in developed

countries to be applied in other countries that imitate them, or can also be by force due to economic pressure from developed countries, or various other means (Elkins & Simmons, 2005).

Legal transplantation is carried out by a country with the aim of carrying out legal reform, or including the country in the group of developed countries (Nelken, 2004). Since 1974 Alan Watson through his book has talked about transplantation in the form of legal imitation, mixing law has also become an important topic in the field of comparative law (Watson, 1993). Watson's views on legal transplants, invited various responses from jurists, including criticisms such as those raised by Pierre Legrand in *Impossibility of Legal Transplants* (Legrand, 1997). Legrand stated that: "Watson has written that the application of legal rules is socially easy. Drawing logical conclusions from his observations, he asserted that it would be a relatively easy task to devise a single basic code of private law that could be applied throughout [the entire western world]". Against this background, Watson argued, not surprisingly, that comparative endeavor, understood as an intellectual discipline, could be defined as the study of the relationship of one legal system and its rules to another (Legrand, 1997).

According to Legrand, Watson made a mistake when he claimed that transplanting the rule of law is socially easy. Taking Watson's observations as the basis for his conclusion, according to Legrand, Watson judged that taking the basis of private law to operate in all countries in the western world was a relatively easy task (Legrand, 1997). According to Legrand, Watson's assessment was wrong, although Watson argued that in the field of comparative law, transplantation is seen as an intellectual discipline, which can be defined as the study of the relationship of one legal system and rules to other legal systems and rules (Legrand, 1997). Legrand states that anyone who thinks that 'law' or the 'rule of law' can operate across jurisdictions must think that law is autonomous and not influenced by historical, epistemological or cultural issues. How can law operate if it is not separated from society (Watson, 1993). Legrand questions this view of law and for him the notion of law signifies a lack of clear knowledge about law. The rule of law is not just what Watson sees, and since the rule of law is essentially a rule, the rule of law cannot function, therefore, legal transplantation is not possible (Legrand, 1997). Meanwhile, according to Watson, legal transplantation which is a necessary and desirable loan and has been practiced in various legal systems taken from other legal systems, is the essence of comparative law in its practical concept, which offers improvements to certain legal systems (Watson, 1993).

There are two main topics that emerge from Watson's opinion on legal transplantation, namely: First, he argues that legal transplants are common and necessary in practice. For example, Watson says that "borrowing" (through adaptation) has been a common way of developing law in the Western world (Watson, 1993). Watson's opinion is challenged by other comparative law scholars. Secondly, that 'transplantation of legal rules is a convenience in the life of society' (Watson, 1993) has proven to be more acceptable and occupies an important position in the debate on legal transplantation (Watson, 1993). However, in legal transplantation, the main challenge will arise in terms of legal culture. Legal culture, in a very general sense, is one way of explaining relatively stable law-oriented patterns of social behavior and attitudes (Watson, 1993). An introduction to the elements of legal culture ranges from facts about institutions such as the number and role of jurists or methods of appointing and supervising judges, to various forms of behavior such as those relating to trials or imprisonment, and, at the other extreme. At the other extreme, legal culture ranges from facts about institutions such as the number and role of legal experts or the methods of appointment and supervision of judges, to various forms of behavior such as those relating to trials or imprisonment, and, at the other extreme, to the more subtle aspects of ideas, aspirations and values and mentalities. Just like culture itself, legal culture is about who the subjects are, not just what people do (Mezey, 2001).

Legal culture is not simply the "local culture" embraced by a school of law (Mezey, 2001). Its normative force comes from the relationship between the political, social and legal traditions, legal institutions, legal practices, informed experiences of the legal culture - inside and outside the legal community: deeply felt, and becoming attitudes about what is seen and should be seen as law, and about how that law is translated into the role of institutions and procedures and regulations, in short, the legal system (Brant, 2010). In this regard, Martin Krygier in his various writings has pointed out the relationship between the rule of law and the socio-political-cultural environment (Nelken, 2004). According to Krygier, the application of ideas such as the rule of law depends heavily on the characteristics of the society to which the law relates, and the interaction between them (Zimmermann, 2007). Meanwhile, according to Mahadi, law whose ultimate goal is society,

creating stability, restoring anomalous conditions, balancing previously disturbed interests, will continue to move and push towards social balance (Mahadi, 1989).

3.4. *Comparison Between Canada and Indonesia*

In Canada on June 18, 2023, the Government of Canada passed the Online News Act. There are five main points covered in the regulation (Canada, 2023): first, to ensure fair revenue sharing between digital platforms and news providers. Second, it strengthens the collective bargaining position of media companies. Third, it supports commercial agreements between digital platforms and media organizations. Fourth, create an arbitration framework in case digital platform companies disagree with media companies. Finally, making Canadian Radio-Television Communications (CRTC) the regulatory regulator. The Canadian government sees the dominance of platform companies in the media ecosystem as having reached an unhealthy point. This is mainly because platform providers earn much greater profits compared to media companies that produce news.

Meanwhile, in comparison to Indonesia, Article 7 (1) of the draft Presidential Regulation as of February 17, 2023 states that digital platform companies among others must: 1) remove news that is not in accordance with the Journalistic Code of Ethics based on the recommendations of the Press Council; 2) share aggregate user activity data derived from the use of journalistic content owned by press companies in a transparent and fair manner; 3) notify changes to algorithms or internal systems that affect content distribution, referral traffic, and paywalls at least 28 days before the changes are made; 4) ensure that algorithm changes continue to support the presence of journalistic content; 5) ensure algorithm changes continue to support the presence of quality journalism in accordance with the Journalistic Code of Ethics and the Press Law; 6) not index and display recycled journalistic content from other media without permission; and 7) provide equal treatment to all press companies in providing digital platform services. Data sovereignty in giant technology companies is more dominant than the state (Gao, 2023). Crawford stated that the lack of accountability in their algorithmic mechanisms led to monopoly power (Crawford, 2016), and on the plus side, Nye observed that one of the current shifts in power is the diffusion of power, which initially shifted from the state to non-state actors (Nye, 2020).

3.5. *Google and Meta Reaction (Australia's Experience)*

Meta and Google are no longer ordinary digital companies but have turned into powerful actors capable of establishing international relations with sovereign states (Gu, 2023). Google's reaction to the regulation in Australia initially focused on a public scare campaign. This was evident where the platform threatened to remove Google Search functionality from Australia, arguing that Google would not be able to function under the proposed legislation. This approach was directed by Google Australia Managing Director Melanie Silva, who appeared in the video arguing that the legislation would undermine Google's business model and cost Google \$4 billion in revenue (Bossio, Flew, Meese, Leaver, & Barnet, 2022). Similarly, Meta initially rejected the regulation and blocked the Australian news service for 5 days and as a middle ground the Australian Government gave Meta one month to make adjustments (Bossio et al., 2022).

In Indonesia, Google Indonesia has officially declared to continue to engage with industry and government to its concerns about the proposed approach and highlight its potential impact on Google products work in Indonesia (Indonesia, 2023). Google Indonesia advocates for a more equitable and collaborative approach to support a future of healthy journalism for the general public and plans to contribute to this common goal. Meanwhile, until this article was written Meta had not provided an official statement.

Director General of Public Information and Communication of the Ministry of Communication and Information Usman Kansong stated that the Presidential Regulation will regulate two important things, namely: (1) regulate the cooperation between digital platforms and press companies in Indonesia, in terms of distributing and utilizing news; (2) establish a body or institution that will regulate the mechanism of cooperation between digital platforms and press companies in Indonesia. Google or Meta's rejection of the Draft Presidential Regulation on the Responsibility of Digital Platform Companies to Support Quality Journalism shows the strengthening role of giant technology companies towards the state (Sheng, 2022).

3.6. *Digital Transformation*

The Draft Presidential Regulation on the Responsibilities of Digital Platform Companies to Support Quality Journalism was made to transform the media. However, according to McKinsey only 26 percent of media

have successfully carried out digital transformation (Boutetière, Montagner, & Reich, 2018). The determining factors for the success of digital transformation according to McKinsey are: (1) having company leaders who understand technology; (2) building future work system capabilities; (3) empowering employees to work in new ways; (4) providing digital equipment upgrades; and (5) communicating frequently using conventional and digital methods. Based on these factors, achieving the goals in the draft Presidential Regulation requires a deep cultural change in media companies.

3.7. Freedom of the Press

Sukardi argued that there is no article or paragraph in the Press Law that provides an entry point for the government to interfere in the management of the press, including in the field of administration and press corporations. The Press Law only provides one provision that allows the government to issue a Presidential Decree, which is about the appointment of members of the Press Council. This limitation applies also to the President as head of the government. The President does not even have the authority to elect, but only approve. The government affirms that draft regulations will pay attention to the principle of freedom or freedom of the press. The government will only regulate the business side and not the press or journalism aspect (Putri & Gandhi, 2023).

3.8. Meaningful Participation

One of the sources of law in the formation of laws and regulations including Presidential Regulations as stipulated in Law No. 12/2011 on the Formation of Laws and Regulations is legal science. One of the existing jurisprudence in Indonesia is the decision of the Constitutional Court which has permanent and binding legal force. The Constitutional Court made a decision, namely the Constitutional Court Decision Number 91 / PUUXVII / 2020 which contains how the definition of Meaningful Participation must at least fulfill three conditions, namely: "(1) The right to be heard (right to be heard); (2) the right to have one's opinion considered (right to be thought); and (3) the right to receive an explanation or answer to the opinion given (right to be explained)." If the Draft Presidential Regulation is passed into a Presidential Regulation and later becomes a Law (Kure, 2023a). The author hopes that the lawmakers pay attention to meaningful participation in its preparation by involving academics and press people and stakeholders so as to realize a balance between the press and digital platforms.

4. Conclusion

Mass media has been experiencing a revenue deficit since the social media era. Television, radio or print media revenue does not generate as much advertising money as online media in 2015 to 2022. But online media only accounts for the largest advertising revenue at US\$450 billion. Meanwhile, Google and Facebook have revenues of US\$224 billion and US\$113 billion in 2021, respectively, and more than 80% of those revenues come from advertising. The Presidential Regulation on the Responsibility of Digital Companies for Sustainable Media is the answer to these problems because it regulates the cooperation of digital platforms with press companies in Indonesia, in terms of distributing and utilizing news, and establishes an agency or institution that will regulate the mechanism of cooperation between digital platforms and press companies in Indonesia. However, when comparing with the implementation in other countries, there will be potential resistance from digital platforms. It is hoped that the stakeholders can reach an agreement that can benefit all parties.

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