



## The Implementation of the Presumption of Innocence in Law Enforcement Coverage by the Mass Media

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### ABSTRACT

The application of the presumption of innocence in the press has long been a subject of attention and debate, both within the legal community and among journalists themselves. However, until now, the debate has not reached a consensus. Debates have started to arise regarding how the provisions in the Constitution (1945 Constitution) should be interpreted concerning the application of the presumption of innocence in the field of the press. The debate continues to the level of interpreting how the legal regulations on the presumption of innocence should be applied in the field of press, and even the technical implementation in reporting. This paper utilizes normative legal research with a descriptive-analytical approach. Secondary data is sourced from legal regulations in the field of the press. Through qualitative analysis, the research yields the following results: Firstly, the presumption of innocence is incorporated into the Journalistic Code of Ethics with the hope that mass media, in their reporting, will not fall into the trap of "trial by the press," which involves reporting that tends to "judge" someone, violating the principles of a fair trial. Reporting that tends to express opinions on the guilt of a suspect not only violates the fundamental principles of a rule of law, namely judicial independence but also infringes upon an individual's human rights by diminishing their right to a legal defense.

**Keywords:** *Mass Media, Presumption of Innocence, Principle.*

### ABSTRAK

Penerapan asas praduga tidak bersalah di dunia pers, sudah sejak lama menjadi perhatian dan perdebatan, baik di kalangan hukum maupun di antara insan pers sendiri. Meskipun begitu, sampai sekarang perdebatan tersebut belum mencapai suatu titik temu. Perdebatan sudah mulai terjadi bagaimana pasal-pasal dalam konstitusi (Undang-Undang Dasar 1945) harus ditafsirkan dalam kaitannya dengan penerapan asas praduga tidak bersalah dalam bidang pers. Perdebatan tersebut terus berlanjut sampai pada tataran tafsir bagaimana peraturan perundang-undangan tentang asas praduga tidak bersalah harus diterapkan di bidang pers, dan bahkan teknis pelaksanaannya dalam pemberitaan. Paper menggunakan penelitian hukum normatif bersifat deskriptif-analisis. Data sekunder bersumber dari peraturan perundang-undangan di bidang pers. Dengan analisa kualitatif, didapat hasil penelitian: Pertama, asas praduga tak bersalah ditempatkan di Kode Etik Jurnalistik dengan harapan agar media massa dalam pemberitaan tidak terjebak dalam 'trial by the press', yaitu pemberitaan yang menjurus 'menghakimi' merupakan pelanggaran suatu peradilan yang adil. Pemberitaan yang cenderung memberikan opini terhadap bersalahnya seorang tersangka, disamping telah melanggar asas utama dari suatu negara hukum, yakni kebebasan kehakiman, juga merupakan pelanggaran hak asasi seseorang, yakni mengurangi hak untuk membela diri secara yuridis.

**Keyword:** *Azas, Media Massa, Praduga Tak Bersalah.*



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## 1. Introduction

The issue of the presumption of innocence concerning mass media coverage is not a new phenomenon. Discussions have been frequently conducted, both in limited circles and in seminars. However, there are still differing opinions regarding this principle in the context of mass media reporting. Until now, the presumption of innocence has been considered applicable only to and within the realm of criminal justice processes. As a result, the public has been indifferent towards this principle, unless they experience unpleasant circumstances related to it.

The presumption of innocence principle in Indonesia was previously enshrined in Article 8 of Law No. 14 of 1970 concerning the Basic Provisions of Judicial Authority, which stated that individuals who are suspected, arrested, detained, prosecuted, and brought before the court should be considered innocent until proven guilty. This principle was further supported by the recent amendment to Article 8(1) of the Judicial Power Law No. 49 of 2009. Although not explicitly mentioned, a similar principle can be found in Article 66 of Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP), which stipulates that the burden of proof should not be placed on the suspect or defendant. The explanatory note accompanying Article 66 explains that this provision reflects the concept of the presumption of innocence. Some argue that the presumption of innocence principle, as regulated in criminal law, is primarily applicable to matters related to criminal proceedings (Limbong, 2017; Caterini, 2017).

In contrast to the legal system used in the United States, many principles related to the rights of defendants are explicitly stated in the Constitution (Hutapea & Karianga, 2019). It encompasses not only the rights of citizens as a whole but also the rights of individuals who are accused or suspected of committing a crime, as regulated in constitutional provisions. Therefore, it is a fundamental provision in the legal life of the nation. The First Amendment of the American Constitution guarantees this freedom of expression, which can be associated with press freedom (Logan, 2020; Roqib, *et.al.*, 2020; Febrianasari & Waluyo, 2022).

On the other hand, one of the functions of mass media is to present the facts that occur in society, so that what happens in one community can be known by other groups of people (Habibie, 2018). Mass media strives to provide comprehensive information so that all members of society are aware of what is happening around them (Nur, 2021). The availability of more extensive data is also the goal of mass media in providing the most comprehensive information to the public. However, it is recognized that its impact on society can be both positive and negative (Khumairoh, 2021).

In the current digital era, the emergence of social media has significantly accelerated the spread of information. Social media platforms allow individuals to quickly share news, opinions, and personal experiences with a wide audience. The ease and speed of information dissemination through social media have revolutionized the consumption and sharing of news. Within seconds, a piece of information can reach millions of people worldwide, surpassing traditional gatekeepers such as news organizations (Rohmiyati, 2018).

Although the rapid dissemination of information through social media has its advantages, it also presents challenges. Timeliness and the lack of verification processes can lead to the spread of misinformation, rumors, and harmful content. The boundary between facts and opinions can become blurred, potentially affecting the public's understanding of events and the individuals involved. Additionally, the viral nature of social media can amplify the effects of sensationalism and the dissemination of unverified information (Susilo, *et al.*, 2019, pp. 71-79).

Therefore, although social media has transformed the landscape of information sharing, it also necessitates media literacy and critical thinking skills among users. Individuals must verify the credibility of sources, cross-check information, and exercise caution before accepting and sharing content. Responsible media usage and the ability to discern good information are essential in navigating the rapidly evolving digital information ecosystem (Rachmawati & Agustine, 2021).

In the presentation of news by mass media, consciously or unconsciously, opinions are often expressed regarding the information being presented. This often leads to judgments on the issues discussed (trial by the press) (Hikmat, 2018). On the other hand, it is agreed that a person can only be deemed guilty after being examined in court and declared guilty by the judge overseeing the case (Marda, *et al.*, 2023).

It was stated in the previous version of the Indonesian Journalistic Code of Ethics that the coverage of criminal proceedings in court should be guided by the presumption of innocence. According to Article 3, Clause (7), a suspect should only be considered guilty if proven so in a final court decision. Additionally, Clause (8) emphasized the need for discretion when broadcasting the full name, identity, and image of a suspect, especially in cases involving morality or underage individuals. It was emphasized that news coverage should strive for a balance between accusations and defense while avoiding "trial by the press" (Pura & Kartika, 2018; Sipayung, 2023).

In this paper, the term "mass media" is used instead of specifically mentioning the press because print media represents a narrower definition of mass media, while mass media broadly includes electronic media such as radio and television (Iramdhan, 2019). Although there are fundamental differences in daily operations between print media and electronic communication media, they share similarities in the profession. Therefore, it is suggested that electronic media operating in the field of communication should also adhere to the Journalistic Code of Ethics as a moral foundation, pending further regulations. In practice, different interpretations of the presumption of innocence principle within the Journalistic Code of Ethics exist, resulting in varying opinions in news reporting (Gawi, et al., 2017).

The first opinion is that the press should not mention the name, identity, or show the image of a suspect. Instead, they should use the suspect's initials. The second opinion states that the presumption of innocence applies to cases being tried in court, so before reaching the courtroom, this principle does not require the withholding of the suspect's identity in pre-trial news coverage. Regarding the second opinion, there are variations in news presentation. Some mass media outlets display the image of the defendant in electronic media, while others argue that since the public is already familiar with the defendant, especially if they are a public figure, there is no need to conceal their identity or even their image (Habsari, 2017).

With the emergence of various opinions resulting in different approaches to news coverage regarding the presumption of innocence, the question arises: to what extent is a news report truly bound by this principle? Besides the issue of how far the presumption of innocence should be embraced in society's life. The purpose of this paper is to discuss the variations in approaches to news coverage related to the presumption of innocence in mass media. The paper also aims to explore differing opinions on the disclosure of a suspect's identity and examine the relevance and adherence of news reporting to the presumption of innocence. Additionally, the paper raises questions about the extent to which the presumption of innocence should be applied in society's life.

## **2. Method**

The research method employed is normative legal research, which is descriptive-analytical in nature (Efendi & Ibrahim, 2021). Secondary data is utilized as a source of legal materials, including constitutional laws (Snyder, 2019) such as the 1945 Constitution, Press Law, Criminal Procedure Code, and Journalistic Code of Ethics. The analysis of legal materials is conducted using a qualitative method.

## **3. Result and Discussion**

### *3.1. The Principle of Presumption of Innocence*

Although the implementation of the presumption of innocence varies among different countries, the Universal Declaration of Human Rights serves as a reference for studying human rights. Article 11 explicitly states that everyone has the right to be presumed innocent until proven guilty in a fair trial where they have the right to defend themselves (Hakim & Kurniawan, 2021).

From this article, it is clear that the existence of an open trial and the guarantee of the defendant's right to defense lead to the conclusion that the presumption of innocence is the fundamental right given to every individual to defend themselves in a public court. In other words, every person is recognized to have the right to defend themselves against the accusations directed towards them. The presumption of innocence is a fundamental factor in ensuring the alignment between accusations and individual rights (Marwandianto & Nasution, 2020).

The presumption of innocence is not only important in the courtroom but should also be applied from the beginning when someone is considered a suspect so that the rights of the suspect to defend themselves are upheld. This does not mean that a suspect has the same rights as someone who has not committed a crime, but every suspect is considered innocent until proven guilty, providing an opportunity for suspects to exercise their rights to defend themselves at all levels of the judicial process.

For investigators, they are granted the right to use coercive measures such as arrest, detention, search, and seizure of premises and property, to prove the alleged wrongdoing by a person suspected of committing a crime. However, the use of coercive measures must comply with the provisions stated in the Criminal Procedure Code (KUHAP). Investigators must strive to prove the guilt of the defendant while also recognizing that the defendant is presumed innocent and has certain rights that must be respected. The use of coercive measures itself constitutes a violation of human rights, thus it must be strictly regulated by the law. Therefore, its use must comply with the provisions outlined in the legislation (Limbong, 2017).

In the Anglo-Saxon legal system, known as the Due Process Model, errors in the application of coercive measures result in the cancellation of the case for the sake of justice. This demonstrates the extent to which respect for individual rights is emphasized, even if the individual is a criminal suspect. The regulation of the rights of defendants is even included in several constitutional amendments in the United States. Thus, the rights and obligations related to criminal justice are not only found in court rulings within the precedent system in America but are also fundamental provisions enshrined in the constitution of the country (Logan, 2020; Roqib, et al., 2020; Febrianasari & Waluyo, 2022).

Protecting the rights of defendants is not excessive protection but rather aims to maintain balance within the judicial system, as in any legal system, the position of a suspect is weaker compared to law enforcement authorities. When recognizing that every person suspected of committing a crime has the right to defend themselves, the presumption of innocence becomes the right of every suspect and must be respected by all parties.

In other words, every member of society must adhere to the presumption of innocence. Even if someone is caught in the act of committing a crime, they should still be given the right to defend themselves legally. The application of the presumption of innocence provides an opportunity for legal defense, and the opportunity for legal defense is the right of the defendant concerning the presumption of innocence.

### 3.2. Mass Media Broadcasting

Although the presumption of innocence is stated in the Journalistic Code of Ethics, various interpretations have resulted in different approaches to reporting, especially in criminal cases. According to Siregar, there are two groups in the mass media reporting related to the presumption of innocence. The first group adheres to the principle, particularly in cases considered ordinary. They only mention the suspect's initials without revealing their full identity. They also refrain from publishing the suspect's photograph. However, in cases that receive significant public attention, they disclose the suspect's complete identity and publish their photographs (Siregar *in Teguh*, 2021).

The second group decides to disclose the complete identity and photograph of a suspect/defendant based on certain criteria. Some media outlets argue that there is no need to protect the identity of a suspect/defendant if their actions are deemed extremely heinous and beyond humanity's limits. According to this perspective, corruption involving public funds is considered more severe than corruption involving state assets. Therefore, in the case of embezzling public funds, the suspect's identity does not need to be protected (Hakim & Kurniawan, 2021; Yusnita, et al., 2020).

There are also instances where mass media outlets mention the complete identity of a suspect/defendant without considering the specific case but rather focusing on the perpetrator. If the perpetrator is a public figure, their identity will be disclosed in full without using initials. The argument behind this approach is that the public figure belongs to the public, and therefore, the public has the right to know the full extent of their actions, including if they are suspected of committing a crime (Al Masyhur, et al., 2021). Another variation is to publish a photograph of the suspect/defendant with their eyes covered, even if their complete identity is disclosed, or vice versa (Habsari, 2017).

These different approaches in reporting demonstrate the varying interpretations of the presumption of innocence within the activities of mass media reporting. It raises questions about the extent to which this principle is adhered to. In this regard, there is an interpretation that the Journalistic Code of Ethics states that the presumption of innocence only applies to criminal cases in court and does not need to be implemented during the preliminary investigation stage. Furthermore, it is argued that the principle does not need to be respected if the case does not proceed to court (Habsari, 2017).

The opinion is further supported by the old version of Article 3, Clause (8) of the Journalistic Code of Ethics, which states that news coverage should always maintain a balance between accusations and defense and avoid "trial by the press." This strengthens the argument that the presumption of innocence will only be applied to cases that have been brought before the court (Pura & Kartika, 2018).

The first analysis to be conducted is why the presumption of innocence is included in the Journalistic Code of Ethics. In practice, it is evident that the ups and downs of the press and threats to freedom often come from journalists themselves. This is seen by Djafar Assegaf as a lack of adherence to the Journalistic Code of Ethics and a lack of responsibility towards readers. It leads to self-judgment, which in turn leads to actions by authorities against the press, even though there is a set of laws available for such cases (Assegaf *in* Nangkih, 2016).

In 1954, the Tasrif Committee made revisions to the old Code of Ethics. It was only in the revised Journalistic Code of Ethics that the presumption of innocence was included. Lastly, the presumption of innocence is also stipulated in the Journalistic Code of Ethics agreed upon by journalist organizations and established by the Press Council on March 24, 2006, following the mandate of Press Law No. 40 of 1999 (Ayurani & Isharyanto, 2021).

Since the beginning, the publication of a defendant's identity in mass media has been a contentious issue that has consistently received two contrasting opinions: those who agree with the publication of a defendant's identity and those who disagree. In the Netherlands, the van Bemmelen committee did not approve of publishing a defendant's identity. They believed that it closely relates to a person's reputation, honor, and future. However, under certain circumstances, exceptions were allowed for specific reasons. For example, in the case of a public figure, it was deemed necessary to disclose their identity because the public is considered entitled to know about someone who is seen as belonging to the public (Bemmelen *in* Putra & Soponyono, 2022).

Another exception for disclosing a suspect's identity is when their actions have caused concern in society. Publishing the complete identity of a notorious offender can bring calmness to the community if their identity is disclosed. Naturally, the van Bemmelen committee's opinion received criticism from the Association of Dutch Lawyers. Mr. H. de Ranitz, the organization's leader at that time, expressed objections to publishing a defendant's identity in press coverage, despite the exceptions mentioned by the van Bemmelen committee.

One of the arguments put forward by van Veen regarding the publication of a defendant's complete identity is that, ultimately, in certain cases that have already captured the public's attention, it is no longer a secret. Umar Seno Adji explained that in today's Indonesian society, certain cases such as political offenses, corruption, and smuggling are matters of great concern and highly condemnable, so publishing the perpetrator's identity is considered satisfying for the public, regardless of whether the perpetrator is prominent or not.

For Klassen and likewise for Willcox, the main reason for publishing a suspect's identity in mass media is for the public interest. Therefore, if there is a public interest that needs to be protected, mass media can publish the suspect's complete identity. Thus, it can be said that, except for lawyers, there is no objection to publishing a suspect's identity in certain circumstances.

In the United Kingdom, the publication of a suspect's complete identity is intended to avoid mistaken identity for individuals with the same name. However, Ignaz Rothenberg disagreed with this opinion, as complete disclosure could embarrass the person whose identity has been published. Looking at it in an extreme sense, most mass media in Central Europe do not publish a suspect's complete identity, while in Anglo-Saxon countries (such as the United Kingdom, Ireland, the United States, and Australia), they freely disclose the suspect's complete identity in any case (Faustino, 2021).

Coverage of the judicial process has long been a subject of discussion, including expressing opinions on court decisions. When discussing the role of the press, particularly in reporting, it is inevitable to address the issue of press freedom. However, in this discussion, I will refrain from delving too deeply into the topic of press freedom.

Based on the comparative analysis, it is difficult to determine whether the opinion of freely publishing the identity of the suspect, not fully disclosing the suspect's identity, or selectively disclosing the suspect's identity in certain cases should be adopted.

Returning to the fundamental issue, the main concern that mass media reporting should avoid in the criminal justice process is judgment by the press. Trial by the press is an act that is universally avoided in reporting, as it not only harms the suspect but also undermines the integrity of the state's legal system.

The function of judicial power in a country is violated when the media, or any other power outside the judiciary, influences the determination of a suspect's guilt. The authority to determine the guilt of a suspect lies solely with an independent judiciary, free from external influences, including the mass media. This is especially crucial when the mass media has already passed judgment on a criminal event.

According to Wahyono, before the constitutional amendments, the 1945 Constitution of Indonesia stated that judicial power is vested in the Supreme Court and other judicial bodies as determined by law, and no power outside the judiciary has the authority to pass judgment on an individual. Therefore, judgment by the press is considered a violation of the Constitution. On the other hand, according to Wayono, professional judges in their careers are not influenced by the free press. Thus, the issue of constitutionality remains a challenge in balancing press freedom with the limitation of avoiding trial by the press, particularly in terms of the extent to which press coverage can affect the course of judicial proceedings. However, when viewed from the perspective of the individuals who are the subjects of media coverage, the issue becomes different, as it relates to the extent to which their fundamental rights have been violated.

In "*The Canons of Journalism*" held by the American Society of Newspaper Editors, besides stating the main function of a newspaper, it also emphasizes the adherence to certain principles in reporting. Article I emphasizes the extent of press accountability, while the freedom of the press is safeguarded as a fundamental human right, as stated in Article II. Impartiality and fair play in reporting are explicitly mentioned in the code of ethics to ensure balance in news coverage. All of these efforts aim to prevent trial by the press (Humam & Susanto, 2021).

According to Reedy and many opinions in the United States, press freedom is seen as part of the country's philosophy of life, which is freedom itself. A free press will thrive in a free society, and press freedom will be lost in a suppressed society (Reedy in Pons & Hallin, 2021). Fisher, citing the writings of Blackstone, an English legal expert in 1765, stated: "*The liberty of the press...consists in laying no previous restraint upon publications...*" (Bird, 2020).

If press judgment occurs, many countries impose sanctions based on the crime against the judicial process ("contempt of court"). Thus, mass media outlets that are considered to have engaged in trial by the press can always be examined through court decisions. In contrast, in countries that follow a codified legal system, determining when an act constitutes trial by the press requires establishing its elements first. However, defining those elements can be challenging. What types of actions are classified as trials by the press (Suresh & George, 2021)

Trial by the press is considered a form of "contempt of court," specifically "press contempt," which can involve pre-trial, during-trial, or post-trial reporting. Pre-trial reporting may involve opinions, but if those opinions already lean towards the guilt of the defendant, it is considered a trial by the press. Similarly, reporting during ongoing court proceedings can enable trial by the press. Furthermore, erroneous reporting resulting from misinterpretation of a court judgment can also be deemed trial by the press (Disemadi & Roisah, 2019).

Reporting on matters before a trial is not inherently punishable by criminal law, but such reporting can be seen as fostering prejudice against the proper conduct of the judicial process. This is what is considered contempt of court. This was evident in the case of *Irvin v. Dowd*, where it was discovered that 8 out of 12 jury members

believed in Irvin's guilt after reading sensationalized media coverage of the case (Cato, 2023; Tenzer, 2019). In conclusion, regarding media reporting that is "judgmental" in nature, since the case of *Nebraska Press Association v. Stuart*, the U.S. Supreme Court has approved direct orders to restrict publications. Although freedom of the press is well-established in the United States (Jones & West, 2021; Nolasco, et.al., 2015).

In anticipation of trial by the press, the Indonesian Journalists Association conducted a "Journalist Training Program" in 1977, stating that journalists should maintain a balanced approach between the law and their stance towards the defendant to avoid trial by the press. To prevent trial by the press, journalists in Indonesia agreed to adhere to the principle of presumption of innocence in their reporting as a professional agreement (Marda, et.al., 2023).

The dilemma between freedom of the press and trial by the press is always a subject of discussion. On one hand, freedom of the press is a cherished principle, while on the other hand, judicial proceedings should only be carried out by the designated authorities defined in the constitution, namely the judicial bodies stipulated in the legislation according to the Law on Judicial Power No. 48 of 2009. The media does not have the authority to conduct judicial proceedings.

### 3.3. Mass Media Function

The function of the press has been discussed from various perspectives. According to TAP MPR No.II/MPR/1988, the functions of the press can be summarized as follows: disseminating objective information, conducting constructive social control, channeling people's aspirations, and expanding communication and public participation. Oemar Seno Adji also considers the press as criticism and correction, a barometer, a guide, and a form of control.

Education is one of the functions that can be inferred both from legislation and doctrine. The educational function here should be understood broadly so that readers not only know what is happening in their surrounding society but also understand the usefulness of the news they read in creating harmony within the community.

Many impacts arise from news reporting. Although news reporting is fundamentally about providing information to the public, the perception of news also depends on an individual's thinking and reasoning abilities. A news report about the modus operandi of a crime, for example, provides information to help the public be vigilant, but it can also be imitated by other criminals.

Furthermore, there is a reluctance to read the entirety of a news article. By only reading the headline, which often does not accurately represent the content of the news, readers may form opinions based solely on the headline. That is why there are regulations stating that headlines should accurately reflect the content of the news, although it is acknowledged that such headlines instantly attract readers' attention.

The educational function of mass media depends entirely on the professionalism of news writing. It cannot be denied that mass media has a significant influence on the intellectual development of a nation. If it is recognized that mass media also serves to educate its readers, the media must demonstrate professionalism in providing information.

It is not as simple as stating the need for news reporting to be educational. There is a dilemma between reporting the existing facts and the impact it has on readers. Many factors, both from the journalists and the readers, influence the emergence of these impacts. Journalists may not always know with certainty the factors, especially the most dominant ones, that shape readers' perceptions after reading a news article, even if the news only presents the facts. Similarly, for news writers, the selection of news for publication influences the perception of readers. For example, if there are frequent reports of theft in a particular area, people may perceive that the reported area is unsafe, even though the news coverage and the percentage of theft in that area may not necessarily be proportional.

It is not clear to what extent readers in Indonesia understand the difference between someone being suspected, charged, and undergoing trial in a court proceeding. For example, when news reports reveal that an individual or a company has engaged in fictitious imports/exports, accompanied by extensive exposés from journalists

covering the story, it does not indicate at what stage the person or company is in the criminal justice system. It is even unknown whether a criminal offense has occurred. Therefore, it is worth questioning when a person or company is entitled to exercise their legal right to defend themselves.

With limited legal knowledge within a society, particularly regarding the judicial process, readers can easily follow the opinions expressed by the mass media. Hence, in factual reporting, it is advisable to immediately provide information about the stage of the ongoing judicial process against someone who is suspected of committing a criminal offense, especially when accusations are made against them.

#### 4. Conclusion

The principle of presumption of innocence is included in the Journalistic Code of Ethics to prevent "trial by the press," which violates fair justice. However, there are differing opinions on how to report criminal events, deviating from the underlying reason for including the presumption of innocence. The focus should be on preventing "trial by the press" rather than debating the disclosure of a suspect's identity. It is important to provide clear reporting, mentioning that a person is a suspect and emphasizing that guilt will be determined in court. The mass media also have a responsibility to educate the public and guide them not to immediately assume guilt. The Journalistic Code of Ethics should be based on ethical principles and conscience, rather than explicitly stating general principles. The fundamental principle is to exercise press freedom without infringing upon the rights of others.

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