

# Overview Of Legal Assurance About Crimes Against The Dignity Of The President And Vice President In Indonesia Post The Decision Of The Constitutional Court

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# Overview Of Legal Assurance About Crimes Against The Dignity Of The President And Vice President In Indonesia Post The Decision Of The Constitutional Court

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## ABSTRACT

In the Indonesian constitution, the President is the holder of government power as well as the head of state. The Constitutional Court in Indonesia through its Decision Number 013-022/PUU-IV/2006 and Number 6/PUU-3/2007 stated that the articles contained in the Criminal Code are in principle contrary to basic human rights. This study aims, First, to analyze the reformulation of articles on crimes against the dignity of the President and Vice President after the decision of the Constitutional Court. Second, reformulation of the regulation of criminal offenses against the dignity of the President and Vice President in the future. The research method used is normative juridical by examining library materials, both primary legal materials, and secondary legal materials. The results of the research, firstly, the articles on insulting the President and the Vice President do not explicitly mention limitations so that it can create legal uncertainty. Second, the provisions regarding haatzai articles and lese majeste do not have a binding force so that their inclusion in the draft Criminal Code is unconstitutional. The implications of the decision of the Constitutional Court in the legal system in Indonesia require that policymakers pay attention to the principles of human rights which in practice prioritize equality before the law, protection of freedom of opinion by the constitutional mandate.

**Keywords:** Legal Certainty, Humiliation of the President and Vice President, Dignity.

## 1. INTRODUCTION

The right to freedom of expression is a human right. [1] In the 1945 Constitution of the Republic of Indonesia, this right is guaranteed. Constitutionally, the right to freedom of expression is one of the most important human rights. This recognition includes freedom of association and assembly, expressing thoughts orally and in writing, and so on are stipulated by law. [2] The discussion on the article on insulting the President and Vice President experienced ups and downs along with the regime in power. The president is not only a symbol of state power but holds sovereignty by being directly elected by the people. [3] The history of regulating articles on insults to the dignity of the President and Vice President in Indonesia began in the days of the Dutch East Indies. Wetboek van Strafrecht Stalblad 1915 No 732 became the runway. [4] The period of the Japanese government changed this provision to Gunzei Keizi Rei. [5] After independence, the Criminal Code is still valid in Indonesia under Article 2 of the

Transitional Rules. The Suharto regime period recorded the most use of articles on insulting the president to criminalize political opponents. [6] The criminalization efforts in question include political speeches, demonstrations, writings in newspapers, and so on. The articles that are often used are Articles 154 and 155 of the Criminal Code or often referred to as Haatzai Articles. This article is often combined with Articles 134, 136 bis, and 137 of the Criminal Code which is often referred to as Lese-Majeste. The Habibie period was marked by the birth of Law No. 26 of 1999 concerning the Revocation of Presidential Regulation no. 11 of 1963 concerning the Eradication of Subversion Activities. [7] Law No. 9 of 1998 concerning the Freedom of Expressing Opinions in Public. Law No. 40 of 1999 on the amendment to Law no. 11 of 1966 concerning the Basic Provisions of the Press and Law no. 21 of 1982. All laws were repealed at that time, especially those that limited freedom of opinion and expression. Tempo Magazine's ban was reviewed. [8] The dissolution of the Ministry of

40 of 1999 on the amendment to Law no. 11 of 1966 concerning the Basic Provisions of the Press and Law no. 21 of 1982. All laws were repealed at that time, especially those that limited freedom of opinion and expression. Tempo Magazine's ban was reviewed.[8] The dissolution of the Ministry of Information.[9] Utrecht believes that the importance of legal certainty is to avoid government arbitrariness that arises by providing firm and clear boundaries.[10] During the Abdurrahman Wahid (Gus Dur) period there were no cases of criminalization using articles of insult. The government is open to criticism.[11] During Megawati's presidency[12], there was a change in the direction of legal politics, articles on insulting the dignity of the President and Vice President were revived. Demonstrations with theatrical media are classified as insulting to the dignity of the President and are therefore criminalized.[13] In the post-reform period, efforts to reform the criminal law were carried out with the revocation of articles 134, 136 bis, and 137. In its legal considerations, the Constitutional Court considered that these articles were no longer relevant to legal developments and community needs. Because in principle the provisions in it shackle the freedom to express thoughts and opinions, freedom of information and are contrary to legal certainty. In its development, the article on insulting the President and Vice President was included in the Draft Criminal Code (RUU KHUP).

## 2. METHOD

This study uses a normative juridical method [14] by examining the provisions regarding the regulation of insults to the President and Vice President after the Constitutional Court Decision Number 013-022/PUU-IV/2006, and the Constitutional Court Decision Number: 6/PUU-V/2007 in terms of the principle of certainty law.

## 3. RESULT

The Indonesian Dictionary defines dignity as dignity or honor.[15] So this is attached to humans and given by God since humans were born. [16]

The provisions contained in Article 134, 136 bis and 137 of the Criminal Code do not explicitly, definitively, and restrictively state actions that are classified as insults. The implication is that the regime at that time in power could interpret the actions taken in terms of criticizing government policies as an attempt to humiliate the dignity of the President and Vice President. Furthermore, this has the potential to result in arbitrary actions from the authorities and officials. Discriminatory

acts are in essence very contrary to the spirit of freedom of expression.

In legal consideration the Constitutional Court stated that by the mandate of Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia that sovereignty is in the hands of the people and implemented according to the 1945 Constitution of the Republic of Indonesia. The President and Vice President are accountable to the people. [17] In addition, legal uncertainty is very likely to occur considering that Articles 134, 136 bis and 137 of the Criminal Code contradict Article 28D paragraph 91 of the 1945 Constitution of the Republic of Indonesia. Political patronage that is carried out can hinder law enforcement against the President and Vice President who are suspected of violating the law as stated in Article 7A The 1945 Constitution of the Republic of Indonesia.[18] If you continue to use the offense of insulting, then Article 310-321 of the Criminal Code should apply which insults are directed at the personal self of the President and Vice President. In addition, Article 207 of the Criminal Code can also be used if the intended insult is directed at the President and Vice President as officials.

TABLE I. Comparison of Articles of Insulting the President and Vice President [19]

No	Legal Issues	KUHP	RUU KUHP
1	Layout Settings	Chapter II Crimes Against The Dignity Of The President And Vice President Article 134	Part Two Attacks On The Honor Dignity And Dignity Of The President And Vice President Article 218
		Chapter II Crimes Against The Dignity Of The President And Vice President Article 136 Bis	Part Two Attacks On The Honor Or Dignity And Dignity Of The President And Vice President Article 219

			<p>insulting the President and Vice President aims to protect dignity/degree of humanity;</p> <p>Second, In principle, insulting acts are despicable activities when examined from the aspect of morals, religion, social values and human values;</p> <p>Third, Each nation has different sociophilosophical, sociopolitical and sociocultural values regarding the scope of the type of criminal act of humiliation;</p> <p>Fourth, the scope of humiliation of ordinary people; certain people (who are carrying out worship and religious officers) including public officials/holders of power, including from friendly countries.</p> <p>Fifth, insults to ordinary people, dead people, national flags/anthems, state symbols, public officers/officials, and friendly heads of state are criminal acts; while insults to the President are not. So the President is seen from a sociological point of view, law and state administration have different duties and functions from ordinary people.</p>
		<p>Chapter II Crimes Against The Dignity Of The President And Vice President Article 137</p>	<p>Par 9 Two Attacks On The Honor Or Dignity And Dignity Of The President And Vice President Article 220</p>

			Sixth, equality before the law cannot be stated considering the status/position of the President is different from ordinary people in general.
2	General purpose	To protect the dignity of the President	First, The basic value of the offense of humiliation contained in the articles on

Based on the contents of the formulation of Article 154 in its explanation it states about maintaining peace and public order among the general public with the aim of not being influenced by various incitements that are disruptive and divisive by means of speeches, writings, pictures in public or newspapers. The formulation of this provision is formal. This is different from the Supreme Court's Decision Number 71K/Kr/1973 which states that what is meant by hostility, hatred, or humiliation in the form of humiliation is as referred to in the title XVI of the Second Book of the Criminal Code on Humiliation. Besides that, Articles 154 and 155 of the Criminal Code are not included in the complaint offense and the threat of punishment is heavier than provisions for insulting as referred to in the title XVI of the Second Book of the Criminal Code. These provisions do not guarantee equality before the law which is constitutionally contrary to Article 27 Paragraph (1) of the 1945 Constitution. So the provisions contained in Article 134, 136 bis and 137 of Article 154 and Article 155 of the Criminal Code are very subjective so that they have the potential to give birth to arbitrariness. by the ruling regime.

The lawsuit to the Constitutional Court is based on the accumulation of several events that have sparked concerns about the possibility of misuse of articles concerning criminal acts of insulting the President and Vice President. The re-inclusion of these articles in the draft Criminal Code is an attempt to revive an authoritarian anti-criticism government. This decision of the Constitutional Court is in line with the dynamics of changing legal politics and the needs of the community that require reform in the national legal system because the content that is regulated is a colonial legacy.[20]

#### 4. CONCLUSION

Re-inserting articles regarding insults to the President and Vice President after being revoked by the Constitutional Court Decisions Number 013-022/PUU-IV/2006 and Number 6/PUU-V/2007 has the potential to create legal uncertainty. Formulations that do not have firm and clear boundaries regarding the definition of attacking the honor of the President and Vice President can lead to arbitrariness on the part of the authorities. Making laws and regulations must pay attention to the principles of human rights and uphold opinion and the principles of equality before the law, freedom of expression of thoughts by the mandate of the 1945 Constitution of the Republic of Indonesia.

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