

# Press Freedom<sup>1</sup>

Submitted by:

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## **Case 1: Foreign intervention against a local radio station**

21 June 2004: Radio Erabaru obtained a recommendation from the Mayor of Batam for frequency licenses from the Department of Transportation and Telecommunications of Indonesia c/q Transportation Agency of Riau Province;

21 August 2004: Radio Erabaru obtained a recommendation from the Governor of Riau;

3 September 2004: Radio Erabaru received a frequency license to operate at 106.1 MHz from the Department of Transportation Province of Riau;

01 March 2005: Radio Erabaru began broadcasting. Target listener segments are people speaking Mandarin Chinese with a common format (music, entertainment, news, cultural, commercial, etc.); the language of broadcast is Indonesian (20%) and Mandarin (80%); the broadcast area covered Batam, Bintan, Karimun, Singapore and Johor (Malaysia); New programmes included, among others, topics of human rights abuses in China, such as the alleged murder and organ harvesting of Falun Gong members, the unrest in Tibet, the persecution of Muslim Uighurs, etc.;

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<sup>1</sup> SAPA TFAHR, Hiding Behind Its Limits, A Performance Report of the First Year of The ASEAN Intergovernmental Commission on Human Rights (AICHR), 2009-2010, FORUM ASIA: 2011, pp. 79-87



28 June 2005: KPID - Indonesian Broadcasting Commission of the islands Riau Province was officially established;

17 September 2005: KPID Riau Islands Province announced the opening of registration for radio and television broadcasters who want to get IPPs (Operating License for Broadcasting), as mandated in the Law 32/2002;

22 December 2005: Radio Erabaru IPP submitted a request addressed to KPID Islands and Minister of Communications and Informatics with the proposed frequency/ channel 106.5 MHz, and attached a feasibility studies proposal (technical, programming, management, etc.);

18 April 2006: Officials from the KPID Islands came to the office of Radio Erabaru to make factual verification. Several members of the commission of KPID Islands expressed support for Radio Erabaru to remain as a dominant Mandarin-language radio station to compete with Singapore and Johor stations.

19 April 2006: KPID Kepri held a Hearing Evaluation (EDP), which was attended by different sectors of society (parliamentarians, cultural, economic experts, activists, women, and NGOs) in order to process the request from Radio Erabaru IPP;

29 April 2006: After going through the process of Administrative Verification, Factual Verification and EDP, Radio Erabaru managed to get a Certificate of Eligibility

Recommendation from KPID Islands to broadcast at a frequency of 106.5 MHz; they were expected to have the IPPs issued;

18 May 2006: KPID Islands requested the Radio Ad Lips Erabaru to broadcast information about the “Socialization Content Monitoring Broadcast Television”

13 November 2006: Kepri asked KPID Erabaru Radio to broadcast Public Service Announcements about “socialization role and function KPID” and “healthy television viewing guide”;

06 December 2006: KPID Islands officials paid a visit to Radio Erabaru to assess the completeness of the broadcasting infrastructure to match the IPP request for proposals that have been filed;

08 May 2007: A news item on the Indonesian Broadcasting Commission (IBC) website appeared saying that the Chinese Embassy requested IBC to close Radio Erabaru for broadcasting political propaganda and discrediting the Chinese government, and accused Radio Erabaru as being financed by the Falun Gong;

09 May 2007: KPID Islands requested for the archives of Radio Erabaru’s broadcasts between 1 May 1 2006 until 10 May 2007;

May 23, 2007: Radio Erabaru with Legal Aid Institute-Press (LBHPers) and AJI-Jakarta visited the Chinese embassy to assess the efforts the Chinese embassy as a conceited act of the communist system that tried to interfere with the press freedom in Indonesia;

28 May 2007: Radio Erabaru visited the Press Council, which firmly rejects the act of foreign intervention against Indonesian press;

30 May 2007: The Coalition of Concerned Press and Broadcasting, which includes LBH-Press, Radio Erabaru, AJI-Jakarta, GHURE, and journalists as members, staged a demonstration to “Reject Foreign Intervention against the Indonesian Press” in front gate of the Chinese embassy;

28 June 2007: KPID Islands releases its assessment that Radio Erabaru used “too much” Mandarin in its programming, and requested that fundamental changes are made. (Note: Law 32/2002 and IEC rules do not expressly mentioned limits on the use of foreign languages);

18 September 2007: IBC Regulation No. 3 / 2007 concerning changes Broadcast Standards Program came into effect. These regulations specified the use of foreign languages (including Mandarin) at up to 30% of the total broadcast time. Radio Erabaru subsequently also changed its programming to adjust to this provision;

December 5, 2007: KPID through *Batam Pos* daily announced the result of the Forum Joint Meeting (FRB) of the IEC with Depkominfo on October 5, 2007 that five radio stations qualified for the IPP, excluding Radio Erabaru;

07 December 2007: Radio Erabaru requested for the minutes of the FRB to KPID (also to the IBC and Kominfo) to determine the reasons for the refusal of the IPP. Until now, they have not received an official answer. It is noteworthy that many aspects of the radio profile of Erabaru—management, technical, human resources, financial, etc.—are superior to the five stations that were qualified for IPPs;

28 March 2008: Hall Monitor Frequency Batam - Depkominfo gave the first warning letter to Radio Erabaru ordering to stop broadcasting for not having the required permit;

22 April 2008: Legal Aid Institute (LBH) Jakarta Press, Radio Erabaru's legal counsel, sent a letter to the Communications and Informatics, KPI, KPID, requesting for the minutes of the FRB and to clarify the reasons for rejection of the IPP to Radio Erabaru. Until now LBH has not received any response;

25 July 2008: Hall Monitor Frequency Batam - Depkominfo give the second warning letter to Radio Erabaru ordering to stop broadcasting for not having the required permit;

31 July 2008: Radio Erabaru sent letters to the Press Council and the National Human Rights commission to "demand protection."

18 August 2008: Radio Erabaru received a letter from the Minister of Communications and Informatics on refusal to grant the request of Radio Erabaru, but did not include the reason for rejection.

16 October 2008: National Human Rights Commission sent a letter to the Minister of Communications and Informatics on protection of Radio Erabaru problem, and demanded an explanation;

21 October 2008: The Frequency Spectrum Monitoring Center in Batam sends the third and final warning Letter to Radio Erabaru to stop broadcasting;

23 October 2008: Radio Erabaru gave authorisation powers to LBH Press to file a lawsuit to the Administrative Court;

14 April 2009: The lawsuit of Radio Erabaru in the Administrative Court was declared lost for the reason that they broadcast using foreign language usage in excess of the 30% limit and the limited frequency;

24 April 2009: Radio Erabaru filed an appeal to the High Administrative Court;

03 August 2009: Frequency Spectrum Monitoring Agency Class II Batam sent a letter ordering termination of radio broadcast of Erabaru on the basis of the State Administrative Court decision on 14 April 2009 to reject all claims of Radio Erabaru;

20 October 2009: The claims appeal of Radio Erabaru at the State Administrative High Court was declared lost; 11 November 2009: Radio Erabaru filed an appeal to the Supreme Court;

December 16, 2009: Radio Erabaru sent an open letter to the President of the Republic of Indonesia;

February 15, 2010: Frequency Spectrum Monitoring Agency Class II Batam again sent a letter of warning to Radio Erabaru to terminate broadcast;

February 22, 2010: The director of Radio Erabaru with a member of LBH Pers responded to the 15 February orders for cessation of broadcasts that until a Supreme Court decision is handed down, all parties must abide by the rule of law, respect judicial processes and not resort to vigilantism. Radio Erabaru also held a press conference saying that the warning letters for cessation of broadcasts only served to strengthen the alleged intervention of the Chinese communist government;

March 9, 2010: In response, the Batam Frequency Spectrum Monitoring Agency sent a new warning letter for broadcast cessation;

March 10, 2010: Radio Erabaru complained to the Indonesian National Human Rights Commission, requesting protection from the Chinese communist government's intervention on the Radio Erabaru;

March 10, 2010: Radio Erabaru held a press conference at the National Human Rights Commission (Komnas HAM) Indonesia, explicitly stating that their plight is a result of Chinese government intervention against Indonesia, and will lodge a protest against the Chinese embassy.

#### Case Recommendations:

1. Protection and respect for press freedom against foreign intervention, particularly by the Chinese government;
2. Protection and respect for the right of Indonesian people to obtain information, which is essential to uphold justice and truth;
3. Encourage all concerned parties to use the Act No. 40/1999 on the Press and Act No. 32/2002 on Broadcasting to resolve issues concerning the press and broadcasting.

#### **Case 2: Lawsuit against a complaint published in the media**

The case arose from a letter from Khoe Seng Seng on *Kompas* daily, which reported complaints to the police about the alleged fraud committed by the PT Duta Pertiwi Tbk Associated about buying and selling of kiosks at the ITC Mangga Dua. In the purchase transaction, Duta Pertiwi did not reveal the status of the actual objects being bought and sold. Khoe Seng Seng intends to inform the public to be careful and wary of the actions of Duta Pertiwi regarding the status of the kiosks being sold at ITC Mangga Dua. Duta Pertiwi did not say that it was only selling the rights to land management and not the rights to construct a building, which can be misleading.

There are 19 similar cases about this issue, and Khoe Seng Seng's complaint is just one of them. PT Duta Pertiwi filed a counter-complaint to the police on the basis of insult and

defamation. Additionally, Duta Pertiwi also sued for civil damages for compensation of 10 billion to 17 billion rupiah. PT Duta Pertiwi used the Indonesian Civil Code's article 1365 on unlawful acts and article 1372 on defamation. Duta Pertiwi regarded the letters made by Khoe Seng Seng as libellous. Actually, the letter of the plaintiff which appeared in daily *Kompas*, *Voice Updates* and *Warta Kota* was attempting to clarify the right of reply. Thus, contrary to its objections, Duta Pertiwi should have used the right to answer to the complaint. If Duta Pertiwi felt aggrieved by a letter in a newspaper, the proper procedure should have been the mechanism under Law no. 40 (1999) on the Press, which is the *lex specialis* for news media matters. The "appropriate" course of action would have been for Duta Pertiwi to take its complaint to the Press Council.

Update: On Wednesday, July 15, 2009, East Jakarta District Court sentenced Khoe Seng Seng with a penalty of six months to one year probation for defamation. The East Jakarta District Court decision required Khoe Seng Seng to pay an indemnity of one billion Indonesian rupiah (IDR). Khoe Seng Seng appealed to the Jakarta High Court, which overturned the verdict. Duta Pertiwi filed an appeal on the criminal case to the Supreme Court.

#### Case Recommendations

1. Transfer of the case jurisdiction under the law concerning the press.
2. Provide protection for the people to be able to freely express their aspirations, complaints, information and opinions especially in the media as a public space.