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license**THE NATURE OF HOMELESS MEDIA IN LAW NO. 40  
OF 1999 ON THE PRESS: A PERSPECTIVE FROM THE  
THEORY OF LEGAL CERTAINTY****Dian Arlesti Lukman<sup>1</sup>, Prija Djatmika<sup>1</sup>, Bambang Sugiri<sup>1</sup>,  
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65145, Indonesia\*Correspondence E-Mail: [arlismaheri6680@gmail.com](mailto:arlismaheri6680@gmail.com)DOI: <https://doi.org/10.30598/baileofisipvol3iss3pp866-873>**ABSTRACT**

*This article examines the nature of homeless media in Law No. 40 of 1999 on the Press through the perspective of legal certainty theory. The research method used is normative legal research with legislative, conceptual, and comparative approaches. The results show that homeless media entities that substantively perform journalistic functions but lack formal legal status under the Press Law are essentially entities experiencing normative dissonance: their functional capacity as journalistic actors exceeds the available legal recognition. This dissonance stems from three structural weaknesses in the Press Law: the institutional bias of the legal entity requirement in Article 9(2), the temporal limitations of the 1999 regulation, and the absence of a mechanism for gradual recognition. Using Fuller's eight criteria of the "inner morality of law" as an analytical framework, this study identifies that these conditions violate the criteria of generality, clarity, and congruence, resulting in three-dimensional legal uncertainty: regarding rights, obligations, and dispute resolution forums. This study concludes that the issue of "homeless media" is fundamentally a regulatory failure to respond to the diversity of the digital media ecosystem, not merely a matter of non-compliance by media actors. A reformulation of the Press Law that prioritizes a recognition-based approach grounded in journalistic functions is an urgent constitutional necessity.*

**Keywords:** Freedom of Information, Homeless Media, Legal Certainty, Normative Dissonance, Press Law

**INTRODUCTION**

Law No. 40 of 1999 on the Press (*Press Law*) emerged as a product of the reform movement's demand for press freedom as a prerequisite for democratization. The law defines the press as "a social institution and a vehicle of mass communication that carries out journalistic activities" using various media, including "all available channels" (Law No. 40 of 1999 on the Press, 1999). This final phrase seems to open the door to technological inclusivity. However, in practice, the breadth of this definition is constrained by strict institutional requirements: every press business operator must be an Indonesian legal entity (Manan & Harijanti, 2016).

More than two decades since the Press Law was enacted, Indonesia's media landscape has changed dramatically. The digital revolution has spawned thousands of new media entities that

substantively perform journalistic functions producing, processing, and disseminating information to the public yet do not meet the formal requirements set by the Press Law. It is these entities that this study conceptualizes as “*homeless media*”: journalistic actors who are functionally active but normatively lack a home within the existing press legal system (Djafar, 2022).

Data from the Press Council indicates that of the tens of thousands of news sites operating in Indonesia as of 2022, only a small fraction have been verified as press companies that meet the standards of the Press Law (Press Council of the Republic of Indonesia, 2023). The majority operate under legally ambiguous conditions: they are treated as the press when claiming press freedom rights, yet do not receive press protections when facing legal claims. This situation creates systemic legal uncertainty and has a direct impact on the quality of Indonesia’s public information ecosystem (Agus Sudibyo, 2019).

This issue has not received adequate and proportionate academic attention. Most studies on Indonesian press law still focus on issues related to conventional press freedom or content regulation, without specifically examining the phenomenon of “*homeless media*” as a distinct problem of legal certainty. This study aims to fill this gap by posing a fundamental research question: what is the nature of “*homeless media*” under Law No. 40 of 1999 on the Press, and how is this nature interpreted from the perspective of legal certainty theory? (Permana, 2022).

This study is expected to contribute in three ways. *First*, theoretically, this study enriches the body of Indonesian press law scholarship by offering the concept of “normative dissonance” as a new analytical framework for understanding the condition of *homeless media*. *Second*, practically, this study provides research-based recommendations for a more adaptive and legally certain revision of the Press Law. *Third*, from a policy perspective, this research provides strong arguments for the Press Council and lawmakers to take concrete steps in addressing the legal uncertainty surrounding *homeless media*.

## RESEARCH METHOD

This study is a *normative legal research* that examines law as a set of norms applicable within the positive legal system (Marzuki, 2013). This approach was chosen because the issue under examination is normative in nature: whether and how the Press Law constructs or fails to construct the legal status of homeless media. In line with the characteristics of normative legal research, this study prioritizes the analysis of primary, secondary, and tertiary legal materials as the main objects of study (van Hoecke, 2013).

Three research approaches were used synergistically. *The statutory approach* was used to analyze the normative construction of the Press Law from a grammatical and systematic perspective, particularly the provisions relating to the definitions of the press, press companies, and journalists. *The conceptual approach* was used to develop and elaborate *the concept of “homeless media”* as a new analytical construct based on relevant legal doctrines and theories.

The *comparative approach* was used to a limited extent to examine how other jurisdictions manage the diversity of media entities within their press regulatory frameworks, serving as a point of comparison for formulating recommendations.

The primary legal materials used include the Press Law and its implementing regulations, relevant Constitutional Court decisions, and Press Council regulations. Secondary legal materials include legal scholarship, journal articles, and relevant prior research findings. The analysis is conducted using grammatical, systematic, historical, and teleological interpretation methods to comprehensively and proportionally uncover the meaning of the norms.

## RESULTS AND DISCUSSION

### The Normative Framework of the Press in Law No. 40 of 1999

The Press Law was formulated within the highly specific context of the post-New Order democratic transition. Bagir Manan notes that the fundamental spirit of this law is the restoration of press freedom as a human right that had long been deprived, not as a tool for restriction (Bintang, 2024). However, the technological context in 1999 was vastly different: the internet in Indonesia was still in its infancy, there were no social media platforms, and there was no citizen journalism in the sense we understand it today. The Press Law was built on the assumption of a monolithic media ecosystem structured institutionally.

Three core definitions in the Press Law establish the normative boundaries determining who can be a subject of press law. *First*, “the press” is defined as a social institution that carries out journalistic activities using various media, including “all available channels.” *Second*, a “press company” is defined as “an Indonesian legal entity that operates a press business” (Law Number 40 of 1999 concerning the Press, 1999). *Third*, “journalist” is defined as “a person who regularly engages in journalistic activities,” without explicitly requiring formal institutional affiliation in the text; however, implicitly and in practice, the Press Council requires a connection to a verified press company (Press Council Regulation Number 1/Regulation-DP/X/2018 Concerning Press Company Standards, 2018).

The requirement to be an “Indonesian legal entity” as stated in Article 9(2) of the Press Law is the most significant critical point. This provision assumes that every entity conducting press business has undergone a legal formalization process resulting in the creation of a legal subjectivity recognized by the state. Dian Agung Wicaksono refers to this condition as an “institutional trap” that *de facto* excludes media entities that substantively perform journalistic functions but have not yet met these formalistic requirements (Wicaksono, 2022). Thus, the phrase “all available channels,” which appears technologically inclusive, is unable to overcome the normative barrier created by the legal entity requirement.

### Conceptualizing Homeless Media: The Anatomy of Normative Disenfranchisement

In this study, *homeless media* is defined as a media entity that substantively performs journalistic functions seeking, processing, and disseminating information to the public yet lacks a clear and recognized legal status within the framework of applicable press regulations, either due to non-compliance with the formal requirements of the Press Law or because there is no existing legal category capable of accommodating their existence and operations. This term is not merely a metaphor; it describes a real and impactful legal condition.

Niklas Luhmann, in his theory of social systems, explains that legal systems operate through the logic of inclusion and exclusion defining who is included within the system and who is excluded from it (Baxter, 2013). *Homeless media* are entities trapped on the threshold of this system: functionally engaged in public communication the domain of the press system yet structurally not recognized as part of the regulated press system. This condition of structural ambiguity is referred to in this study as *normative dissonance* a state where functional capacity exceeds the available formal recognition.

At least four typologies of *homeless media* can be identified within the contemporary Indonesian media ecosystem. *First*, independent online media without legal entity status news sites operated without legal formalization. *Second*, platform-based content channels YouTube channels, social media accounts, or podcasts that consistently produce journalistic content. *Third*, community or advocacy-based media entities established by civil society organizations to distribute information to specific communities. *Fourth*, hybrid media in transition entities currently in the process of meeting formal requirements but have not yet completed them. These four typologies differ in scale and capacity, yet share one fundamental commonality: the absence of formal legal status recognized by the Press Law (Aris, 2023).

#### **Legal Certainty as an Analytical Framework: Fuller's Test**

Lon Fuller established eight conditions for a norm to be considered a law in the true sense: (1) generality; (2) public promulgation; (3) non-retroactivity; (4) clarity; (5) non-contradiction; (6) *possibility of compliance*; (7) *constancy over time*; and (8) *congruence* between the announced rules and those applied. These eight requirements constitute the most systematic evaluative standards for measuring the quality of legal certainty produced by a regulation (Henley, 1992).

When tested using the Fullerian framework, three requirements are significantly violated in the relationship between the Press Law and *homeless media*. The *generality* requirement is violated because the Press Law does not apply generally to all entities performing journalistic functions it only covers those meeting formal institutional requirements that do not directly correlate with journalistic quality. The *clarity* requirement is violated because there are no sufficiently clear norms to determine how *homeless media* should be treated legally: whether it is subject to the Press Law, the ITE Law, the Criminal Code, or whether no regulation precisely covers it. The *congruence* requirement is violated because, in law enforcement practice, *homeless media* are treated differently and inconsistently by various institutions, creating a gap between what is written in the norms and what is experienced in reality (Wiratraman, 2018).

Violations of these three Fuller criteria result in a three-dimensional legal uncertainty. *The first dimension* is uncertainty regarding rights: *homeless media* cannot claim the protections guaranteed by the Press Law including protections for journalists (Article 8) and dispute resolution mechanisms through the Press Council because they do not meet the criteria for being a rights-holding subject within that system (Prasetyani & Widodo, 2022). *The second dimension* is uncertainty regarding obligations: there are no clear normative standards regarding what obligations actually apply to *homeless media*, which opens the door for media to operate without effective accountability standards (Mulyadi & Astutik, 2023). *The third dimension* is uncertainty regarding dispute resolution forums: when *homeless media* are involved in legal conflicts, there is no clarity regarding the appropriate and proportionate resolution mechanisms (Saleh, 2022).

### **The Phenomenon of the Double Trap and Implications for Freedom of Information**

The legal uncertainty surrounding homeless media culminates in what this study terms the “double trap”: on one hand, homeless media cannot access the protections of the Press Law because they do not meet its formal requirements, and on the other hand, they are actually more vulnerable to the application of the ITE Law, which contains criminal penalties without providing equivalent professional safeguards. This demonstrates that this situation is the most tangible manifestation of the regulatory system’s failure to provide fair and proportional legal certainty for journalists operating outside formal institutional channels.

Substantively, this “double bind” creates a *chilling effect* that undermines the journalistic spirit of “*homeless media*” practitioners and ultimately impoverishes the diversity of information available to the public. In the context of responsible freedom of information as envisioned by the Press Law, this situation presents an ironic contradiction: a law born of the spirit of liberating the press actually creates normative exclusion that risks silencing some of the journalists closest to the information needs of communities long underserved by mainstream media (Susanti, 2023).

Tri Mulyadi and Dewi Astutik observe that many “*homeless media*” entities practice hyperlocal journalism and community journalism, filling the information gaps left by mainstream media that are becoming increasingly centralized and conglomerated. Excluding these entities from press law protections not only harms them individually but also harms the public, which loses access to diverse information sources. Yance Arizona points out that treating entities performing substantively identical functions differently can only be justified if based on objective, rational, and proportional criteria not merely on the fulfillment of formal requirements that have no direct correlation with journalistic quality (Arizona, 2020).

### **The Root of the Problem: Regulatory Failure, Not Non-Compliance by Media Actors**

A deeper analysis of the “homeless media” phenomenon reveals that this issue is, at its core, not merely about media actors who are unwilling to comply with the law. In his critical analysis, Aswanto demonstrates that the proliferation of homeless media is a consequence of the gap between “*law in the books*” and “*law in action*”: the Press Law assumes a structured and

formal media ecosystem, while the reality of the digital media ecosystem is far more fluid, fragmented, and constantly evolving (Aswanto, 2022).

Zainul Daulay identifies three structural factors contributing to the creation, acquisition, ownership, and proliferation of *homeless media*: disproportionate regulatory barriers (requirements for legal entity status, verification, and press company standards demand resources that small media entities lack), low incentives for formalization (no immediate benefits commensurate with the costs of meeting requirements), and weak law enforcement (the absence of effective disincentives to encourage compliance) (Daulay, 2020). Satjipto Rahardjo reminds us that laws that fail to respond to genuine social needs quickly and appropriately will ultimately lose their relevance in the eyes of the public (Rahardjo, 2010).

From this perspective, the issue of *"homeless media"* is a failure of regulation to respond to the diversity and dynamics of the contemporary media ecosystem. Good press law is law that is capable of accommodating the diversity of media entities without sacrificing standards of journalistic professionalism a principle that aligns with Mochtar Kusumaatmadja's idea of the function of law as a means of social renewal that must grow alongside the development of ever-changing social needs (Kusumaatmadja, 2013).

## CONCLUSION

*"Homeless media"* under Law No. 40 of 1999 on the Press are, in essence, entities experiencing *normative dissonance* a condition where their functional capacity as journalistic actors exceeds the formal recognition available within the press law system. This dissonance stems from three structural weaknesses of the Press Law: the institutional bias inherent in the legal entity requirement of Article 9(2), the temporal limitations of the 1999 regulation that failed to anticipate the digital revolution, and the absence of a proportional, phased recognition mechanism. When examined through Fuller's *"inner morality of law"* framework, these conditions violate the requirements of *generality, clarity, and congruence*, resulting in three-dimensional legal uncertainty: regarding rights, obligations, and dispute resolution forums.

This legal uncertainty culminates in the *"double bind"* phenomenon, which places *"homeless media"* in the most vulnerable position: unprotected by the Press Law, yet more easily ensnared by other regulations not designed to govern journalistic dynamics. This condition ultimately undermines responsible freedom of information the very core ideal of the Press Law itself. Therefore, the issue of *"homeless media"* is fundamentally a regulatory failure to respond to the diversity of the digital media ecosystem, not merely a matter of non-compliance by media actors. A reformulation of the Press Law that prioritizes a recognition-based approach grounded in journalistic functions, incorporates a tiered recognition system, and explicitly resolves normative overlaps with the ITE Law is a constitutional necessity that cannot be postponed.

## ETHICAL STATEMENT AND DISCLOSURE

This study was conducted in accordance with established ethical principles, including informed consent, protection of informants' confidentiality, and respect for local cultural values. Special consideration was given to participants from vulnerable groups to ensure their safety, comfort, and equal rights to participate. No external funding was received, and the authors declare no conflict of interest. All data and information presented were collected through valid research methods and have been verified to ensure their accuracy and reliability. The use of artificial intelligence (AI) was limited to technical assistance for writing and language editing, without influencing the scientific substance of the work. The authors express their gratitude to the informants for their valuable insights, and to the anonymous reviewers for their constructive feedback on an earlier version of this manuscript. The authors take full responsibility for the content and conclusions of this article.

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