

The Contempt of Insulting the President/Vice President Reappears in Indonesian Criminal Code Draft 2022?

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Received 18-07-2022	Abstract: The purpose of this study is to examine the article of contempt of the president/vice president in the criminal code draft and to study and analyze the article of contempt of the president/vice president in the criminal code draft in terms of the theory of criminal law and human rights policies. This research uses the normative legal research method using a statute approach, which is an approach that is carried out by examining all laws and regulations related to the legal issues being handled. The results of this study show that the article of the Presidential/Vice President's Contempt Article in the Criminal Code draft is regulated in Chapter II (two) of the Criminal Code Draft Article 217, Article 218 and Article 219 and Article 220 concerning the attack on dignity against the president and vice president is a complaint, which in this case is then based on the power of the president and vice president as the object of the attack and can then complain or make a report to the Police as those who have authority in investigating. The Article of Contempt of the President/Vice President in the Criminal Code Draft in terms of the Theory of Criminal Law Policy and the Theory of Human Rights still remains very relevant because freedom of expression is not an absolute right.	Keywords: Article Contempt of The President / Vice President, The RUU KUHP
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INTRODUCTION

Indonesia is a democratic country of law based on Pancasila and the 1945 Constitution, thus leading to the high human rights of every citizen. The same is true in the right to free speech. Too widespread freedom of expression led to cases of contempt by citizens to their heads of state both verbally and through social media.

If we go back to the past in Indonesian history, in 2003, there were two activists who held a demonstration in which they both trampled on a photo of Megawati Soekarnoputri while expressing their opinions in front of the Merdeka Palace because the government broadcast a policy in the form of increasing fuel, electricity, and telephone tariffs. The two activists, named Nanang and Mudzakir, were sentenced to one year in prison on the grounds that they had committed acts of contempt against the president (Tempo, 2003).

In the era of President Susilo Bambang Yudhoyono, the punishment of the peoples which is considered to have committed insults to the president is still happening, in 2005 I Wayan Gendo Suardana, a chairman of the Indonesian Legal Aid and Human Rights Association Bali, was arrested and sentenced to imprisonment for 6 (six) months for criticizing the government's policy of increasing fuel prices. Not long ago, Sri Bintang Pamungkas, who is a lecturer at the University of Indonesia, was arrested and questioned by the police for allegedly insulting the president by launching the book "Dismantling SBY-JK's Political Lies" and he was

also involved in the action of lowering the President's photo (Detik News, 2005).

Furthermore, lawyer Eggi Sudjana was also accused of committing a criminal act of contempt of the president because he went to the Corruption Eradication Commission (CEC) to clarify the alleged provision of jaguar cars to members of the presidential palace (Tempo, 2007). The freedom of a citizen to obtain information, fiber to seek, obtain, store, process information has been protected by the 1945 Constitution of the Republic of Indonesia in article 28F, moreover what an Eggi Sudjana does isn an embodiment of n supervision carried out by the community against the ruling government.

Regarding the case of contempt of the president / vice president, it was initially regulated in the Criminal Code which states that an act / criticism that is considered insulting to the government is often considered as a delict and the Indonesian government, especially in this case is contained in the article of the Indonesian Criminal Code, such as:

Article 134 of the Criminal Code;
Contempt committed intentionally against the President and Vice President is threatened with a maximum sentence of 6 years or a maximum fine of Rp4,500

Article 136 Criminal Code:
Whoever deliberately in public verbally or in writing insults a ruler or public hadan in Indonesia, is threatened with imprisonment for

a maximum of one year and six months or a maximum fine of four thousand five hundred rupiah.

Article 137 of the Criminal Code:

Whoever broadcasts, performs, or pastes on publicly written or paintings containing contempt of the President or Vice President, with the intention that the contents of the insult are known or better known to the public, shall be punished with imprisonment for a maximum of one year and four months or a fine of not more than four thousand five hundred rupiah.

The insults were then widely regarded by some academics as a very broad interpretation therefore it is not surprising that in some regimes in force in Indonesia these articles are widely used to ensnare those who often criticize the government. The articles are then used by government officials, especially the president, to punish people who commit these "insults."

The Indonesian Constitutional Court through its Decision No. 013-022/ PUU-IV/2006 stated that the Article "contempt of the President" (Article 134, Article 136 bis, and Article 137 of the Criminal Code) no longer has binding force or in other words is no longer valid. The Constitutional Court considers that these articles can cause legal uncertainty (*rechtsonzekerheid*) because they are vulnerable to multi-interpretation and have the opportunity to hinder the right to freedom of expression of thoughts orally, in writing and expression. In its consideration, the Constitutional Court also considered that Article 134, Article 136 bis, and Article 137 of the Criminal Code were also deemed irrelevant to be applied in Indonesia which upholds human rights as expressly specified in the Indonesian 1945 Constitution.

The Criminal Code as the parent of criminal law in Indonesia is a legacy of Dutch colonial law, certainly has a historical nature because its existence is not in line with population growth at that time and today. The current Criminal Code is often considered incomplete and cannot facilitate various problems and the scale of innovation in the latest forms of criminal behavior, which is certainly in accordance with the growth of aspirations and thoughts of population needs (Irawati, 2019). The current Penal Code is also still motivated by the thought / understanding of individualism-liberalism and is strongly influenced by the classical tradition. Attempts to make changes to the Criminal Code have been carried out several

times, this is evidenced by the concept of several bills from the oldest to the most recent (Ngurah et al., 2022).

A new paradigm of criminal law reform national is not just changing criminal norms technically, the most important thing is to reflect on what the Indonesian nation aspires to be an independent, just and prosperous state. The renewal of the national criminal law is based on the vision and mission that surrounds the Criminal Code Draft (Faisal & Rustamaji, 2021).

There are several updates that have occurred in the criminal code, one of which is the insult to the president/vice president.

The contempt of the president/vice president is considered unconstitutional based on the Constitutional Court Decision No. 013-022/PUU-IV/2006. The ruling provides a strong argumentation to eliminate the president/vice president's contempt.

With the cancellation of the articles of contempt of the president or vice president, in fact, they currently have no legal force. However in its development, there is a criminalization of contempt of the president or vice president in the Criminal Code Draft. Although Indonesia's President Joko Widodo guarantees the intention to "revive" the article on insults to the president or vice president is not to silence the people however rather to protect those who often criticize the government in a good way for the benefit and public order. However, the re-regulation of this criminal act has caused debate (Widayati, 2017).

After the revocation of the article, it was then tried to revive it in the Draft Criminal Code which is being worked on by the legislative authorities in Indonesia or the House of Representatives. A series of rejections from various circles are also often voiced because the article is considered to be misused by the ruler to silence voices which are then considered to bring down the dignity of the President as head of state and head of government. Based on the previous constitutional court ruling, the article of contempt of the president or vice president should have disappeared from the Criminal Code.

Peviewing and realigning of laws and regulations is an activity of harmonizing various draft laws and regulations, including carrying out activities to harmonize various draft laws and

regulations with other laws and regulations as well as to existing laws and regulations, as well as harmonizing existing laws and regulations with other laws and regulations. It is intended that overlapping, inconsistent, conflicting laws and regulations with higher legislation can be revisited to make changes.

In the Indonesian Criminal Code Draft 2022 in articles 217 to 220, namely articles regarding insulting the president. These articles can hinder the right to freedom of expression, orally, in writing and in expression, whereas in the decision of the Constitutional Court no. 013-022/PUU-IV/2006, states that Article 134, Article 136 bis, and Article 137 of the Criminal Code concerning criminal acts of insulting the President or Vice President no longer have binding force or in other words are no longer valid. Based on this, it is necessary to conduct further research related to the offense of insulting the president and vice president that is re-emerged in the draft.

Previously, there has been previous research related to the Presidential/Vice President's Contempt Article written by Ajie Ramdan with the title of the article Controversy over the Presidential/Vice President's Contempt Delict in the RKUHP. In the study, it discussed related to the controversion of the contempt delict President/vicePresident in the 2019 RKUHP, as well as discussed related to the legal arguments of reviving the contempt delict President/vice president in the RKUHP year 2019 attributed to penvoy of the Constitutional Court Number 013-022 / PUU-IV / 2006 (Ramdan, 2021).

Different from the previous article in this study, the author deepens two things in this discussion, namely the first one related to the study of the President/Vice President's Contempt Article in the 2022 of Indonesian Criminal Code Draft and the urgency of re-re-arranging the President/Vice President's Contempt Article in the 2022 Criminal Code Draft in terms of criminal law and human rights policy theory. Based on this, the author feels it is important to discuss the issue of the President/Vice President's Contempt Article in the 2022 Criminal Code Draft to be discussed into a study.

LITERATURE REVIEW

This paper will use two theories, namely the theory of criminal law policy and the theory of human rights. The two theories are very closely related to the issue of insults to the president/vice

president. The offense in the Penal Code and the Criminal Code will relate to the purpose of punishment to be achieved in forming the legislation. Human rights theory is used because it correlates with the restrictions carried out by the The House of Representatives and the government in the laws and regulations made. Criminal policy, which includes policies related to criminal, criminal, and acts. The issue of criminal and criminal justice, as the most important part of criminal law and the estuary of the criminal justice system, is an ever-evolving part of the dynamic. In addition, developments in the criminal and criminal system are seen as a reflection of the level of development of a country's criminal law. On the other hand, some view that criminality and punishment reflect the level of civilization of a nation.

RESEARCH METHODS

Legal research is a process taken to find legal rules, legal doctrines to be able to answer existing legal issues. The research method used in writing the article is normative legal research (Diantha, 2016). This is because this research was conducted with the aim of assessing the existence of ambiguity in the norms in the Criminal Code Draft related to the Article Insulting the President/Vice President which in the article can lead to multiple interpretations in the rules. This study uses a statute approach, which is an approach that is carried out by examining all laws and regulations that are related to the legal issues being handled. Then also uses a case approach, namely the approach used to find values the truth and the best solution to legal events that occur in accordance with the principles of justice and finally, the historical legal approach is used, which is the approach used to find out the historical values that are the background and influence. The technique of tracing legal materials uses document study techniques, and analysis of studies using qualitative analysis.

RESULTS AND DISCUSSION

Review of the President/Vice President's contempt article in the Criminal Code Draft

Criminal acts are the main terminology in criminal law. A person's actions carried out in the life of society can be processed through criminal law mechanisms if in particular it was previously regulated by legal provisions containing threats in the form of criminal sanctions. The consequence of this provision is that a criminal cannot be imposed on a person who commits an act in the event that

the act committed has not been regulated in the rules that contain criminal sanctions. This is the spirit embodied in the principle of legality as the heart of criminal law (Hartono & Hariyanto, 2018).

The existence of issues related to the inclusion of Articles of insult to the President and Vice President in Criminal Code Draft raises pros and cons among the public considering that in developments in Indonesia, the Criminal Code inherited from the Dutch East Indies government has undergone changes and is full of intrigues (Arief, 2020).

In the latest draft year 2022, the article on assault on dignity is set out in the second book in Chapter II on the criminal act of assaulting dignity against the president and/or vice president. In general, the criminal act is a criminal act committed by deliberately attacking the honor or good name of the President and Vice President (Prayogo, 2020).

The article on contempt of the President and Vice President needs to be further regulated considering that in order to ensure the honor dignity and dignity of the President and Vice President however there are also people who argue that the Article of contempt for the President and Vice President in the Criminal Code Draft will have the opportunity to threaten free speech. In fact, the problem of criminal law renewal is a "big problem" faced by the Indonesian nation since the beginning of independence.

Regarding the Indonesian Criminal Code Draft of 2022 that exists and circulates in the community, the arrangements for contempt for the President and Vice President exist and are seen in Chapter II (two) of the Criminal Code Draft Article 217, Article 218 and Article 219 and Article 220. As for the articles of the Criminal Code Draft, it stipulates that:

Article 217

"Any Person who attacks the President or Vice President who does not fall under the provisions of a more severe sentence shall be punished with imprisonment for a maximum of 5 (five) years"

Article 218

- *Any Person who publicly attacks the honor or dignity and dignity of the President or Vice President shall be punished with imprisonment for a maximum of 3 (three) years and 6 (six) months or a maximum fine of category IV;*

- *It does not constitute an assault on honor or dignity as referred to in paragraph (1) if the act is done in the public interest or self-defense.*

Article 219

- *"Any Person who broadcasts, performs, or pastes writings or images so that they are visible to the public, broadcasts recordings so that they are heard by the public, or disseminates them by means of technology*
- *information that contains an assault on honor or dignity against the President or Vice President with the intention that its contents are known or more publicly known shall be punished with imprisonment for a maximum of 4 (four) years and 6 (six) months or a maximum fine of category IV"*.

Article 220

- *Criminal Offences as enshrined in Article 218 and Article 219 can only be prosecuted on the basis of a complaint;*
- *Complaints as referred to in paragraph (1) may be made in writing by the President or Vice President.*

If further reviewed related to the Criminal Code Draft, it is at least dotted with three main substances or problems in criminal law, namely the problem of criminal acts, problems of criminal misconduct or criminal liability, as well as criminal and criminaln (Efandi, 2011).

In the explanation of Criminal Code Draft, the meaning by the "attacking the honor or dignity of self" is basically something that attacks the good name or dignity of the President or Vice President in public, including insulting with letters, slandering, and insulting with letters. defamatory purposes. This provision is not intended to eliminate or reduce the freedom to express criticism or different opinions on policies. Insult is essentially a very despicable act, when viewed from various aspects between morality, religion, social values, and human rights values. Attacking and honoring human dignity, therefore, is theoretically seen as "*rechts delict, intrinsically wrong, mala per se*" and therefore also prohibited in various parts of the world. Article 220 of the Criminal Code Draft, it is also stated that the offense in the article on assaulting the dignity of the president and vice president is a complaint, which in this case is then based on the power of the president and vice president as the object of the attack and can then complain or make a report to the Police as the one who has the authority to investigate. Of course, it is different from ordinary deliberations, by regulating

the type of complaint, which can only be processed by the report if there is a complaint or report from a person who be a victim of a criminal act. Utrecht stated that in the complaint of the prosecution against the delict it is dependent on the consent of the aggrieved (victim) on the complaint (Kumendong, 2017). Therefore whether or not the sentence goes later is also very dependent on the victim to withdraw the report. Thus, the origin of the Insult of the President/Vice President in the Criminal Code Draft year 2022 should still be included in the formulation as a complaint.

Article Contempt of the President/Vice President in the Criminal Code Draft reviewed from the Theory of Criminal Law Policy and the Theory of Human Rights

The Ministry of Law and Human Rights has provided the latest draft of the Criminal Code Draft 2022 to Commission III of the House of Representatives. It is known that the draft still regulates the issue of contempt for the president and vice president.

The preparation of the concept of a new Criminal Code was motivated by the national needs and demands to renew and at the same time change or replace the old Criminal Code (*Wetboek van Strafrecht*) from the Dutch colonial era. So, it is closely related to the idea of "penal reform" (renewal of criminal law) which in essence is also part of a larger idea, namely the development / renewal (system) of national law. Efforts to update criminal law (*penal reform*) including the field of criminal law policy (*penal policy*) which is part and closely related to *law enforcement policy, criminal policy, and social policy*. The construction and renewal of criminal law bases on the criminal law policy taken in the formation of criminal law. Criminal law policy concerns both the formation of criminal law norms both material and formal, as well as criminal law enforcement policies. Criminal law policy in the formation of criminal law includes arrangements, both regarding prohibited acts, criminal liability and related to criminal sanctions. Meanwhile, criminal policy, including policies related to criminal, criminal, and acts. The issue of criminal and criminal justice, as the most important part of criminal law and the estuary of the criminal justice system, is an ever-evolving part of the dynamic. In addition, developments in the criminal and criminal system are seen as a reflection of the level of development of a country's criminal law. On the other hand, some view that criminality and punishment reflect the level of civilization of a nation.

Therefore, the renewal of criminal law must be taken with a *policy-oriented approach* and also a value-oriented *approach*. Policies or efforts to overcome crime are essentially an integral part of efforts to protect the community (*social defence*) and efforts to seek community welfare (*social welfare*). Therefore, it can be said that the ultimate goal or main goal of criminal law policy is the protection of society to achieve public welfare. Criminal politics is also essentially an integral part of social politics, namely policies or efforts to achieve social welfare.

Criminal policy is used as an alternative in resolving social policy. Overcoming social problems is carried out by law enforcement which is a response to crimes committed by the community. As a response to crime, the criminal policy has limitations in tackling such a broad and complex crime. Therefore, the countermeasures of crimes are carried out by penal means (the use of criminal law) and balanced by non-penal means (Arief, 2005).

The policy in efforts to overcome crime with criminal law is essentially also part of law enforcement efforts especially criminal law enforcement. Criminal law enforcement cannot be separated from the policies made by the state in order to enforce the rules for the realization of the common welfare, thus, criminal law policies are often also said to be part of the law enforcement policy (Ariyanti, 2019).

The existence of regulations in the Articles in the Criminal Code Draft related to contempt for the President or Vice President still remains very relevant because *freedom of expression* is not an absolute right. Freedom of expression is essentially a right possessed by every individual guaranteed by the constitution, this is contained in Article 28 E paragraph (3) Constitution which reads "Everyone has the right to freedom of association, assembly and issue".

Article 28 F of Indonesian Constitution also regulated that Everyone has the right to communicate and obtain information in order to develop his personal and social environment, as well as the right to seek, obtain, possess, store, process and convey information using any kind of available channels", also provides that everyone has the right to communicate and obtain information in order to develop his personal and social environment, as well as the right to seek, obtain, possess, store, process, and convey information

using any type of channel available. Meanwhile, article 19 of the Universal Declaration of Human Rights of the United Nations (UDHR) which was declared on December 10, 1948, it is emphasized that everyone has the right to freedom of opinion and expression, in this case it includes the freedom to cling to certain opinions without interference, and to seek, receive and convey information and ideas through any media without any restrictions.

Although Indonesia adheres to the principle of popular sovereignty, the dignity of the president or vice president is still relevant to be protected through criminal provisions on insulting the president or vice president as an ordinary offense, not a complaint. When viewed from the theory of human rights and nature related to freedom of opinion as a human rights, freedom of opinion is not absolute because in the freedom of opinion there are opinions that should be protected and there are also opinions that are not protected (Bangsawan, 2019). In relation to the protection of the dignity of the president or vice president, such freedom of expression is subject to restrictions. The restriction here is that freedom of expression should not take the form of an opinion that insults the president or vice president.

If the article of contempt for the honor, dignity and dignity of the President and Vice President is abolished and finally by the community is considered a matter of course as in a liberal country such as the United States, then it is also the same as not respecting the noble values of Pancasila (divine values, human values, unity and unity values, people's values and justice values) as the basis and nation soul from the source of all sources of law in Indonesia.

If referring more deeply to the law, it has a function as a maintainer of order and security, a means of development, enforcement of justice and public education. The establishment of invitation regulations as part of the development of laws directed at achieving state goals must be based on the values of Pancasila. This is a fundamental reflection of the implementation of human rights which must always be affirmed in line with the principles of civilized human life. The principle of balance can be realized by aligning rights and obligations and responsibilities (Fernando, 2022).

The article of contempt for the President/Vice President in the 2022 Criminal Code Draft if examined from the theory of criminal law policy is a development and renewal of criminal law based

on the criminal law policy taken in the formation of criminal law. Criminal law policy concerns both the formation of criminal law norms both material and formal, as well as criminal law enforcement policies. Criminal law policy in the formation of criminal law includes arrangements, both regarding prohibited acts, criminal liability and related to criminal sanctions. Meanwhile, criminal policy, which includes policies related to criminal, criminal, and action. The issue of criminal and criminal justice, as the most important part of criminal law and the estuary of the criminal justice system, is an ever-evolving part of the dynamic. The regulation of the article on insults against the President/Vice President in the 2022 Criminal Code Bill shows that development in the system of criminalization and punishment in Indonesia where the main purpose of criminal law policy is the protection of the community to achieve public welfare.

CONCLUSION

The offense in the article Contempt of the President/Vice President in the 2022 Criminal Code Draft is regulated in Chapter II (two) of the Criminal Code Draft Article 217, Article 218 and Article 219 as well as Article 220 concerning the attack on the dignity of the president and vice president is a complaint, which in this case then based on the power of the president and vice president as the object of the attack can then complain or make a report to the Police as who has the authority to investigate. Of course, it is different from ordinary deliberations, by regulating the type of complaint, which can only be processed if there is a complaint or report from a person who is a victim of a criminal act. The Article of Contempt of the President/Vice President in the Criminal Code Draft 2022 in terms of the theory of criminal law policy and the theory of human rights still remains very relevant because *freedom of expression* is not an absolute right. Freedom of expression is essentially a right possessed by every individual guaranteed by the constitution contained in Article 28.

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