



NURANI:

JURNAL KAJIAN SYARI'AH DAN MASYARAKAT

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website: <http://jurnal.radenfatah.ac.id/index.php/Nurani> Email: jurnalnurani@radenfatah.ac.id
E ISSN: [2460-9102](https://doi.org/10.15992/2460-9102) P ISSN: [1693-8437](https://doi.org/10.15992/1693-8437)

Construction of Criminal Law Against Blaspheming the President as the Head of Government in Indonesia

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Keywords:
Dignity;
Norms;
State law.

Abstract: *The State of Indonesia is a state of law, every citizen gets protection of both civil and political rights. In addition, as a country that adheres to a presidential system of government, the position of the President is both head of state and head of government. However, there is an update efforts to provide better protection for the dignity of the President in the Criminal Law raises pros and cons, of course it is very interesting to study more deeply, namely regarding the norm of defamation against the president and the limits to the concept of norms of defamation against the president for the protection of dignity as head government. The research method used in this paper is through normative juridical research using primary data sources derived from secondary data. Secondary data from primary, secondary and tertiary legal materials that are directly related to the problems written. The conclusions in the research show that the legal norms and concepts regarding insulting the president in the the 2019 Draft Criminal Law (RUUKUHP) are in an effort to maintain the existence of the president as a person because everyone has legal rights to protect human dignity and worth. Furthermore, the concept of protecting the dignity of the president or vice president in the article does not mean protecting government policies from criticism.*

DOI:

10.19109/nurani.v%vi
%i.15992

Introduction

National development must not be left out of a plan for community protection against crimes that accompany development itself. The preamble to the 1945 Constitution of the Republic of Indonesia (*UUD NKRI Tahun 1945*) stated that the purpose of the establishment of the Indonesian State was to protect the Indonesian nation and all of Indonesia's bloodshed, promote public welfare, educate the nation's life and participate in carrying out world order based on freedom, eternal peace and social justice. One form of protection for citizens is regarding civil and political rights, namely the right to express opinions, seek to receive and convey information (Mirzana, 2006).

This is also related to Article 27 paragraph (1) (1), Article 28, Article 28E paragraph (2) and (3), Article 28J paragraph (1) and (2) of the 1945 NKRI Constitution. Indonesia as a democratic country, freedom of expression has significant influence in the community. The opinions expressed can influence individuals or groups, directly or indirectly (Mirzana, 2006). Such is the importance of the existence of human rights, without

human rights, humans cannot develop their talents and meet their needs (Ramdan and Susanto, 2017). According to the concept in human rights law, the state, in this case the government, has a position as a duty bearer. Obligations carried by the state consist of three forms, namely respect (to respect); protect (to protect); and fulfill (to fulfill). The obligation to respect is the state's obligation to refrain from intervening, except under legitimate (Arrsa, 2014).

However, in particular the right to express opinions, it turns out that in several laws, including the Criminal Code, there are still efforts to limit these rights, even though (the 1945 Constitution of the Republic of Indonesia) accommodates the protection of human rights regarding freedom of expression. Freedom from Expressing opinions regarding the authority of the President as head of government has finally become a topic of ongoing legal reform efforts in an effort to provide better protection for the dignity of the President. Defamation is the result of humiliation which is a character assassination and a violation of human rights (Muchladun, 2015). In addition, in order to avoid disparities in court decisions, there needs to be harmonization between the Criminal Code and the ITE Law in relation to the weight of the punishment that is threatened (Wibowo, 2012).

The president and vice president, however, are not permitted to enjoy legal rights that are unfairly superior to those enjoyed by the general populace. Extreme caution must be exercised when the government limits the viewpoints of its citizens, as this implies that the state has limited respect for human rights (Ramdan, 2020). By converting the offense under the article on insulting the president and vice president from a formal offense to a material offense, the government has also complied with the demands of the Constitutional Court's ruling (Tampi, 2016).

Criticism made against the president and/or vice president is closely related to freedom of expression which is a human right. Atmasasmita stressed that the right to freely express opinions orally, in writing and expression is a basic right that requires attention and is very crucial in the development of politics and legal practice in Indonesia (Widiastuti, 2009).

Taking into account the existence of the Unitary State of the Republic of Indonesia is a country that adheres to a presidential system of government, in which the position of the president is very strong because the President is the head of state as well as the head of government. Based on the 1945 Constitution of the Unitary State of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) which is under the Authority of the President of the Republic of Indonesia as Head of Government:

1. Holding government power (Article 4 Paragraph 1);
2. Submitting the Draft Law to the DPR (Article 5 Paragraph 1);
3. Establish government regulations (Article 5 paragraph 2);
4. Establish an advisory council tasked with providing advice and considerations to the president (Article 16);
5. Appoint and dismiss ministers (Article 17 Paragraph 2);
6. Discussed and gave approval for the bill with the the DPR and ratifiedthe bill (Article 20 Paragraphs 2 and 4);
7. To stipulate a government regulation in lieu of a law in a compelling

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- emergency (Article 22 Paragraph 1);
8. Submitting the *APBN* Bill for discussion with the DPR taking into account the considerations of the *DPD* (Article 23 Paragraph 2);
 9. Determine the Supreme Court justices from the candidates proposed by the Judicial Commission and approved by the DPR (Article 24A Paragraph 3).
 10. Appoint and dismiss members of the Judicial Commission with the approval of the *DPR* (Article 24B Paragraph 3);
 11. Appoint and dismiss members of the Judicial Commission with the approval of the *DPR* (Article 24B Paragraph 3);
 12. Nominate three candidates for constitutional judges and appoint nine constitutional judges (Article 24C Paragraph 3).

Therefore, this crime prevention and control plan must be an integral part of the national development plan. Prevention and control of crime is included in criminal politics (law) which must be carried out by the authorities, legislators, police, prosecutors, courts and criminal execution apparatus.

For this reason, a legal concept of crime should be an integral part of the national development plan itself. Prevention and control of crime is included in criminal politics (law) which must be carried out by the authorities, legislators, police, prosecutors, courts and criminal execution apparatus.

The arrangement of the article on insulting the President is related to the repeal of the article on insulting the President by the Constitutional Court. Of course, with the repeal of the article on insulting the President in the Criminal Code (KUHP), it will directly or indirectly have a juridical impact on protecting the dignity of the President himself. The repeal of the article on insulting the President is an attempt to reform the criminal law in Indonesia, but on the other hand, the repeal of the article on insulting the President undermines the system in the Criminal Code itself. The repeal of the article on insulting the President will show that the act of insulting the President is not a criminal act.

The Constitutional Court's decision to abolish the provisional banning of insulting the President has an impact on how the article is arranged. Of course, the Criminal Code's (KUHP) deletion of the section on insulting the President will have a legal effect on safeguarding the President's dignity, either directly or indirectly. While the endeavor to modernize Indonesia's criminal code through the admirable removal of the insulting items of the president, the Criminal Code as a whole is undermined by the repeal of this particular article. The elimination of the presidential insults provision will demonstrate that doing so does not constitute a crime.

The Constitutional Court's decision to abolish the provision prohibiting insulting the President has an impact on how this article is regulated. The elimination of the article on insulting the President in the Criminal Code (KUHP) will certainly have a legal impact on maintaining the dignity of the President, both directly and indirectly. Meanwhile, the effort to abolish the article on insulting the president is a reform in criminal law in Indonesia.

However, the removal of this article has damaged the criminal law system itself. Removing the presidential insult provision would show it was not a crime (Lambang B, 2009).

The existence of an Article in the Draft Criminal Code (*RUU-KUHP*) regarding the repeal of the defamation article against the President is an attempt to renew criminal law in Indonesia, but on the other hand the repeal of the insulting article against the President undermines the system in the Criminal Code itself. The repeal of the article on insulting the President will show that the act of insulting the President is not a criminal act.

For the need for renewal of Indonesian criminal law. Substantive criminal law reforms can not only be carried out by the House of Representatives (DPR) and the President as legislators, but substantive criminal law reforms can now also be carried out by the Constitutional Court as one of the institutions in the field of judicial power to carry out a judicial review of laws. against the 1945 Constitution of the Republic of Indonesia.

In fact, one of the forms or efforts of the Constitutional Court in safeguarding the constitution and reforming the criminal law is to revoke Articles 134, 136Bis, 137 of the Criminal Code which are deemed to be contrary to the 1945 Constitution of the Republic of Indonesia.

Article 134 of the Criminal Code: Intentionally insulting the President or Vice President, is punishable by a maximum imprisonment of six years or a maximum fine of four thousand five hundred rupiahs.

Article 136 Bis : he definition of insult as referred to in Article 134 includes the formulation of the act in Article 315, if it is done outside the presence of the insulted person, either by behavior in public or not in public orally or in writing, but in the presence of more than four people, or in front of other people who are present not of their will and therefore feel offended.

Article 137 :

1. Any person broadcasting, showing, or posting in public a writing or painting containing insults to the President or Vice President, with the intention that the contents of which are insulting are known or made known to the public, shall be punished by a maximum imprisonment of one year and four months or a maximum fine of four thousand five hundred rupiahs;
2. If the person who is guilty of committing a crime while carrying out his work, and at that time has not yet passed two years since the conviction has become permanent for such a crime, then he may be dismissed from the right to carry out said work.

Of course, the repeal of this article on insulting the President has a juridical impact on the Criminal Code itself and protection for the dignity of the President. The repeal of the article on insulting the President as if the act of insulting the President is no longer a crime, apart from that there are still provisions for the article on insulting ordinary people, the article on insulting the flag and state symbol and the article on blasphemy against kings, heads of state and representatives of other countries show show repeal

The article on insulting the President undermines the gradation of values in the Criminal Code. In this way, the renewal of criminal law is not only done by repealing and adding articles in the Criminal Code.

Based on this background, it will be examined further regarding the norm of defamation against the president and how the concept of the norm of defamation against the president limits the protection of dignity as the head of government. In other words, there are strong legal arguments for reviving the offense of insulting the president/vice president, so that there are clear limits regarding the norms for actions in the form of criticism and demonstrations against the government, whether or not it constitutes insulting the president as well as being considered anti-government and constitutes a criminal act.

Research Methods

The author in this research uses a type of normative juridical research with secondary data sources used (Noor, 2011). Secondary data which is meant in the form of primary legal materials in the form of legal regulations related to research include the 1945 Constitution of the Republic of Indonesia, the Criminal Code, the *RUU-KUHP*.

Literature, academic works, books, and research findings pertaining to the topics covered in this document are examples of secondary legal materials. The internet and other sources of information relevant to this study are examples of tertiary legal materials that can offer guidance on how to use primary legal materials and secondary legal materials. The method of data collection used in this work is literature review, which involves gathering information from primary, secondary, and tertiary legal sources.

Discussion and Results

Definition of Humiliation to the President

The government reinserted articles on insulting the President or Vice President in the new Draft Criminal Code (*RUU-KUHP*). Where the articles regarding insulting the President or Vice President have been declared unconstitutional by the Constitutional Court, namely through Decisions Number 013 and 022/PUU-IV/2006, then the articles relating to insulting the President or Vice President, namely Article 134, Article 136 bis, and Article 137 of the Criminal Code consider these three articles to be contrary to Article 28 and Article 28E Paragraph (2) and Paragraph (3) of the 1945 *NKRI* Constitution.

The articles on insulting the President or Vice President in the new Draft Criminal Code, as can be read from Article 263 and Article 264, not only contain the same substance as that which was canceled by the Constitutional Court, but, more than that, contain the scope of wider contempt. If the Criminal Code which has been canceled by the Constitutional Court in broadcasting insults only includes showing or pasting writing or pictures, the new Criminal Code Bill also includes the activity of "listening to recordings".

According to Article 218 paragraph 1, anyone who publicly disparages the honor or dignity of the President or Vice President faces a maximum

sentence of 3 (three) years and 6 (six) months in jail or a maximum fine of category IV. The phrase "assault against the dignity of the president and vice president" rather than "humiliation" is used in the Criminal Code Bill, and it refers to insults that attack the president or vice president's reputation or dignity in public, including verbal insults, slander, and insults with the intent to slander.

Humiliation is essentially a disgraceful act from the perspective of morality, religion, social values, and human rights values. "humiliation" must be formulated in a clear, firm and non-interpretive manner, so that it will minimize interpretations other than what is meant in the law and not have the potential to violate human rights (Rahman, 2015).

However, the re-entering of the articles regarding insulting the president also raised serious constitutional problems which later emerged in this connection, namely the existence of a provision according to Article 24C Paragraph (1) of the 1945 Constitution of the Republic of Indonesia that the Constitutional Court's decision is final, must be implemented without being able to be challenged. with legal remedies. According to the Constitutional Court, these articles can ensnare people who may not intend to insult the President, but are only using ordinary constitutional rights, such as protesting, making statements, expressing thoughts, or conveying criticism. These articles have the potential to be used arbitrarily by the authorities to silence the people's voice in exercising their constitutional rights (MD, 2015).

The criminal act of insulting the president or vice president is regulated in Chapter II of Book II of the Criminal Code concerning Crimes Against the Dignity of the President and Vice President. Originally this chapter consisted of 11 articles, but based on Article VIII of Law no. 1 of 1946, 6 articles were deleted because it regulates the royal family, which does not exist in Indonesia. Thus there are only 5 (five) articles, namely Article 131, Article 134, Article 136 bis, Article 137 and Article 139. 23 While the articles concerning insulting the president or vice president are contained in Article 134, Article 136 bis, and Article 137.

According to Cleiren, it is said that there is humiliation (belediging; slander; defamation), if someone's honor (eer; honor) or good name (goede naam; reputation) is attacked (aangetast; impugns). While the notion of "honor" refers to "respect" which is the right of a person as a human being. Furthermore, the meaning of "good name" refers to "reducing one's honor in the eyes of other people". Regarding what constitutes "derogatory nature" (beledigend character) depends on the norms of society at that time (Reksodiputro, 2009).

Regarding the problem of interpretation of "humiliation", Mardjono Reksodiputro argued that in terms of enforcing Article 134 of the Criminal Code and Article 136 bis of the Criminal Code, the meaning of "humiliation" must use the understanding that has developed in society regarding Articles 310-Article 321 (*mutatis mutandis*) (Reksodiputro, 2009). Meanwhile, Sianturi stated that because the definition of insult or the means was not mentioned, the insult referred to in Article 134 must be interpreted the same as the insult regulated in Chapter XVI Book II of the Criminal Code concerning Humiliation (Soesilo, 1996).

Regarding insults that can be directed at anyone as regulated in Article 310- Article 321 of the Criminal Code, there are 5 qualifications as insults, namely: insulting (smaad) both verbally and/or in writing; slander (laster); mild humiliation (eenvoudige belediging); complain slanderously (lasterlijke aanklacht); and slanderous accusations (lasterlijke verdachtmaking). The five forms of humiliation are complaint offenses which are explicitly stated in Article 319 of the Criminal Code (Hiariej, 2014). This unclear explanation will result in a lack of legal certainty and will result in arbitrary actions by law enforcement officials because the interpretation of "any action" depends on the interpretations and interpretations of law enforcement officials.

Limitation of the Concept of Norms of Contempt of the President on the Protection of Dignity and Dignity as the Head of Government

In practice, the articles on the criminal act of insult or the articles on the criminal act of insulting the president or vice president have been misused, namely to further the interests of the administration that the president or vice president represents. In these articles, the idea of defending the president's or vice president's dignity also refers to defending government policies from criticism. Therefore, anyone who criticizes and opposes the administration will be seen as insulting the president and opposing the government (Haryanto, 2002).

In other words, "criticism" or "protest" against central or regional government policies and central or regional government officials are not only susceptible to interpretations of whether "criticism" or "protest" constitutes an insult to the president or vice president, but also has the opportunity to impede the rights of the president or vice president. on the freedom to express thoughts orally, in writing and expression as guaranteed in Article 28D paragraph (1), Article 28E paragraph (2) and paragraph (3), and Article 28F of the 1945 *NKRI* Constitution.

The urgency is important to define clearly the norms for the category of contempt for the president, because a citizen of an independent and sovereign country cannot be hostile to the state and its own government which is free and sovereign, except in the case of treason. Related to the rearrangement of articles on insulting the president or vice president, thus it can also be analyzed based on external constraints, especially regarding the obligation for legislators to pay attention to the 1945 Constitution of the Republic of Indonesia.

In his explanation, the Draft Criminal Code (RUUKUHP) relating to the crime of self-attacking a person in general can constitute various criminal acts (delicts), such as persecution or committing violence. Moeljatno in the Principles of Criminal Law, explained that criminal law is part of the overall law that applies in a country, which provides the basics and rules for: Determining whether behaviors are prohibited and if they should be followed by warnings or sanctions in the form of specific fines for violators; Determine whether and when people who have broken these restrictions can receive the punishment that has been threatened; Determine how the punishment can be applied if there are individuals

accused of having broken the rule (Moeljatno, 2008).

Then, when referring to the explanation regarding insult in the elucidation of Article 263 of the *RUU-KUHP*, what is meant by "insulting" in this article can be said to be obscure. In this case, there is no definite, definite and limitative mention of what actions are classified as insults. Article 263 of the Criminal Code Bill's clarification solely clarifies that "insulting" refers to any conduct that disparages the reputation or honor of the president or vice president in public (Widayati, 2017). But in general, humiliation is defined as an act that harms the reputation of another person so that it can reduce the views/opinions of society towards him or prevent a third person from associating with or dealing with him (Arend, 1997). The damage to reputation lies in the effect the insulting statement has on the minds of those who hear it (Smola, 2017).

Basically Article 310-Article 321 of the Criminal Code is also contained in the Criminal Code Bill which also contains articles on defamation as the substance in Article 310-Article 321 of the Criminal Code. However, the elucidation of the article that formulates the crime does not clearly state what interests are behind the arrangement for insulting the president or vice president, so it must also fulfill the interests of the state.

On the other hand, the honor, dignity and prestige of the President and Vice President must still be protected through statutory provisions. Special protection regarding the honor, dignity and prestige of the President and Vice President in Indonesia is something that deserves attention in a presidential system like Indonesia. It is very important to regulate honor, dignity and dignity so that the Articles relating to insulting the President and Vice President are in the 2019 Draft Criminal Code (*RUU-KUHP*).

By looking at these reasons, it is inaccurate that the existing Articles in the 2019 Draft Criminal Code (*RUU-KUHP*) are an extension of an Article that was declared unconstitutional by Constitutional Court Decision Number 013-022/PUU - IV/2006, but the Articles in the 2019 Draft Criminal Code (*RUU-KUHP*) are Articles with new formulations and are not the same as Article 134, Article 136 bis, and Article 137 of the Criminal Code (Fernando and Junius, 2022).

For this reason, it is very important to regulate honor, dignity and dignity so that the Articles relating to insulting the President and Vice President are in the 2019 Draft Criminal Code (*RUU-KUHP*). The President and Vice President are heads of state and also act as head of government, symbol of a sovereign nation and state. Besides that, the President and Vice President attach to their positions the interests and powers of a country.

Conclusion

The article on insulting the President and Vice President after being declared unconstitutional by the Constitutional Court through Decision Number 013-022/PUU/IV/2006, turns out to be re-embodied in the 2019 Draft of Criminal Code (*RUUKUHP*) drawn up by the Ministry of Law and Human Rights of the Republic of Indonesia. This article demands precise limitations regarding legal norms of humiliation because everyone has the legal right to protect their pride and dignity as human beings. Furthermore, the clarity of

legal norms limitation is also critical. This is not meant to preclude criticism of the exercise of the president's authority as head of government

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