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# MEDIA BLACKOUT IN INDONESIAN CRIMINAL JUSTICE SYSTEM: HOW SHOULD IT BE FORMULATED?

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**Abstract**

Indonesia's criminal justice system recognizes closed court hearings, yet it lacks a media blackout mechanism capable of restricting the dissemination of case information beyond the courtroom. This normative gap weakens the protective purpose of closed proceedings because victims' identities, evidentiary materials, and sensitive information may still circulate through journalistic and non-journalistic media. This article examines how a media blackout should be formulated within Indonesia's criminal justice system. Using a doctrinal method, the study analyzes legislation, legal doctrine, human rights principles, victimology, and comparative practices from the United Kingdom, Canada, and Australia. The analysis finds that a media blackout should be treated as an exceptional restriction on freedom of expression, access to information, press freedom, and the right to a fair and open trial. Its application should therefore be limited to three fundamental grounds: protection of national security and confidential state information; protection of victims, particularly children and victims of sexual violence; and protection of law-enforcement or criminal-justice interests. The blackout may take the form of temporary or permanent restrictions on publication concerning subjects or proceedings. To prevent arbitrariness, its implementation should require prior judicial authorization and provide an objection mechanism through pretrial proceedings. Courts should apply necessity and proportionality tests to determine whether no reasonable alternative can prevent serious harm and whether the protective benefits outweigh the adverse impact on individual rights, press freedom, open justice, and effective criminal adjudication.

***Keywords**: Media Blackout; Closed Court Hearings; Open Justice; Victim Protection; Proportionality.*

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## 1. Introduction

Media blackout as a country's policy has complex processes and implications depending on the basis and objectives of this policy being implemented. This policy is based on the actions of authorities who carry out censorship to the prohibition of certain news topics in one or several certain jurisdictions. Different countries have different reasons or goals in implementing this policy. For example, countries with totalitarian communist systems, such as China,[1] enforces national security laws for the territory of Hong Kong. The law aims to regulate criminal acts in the form of secession, subversion, terrorism, and collusion with foreign entities with various related sanctions. This law is used as a legitimacy, so that certain parties are asked to self-censorship news or content considered dangerous to national security or violations according to the law.[2] At

[1] Minxin Pei, "China: Totalitarianism's Long Shadow," *Journal of Democracy* 32, no. 2 (2021): 5–21, https://dx.doi.org/10.1353/jod.2021.0015.

[2] Lydia Wong and Thomas E. Kellogg, "Hongkong's National Security Law: A Human Rights and Rule of Law Analysis" (Research Report, Washington DC: Georgetown Center for Asian Law, 2021),

the application level, violations of this law relating to the prohibition or censorship of news and content about the Hong Kong pro-democracy movement, including it's enforcement actions, ranging from arrests and prosecutions to the imposition of sanctions.[3] Unlike the case with the application of this rule in countries that adhere to system democracy that guarantees rule of law and freedom of press. The use of media blackout can no longer be addressed for the government's political agenda but directed to reduce losses, due to certain news.

Applying for a media blackout in some cases may protect the victims of crime. Several cases show that media blackout is successful in reaching the goal, like in the case of the kidnapping of the Canadian CBC journalist, Melissa Fung on October 12, 2008 in Afghanistan. Fung was kidnapped for 28 days, and on the recommendation of the expert security committee, various current media agreed for a blackout for Fung 's sake. For 28 days, there was no news regarding Fung's kidnapping, until finally Fung got released without ransom on November 8, 2008. A similar case was also experienced by a New York Times correspondent David Rohde, who the Taliban kidnaped for 8 months. The case was also protected by a media blackout until his release. The media blackout here reduces the bargaining value of the kidnapper or hostage taker. With widespread media coverage, the perpetrators feel they have a high bargaining position because their political views, threats, and identities are known and feared by the public[4] Even though it is not the only factor in the safety of victims, media blackout is still part of the efforts that can be made to protect victims in certain cases.

On the same spectrum of objectives, media blackout is also applied to the Reynhard Sinaga case, a perpetrator of sexual crimes against approximately 195 young men in the United Kingdom. Reynhard himself had been investigated and arrested since 2017. However, reporting on this case had only been carried out in early 2020. The police and the Manchester court, in this case, implemented a media blackout for two years under the consideration of victim protection. Widespread reporting of this case may discourage victims from reporting and submitting evidence to law enforcements, whereas there was a significant need from the police to acquire the victim's identities in large amount. The importance of impartial law enforcement is also a matter of its own, as the British Courts examined it in four separate trials with different jurors.[5] These case examples indicate the existence of a media blackout mechanism in the law enforcement proceedings, which can be regulated from the disclosure of the crime through the investigation to the verdict of the case, based on the protection of the primary interests of the state, the victim, and the interests of evidence (witnesses and their testimonies).

In the context of the relevance of regulations in Indonesia, the formulation of media blackouts has not been explicitly determined and related matters are only found in the regulation of deviations from the principle of open justice or the implementation of closed trials or closed court examinations/ hearings (or just closed court). According to several regulations, court hearings in Indonesia are generally held in open court so that the public can attend. However, in certain cases, the judge may declare the court hearing closed to the public, such as in cases of violations of morality (in the context of criminal acts in Indonesia, this is related to the crime of sexual violence), and case involving children (based on the Indonesian Criminal Procedure Code and Indonesian Law No. 11 of 2012 governing the Juvenile Criminal Justice System), or concerning state secrets (basen on Indonesian Law No. 31 of 1997 governing the Military Justice). The relevant Journalistic Code of Ethics also emphasizes the censorship of news cases of crimes

https://www.law.georgetown.edu/law-asia/wp-content/uploads/sites/31/2021/02/GT-HK-Report-Accessible.pdf.

3 Amnesty International, "Hong Kong: In the Name of National Security - Human Rights Violations Related to the Implementation of the Hongkong National Security Law" (ASA 17/4197/2021, Report, June 2021), https://www.amnesty.org/en/documents/asa17/4197/2021/en/.

4 Robert G. Picard and Hannah Storm, *The Kidnapping of Journalists: Reporting from High-Risk Conflict Zones* (London, New York: I.B.Tauris, 2016).

5 Helen Pidd and Josh Halliday, "Reynhard Sinaga Jailed for Life for Raping Dozens of Men in Manchester," *The Guardian*, January 6, 2020, accessed Desember 05 2024 https://www.theguardian.com/uk-news/2020/jan/06/reynhard-sinaga-jailed-life-drugging-raping-men-manchester.

against morality (or sexual violence), and involving children (based on Press Council Decree No. 03/Sk-Dp/III/2006 concerning Journalistic Code of Ethics as Press Council Regulation.

Despite operating on a similar spectrum of objectives, the regulation of deviations from open court or implementation of closed court hearings without media blackout regulations indicates normative problems in Indonesia. The first problem, in several cases, there is an ambiguity in the application of closed court hearings, which are solely based on the authority and consideration of the judge in examining cases, even if they are not sexual assault or child-related cases. An example of this case is the Corruption Court at the Central Jakarta District Court No. 112/Pid.Sus/TPK/2016/PN. Jkt.Ps, where the evidentiary examination was conducted in closed hearing, which the judge stated was to avoid the potential for witnesses to influence each other.[6] There is also a proceeding of case No. 1057/Pid.Sus/2024/PN Jkt.Utr, a criminal offense related to electronic information and transactions, which the judge requested be conducted in private due to the sensitive issue of defamation.[7] Second problem, the closed court regulation lacks contextual meaning for the media.

The application of this regulation is still limited to courtrooms with closed doors and windows, and where the public is not present. However, court materials, even information and the identity of victims, continues to be covered by the media and consumed by the public, and has increasingly evolved into non-journalistic content on various social media platforms. This situation relates to the third problem, namely that the closed trial regulation is limited to the court process. Journalistic reporting, coupled with non-journalistic or social media contents, can develop because the coverage and information-seeking process has been carried out since the investigation or early stages of prosecution. [8] This means that the media and those that are involved still have the freedom to report on the cases, even when they are being examined in closed court hearings. This publicity of cases in the media, in turn, continues to negatively impact several interests, including those of evidence and victims, which contradicts the very purpose of closed court sessions. In the context of crime and law enforcement, the mass media, including the development of non-journalistic content on social media, plays a crucial role as the primary provider of knowledge of the crime, rather than personal experience. Media represents the majority of individuals, both victims and perpetrators of crime, that can shape societal identities.[9] This is because the media can shape public opinion about the victims and the crimes, as well as public policy.[10] In this regard, media framing can lead to victim blaming, resulting in public opinion, concretely expressed in public comments in various media, ultimately blaming the victim. In addition to victims, the media also influences the evidence presented in cases, particularly witnesses.

Research shows that journalists can induce false memories in witnesses by asking misleading questions and publishing false eyewitness accounts.[11] Based on the problematic

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6 Merti Ardilla et al., "Peliputan Secara Langsung Persidangan Perkara Pidana Oleh Media Televisi Dihubungkan Dengan Asas Pemeriksaan Di Pengadilan Terbuka Untuk Umum Dalam Rangka Pembaharuan Hukum Acara Pidana," *Jurnal Hukum & Pembangunan* 50, no. 1 (2020): 35–53, https://doi.org/10.21143/jhp.vol50.no1.2481.

7 Yudono Yanuar, "Kronologi Razman Arif Nasution Vs Hotman Paris, Sampai Pengacara Naik Meja Di Pengadilan Jakarta Utara," *Tempo,* February 12, 2025, accessed March 30, 2025, https://www.tempo.co/hukum/kronologi-razman-arif-nasution-vs-hotman-paris-sampai-pengacara-naik-meja-di-pengadilan-jakarta-utara-1206126.

8 Hukumonline, "Sidang Tertutup, Bukan Sekadar Larangan Masuk Ruang Sidang," *Hukumonline*, February 02, 2015, accessed March 30, 2025, https://www.hukumonline.com/berita/a/sidang-tertutup--bukan-sekadar-larangan-masuk-ruang-sidang-lt54cef128994d1/.

9 Silvia Gomes, Thais Sardá, and Rafaela Granja., "Crime, Justice and Media: Debating (Mis) Representations and Renewed Challenges," *Comunicacao e Sociedade* 42 (2022): 7–24, https://doi.org/10.17231/COMSOC.42(2022).4467.

10 Christoper Wleizen and Stuart Soroka, "Media Reflect! Policy, the Public, and the News," *American Political Science Review* 118, no. 3 (2024): 1563–1569, https://doi.org/10.1017/S0003055423000874.

11 Robin Blom, "Eyewitness Memory in Journalistic Context: An Interdisciplinary Approach to Study Post-Event Misinformation Effects," *Journalism Practice* 17, no. 9 (2023): 1962-1979, https://doi.org/10.1080/17512786.2022.2034519.

norms and the media's relationship with the interests of victims and the interests of evidence, it is crucial to formulate a media blackout regulation as an extension of the closed trial regulation. However, in a country based on the rule of law and a democratic system, media blackout regulations cannot be formulated arbitrarily simply for the sake of a country's political agenda. The basis for consideration must be formulated firmly and strictly, oriented towards public interest, including the interests of law enforcements, without degrading the right of fair trials, and press freedom, and citizens' rights. Media blackout regulations will inevitably intersect with the right of fair trials and right to information, communication, and the use of various media channels. These rights are part of human rights, the fulfillment and protection of which are guaranteed by the Indonesian constitution.[12] Regulations that rely solely on the policies of those in power without written procedures or restrictions, in the context of law enforcement, clearly have the potential to create arbitrary processes that would lead to violations of the constitution (rule of law) and democratic values.

Therefore, this article discusses the fundamental reason, mechanism and parameters of the media blackout rules applied in Indonesia, particularly in the criminal justice system. The discussion of the formulation of the media blackout in Indonesia uses several approaches, including the review of Indonesian legislation, theoretical or doctrinal review, comparative of case and law from several countries. The study begins by formulating the fundamental basis for the application of media blackout rules in Indonesia, through an examination of the regulatory framework concerning relevant human rights, public information disclosure regulation, media regulation, and the system of law enforcement in Indonesia, followed by a comparative approach to compare media blackout policies in several countries, and linking media blackout policies with the victimology and human rights perspectives, spesifically secondary victimizations, the rights to freedom of opinion, expression and press, and also the right of a fair trial. The next study is conducted by formulating the mechanism and the parameters for the media blackout rule. The study is conceptually anchored in the doctrine of the certain test, which serves as a parameter delimiting the principle of open justice. It then proceeds to connect this framework with the principle of due process of law, particularly in relation to the application of coercive measures and the conduct of pre-trial proceedings within Indonesia's criminal justice system.

## 2. Discussion

### 2.1. Fundamental Reason for Media Blackout

The regulation of media access in the judicial system is related to the model and principles of open justice (*openbaarhead van rechtspraak*), also known as the open court principle. This principle applies universally as a principle of the judicial system in a democratic society.[13] This principle requires that every judicial proceedings to be conducted openly and accessible to the public and the mass media (press), not only during court hearings but also at every stage of the judicial proceedings, including the investigation or pre-trial phase.[14] Based on human rights instruments, the implementation of this principle is part of a person's right to a fair trial, as stipulated in Article 11 of Universal Declaration of Human Rights ('UDHR'), Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms or commonly known as Eropean Convention on Human Rights ('ECHR') and Article 14 of the International Covenant on Civil and Political Rights ('ICCPR').[15] This principle is also related to the right to freedom of

[12] Untung Sumarwan, Arief Hidayat and Lita Tyesta ALW, "The Future of Freedom of Press in Indonesia After the Personal Data Protection Law Era," *Indonesia Law Review* 13, no. 2 (2023): 143–155, https://doi.org/10.15742/ilrev.v13n1.2.

[13] Supreme Court of Canada, *Vancouver Sun (Re),* 2004 SCC 43, [2004] 2 SCR. 332 (Supreme Court of Canada, June 23, 2004), accessed January 16, 2025, https://canlii.ca/t/1hbl8.

[14] Supreme Court of Canada*, Vancouver Sun (Re)*.

[15] Asher Flynn et al., "Legal Aid and Access to Legal Representation: Redefining the Right to a Fair Trial," *Melbourne University Law Review* 40, no. 1 (2016): 207–239, https://research.monash.edu/en/publications/legal-aid-and-access-to-legal-representation-redefining-the-right/.

opinion and expression. This right also encompasses the right to freedom to seek, receive and impart information and ideas of all kinds. Such freedoms may be exercised through speech, writing, print, artistic expression, or any other medium of choice as enshrined in Article 19 UDHR, Article 10 ECHR, Article 19 of the ICCPR.

The purpose of this principle is to guarantee the integrity of the judiciary, fulfill the right to freedom of opinion and expression, public trust and oversight of the judicial system, and legitimize the compliance of the parties and the public with court decisions. The application of this principle demonstrates to the public that the judicial system is non-arbitrary, independent, and impartial.[16] The same principles and guarantees of related rights are also regulated in Indonesian laws and regulations. The right to freedom of opinion and expression (also right to information) is guaranteed by Article 28F of the 1945 Indonesian Constitution and Article 14 of Law Number 39 of 1999 governing Human Rights, while the right to a fair trial is guaranteed by Article 17 of Law Number 39 of 1999 governing Human Rights and Criminal Procedure Code.

The principles of open justice and the right to information are also implemented through operational mechanisms regulating public information disclosure in Indonesia under Law No. 14 of 2008 (Indonesia's Public Information Disclosure Law). This law establishes citizens' right to access public information and imposes obligations on public bodies (including law enforcement institutions and court) to provide and respond to information requests. The right of access encompasses matters related to policy formulation, programs, and decision-making processes. The law promotes transparency, accountability, efficiency, and public participation in governance, while enhancing institutional responsibility and the quality of information services.[17] In the criminal justice system, disclosure has been further implemented through sectoral or each institution regulations, such as the Indonesian National Police under Chief of Police Regulations No. 16 of 2010, No. 24 of 2011, and No. 9 of 2024 on Procedures for Public Information Services within the Police, and the Indonesian Supreme Court under Decree No. 2-144/KMA/SK/VIII/2022 on Standards for Public Information Services in the Courts.

Openness is not only defined as access to information, but also as the right of anyone wishing to participate in a court proceeding to enter and be present in person in the courtroom.[18] Indonesian Law No. 48 of 2009 governing Judicial Power explicitly stipulates this norm of court openness. This normative regulation has implications for all types of court proceedings in Indonesia, including general courts (civil and criminal), state administrative courts, religious courts, military courts, and the Constitutional Court. The open justice principle is not applied without limits, as are the limitations on the right to a fair trial, the right to freedom of opinion and expression (also right to information). Limitations on this right allow the court to exclude some or all of the proceedings from the public for reasons of morality, public order, or national security, as long as they are proportional to the interests of a democratic society, the interests of certain private lives, and as long as publicity could harm the interests of justice.[19] Limitations also exist on the right to freedom of opinion and expression, as these limitations must be stipulated in valid laws and can be proven to be proportional to the purpose (protection of personal reputation, security, public order, health, and morals, including the interests of children).[20] In contrast to this principle, court hearings are conducted in camera or in private proceedings, namely, court

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16 *Vancouver Sun (Re)*.

17 Rizal Khadafi et al., "Assessing the Indonesian Government's Compliance with the Public Information Disclosure Law in the Context of COVID-19 Data Transparency," *Frontiers in Political Science* 6 (2024): 1339506, https://doi.org/10.3389/fpos.2024.1339506.

18 Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, Dan Peninjauan Kembali*, 2nd ed. (Jakarta: Sinar Grafika, 2007).

19 Khansadhia Afifah Wardana, Rahayu and Sukirno, "Redefining Indonesia's Blasphemy Law In The Digital Age: A Human Rights Perspective," *Diponegoro Law Review* 9, no. 1 (2024): 19–35, https://doi.org/10.14710/dilrev.9.1.2024.19-35.

20 UN Human Rights Committee (HRC), " General comment No. 32: Article 14 (Right to equality before Courts and Tribunals and to a Fair Trial)", CCPR/C/GC/32, August 23 2007, https://www.refworld.org/legal/general/hrc/2007/en/52583.

hearings that prohibit the public, including the media, from following or observing the proceedings. Such proceedings can be a limitation on the implementation of the principle of open justice.

Indonesian Law No. 48 of 2009 governing Judicial Power also provides an exception to the phrase “All court hearings are open to the public, unless otherwise stipulated by the law.” This phrase is actualized in several regulations governing the types of cases that can be heard in closed court, as follows: (1) State administrative court hearings concerning public order or national security, at the discretion of the panel of judges (Based on Article 70 of Indonesian State Administrative Court Law). (2) Military court hearings concerning military or state secrets, at the discretion of the panel of judges (Based on Article 141 of Indonesian Military Justice Law). (3) Divorce court hearings (Based on Article 59, 68, and 80 of Religious Court Law). (4) Criminal court hearings involving juvenile defendants (Based on Article of 201-202 New Indonesian Criminal Procedure Code and Based on Article 54 and 56 of Juvenile Criminal Justice System Law). (5) Criminal court hearings concerning violation of morality or sexual violence (Based on Article of 201-202 of New Indonesian Criminal Procedure Code).

In the context of criminal proceedings, the limitation of case-related information as a restriction on the principle of open justice is legitimized under the Indonesia's Public Information Disclosure Law. Several categories of information are excluded from public access, namely information which, if disclosed to the applicant of public information, could obstruct the enforcement of law. Such information includes: (1) information that may hinder the investigation and prosecution of a criminal offense; (2) information that could reveal the identities of informants, complainants, witnesses, and/or victims with knowledge of the crime; (3) criminal intelligence data and plans related to the prevention and handling of transnational crimes; (4) information that may endanger the safety and lives of law enforcement officials and/or their families; and (5) information that could compromise the security of law enforcement equipment, facilities, and infrastructure. Within Indonesia’s legislative framework, the understanding of such exempted information remains largely subjective, as no clear normative criteria have been established. In addition to these limitations on public information, certain categories of criminal cases are conducted as closed hearings from the outset. Various justifications are advanced to explain why, in specific criminal proceedings, hearings are not open to the public.

First, it relates to cases in the juvenile criminal justice system. Criminal case hearings in the juvenile justice system also require deviations from the principle of open justice to the public. Indonesian Law Number 11 of 2012 governing the Juvenile Criminal Justice System affirms a closed trial process as a child's right in every criminal justice process without publicizing identities. The interests of children protected here are not only children who are victims or witnesses of criminal acts, but also those suspected of committing crimes (children in conflict with the law). The closed juvenile criminal justice system in Indonesia is in line with the provisions in Article 16 and Article 40 and 40 (2) (b) (vii) of the Convention on the Rights of the Child as well as No. 8 the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) which emphasizes the protection of children's right to privacy at all levels of the trials, starting from the child's first contact with law enforcement until the completion of the case decision (completion of supervision, custody or deprivation of liberty).

Children are viewed differently from adults in their actions and responsibilities. There are vulnerability factors related to mental and physical development that require protection. Closed court in the juvenile justice system, in addition to fulfilling the child's right to privacy, also aim to protect this vulnerability from threats and dangers that may arise as a result of the trial, including excessive publicity and the labeling process. The process of labeling as a perpetrator can create a stigma that will not prevent the child from committing another crime but will instead lead the child to live with the label.[21] This is in accordance with the welfare approach to juvenile justice according to the Convention on the Rights of the Child, which prioritizes the principle of protecting

[21] Niamh Joyce, “An Analysis of the Extent of the Juvenile Offender’s Right to Privacy: Is the Child’s Right to Privacy Circumvented by Public Interest?,” *European Journal of Crime, Criminal Law and Criminal Justice* 19 (2011): 113–124, https://doi.org/10.1163/157181711X566335.

the best interests of the child, as well as respect for the child's opinions, survival, and development.[22]

Second, regarding the proceeding of cases of violations of morality or sexual violence. In these cases, the protection of the victim is a primary consideration. After becoming the victim of a crime, the victim must face the judicial procedure, which is another harrowing experience. This experience is considered complex, time-consuming, and focused primarily on punishing the perpetrator without considering the victim's actual needs. These factors hinder victim involvement in the criminal justice system.[23] Closed court in cases of violations of morality, particularly crimes related to sexual violence, attempt to mitigate these barriers, as publicity can lead to feelings of intimidation, humiliation, and stress for the victim.[24] Closed court hearings are intended to prevent secondary victimization. Secondary victimization or social injuries arise from the responses of other parties, such as society, institutions, or other individuals, to victims of crime. Various forms of responses from society, institutions, or other individuals, including media to victims of crime can cause suffering or subsequent detrimental impacts for the victim.[25] Related to crimes of sexual violence, including against children, this secondary victimization process can occur during the investigation phase with law enforcement officials, such as stress and embarrassment due to communication during the interrogation, lack of empathy, and unawareness of the victim's trauma, which is further exacerbated by media coverage.[26] Secondary victimization by the media has a powerful impact because its influence can reach large swaths of society, even entire countries. Furthermore, there are factors such as sensationalized news publications to boost ratings, garner more viewers, and create hype. These factors are exacerbated by the insensitive nature of journalists who deliberately target specific aspects of sexual violence cases. These factors ultimately lead to re-victimization of sexual violence survivors.[27]

Open court actually increase access for various parties to provide responses to victims of crime. These responses, in turn, not only violate the victim's right to privacy but also give rise to a series of subsequent negative consequences for the victim. For example, for victims of morality cases (including children), there are negative excesses from society, ranging from labeling, stereotyping, to victim blaming.[28] These negative consequences can continue to develop, resulting in extreme impacts ranging from mental and physical health impacts to suicide. Therefore, in-camera trials attempt to prevent judicial victimization and victimization by media as a secondary victimization, namely preventing the justice system from inflicting further suffering on victims. Preventing victimization due to law enforcement and the media is in line with victims' rights as stipulated in Law No. 13 of 2006 and Law No. 31 of 2014 governing the Protection of Witnesses and Victims, as well as Law No. 12 of 2022 governing the crime of sexual violence. These rights include: 1) The right to privacy: victims' identities, photos, addresses, or information

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[22] Akhmad Budiawan, "Persidangan Terhadap Anak Yang Menjadi Saksi Tindak Pidana Dalam Kerangka Perlindungan Hukum Anak Menurut Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak (Studi Di Pengadilan Negeri Bintuhan Dan Pengadilan Negeri Cilacap)," *Jurnal Idea Hukum* 2, no. 2 (2016), https://doi.org/10.20884/1.jih.2016.2.2.79.

[23] Eileen Skinnider, Ruth Montgomery, and Stephanie Garrett, *The Trial of Rape: Understanding the Criminal Justice System Response to Sexual Violence in Thailand and Viet Nam* (The United Nations Entity for Gender Equality and the Empowerment of Women/ UN Women, The United Nations Development Programme/ UNDP, United Nations Office on Drugs and Crime/ UNODC, June, 2017), https://asiapacific.unwomen.org/en/digital-library/publications/2017/09/the-trial-of-rape.

[24] Eileen Skinnider, Ruth Montgomery, and Stephanie Garrett, *The Trial of Rape: Understanding the Criminal Justice System Response to Sexual Violence in Thailand and Viet Nam*.

[25] Lorraine Wolhuter et al., *Victimology: Victimisation and Victims' Rights*, in *Victimology: Victimisation and Victims' Rights* (New York: Taylor & Francis, 2008).

[26] Hyokyung Choi, "Are You a Victim for sure?" Media Framing on Sexual Violence and Secondary Victimization in Korea," *(Master's Thesis, Lund University, 2022), https://www.essays.se/essay/022066d6eb/*.

[27] Neeti Tandon, *Secondary Victimization of Children by the Media: An Analysis of Perceptions of Victims and Journalists*, 2, no. 2 (2007): 119–135, https://www.ijcjs.com/article-detail.php?id=368.

[28] Kate Theimer and David J. Hansen, "Child Sexual Abuse: Stigmatization of Victims and Suggestions for Clinicians," *The Behavior Therapist*, 2018, https://digitalcommons.unl.edu/psychfacpub/1003/.

that could lead to their identification, should not be published; 2) The right to be free from social stigma: news coverage often creates negative labels that worsen the victim's psychological condition; 3) The right to protection from secondary victimization, including victimization by law enforcement officials and the media.[29]

Third, the proceeding of cases related to security issues, intelligence information, or state secrets. In the Indonesian, both military and state administrative courts accord the highest priority to considerations of national safety and security. Although the legal framework does not provide a precise normative definition of these interests, a systematic interpretation of the Public Information Disclosure Law (Law No. 14 of 2008) offers a doctrinal basis for assessing whether particular proceedings implicate matters of state security or fall within the ambit of state secrets. The Public Information Disclosure Law regulates sensitive information belonging to public bodies that cannot be accessed by the public. This includes information that, if disclosed, could hinder law enforcement, endanger state defense and security, harm foreign relations, harm national economic resilience, and information concerning the state's natural resources. Examination of cases or disputes related to this information can be interpreted as being conducted closed hearings. Despite the lack of a normative definition and governance regulations, state secrets are primarily related to the nation's national stability in all aspects of national and state life, as well as the administration of government aimed at protecting the sovereignty, integrity, and safety of the state.[30] Regarding criminal justice, Indonesia does not have clear legislative provisions. There are no provisions in Indonesian law regarding the examination of criminal cases related to state security or state secrets. In some countries, provisions regarding closed court are based on criminal cases related to threats to national security or the public interest, including crimes related to espionage and terrorism. In addition, there are also provisions regarding criminal intelligence as a criterion for closed court hearings. This provision is said to have a criteria, including information related to a crime or suspected crime, the disclosure of which could impose prejudice to the investigation, allow the discovery of the source of confidential information relevant to law enforcement, or endanger the life or physical well-being of someone, in this case including witnesses, victims, or other suspects who have been arrested.[31]

In addition to the norms and objectives of the implementation of justice conducted in camera or in private proceedings, mass media (press) access to the course of the judicial system is also bound by the provisions of the law on the press and the journalistic code of ethics. The press law in its explanation emphasizes that the implementation of journalistic activities in the judicial system as a form of freedom of opinion, expression, and the press must also be accompanied by respect for norms and rights in society, compliance with the rule of law and professional responsibilities outlined in the journalistic code of ethics. In the Indonesian journalistic code of ethics, journalists are not only required to be independent, produce accurate, balanced news, but also not to have bad intentions. This relates to the reporting process that does not cause harm to other parties. Similar ethics are also formulated explicitly in the 4 basic principles in the code of ethics according to the Society of Professional Journalists.[32] The four basic principles are: seek truth and report it, minimize harm, act independently, and be accountable and transparent. Referring to the principle of minimizing harm, journalists must be able to act proportionally, considering the public's need for information and the potential harm, danger, and discomfort that may arise from news coverage, including its long-term and permanent implications. Specifically,

[29] Sarah Simons, "The Media: Minimizing Re-Victimisation through Duty of Care for Victims and Responsible Journalism," *Temida* 20, no. 3 (2017): 377–394, https://doi.org/10.2298/TEM1703377S.

[30] Kementerian Pertahanan Republik Indonesia, *Naskah Akademik Rancangan Undang-Undang tentang Rahasia Negara* (Naskah Akademik, 2016), https://www.bphn.go.id/data/documents/na_ruu_rahasia_negara.pdf.

[31] Anthony Gray, "Constitutionally Protected Due Process and the Use of Criminal Intelligence Provisions," *University of New South Wales Law Journal* 37, no. 1 (2014): 125–161, https://www.unsw.edu.au/content/dam/pdfs/law/unsw-law-journal/2010-2019/Vol-No-37-1-11.pdf.

[32] The Society of Professional Journalists, "Society of Professional Journalists: Code of Ethics" (September 2014), https://www.spj.org/spj-code-of-ethics/.

this principle requires journalists to be sensitive to crimes involving children and victims of sexual crimes.[33]

The basis for closed court hearings correlates positively with the basis for implementing media blackouts. The basis for closed court can then be examined by comparing how closed court hearings correlate with media blackouts in certain countries. Several countries can serve as comparative benchmarks for the implementation of media blackouts, extending beyond closed court hearings. This comparison was chosen because these countries uphold the principles of democracy and the rule of law, upholding the right to a fair trial, freedom of opinion, expression, and the press, while also balancing this with regulations on media publication in the criminal justice process for certain matters.

The first country is the United Kingdom of Great Britain and North Ireland ('United Kingdom'). The United Kingdom is a country that has adopted the ECHR in 1951 and the ICCPR in 1976. The UK also has a Human Rights Act in 1996. All three instruments regulate the right to a fair trial and freedom of expression, but the United Kingdom also has regulations on the publication of cases in the contempt of court act 1981.[34] This law has a rule called the strict liability rule, namely the rule on the act of publication that is considered contempt of court if it has a tendency to disrupt the course of a certain legal process regardless of the intention to carry out the act (strict). The publication in question can pose a major risk (risk prejudice), hindering or seriously harming the law enforcement process. Similar violations are also referred to as sub-judice.[35] There are several key points in the main regulation of strict liability in contempt of court in 1981, namely: 1) This rule applies to publications made during the active law enforcement process, namely from the time the initial step begins, including a warrant (arrest), summons to appear or indictment is submitted until the criminal law enforcement process is deemed complete such as a decision to acquit or convict, a decision that ends the process, the termination of the case, or the initial rejection. 2) In each law enforcement process, if deemed necessary to avoid substantial risks, the Court may order a postponement of publication for a specified period. 3) The Court may also not force someone to reveal the source of published information except in the interests of national security or crime prevention. 4) The Court may also request that names or other things be hidden in publications for certain reasons. 5) As a defense, it is not considered to have committed contempt of court if the publication is carried out fairly, accurately, contemporaneously and in good faith, innocent publication or distribution and publication that is a permissible discussion of public affairs.[36]

The next country is Canada. This country also ratified the ICCPR in 1976. Canada also has the right to a fair trial and freedom of expression regulated in the Canadian constitution called the Canadian Charter of Rights and Freedoms, specifically Sections 2 and 11. However, Canada also applies a publication ban rule in its Criminal Code. A publication ban is a court order to prevent anyone from publishing, broadcasting, or transmitting on social media any information that identifies victims, witnesses, or people named in the court order.[37] Some of the main rules related to publication bans in Canada include (1) This Publication Ban is intended for several interests, including encouraging victims to report their crimes and provide testimony, protecting the identity of jurors, protecting vulnerable victims and witnesses, preventing the names of children involved in criminal acts, ensuring a fair trial and protecting the privacy of justice system participants (2) Information protected in a publication ban includes the name, details of the crime, the relationship between the victim and the suspect/defendant, including the name of the suspect/defendant. 3)

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[33] The Society of Professional Journalists, "Society of Professional Journalists: Code of Ethics".

[34] *United Kingdom Contempt of Court Act 1981*, 1981, https://www.legislation.gov.uk/ukpga/1981/49.

[35] Galia Schneebaum and Shai J. Lavi, "The Riddle of Sub-Judice and the Modern Law of Contempt," *Critical Analysis of Law* 2, no. 1 (2015): 173-178, https://doi.org/10.33137/cal.v2i1.22521.

[36] John McGarry, "The Attorney General and Contempt of Court-Some Political and Constitutional Concerns," *Legal Studies* 44, no. 2 (2024): 352-368, https://doi.org/10.1017/lst.2023.26.

[37] Anne A. Ko, "A Legal Analysis of the Access to Court Record Policies of the Provincial and Territorial Courts of the Common Law Jurisdiction of Canada and Public Accessibility" (LLM Thesis, University of Toronto, 2016), https://utoronto.scholaris.ca/bitstreams/18660254-c099-4476-b9fd-08e0892dd62f/download.

There are 2 types of publication bans, namely mandatory and discretionary.[38] Mandatory bans apply to victims of sexual crimes, witnesses of sexual crimes under 18 years old and all witnesses under 18 years old, while discretionary bans are carried out at the request of anyone as long as it is in the best interest of justice or law enforcement, including for all victims over 18 years old or victims not covered by the mandatory ban and in certain cases to protect the jury, judge and prosecutor. 4) This publication ban request can also be changed or revoked by re-submitting to the Court to examine whether the change or revocation can be granted.[39]

The third country is Australia. Like the previous countries, Australia has guaranteed the right to freedom of expression and a fair trial, both through the ratification of the ICCPR in 1980 and through several human rights laws in each state. However, Australia has regulations regarding suspension orders or non-publication orders, which deviate from the principle of open justice. These regulations refer to the laws of each state, such as Victoria, South Australia and New South Wales[40] For example, the state of Victoria has the Open Court Act 2013. According to this law, the court can order a suspension order on several grounds, including preventing prejudice in the judicial process, national and international security, the safety of an individual, and preventing distress and embarrassment for victims, particularly victims of sexual crimes and family violence, as well as children. Other reasons may relate to confidential information or the interests of the judicial process. If the court has issued a related order, any publication of the information cannot be made, including publication through online media and publication abroad. Other states, such as New South Wales, also have similar provisions under the Court Suppression and Non-publication Orders Act 2010 (The Suppression Act). Violations of these court orders can be categorized as contempt of court.[41] Based on discussion of the norms and limitations of the open justice principle in the judicial system, combined with the perspectives of victimology, press obligations, and comparative law, three fundamental reasons can be formulated regarding the implementation of media backouts in the judicial system: 1) National security or confidential national information interests. 2) Protection of victims, especially victims of sexual crimes and children. 3) Law enforcement or criminal justice interests.

A media blackout for these fundamental reasons is necessary as an extension of the closed trial or closed court hearings. The closed trial rule alone is not sufficient to protect these fundamental reasons. This is because the closed trial rule does not extend to prohibiting or restricting the dissemination of information, including news censorship, of developments in a case from the beginning of the hearing or before the trial begins. Furthermore, even if the law or the judge's discretion orders a closed trial, there are no concrete prohibitions or restrictions on the media covering these types of cases. Outside of court, journalists can still freely obtain trial materials, whether from the litigants, related parties, or other sources. This coverage can then develop into non-journalistic content across various channels, including social media. For example, in cases of indecency, information and identities about victims of sexual violence remain a topic of media coverage and public consumption. The public knows who the victims are, and secondary victimization begins to occur. Such circumstances create negative consequences that contradict the very purpose of closed court.

Therefore, the implementation of a media blackout protects interests from negative excesses, from the very outset when a case is handled or investigated by the law enforcement

[38] Jason Bosland and Jonathan Gill, “The Principle of Open Justice And The Judicial Duty To Give Public Reasons,” *Melbourne University Law Review* 38, no. 2 (2014): 482–524, https://doi.org/doi/10.3316/ielapa.973862058950027.

[39] Canadian Resource Centre for Victims of Crime, Publication Bans: A Victim's Right to Privacy (Paper Guide, May 2022), 2, https://www.example.com/Publication-Bans_DISCLAIMER_Revised_-May-2022_FINAL.pdf..

[40] Jason Bosland and Jonathan Gill, “The Principle Of Open Justice and The Judicial Duty to Give Public Reasons."

[41] Judicial Commission of New South Wales, "Closed court, suppression and non-publication orders," in Criminal Trials Bench Book, (last reviewed June 2024), accessed March 30, 2025, https://www.judcom.nsw.gov.au/publications/benchbks/criminal/closed_court_and_non-publication_orders.html.

officials. A media blackout also serves as an initial barrier to prevent publicity concerning a case from expanding beyond journalistic reporting (or news coverage) into non-journalistic content dissmeinated across various channels. Media blackouts, in the concrete term of prohibitions or censorship, can be divided into several forms, including: 1) Ban or censorship of all publications or news coverage, covering both the subjects of a case and the proceedings of the case, for a specified period of time, as required by law enforcement for the purpose of establishing evidence. 2) Permanent ban or censorship of publications or news coverage of certain subjects in a case. 3) A permanent ban or censorship of all publications or news coverage, covering both the subjects of a case and the proceedings of the case.

While the principle of open justice embodies the right to a fair trial and the right to freedom of opinion, expression (also right to information), and the press, closed court and media blackouts constitute restrictions on these rights. Therefore, to assess whether the restrictions can be carried out based on proof of these fundamental reasons, a trial of the media blackout request must be conducted by the court.

### 2.2. Media Blackout Mechanism and Its Parameter

A court mechanism of a media blackout must carefully weigh the conflicting interests, including the right to a fair trial, freedom of opinion, expression, right to information, also freedom of the press, and the protection of the reasons for the media blackout, ranging from state security and confidentiality interests, to the interests of victims and/or interest of justice or law enforcement. Several testing parameters can be used by the court. The first parameter to be explained refers to the case of the publication ban in Canada. This case, which later became the jurisprudence known as the Dagenais and Mentuck Test, is based on the Publication Ban case filed by Lucien Dagenais, Léopold Monette, Joseph Dugas, and Robert Radford (Dagenais), and the objections filed by the Canadian Broadcasting Corporation and the National Film Board of Canada (CBC). In this case, four members of a Catholic order accused of sexual and physical abuse of children filed a ban order against the producers of the television program “The Boys of St. Vincent”, a fictional miniseries about the sexual and physical abuse of children in a Catholic institution.[42] The Ontario Court of Appeal and the Court of Appeal granted the ban request from the four members of the order, but the CBC filed a legal action with the Supreme Court, and the Supreme Court subsequently overturned the ban. In overturning the ban, the Supreme Court stated that the important elements for a publication ban to be implemented are: (1) The ban is necessary to prevent a real and substantial risk to the interests of the trial case, because other alternative measures that are reasonably available cannot prevent the risk; and (2) (b) The positive impact of the publication ban is greater than the negative impact on freedom of expression for those affected by the ban.[43]

The basis for publication through the Dagenais test was updated by the Mentuck Test. In this second case, the Publication Ban was filed by the Public Prosecutor in the case of the murder of a 14-year-old girl. The Publication Ban was filed against the identity of the police officer and the undercover method used to uncover the defendant's crime (Clayton George Mentuck).[44] This was because in the previous court hearing the evidence of the defendant's guilt was inadmissible. The defendant along with two Canadian newspapers filed an objection to the imposed publication ban. The Supreme Court at the final level decided on a partial publication ban, namely a ban on publication of the officer’s identity for 1 year, but rejected the publication ban for operational methods carried out by the police.[45] Based on this case, the judge developed the concept of the Dagenais Test to Mentuck Test. To consider a publication ban, there are at least two requirements

[42] Supreme Court of Canada*, Dagenais v. Canadian Broadcasting Corp.,* 1994 SCC 39, [1994] 3 SCR. 835 (Supreme Court of Canada, December 8, 1994)*,* accessed January 16, 2025, *https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1204/index.dob*.

[43] Supreme Court of Canada*, Dagenais v. Canadian Broadcasting Corp.*

[44] Supreme Court of Canada, *R. v. Mentuck*, 2001, SCC 76, [2001] 3 S.C.R. 442 (Supreme Court of Canada, November 15, 2001), accessed January 17, 2025, https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1917/index.do.o.

[45] Supreme Court of Canada, *R. v. Mentuck*.

to be considered. First, regarding neccesity, the publication ban order is necessary to prevent a serious risk to the proper administration of justice because reasonable alternative measures will not prevent such serious risk; and Second, regarding proportionality, the positive impact of the publication ban is greater than the negative impact on the rights and interests of the parties and the public, including the impact on the right to freedom of expression, the right to a fair and open trial, and the effectiveness of the administration of justice.[46]

In short, the primary consideration is whether media access plays a significant positive role in certain processes in the case. Two interests are also considered: the potential for greater harm to the parties in the justice system outweighing the benefits of media access. This consideration is made by applying the necessity test. Another example of this doctrine was applied by the European Court of Human Rights (ECHR) in the lawsuit case of press companies named Krone Verlag and Krone Multimedia (Krone Verlag GmbH and Krone Multimedia GmbH v. Austria (Application No. 33497/07, 2012).[47] The companies were found guilty and paid damages by the Austrian Court for publishing detailed news articles about cases of sexual violence and mistreatment by parents towards their children, including the children's identities and photos of their parents. Krone Verlag and Krone Multimedia then filed a lawsuit with the ECHR alleging that the Australian Court had violated freedom of expression. In examining the lawsuit, the ECHR stated that the restriction of media access to the judicial system was a meeting between two conflicting rights, namely freedom of the press and the protection of the victim's privacy (identity). Consideration of the protection of the victim's identity must take into account whether the victim is a public figure or not or whether the crime was committed in a public place. In the case of Krone Verlag and Krone Multimedia, the victim was not a public figure nor did the victim enter the public scene by becoming the victim of a criminal offense. Therefore, the European Court of Human Rights ruled that there was no public need to publish the victim's identity and confirmed the Austrian Court's action.[48]

As explained previously, implementing a media blackout constitutes a restriction or reduction of certain rights, particularly the rights to freedom of opinion, expression, the press, right to information and the right of fair trial. Therefore, if the state, through relevant officials, implements a media blackout, in the context of Indonesian Criminal Procedure Law, this action can be considered akin to coercive measures (dwang middelen). In the context of implementing coercive measures, it must be noted that their implementation must be based on a written order from an authorized official under the law and in a manner also regulated by law (due process of law).[49] In this regard, the official, their authority, and methods must be clearly formulated (lex certa), strictly (lex stricta), and in writing (lex scriptura). The essence of coercive measures must be carried out in accordance with the principle of due process of law, and the media blackout itself relates to restrictions on the rights of many people (the public). Therefore, implementing this measure requires court permission, similar to seizures and searches. In addition to court permission for its implementation, parties objecting to these matters, namely those interested in ensuring the case is known and accessible to the public, can file objections through mechanisms such as pretrial as stipulated in the Indonesian Criminal Procedure Code. These parties include the parties involved in the case, journalists, journalist organizations, or related press companies. The pretrial motion was chosen because the media blackout is implemented from the very beginning of the case's handling or examination by the state, before the case proceeds to the main court hearing. This protected interest is implemented as early as possible to prevent negative excesses from occurring from the outset, under the state's jurisdiction, and serves as an initial barrier to prevent publicity from developing into non-journalistic content across various

[46] Ranjan K. Agarwal and Carlo Di Carlo, "The Re-Emergence of a Clash of Rights: A Critical Analysis of the Supreme Court of Canada's Decision in R. v. S. (N.)," *The Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference* 63, no. 1 (2013), https://doi.org/10.60082/2563-8505.1266.

[47] European Court of Human Rights, *Case of Krone Verlag Gmbh v. Austria,* Application no. 27306/07 (European Court of Human Rights, September 19, 2012), https://hudoc.echr.coe.int/fre?i=001-111526.

[48] European Court of Human Rights*, Case of Krone Verlag Gmbh v. Austria*.

[49] Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, Dan Peninjauan Kembali*.

channels. Court permission and pretrial motions represent a system of checks and balances and safeguards against officials' abuse of certain human rights. These procedures and mechanisms balance the interests of those in power through their various authorities with the protection of human rights.

Referring to the opinion of Paul Roberts and Adrian Zuckerman, court permission and pretrial mechanisms are methods that align with three basic principles: protection of rights by the state, discipline of officials, and legitimacy of decisions. These principles demonstrate that the use of coercive measures through court permission and pretrial mechanisms is carried out to restore or defend violated rights. These procedures and mechanisms can prevent/deter authorized officials from acting prudently and not repeating mistakes based on actions previously ruled unlawful. Court permission and pretrial mechanisms also serve as a legitimacy for public trust and the rule of law in a fair justice system.[50] When the court examines the media blackout permission or objection by pretial mechanism, the judge can use the test parameters as described in the previous explanation, namely the Dagenais and Mentuck Test or Neccesity Test, which essentially considers 2 things related to necessity and proportionality. First, in terms of necessity, the media blackout is necessary to prevent serious risks of the fundamental reasons for the media blackout because no other reasonable alternative measures will prevent these serious risks. Second, in terms of proportionality, the positive impact of the media blackout is greater than its negative impact on the rights and interests of the parties and the community, including the impact on the right to freedom of opinion and expression, right to information, the right to a fair and open trial, and the effectiveness of the administration of justice itself.[51]

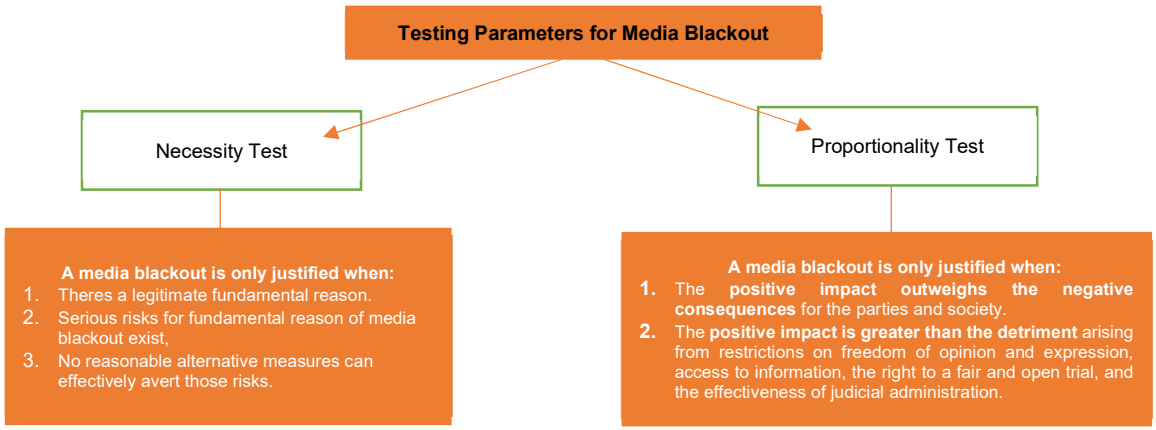



**Figure 1. Testing Parameters for Media Blackout Implementation**
Source: the author's analysis

If the application of coercive measures requires court permission and an objection mechanism through a pretrial petition, the implementation of a media blackout can be implemented using the following mechanism:

(1) The relevant official, considering fundamental reasons, submits a request for court permission to implement a media blackout of a specific type, including a permanent or temporary option.
(2) If the court deems there to be a valid reason, the court will issue a media blackout.
(3) The relevant official, with the court's permission, will issue a media blackout order detailing the type of prohibition, restriction, or censorship being implemented.
(4) The relevant official will distribute the media blackout order to major media companies by registered mail, with instructions to also distribute it to other media outlets.

[50] Paul Roberts and Adrian A. S. Zuckerman, *Roberts & Zuckerman's Criminal Evidence*, 3rd Edition (Oxford: Oxford University Press, 2022).
[51] Supreme Court of Canada, *R. v. Mentuck*.

(5) Parties objecting to these matters, namely those interested in ensuring the case is known and accessible to the public, may file an objection through available mechanisms such as a pretrial motion.
(6) The court will issue a pretrial decision to determine whether the media blackout is valid.

In diagram form, the implementation of the media blackout using the court permission model and pretrial mechanisms such as Indonesian criminal procedure law can be outlined as follows:

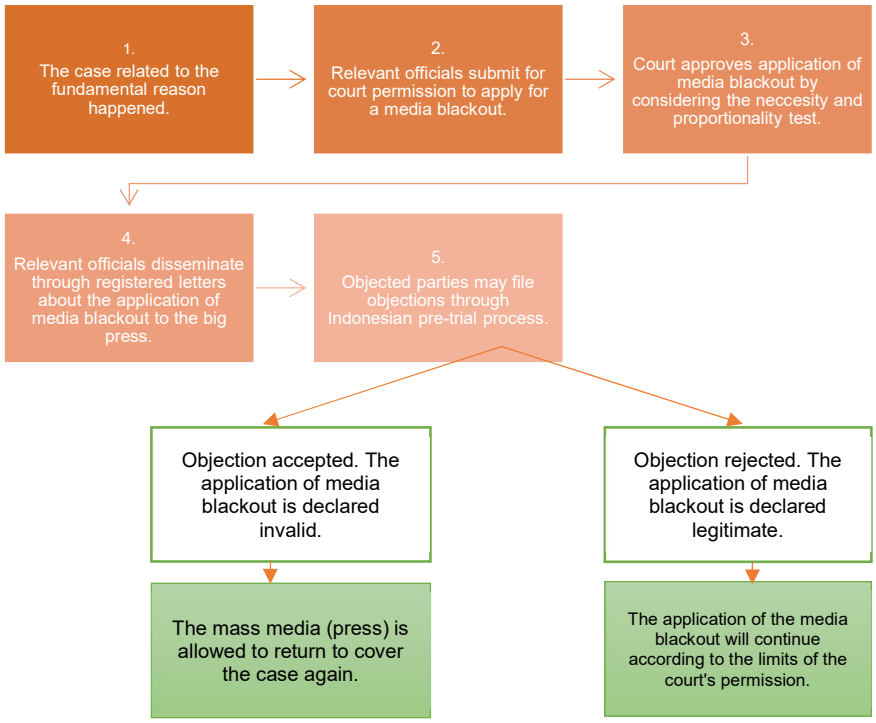



**Figure 2. Media Blackout Mechanism for Indonesian Criminal Justice**
Source: the author's analysis

## 3. Conclusion

Media blackout in criminal proceedings is a form of extension of the implementation of closed court hearings. The results of the discussion based on the analytical approach of legislation, doctrine and comparison related to the principles of open justice, human rights and victimology show that media blackout is an exception to the rights to freedom of expression, information and the press as well as the right to a fair trial which can be addressed to three fundamental reasons, namely 1) National security and national confidential information interests. 2) Protection of victims, especially victims of sexual crimes and children. 3) Law enforcement or criminal justice interests. Media blackouts function as protective measures against undue adverse effects from the earliest stage of law enforcement proceedings. It functions as a preliminary restraint, preventing case publicity from extending beyond journalistic reporting into non-journalistic dissemination across multiple platforms. Media blackouts, in the concrete term of prohibitions or censorship, can be divided into several forms, including: 1) Ban or censorship of all publications or news coverage, covering both the subjects and the proceedings of the case, for a specified period of time, as required by law enforcement for the purpose of establishing evidence. 2) Permanent ban or censorship of publications or news coverage of certain subjects in a case. 3) A permanent ban or censorship of all publications or news coverage, covering both the subjects and the proceedings of the case.

Indonesia has not yet any regulations regarding media blackout in the law enforcement process, and may use the court permit model and pretrial according to the current Indonesian criminal procedure law, by applying two standards as a test to consider the implementation of media blackout, called the test of necessity and proportionality. The necessity test is aimed at assessing whether the media blackout is necessary to prevent serious risks of the fundamental reasons because no other reasonable alternative measures will prevent these serious risks. The proportionality test is aimed at assessing whether the positive impact of the media blackout is greater than its negative impact on the rights and interests of the parties and the community, including the impact on the right to freedom of opinion and expression, the right to a fair and open trial, and the effectiveness of the administration of justice itself.

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