

Power and Free Speech: The Elites' Resistance to Criticism in Indonesia¹

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Abstracts

The fall of Suharto brought Indonesia onto a new path of democracy. However, after 19 years, Indonesia remains lacking in the exercise of free speech. In 2008, the government enacted a law which criminalizes defamation on the Internet. This law adds to the existing defamation law in the Penal Code in silencing criticism. This paper explores why the elites remain reluctant to allow open criticism despite the country's practicing democracy. Using the method of political history, I track the behavior of the elites in different political regimes: Old Order (1945-1965), New Order (1965-1998), and post-Reformasi (1998-present). I observe the resistance against the imposed regulations and how the elites have used the regulations during each regime. In addition, I observe how the current political society interacts with previous regimes. I argue that the legacy of Dutch colonialization and the system of dictatorship which lasted more than three decades continue to influence the Indonesian political culture which justifies the elites' attitude toward criticism.

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“This step backwards has forced us to reflect anew upon the problems of democracy in these new states and has made many of us realize the necessity of having, first, to create the condition under which democratic institutions could properly function in these new states.” Rosihan Anwar, 1961.

1. Introduction

During the years 2013 and 2014, the bold anonymous Twitter account @TrioMacan2000 was reported to the Jakarta Police Office for four cases of defamation (*The Jakarta Post*, 2014). The Twitter account had published tweets criticizing and alleging corruption on the part of government officials through the microblogging site. The Jakarta Police Office blocked the account after these defamation cases, yet it returned online under different accounts such as @TMBack2000. In 2014, the Jakarta Police Office arrested Edi Saputra and Raden Nuh who are affiliated with the account for extorting the Public Relations Vice President of the state-owned telecommunication company PT Telkom, Arif Wibowo. Both were charged with Article 27 and Article 45 of Electronic Information and Transactions Law 2008 which regulate intimidation or defamation of others through electronic media including social networks (*The Jakarta Post*, 2014).

In 2016, the Indonesian Parliament revised the law, adding some articles on the right to request the deletion of content from the Internet. The enactment of this revision shows the power of the elites in responding to criticism from the society amid the challenges of the Internet. Mainstream media in Indonesia are concerned that the law will burden the exercise of free speech because the Ministry of Communication and Information Technology has full authority to block any Internet content when it receives reports from other government institutions (*BBC Indonesia*, 2016).

The development of the Internet has brought a new mechanism for supporting democracy by providing an easier platform for individuals to participate in democracy. However, some states perceive the freedom of expression in the Internet sphere as a threat to the elites' power sustainability. Warf (2011) cites a study from Reporters Without Borders,

an NGO based in Paris, which concludes that heavy censorship occurs in countries with an authoritarian system. Reporter Without Borders categorizes countries based on the severity of censorship. Iran, Burma, Vietnam, and China are considered to have heavy Internet censorship. Russia, Belarus, Pakistan, and Arab countries are in the severe censorship category. Thailand, Malaysia, Singapore, Indonesia, India, Central Asian countries, United Arab Emirates (UAE), Egypt, Jordan, Lebanon, sub-Saharan African countries, and Cuba are in the moderate censorship category. Brazil, Chile, Peru, Italy, Spain, Bulgaria, and Moldova are considered light Internet censorship countries. Finally, Western European countries and the United States are in the uncensored category (see **Table 1**).

Table 1. Internet Censorship based on Severity

Worst censors	Severe censors	Moderate Censor	Light Internet censors	Uncensored
China	Russia	Thailand	Brazil	Finland and other
Vietnam	Pakistan	Malaysia	Costa Rica	Scandinavian
Burma	Saudi Arabia	Singapore	Argentina	countries
Iran	Bahrain	Indonesia	Chile	German and other
	Jordan	India	Peru	Western European
	Tunisia	Kirgizstan	Italy	countries
	Belarus	Uzbekistan	Bulgaria	United States
		Azerbaijan		United Kingdom
		Ukraine		
		Georgia		
		United Arab Emirates (UAE)		
		Egypt		
		Lebanon		
		Oman		
		Yemen		
		Zimbabwe		
		Sudan		
		Cuba		

Source: Warf (2011)

Indonesia is still a young democracy and is in the moderate censorship category regarding Internet freedom. After experiencing an authoritarian political system for 32 years, Indonesia is now on the path toward mature democracy, yet protection from criticism remains in existence for the elites. Criticism is disguised, even after *Reformasi*, as individuals and even media replace the names or organizations of the elites with words such as *pihak tertentu*

(some groups), *partai tertentu* (some parties), *oknum tertentu* (some individual), and initials.³ This replacement is often found in allegation cases which have not been proved legally but appear in mainstream media or social media⁴. This paper aims to explain why and how the elites⁵ in Indonesia, facing the challenges of the development of media, have been resistant to criticism from society despite the country's democratic system. Using the method of political history, I track the behavior of the elites in different political regimes: Old Order (1945-1965), New Order (1965-1998), and post-*Reformasi* (1998-present). I observe the resistance against the imposed regulations and how the elites have used the regulations during each regime. In addition, I also observe how the current political society interacts with previous regimes.

I argue that three factors render the elites in Indonesia resistant to criticism during post-*Reformasi*: 1) imperfect institutional reform; 2) political elites from New Order remaining in power during the post-*Reformasi* period; and 3) the existence of social norms which are unchanged from the New Order. However, the mechanism of resistance in each regime is different. During the Old Order, particularly in Guided Democracy, repression of criticism of the government peaked due to the enactment of Martial Law--for example, by the closing of newspapers which opposed Sukarno's political ideology. In the New Order, Suharto used his coercive institutional power to arrest individuals or groups who criticized elites and ideology, causing humiliation. In addition, Suharto used Javanese, Islamic, and Pancasila values to silence the critics. The doctrine of this value was implemented through the educational system, licensing for newspapers, and licensing for civil organization. During the post-*Reformasi* era, Indonesia shifted toward becoming a more democratic country, which

³ In Indonesian, the word *pihak* is vaguer than the word *partai*—which *partai* literally means political party.

⁴ For example, the current Coordinating Ministry of Law, Politics, and Security Wiranto mentioned “*oknum tertentu*” to disguise alleged individuals or parties spreading the issue of Chinese migrant workers in Indonesia (Tempo.co, 2016)

⁵ I categorize the elites as a national political and public figure such as the president, high official, minister, actor, businessman, and others at the same level.

has made it difficult for elites to use their power through institutions, hence making the “new elites” rely on regulations to curb criticism from the society. I also address the importance of the role of the Army in each regime, particularly in the Old Order and the New Order. I use the approach of power holding in exercising freedom of speech in Indonesia. This paper represents a preliminary analysis of the topic and will form the basis of a deeper study in the future.

2. Freedom of Speech

The word “freedom” is closely connected with democracy. Freedom of expression, particularly, is recognized as a basic human right in the Universal Declaration of Human Rights established by the United Nations (UN) in 1948, specifically in Article 19 that states: “Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” One of the essential types of freedom of expression is freedom of speech.

From the democracy point of view, freedom of speech is a prominent component of a society that assumes a sovereign population. This right relates to public affairs, importantly, as a tool for criticizing government officials and policies (Schauer, 1982). Schauer (1982) states that democracy with freedom of speech is necessary for two purposes: 1) to provide the sovereign electorate with information crucial to exercising its sovereign power; and 2) to hold governmental officials properly accountable regarding the freedom of speech to criticize the government and public policy. Meiklejohn (1948) argues that free speech is prominent in the discourse of democracy in positioning the people as the government, a concept which he introduces as a self-government system. Freedom of speech should be independent from private interest speech which might lead to private gain. In the context of development

economy, freedom of speech has the function of providing valuable support to good governance, hence forming sustainable democracy that increases human development (Pippa, 2008). In her study, Pippa (2008) argues that independent media function as another check and balance on government, potentially promoting freedom of information and transparency as well as calling attention to social problems.

Aside from the function of free speech in the relation between society and state, the principle is also prominent at social and individual levels. Milton (1968) argues that freedom of speech helps in the attempt to seek the truth. Freedom of speech guaranteed by the absence of a government restriction on publishing as well as licensing publication enables society to locate truth and reject error. Even if a government imposes a filter on information it considers false, a subjective judgment, the information may still be true or contain a portion of truth. Truth acquired by the public creates a competition in the market which benefits the society as a whole. However, freedom of speech may have consequences such as false opinion, offense, violence or disorder, and damage to reputation (Schauer, 1982). Thus, the society must tolerate a large amount of knowledge with the potential of possibility opinion (which contains probability instead of fact) and even falsity. In this case, society must risk the consequences in order to receive true information. Combined with the idea of self-government argued by Meiklejohn, political truth by definition is information which is accepted by the majority—in line with the concept of democracy. In short, the government does not decide the truth.

While freedom of speech is valuable for governance and for seeking the truth, individuals exercising this right should be responsible for their opinions in order to minimize the consequences. Newspapers often use layers of editorial functions to verify the facts in order to avoid slander and false information which may harm others' reputations, including those of public figures. This self-censorship mechanism, however, functions within the context of the rules and laws imposed by the government. It also leads an individual or a

publishing company to refrain from presenting true information due to uncertainty (Schauer, 1982). However, criticism toward individuals, particularly within the government, remains important in order to exercise good governance related to corruption.

If, on the one hand freedom of speech is important to the sovereignty of the state which, according to Meiklejohn, is governed by the people, while, on the other hand, freedom of speech has two sides (source of truth and risk of consequences), who should determine what is true and responsible speech? The general justification for freedom of speech is society's ability to consistently separate truth from falsity. In current practice, many countries hand the function of determining truth and responsible speech to the government. However, giving government the power to determine what is true and responsible speech and the authority to educate the people would expand the gap between the rulers and the ruled. Within the context of democracy, ideally, the government represents the majority of the people through the electoral system. In the democratic context, the society and the government participate equally (Schauer, 1982).

However, the power of the elites who often hold the resources may distort this ideal picture of democracy. A popular argument depicting how power can affect one's freedom of speech is in Mill's essay on Liberty. Mill argues that an individual with power can silence the opinion of the majority despite the opinion's containing truth or falsity, and majority with power can silence an individual opinion despite its containing truth or falsity. In both cases, the society will lose (Mill, 1869). Common instances are defamation and libel cases where the defendants are typically ordinary citizens or groups "whose public positions on policy issues have triggered the litigative impulses of political adversaries." This practice is commonly called a Strategic Lawsuit Against Political Participation (SAPP), designed to intimidate and harass political critics into silence (Conciantini and Nash, 1990).

2.1 Freedom of Speech and Restriction

Limitations on freedom of expression and opinion commonly occur in an authoritarian state in order to protect the existing ruler from political foes or people movements that may trigger political change. For example, China implements tight control and regulation over the Internet because of possible political ramifications for the current ruling government. China uses its power through both institutions and regulations to limit the freedom of Internet usage in the country, such as developing “the great firewall” which allows only government-approved agencies to establish an Internet Interconnecting Network and receive a license for operating as an Internet provider. In addition, the Communist Party regulates businesses that are based on the Internet such as social media, search engines, and blog platforms. These businesses face stiff penalties if they do not comply with the regulations and implement self-censorship (Liang and Lu, 2010). Starting in 2010, the Chinese government has blocked giant American-based Internet companies like Google, Twitter, and Facebook in order to prevent a potential uprising and revolution, learning from the Arab Spring (ChinaFile.com, 2016).⁶ However, due to China’s enormous potential market, Facebook has attempted to develop software “to suppress posts from appearing in people’s news feeds in specific geographic areas” (Isaac, 2016). The lure of the potential market in China has made Yahoo!, Google, and Microsoft bow down to the regulation of censorship in China which is against the companies’ values and ideologies (Amnesty International, 2006). For example, Microsoft compromised with Chinese regulation to block words like “democracy,” “human rights,” “freedom of expression,” and “Tiananmen Square” on their blogging site MSN Spaces. Microsoft also shut down a blog written by a Chinese blogger and journalist in December 2005 due to a request from the Government of China.

⁶ Many scholars argue that social media like Twitter and Facebook fueled collective actions in the Middle East and North Africa from 2010 to 2011 which led to revolutions (see Khondker, 2011; Wolfseld et al, 2013; Gerbaudo, 2012; Howard et al., 2011; Eltantawy and Wiest, 2011)

This action was in contrast to Microsoft's value conveyed by its founder Bill Gates during a debate regarding a US law about access restriction for children to pornographic content on Internet: "Microsoft and others in industry and non-profit organizations were deeply involved in trying to block language that would put chilling restrictions on the use of the Internet for the free publication of information" (Amnesty International, 2006).

In democratic discourse, freedom of speech is treated in various ways. Some countries' freedom of speech is protected under the constitutional law (e.g. the United States under the First Amendment) or by reference to international law (e.g. the United Kingdom which refers to the Universal Declaration of Human Rights, particularly Article 18 and 19). Freedom of speech commonly goes hand in hand with freedom of the press which is an extension of freedom of expression.

However, in democratic society, the right of speech also intersects with individual/group's right to protection from extreme speech (Weinstein and Hare, 2009). Democratic countries apply regulations regarding extreme speech which might insult or offend individuals or groups. Some examples of extreme speech are hate speech, blasphemy, defamation, and libel. The relationship discussed by Weinstein and Hare (2009) is horizontal within society rather than vertical. In the liberal concept of free speech, the right to express opinion is in favor of political speech which supports the rights to criticize the government and institution freely and publicly to maintain representative democracy (Amponsah, 2004). For the simplicity of categorization in this paper, I will focus on defamation, which can be extended to libel and slander in the law which covers the vertical relationship between ordinary individuals in criticizing the government, institutions, and public figures within the government. However, as I also include power as the contributing variable in determining ordinary individuals versus the higher power of the government and public figures within the

government, I also include resources to determine the inclusion of the higher power. These resources might derive from wealth or the privilege of accessing legal process.

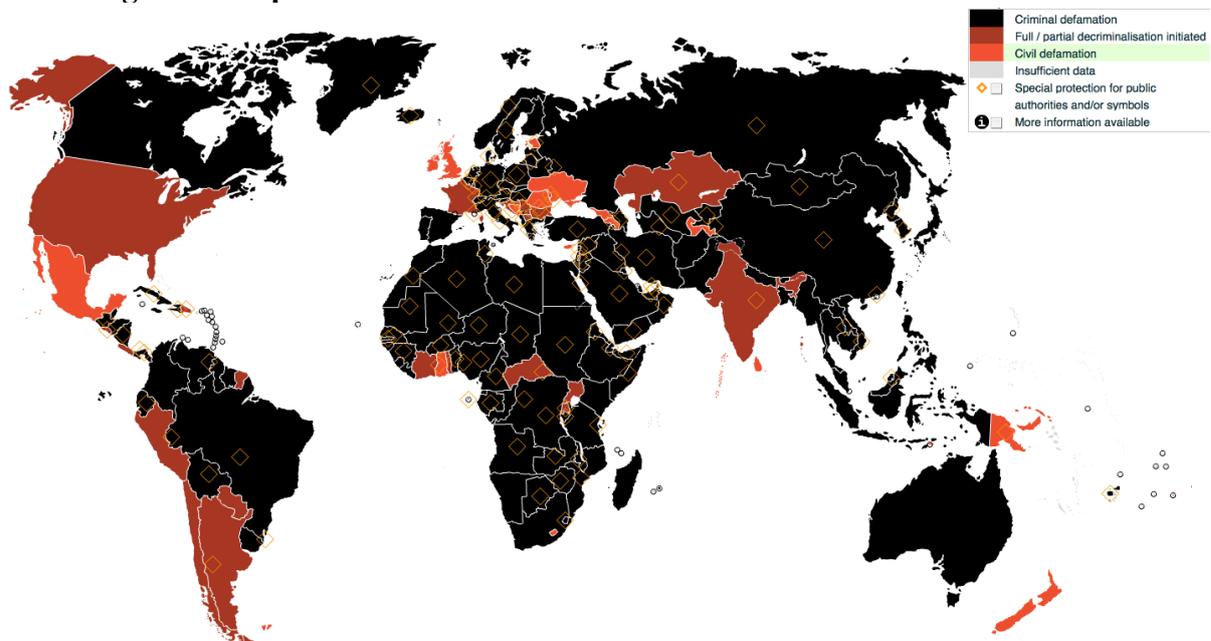
Amponsah (2004) argues that defamation laws are created by society “to settle issues of truth or falsehood and reputational harm that result from defamatory statements.” Libel laws are within the discourse of assumption that the people’s reputation will be significantly harmed by defamatory statements and that any judicial decision in this regard will settle the claims of falsity and reputation harm. By this definition, defamation covers general actions which harm the reputation of individuals or group, and libel and slander are different forms of defamation. In Indonesia’s Penal Code, the definition of defamation is “a person who intentionally harms someone’s honor or reputation by charging him with a certain fact, with the obvious intent to give publicity.”

Defamation was popularly used during the rise of the Nazis in Germany before World War II. The Nazi party, then called a nationalist group, used defamation to attack the concept of democracy, expressed by a defamatory attack on Ebert, the first President of the Weimar Republic. The group also used defamation to attack sometimes vague group categories such as “Jew,” “democrats,” “Reds,” “Catholics,” “liberals,” and “socialists.” The group developed its method on defamation by creating a whole new grammar to “calumniate their foes by assumed adjectival associations, devoid of traditional logic and sentence structure” (Riesman, 1942). In order to eliminate such consequences of freedom of expression, Riesman (1942) discusses two methods to control group defamation in a democratic country: 1) control of libel through criminal law and 2) control of libel through civil suits. On the European pre-industrial trajectory, Riesman argues, punishment of defamation against the elites was common, as the elites highly valued their reputation.

In a later study, Weaver and Partlett (2005), by examining common law and civil law in commonwealth countries, conclude that liberal democracies have shifted strongly in favor

of free speech compared to reputation. However, the degree of the balance hinges on constitutional, historical, and social settings. At the same time, criminalization of defamation remains in European democratic countries by the issuing of regulations which may be prosecuted through judicial process. Chapman (2008) argues that criminalization of defamation which initially functions to protect minorities is abused by the elites, leading to suppression of freedom of speech including freedom of the press. The practice is common in Eastern European countries as well as France, Spain, Iceland, and Finland among others (see **Figure 1.** for a map of countries which have defamation laws). The elites curb critics by criminal defamation proceedings using their position and power in the judicial institution. “They may pressure a prosecutor to conduct an investigation, to bring charges, to appeal a hostile verdict, or any combination of the above” (Chapman, 2008). Although defamation cases have been filed in a great number before the European Convention on Human Rights (EHCR), such abuses remain in existence in the current situation despite the governmental elites in Europe holding a commitment to freedom of expression subject to the EHCR.

Figure 1. Map of Countries with Defamation Laws



Source: Article 19

2.2. Freedom of Speech in the Digital Age

The development of freedom of speech through history is linked with the advancement of technology (Weaver, 2013). The development of the alphabet and papyrus contributed a major change in the technology of delivering information. Prior to the 1400s, oral information across the Roman Empire was delivered very slowly. It was not until Gutenberg's developing the printing press that a revolution occurred in communication technology. In addition, the Industrial Revolution allowed the further advancement of communication technology, from, for example, newspapers, radio, and television, to the Internet.

As the media of communication develop, the power over freedom of speech lies in the "gatekeeper" of communication technology. Weaver (2013) argues that most communication technology has been accompanied by "gatekeepers" which are "essentially private individuals and governmental entities, that were able to limit or control the ability of ordinary individuals to communicate with each other." These gatekeepers fall into two categories: monopolists who want to control market capitalization and formed because the nature of technology. Other than limiting communication, these gatekeepers also can control how "average people . . . use communication technology to advance their ideas and political agendas."

Prior to the invention of the printing press, the gatekeepers of oral communication were itinerant monks, soldiers, peddlers, couriers, and the pardoners who traveled from town to town selling absolution from sin. They were the only media to transfer information from the outside world, due to their commute. After the finding of papyrus and the development of an alphabet, information in books was written exclusively by monks and had limited circulation and access due to illiteracy and language differences. The Gutenberg invention of the printing press made information accessible to a larger market.

However, the market condition which makes it difficult to gain profit from the printing industry limits individuals in opening a newspaper business. In addition, the government also plays an important role in putting additional barriers on the printing industry, such as issuing licenses and limiting the number of newspapers published. With the market barriers and government involvement in the newspaper industry, the capitalization of free speech in the media begins. Only an individual or organization that has ample money to establish a newspaper company or pay for the publication of the newspaper, or by the consent of the owner of the newspapers, has the privilege to convey ideas or opinions. For example, American newspapers are owned by family conglomerates who have the money and access to own and operate the newspapers industry.

Individuals who do not own printing presses have limited options available regarding the information printed in newspapers. Individuals who have less money can persuade the writers and the editor to publish their opinion. In this case, the editors and writers become the gatekeepers of communication since the publication of the ideas depends on them. In theory, individuals can pay money to write their opinions for the editors. Should the editor refuse to publish the opinion as the individual could not afford to pay, the individual is left with more traditional options of communication such as speech and handwritten material. Having the privilege of media owner (including radio and television), it is common for publishers to further their own agendas or have their own biases.

The development of the Internet, Private Computer (PC), and smartphone has eliminate the barriers of the “gatekeepers” for ordinary individuals to access information as well as convey their opinion (Weaver, 2013). The development of the Internet which began in the mid 1990s has opened a new discourse on communication as well as on practicing freedom of speech. The Internet offers a new platform for individuals and lowers barriers to accessing and publishing information and opinion. Social media, e-mails, blogs, and Internet

forum are a small example of available platforms for ordinary individuals to channel their opinions. Different from printed media, television, and radio, the Internet offers a platform which does not require any license for publication. This barrier-free platform makes society more active in participating in democracy. The Internet has enabled a collective as big as the Arab Spring which urged a mass protest against the oppression of the authoritarian regime in 2010 (Wolfsfeld et al, 2013).

2.3. Free Speech and Political Culture

The application of human rights within the discourse of democracy is related to the culture of the society. This culture that is embedded in individuals' daily living might be favorable or unfavorable to the culture of democracy. For instance, Asian culture is group-oriented and respectful of authority; the leaders concern for dignity and upholding collective pride may avoid tension created by the Western concept of democracy, yet may produce a whole different set of problems (Pye, 1985). Hence, it is important to address the culture of Indonesia as it contributes to explaining the elites' reluctance to criticism.

The current political systems which differ in each country in Southeast Asia make every country unique for explaining elite politics. In his study of defamation in Thailand, Streckfuss (2010) argues that defamation law exists to protect against false allegations and is sensitive to the political, cultural, and religious environment at the time it occurs. The criminalization of defamation was initiated as a result of Thailand's avoidance of colonialization in the nineteenth century and the king's protection against Western schools of thought. *Les majeste* is a special version of restrictions on criticism. Although Thailand has had changes in its political system throughout its history, Streckfuss says that Thailand has not moved forward in terms of defamation. Two factors affect the country's continuing

exercise of defamation law: 1) the frame of thinking in Theravada Buddhism⁷ remains the same despite the challenges of modernity; and 2) the authoritarian regimes which have been constant since 1958 have strengthened defamation law in order to curb criticism, debate, and independent thinking. He argues that these factors have also played an important role in the democratic periods in Thailand.

The existence of defamation laws in Thailand resonate with Pye's argument that the society in Asian countries remain respectful of authority, and hence leaders play an important role in the political culture. In Indonesia which consist of many cultures, political power is rather in skewed distribution and has unequal access to national-level politics (Emmerson, 1976). Javanese is the biggest ethnicity in Indonesia, accounting for 40% of the population, as of 2010; followed by Sundanese, with as much as 15.5% (Suryadinata et. al., 2003). Most Javanese live on Java island which is the most populous island and accounts for more than 30% of Indonesia's economy. This domination of the Javanese population in Indonesia is also represented in the political governance. Emmerson (1976) argues that, although the composition of cabinet and ministries include ethnic minorities, the powerful people in government are mostly Javanese. The dominance is also depicted in the history of the Indonesian presidency starting with Sukarno who is a mix Javanese and Balinese, Suharto from Yogyakarta, Abdurrahman Wahid from East Java, Megawati Sukarno Putri who is the daughter of Sukarno, Susilo Bambang Yudhoyono from East Java, and Joko Widodo from Central Java.

Another prominent factor in forming Indonesia's political culture is religion. Islam is by far the biggest religion, accounting for more than 80% of the population. However, the

⁷ Based on this view, only a limited number of person with greater merit deriving from wealth, status, and education has access to the truth while, ordinary people are not able to perceive the truth due to lack of mental and spiritual discipline, including for events that are easy to observe. Social elites should be entrusted to discern Truth in e confusing social events and they can identify and punish the insidious individuals and groups who are considered a threat to the nation (Streckfus, 2010).

assumption of the dominance of the Javanese and Islam does not mean the elites in political culture are Javanese and piously Muslim. Emmerson (1976) argues that given the role of Islam in Indonesian political history, the contrast between strict Islam practitioner and Muslims who take religious obligations lightly has divided the Javanese and prevented them from making a monolithic polity, while the ethnic contrast between Javanese and non-Javanese has mitigated religious conflict by “cutting through core and periphery in the community of Islam.”⁸

The dominance of Javanese culture in Indonesian politics helps to explain the acceptance of the society of the authoritarian period as well as the culture as a tool to sustain the power of the leader. Anderson (1990) notes that according to Javanese culture, the rulers are perceived to have the power center on them as well as to be responsible for the prosperity of the people. The vertical distinction between the ruler and the ruled is captured in the word of *pemimpin* (leader, big shot) and its synonyms *tokoh*, *orang gede*, *dan pembesar* are applied to officials, generals, and politician alike. The people are perceived to be below the *pemimpin* with the word *rakyat* which means people or ordinary people. The *rakyat* are also perceived as less educated than the elites.⁹ During the Sukarno era, the responsibility of the leader also appeared in his designation in the jargon as *penyambung lidah rakyat*, literally “extension of the people’s tongue,” although this epithet was rather unrealized and less emphasized than other more power-centered jargon such as Great Leader of the Revolution and Supreme Boy Scout (Anderson, 1990).

In the attitude of the ruler to critiques, Anderson (1990) argues that only the figure of intellectuals who are withdrawn from society and do not have the intention to accumulate

⁸ Emmerson (1976) uses “*santri*” term for good Islam practitioners as “*santri*” and “*abangan*” for Muslims who take the obligation lightly. *Santri* in a narrow definition is people who are learning Islam in a boarding school. One of the examples of the involvement of *santri* on the political periphery is Nahdlatul Ulama. *Abangan* represents Muslim Javanese whose practice includes animist, Islamic, and Hindu-Buddhist elements.

⁹ The parallel of this distinction also appeared during the colonial period of *priyayi* (the elite class during the Dutch era) and *wong cilik* (little man) and *literate* and *illiterate* (Anderson, 1990).

wealth or power can function as the critics.¹⁰ During Sukarno's tenure, the critics of the regime were perceived to play a similar role to the intellectual figures with the rights to critique in the Javanese culture (Anderson, 1990).

Javanese culture is not only fitting for explaining the political culture in Indonesia as Anderson and Emmerson explore on their study. It also has been used by the authoritarian Suharto during his leadership in order to legitimate the government's policy (Pemberton, 1994). Pemberton gives an example of the usage of Javanese culture to legitimize Suharto's policy. The total eclipse of the sun on June 11, 1983 as a rationale of Mysterious Shooting (*Penembakan Misterius*) or Mysterious Marksman (*Penembak Misterius*) which is also known as Petrus. The anxiety of society over the eclipse legitimized Petrus to gain *slamet* or safe society.¹¹

The mixture of Indonesian culture coinciding with modern democracy yields a unique approach for examining the exercise of free speech. The colonialization in Indonesia has brought many legacies; one of them is the Penal Code which limited freedom of speech and is still being used. The fact that Indonesia continues using the Dutch-heritage Penal Code while the country is paving its way toward democracy raises the question of why the elites perceive that these laws remain important in the Indonesian political trajectory. Considering that Thailand's defamation law (which was strongly enforced during the authoritarian regime) heavily affected the country during its democratic period, how has the legacy of the authoritarian regime in Indonesia affected the elites' resistance to criticism in the present day? How have culture and religion influenced the elites in this matter?

¹⁰ Anderson (1990) notes that in the pre-Islamic period, the intellectuals who had the right to criticize the ruler had trained by isolation in caves or on lonely mountainsides remote from the society. Such a person withdrew from society to cultivate "clairvoyance, study the secrets of the cosmos, and prepare himself for death." During the precolonial and colonial periods, these ??? rural *kyai* were similar to clerics with a combination of Islam and the animism of Javanese.

¹¹ In 1982 and 1983, the number of crimes in Indonesia increased significantly, leading the government to begin operating Petrus, kidnapping and killing small criminals, or *gali*, without any prosecution. Meanwhile a total eclipse in Javanese culture is presented in a myth- that the danger would happen on earth from the anger of giant Betara Kala who steals the sun (Pemberton, 1994).

3. Freedom of Speech in Indonesia's Political Trajectory

Indonesia has experienced three different regimes since its independence in 1945: Old Order, New Order, and post-*Reformasi*. The Old Order emerged during the transition from Dutch colonization and Japan's short invasion, to form the new state of Indonesia. During these first 20 years of independence, then President Sukarno introduced two different ideologies of democracy: Constitutional Democracy and Guided Democracy. Guided Democracy early shifted to an authoritarian system in the country. After the Old Order, Indonesia experienced its longest authoritarian regime, the New Order, for 32 years under President Suharto. The regime changed during the *Reformasi* movement which forced Suharto to step down in May 1998, and the country began its transition from authoritarian to more democratic governance.

The Indonesian Constitution Law guaranteed the freedom of speech in its second amendment on the Article 28(f) which states "everyone shall be entitled to communicate and obtain information to develop their personality and social setting, and to find, obtain, have, keep, process and give information with any means of channel available." The Article on the Constitution Law then extended into the Law No. 9/1998 on Freedom of Expression in Public which was introduced after the New Order period. It states both a right and an obligation yet that should be exercise it in a responsible way. In addition, the Law No. 40/1999 on Press also guarantees freedom of expression for the press which is considered an important element to create democratic society, nation, and assure the freedom of expression as stated in Article 28 of the Constitution Law. Protection of freedom of speech is also supported by the Law No. 39/1999 on Human Rights, particularly Article 19 which states "protect the rights to seek, own, store and disseminate through any channel."

In contrast, Indonesia has a Penal Code which limits the exercise of freedom of speech. In the early period of independence, the government in 1946 enacted presidential instructions regulating the social system of the country, including one regulating criminal behavior adapted from the Dutch *Wetboek van Strafrecht voor Nederlandsch Indie* (Staatsblad 1915). During the transformation from presidential instructions to law in the late 1950s to early 1960s, this instruction became the Penal Code in 1958. The code stipulates articles which criminalize defamation and humiliation attempted by both individuals and groups. Chapter 16 of the Penal Code covers acts of insult and humiliation which consist of six different types of defamation: a) slander defined as defamation in verbal form (Article 310 (1)); b) libel defined as written defamation (Article 310 (2)); c) calumny defined as libel or slander, with a certain accusation against an individual that the individual says is untrue (Article 311); d) simple defamation defined as defamation that does not constitute libel or slander (Article 315); e) calumnious submission (317); and f) calumnious insinuation (Article 318).¹²

In addition, two articles in the Penal Code cover the criminalization of defaming the president or vice president of Indonesia, including verbal defamation in a public area and libel. In addition, the law also criminalizes individuals or groups who defame authority or public officials. The penalty for intentionally insulting the president or vice president, as stated in Article 134, is six years of imprisonment or a fine of 4,500 Rupiah (which at the time was equal to \$1,184). For disseminating defamatory written information in public and libel about the president or vice president, the penalty is four months of imprisonment or a fine as much as 300 Rupiah (which at the time was equal to \$79).¹³

¹² Please see Appendix 1 for complete list of defamation, libel, and slander charges stipulated in the Penal Code.

¹³ The fine will be adjustable for inflation, with the estimation defined by the court.

Over time, the elites have applied free speech restriction through different mechanisms. In this paper I will discuss how, during three periods, the elites have resisted criticism through such mechanisms as: 1) the enforcement of limitation of free speech through the Penal Code and other regulations; 2) application of defamation law through institutions; 3) application of defamation law through other regulations. In this section, I also note the role of the power holder in limiting freedom of speech.

3.1.Old Order (1945-1965)

Indonesia under Sukarno experienced two different democratic systems: Constitutional Democracy and Guided Democracy. Right after the Independence in 1945 until the end of the 1940s, the newspapers covered the struggle for independence and the attempt to secure a declaration of independence. During Constitutional Democracy, the press, which represented mostly political parties, took various stances which showed that it had the freedom to write subjective political ideology representing particular parties. In this period, the party in power used the 1931 Press Ordinance to silence opposition parties' criticism and close down newspapers which it believed endangered public order. The Ordinance had originally been issued by the Dutch to intimidate the emerging nationalist newspapers. Under the Dutch, the ordinance had led to the government's repressive act of banning publications which contained criticism of the Dutch. In addition, lack of government subsidy, low readership,¹⁴ and lack of journalists due to expensive school tuition had led the press into bankruptcy.

In August 1952, the Masjumi government led by Prime Minister Sukiman launched an anti-Communist raid because the party was believed to be conspiring to overthrow the government. Fifteen thousand people were arrested by the end of October. This repressive

¹⁴ In early the 1900s, 90% of Indonesians were illiterate.

measure translated into arresting journalists and banning Communist, Dutch, and Chinese publications (Oey, 1971). The application of the law was supported by the military police which was then separate from the military force.¹⁵ In 1953, Dahono, a Communist Party (Partai Komunis Indonesia/PKI) member, was charged with defamation for saying in front of 2,000 attendees of a PKI general meeting in Surakarta, Central Java, that “*Presiden Sukarno dengan pitjinya dibawah rok Juliana* (Sukarno with his pious hat (is hiding) under [Queen] Juliana’s skirt)” (*Indonesia Raya*, 1953).¹⁶ Surakarta’s local court decided that Dahono was guilty of insulting Sukarno and he was imprisoned for five months.

Due to Western pressure regarding freedom of speech, in August 1954 the government revoked the 1931 Press Ordinance. The opposition press used this opportunity to attack the government’s policies. However, government control of the press was lacking, allowing the press to abuse this freedom by publishing unverified and non-objective stories that contained many false allegations (Oey, 1971). One prominent example was *Indonesia Raya* led by Mochtar Lubis. *Indonesia Raya* published a series of articles about scandals, feuds, and frauds in the ministries as well as criticism of several diplomatic missions abroad without considering the status of the people involved. *Indonesia Raya* also aggressively criticized Sukarno regarding personal matters that included his marriage to a divorcee, with coverage on the front page in the form of an opinion piece by Abdul Wahab, one of the founders of Nahdlatul Ulama, an Islamic organization, and two cartoons (*Indonesia Raya*, 1954).

In 1956, the military police arrested Mochtar Lubis after publishing a story about the overthrow of the Governor of West Sumatra by the regimental commander of West Sumatra

¹⁵ From 1950-1959, the command of the Police went back and forth between the prime minister and the deputy, with direct administration through the Ministry of Internal Affairs. In 1955, the Police were empowered to help the Army fight rebellions against the central government. Later, during Guided Democracy, the Police were merged with the Army (Muradi, 2014).

¹⁶ Juliana was the Queen of the Netherlands.

Lieutenant-Colonel Achmad Husein (Oey, 1971). The tension among political parties in the Parliament created negative sentiment toward the central government. The coverage by Lubis on the act of forceful replacement of the West Sumatra Governor by the Army was considered against public order (Oey, 1971). Oey argues that this incident was prominent in the shifting of censorship during Guided Democracy. However, Lubis believed the reason for his arrest was unclear and reflected the sentiment of Sukarno, PKI, and the military leader General Nasution related to his activities as a journalist (Hill, 2010).

The shift from Constitutional Democracy to Guided Democracy was a pivotal point in Indonesia's democracy due to the emergence of authoritarian power which changed the practice of freedom of speech from entirely free to heavily restricted and controlled by the Army. The collapse of the parliamentary system in 1957 led Sukarno to declare Martial Law leading to the emergence of Guided Democracy which became the era of confusion and conspiracy. This enforcement of Martial Law enabled army officers to become involved in political, administrative, and economic functions.¹⁷ Under Guided Democracy, Grouch (1978) argues, "the politics revolved around the army and the president as the two pillars of the system." Officers in the army also were given prominent representation including in formal institutions of government like the cabinet and ministries, governorships, and enterprises left by the Dutch. In addition, the Police were finally merged with the Army and managed under the Ministry of Defense led by Nasution.¹⁸

¹⁷ Grouch (1978) argues that the Army was perceived as a political force due to the blurred distinction between its military and political functions during the revolutionary war against the Dutch. During the first few years of Independence, the Army perceived itself in a "guardian" role. Its function was not directly political but rather concentrated on becoming a cohesive and effective military force. In the early 1950s, the Army's involvement in the political sphere fluctuated. The enactment of Martial Law gave Nasution an unchallenged power against his opponents and full control of the Army. He made the Army more united and more capable of promoting its political interests than ever before.

¹⁸ During Guided Democracy, the political relationship between the Police and the Army was tense at times, including the accusation by the Army that the Police supported Sukarno and had an affiliation with PKI. The Army pushed the agenda that the Police should be under the Ministry of Defense and become a branch of the Indonesian Army (*Angkatan Bersenjata Republik Indonesia/ABRI*) (Muradi, 2014; Grouch, 1978).

During Guided Democracy, which was effectively implemented in July 1959, Sukarno shifted to support the Indonesian Communist Party (PKI) to gain more power against the increasing power of the Army, although he still needed the Army to sustain his power. Using Pancasila as a base for his creation of more socialist ideology by promoting Manipol USDEK,¹⁹ Sukarno created polarization among the media which already represented various political parties and ideologies. The media divided into newspapers supporting and opposing Sukarno. Newspapers supporting Sukarno centered in the newspapers owned by Indonesia's National Party (*Partai Nasional Indonesia /PNI*), PKI, and Indonesia's Party (*Partai Indonesia/Partindo*). Newspapers supporting the government often published content approved by the government about the current ideology, for instance *Pedoman* (PSI's newspaper), *Suluh Indonesia* (PNI's newspaper), and *Harian Rakjat* (PKI's newspaper). These three newspaper were among the biggest circulated newspapers at that time: 48,000, 40,000, and 55,000 respectively (Oey, 1971). One of the prominent oppositions in this era was the Body for the Support/Diffusion of Sukarnoism (BPS), launched in 1964 by the anti-PKI journalists in their newspaper; BPS expressed support of the old Sukarnoism. Opposition newspapers wrote criticism toward these newspapers with camouflaged names. For instance, *Haluan Daily* which criticized government-backed newspapers called them as "*Koran Koran Got (Dirty Newspapers)*" (Haluan, 1958).

In 1959, the government initiated a blueprint for a guided press under Guided Democracy, enacted in MPRS-Edict No. 11 which mentioned "all the media of mass communication such as press, radio, films etc., should be operated in waves as one coordinated unit, in a guided, planned and continuous way thus leading to an awareness

¹⁹ Manipol or Indonesian Manifesto Politics was initiated during the 1959 commemoration of Indonesia's independence. Using Pancasila as a base, the ideology promoted the revolution of the country which includes: (1) the Indonesian Republic as unitary from Sabang to Merauke (the farthest west to the farthest east); (2) the establishment of a just and prosperous society; (3) the establishment of friendship with all countries. The second point implies the socialism that matched the culture and psychology of Indonesian.

regarding Indonesian Socialism and the Pancasila” (Oey, 1971). Regulations of *Peperti* (Supreme Martial Law Administration) were imposed to create the guided press in line with the objective of Guided Democracy. Some of the regulations resulted in closure of Chinese newspapers, meant to expel the Chinese, and prohibited publication of several Indonesian newspapers (see **Table 2.**) (Oey, 1971). One that was closed was Rosihan Anwar’s *Harian Pedoman*. Anwar later wrote an opinion piece titled “Neither Quixotism nor Surrender” in 1961, criticizing the regime, saying that it moved toward authoritarianism rather democracy. Anwar was the chief editor of *Pedoman*, a newspaper which was considered to be affiliated with the right-leaning Indonesian Socialist Party (Partai Sosialis Indonesia/PSI), which had been closed several times by the military, the workers’ union, and finally by the government in 1960.

Table 2. List of Guided Press regulations during Guided Democracy

No	Regulation	Implications
1.	The <i>Peperti</i> Regulation No.3/1960 concerning the prohibition of newspapers/periodicals that are not printed in the Latin and Arabic Script or in the Script of a regional languages.	Meant to effect expelling Chinese in rural area. 102,297 Chinese left the country in 1960 vis a vis annual number of 12,000.
2.	<i>Peperti</i> Regulation No. 10/1960 concerning the publishing permit for newspapers and magazines. ²⁰	Opposition’s newspaper such as Abadi’s <i>Masjumi</i> and <i>Pedoman</i> ’s <i>PSI</i> were excluded.
3.	<i>Peperti</i> Regulation No. 2/1961 concerning the supervision and promotion of private printing firms.	The private printing firms should abide the propaganda of <i>Manipol</i> .
4.	Presidential Decision No. 307 concerning the establishment of the Institute of the National News-Agency <i>Antara</i> .	<i>Antara</i> as the government-owned source of news for government’s propaganda.
5.	Presidential Decree No. 6/1963 on Stipulation Regarding the Promotion of the Press.	Stipulation on penalties for printing companies who print without printing permit. It was also an initial step to make this regulation under civil law instead of martial law.
6.	Proclamation of the President/Supreme Commander of the Armed Forces/Koti No. D/450/64 concerning the publishing without interpretation of the writings of the Great Leader of the Revolution (Sukarno).	A new column created in every newspaper dedicated to Sukarno’s writing namely “The Teaching of the Great Leader of the Revolution <i>Bung Karno</i> .”
7.	Ministerial Decision No. 17/SK/M/65 concerning the prohibition of 21 newspapers/magazines that were implicated without BPS. Supplemented by Decision No. 27/SK.M/65	In February 1965, publications prohibited were among others: <i>Berita Indonesia</i> , <i>Merdeka</i> , and <i>Suluh Minggu</i> . The second wave of prohibition in March 1965 were for eight newspapers.
8.	Ministerial Decision No. 29/SK.M/65 concerning the basic norms for Press Enterprises within the context of the promotion of the Indonesian Press.	Newspapers should report their editorial members to the Ministry of Information for background check on indication of rebellion.
9.	Ministerial Decisions No. 51/52 and 53/SK/M/65	Support regulation to prohibit the publication of non-Latin and Arab newspapers.

Source: Oey, 1971

²⁰ Requirements for receiving a license for publication include “to support and defend *Manipol* and the program of the Government” and “to serve as an instrument for the propagating of *Manipol* with the aim of eliminating imperialism and colonialism, liberalism, federalism and separatism (Oey, 1971)

3.2. New Order (1965-1998)

In the New Order, suppression came in the form of vague regulations and depended heavily upon military enforcement to limit any criticism against the elites, particularly Suharto and the group of elites who were connected through military relationships, business, and family ties. In addition, the oppression against criticism was expressed by emphasizing the vague and broad concept of valuable critiques (*kritik membangun*); this message was disseminated throughout the regime by various political actors. During this period, Suharto used the dominance of Javanese culture to legitimize his political action to sustain his power and repress political foes. Javanese values were already shared by the majority Indonesians and were deeply rooted, favoring Suharto's attempt to secure his power. In addition, he used Pancasila ideology to silence criticism coming from the student movement and political foes.

Two pivotal events of repression worsened the exercise of free speech in the country: the mass killing of PKI supporters in the late 1960s and the Malari protest. Aspinall (2005) argues that the repression against criticism in the New Order was focused on the political left. The definition of political left was limited to any ideology which rejected or was against the regime's ideology. The repression against criticism was "harsher against lower-class than against middle-class groups, harshest of all against groups that rejected the regime's ideology" (Aspinall, 2005). The doctrine on anticommunism by the regime was expressed by repetitive warnings of the *bahaya laten PKI* (latent danger of PKI) and *ekstrim kiri* (extreme left) which remained central until the regime ended; later this paradigm was slowly changed in the Post-Reformasi era. The Malari incident which began with the student movement protest in the mid 1970s ended up in a riot and 800 students were arrested along with a number of journalists.

Born and raised in the Javanese culture of Yogyakarta, Suharto interpreted his governance using Javanese culture. During his leadership, Suharto claimed himself as the

father of the nation (later he called himself father of development or *Bapak Pembangunan*) who was protecting the nation. He also treated the country much like a Javanese family, positioning himself in the highest level (Sarsito, 2006). He translated his power as a father of the nation in different ways, one of which was limiting criticism as it is improper to criticize or corner the father (derived from the Javanese philosophy *hormat kalawan Gusti, Guru, Ratu lan wong tuwo loro* or always respecting God, teacher, king, and two parents). This philosophy has commonly been used by Javanese Islam to teach the young to respect the older person, respected person, and God.

The role of the Army was pivotal in this era. Suharto, who came from the Army himself, gave it the power to be involved in social and political affairs, known as *Dwifungsi ABRI* or dual function of the Armed Forces. This function was continued in Guided Democracy, as Suharto also had the Army guard the Pancasila ideology and gave it ultimate power as the stabilizer in realizing the national struggle. Officers of the Army were given many positions in the national government and public companies, as well as governorships in the provinces (Elson, 2001). More than 80 percent of the members of the legislative bodies People's Representative Assembly (*Dewan Perwakilan Rakyat/DPR*) and the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat/MPR*) were appointed directly by the President, organizations under Armed Forces control, or Suharto's party GOLKAR. In addition, the Army also controlled judiciary institutions such as Attorney General, Minister of Justice, and Supreme Court (Budiardjo, 1986).

In his early stage of government during the New Order, Suharto emphasized the Pancasila ideology in addition to his focus on development. Different from Sukarno's use of Pancasila as the basis of his socialism ideology, Suharto used it as a basis for political security to support Indonesia's acceleration to stable economic development. He utilized the Armed Forces (ABRI) to ensure that Pancasila was the only ideology applied in the country

(Elson, 2001) and repeatedly repressed public debate and opinion regarding political ideology, religion, and criticism. The past experience in the Old Order's political debate was described as "no use and only caused confusion."

In 1969, the Armed Forces' authority expanded to tackle varieties of extremism and subversive behavior and to ensure the safety and integrity of the government apparatus. On the surface, ABRI presented itself as a gatekeeper for democracy and freedom of expression. For example, ABRI attempted to establish a healthy democratic nation and allow individuals to give fierce critiques toward the army as long as it is constructive criticism, true, and reasonable (Kompas, 1969). The message of permission to give constructive criticism was conveyed by various high level government officials throughout the regime, such as the military, ministries, and head of the Council of State. In addition, the concept of constructive criticism had to be disseminated in the right way according to the regime, such as consultation instead of holding demonstrations, by participating in the formulation of government programs; or through consensus decision making (*musyawarah mufakat*). Suharto's definition of constructive criticism was "a critique that does not disturb the unity and oneness value, public interest, and against Pancasila value."

The suppression of criticism did not make protests and demonstration absent during Suharto's leadership. Elson (2001) points out that a demonstration against corruption initiated by student activists during 1970s targeted generals closest to Suharto due to kerosene, petrol, and staple food price hike. Suharto formed a four-man commission to investigate the corruption case in response to students' demands. However, the corruption investigation was discontinued "because those who came...did not bring concrete information," and Suharto told the students that they were being used as tools by politicians. In this event, popularly known as *Malari*, resulted in the arrest of approximately 800 students, two journalists, and 12 newspapers for supporting the movement. From this incident, the government controlled

student activities by enacting a permit scheme for on-campus activities and student publication—both supervised by the Ministry of Information and university administration (Human Rights Watch, 1998). The withdrawal of the newspapers' publication permit came two weeks after the movement, causing the closure of *Nusantara*, *Harian KAMI*, *Indonesia Raya*, *Abadi*, the Jakarta Times, *Mingguan Wenang*, *Pemuda Indonesia*, Ekspres Weekly news magazine, *Pedoman*, *Suluh Berita*, *Mahasiswa Indonesia*, and Indonesia Pos. Despite this suppression from the government, many student movements continued, until the ultimate movement which led to the fall of Suharto in 1997.

The doctrine of Pancasila for sustaining the regime's power began in 1970s. The establishment of Pancasila Moral Education (PMP) and P4 Program (*Pedoman Pengalaman dan Penghayatan Pancasila* or Guide to the Implementation and Vitalization of the Pancasila) was initiated by several factors, including getting rid of Sukarno's shadow in the concept of Pancasila, suppressing rival ideologies which were triggered by the existence of Malari events, and suppression of Islam power (Bourchier, 2015). Pupils were taught PMP as a manifestation of Pancasila norms for the young generation starting in 1978. The course mainly emphasized the consensus of decision making and mutual cooperation (*gotong royong*) as the main solution for compromising in the democratic sphere. Pupils' experience at school learning PMP internalized the boundaries of legitimate action and, in practice, acceptable behavior and even acceptable thoughts in society. As a result, a subversive act was created, including accepting the value that criticism toward the president and his family is morally unacceptable (Leigh, 1999). In addition, such indoctrination of Pancasila was also aimed at civil servants through the P4 program (Thomas, 1981). Such education made the young generation believe it was morally improper to criticize high officials, particularly using symbols which represent Indonesia like flags, Garuda, and the President. In sum, the overall impression of the P4 was that in order to become a good citizen one must preserve existing

condition other than change them, and that values of harmony and balance were essential to achieve individual happiness. and the emphasis was very much on self-control in subordinating individual interests to the common good (Bourchier, 2015).

Despite this well-structured brainwashing for curbing criticism, the P4 program was being criticized by the intelligentsia, particularly those who remembered the Manipol-USDEK ideology initiated by Sukarno during Guided Democracy. Critics also came from the civil servants in the provinces, but no significant movement or resistance occurred due to a sanction for avoiding the P4 program and repressive threats such as lay off or jail (Bourchier, 2015). Student movements also continued to exist despite this repression program, on a smaller scale and more independently organized by students in cooperation with NGOs (Human Rights Watch, 1998)

Other than curbing criticism through the education system and military forces, Suharto answered the challenges of media development through state-controlled media and close supervision of the content of the media. In the late 1960s, after Suharto secure his position as a President, he continued to ban newspapers similar to Sukarno's ban in Guided Democracy. The ban continued in the 1970s following the riot called Malari, although by then it involved fewer newspapers. In 1982, the government introduced publishing permits (*Izin Usaha Penerbitan Pers/SIUPP*) which required newspaper companies to submit documents to the Ministry of Information (Hill, 2007). A temporary ban, however, might be made, such as for the magazine Tempo which was banned from publishing for two months for its "incisive reporting" of the general election campaign in April 1982. The government also filtered the content published in the media by a "telephone culture (*budaya telepon*)" from senior officials to editors in the form of "appeal (*imbauan*)" related to sensitive content. The control over radio and television were easier for the New Order government. In 1970, private radio stations were legalized but under the condition of relaying only the state-radio

RRI newscast and restricted to a permissible transmission area and broadcast content. The government monopolized television broadcasting throughout the New Order until the late of 1980s when the government opened the business of private television. *Televisi Republik Indonesia* (TVRI) was heavily subsidized by the government and became the media for government propaganda. In the mid- 1970s, television technology expanded throughout Indonesia and broadcasting was accessible with the launching of the Palapa satellite in 1976. Local television emerged, with the restriction of broadcasting a relay from TVRI Jakarta. In the late 1980s, private televisions penetrate the market, yet with the majority of shares owned by Suharto's family and his cronies (Sen and Hill, 2007).

Many newspapers were banned or closed for several different reasons during the New Order. Tempo magazine was among the critical media and was banned in 1982 and in 1994 for criticizing the regime and its vehicle party Golkar during the general election. The magazine then signed an agreement with Minister of Information Ali Murtopo. The second ban was for criticizing the purchase of used ships from East Germany (Tempo, 2017). Also in 1994, *DeTIK* and Editor were closed for technical violations in the documents for changing editors, news content, and office address. However, it was widely acknowledged that the closure was due to their critical coverage of people close to the President (Hill, 2007). Two other newspapers, *Sinar Harapan* and *Prioritas*, were banned in 1986 and 1987 respectively. *Sinar Harapan* was banned due to critical coverage of the regime, while *Prioritas* was banned for "reports which are not true and are not based on facts, and which are cynical, insinuating and tendentious" (Hill, 2007). The closure of *Prioritas* was proof that the limitation of criticism was equal for any newspaper, despite the owner's and editors' closeness to the elite (Hill, 2007).

3.3.Post-Reformasi (1998-present)

After the Asian financial crisis that caused a movement in 1997-1998, Indonesia experienced a massive shift from authoritarian regime to democracy. The many attempts to reach democracy include reformation of the judicial system, electoral system, and government institutions, and opening a press freedom. The country also opened itself to competition. How has this democratization process affected the behavior of the elites toward criticism? How has the deeply rooted indoctrination changed during post-*Reformasi*?

Despite Indonesia already in phase of democracy, the 32 years of indoctrination remains in place. In addition, the elites from the New Order remain in power with Golkar party and the Democratic Party of Struggle still the biggest parties in Indonesia, keeping the value of anti-criticism intact among the elites. In addition, the Pancasila value as well as Eastern culture are still used to curb criticism. The defamation law is still enforced, and it has developed into other rules and regulations which convey the elites' fear of criticism. The role of the Army, however, is reduced, due to the separation between the military and political discourse. In order to form a new paradigm of democracy, three laws which support freedom of speech have been enacted: Law No. 9/1998 on Freedom of Expression in Public, Law No. 40/1999 on Press, and Law No. 39/1999 on Human Rights.

In this period, several prominent reforms have occurred including the existence of free and fair elections, the establishment of independent bodies such as the Constitutional Court and the Corruption Eradication Commission. In addition to separating the military from political and civil discourse, the government also separated the role of the Police from ABRI in 1999. The Police function for law enforcement domestic security.

Many scholars agree that the downfall of the New Order did not create a fresh democratic atmosphere in Indonesia (O'Malley, 2000; Bunte and Ufen, 2009; Tornquist, 2000; Aspinall, 2005). Soon after the departure of Suharto, Habibie took over the presidential position, before Indonesia held its first free and fair election since 1955, in June 1999. The

election resulted in Abdurrahman Wahid, a liberal leader of Nahdlatul Ulama from National Awakening Party (PKB), becoming the president of Indonesia. Despite only one and a half years in the position, he curbed the military power in the political sphere and liberated the boundaries on criticism by not enforcing the defamation law (Pamungkas, 2014). However, in 2001, the clash among the elites in politics led to the overthrow of his power and transferred it to his vice president, Megawati Sukarno Putri-- the daughter of Sukarno. During her leadership, enforcement of defamation law and the presidency as an untouchable position returned. Indonesian Police arrested students conducting protests against the government in 2002 and 2003. They were charged with Articles in the Penal Code related to showing hate and insulting the president and vice president. Megawati was insulted because the protestors criticized her policies and stomped on her pictures during the protest; the government said that she is the symbol of Indonesia and thus has to be respected (Human Right Watch, 2003).

Having a military background and serving during the New Order, the next president, Susilo Bambang Yudhoyono (SBY), supported the existence of defamation law. He emphasized his stance during a speech after the announcement of his cabinet during his second term as a President. “(I hope that any hatred) is not happening [...] then commit defamation in public, mass media. (There is) law which regulates this matter. This country is a law-abiding country. Not a slander country, not a country where you can crush someone’s honor without any responsibility” (Widjaya, Hasist, Ahniar, 2009). Human Rights Watch (2009) listed at least 17 citizens charged under the defamation law as persecuted by the government of Indonesia, local government, and companies. For example, the Jakarta Police Office arrested I Wayan Suarda for burning a picture of SBY during a protest in 2005 and he was imprisoned for six months. Other protesters faced similar charges for insulting and depicting pictures which showed hatred toward SBY (Rappler.com, 2015).

In 2006, the Indonesian Constitutional Court granted Eggi Sudjana and Pandapotan Lubis' contest on the Articles about defamation toward the president and vice president in the Penal Code²¹. They argued that the Articles did not represent the protection of freedom of speech enacted in the Constitutional law 1945. The Constitutional Court granted their demand by removing these three Articles from the Penal Code. However, four constitutional judges had dissenting opinions about the decision, arguing that the position of a president is similar to that of the Dutch queen who is obliged to be protected against defamation. In addition, the president is also the symbol of the country and thus as head of state has exclusive rights in the state law, or namely prerogative rights.

In 2008, the Constitutional Court rejected the contestation of Article 310 and Article 311 in the Criminal Code from chief editor of *Radar Jogja*, Risang Bima Wijaya²² and columnist Bersihar Lubis.²³ The Constitutional Court argued that, according Indonesian Constitutional Law, people are guaranteed to be protected to any untrue attack on their reputation. According to the written argument made by the Penal Code drafting committee, the norm of defamation law enforcement should be based on an “ethical of criminal intent” which differentiates between critique and insult.²⁴

In 2014, which was the last year of SBY's tenure, the Constitutional Court decided to delete the phrase “unpleasant treatment” from Article 335 of the Penal Code as it was often

²¹ Jakarta Police Office arrested Sudjana for defamation against the president due to his request for clarification and his report in the Corruption Eradication Commission (KPK) about a graft from Hary Tanoesoedibjo to then President SBY. Using the same charge, the National Police Office arrested Lubis on May 16, 2006 due to displaying a poster, during a protest, that had a picture of SBY and Jusuf Kalla with the sentence “*Kami Tidak Tahan Lagi* (We Can't Take It Anymore), *Turun!* (Step Down!)” and two other posters saying “No Trust, Step Down”

²² In 2004, Wijaya was charged with defamation by the local Court of Sleman, Yogyakarta. The founder of *Kedaulatan Rakyat* Soemadi Wartono Wonohito filed a defamation suit against her for an article about his alleged doing sexual harassment of one of *Kedaulatan Rakyat*'s employees.

²³ Lubis was charged under defamation by the General Attorney Office because of his article published in Tempo Magazine “*Kisah Interrogator yang Dunggu* (A Story of an Idiot Interrogator)” criticizing the banning of textbooks for middle and high school students by the General Attorney Office, as the book does not discuss the true history of the Communist Party's involvement in the 1948 Medan insurgency and the September 30, 1965 tragedy.

²⁴ Based on Constitutional Court Decision No 14/PUU-VI/2008

being abused in order to file a suit for protest or criticism against the elites (Hukum Online, 2015).²⁵

Under the government of Joko “Jokowi” Widodo, the enforcement of defamation law remains in existence. The National Police Mobile Brigade arrested a musician and politician Ahmad Dhani for defamation of Widodo (The Jakarta Post, 2016). Under Widodo’s leadership, the Article about defamation of president and vice president has returned to being enacted in the Penal Code, responding to Constitutional Court’s decision in 2006. Widodo’s attitude toward free speech does not show progress and instead echoes the restriction which was promoted during the New Order. During his speech to the legislature on August 14, 2015, he lamented “current tendencies that people feel they are ultimately free to behave and voice their opinion as they like. This is less productive when the media only pursues ratings instead of guiding the public to be virtuous and have a productive work culture” (The Jakarta Post, 2015).

3.3.1. On the Internet Age

With the penetration of the Internet, many Indonesians have vast access to information. They are also able to publish their own opinions through blogging platform sites or microblogging social media platforms such as Twitter, Facebook, and Path. As of 2016, Internet penetration had reached 82 percent of Indonesians in the 20-29 age group (CNN Indonesia, 2016), attracting more Internet-based companies to enter Indonesia’s fruitful market. Despite the flourishing Internet penetration, Freedom House ranked Indonesia only

²⁵ The Article says: (1) By a maximum imprisonment of one year or a maximum fine of three hundred rupiahs shall be punished: 1) Any person who unlawfully forces another by force, by any other battery or by an offensive treatment or by threat of force, of any other battery, or also of an offensive treatment, aimed either against the other person or against a third party, to do, to omit or to tolerate something; 2) Any person who forces another by threat of slander or libel to do, to omit or to tolerate something. (2) In the case in reference of the second description, the crime shall not be prosecuted except upon complaint by the person against whom it has been committed.

“partly free,” due to regulations that restrict freedom in the Internet sphere in comparison to international standards (Freedom House, 2011).

In 2008, SBY proposed the Information and Electronic Transaction Law, in which one of the Articles stipulates defamation in the Internet sphere. The law which was drafted in 2003 was legalized by the Indonesian Parliament in 2008. Under his government, although the exact data have not been confirmed, the defamation law was heavily abused by the elites. As of 2015, Freedom House (2015) noted that there were 85 cases filed under defamation in the Internet sphere since 2008, and they were prosecuted using the Law on Information and Electronic Transaction Article 27. However, in addition to targeting political material, the Internet censor during this period took a hardline approach towards controversial moral or religious content. In 2014, the then Minister of Information and Technology Tifatul Sembiring who is a member of the conservative Islamic Prosperous Justice Party (*Partai Keadilan Sejahtera/PKS*) signed a regulation which authorizes the ministry to block any content perceived to have negative contents. The major categories of the blockage include those who offer pornographic and other sexual content, including content deemed blasphemous.

In addition to the existing restriction on the Information and Electronic Transaction Law, the government during Widodo’s tenure has also strengthened the power of the Ministry of Communication and Information Technology to block Internet content based on reports from related ministries.

Despite the judicial process’s greater clarity in this era compared to in New Order, defamation law is still abused by the power elite. The interpretation of the Penal Code as well as the Information and Electronic Transaction Law on defamation is based on complaints. Reporting defamation suits takes resources which are accessible only to elites who have power and wealth. For instance, the case of Suarda which was prosecuted for protesting SBY

was based merely on the interpretation of the National Police on the action of defamation. Another example is on the famous case of Prita Mulyasari in 2009 who criticized the service of Omni International Hospital through a mailing list which soon spread to the public thanks to the Internet (Kompas.com, 2009). Omni International Hospital then filed a defamation suit using the Information and Electronic Transaction Law a month after the e-mail was spread on the Internet. Despite Prita's being in jail for several months, the Supreme Court finally released a verdict that she is not guilty (Detik.com, 2012).

4. Conclusion

An individual right for getting information should be guaranteed in order to find the truth. However, the freedom to get true information carries with it the possible consequence of getting false information. Overall, it is beneficial for society that people to have the right to exposed to all information without a filter, particularly in democratic discourse. The balancing of the right for information and the right for protection against defamation, insult, and falsity would ideally be in the hand of an individual. In the real world, however, governments have the power to decide what is truth information and what is falsity as well as to regulate individuals' right to express their opinions.

In the case of Indonesia, after more than three decades under an authoritarian regime, the notion of "responsible" free speech remains. Javanese and Islamic believes, complemented with Pancasila values, are used to justify the limitation of freedom of speech. People are expected to have use self-censorship to express their opinions without offending or insulting others. The elites continue to hold the power in interpreting of such vague standards of defamation, libel, and slander. Although Indonesia has been paving its way toward liberal democracy for more than 25 years ago, it keeps this legacy of the authoritarian

regime. It is important to keep this in mind for the future discussion regarding democratization in Indonesia.

In the current emergence of Islam radicalism in the country, we should also raise broader questions than that of free speech. Human rights issues in general will face challenges should this radicalism continues. How do the elites address human rights issues as in the face growing Islam radicalism? How do the elites use the moment of the emergence of this radicalism to gain or sustain their power?

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Appendix 1: List of Articles related to defamation in Indonesian Penal Code

No	Article	Content
	107	(1) The attempt undertaken with the intent to cause a revolution shall be punished by a maximum imprisonment of fifteen years, (2) leaders and originators of an attempt to in the first paragraph shall be punished by life imprisonment or a maximum imprisonment of twenty years
	134	Deliberate insult against the President or Vice President shall be punished by a maximum imprisonment of six years a maximum fine of three hundred Rupiah
	136 bis	Deliberate insult in Article 134 also includes the act described in Article 315, if this has been committed in the absence of the insulted person, either in public by acts or not in public but in the presence of more than four persons, or only in the presence of a third party who is present notwithstanding his own will and who takes offence of it, by acts as well as by words or in writing.
	137	(1) Any person who disseminates, demonstrates openly or puts up a writing or portrait containing an insult against the President or Vice President with intent to make the contents public or enhance the publicity thereof, shall be punished by a maximum imprisonment of one year and four months or a maximum fine of three hundred Rupiah, (2) If the offender commits the crime in his progress on and during the commission of the crime two years have not yet elapse since an earlier conviction on account of a similar crime has become final, he may be deprived of the exercise of said profession.
	154	A maximum imprisonment of seven years or a maximum fine of three hundred Rupiahs shall punish the person who publicly gives expression to feelings of hostility, hatred or contempt against the Government of Indonesia
	155	(1) Any person who disseminates, openly demonstrates or puts up a writing where feelings of hostility, hatred or contempt against the Government of Indonesia are expressed with intent to give publicity to the contents or to enhance the publicity thereof, shall be punished by a maximum imprisonment of four years and six months or a maximum fine of three hundred Rupiahs; (2) If the offender commits the crime in his profession and during the commission of the crime five years have not yet elapsed since an earlier conviction on account of a similar crime has become final, he may be released from the exercise of said profession.
	160	Any person who orally or in writing incites in public to commit a punishable act, a violent action against the public authority or any other disobedience, either to a statutory provision or to an official order issued under a statutory provision, shall be punished by a maximum imprisonment of six years or a maximum fine of three hundred Rupiahs.
	162	Any person who in public orally or in writing offers to give information opportunity or means for the commissions of a punishable act, shall be punished by a maximum imprisonment of nine months or a maximum fine of three hundred Rupiahs.
	207	Any person who with deliberate intent in public, orally or in writing an authority or a public body set up in Indonesia, shall be punished by a maximum imprisonment of one year and six months or a maximum fine of three hundred Rupiahs.
	208	(1) Any person who disseminates, openly demonstrates or puts up a writing or portrait containing an insult against an authority or public body set up in Indonesia with intent to give publicity to the insulting content or to enhance the publicity thereof, shall be punished by a maximum imprisonment of four months or a maximum fine of three hundred Rupiahs; (2) If the offender commits the crime in his profession and during the commission of the crime two years have not yet elapsed since an earlier conviction of the person on account of a similar crime has become final, he may be deprived of said profession.
	310	(1) The person who intentionally harms someone's honor or reputation by charging him with a certain fact, with the obvious intent to give publicity thereof, shall, being guilty of slander, be punished by a maximum imprisonment of nine months or a maximum fine of three hundred Rupiahs; (2) If this takes place by means of writing or portraits disseminated, openly demonstrated or put up, the principal shall, being guilty of libel, be punished with a maximum imprisonment of one year and four months or a maximum fine of three hundred Rupiahs; (3) Neither slander nor libel shall exist as far as the principal obviously has acted in the general interest or for a necessary defense.
	311	(1) Any person who commits the rime of slander or libel in ease proof of the truth of the charged fact is permitted, shall, if he does not produce said proof and the charge has been made against his better judgement, being guilty of calumny, be punished by a maximum