New Media and Human Rights: The Legal Battle of Freedom of Expression in Indonesia[1]

by. R. Herlambang Perdana Wiratraman
Lecturer at Constitutional Law Department, Faculty of Law, Airlangga University,
& PhD Researcher, Faculteit der Rechtsgeleerdheid, Universiteit Leiden
E. herlambang@unair.ac.id or h.p.wiratraman@law.leidenuniv.nl

Abstract

The development of freedom of expression in Indonesia has radically changed after Soeharto stepped down in 1998. A new law on the Press was enacted in 1999 (Law Number 40 of 1999), and the Indonesian Constitutional amendments (1999-2002) have introduced a catalogue of human rights, although press freedom had failed to be inserted as constitutional right for three times since 1945. In current situation, the parliament enacted two laws in 2008 which are related to information, Law Number 14 of 2008 concerning Public Information Openness and Law Number 11 of 2008 concerning Information, Transaction and Electronic (IET). IET law adopts a cyber defamation, which could charge anyone, including the journalist, by six years imprisonment. This law has been potentially used to attack freedom of expression, as we have seen in the case of Omni International Hospital against Prita Mulyasari. PWI (Indonesian Journalist Association) is also trapped to use this law against actress Luna Maya for cyber defamation. Interestingly, it has been triggering human rights movement to defend Prita and Luna, by using new media as well, especially Facebook and Twitter media. Departing from these cases, this article unravels legal restriction against freedom of expression through new media law and it's a social movement trend in the context of ten years of reformation after Soeharto fall down.

1. Introduction: Context of Democratization and Freedom of Expression in Indonesia

The wave of democratization and freedom have been significantly happened after Soeharto stepped down in 1998, then it has been followed by huge changing in government system, from authoritarian to democratic and open system. This is also supported by fair general election, multi-party political system, decentralization of government, and human rights protection which are recognized by the latest amendment the 1945 Constitution of Republic of Indonesia in 2002 (the 1945 Constitution). One of the most significant changes for such situation is liberal democracy which highlights freedom of expression. People could speak and express freer than before, and mass organization and political groups can be easier established.

[1] Paper presented for the 11th Annual Student Human Rights Law Conference, di Nottingham University, United Kingdom, 20-21 March 2010.

Freedom of expression is one of fundamental freedoms which in Indonesia historical context has been recognized since the first enactment of Constitution in 1945. Freedom of expression was formulated at Article 28: 'Freedom of association and assembly, of expressing thoughts and of issuing writing and the like, shall be prescribed by statute.' Although constitutionally recognized, the word '…prescribed by statute' remains problem, because it opens the various debate among legal scholars. This article has still existed until the fourth amendment in 2002.

Although the freedom of expression article is one of the oldest human rights article which constitutionally recognized, but practically its implementation has been extremely influenced by political configurations and its policies. There have been dynamics and conflict interpretation in recognizing legally freedom of expression as fundamental freedom. It means, in implementing freedom of expression has been often occurred limitations which was exacerbated by political regimes, including Soekarno regime, authoritarian regime of Soeharto, and post-Soeharto regime. Yet the Netherlands Indies legacy of criminal code which has been often used to pressure activists or oppositions against government, such as hatred sowings.[2]

Those dynamics and conflict interpretation have structurally employed various laws and policies, state-institutions, court interpretations and decisions, which all of those have shown the progression (and the regression) to freedom of expression in Indonesia. Although constitutionally recognized, freedom of expression has been operationalized by various laws and regulations, which impose serious preventive and repressive restrictions on the exercise of these liberties.

Although political and economy democratization have been changed within last ten years, but the change or reformation era does not mean transforming into more democratic political system. This is because the New Order's political pattern still strong enough and rooted in bureaucracy system, which has corruptive system and easily uses violence approach. On the other side, the state has shown rhetoric human rights program without progressive strategy how the state should avoid violence and prevent discrimination practice. Unsurprisingly, if the state has reproduced numerous draconian laws which tremendously threatened public spheres, freedom of expression and opinion, including freedom of the press. One of the controversial issues is related to the use and restriction of new media as political or public expression.

In current situation, the parliament enacted two laws in 2008 which are related to information, Law Number 14 of 2008 concerning Public Information Openness and Law Number 11 of 2008 concerning Information, Transaction and Electronic (IET Law). Interestingly, IET law adopts a cyber defamation, which could charge anyone, by six years imprisonment. This law has been potentially used to attack freedom of expression, as we have seen in the case of Omni International Hospital against Prita Mulyasari. *Persatuan Wartawan Indonesia* or PWI (Indonesian Journalist Association) is also trapped to use this law against actress Luna Maya for cyber defamation. Uniquely, it has been triggering human rights movement to defend Prita and Luna, by using new media as well, especially Facebook and Twitter media. Departing from these cases, this article unravels legal restriction against freedom of expression through new media law and it's a social movement trend in the context of ten years of reformation after Soeharto fall down.

[2] 'Hatred sowing' articles as the most controversial law and colonial legacy was adopted by Netherlands (*Wetboek van Strafrecht*) from article 124a British Indian Code in 1915 (Soesilo 1996: 132). In historical context, "Indonesia Menggoegat" was written and campaigned by Soekarno in confronting 'elastic articles' of *hartzaai artikelen* before the judges in *Landraad*, Bandung, 18 August 1930. It was not only Soekarno, but also Maskoen, Soepriadinata, Gatot Mangkoepraja, and other political activists were detained and imprisoned.

2. Cyber Defamation Law and Judicial Review

Quoted from Dewdney and Ride (2006: 4), the working definition of new media is neither about the current moment in time, nor about media as the latest technologies. The term 'new' in this paper will refer to what people do with technologies and is, therefore, about the possibilities for, and realization of, human thinking, feeling and communication in a new medium.

How has the new media in Indonesia evolved? If we say about 'Indonesian media', at the beginning of the New Order (1966s) meant newspapers and magazines, government-controlled state radio and the beginnings of the state television. By the 1990s, the national media included enormous print media conglomerates, over 700 privately owned radio stations and five national private television channels, in addition to the state broadcasters RRI (*Radio Republik Indonesia*, Radio of the Republic of Indonesia) and TVRI (*Televisi Republik Indonesia*, Television of the Republic of Indonesia), competing against trans-national television and the newly emerging internet (Hill and Sen 2005: 17).

Inevitable, this development has been promoted by a giant economic capitalism which tremendously influence into various level of society, including media development in Asia. Moreover, since the fall of Soeharto, the tap of democracy was freely opened, it has been massively affecting to the reproduction of press industry. And unsurprisingly, internet as an alternative media has been growing quickly in the context of post-authoritarianism of the New Order.

The first project in responding this development is the enactment of press law (Law Number 40 of 1999 concerning Press). This development is also supported by the 1945 Constitution which have introduced a catalogue of human rights. The Press Council governance has been established to strengthen the role and position of media and journalists, and the wave of transparency and democratization has reinforced Indonesia's rule of law.

By having new press law, it actually promoted the protection of journalist or press worker. The new development of press freedom has been reflected from press law, which is revoking press permit (*Surat Izin Penerbitan Pers*), abolishment censorship and press banning (*persbreidel*). This law is then corroborated by the enactment of Law Number 14 of 2008 concerning Public Information Openness. This new law clearly guarantees the people to access public information as mandated by article 28F of the 1945 Constitution. By using this law, the government could no longer say an 'official/state secret document' if the required document is categorized as public document.

Nevertheless, at the same time, the government and parliament have also passed numerous legislations that tremendously threatened freedom of the press, especially by providing a heavy criminal sanction, not only against to public but also to press workers. Ironically, those legislations are not related to media law. These legislations include, first, Law Number 10 of 2008 concerning General Election of Parliament. Second, Law Number 42 of 2008 concerning General Election of President. Third, Law Number 44 of 2008 concerning Pornography, and fourth, Law Number 11 of 2008 concerning Information and Electronic Transactions (IET Law). These are, unfortunately, rejoining with the Dutch legacy of criminal code which has been preserved until today.[3] Defamation article for instance, it is still applied to attack citizen, parliament member and also mostly cases against journalist, such as the case of of Tomy Winata versus editor chief of *Tempo*, Bambang Harymurti, and *Tempo* journalist, Ahmad Taufik and Tengku Iskandar Ali.

[3] Since 2003 until 2008, there are 59 cases related to defamation, which clearly more used to attack the press worker by using the Criminal Code rather than press law (Margiyono 2009: 16-17).

This case was caused by *Tempo* news that reporting a fire accident in Tanah Abang, Jakarta.[4] Although they were loss in Jakarta District Court, but in the Supreme Court level, they won.

This paper focuses on the Law Number 11 of 2008 or IET Law. It was approved by the House of Representatives on 21 April 2008, and then the GOI enacted Law No 11 of 2008 regarding Information and Electronic Transactions. IET Law came into effect and full force as of its date of enactment. The most controversial issue of the IET Law is related to the adoption of a cyber defamation which could charge the journalist by six years imprisonment for online media journalist and public or citizen. Because the criminal charge is more than five years imprisonment, by using this law, the State apparatus could apply direct detention, and this would be very serious threatening freedom of expression and journalism works. The defamation article is based on Chapter VII, article 27 section (3)[5], and its penal provisions at Chapter XI article 45[6]. Because of the cyber defamation provision, it is easily used to criminalize any citizen who actually expresses or voices their freedom of opinion. Terribly, criminalization would be a draconian mechanism to pressure freedom of expression, and it is getting complex, difficult and unresolved.

This potential arbitrarily use of IET Law clearly contravenes to several articles of the 1945 Constitution, especially related to freedom of expression. Numerous individual and non-governmental organizations have made a file petition against Article 27 section 3 of IET Law to Constitutional Court.[7] According to the applicants, this article is contradictory to Article 1 section (2), Article 1 section (3), Article 27 section (1), Article 28, Article 28C section (1) and (2), Article 28D section (1), Article 28E section (2) and (3), Article 28F and Article 28G section (1) of the 1945 Constitution.

According to petitioners, the provision of Article 27 section (3) of IET Law is not reflecting the Rule of Law concept, which emphasizes a clear provision, easily or well understood, and fairly enforced. Because this reflection, it is potentially abused and against the foundation of Rule of Law. The second argumentation is based on the character of Rule of Law, which has three principles: legality, predictability, and transparency. Article 27 section (3) of IET Law clearly contradicts to these principles. The third argumentation is based on the good rule making principles, under Law Number 10 of 2004 concerning Rules Making. Cyber defamation provision under IET Law does not reflect the importance of procedural and substantial aspects of rule making. Fourth, Article 27 section (3) of IET Law is also against the principle of *lex certa* and legal certainty because it is not formed in formula glare at clearly and formulation of unclear criminal definition or too complicated will only peep out uncertainty of law. Fifth, this law could also restrict information flow and limit public or social participation in controlling the ruler. Sixth, because it has a heavy criminal sanction, the law would be threatening press or journalists works, which would affect to improper self censorship. And seventh, by having cyber defamation article, it restricts and contradicts to the freedom of expression, freedom of opinion and right to disseminate information.

The judges argued that Article 27 section (3) of IET Law is a limitation of freedom of expression and not contradictory to constitutional rights provision. According to judges, those limitations under IET Law is

[4] The report was titled by "Ada Tomy di Tenabang?" (Is there Tomy in Tenabang?), and the entrepreneur Tomy was called as a 'Big Collector' (*pemulung besar*).

[5] Article 27 section (3) of IET Law: Any person who knowingly and without authority distributes and/or transmits and/or causes to be accessible Electronic Information and/or Electronic Records with contents of affronts and/or defamation.

[6] Penal Provision under Article 45 section (1): Any person who satisfies the elements as intended by article 27 section (1), section (2), section (3), or section (4) shall be sentenced to imprisonment not exceeding 6 (six) years and/or a fine not exceeding Rp. 1.000.000.000 (one billion rupiah).

[7] The applicants are Edy Cahyono, Nenda Inasa Fadhilah, Amrie Hakim, Indonesian Association of Legal Aid and Human Rights (PBHI), The Alliance of Independent Journalists Indonesia (AJI), Legal Aid Centre for Press (LBH Pers).

regulated by State in order to not hinder fundamental rights to seek, obtain, posses, store, and convey information, but to guarantee other people to enjoy their freedom from any threatening against individual and family dignity, also degrading human dignity which causes inhuman life (vide: Court Decision Number 2/PUU-VII/2009, 5 May 2009). Regarding to human rights issue, the judges consider that IET Law is important to secure and protect freedom of expression, giving legal certainty, and not only addressing specially to press or journalism. And finally, the judges conclude that 'refusal all petition claims', and it means that Article 27 section (3) of IET Law is not against the 1945 Constitution.
The core issue in this IET Law is basically related to defamation through new media, or so called cyber-defamation, and its affect to human rights, especially freedom of expression. Article 17 section (3) of IET Law does not provide a rigid regulation to determine defamation, so that is why this article is unclear and could be easily used to pressure rights of the people to express his or her opinion. Also, this new law could silence the press, through its provisions on defamation, by threatening potential violators with jail terms and fines, which are heavier than those stipulated in the Criminal Code.

The major issue at this context is whether there is possible law without defamation article at all, as the current development several countries which have abolished law about defamation, slander, insult and false news. Or, how to balance the issue of cyber-defamation and human rights protection, so then the IET Law could be applied properly and clearly.

Regarding this issue, Mr Abid Hussain has given a Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression.[8] In this report stated that the Special Rapporteur believes strongly that it is critical to raise the public conscience to ensure that criminal laws are not used (or abused) to stifle public awareness and suppress discussion of matters of general or specific interest. At minimum, it must be understood that: (a) The only legitimate purpose of defamation, libel, slander and insult laws is to protect reputations; this implies defamation will apply only to individuals not flags, States, groups, etc.; these laws should never be used to prevent criticism of government or even for such reasons as maintaining public order for which specific incitement laws exist; (b) Defamation laws should reflect the principle that public figures are required to tolerate a greater degree of criticism than private citizens; defamation law should not afford special protection to the president and other senior political figures; remedy and compensation under civil law should be provided; (c) The standards applied to defamation law should not be so stringent as to have a chilling effect on freedom of expression; (d) To require truth in the context of publications relating to matters of public interest is excessive; it should be sufficient if reasonable efforts have been made to ascertain the truth; (e) With regard to opinions, it should be clear that only patently unreasonable views may qualify as defamatory; (f) The onus of proof of all elements should be on those claiming to have been defamed rather than on the defendant; where truth is an issue, the burden of proof should lie with the plaintiff; (g) In defamation and libel actions, a range of remedies should be available, including apology and/or correction; and (h) Sanctions for defamation should not be so large as to exert a chilling effect on freedom of opinion and expression and the right to seek, receive and impart information; penal sanctions, in particular imprisonment, should never be applied

Given this perspective, it seems that the decision of Constitutional Court regarding the Article 27 section (3) of IET Law is unfair and disappointing, as this puts a continuous threat on journalists and civil society members who express their opinion. According Agus Sudibyo (2009), "the IET law is strange. If other

[8] E/CN.4/1999/64, 29 January 1999, Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, para. 28.

country would like to regulate in relation to cyber crime, but in Indonesia, the purpose of this law is restricting freedom to information and criminalizing citizen."[9]

If the law could be amended, especially based on human rights perspective, clearer and more rigid provision, the new media law would be in stronger position to encourage the responsibility, not to restrict over freedom of expression or freedom of opinion as guaranteed by the 1945 Constitution. So then the new media law, especially the IET Law, could always correspond to human rights protection and the purpose to promote social control in the context of democracy.

3. Prita's Case

The controversial and the most famous case regarding to the application of IET Law was Prita's case in 2009. Prita, or her complete name is Prita Mulyasari, an Indonesian woman who was arrested on 13 May 2009 for allegedly circulating online defamatory statements against Alam Sutera Omni International Hospital in Serpong, Tangerang, Banten province, Indonesia.

Prita, who had been a patient at the Omni International Hospital, asked her doctor for her medical record. When the doctor refused, Prita has sent out copies of her complaint via e-mail. Prita had sent an e-mail to her friends complaining that she had been misdiagnosed as suffering from dengue fever. In August 2008, while further medical examination proved that she in fact had mumps.

After the e-mail circulated among various mailing groups and eventually came to Omni's attention, the angry hospital sued her for defamation. She had accused the doctors of unprofessional conduct and warned her friends against visiting the hospital. The case sparked public outrage and a media frenzy after Prita was detained for three weeks ahead of her trial.

The prosecution said that Prita should be declared guilty for defaming the two doctors, Hengky Gosal and Grace Hilza Yarlen Nela, in an email sent to 20 people that described the two as unprofessional and impolite. The prosecutor of Tangerang, Banten said Prita Mulyasari was charged with violating Article 27 section (3) of the IET Law. The charge, according IET Law, carries a 6-year prison term.[10]

The Omni International Hospital also has brought a civil suit against Prita, and she was found guilty of defamation and ordered to pay Rp. 204 million to the hospital by the Tangerang District Court. Then, The Banten High Court upheld the verdict, forcing Prita to file an appeal to the Supreme Court. The latest process of civil suit is being held by Supreme Court, and there is no decision yet given for this case.

In criminal case, after long process of court session in Tangerang District Court, Prita is finally stated innocent. Because of this verdict, several non-governmental organizations involved in making 'amicus curiae' to the Court process, in order to remain that Prita's case is very important to examine fundamental values and rights for Indonesian democracy.

Departing from this case, why this case is so important noted in the context of new media development in Indonesia? There are at least three reasons. First, it has been showing that the Article 27 section (3) IET Law was easily abused and dominantly interpreted by capital owner and the State against civil society. Because of defaming through email, Prita should face two serious cases at the same time, which

[9] 'Kebebasan Berpendapat Janganlah Direduksi', Kompas, 4 June 2009, kompas.com/read/xml/2009/06/04/03091447/kebebasan.berpendapat.janganlah.direduksi [accessed on 5 January 2010].
[10] This case (Prita Mulyasari vs. Indonesia Republic) was numbered 1269/PID.B/2009/PN.TNG, in Tangerang District Court.

are criminal charge brought by the Government of Republic of Indonesia, and also civil suit which are brought by lawyer of Omni International Hospital. Actually, what Prita had done just complaining the medical services because she believes that she is as customer or patient has right to access information regarding her medical record, but adversely she had been accused, and ironically fined Rp. 204 million. Moreover, the law enforcer has shown repressive character in arresting Prita. It was the first time in history of contempt of court case in Indonesia that a suspect could be arrested by prosecutor.

The second, from human rights perspective, this case has given an important example that the IET Law clearly breached Article 19 of the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights, which has been ratified by Indonesian Government through Law Number 12 of 2005. Unsurprisingly, an ordinary citizen will be frightened if she or he express opinion or communicate through internet, because the IET Law stipulates that anyone found guilty of publishing defamatory or insulting information on the Internet face six years' imprisonment and a penalty of RP 1 billion (approx. US$ 98,000.00). And of course, this regulation is also against the 1945 Constitution and Law Number 39 of 1999 concerning Human Rights. In 'amicus curiae' applied by non-governmental organizations provoked that freedom of expression is the vital basic rights for some individuals to participate and take responsibility in democracy. It is one of the very strategic human rights to make democracy work because democracy cannot work without the freedom of expression and speech (Elsam et all., 2009). In this regard, the infraction of these rights does not only breach the law, but ironically also breach the protection of citizen constitutional rights.

The third, the most interesting in public sphere, this case has a meteoric rise of social solidarity movement across various level of civil society. Unsurprisingly, the case has outraged the public, tens of thousands of whom have joined a Prita support page on new media, especially Facebook. This case invited public sympathy because it exposed at the context of the longstanding injustice and corruption within the country's judicial system. During court session, numerous groups of people have been hand in hand gathering people to donate coins for Prita Mulyasari. This has been gathered at the Wetiga post, Kramat Pela, South Jakarta sum up to Rp. 317,639,105. The count has stopped since Wednesday, at 18.43 since all the coins there have been counted.[11] Shortly, Prita has been a symbol of freedom of expression fighter against the IET Law and the tyranny law system in Indonesia.

4. New Social Movement and New Media

Before discussing new social movement in relation to new media development in Indonesia, this starts by defining the term 'new' in new social movement. There is no single definition and approach to explain new social movement. In this paper, it uses the term to describe a diverse set of popular or cultural movements characterized by a model from conventional methods of political or cultural organization and expression, and experimentation with new forms of social relations and cultural meanings and identities.

The development of new social movement in the context of the use of new media is inseparable from the idea of Habermas identified as public sphere. Habermas conceptualizes the public sphere as the realm of social life where the exchange of information and views on questions of common concern can take place so that public opinion can be formed. The public sphere 'takes place' when citizens, exercising the rights of assembly and association, gather as public bodies to discuss issues of the day, specifically

[11] 'Coin for Prita Sums up to 317 Million Rupiahs', Kompas, Kamis, 17 Desember 2009, http://english.kompas.com/read/2009/12/17/14380167/Coin.for.Prita.Sums.up.to.317.Million.Rupiahs [accessed on 15 January 2010].

those of public concern (Dahlgren 1995: 7).

This concept has been also significantly articulated in responding Prita's case. As mentioned above, numerous groups of people have been enlarging solidarity and voluntarily supporting Prita to donate coins for showing to the judges or judicial system that public and groups of people are behind her. This solidarity has been built through the facebokers network, and sharing the progress information through this new media.

New social movements aspire to a broadening of 'the political', popular empowerment, and the re-appropriation of civil society, away from the control of the state. The coins sent by mail came from Bogor, Bali, Semarang, Solo, Jember, and Depok, also brought by container truck for free, because there was agreement among drivers solidarity. About a dozen volunteers from various backgrounds were still at the Prita's solidarity secretariat to count the latest coins. The student from basic school up to university student, urban poor communities, women groups, political elites, minister, parliament member, and other professional groups have been surprisingly giving full support to give donation. Also, journalists, entertainer, and famous singers or band groups have given their role to campaign justice for Prita.[12] It can be seen from the music concert themed "One Prita is Enough" at Hard Rock Cafe, Jakarta, December 20, 2009. The concert, which will be held by the "Coin Concert for Justice" committee, happens to be on the Human Solidarity Day.

According to the head of the concert committee, Adib Hidayat, the 'Coin for Prita Concert' is a form of solidarity and a statement to fight injustice so that in the future there will be no other cases like Prita's. As for the word 'coin', other than being inspired by a public movement to gather coins to help Prita pay her fine, it's also supposed to be an acronym from "Indonesian People's Solidarity" ("Kepedulian Orang Indonesia" shortened 'koin', in English means coin). "This is a symbol of the moral movement from the nation's showbiz as a message for the government and to inspire the young that all citizens are equals in law, politics, social life, economy, and culture."[13] This was really an extraordinary movement in the context of Indonesia new social movement post Soeharto, because their solidarity has been provoked by tremendous corrupt and unfair judicial system, and the people wanted to remain the ruler or law enforcer for providing access to justice.

In the context of protesting IET Law, Prita's case is not the first case. She is the second person to be charged under the Article 27 section (3) of IET Law, after Narliswandi (Iwan) Piliang, an Indonesian blogger and journalist. A legislator Alvin Lie filed a defamation lawsuit against Piliang over his article, "Hoyak Tabuik Adaro dan Soekanto", published in the Kompas Readers Forum's mailing list. The article alleged that coal mining company PT Adaro Energy bribed the National Mandate Party (PAN) through its legislator Alvin Lie to influence the proposal in the House of Representatives to investigate PT Adaro's initial public offering. Adaro was allegedly involved in transfer pricing when it sold coal to Singapore-based coal firm Coaltrade Services International Pte. Ltd., whose shares are owned by Adaro shareholders, at a below-market price of $32 per ton, despite prevalent high coal prices reaching an average of $95 per ton by the end of the year.[14] Police also summoned Agus Hamonangan, moderator of the mailing list, on September 4 for questioning about Piliang's article.

[12] The famous band groups are Slank, Gigi, Ari Lasso, Nidji, Cokelat, Sheila on 7, Titi DJ, Ada Band, Andra and The Backbone, Padi, and She. Other famous names follow the list, such as Sherina, Audy, Drive, Seringai, Pee Weegaskins, Funky Kopral, Kunci, Marvells, Drew, Saykoji, Ronaldisko, Endah N. Rhesa, Black Star, Domino, Ika Putri, Gruvi, J-Flow, and Patent.
[13] Kompas, Kamis, 17 Desember 2009
[14] New media law 'threatens press freedom', Jakarta Post, Monday, September 2008.

After Prita's case, there is Luna Maya's case. Luna Maya, an actress, a television presenter, and model, has been threatened with legal action by Indonesian Journalists Association (PWI) and has closed her Twitter account following backlash against a heated message where she labeled infotainment television program crews as being "lower than prostitutes."[15] Following her post, she has been threatened with boycotts by entertainment television programs and the PWI has reported her to police. In this case, the PWI (Indonesian Journalist Association) is also trapped to use this law against actress Luna Maya for cyber defamation. The PWI filed a complaint against Luna for defamation, lies and unpleasant conduct, and asking charge her under Article 27 section (3) of IET Law.

Regarding both cases, Luna Maya, similarly to Prita and Piliang, is also supported by public and other journalist associations. The Alliance of Independent Journalists Indonesia (AJI) for instance, through Margiyono, AJI's coordinator for legal affairs, says that Luna Maya's case should make entertainment reporters reflect on how they do their job. And, he also questioned whether infotainment programs were 'journalism' because they often violated the journalism code, especially in relation to other people's privacy. This is an example of solidarity making from journalist association in fighting not only against unprofessional journalism, but importantly, the application of IET Law that started to pressure public voices.

If we compare those cases, surely, the Prita's case was largely more supported by public and across the class of society rather than Pilliang's or Luna Maya's case, and her case was brought into wider media coverage. She was a mother of two and facing the long court session while pregnant, and struggle her rights against arrogance doctors, unfair and arbitrarily process of judicial system. So that is why, she became a national symbol for the plight of the powerless in Indonesia, especially symbol of freedom of expression fighter.[16] Unsurprisingly, millions people solidarity through cyberspace, especially facebook user (facebookers) movement, has given tremendous effect to political sphere or even legal sphere.

The facebookers movement has been also booming when the people in Indonesia gathering to support two commissioners of KPK (Commission for Eradicating Corruption), Bibit Samat Rianto and Chandra Hamzah. Both are symbolized as anti corruption fighter when they were unfairly arrested by police in Jakarta. Because the facebookers movement which has collected more than a million supporter, and media or press support to blow up this case into public sphere, then their case has been politically resolved by President Soesilo Bambang Yudhoyono.

By learning those cases, the new social movement through new media has an importance and significant contributing to democratization. It has generated various perspectives about the media's role in the process of democratization. Quoted Poster (1995: 3) mentions there are two sided debates among social theorists regarding the political effect of media technologies. On one hand, a group of critical theorists view that mass media is capable of promoting democratization. On the other hand, another group has more concerns about the danger of media freedom, predominantly in the pinnacle of the broadcast media era, when a small number of TV, radio and film producers can send a certain message to large number of audiences. Media improvement through the growth of internet technology has brought this discourse to the new level. Again, there are different perspectives in seeing internet capabilities as assisting democratization. The Internet as a new media technology, in the utopian rhetoric, gives an assurance in promoting the process of democratization within the contemporary

[15] She wrote: "Infotainment are LOWER than PROSTITUTES, MURDERERS!!!!! May your soul burn in hell!!!"
[16] The Straits Times, Thursday, February 18, 2010, p. A14.

society, since it is considered able to enhance the opportunity for individual expression and citizen activity (Papacharissi 2002: 10).

Again, quoted Habermas's perspective, the public sphere also highlights that public participation is an important aspect of democratic society. In pointing this out, Habermas focuses his attention on the site of political change, instead of analyzing the agent for democratization (Dean 2001: 251). Through the public's engagement with rational-critical reason in the public sphere, political changes can be achieved. Habermas proposes the idea of public sphere as the site where 'private people come together as a public' (Habermas 1992: 27). In this context, we get the closer possible answer why the new media has importantly created tremendous social movement against injustice and unfair political and legal system.

4. Conclusion: Human rights learning from the legal battle

The story of Prita Mulyasari and her supporters has been impressively fascinating a legal battle on freedom of expression against cyber defamation law in Indonesia. This case has inspired other groups or individuals as lesson learned to strive his or her rights against any abusive policy or arbitrarily law enforcement.

If we look at the legal battle of freedom of expression from historical point of view, this had been influenced by regime character from one to another regime. Freedom of thought and expression were also tremendously exacerbated by the New Order era of Soeharto, especially concerning freedom of the press. Press restrictions are characterized by numerous conflicts between newspapers or magazines and the government. The system included a wide range of preventive institutional mechanisms, particularly the publication license (Hill 1994; Lubis 1993: 251-299). The basis for this license was Regulation No. 1 of 1984 of the Minister of Information, which itself was based on the Press Law (No. 11 of 1966 as amended by Laws No. 4 of 1967 and No. 21 of 1982). The license requirement was not officially intended to be used for the purpose of censorship, but to prevent a concentration of power by press ownership, and it was well known as 'press-curbing' (*persbreidel*). Those examples are several cases highlighted during Soeharto regime, which are actually much more than those cases. In responding press restriction law, journalist or social groups had reproduced alternative media, what they called as 'underground media'. This was also famous among university or student press, in order to balance the dominant information reproduced by the State. Also, among journalists, since 1994, especially after press curbing over Tempo, Detik and Editor, they established a new alternative group of journalist association, outside the government control. They have been often fighting against the State at the court, either facing the criminal case or civil case, and also judicial review against any freedom restriction policy (administrative issue).

The legal battle was also shown though the strategy in involving constitutional amendment, since 1999 until 2002. During amendment process, the idea of press freedom has been proposed by journalists group, non-governmental organizations, and academicians, to be included into the 1945 Constitution, but it failed. Nevertheless, the new amendment has approved new articles on freedom of expression (Article 18E Section 3) and right to information (Article 28F), which are quite related to the promotion of press freedom, but not strong enough protecting the press or journalism works. Since the constitutional amendment, the legal battle for striving freedom of expression was also done by various actors, either through the judicial process[17] or non judicial process.

[17] The judicial review was applied by Eggi Sudjana who was suspected for disrespecting the president in Jakarta, and also dr. Panji Utomo who was suspected for committing crime against public order in Aceh. Both of them filed the case for constitutional review, especially concerning *haartzai artikelen* under Criminal Code, which is considered contravene with Indonesian Constitution after amendment. Finnally, Constitutional

Nevertheless, the new character of legal battle in promoting freedom of expression has been slightly changed, which are characterized by the use of new technology of media in creating a popular movement. This new social movement is not only achieved in defending victims (such as the case Prita Mulyasari, Luna Maya and Bibit-Chandra), but also in promoting human rights through various level of legal reform, included fighting against numerous draconian laws which restrict freedom of expression and press. Beside the campaign in rejecting Article 27 section (3) of IET Law, in early year of 2010, the public groups and journalist associations have been starting to campaign 'Tolak RPM Konten Multimedia!' (Refuse the draft of Information Minister Regulation on Multimedia Content) through facebookers community. Sharing, debates, contribution, or refusal argumentations are widely accommodated by facebookers, twitters and bloggers community. For instance, Kompas as national and influential Indonesia's newspaper, has reported this new social movement and criticism against the law draft in headline page, and given a constant media coverage.[18]

The draft of Information Minister Regulation on Multimedia Content is currently becoming hot topic in Indonesia, because it would be predicted to limit and restrict freedom of expression through new media. And it is frightened to disturb the democratization process, and would be escalating the repressive character against public spheres. Keane (1991: 176) says that democracy requires informed citizens. Their capacity to produce intelligent agreements by democratic means can be nurtured only when they enjoy equal and open access to diverse sources of opinion. This argument is corroborated by Feintuck and Varney (2006: 245) who say that a fundamental objective for media regulation remains that of ensuring universal access to a wide range of quality media products, and therefore any move towards greater access to a wider range of media is apparently to be welcomed.

In this regards, either the restriction against freedom of expression or restriction against the use of new technology of media, this still needs wider attention and social movement to always control the government policies or judicial process in order to strive a better quality of human dignity. Without building strong public control, unsurprisingly if the further regime would be trapped into throwback to General Soeharto's New Order dictatorship. And of course, it is not only an adverse for democratization process, but it is more sinister for human rights development. Hopefully not in that way!

Reference

Dahlgren, P. (1995) *Television and the Public Sphere: Citizenship, Democracy and the Media*. London: Sage.

Dean, Jodi (2001) 'Cybersalons and Civil Society: Rethinking the Public Sphere in Transnational Techchoculture', *Public Culture* 13 No. 2: 243-265, http://muse.jhu.edu/journals/public_culture/v013/13.2dean.pdf [Accessed 2 / 2 / 10]

Dewdney, Andrew and Peter Ride (2006) *The New Media Handbook*. London and New York: Routledge.

Court through its decision No. 013-022/PUU-IV/2006 (reviewing articles on crime against President and Vice President, article 134, 136 *bis* and 137 Criminal Code) and decision No. 6/PUU-V/2007 (reviewing articles on crime against public order, article 154 and 155 Criminal Code), gave an opportunity to openly promote and guarantee freedom of expression in Indonesia.

[18] 'Protes Meluas di Dunia Maya' (Spreading protest in cyber space), Kompas, 17 February 2010.

Elsam, IMDLM, ICJR, PBHI, YLBHI (2009) *Amicus Curiae: Prita Mulyasari vs. Indonesia Republic*. http://www.elsam.or.id/images/uploads/prita.pdf [accessed on 10 February 2010].

Feintuck, Mike and Mike Varney (2006) *Media Regulation, Public Interest and the Law*. Edinburgh: Edinburgh University Press.

Habermas Jurgen (2002) *Structural Transformation of Public Sphere.* Cambridge: Polity [1989]

Hill, David T. and Krishna Sen (2005) *The Internet in Indonesia's New Democracy*. London and New York: Routledge.

Keane, J. (1991) *The Media and Democracy*. Cambridge: Polity Press.

Margiyono (2009) *Membangun Benteng Kebebasan*. Jakarta: Aliansi Jurnalis Independen (AJI).

Poster, Mark (1995) *The Second Media Age*. Cambridge: Polity Press.

Papacharissi, Zizi (2002) 'The Virtual Sphere: the Internet as a Public Sphere', *New Media Society*. 4; 9 http://nms.sagepub.com/cgi/content/abstract/4/1/9 [Accessed 1 / 1 / 10]

United Nations (1999) *Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression*, para. 28, E/CN.4/1999/64, 29 January 1999.

Court Cases

Prita Mulyasari vs. Indonesia Republic, No. 1269/PID.B/2009/PN.TNG, in Tangerang District Court.

Judicial review, applied by Eggi Sudjana (Constitutional Court decision No. 013-022/PUU-IV/2006, reviewing articles 134, 136 *bis* and 137 Criminal Code)

Judicial review, applied by dr. Panji Utomo (Constitutional Court decision No. 6/PUU-V/2007, reviewing articles 154 and 155 Criminal Code)

Newspaper

'Kebebasan Berpendapat Janganlah Direduksi', Kompas, 4 June 2009, kompas.com/read/xml/2009/06/04/03091447/kebebasan.berpendapat. janganlah.direduksi [accessed on 5 January 2010].

'Coin for Prita Sums up to 317 Million Rupiahs', Kompas, Kamis, 17 Desember 2009, http://english.kompas.com/read/2009/12/17/14380167/Coin.for.Prita.Sums.up.to.317.Million.Rupiahs [accessed on 15 January 2010].

New media law 'threatens press freedom', Jakarta Post, Monday, September 2008.

The Straits Times, Thursday, February 18, 2010, p. A14.

'Protes Meluas di Dunia Maya' (Spreading protest in cyber space), Kompas, 17 February 2010.