

Journalist Liability for Breaches of Good Faith under Indonesian Press Law

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ABSTRACT

This article aims to explore the conflict between the good faith values of press law and the criminal liability implications in journalism within the wide-open context of such vague norms as they exist in Indonesia. Right of legal protection for journalist was guaranteed by Law Number 40 of 1999 on the Press, but this law had no operational criteria concerning whether acts of journalism are carried out in good faith or not. The absence of consistently interpreting such rulings has resulted in confusion molding law enforcement agencies. They lack a universal definition, and would especially fall under defamation, false information and electronic communication offences. This article is primarily a normative juridical one, which, with the support of various research methods including statute, conceptual, case and comparative methods, aims to argue that the good faith should not be perceived as just an abstract moral value but rather as a legal doctrine that could limit the journalist criminal liability. This leads to the definition of signs of bona fides as reasonable verification, balance of sources, orientation towards public interest, lack of malice intention, journalistic precaution, and willingness to be corrected or right-of-reply. This article develops a model of press freedom law in Indonesia that could integrate journalism ethics with the criminal accountability of journalists. It argues that the prosecution of journalists should be a last resort and is only warranted in cases of "intentional falsity, actual malice, or reckless disregard for the truth". Among others, the Press Council is tasked to strengthen its own role and align the Press Law with the Criminal Code and Electronic Information and Transactions Law to safeguard press freedom on a democratic rule of law.

Keywords: Criminal Liability, Criminalization of Journalists, Good Faith, Journalism, Press Freedom, Press Law.

I. INTRODUCTION

When seen in the prism of fourth pillar of democracy, press freedom significantly impacts modern democratic governance (Umesh Patnaik, 2024). It is not only about providing information to the public but also putting transparency on public discourse and ensuring that it is critical and well-informed. The press serves as a literal watchdog: keeping government institutions accountable, challenging policy decisions, and exposing abuses of power (Wiratraman, 2025). This gives the press an essential position in defending democracy and maintaining a balance between state power and the interests of its citizens. Of course, the journalist crave for press freedom is a part of basic rights in Indonesia itself which are still rambling under general human right virtues to what it referred in Article 28F of the 1945 Constitution. This ensures the right of all citizens to communicate, access and receive information and disseminate it. This constitutional principle is stated in Law No. 40 of 1999 about Press which state that press freedom is not merely human right of a journalist but rather public rights (Syafriadi & Santri, 2025). In addition, this law also dictates that free and independent media is a basic right of people to develop their democratic will. The Press Law states freedom of the press as a pillar in politics, culture, economy, and society in the country. It acknowledges the function of the press as a medium space of communication among different social classes, and a breeding place for dialogue and transferring ideas (Kencono, 2024).

In practice, however, the extent and manner of legal protection do not always match. In recent years, a trend has taken hold where journalists are being criminalized for doing their jobs. In total, the Alliance of Independent Journalists (AJI) recorded 89 cases of violence against journalists in 2023, up from those registered during 2022. Those incidents include aggressive acts,

acts of intimidation, and attempts to criminalize journalists with the application of crimes committed through laws such as the Criminal Code (KUHP) and provisions contained in the Electronic Information and Transactions Law (EIT Law). Nonetheless, it also has serious ramifications towards the condition of press freedom in Indonesia, as this brings up a grave threat about whether or not press freedom is experiencing systemic issues in that context (Aji, 2024).

The application of the principle of good faith has been one of the main problems in criminal cases concerning violations by the press, which derives from a specific article under Indonesian Press Law that protects journalists who carries out their duties professionally and in good faith (Widyastuti, 2021). Journalists are protected by law in carrying out their professions based on the provisions of laws and regulations as stipulated in Article 8 (1) of the Press Law. Moreover, the Journalistic Code of Ethics (KEJ) organized by the Press Council incorporates accuracy, independence and fairness as core professional values which are essentially inseparable from the principle of good faith. Yet, as of this writing, there exists no established normative definition regarding what “good faith” is within the parameters of journalism (Wesnala & Budiana, 2024).

This lack of clarity does not mean that there is no regulation, but instead the presence of normative ambiguity. Good faith, on the other hand, is an option that protects journalism in the Press Law but it lacks operative criteria to qualify if such journalistic action meets the requirement (Siti Atikah, 2023). As a result, this means the interpretation of good faith will be subjective and may not be uniformly interpreted by law enforcement authorities. Such responsiveness is fundamentally unavailable in any case, and also gives an abusing confinement with the end goal to selectively prosecute journalists

who reveal politically sensitive issues, individuals of impact or holding public office (Ani Mustafa, 2025).

We have witnessed some instances of this problem. For example, Haris Azhar and Fatia Maulidiyanti were sued for defamation after revealing the names of state officials linked to mining interests in a program that runs on YouTube (Putusan Mahkamah Konstitusi, 2021). While the information was public and from research report data, prosecution authorities disregard good-faith efforts to disseminate knowledge. Likewise, Dandhy Laksono received punishment over hate speech he posted on social media after he expressed concern about the violence committed against Papuan citizens. Both of these situations involve criminal provision used in response to journalistic activities or public advocacy (Putri dzahra fatiha anwar Sidiq, 2024).

However, we also observe in various sentences that the test of the principle of good faith seems a little authentic and devoid of grounding in law and journalistic codes of ethics (Tirtayasa & Sebastian, 2025). For example, in the criminal law cases against journalists, which are few and far between in Indonesia, references to the Guidelines for Online Media Reporting or Journalistic Code of Ethics are minimal (Musacarlos & Hartanti, 2020). This shows that law enforcement authorities seem to deal a lot more on the issue of general criminal offenses without understanding the journalism context. There are no norms, which is why legal uncertainty looms over the journalism and media institutions.

The absence of obvious standards prevents the successful implementation of the due process of law principle too. Consequently, Criminal law has to be applied as the '*ultimum remedium*' (the last remedy or resource) in a rule-of-law type of state (Maulana & Setyaningrum, 2020). In the struggle between these rights, it is necessary to pursue a way outside of

the courts, in the first place, and then preceding rights against other types of speech issues embodied by Articles 5 and 6. However, given the chance it is far too often that law enforcement will skip right past remedy into prosecution without giving time for the ethical and administrative remedy to be used as the first step in achieving resolution of a dispute. This is not in accordance with the spirit of protecting the right of journalists as prescribed by the Constitution (Njatrijani, 2022).

This absence of norms has ramifications for individual journalists and the broader state of democracy in many places. The idea is that when journalists are afraid of being criminally prosecuted because of their reporting, this has a serious chilling effect on the public (Simandjuntak et al., 2024). It is another blow to loses one of the pillars of checks and balances in a state, further depriving society of information that is necessary for of critical and objective social understanding. This might be a democratic setback in the long-run, for what we have at runway is public information mangled not by truth-seeking but fear.

The urgency of legal reform, in this regard, is tremendous. However, the good faith that must be translated by lawmakers needs to be deliberated in greater detail juridically, either through regulation under Press Law or various bodies of guidance as perpetrated by Supreme Court and restoring or harmonization with KUHP (the Criminal Code) and EIT Law. Functioning of the Press Council must likewise be fortified, so far as to have benevolent authoritative headings which can be referred to law implementation specialists. Nowhere do any specific legal protections appear, nor even a statement of non-liability on the part of the state; in fact, it is only affirmatively stated that the state has an obligation to remedy that lack in order to ensure citizens may enjoy freedom of expression.

This study seeks to provide a critique of the notion of good faith in criminal law (in press cases in Indonesia). This research method is juridical-normative while the qualitative analysis, judicial decisions, Press Council documents and case study are used. The normative gap will be the basis for recommendations in order to guide the reform of press-related criminal law equitably and in a constitutional sound manner, based on this analysis and other forms of interpretation that have a direct impact on freedom of the media.

Against this backdrop, the authors investigated three questions: First, what do press-related criminal cases in Indonesia mean by good faith? Second, what does the normative concept of good faith correspond to in the law on press freedom and criminal liability about journalism? Third, then what will be the type of good faith as an operational legal standard in Indonesian press law? The uniqueness of this article is that it undertakes to redefine “good faith” not merely as an ethical consideration, but as a doctrinal legal standard limiting criminal liability in journalism. This article clarifies the matters that must be applied in accordance with a fair understanding and between fact verification, source balance, public interest, absence of malice, respect for ethics and willingness to correct things as explained by this Article.

II. RESEARCH METHODS

This research uses an approach of law normative juridical (Hardinanto et al., 2024). Indicative good faith in relation to the concept of press law in Indonesia, this article discusses legal norms that reflect principles, doctrines and institutional practices of good faith relating to each party’s actions and relations with other parties (Akhmad et al., 2023). The methods used in this study include: statutory, conceptual, case law and comparative approaches (Junius Fernando et al., 2025). The “statutory approach” is used to review

the provisions of law that relates or determines the good faith status such as the Press Law No. 40 of 1999, the Criminal Code of the Republic of Indonesia, the Electronic Information and Transactions Law, and case law from the Press Council. This paper analyzed the concepts of good faith, press freedom, criminal liability, due diligence, public interest and *ultimum remedium* from a conceptual perspective. The case-law approach outlines selected examples of criminalization of journalism in the public interest. We employ a comparative method, surveying legal standards in jurisdictions that offer greater safeguards for journalistic work such as the actual malice doctrine, and proportionality analysis and good faith defense in defamation (Putra et al., 2024). This study uses primary, secondary, and tertiary legal materials. Primary sources comprise statutes, court rulings, Press Council regulations and other forms of official legal instruments. Books on press freedom, scholarly articles exploring press freedom in law journals, and even legal doctrines involving press freedom, criminal law, freedom of expression, and journalists' ethics are all secondary legal resources. Legal dictionaries, institutional reports, and other helpful reference materials fall under tertiary legal materials. This analysis is qualitative, performed using descriptive, doctrinal and argumentative analysis methods on the data. The analysis seeks to reveal which normative ambiguity results in a struggle with legal consistency and the necessity of recoding good faith as an operative or directly operationalizable legal standard for attributing criminal liability in journalism.

III. RESEARCH RESULTS AND ANALYSIS

A. The Good Faith Concept in Criminal Actions Associated with the Press

Good faith is one of the foundations in law, and it concerns to both relations between people as well as relationship between person and state.

This principle of good faith is specifically recognized under the Indonesian press law, which lays out one of the indicators of conducting quality journalism. This can be seen in Article 8 of the Journalistic Code of Ethics, saying that it is the duty of the journalist to practice truthfulness, accuracy and responsibility in their work. It also explained in the statutory explanation on Article 5 paragraph (1) and Article 18 of Law Number 40 of 1999 on Press. They state with force that journalists who by their own professional actions have acted in good faith, and observed the standard practices expected of journalistic activity are immune from prosecution. Here, good faith is an ethical norm and a legal shield—the journalists find themselves in a narrative understanding their work as public information provision requiring compliance with professional integrity. This principle is clear in statutory provisions and ethical codes, and it is essential that journalistic practice complies with the rules of credibility, accountability, and respect for others' rights (Noho et al., 2023).

But the Press Law does not include a definite definition on good faith. From a juridical point of view (Alhakim, 2022). On the other hand, there are no normative standards or criteria which law enforcement authorities, courts or other entities can refer to on case-by-case basis in order to declare if an act of journalism is produced bona fide. Because there are no well-defined benchmarks here, it creates a lot of grey area and some subjectivity for the evaluator. However, in truth, this subjectivity results in different interpretations of the law depending on how the authorities involved interpret it—sometimes similarly and sometimes oppositely. This not only represents a lack of clear legal security, but leaves journalists open to criminal responsibility since it does not characterize any expected consistency in applying the parameters of evaluation to their professional activity.

Here, good faith in journalism shall be an unwritten legal standard of doctrines that strikes a necessary balance between the ethical obligations imposed on the journalist while also limiting potential criminal culpability. It means acting in good faith, fact-checking what is reported to a reasonable level, using multiple sources to counter the sources of information, directing the work towards public interest rather than malice and abiding by proper journalism ethics while being prepared to amend any errors or provide the right of reply. Consequently, good faith shall not be interpreted as implying that reports made public by the Commission are always and, in every respect, accurate. The issue is really whether the journalist had acted in a responsible and diligent manner and without any evil intent, whether express malice or wanton disregard for the truth.

In this context it provides three functions in law. First, it serves to protect those who practice their profession diligently. Second, it is used to differentiate between "journalistic error" and "criminal misconduct". Third, it may be just a justification or doctrine of partial immunity in defamation, false information or injury to reputation. This doctrinal statement is necessary, because without its good faith is not a practical tool of the law, but merely an abstract moral principle.

Generally, in civil and criminal law streams, good faith refers to an honest intention or state of mind, transparency and adherence to the rules or obligations placed on a person by law (Fitrianto, 2023). In journalism, good faith is generally regarded as professionalism in searching for information and reporting it factually and proportionately without ill will (slander, insult, improper presentation of facts) (Hikmat, 2018). In comparative perspective, the notion of good faith in journalism is observed differently across jurisdictions. Nonetheless, it tends to be the main benchmark for striking the

right balance between freedom of press and individual interest. The regulation, however, is far more closely tied to the “actual malice” criterion created within the U.S. through a landmark case, *New York Times Co. v. Sullivan* (1964) (Barbas, 2023). It holds journalists liable for defamation only if they know the accusations are false or act with reckless disregard for truth. Good faith here is part and parcel to a higher than usual standard of liability, which protects press freedom from frivolous and politically generated lawsuits. In contrast, the European jurisdictions (particularly under the European Court of Human Rights (ECHR)) are much more proportionate in looking at journalistic acts. In *Handyside v. United Kingdom* and *Lingens v. Austria*, the ECHR reiterated that freedom of expression includes controversial or unpopular statements, as long as there is political responsibility in terms of professional ethics (McHangama & Alkiviadou, 2021). This means that good faith is assessed not only on the truthfulness of the information published, but also dependent upon whether journalists acted with ordinary diligence in verifying facts and safeguarding rights. Similarly, in a country like India, good faith is clearly spelled out as a valid exception to defamation in the sense that liability for a journalist can be avoided if it can be demonstrated that there has been publication honestly and for the public benefit under Section 499 of Indian Penal Code. These comparative frameworks demonstrate that while there are different definitions of good faith in the law across jurisdictions, they share a common purpose: protecting journalism undertaken in an honest, responsible manner and consistent with democratic values. However, in the absence of a binding legal definition, however, the notion of good faith in journalism is largely defined by Journalistic Code of Ethics and based on the verdict made by the Press Council

after adjudicating about news reporting disputes, as well as from online media Guidelines (Nurbaya & Pratiwi, 2023).

Internationally, 'good faith', or its Indonesian equivalent '*itikad baik*', is again a fundamental principle of freedom of expression and press freedom. Article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Indonesia through Law No. 12 of 2005, explicitly guarantees "Everyone shall have the right to hold opinions without interference" as well as "the freedom to seek, receive and impart information and ideas of all kinds". On the other side, it allows restrictions only in limited circumstances—specifically that the restriction is necessary and proportionate to protect a legitimate interest, namely respect for the rights or reputations of others, national security, public order, public health, and morals. A feature of its ruling in this regard is the principle of good faith, which enshrines that prohibitions should not be capriciously enforced or exploited as a pretext to silence dissent, criticism through objectionable journalism. Relatively, good faith as international human rights law only pays attention to journalists from a moral/professional standpoint but also normatively as protection which is binding on the actions of states to avoid unreasonable or excessive regulation on freedom of expression (Cindawati, 2014). Therefore, the legal safeguard of good faith requires states to be responsible in limiting (leverage measure) freedom of expression and do it proportionately (Adolf, 2024).

While this good faith specification was meant to be a shield for journalists' labor, the vagueness and lack of legal bounds only open up more opportunities for easily interpretable arguments that could serve simply as a vehicle to restrict press freedom. Even in some cases, good faith has used as a defense to support the criminal defense of journalists which reduces their rights as one of the main pillars of democracy (Siagian, 2024).

Journalist Criminalization Case Studies in Indonesia

In Indonesia alone, the criminalization of journalists continues for more than a decade and has contributed to one of the biggest risks to press freedom. In spite of Law Number 40 of 1999 on the Press explicitly guarantees protection for press activities, a practice developed where police and other law enforcement institutions have often resorted to applying general criminal provisions against journalists, mainly through defamation articles contained in the Criminal Code (KUHP) and the Electronic Information and Transactions Law (EIT Law) (Salma Najla Amir et al., 2025). This means that evaluating the degree of good faith in journalistic work is essential, but it is often neglected or interpreted in a subjective manner by law enforcement officers.

It is a much more complicated issue than it appears, for example, the Jerinx SID case (2020). Jerinx, a famous musician and activist himself, was jailed for saying on social media that the Indonesian Doctors Association (IDI) was “*kacung WHO*” or “*lackey of WHO*”. It came at a moment of intense public debate over combating the COVID-19 pandemic, when official measures and protocols were being challenged by public. His speech was a critique of the “wholesale acceptance” by IDI to follow orders from the World Health Organization (WHO), which, he claimed had “serious long-term impacts” for society. Law enforcement authorities regarded the post as defamation instead of treating it as an expression that belongs to public discourse and criticism, both a component of democratic life.

The very next piece of litigation gives an insight into the absence of detailed readings on good faith in public or journalistic discourse. The trial court did not consider the context of Jerinx's statement, without going into whether his statement was made in bad faith or for this public interest. The prosecution and the sentencing largely failed to make enough of an

acknowledgement of the freedom of expression dimension that protects criticism of policies with implications for public health, but focused to some extent on his alleged insult against IDI.

The case also demonstrates that the purport of the criticism—relevant to good faith—is constrained to an assessment that the language chosen by the critic is rude, not whether the criticisms reflect a manifestation of democratic freedoms. This case is a good example of how random articles in the criminal code, such as those for defamation, are not sufficiently sensitive to ethical or professional concerns of free of speech by the other parties in freedom of expression cases. The unresponsive legal style simply pays little attention to the context of Jerinx's criticism and his purpose of raising awareness of public health policies, having a tendency toward institutional rather than democratic accountability. Additionally, the case marks a broader pattern in Indonesia whereby public opposition to state-linked entities is almost invariably criminalized and instead examined under laws that ignore basic principles of bona fide activity or public interest. In such situation, the value of good faith protection is sometimes neglected and important critics of the government are being sued while they play a useful role in discourse.

In a similar case, Dandhy Dwi Laksono, a journalist and documentary filmmaker, was reported to the police in 2019 over social media posts he made about Papua. In these posts, Dandhy shared information and views, all based on verifiable evidence for the purpose of promoting public awareness about human rights problems and violence in the area. However, he was charged after his comments were viewed as incitement to hatred by the complainant. A strange characteristic of the case is how good faith, the notion that Dandhy had no other motive than to keep the public informed and to open up the debate on democracy was not satisfactorily contested in court. Instead, the

focus was on interpreting his posts as "incitement" and trivializing (even whitewashing) parts of his role as a journalist: 'overseeing and monitoring the conduct of the state'—scrutinizing it critically. This is not isolated: in a democratic context, the function of press as one element in social control has become minimalized by a largely mechanistic and punitive use of criminal law which affords little room for contextualization of journalistic intent (Hardiyanto & Saryono, 2023).

Haris Azhar and Fatia Maulidiyanti are also another case known to the public when both of them were criminally prosecuted by a state official for their writings on a discussion about the supposed links between government officials and mining companies in Papua, which is without doubt research based. This was in relation to results that were documented from various credible civil society organizations with the capacity to conduct research on political profile and economic activity around mining in Papua along with associated with human rights violations and damage to the environment. And via which, on pausing and through negation, this debate was transformed from a genuine idea of citizen participation—where citizens and activists exercise their democratic rights to question the behavior of any public official concerned—to an approach framed by criminal law: the alleged slander of the relevant public official. The response is systemic issues rooted in the very foundations of law, which is interpreted by police and law enforcement agencies, especially with regard to activities associated with freedom of expression and press matters.

Both were compelled to defend criminal charges for making statements based on factual research, thus intended to promote public debate on a matter of broad provable social import and environmental relevance. The debate did not delve into whether they were acting in good faith with good intentions, in

the public interest and based on credible sources. Instead, the prosecution focused solely on a pedantic interpretation of whether the statements vilified or wounded the honor of a senior civil servant, entirely missing the larger questions about democratic accountability and transparency. This illustrates once again how Indonesian law offers little protection for journalists and human rights activists, with no examination by a court or prosecutor of the concepts of "good faith" in this case.

In its attempt to criminalize these social media conversations, the state essentially dismisses journalism and civic engagement duties, such as truth-telling, educating public opinion, and holding government accountable. This case also illustrates how criminal sanctions aimed at quieting discussion of facts and opinions, especially those that may be unflattering to powerful persons and entities (as in this case), are likely to encourage self-censorship among other journalists and civil society actors covering the same issue. In this context, the Haris–Fatia case is not just an example of those who speak in the public interest are susceptible to abuse but also reflects concerns about an increasingly shrinking democratic space where criticism and accountability are silenced under cover of protecting reputation.

These cases illustrate that a judicial ruling regarding the conduct of journalists ought not be confined to whether or not reputational harm exists as a result of an alleged clickbait statement. Courts and law enforcement agencies could assess, and be guided by applying a good faith test consisting of the following elements: (1) value of the information in public interest; (2) attempt at verification; (3) balance/proportionality of publication; (4) presence or absence of malice; (5) adherence to ethical journalistic standards support for journalistic freedom by setting out non-criminal remedy options, such as corrective measure, right to reply, and Press Council assessment. The process

enables the law to be used as the measure of last resort and not first-bound remedy in case reporting is contested.

The three examples illustrate that in Indonesia law suits against journalists, the meaning of good faith is consistently overlooked. The law enforcement is very generalist and formalist, since it uses the provisions of criminal law in general, mostly referring to the KUHP defamation articles and EIT Law, and neglecting the Press Law as *lex specialis*, as well as ignoring Press Council which is a body that has been established legally to assess journalistic products (Hukum et al., 2025). Such a practice is not only inconsistent with the principle of *lex specialis derogat legi generali*, but it shows the positivist mentality that puts greater faith in text-based legality than an ideally-functioning democratic built around press freedom. In theory, this problem recalls Radbruch's Formula: the notion of law cannot be confined to legal certainty (*Rechtssicherheit*), but must also include justice (*Gerechtigkeit*) and purposiveness (*Zweckmäßigkeit*) (Bix & Radbruch, 2011). The criminal justice system disregards good faith as an interpretational safeguard, permitting the law to be applied mechanically to the provisions of the criminal law in a manner that Radbruch termed “unjust law in garb of legality”. Neglecting good faith as an interpretive safeguard turns the criminal justice system into mere mechanical application of criminal provisions, creating “unjust law in the guise of legality” as identified by Radbruch. This leads to a skewed distribution of the normative hierarchy where the Security Council Functioning protecting the Press Law is rendered useless due to reliance on general provisions of criminal law in a punitive setting. Moreover, the absence of a good-faith norm also exposes a structural defect in how the Indonesian legal culture prioritizes legal formalism over substantive justice. Against this background, the theory of “the inner morality of Law” expressed by Lon L.

Fuller is particularly opposite—it must have clarity, coherence and consistency if it is to serve as a rule (Zipursky, 2013). The disparity that existed between norms regarding good faith assumption and existing requirements today further corrupts these latter responsibilities, causing distortion in judicial reasoning and selective prosecution. It will also generate potentially arbitrary legal exposure for journalists, who would have to face the possibility of their work being ordered criminalized not due to any ethical violation in the way lawyers might be, but subjected on the basis of selective interpretation of law-by-law enforcement authorities. Moreover, when understood in light of Meiklejohn's free-speech theory of democratic governance the disregard for good faith has implications both for democracy and mean democratic government more broadly. He argues that the most protected forms of expression are those that facilitate the public's ability to self-govern (Bates, 2021). The press is an intermediary for information critical to the public interest and holds people accountable, a function that Indonesian courts have criminalized both reporting on investigations and modes of expression in support of advocacy without nexus to good faith. The chilling effect included within the body of First Amendment jurisprudence itself can be seen in a wariness to speak on politically controversial topics. This form of self-censorship also weakens the press as a whole and its function of watchdog for democracy itself.

B. The Normative Ambiguity of Good Faith and Its Complicated Relationship with Press Freedom and Journalist Protection

Good faith is one of the fundamental building blocks for the protection of journalists and often comes up in press law. Although the statutory regulations do not register any official language as to whether or not good faith can be used. The term “good faith” appears multiple times in Law No.

40 of 1999 on the Press, particularly found on the explanatory notes to Article 5 and Article 18, but legal parameters that can guide its implementation does not exist (Satino et al., 2021). This absence of legislation results in the lack of clarity over what constitutes good faith, and the judgment is left to actors such as law enforcement, courts and other stakeholders. Often, this discretion is arbitrary and swayed with much greater ease by the agency of political factors such as the interests of those in power or public pressure.

The absence of a transparent normative base creates serious difficulties, especially in terms of the restriction of laws on journalists conducting their professional activities. In the context of a democratic legal system, legality (*nullum crimen sine lege*) means that any act falling within the boundaries of any limited definition in law must be included in this law explicitly and that all factors constitute of crime must have been embodied in it. If a fundamental legal concept such as good faith is not clearly defined, even in contrast to standards that place legal boundaries around it—then legality itself is being weakened. Next, journalists have an uncertain status under both the Press Law and basically the floor (in terms of when criminal liability is pursued) for criminal liability. Uncertainty makes the law less predictable, one of the main principles of rule of law.

This equivocation dives deeper into its effect when it transforms the nature of legal protection from preventive and educative to repressive and punitive. Criminal laws have been effectively used when it comes to the actions of false information, even prior to having a conversation with Press Council regarding disputed reports. Even so, the Press Council maintains this MoU with the Indonesian National Police that expresses clear instructions for determining a disputed publication can be seen as to have been published in good faith by journalists. This politicizes the role of an institution which is

supposed to function as a quasi-independent mechanism for reinforcing journalistic norms and acting as a forum for grievance resolution.

The Press Council is a procedural entity, but its significance is also doctrinal. This is consistent with the *lex specialis* nature of the Press Law on disputes over journalistic work. If a publication is in dispute and it is a product of journalism, the initial question should not be if the journalist has defamed but whether he followed ethical and professional standards during the journalistic process. This encompasses objectivity, impartiality, accountability, the pursuit of truth and balance in reporting. Such an escape from under the roof of Press Council would serve to undermine that network of protection created by the provisions of the Press Law and shall reinforce applicability/priority of general criminal law rules in disputes which, due to their nature, should be first solved using mechanisms provided for journalists with respect to them (by laws specifically directed at press) as already determined by the Press Law.

It gets even worse, and yet more ironic when articles in the Electronic Information and Transactions Law and the Criminal Code are applied without regard for the provisions of Law No. 40 of 1999 on Press. Though the purpose of defamation and false-information law can be legitimate by protecting reputation and public order, it must be used against journalism under conditions that meet the standards of legality, necessity, proportionality, and subsidiarity. There should be strict limits in criminal prosecution for the press when they are contesting a case based on proof of knowing false statements, actual malice, or reckless disregard for the truth. In cases of only factual error, imbalance or reputational discomfort, this should be repaired by a right to reply, ethical adjudication or civil remedies. This way, the marginalization makes obsolete the *lex specialis* characteristic of Indonesian Press Law which

should be specifically concern with non-criminal dispute settlement procedures including a right of reply and a right of correction as the most prior mechanism to resolve problematic arising from news reporting disputes. They are the often overlooked and neglected victims of institutionalized punishment, and criminal justice in general is primed to go punitive at the drop of a hat. Not only does this trend run directly counter to the particular legal context of the press, it also increases journalists' risk of criminalization.

This environment creates legal uncertainty for journalists who serve as a check on power and a social conscience in the absence of minimum normativity. This lack of clarity with how the laws would be interpreted only fosters higher levels of self-censorship (when journalists and editorial boards actively choose not to report on important or sensitive issues due to fear of civil lawsuit). While there may be pragmatic reasons to behave this way for risk management purposes, it greatly diminishes the potential role of the press as a check on government powers in a democratic nation. This process of self-censorship, which erodes the media over time and stifles a robust marketplace of ideas, is termed as shrinking space for public debate. Beyond the professional and quasi-professional applications (e.g., journalism) the implications arise for democratic order and active citizenship-i.e. citizens without information sufficiently comprehensive, balanced, or critical to aspire to genuine participation in governance (Poppy Irawan, 2013).

An equally significant impact is the erosion of public accountability mechanisms. Our journalists are a vital component of the public policy apparatus and as investigators of power malfeasance. A professional journalist does their job of the basis of fact. This poses a threat to the foundations of democratic practice when it can be so easily criminalized on the mere claim by subjects that they have been harmed by a journalist. The

media can no longer be trusted to deliver accountability and/or to hold power accountable under those circumstances. Financial resources are used to impose legal sanctions, which makes the press susceptible to suppression by state authorities instead of transparency and accountability of public officials and state institutions to the public. By doing so, it weakens the democratic function of the media and diminishes citizens' trust in journalism's role as a watchdog—and thus society's ability to hold powerholders accountable for their actions.

Moreover, uncertainty with regards to good faith also results in uncertainties in the judgments pronounced in criminal proceedings against journalists. In the absence of a standard juridical structure, Judges have been forced to factor in subjective considerations when deciding these cases. This results in a type of legal inequality: nearly equal situations give rise to extremely unequal outputs. In some cases, reporters have been sentenced due to the absence of good faith, while in others, journalistic professionalism and honest intention was recognized by the court. These discrepancies undermine the predictability of legal outcomes, which poses a direct threat to the rule of equality before the law and keeps uncertainty over journalists' legal rights and subject to uneven enforcement by the state.

This raises the critical question of how to articulate concrete and enforceable legal standards of good faith in news reporting (Christian, 2025). This can be carried out by enacting rules in the regulatory space on the Press Law; for instance, a regulation on the Press Council or joint regulations with law enforcement agencies that outline indicators of good faith for journalists. It may be anything from efforts to ascertain facts, to a fair balance in use of sources, to post-factum rights of reply and ban on defamation or personal attacks. With the parameters set, good faith would no longer be a fuzzy notion

but an enforceable standard capable of guiding journalists in their news-gathering activities and arbiters of disputed reporting in reviewing them.

At the same time, awareness of law enforcement officials and judicial authorities about the principles of press freedom and journalists' rights should be raised (Hijriani & Nadzirin, 2024). A fairer disposition of journalists' cases could be achieved if awareness about journalistic ethics and media practice is raised, potentially reducing the proclivity to criminalize them. As long as the government accepts that a journalist cannot report perfectly, but in good faith is trying to do what they can in the public interest, then criminal prosecution should be used only where it is strictly necessary.

So far, the concept of good faith has become unclear in Indonesian press law and now turns into more ambiguous part which is one of the bases why they criminalize journalists repeatedly. Secondly, the lack of a normative definition not only decreases protection for journalists in law, but also undermines the very foundation of freedom and open information. The next critical step in strengthening rule of law principles to support the legal rights of journalists in a democratic state is clarification around both the scope and measures of good faith within the law (Thio, 2010).

C. Legal Reform and Protection for Journalists

Despite all of these problems arising out of the vagueness of good faith in Indonesian press law, comprehensive legal reform still needs to be done to guarantee specific protection for journalists and press freedom more generally. Reform relies not only on the betterment of legal norms by the statute, but also establish a robust institutional mechanism, enhance legal literacy, and foster close coordination of law enforcement and press community.

A potential counter is that there should be no blanket protection for journalists. There is no justification for intentionally misleading, defamatory fact manipulation and malicious reporting that maligns people's characters disguised as press freedom. This is a valid objection. It is not the idea, which this article promotes, that journalists should be above the law. In fact, it says that only acts committed with malice, intentional fraud or willful neglect of the truth meet the standards for criminal accountability. Mistakes committed by journalists in good faith should not be punished or made liable, except through self-regulatory measures to correct them first—correction, right of reply, and Press Council adjudication. This is a crucial distinction to make, to avoid ethical violations becoming criminal.

There is no definitive thing on the law in Indonesia when it comes to good faith and this needs to be immediately addressed with one simple step: defining good faith particularly regarding journalism. This definition should not remain theoretical but must be concretized in accordance with the international standards of press freedom and the news reporting principle of due diligence. It would, in practice, elevate the essentials of good faith journalism—careful fact-checking, balanced sourcing, absence of personal motivation and consideration of public interest—to central criteria against which whether journalism has been done in good faith is to be assessed. It is similar to the theory of "inner morality of law" proposed by Lon L. Fuller from the perspective of legal theory, and Fuller once said that the norms of law must be clear, regular and capable to guide their proper Use (Rahmatollahi & Yazdizadeh Alborz, 2019). The concept of good faith will be susceptible to arbitrary interpretation, which might prejudice the principle of legal certainty, unless the parameters are unambiguous. Furthermore, let us all remember H.L.A. Hart's idea of the open texture of the law, a problem he argued we must

address so that the law will not be used in arbitrary and inconsistent way. Hart observed that vague legal concepts must be particularized by means of secondary rules or authoritative interpretation (Schauer, 2012). A normative definition of good faith would provide clear guidance to journalists and law enforcement authorities, and it would resolve the current “open texture” in the law. On the international level, there are a number of comparable models that can serve as an example. In the U.S., the actual malice doctrine came from *New York Times v. Sullivan* (1964) and protects journalists from defamation unless they knowingly publish false statements or act with reckless disregard as to whether a statement is false or not (Barbas, 2024). Perhaps the most serious hinge provision of this doctrine is the liability to criminally convict manufacturers in those cases which were determined to be honest mistakes, whether or not good faith reporting was established. In the European system, the notion of good faith has often been tested by proportionality under the European Court of Human Rights (ECHR). The Court emphasized in *Lingens v. Austria* (1986) and *Thorgeirson v. Iceland* (1992) that freedom of expression, especially for journalists, is to be protected when reporting on matters of public interest in good faith having regard also to it's the ethical obligation concerning accuracy and fairness carried out by a journalist. Section 499 of IPC, on the other hand, has a clear provision for exemption from liability on the ground of 'good faith' in an action against defamation in India and a newspaper may be free from any punishment under that section if its article was published in good faith or for public interest (Kenyon, 2019). These approaches could be integrated to suit Indonesia using the US comparative approach which views misinformation as intentional or reckless in service of a public goal and the European model that emphasizes proportionality and culpability. A reasonable compromise between protecting journalists from the

threat of criminalization for doing their jobs well and appropriately, while ensuring that there is still space to pursue legal proceedings where reporting has occurred willfully or recklessly. This proposed definition can be written up in a secondary legislation (PP) under the Press Law itself, such as binging regulation of the Press Council or jointly with law enforcement authorities for coherent implementation and interpretation. Because the idea of good faith could be part of public interest through statutory reforms, such as UU ITE and KUHP which have been previously misused to target journalists (Arifin et al., 2025). This coherence of the Indonesian legal system would reflect positively as this good faith definition aligns with constitutional guarantees in Article 28F of the 1945 Constitution and Article 19 in the International Covenant on Civil and Political Rights (ICCPR).

Second, the Press Council should be strengthened as a front-line institution to resolve disputes in journalism. The process narrated in the Memorandum of Understanding executed between the Press Council and law enforcement agencies must be invariably be followed at case lodgment stage (Faisal, 2021). Any criminal accusation against journalists should be pre-filtered by the Press Council to determine whether the material is judicious product (Widiatmika, 2015). Journalistic ethics should provide the answer in such cases not the penal code.

In this scenario, it is essential that the Press Council be strengthened as an institution in power and capacity; without such measures, there will not be any improvement. In law, it means *lex specialis derogat legi generali*; the Press Law wins out over general criminal laws—both defamation or false-news offences in the KUHP and the EIT Law. The principle of subsidiarity is supposed to guide operation of the legal system, meaning that jurisdiction for resolving disputes shall be delegated—prior to being adjudicated upon in the

courts—to special institutions that are well-versed in their specific matter, e.g. before entering the general courts, cases are resolved by (and thus subject-matter competence is attributed to) such instance as the Press Council. This is also consistent with Lon Fuller's inner morality of law, where clearer and more general rules produce greater legal certainty for journalists through procedural protection.

And the MoU is a non-binding instrument with such no codification, so may simply be enforced at law enforcement's discretionary power. This was seen in experience outside our shores, where independent press regulation exists. The United Kingdom, the Independent Press Standards Organization (IPSO) is a self-regulatory watchdog body able to investigate complaints against the press, issue adjudications and require corrections (Duffy, 2015). Its decision is the primary means of resolving conflicts before actions are taken into litigation. In Germany, the *Deutscher Presserat* (German Press Council), which hears complaints about breaches of ethics and is empowered to issue public censure but not criminal convictions for prosecution (Eberwein & Brinkmann, 2021). As an example, South Africa has a Press Council of South Africa (PCSA) mechanism for dispute resolution through a non-punitive Press Ombudsman and Appeals Panel based on mediation and correction (Reid, 2014). These comparative models and other studies show that press councils can be an effective bulwark against the improper use of criminal law as a weapon against journalism when provided with explicit powers and proper legal or quasi-legal backing for their decisions.

Third, the Indonesian criminal justice system shall adopt a human rights-based approach in every legal action against journalists. It is in this way that the principles of proportionality, legality and subsidiarity are applied and criminal law cannot be used as a tool of repression. The doctrine of

proportionality casts the requirements that any restriction on freedom of the press must be narrowly constructed, necessary and proportionate to a democratic interest. The legality principle demands specificity in the applicability of criminal law features to journalists in accordance with the maxim '*maxim nullum crimen sine lege*'. The starting point of the principle of subsidiarity is that after other actions (including correction, mediation and/or right of reply) have been exhausted criminal prosecution can only be considered as a last resort. In comparative practice the United States has essentially adopted the actual malice standard as defined in *New York Times v. Sullivan* (1964) that virtually all criticism of a public official is constitutionally protected unless the journalist knew the information was false or published it with reckless disregard of truth. The European Court of Human Rights (ECHR) has stated in its verdicts that even radical criticism and controversial statements have to be protected if they are expressed in good faith and serving the public interest, as was decided in *Lingens v. Austria* (1986). in a similar vein, India has geared its defenses to defamation around good faith and the public interest under its Penal Code so as to allow for lively public debate that is sometimes sore or critical.

Operationalizing this approach would require the development of technical guidelines and having organized training for police officers, prosecutors, and judges in Indonesia. These provisions would instill human rights values in law enforcement practice on a day-to-day basis, including Article 19 of the ICCPR, providing that Indonesia ratifies it. Part of the training should consist of reminding about some basic principles: (i) criminal law as a last resort (*ultimum remedium*) in controversy with the press and (ii) the preference that should be granted to journalistic work carried out in good faith, through presumed legality. Through this approach, Indonesia would

not only practice law resistant to international democratic norms but also nurture a legal culture that encourages accountability and media freedom rather than repression (Dewi et al., 2025).

Fourth, reforms in the judiciary and training law enforcers have to be implemented. It seems that there are still not enough people in law enforcement who already understand what news work and freedom of expression mean. Often journalists are prosecuted as nothing more than ordinary criminals and so should not be given special treatment, losing sight of the significance of a journalist (Shader et al., 2021). To that end, universities in the legal realm and training for police officers, prosecutors, and judges should require courses on press law, journalistic ethics, and protection of human rights. This can then help spread a legal shift in journalists' treatment from protectors of democracy to enemies of the state. Other states have enacted similar changes, and they are something more than a matter of importance. In Germany, for example, legal education and judicial training go hand in hand with constitutional principles like free speech and freedom of the press laid down by the Grundgesetz (Basic Law). The law also includes an ongoing education program for judges and prosecutors on the need to balance freedom of expression with protection for privacy, which should remedy some inconsistencies in decisions covering charges filed against journalists. Now, First Amendment legal classes are usually required in a law school curriculum across the United States, as this chilling effect doctrine makes up much of judge and prosecutor training to avoid unduly restricting free-speech rights. The Judicial College in the United Kingdom also incorporates elements of freedom of expression and media law into its general judges' training, thus going some way towards bolstering appreciation for the press's role within a democracy.

Fifth, and very importantly in terms of public policy, there should be actual protections for journalists and press freedom by the government. IN many places, law enforcement officers do not initiate prosecutions in cases of violence against journalists and the state does not appear to be very interested in protecting the safety of journalists. That failure to ensure accountability leads to lost trust in the justice system, a climate of impunity which triggers new assaults on the press. In this context, the government should promote all actions required to establish a system for collecting and tracking all incidents against journalists so that timely report can be prepared by the relevant authorities. Journalists who work on sensitive topics such as corruption, human rights abuses or environmental issues live under constant threat and intimidation and witness protection mechanism specifically for journalists is also needed. Furthermore, a litigation fund or legal aid mechanism for journalists facing criminalization would provide institutional protection that enables journalists to push back against criminalization without the costs being fatal. Comparative experiences have shown that such measures are effective. In such a climate of violence against journalist, the Mexican government has established a Federal Mechanism for the Protection of Human Rights Defenders and Journalists, with 24-hour emergency hotlines and action plans; escort bodyguards are assigned to federal prosecutors by request; relocation programs exist through Subsidized Internal Repartition Program (PRIS), but the system is flawed. A similar system in Colombia also ranks journalists at risk and offers safety steps including safe accommodation and armed escorts. Journalists who have been involved in defamation and press-related cases, on the other hand, are entitled to legal assistance in Norway and other Nordic countries—an indication of the inherent status journalism has a vis-à-vis the public good, and a recognition of its need for extra structural

protection. Such comparative models can still demonstrate how government supported machinery can elevate press freedom considerably by making journalists not only safer but also legally resilient. For Indonesia, these kinds of affirmative actions carry more weight with respect to focusing protection on individual journalists but also are relatively political statement of intent for democracy in terms of transparency and accountability.

Lastly, but by no means the least important point, are those legal provisions that have resulted in repeated use against journalists, especially so-called “rubber articles” of the Electronic Information and Transactions Law (EIT Law) and the Criminal Code of Ukraine (KUHP), should be amended. These reforms must be applied in a way that allows meaningful engagement with civil society organizations, press associations and academics, and safeguards against importing repressive provisions into new silencing legislation. Such a participatory legislative process would not establish the tools for transparency but also rebuild public confidence in the legislative institutions by incentivizing participation of all those affected in drawing up these rules that directly impact on fundamental freedoms. In addition, the revision must also factor in Constitutional Court decisions already limiting the scope of vague and overbroad terms, as well as international human rights norms that Indonesia has committed to abide by—such as those found in Article 19 of the ICCPR. Aligning with the new legislation is critical to ensure it does actually promote democratic values and that freedom of expression will be respected. Bringing the principles of clarity, necessity and proportionality into statutory reform in Indonesia can take a legislative path to stop criminalizing journalism and adopt press law that is protective rather than punitive.

Since subjective interpretation has led to the abuse of “good faith,” good faith in journalism should not be interpretative moral consideration but rather a legal standard for operational purposes, thereby avoiding subjectivity. There will be six cumulative indicators, but stated flexible to this standard. First is what we call reasonable verification: if the journalist made reasonable efforts to fact-check information before publishing. Two, balance of sources: whether the report provided a fair opportunity for relevant parties and/or their response to be represented. Third, orientation to public interest: if the publication dealt with issues of democratic accountability, public policy, corruption, human rights violation or damage to environment, public health or abuse of power. Fourth, no malice-intent: that the publication was not in retaliation, deliberate falsity or calculated insult. Fifth, compliance with journalistic standards: whether the journalist had made substantial compliance with media ethics, such as truthfulness, independence, bias and accountability. Sixth, goodwill towards correction or right of reply: the extent to which the journalist and/or media institution provided a good opportunity for clarification, correction or response.

None of these indicators requires a flawless performance by the journalist. Instead, they require responsible reporting. Ordinary act of journalism is not enough to find a liability on the journalist for committing a criminal offence merely because after due diligence and without malice in publishing an error, the report was published with mistake. On the other hand, a journalist who knowingly publishes false information, falsifies sources, distorts facts or fails to publish corrections in good faith cannot plead good faith as a defense. This legal principle provides an equitable reconciliation between the right to freedom of expression and the right to reputation comfort.

More generally, this type recommendations on legal reform answer to the conditions that Indonesian criminal justice system have not maximally been able to ensure its optimal protection toward quality and integrity of journalistic activities will be hold professionally and in good faith (Samawati, 2018). Except there is wider legal reform, unless journalists are no longer liable for being criminalized, such criminalization will have a chilling effect not only on the expression of journalists but also on the ability of citizens to read independent and accountable information.

IV. CONCLUSIONS

The key conclusion in this article is that the problem of Indonesian press law can no longer be found solely in the criminalization of journalists, but also more importantly, the absence of an operational standard to weigh the good faith of journalists in journalism. Good will also be the basis for legal protection of professionals (including journalists) as contained in Law Number 40 of 1999 on the Press, but remains unquantified. This normative vagueness leaves it to the discretion of law enforcement officials whether provisions in general criminal law (which also apply to defamation and other offences in electronic information) are enforced with or without regard due care for journalistic ethics, public interest, mechanisms of the Press Council, or *ultimum remedium*.

Good faith, therefore, must be reformulated as a component of the legal doctrine that includes reasonable verification standards, balancing of sources, orientation towards the public interest, freedom from malicious intent protected by journalistic ethics and openness to correction and response. All of which are useful tools to help the difference between journalistic negligence

and crime. Criminal liability should result only on proof of intentional falsehood, actual malice or reckless disregard for the truth.

Press reform should center on the nature of good faith, strengthening the workings of the Press Council as the primary institutional mechanism for resolving press-related disputes with other entities and harmonizing provisions between the Press Law, the Criminal Code and the Electronic Information and Transactions Law. The reforms are critical to protecting the freedom of press, providing legal certainty and making sure that criminal law does not target journalism in the public interest.

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