

Criminal Legal Policy On Insults Against The President And Vice President Post Constitutional Court Ruling Number 7/Puu-Xxi/2023

^{1*}Dian Adriawan Dg Tawang, ²Rini Purwaningsih
dian.adt@trisakti.ac.id

^{1,2}Lecturer in Criminal Law, Fakultas Hukum, Trisakti University, Jakarta, Indonesia

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Abstract

This research discusses criminal law policies related to insulting the President and Vice President in Indonesia after the Constitutional Court (MK) decision. Previously, Articles 134, 136 bis, and 137 of the Criminal Code regulated criminal acts of insulting the President and Vice President, but these articles were abolished through Constitutional Court Decision Number 7/PUU-XXI/2023 on the grounds that they conflicted with the freedom of expression guaranteed by the 1945 Constitution . This decision raises a dilemma between protecting the dignity of high-ranking state officials and freedom of expression. Along with the introduction of the new Criminal Code in January 2023 through Law Number 1 of 2023 following the decision, there are legislative efforts to introduce new insult articles that are more in line with human rights principles. This research highlights the legal and social implications of these policy changes, including their potential impact on press freedom and political dynamics. Analysis of the Constitutional Court's decision according to the new Criminal Code shows the need to balance between protecting the presidential institution and maintaining the space for freedom of expression in Indonesia.

I. Introduction

Equal treatment in substance of criminal law is that everyone obeys and respects the rules of criminal law, which are prohibited or required, which have been regulated in law as prohibited acts. Criminal law rules are provisions that contain orders and prohibitions, which if violated will be subject to sanctions, while criminal acts (*strafbaar feit*) are behavior that is punishable by crime, which is against the law related to mistakes and is carried out by people who are capable of being responsible, according to the view Simons quoted by Andi Hamzah .

Equal treatment in the substance of criminal law reflects the principle that everyone must obey and respect the criminal law rules established by law. This means that both commands and prohibitions in criminal law are followed consistently by all individuals, and violations of these rules will be subject to appropriate sanctions. Criminal law itself contains provisions consisting of two main elements: commands and prohibitions. Commands are certain obligations that must be carried out by everyone, while prohibitions are certain actions that must be avoided. If someone violates these provisions, they will face consequences in the form of sanctions or penalties that have been determined by law.

Criminal action (*strafbaar feit*), according to Simons' view as quoted by Andi Hamzah, is an action that violates the law and is punishable by crime. This action has several characteristics, namely:

- 1) Unlawful: The action is contrary to applicable legal provisions.
- 2) Related to error: There is an element of error or malicious intent in the commission of the act.
- 3) Carried out by a person who is capable of taking responsibility: The perpetrator of the act is a person who is considered capable of providing responsibility for his actions, both morally and legally.

The Constitutional Court (MK) Council stated that it does not accept the review of Article 218 paragraph (1), Article 219, Article 240 paragraph (1), and Article 241 paragraph (1) of Law No.1 of 2023 concerning the Criminal Code (KUHP) related to criminal acts of insulting and defaming the president/vice president and state institutions/public authorities, including by means of information technology.

The provisions governing insulting the president are regulated in Articles 217, 218 and 219 Chapter II Criminal Acts Against the Dignity of the President and/or Vice President. Article 217 reads, "Any person who attacks the President and/or Vice President who is not included in the heavier criminal provisions, shall be punished with a maximum imprisonment of 5 (five) years." In this case, a maximum prison sentence of three years also awaits anyone who publicly attacks the honor or dignity of the president and/or vice president.

This is stated in Article 218 paragraph (1) Attacking the Honor or Dignity of the President and/or Vice President. Those who fall into this criminal category can also

be sentenced to a fine of up to category IV. "It does not constitute an attack on honor or dignity as intended in paragraph (1), if the act is carried out in the public interest or self-defense," reads Article 218 paragraph (2). Meanwhile, there is also a maximum prison sentence of four years or a maximum fine of category IV in the article for insulting the president in Article 219. This applies to anyone who broadcasts, displays or pastes writing or pictures so that they can be seen by the public, listens to recordings so that it is heard by the public, or disseminates using information technology means an attack on the honor or dignity of the President and/or Vice President with the intention of making its contents known or better known to the public. However, criminal acts regulated in Articles 218 and 219 apply if there is a complaint. Complaints can be submitted in writing by the president and/or vice president according to Article 220 paragraph (2).

Cases of insulting the President and Vice President are often in the spotlight in various media, especially in the current digital era. The increased use of social media and other online platforms facilitates the spread of opinions, criticism, and, at times, insults against state officials. Some of the main factors causing the emergence of these cases are:

1. Openness of Information and Freedom of Expression: People are increasingly daring to express their opinions openly. However, the line between constructive criticism and insults can sometimes become blurred.
2. Political Polarization: Sharp differences in political views often trigger offensive comments against the country's leaders.
3. Anonymity in Cyberspace: The anonymity offered by the internet allows individuals to express opinions that they might not express in person in the real world.

These insult cases are often handled based on Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE). Article 27 paragraph (3) and Article 45 paragraph (3) of the ITE Law regulate insults or defamation carried out through electronic media. In Indonesia, insulting the President and Vice President can also be subject to the article of insulting a state official in accordance with Article 207 of the Criminal Code. Some examples of well-known cases include:

1. During his presidency, President Joko Widodo (Jokowi) was often the target of criticism and insults on social media, which sometimes resulted in legal action.
2. Some parties view law enforcement regarding insults as an attempt to limit freedom of expression, while others see it as an important step to maintain the honor and authority of the state.

Overall, these defamation cases reflect the dynamic between free speech and legal responsibility in an increasingly digital society. The government and society continue to seek the right balance between respecting the highest state officials and maintaining freedom of expression.

Based on the criminal system in the narrow sense, criminal law reform includes substantive criminal law, namely special rules and general rules. General rules cover book I of the Criminal Code, while special rules include book II or book III of the Criminal Code and laws outside the Criminal Code.

Based on the above, the author is interested in studying further through research on the Criminal Law Policy for Insulting the President and Vice President After the Constitutional Court Decision Number 7/PUU-XXI/2023 with what problems the criminal law policy regarding insulting the President and Vice President before and after the Constitutional Court decision?

2. Research Method

This research is a normative juridical research, obtained from statutory studies (statue approach), concept studies (conceptual approach), case studies (case approach), reviewing and analyzing all related laws and regulations, the legal position regarding Deponeering in the Criminal Justice system, both Laws and other laws and regulations.

3. Results and Discussion

Implementation of Legal Protection for Lampung Robusta Coffee Geographical Indications in Improving the Economy of West Lampung Coffee Farmers

Constitutional Court Decision Number 7/PUU-XXI/2023 The Constitutional Court considers that the new Criminal Code will come into effect in three years, namely on January 2 2026, so that the articles of the Criminal Code that are being sued have not caused constitutional losses, either potential or actual losses. The Constitutional Court (MK) Council stated that it does not accept the review of Article 218 paragraph (1), Article 219, Article 240 paragraph (1), and Article 241 paragraph (1) of Law No.1 of 2023 concerning the Criminal Code (KUHP) related to criminal acts of insulting and defaming the president/vice president and state institutions/public authorities, including by means of information technology. This application was submitted by Fernando Manullang (Lecturer at the Faculty of Law, University of Indonesia/Applicant I); Dina Listiorini (FISIP Lecturer, Atma Jaya University Yogyakarta/Applicant II); Eriko Fahri Ginting (Content Creator/Applicant III); and Sultan Fadillah Effendi (Student/Petitioner IV).

Marc Ancel in his book entitled social defense, a modern approach to criminal problems states that penal policy or criminal law policy is: " a science and an art, of which the practical purposes, ultimately, are to enable the positive rules to be better formulated and to guide not only the legislators who have to draft criminal statutes, but the courts by which they are applied and the prison administration which gives practical effect to the court's decisions" . Criminal law policy is both a science and an art which ultimately has the practical aim of enabling positive legal regulations to be formulated better and to provide guidance not only to legislators, but also to the courts that apply the law and also to the administrators or executing court decisions.

Ancel emphasized that penal policy or criminal law policy is the same as the term "criminal law policy or politics". According to Sudarto, what is meant by legal politics is:

- a. Efforts to create good regulations according to the circumstances and situations at any given time;
- b. State policy through authorized bodies to establish the desired regulations which are expected to be used to express what is contained in society and to achieve what is aspired to.

Based on the understanding stated above, Sudarto again stated that criminal law politics is holding elections to achieve the best results in criminal legislation in the sense of fulfilling the requirements of justice and effectiveness.

Quoting Barda Nawawi Arief, criminal law policy (penal policy) is essentially a criminal law enforcement policy (penal law enforcement policy). Barda further added that criminal law enforcement policy is a process that consists of three policy stages. First, the formulative policy stage or legislative policy stage, namely the stage of drafting/formulating criminal law. Second, the judicial/applicative policy stage, namely the stage of implementing criminal law. Third, the executive/administrative policy stage, namely the implementation/execution stage of criminal law. Thus, the three stages of criminal law enforcement policy contain three (3) powers or authorities, namely legislative power/authority to formulate or determine acts as punishable (criminal acts) and criminal sanctions, power/authority to apply the law by law enforcement officials and power/authority to execute or carry out the law concretely by the authorized apparatus/body. On the other hand, Barda Nawawi Arief stated that criminal law enforcement is closely related to three components, namely, norms/legislative regulations (substantive/normative components), law enforcement institutions/structures/apparatus (structural/institutional components along with procedural mechanisms) and values. legal cultural values (cultural components).

The existing norm formulation of Article 134, Article 136 bis, Article 137 of the Criminal Code states as follows:

Article 134

"Deliberate insults against the President or Vice President are punishable by a maximum penalty of six years, or a maximum fine of four thousand five hundred rupiah."

Article 136 bis

"The definition of insult as intended in article 134 also includes the formulation of the act in article 135, if it is carried out outside the presence of the insulted person, whether by behavior in public or not in public, either verbally or in writing, but in the presence of more than four people, or in before a third person, against his will and therefore feels offended."

Article 137

- 1) Any person who broadcasts, displays or puts up in public writings or paintings containing insults against the President or Vice President, with the intention of making the contents of the insult known or better known to the public, is threatened with imprisonment for a maximum of one year and four months or a fine. a maximum of four thousand five hundred rupiah;*
- 2) If the person guilty of committing a crime while carrying out the search, and at that time two years have not passed since the conviction became permanent for*

such a crime, then the person may be prohibited from carrying out the search.

If the person affected is a State official (article 134 of the Criminal Code: "Deliberate insults against the President or Vice President, punishable by a maximum prison sentence..."). This article clearly threatens punishment for "intentionally insulting" the President or Vice President. What is meant by "deliberate insult" is any kind of action that attacks the good name, dignity or glory of the President or Vice President, including all kinds of insults contained in Chapter , slander, mild insults and slanderous accusations

Based on the Constitutional Court's decision, the order to cancel articles on insulting the president or vice president is not only those contained in the Criminal Code but also those contained in the new Criminal Code. In its considerations, the Constitutional Court is of the opinion that Indonesia, as a democratic legal state, in the form of a republic and with people's sovereignty, and which upholds human rights as stipulated in the 1945 Constitution of the Republic of Indonesia, is no longer relevant if its Criminal Code still contains articles such as Article 134, Article 136 bis, and Article 137 which negate the principle of equality before the law, reduce the freedom to express thoughts and opinions, freedom of information, and the principle of legal certainty.

Norms regarding insults and defamation of the government are contained in the provisions of Article 218 paragraph (1), Article 219, Article 240 paragraph (1), and Article 241 paragraph (1) of Law Number 1 of 2023 concerning the Law Code The criminal code (KUHP) is tested at the Constitutional Court (MK). Article 218 paragraph (1) of the Criminal Code states, "Any person who in Public attacks the honor or dignity of the President or Vice President shall be punished by a maximum imprisonment of 3 (three) years and 6 (six) months or a maximum fine of category IV."

Article 219 of the Criminal Code states, "Any person who broadcasts, shows, or attaches writing or pictures so that they are visible to the public, listens to recordings so that they can be heard by the public, or disseminates by means of information technology that contains an attack on the honor or honor and dignity of the President or Vice President with "The intention is that the contents become known or become more publicly known shall be punished by a maximum imprisonment of 4 (four) years and 6 (six) months or a maximum fine of category IV."

Article 240 paragraph (1) of the Criminal Code states, "Any person who in public verbally or in writing insults public authorities or state institutions shall be punished with a maximum imprisonment of 1 (one) year and 6 (six) months or a maximum fine of category II." "

Article 241 paragraph (1) of the Criminal Code states, "Any person who

broadcasts, displays, or attaches writings or images or listens to recordings, or disseminates via information technology means that contains insults against public authority or state institutions, with the intention that the content of the insult is known or "It is better known to the general public to be punished with a maximum imprisonment of 2 (two) years or a maximum fine of category III."

The decision of the Constitutional Court (MK) rejecting the review of articles in Law No. 1 of 2023 concerning the Criminal Code (KUHP), especially those that regulate insults and defamation of the president, vice president and state institutions, has several important impacts. The impact on freedom of opinion includes:

1. **Fear Effect:** The decision to keep these articles unchanged may cause people to feel afraid to express opinions or criticize high-ranking state officials. This can create a deterrent effect, where individuals and the media may be reluctant to criticize the government for fear of legal consequences.
2. **Restrictions on Public Discourse:** With the enactment of these articles, space for critical discussion may become limited. A number of parties feel that these articles have the potential to be used to silence constructive criticism which should be part of the democratic process.
3. **Interpretation and Application of Law:** Law enforcers have an important role in interpreting and applying these articles. There are concerns that these articles could be used subjectively and discriminatorily, depending on the interests of certain parties.
4. **Quality of Democracy:** The dignity of high-ranking state officials is important, but a balance must be struck between protecting that dignity and maintaining freedom of expression as an important element in democracy. Strict enforcement of the defamation law could undermine a healthy democratic climate.
5. **Protection of Dignity:** On the other hand, enforcement of these articles can be seen as an effort to protect the dignity and honor of high-ranking state officials from unethical and reputation-damaging forms of insults.
6. **Institutional Stability:** These articles can be considered as a tool to maintain the stability and honor of state institutions from attacks that could weaken the authority or trust in state institutions.

Criminal law policies regarding insulting the president and vice president need to be regulated firmly to maintain the authority of state institutions while ensuring freedom of expression and human rights in accordance with democratic principles and the constitution.

4. Conclusion

The Constitutional Court (MK) has made important decisions regarding the review of several articles in Law No. 1 of 2023 concerning the Criminal Code (KUHP), especially those relating to criminal acts of insulting and defaming the president and vice president, and state institutions/general powers. The articles being reviewed include Article 218 paragraph (1), Article 219, Article 240 paragraph (1), and Article 241 paragraph (1). However, the Constitutional Court decided not to accept the test. This means that the articles related to insults and defamation remain in effect according to their original editorial in the new Criminal Code Law.

This decision certainly has a significant impact on freedom of opinion and the press in Indonesia, especially in the context of insulting high-ranking state officials and state institutions. There are concerns from various parties that this decision could potentially curb freedom of expression and create a deterrent effect on the public and media who want to voice criticism of the government.

For some people, this provision is considered necessary to maintain the honor and dignity of state institutions and high-ranking officials, while for others, this is considered to have the potential to hamper democracy and freedom of opinion, which is an important pillar in a democratic country. In the end, the Constitutional Court's decision shows how criminal law in Indonesia is developing in the face of existing social and political dynamics. Public scrutiny, discussion and advocacy regarding the implementation of these articles will likely continue, reflecting society's efforts to find a balance between maintaining the honor of state institutions and respecting the basic rights of individuals.

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