

Urgency of Strengthening the Supervisory Function of the Broadcasting Commission in The Era of Media Disruption

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Abstract

The Broadcasting Law is seen as less relevant to the development of broadcasting technology. The development of internet media content cannot be monitored by the Broadcasting Commission because the definition of broadcasting is only limited to television and radio. Meanwhile, there is no regulation that provides adequate regulation. In fact, the state must guarantee the delivery of healthy broadcasts to the public. The urgent revision of the Broadcasting Law is carried out by giving the Broadcasting Commission a broader supervisory authority, in order to ensure the fulfillment of the rights of the public to obtain proper broadcasts.

Keywords

broadcasting; broadcasting commission; disruption



I. Introduction

The enactment of Law 32 of 2002 replacing Law Number 24 of 1997 marked the wave of democratization of broadcasting that began in 1998. However, the development of internet technology has had implications for the massive development of new media that this regulation was unable to anticipate. New internet-based media present richer and more interesting content with easy access, making it more popular. Meanwhile broadcasting regulations cannot reach the development of internet media because they are limited by the definition of broadcasting which only covers television and radio. As a result, broadcasting activities through internet media run without adequate regulation. Development is a systematic and continuous effort made to realize something that is aspired. Development is a change towards improvement. Changes towards improvement require the mobilization of all human resources and reason to realize what is aspired. In addition, development is also very dependent on the availability of natural resource wealth. The availability of natural resources is one of the keys to economic growth in an area. (Shah, M. et al. 2020)

This development creates two non-ideal conditions in the broadcasting world. First, the condition of "Anomie" which was popularized by Emil Durkheim as a condition where there is no regulation so that there is chaos due to unlimited freedom. This condition is often interpreted as "moral absence" because there is no law that exists to provide value limits. The distribution of content on the internet is very free without supervision from any institution, it has the potential to cause public inconvenience. It can even lead to social conflict when it comes to sensitive matters. Second, unequal treatment for broadcasting industry players. Television and radio industry players have strict regulations regarding the ethical limits of broadcast content, while internet-based media are free to broadcast without limits. This situation gives rise to inequality in legal treatment for the broadcasting industry.

The demand for internet-based media to be included in the regulatory scope of the Broadcasting Law has actually been voiced by various parties, including broadcasting industry players. The lawsuit filed by InewsTV and RCTI to the Constitutional Court in May 2020 shows that there is an unfair regulation for conventional broadcasting institutions with internet-based media.

Observing this situation, it is deemed urgent to revise broadcasting regulations by enforcing the strengthening of the authority to supervise internet-based media content to the Broadcasting Commission, as an independent state institution that is not interfered with by the practical political interests of government power.

II. Research Method

This research uses the normative juridical method, namely legal research conducted by examining library materials or secondary data. This type of research is also called doctrinal legal research because the main analysis material uses legal doctrines. The data in this study consisted of library materials, both primary legal materials and secondary legal materials. Primary legal materials include the 1945 Constitution, Laws related to Broadcasting, decisions of the Constitutional Court, and related regulations. Meanwhile, secondary legal materials consist of legal theory books, results of legal research, and news about broadcasting law.

III. Result and Discussion

3.1 Review of Regulations

a. Law of electronic information and transaction

Law Number 11 of 2008 concerning Information and Electronic Transactions (EIT) has so far been seen as the regulation that is most capable of reaching the circulation of content in internet-based media. However, the EIT Law regulates more about the use of information and communication technology. Matters that are regulated regarding content are only a few aspects that fall into cybercrime. Even though the regulation of healthy content does not only use the measure of crime, but also the ethical values that apply in society, including decency, culture, and so on. So as a basis for regulating healthy content, the EIT Law has limitations.

b. Omnibus Law

Law Number 11 of 2020 is present in order to encourage the improvement of the national economy. The stipulation of the Omnibus Law also has an impact on the world of broadcasting, especially on trimming the role of KPIs in licensing broadcasting agencies. The broadcasting regulator in the Broadcasting Law is the government with KPIs, while the Omnibus Law places the government as the sole regulator. These provisions are contained in Article 72 of the Omnibus Law, which among others amends Article 33 and completely abolishes Article 34 of the Broadcasting Law, where the involvement of KPIs in the licensing process is eliminated.

c. Constitutional Court Decision

The decision of the Constitutional Court Number 39/PUU-XVIII/2020 regarding the petition for judicial review submitted by PT. Vision Citra Mitra Mulia (Inews TV) and PT. Rajawali Citra Televisi Indonesia (RCTI) dated May 19, 2020. The application was submitted regarding the provisions of Article 1 and Article 2 of Law 32 of 2002 which

defines broadcasting only covers broadcasting with radio frequencies and does not include internet-based broadcasting such as Over the Top (OTT) services.). Provisions of the Broadcasting Law are considered to cause unequal treatment before the law. The Constitutional Court issued an Order of Decision to reject the petition in its entirety. The arguments considered include the fact that conventional broadcasting uses a simultaneous broadcast system from one transmitter to many broadcast receivers who receive the content as it is presented. Meanwhile, internet-based media because it presents content that viewers can choose at any time and there is no special licensing mechanism for broadcast providers.

3.2. Basic Thought of Law Revision

The main idea of the Broadcasting Law that needs to be considered in the revision of the Law is as follows.

a. Ensuring Freedom of Expression, Expressing Opinions, and Obtaining Information

The implementation of broadcasting as a form of freedom to express opinions and obtain information, both conventionally and digitally, must comply with the provisions of Article 28J paragraph (2) of the 1945 Constitution, namely the obligation to comply with the restrictions stipulated by law with the sole purpose of guaranteeing recognition and respect. rights and freedoms of others and to fulfill just demands in accordance with considerations of morality, religious values, security, and public order in a democratic society. So when Law 32 of 2002 has lost its relevance in technological developments, it is necessary to revise it to suit the needs.

b. Broadcasting Must Reflect the Balance between Rights and Duties

Broadcasting organizers need to balance their rights and obligations because they are closely related to the fulfillment of the rights and obligations of the community as media consumers, as well as the government as a regulator. The rights of broadcasting operators include expressing themselves in content and obtaining economic value from broadcast activities. Meanwhile, his obligation is to provide educative and informative content for the public, as well as tax obligations that must be paid to the state. In order to fulfill these rights and obligations, every broadcasting operator, both conventional and internet-based, must be regulated regarding administrative matters and have clear provisions on ethical boundaries for broadcast content and their supervisory mechanisms.

c. Broadcasting as an Important and Strategic Economic Institution

The broadcasting industry is a capital-intensive and labor-intensive area that can significantly encourage creative economic growth. The job opportunities opened for creative and skilled people are so wide that they promise an increase in decent welfare. This potential must be empowered by the state by providing legal certainty to ensure business continuity. Creative workers also have the right to obtain job security which must be fulfilled by employers.

d. Anticipating the Development of Communication and Information Technology in the Broadcasting Sector

Broadcasting regulations must be able to adapt to the development of technology used for broadcasting, including internet technology. Adaptive demands have actually been stated in the Broadcasting Law. So ideally the Broadcasting Law also adapts to technological developments. However, referring to the Constitutional Court's decision that

the definition of broadcasting cannot be contextually expanded to reach internet-based broadcasting, it is necessary to revise it to include a broader definition textually so as not to cause multiple interpretations.

The expansion of the definition of broadcasting has consequences for regulating other administrative matters in the following articles. More detailed arrangements at least include requirements for broadcasting operations, licensing for broadcasting operations, guidelines on broadcast content and language, broadcasting behavior guidelines, and supervision of broadcasting operations.

e. Empowering Communities in Advancing National Broadcasting

Active public participation in broadcasting management is a must. Society is not just an object of broadcasting, but a subject that can significantly determine the direction of broadcasting. The role of the community, especially in the form of input for the formation of healthy broadcast content. Aspects of the benefits and impacts of broadcasts must also be measured based on community inputs.

The Broadcasting Commission is an institution mandated to accommodate, research, and follow up on public input as part of its supervisory function. This institution is deemed appropriate to carry out this task because of its independent position and as a public representation in broadcasting, as has been mandated in the current Broadcasting Law.

3.3. Restructuring and Strengthening the Role of KPI Oversight

The early days of KPI's presence through Law 32 of 2002 had become doubts for broadcasting practitioners, both industry and associations. KPI is seen as a new version of the Ministry of Information which has strict control over broadcast content. In response to the plan to establish KPI, a number of associations of broadcasting institutions and practitioners filed a lawsuit to the Constitutional Court. The Court granted the lawsuit so that several articles concerning the authority of KPI in making more technical rules regarding broadcasting aspects were revoked, namely those related to Article 44 paragraph (1) and Article 62 paragraph (1) and (2) through Decision Number 005/PUU-I/ 2003 dated February 25, 2004.

In its development, KPI has proven itself as an independent state institution that is open to public input and is not influenced by the interests of government power. This is a positive note for KPI which is mandated to be a public representation in the broadcasting sector.

a. Supervision Urgency

Content that is broadcast and widely accepted by audiences has a great influence on the formation of opinions, attitudes, and behavior. So it is proper that broadcasting organizers are burdened with the responsibility to maintain the values upheld by the community, whether based on culture, religion, custom, or positive law. The widespread impact of media broadcasts remains unstoppable, regardless of the broadcast medium used, whether radio frequency, satellite, or the internet. So as a country based on law, the burden of responsibility for broadcasting operators to always present healthy broadcasts must be contained in the form of written legal products, in order to guarantee certainty in creativity. Broadcast content that is disseminated virtually is still the result of the creation of human hands, both individuals and groups, which must be fully accounted for before the law. Like behavior in the real world, a person's behavior in cyberspace is also inseparable from regulations and restrictions by law. It should be reaffirmed that the regulations and restrictions are not meant to curb freedom and creativity, but rather to fulfill the public's

rights to a healthy broadcast. The world of content that is full of demands for creativity does require a wide range of motion to express art, so an independent external party is needed who maintains legal corridors without limiting the development of creative ideas.

KPI is the only public institution that is independent with the task and function of supervising broadcast content. So far, the supervisory approaches taken by KPI are considered more appropriate because they do not merely use a “black-and-white” perspective like criminal law enforcement. The context of KPI supervision is more about maintaining the application of ethical values and encouraging the improvement of broadcast quality so that it plays a more community-building role.

The approach used in imposing sanctions is also not only repressive, but also a preventive approach by way of coaching. Broadcasting industry players need to be provided with provisions related to regulation of broadcast content on a continuous basis in accordance with the context of the development of broadcast content. The media literacy approach for the public as broadcast recipients is part of the long-term agenda to carry out “natural selection” for broadcasts that are not good. With a public education approach, the public will be able to choose broadcast content that is useful and according to their needs.

b. Restructuring as Necessity

The current institutional structure of the KPI needs to be reorganized to support a broader monitoring agenda. First, the restructuring of the leadership, namely the members of the KPI. In structuring the realm of work, in general, KPI members are divided into 3 fields, namely licensing, broadcast content, and institutions. The role of KPI in the licensing process for broadcasting institutions which is no longer enforced in the latest regulations, as well as the agenda for expanding the supervisory function to a wider realm, requires internal adaptation. Strengthening the field of supervision is considered to be in line with the trimming of the licensing sector, so that adjustments can be made in that direction.

Second, restructuring of supporting human resources. Restructuring also needs to be carried out in the ranks below it, including the ranks of the supporting system consisting of human resources for institutional employees. KPI needs to optimize the surplus of human resources from the licensing sector to strengthen the supervision sector. Third, restructuring of physical infrastructure and systems. The wide range of internet surveillance requires optimization of all KPI's resources. Supervision of the latest information and communication technology also requires up-to-date instruments. Monitoring instruments also need to be carried out by adequate system procedures. It is necessary to update the SOP (standard operating procedure) for a set of KPI monitoring systems, both the equipment and the human resources that drive it. KPI has a lot of “homework” to organize itself to meet a stronger role.

IV. Conclusion

Based on the description above, conclusions can be drawn in the following points.

1. The development of information and communication technology is currently very fast and requires clear regulations. The development of internet-based media runs freely without any regulation. Law 32 of 2002 concerning Broadcasting cannot reach internet-based media. Therefore, it is necessary to immediately revise it to expand the scope of the regulation on the Broadcasting Law.
2. Monitoring internet-based media content is a shared need, both by the government, industry players, and the community. So the most appropriate institution to carry out the

supervisory task is the KPI. By expanding the definition of broadcasting to include internet-based media, the supervisory authority of KPI can also extend to a wider area, not only limited to television and radio broadcast content.

3. Strengthening the role of KPI in internet content supervision must at least be carried out in stages, including revision of the Broadcasting Law, stipulation of technical provisions regarding internet-based media management, revision of broadcasting behavior guidelines and broadcast program standards in accordance with media content developments, as well as restructuring KPI institutions.

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