

**CRIMINAL OFFENSE OF ATTACKING THE HONOR OF THE
PRESIDENT AND VICE PRESIDENT OVER CONCERNS ABOUT
CRIMINALIZING FREEDOM OF OPINION IN THE PUBLIC**

Zidane Zykrie Balfas, Erwin Asmadi

Email: Zidane08@gmail.com

Universitas Muhammadiyah Sumatera Utara

ABSTRACT

This research is motivated by the reform of the national criminal law through Law Number 1 of 2023 concerning the Criminal Code which again regulates the offense of assaulting the honor of the President and Vice President and causing polemics in the community regarding the potential criminalization of freedom of opinion. In the context of a democratic country, the existence of these norms raises a tension between the protection of the dignity and dignity of state officials and the guarantee of human rights, especially freedom of expression. Therefore, this study aims to analyze the regulation of the offense of assaulting the honor of the President and Vice President in the old Criminal Code and the 2023 Criminal Code, examine its limitations and qualifications, and assess its urgency from the perspective of protecting public freedom of opinion.

The method used in this study uses a type of normative juridical research with a descriptive nature and a legislative, conceptual, and case approach. The data sources used include primary, secondary, and tertiary legal materials obtained through literature studies both offline and online. The data collection technique is carried out through library research, while the data analysis uses a qualitative method by examining relevant legal norms, principles, and doctrines to obtain systematic and comprehensive conclusions.

Based on this research, it can be described that the regulation of the offense of assaulting the honor of the President and Vice President in the 2023 Criminal Code shows a fundamental difference compared to the old Criminal Code, especially through the change in the nature of the offense to a complaint offense that provides more proportional protection. Furthermore, the limitations and qualifications of the offence have been formulated by emphasizing the element of "attacking honour" in order to distinguish between legitimate criticism and contempt, although it still requires a clear interpretation to avoid multiple interpretations. In addition, the urgency of regulating this delicacy is still needed as a form of protection for the dignity of state

officials, but it must be balanced with strict implementation guidelines, human rights-based interpretation, and strict supervision so that it is not misused as a tool of criminalization of public freedom of opinion.

Keywords: Honor President and Vice President, Human Rights, Freedom of Opinion

A. Introduction

Indonesia is a country based on the law, in accordance with the realization of stability in every relationship in society can be achieved with the existence of legal regulations that are regulating (*regulate/supplement law*) and coercive legal rules (*Dwingen Recht*) every member of society to obey and obey the law.¹ The national legal system essentially provides a comprehensive guarantee of protection for every citizen, both in his or her position as part of the governance structure and as a subject of human rights. The protection is specifically directed at the maintenance of the dignity, honor, and good name of the individual so that it is not damaged or attacked by other parties. Everyone has an inherent right to defend his or her honor as part of a fundamental right recognized and protected by law.

The essence of this legal protection lies in the effort to uphold human *dignity*, which is a basic principle in the life of the nation and state and cannot be reduced under any circumstances. From the theoretical perspective of criminal law, violations of a person's honor and dignity can be categorized as *intrinsically wrong or rechtsdelict*, because they are contrary to the fundamental values that live in society, such as moral norms of religious teachings, social ethics, and human rights principles. Therefore, the protection of individual honor not only has a juridical dimension, but also reflects the values of justice and humanity that must be maintained in every legal system.²

The government and the legislature have formulated a revision to the Criminal Code (KUHP) that has been drafted for many years, which has been awaited by the Indonesian people to become a pure legal product and free from colonialism. On January 2, 2023, Law No. 1 of 2023 concerning the Criminal Code (hereinafter referred to as the 2023 Criminal Code) was

¹ Lubis, M. T. S. (2021), *The Principle of Restorative Justice in the Child Criminal System as Narcotics Crime Offenders*. In National Seminar on Social Educational Technology and Humanities, No. 1, page 3.

² Eva Mardiana. (2024). "Juridical Review of the Crime of Assault on the Dignity of the President or Vice President in Law No. 1 of 2023 concerning the Criminal Code (KUHP)", *Iblam Law Review*. No. 3, page. Sec. 49.

passed, with some of the previous regulations having been updated and some new regulations that were not regulated in the previous Criminal Code.³

Indonesia as a sovereign country is obliged to have its own National Criminal Code (KUHP). This is because the Criminal Code that has been used so far is sourced from Dutch translations, which results in many of its provisions becoming outdated. Therefore, there is a significant shift from the principle of formal legality to the principle of material legality, which is reflected in Article 1 number (1) of the 2023 Criminal Code. The article states that even if an act is not regulated in the law, it does not eliminate the validity of the law that lives in society. In other words, a person can still be convicted if his actions are considered to be against the applicable law in society, regardless of whether or not there are specific provisions in laws and regulations.

Value is the standard or measure of the norm that we use to measure things. According to the Indonesian Dictionary, values are qualities (things) that are important and useful for humanity.⁴ The National Criminal Code (KUHP) has contained many values that are very much in accordance with the distinctive character of the Indonesian nation and are also able to guarantee the existence of the principle of legal justice for all levels of society. The National Criminal Code has values that are very much in line with the values of the nation and adopts universal Human Rights (HAM) values.

B. Research Methods

A study cannot be called research if it does not have a research method.⁵ Research methods are one of the factors of a problem that will be discussed. The study was conducted using secondary data which was analyzed qualitatively using the Desk Research Method. The literature materials used in writing this research are several references originating from research results, studies, and reviews of several writings which are then summarized into a scientific paper.⁶

C. Discussion

³ *Ibid.*

⁴ Writing Team, 2012, *Kamus Besar Bahasa Indonesia, Language Center, Ministry of National Education*, Central Jakarta: Gramedia Pustaka Utama, p. 963

⁵ Hanifah, I., Hariyanto, H., Ginting, L., Koto, I., & Syafriana, R. (2026). Legal Protection of Indonesia's Fisheries from Foreign Investment: A Social-State Approach. *Jurnal IUS Kajian Hukum dan Keadilan*, 14(1).

⁶ Simatupang, R. S. A., Hanifah, I., & Mansar, A. (2025). The Concept of Restitution as Legal Accountability in the Crime of Human Trafficking. *Pena Justisia: Media Komunikasi dan Kajian Hukum*, 24(1), 3554-3462.

1. Criminal Regulations for Assaulting the Honor of the President or Vice President in the 2023 and Old Criminal Code

The regulation of the offense of insulting honor against the President and Vice President is an important issue in Indonesian criminal law. In the old Criminal Code (KUHP), we find several articles that regulate insults, namely Articles 134, 136 bis, and 137. However, a Constitutional Court ruling in 2006 stated that the articles were no longer valid, leaving room for improvements and adjustments in the law. With the passage of the 2023 Criminal Code, we see significant changes in this regulation.

In the context of freedom of speech, it is important to understand the difference between criticism and insults. Criticism is part of the human rights guaranteed by the constitution, while insults can be a sanctionable offense. The ambiguity in distinguishing between the two can hinder freedom of expression, which is a key element in a democratic society. Therefore, clear and firm provisions in the new Criminal Code are needed to protect individual rights while maintaining the honor of state institutions.

With the new articles in the 2023 Criminal Code, we are expected to see how the law adapts to the times and the needs of society. This arrangement is not only to protect the President and Vice President, but also to provide legal clarity for the public in expressing their opinions. Let's delve deeper into the provisions in this new Criminal Code and how they are implemented in the field.

Let's take a look at the comparison between the insult articles in the old Criminal Code and the 2023 Criminal Code. In the old Criminal Code, insults to the President and Vice President were regulated in Articles 134, 136 bis, and 137, where the criminal threat was quite severe, with a maximum prison sentence of six years. However, with the passage of the new Criminal Code, there has been a significant change where insults are now regulated in Articles 217 to 220, with lighter criminal threats and more focused on the material context.

One of the most striking changes is the shift from formal to material delicacies. In this context, insults can now only be reported by the President and Vice President as aggrieved parties. This shows a recognition of human rights and freedom of opinion, where constructive criticism of the government can no longer be considered a mere insult. This is a step forward in creating a balance between the protection of the honor of public officials and the freedom of public expression.

With a lower criminal threat, it is hoped that people will be more courageous to express their opinions without fear of excessive legal sanctions. However, it is important to remember that despite the decrease in criminal threats, contempt is still an act that is subject to sanctions. Therefore, wise and fair law enforcement is needed so that there is no abuse of these articles in the future.

In closing, we need to understand that changes in the regulation of the offense of assaulting the honor of the President and Vice President in the 2023 Criminal Code have broad implications for society. With clearer provisions, it is hoped that the public will better understand the boundaries between criticism and insults, as well as how they can express their opinions responsibly. This is an important step in building legal awareness among citizens.

A balance between freedom of expression and protection of individual honor is key to creating a healthy and democratic society. A society that can express its opinions without fear of disproportionate legal sanctions is an indicator of democratic progress. Therefore, it is important for law enforcement officials to have a clear understanding of these articles, so that law enforcement can be carried out fairly and non-discriminatory.

Finally, let's hope that with better arrangements in the 2023 Criminal Code, we can create a more open society that respects freedom of opinion, while still respecting the values of decency and human dignity. Thus, we can move towards a better and more democratic future for all Indonesian citizens.

2. Criminal Regulations for Assaulting the Honor of the President or Vice President in the 2023 and Old Criminal Code

The regulation regarding the offense of insulting honor against the President and Vice President has undergone significant changes from the old Criminal Code to the 2023 Criminal Code. Previously, insults to the President were regulated in Articles 134, 136 bis, and 137, which were later declared invalid by the Constitutional Court through its ruling. This shows that there is an effort to strike a balance between the protection of the honor of public officials and the public's right to have an opinion.

In this context, it is important to understand that criticism of government actions is part of a healthy democracy. However, often the line between criticism and insult becomes blurred, and this is what the Constitutional Court considers. By changing insults from formal to material in the 2023 Criminal Code, the government seeks to provide greater space for freedom of opinion, while still maintaining the honor of public officials.

These changes reflect the evolving dynamics of the law and the need to protect human rights in the context of freedom of expression. With this new provision, it is hoped that the public can better understand the boundary between constructive criticism and harmful insults, so as to create a more harmonious social environment.

In the 2023 Criminal Code, there are several articles that clearly regulate the offense of insulting honor against the President and Vice President. For example, Article 217 threatens perpetrators with a maximum prison sentence of five years for anyone who directly attacks the honor of the President or Vice President. This shows that the law pays serious attention to the protection of public officials.

Furthermore, Article 218 regulates insults committed in public, with a maximum penalty of three years. This provision further affirms the commitment to maintain the honor of the President and Vice President, but still provides space for the public to express their opinions. Finally, Article 219 expands the scope of contempt to include actions carried out through mass media and information technology, with the same criminal threats. It is a legal response to the development of the times where information can quickly spread.

It is important to note that Article 220 stipulates that this criminal act can only be prosecuted based on a complaint from the President or Vice President. This underscores the principle that only those who feel insulted can take legal action, thus encouraging responsibility in the use of freedom of expression.

The implications of regulating the criminal offense of attacking the honor of the President and Vice President in the 2023 Criminal Code are very broad. On the one hand, this law provides better protection for public officials, but on the other hand, it must be balanced with freedom of opinion which is a human right. This balance is very important so that the public can express criticism without fear of improper legal action.

Law enforcement officials also need to have a clear understanding of the boundaries between criticism and insults. This is important so that there are no errors in law enforcement that can harm society and hinder freedom of expression. Education and socialization regarding this provision is very necessary to ensure that the community understands their rights and obligations.

In conclusion, the 2023 Criminal Code is a step forward in regulating the law in Indonesia. With an emphasis on complaints and clearer regulation, it is hoped to create a more democratic climate where criticism can be accepted as part of the public dialogue, without

neglecting the protection of individual honor. It is a challenge for all of us to continue to maintain a balance between freedom and responsibility in opinion.

3. Limitations and Qualifications for Criminal Offenses for Assaulting the Honor of the President or Vice President in the 2023 Criminal Code

The delinquent attack on honor against the President and Vice President is a very important topic in the context of criminal law in Indonesia. In Article 218 of Law No. 1 of 2023, it is clearly stated that anyone who attacks the honor or dignity of the President and Vice President will be subject to a maximum criminal sanction of three years in prison or a category IV fine. However, it should be noted that there are exceptions, where such actions are not considered assaults if they are carried out in the public interest or as a form of self-defense. This suggests that the law must strike a balance between protecting public officials and safeguarding public freedom of expression.

It is important to remember that in 2006, the Constitutional Court ruled that several articles in the Criminal Code regulating insults against public officials were contrary to the 1945 Constitution. The Court emphasized that restrictions on the right to express criticism must be avoided, especially in democratic countries. This lays the groundwork for more progressive changes in our criminal law, where criticism of the government should be protected, not silenced.

With this provision in place, we must better understand that criticism delivered in a constructive manner and aimed at the public interest cannot be considered an attack on honor. This is important to maintain the accountability of public officials and ensure that the voice of the public remains heard. Let's take a deeper look at how these limitations and qualifications function in our legal practice.

Although Article 218 provides clear limits, there are potential abuses to watch out for. This article can be used by the authorities to silence criticism that is supposed to be part of democratic dialogue. In the absence of a clear operational definition of the term "insult," the space of subjectivity is wide open, which can be used to suppress freedom of opinion. This is a huge challenge that the community and law enforcement must face.

In this context, it is important to distinguish between constructive criticism and destructive criticism. Constructive criticism aims to improve and provide solutions, while destructive criticism tends to be demeaning and not beneficial. The public needs to be encouraged to convey criticism in a constructive way, so as to create a healthy dialogue

between the government and the people. It also reflects the principles of democracy that we must uphold.

Finally, maintaining freedom of expression within the existing legal framework is key to ensuring that people can actively participate in the democratic process. The government and the public must work together to ensure that criticism is not only accepted, but also appreciated as part of a shared responsibility in maintaining the integrity and honor of the country.

D. Conclusion

The regulation of the offense of assaulting the honor of the President or Vice President in the old Criminal Code and the 2023 Criminal Code has undergone significant changes both in terms of formulation and legal approach used. In the old Criminal Code, the provision regarding insulting the President and Vice President was removed by the Constitutional Court decision because it was considered potentially contrary to the principle of freedom of opinion. However, in the 2023 Criminal Code, the regulation was resurfaced with a different formulation, namely as a complaint offense and with an emphasis on the element of attacking honor or dignity. This shows that there are efforts by lawmakers to continue to provide protection for state symbols, but with due regard to the principles of democracy and human rights. Thus, the regulation in the 2023 Criminal Code is a form of compromise between protecting the honor of the head of state and guaranteeing freedom of public expression.

Based on the description of the previous chapter, the limitations and qualifications of the offense of assaulting the honor of the President or Vice President in the 2023 Criminal Code, it can be concluded that although normatively there have been restrictions through more specific elements of the offense, there is still a fairly wide room for interpretation. Limitations between legitimate criticism

and insults that attack honor have not been formulated firmly, so they have the potential to cause different interpretations in law enforcement practice. The qualification of this crime basically emphasizes the existence of acts that manifestly degrade honor or dignity, but the assessment of this depends heavily on the perspective of law enforcement officials and the context of the event. Therefore, it can be concluded that although there are efforts to improve the formulation of the deli, the clarity of normative boundaries still needs to be strengthened so as not to cause legal uncertainty.

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