

## Criminalization of Insults the President and Vice President in Indonesia

Dewi Maesyaroh\*<sup>1</sup>, Sulistyanta<sup>2</sup>

<sup>1,2</sup> Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia

[dewimaesyaroh@student.uns.ac.id](mailto:dewimaesyaroh@student.uns.ac.id)<sup>1</sup>, [sulistyanta@staff.uns.ac.id](mailto:sulistyanta@staff.uns.ac.id)<sup>2</sup>

Address: Jl. Ir. Sutami 36 Kentingan, Jebres, Surakarta, Central Java, Indonesia 57126

Author Correspondence : [dewimaesyaroh@student.uns.ac.id](mailto:dewimaesyaroh@student.uns.ac.id)\*

**Abstract :** Law Number 1 of 2023 about Criminal Code (KUHP), standardizes the criminalization of insults head of state Indonesia, particularly in Articles 217 to 220. The rule is considered contradictory because it can limit criticism toward the government. This study aims to examine regulations akin to castigations against the President and Vice President and evaluate the impact of criminalization on freedom of expression and human rights. The research method utilized normative legal research conducted by reviewing literature and focusing on the democracy principles, freedom of speech, and civil rights. The study results show that the criminalization of offences aim the President and Vice is considered a mechanism check and conducive balance, ensuring that criticism against the President is conveyed responsibly without violating ethics, and maintaining the honor and dignity of the president. In conclusion, insulting the President provokes great consequences, in regard to the constitution, freedom of speech is not as limitless, and not absolute and must be rationated by the human rights of others. Therefore the rules concerning the criminalization of insults aim the President and Vice are suitable to maintain stability and public interest and belongs to the process of legal reform.

**Keywords:** Criminalization of Insults President and Vice President ; Freedom of Speech; Human Rights.

### 1. INTRODUCTION

The criminalization of insults aim the President and Vice President within Act No. 1 of 2023 regarding the Criminal Code (KUHP) is reputed a borden on freedom of speech and opinion, which opposes the democracy principles and human rights. The articles in question include regulations about disrespecting the president and the vice, particularly within Articles 217 to 220. According to the provisions of this article, any people who openly violate his leader's nobility can got penalized with fines and even send theto the jail. [1] Criminal Code (WvS) previously also regulated mocks against the state's leaders in Articles 134, 136 bis, and 137. Ruling No. 013-022/PUU-IV/2006 by the Constitutional Court abolished insult against chief of the country because it was considered contrary to the Constitution. [2]

This change aims to prevent disinformation from having an impact not only on the political field but also on aspects of economic, social, and cultural life. [3] This change has a significant impact on the balance between the protection of the image of the head of state and the central rights of people, especially the right of voice. Human rights, counting freedom of speech, must also be limited by the human rights of others as well as to safeguard the state's interests in maintaining political stability and national security. This freedom is not as free as it can be, to maintain a balance between individual freedom and the public interest. Freedom of opinion is allowed, but the public must provide consumptive criticism.

Prasetyo Hadi Prabowo in his study, has made a relevant contribution in understanding the regulation of disrespecting the state's leader in the legal context in Indonesia. The study concerns on the distinct between the regulations of mocking the head of state in Law No. 1 of 2023 regarding the Criminal Code (KUHP) and Criminal Code (WvS) highlights the incompatibility of the regulation with the principles of equity and the 1945 Constitution. [4] In contrast to the author's research, which looks for wider and more in-depth approach by exploring the legal changes practical implications about voice expression and human rights associated to the criminalization of insults against the state leaders in Indonesia. This study discuss the rules for criminalizing violance the president and vice president intimation criminalization insluts the president and vice president violate independence of discourse and human rights.

This study urgency tries to explain the impact of the criminalization of abuses attack the president and vice president on free will of speech and human rights in Indonesia. The study results are able to provide in depth awareness into the urgency of the principle of conducive checks and balances certify that criticism of the head of state is delivered responsibly without harming the ethics and maintain the nobility leader that must be honored. Restrictions on freedom of speech must be balanced and should not be used to silence constructive criticism and the public in their opinion of complying with applicable legal rules and ethical norms.

Every nation, including Indonesia, should protect the basic right to free expression. The preservation of the right to free expression is also crucial to the human rights framework. Criminal penalties for insults directed at the President and Vice President may put people at danger of having their rights violated, particularly if these rules are used arbitrarily or are abused to stifle reasonable criticism. Therefore, it is important to take into account the impact on freedom of expression and human rights while analyzing the debate surrounding the prosecution of insults directed towards the President and Vice President in the framework of the new Indonesian Criminal Code.

## **2. LITERATURE REVIEW**

### **Criminalization**

Criminalization is a process or policy that changes an act or behavior that was not previously considered a illegal act into a behavior that is subject to criminal sentences. Moeljatno stated that criminalization must meet three main criteria: the act is detrimental to society, criminalization is the main way to avert such committed acts, and the government can

effectively enforce criminal threats. Sudarto added three other criteria: the act is harmful, the analysis of costs and benefits, and the burden of law enforcement. [5]

### **Throwing insults toward the Leaders of country**

Insult is a behavior that attacks a person's integrity or honor, either through direct or indirect words, to be known by the general public. Insults to someone can be done through direct or indirect words, including in the form of writing, to be known to the public. This can be in the form of unpleasant acts or remarks, including the use of abusive words that can damage an individual's good title or honor. Although the Constitutional Court has struck down the article on mocking the heads or leaders of a country, this controversial similar article has been revived. [6]

### **Freedom to Speak**

The right to speak freely, in this case is freedom of speech in a democratic system that includes various forms of communication, including oral speech, writing, art, and electronic media. A government that is open to criticism and the opinions of its people is the government that the people expect, and this is a reflection of the principle of democracy. Without the support of the people, the government cannot function properly.[7]

### **Human Rights**

In general, human rights are rights inherent in each individual that are fundamental and universal, applicable to all people without discrimination. Human rights belongs to an integral part of fundamental human rights, reflecting respect for the dignity and freedom of the individual recognized by national and international legal instruments. This right is His grace that obligate to be appreciated, advocated, and preserved by institutions and societies.[8] It is this fundamental right inherent in every individual that must be honored, defended, and sufficed by the state.

## **3. METHOD**

The study belongs to a normative legal research with an emphasis on free expression and human rights, this study looks at how insults directed towards the president and vice president are now illegal under Indonesia's Criminal Code. Then secondary legal materials refer to literature references obtained from research, scientific papers, and expert views that can be taken from books and journals relevant to this research. The categorized data is simplified, presented in the form of a systematic and structured narrative or text description, and then analyzed to produce clear and informative conclusions.

#### 4. RESULTS AND DISCUSSION

##### **Historical Context and Legal Framework**

The Criminal Code comes from the Dutch colonial heritage, namely *Wetboek van Strafrecht* (WvS) 1915 NO. 732. After Indonesia's independence, the Dutch Criminal Code, altered the titles of Dutch kings and queens to president and vice president, with articles regulating insults to them located in Articles 134, 136, and 137. These articles are not included in the category offense upon complaint offenses (*klachtdelict*), meaning that legal proceedings against these violations can be carried out without having to wait for a report from the party who feels aggrieved. The prohibition of hosing the president and vice president after independence, especially in the country's unstable conditions, can be understood as an effort to maintain the stability and security of the country.

These articles are often referred to as *lesse majeste* articles, which aim to protect the country's leaders from criticism or interference.[9] The New Order and certain sections of the Indonesian Criminal Code, most likely alludes to the way in which the government frequently employed such provisions to punish particular offenses, including defaming the president or vice president. Namely articles 134, 136 bis, and 137 one example is a figure named Sri Bintang Pamungkas who was imprisoned on charges of insulting Suharto. This case began when Sri Bintang allegedly led a protest against Suharto and his entourage during a visit to Germany in April 1995. However, Sri Bintang was there to give lectures in Hannover and Berlin. The accusation then turned into insulting Suharto in a speech with Indonesian students in Berlin.[10] In Indonesia's history of opposition to authoritarian government, the above cases are true examples of how the New Order dictatorship under Soeharto used authority and legislation to muzzle criticism and viewpoints that were deemed to disrupt political stability. Those who dared to speak out and criticize the regime at the time faced oppression and incarceration without a fair trial. Nonetheless, their opposition and criticism have paved the path for a transition toward democracy and free expression in Indonesia. Since May 1998, Indonesia has seen quick and dramatic transformation. The many areas of public life were more widely opened up, allowing for the emergence of previously banned activities and discussions under authoritarian governments. The articles regulating insults aim the chiefs of country were not only used during the New Order period but also during the Reform period, especially during the leadership of President Megawati Soekarnoputri to President Susilo Bambang Yudhoyono. Many people have been accused of insulting the president of Indonesia when they hold demonstrations, and speeches, or perform theatrical acts.

In Decision No. 013-022/PUU-IV/2006, the Constitutional Court granted a motion for material review under Criminal Code Articles 134, 136 bis, and 137. Constitutional Court stated that these articles are contrary to the 1945 Constitution. These articles are considered to have the potential to be abused by the authorities and can be an obstacle to freedom of opinion. However, the current government has re-included the article regarding insulting the president in the new Criminal Code, namely through Law Number 1 of 2023 touching the Criminal Code. The articles in question are Articles 217, 218, 219, and 220. There is a fundamental difference between the regulations for contradicting the Head of state and vice, which were originally ordinary offenses (*gewone delicten*) to complaint offenses (*klacht delicten*). This change in formulation may reflect the efforts of legislators to improve the effectiveness of criminal law in responding to social, and technological changes and societal values. Articles 217, 218, 219, and 220 in the revised Criminal Code contain new provisions correlated to disrespecting the head of state and their deputy. If the act occurred prominently or self-defense, then it is not considered an attack on the dignity.

Constructive criticism, which aims to provide solutions or improvements, is valued more than criticism that is harassing or insulting. In criticizing the government, including the Head of state and vice, it is also important to respect the ethical norms that apply in society. Efforts to protect state institutions through law must be in line with efforts to strengthen public participation in the democratic process. Thus, the criminalization of insults against the president can be seen as part of an effort to create a society that is more responsible for voicing opinions, on the same side to democratic values that value freedom of expression and inclusive dialogue. The rules for punishing insults against the president and vice president, if applied wisely and in accordance with democratic principles, not only protect the honor of the institution but also strengthen the value of responsible freedom of speech. With clear limitations, proportional penalties, and a fair legal process, these rules create a safe environment for the expression of opinions and encourage a culture of constructive dialogue without fear of criminal charges, which impacts the protection of institutions and the development of society.

### **Implications of Criminalizing Insults toward the President and Vice President**

Indonesia is a democratic country that upholds freedom of opinion and human rights. In Indonesia, democracy is reflected as an important basic principle because this country implements sovereignty of people. Although freedom to voice is recognized as important values in a democratic system, in practice, criminalization of insults happened to premiers, there is a potential restriction on freedom of speech itself. This can happen because such criminalization

can create fear or intimidation for the public to criticize the government or state leaders, which can ultimately hinder the democratization process and participatory community development.

The criminalization of insults direct to President and Vice within Articles 217, 218, 219, and 220 in Act No. 1 of 2023 concern the Criminal Code is feared to harm freedom of speech. The criminalization of these articles can pose a real threat to the freedom of expression of individuals, as people become afraid of the legal action that could be imposed on them. Additionally, criminalization can carry the risk that governments may use it as a tool to limit criticism of their policies or actions. In democratic theory, freedom to speak is a major right for each individual to express his or her opinion. Sovereignty of communication is in principle a fundamental right preserved by democratic countries. While the criminalization of insults offend the president and the deputy president can be seen as a potential restriction on freedom of speech, that freedom is not as free and must be regulated by law to maintain a balance between individual freedom and the public interest, i.e. related to the welfare and common interests of society as a whole.

Power is a necessary component in the execution of the law and the governance of a country. However, when power is unchecked, it may result in abuse of power, authority, and injustice. In a democratic government, criminalizing insults directed against presidents and vice presidents may limit freedom of expression. In this scenario, abuse of power occurs when a regulation or legislation that criminalizes insults to the president and vice president is utilized on purpose to stifle criticism or opposing views. As a result, one of the essential ideals of democracy is the existence of systems that limit government authority while preserving freedom of expression. A democratic democracy allows citizens to vote in general elections, promotes transparency and accountability, and emphasizes law as the cornerstone of justice. Political education is crucial for raising understanding and informed voting. In practice, the notion of democracy, or people's sovereignty, promotes public participation in decision-making, so that every rule of law imposed and enforced represents the fairness seen by the people. In a law-based state, law must be defined as the union of the highest hierarchical legal rules, namely the constitution. In a state of law, the Constitution takes precedence.

This criminalization also has an effect on human rights because it restricts the freedom of voice and word guaranteed by international and national legal instruments. The Universal Declaration of Human Rights (DUHAM) and the International Covenant on Civil and Political Rights (ICCPR) both acknowledge the right to free expression as an essential human right. Both document affirm the liberty and equal justice inherent in all individuals, ensuring their

freedom of expression without hindrance, further choice to pursue, obtain, and convey evidence and thoughts through various sources regardless of boundaries.

Article 28E of the 1945 Constitution states that honor and dignity are constitutional rights protected by the Constitution. Everybody has the right to freedom of opinion, expression of thought, and conscience-driven action, according to Article 28E(2). Article 28E(3), on the other hand, highlights that everyone has the freedom to associate, congregate, and voice their thoughts. These rights, which uphold the values of democracy and respect for each person's freedom and dignity, are an essential component of the fundamental human rights. Then Law No. 39 of 1999 on Natural Rights strongly supports freedom of speech, expression, and opinion as part of the fundamental rights that every individual in Indonesia has. Article 23 (2) also expressly states that each civilian has freedom to voice, spread, and get thoughts based on their conscience, both spoken and in writing, through various media.

However, the right to choice of communication is not an unrestricted right. According to Article 19 paragraph (2), everyone has the right to freedom of speech, which includes the ability to search for, receive, and disseminate information and ideas of any sort without respect to boundaries, whether verbally, in writing, in print, through the medium of their choosing, or through other media. The International Covenant on Civil and Political Rights (ICCPR) places restrictions on the right to free speech in certain circumstances. According to Article 19(3) of the ICCPR, limitations on the exercise of rights granted in Article 19(2) are permissible as long as they are mandated by law, respected other people's rights or reputations, and safeguard public health, morals, national security, or any combination of these.[11] Despite the fact that freedom in expressing is known as a right of citizenship, the state can set borders in the public interest. As mention in the 1945 Constitution, it recognizes freedom of opinion, this is not absolute and can be under controled by the law. According to Article 28J(1), in order to respect the rights of others and satisfy the requirements of a democratic society, rights and freedoms must be used in conformity with the law. Although human rights are unalienable, Article 28J(2) states that they may be limited for the good of the public, including law and order, national security, health, and morality, as well as to safeguard the rights of others.

Some countries apply barriers for freedom of speech, making sure that everybody have the right to come up with their opinions without fear of repression or pinalty. For example, the United States and China have very different approaches to regulating free speech. The United States, under the liberal ideology, places freedom of speech as a fundamental and protected right. The United States can be assessed as a country with the highest quality of democracy in the world.[12] Freedom of speech in the United States receives very high constitutional

protection. This protection may be one of the strongest forms of protection granted to any individual right under the American Constitution. The value of freedom of speech is generally prioritized over other democratic values. Criticism of the President in the United States is not punishable because it is protected by the US Constitution, which recognizes freedom of speech and expression. This is a fundamental principle in the democracy of the United States guaranteed by the First Amendment of the Constitution. As a democratic country, the United States provides strong protection for the right to criticize the government, including the President, without fear of criminal action or retaliation.[13]

The penal code of the United States does not expressly prohibit insults directed at the President and Vice President. Rather, threats against life, kidnapping, or physical violence against the President, President-elect, Vice President, and Vice President-elect are prohibited by U.S. law, specifically 18 U.S. Code § 871. A fine or up to five years in jail may be imposed for this offense. Threats that are not physical are not subject to the same regulations as public insults. Federal criminal law does not expressly control insults directed at public officials in the same manner, despite laws protecting high-ranking officials from threats of violence or kidnapping.[14] In the US, robust constitutional protection of free speech is frequently regarded as an essential humanistic principle. This value is seen to be the outcome of a protracted historical conflict and the combined experiences of American culture. It is also believed that this value is a powerful representation of the diverse American culture. In this situation, how one approaches freedom of expression is heavily influenced by considerations of humanitarianism. This method tends to safeguard destructive words and ideas rather than restricting them. This may be seen as an attempt to give people more freedom to express themselves without worrying about roadblocks or government harassment.[15]

On the other side, China, which embraces communist ideology, tends to have massive restrictions on free speech, as part of the government's efforts to preserve political and social stability. Insults against public officials are strictly regulated by the Criminal Law of the People's Republic of China, which places a strong emphasis on safeguarding political power and the socialist system of the state.[16] Articles of the law impose harsh penalties for insults directed towards the president and other public officials. According to the PRC's Criminal Law, there are penalties for activities that endanger political authority or the socialist system, such as inciting through the dissemination of rumors, insults, or defamation. [17] According to Article 105, there are strict penalties for subversion through rumors or slander, with jail terms of up to five years or more, according on the seriousness of the offense. This regulation



represents the PRC's stringent guidelines for monitoring information and accepting criticism from the public. [18]

In the US, laws pertaining to threats to one's bodily safety are the only ones that restrict speech and expression, hence there are no particular restrictions on insults directed at the president and vice president. On the other hand, defamation and insults against public authorities, including the President, are strictly prohibited by law in the People's Republic of China, both offline and online. A comparative analysis of the laws governing insults directed against the President and Vice President of the United States, the People's Republic of China, and Indonesia reveals that while these policies vary, they are all based on the same legal ideals and principles. Indonesia is not as tight about censoring speech as China is, but it is still not as free as the United States. Such limits must be explicitly designed to preserve legitimate rights or interests, such as avoiding the spread of hatred and violence. Thus, the restriction should continue to favor the value of the speaker's overall speech while protecting the individual's right to express his or her views responsibly. However, such limits can be exploited to suppress valid government criticism and limit free expression, both of which should be safeguarded in a democratic system. Efforts to safeguard state institutions through legislation must be coordinated with efforts to increase public engagement in democratic processes. Thus, criminalizing insults to the president might be viewed as part of an effort to foster a more responsible society in terms of expressing viewpoints, consistent with democratic norms that respect freedom of expression and inclusive discussion.

The criminalization of insults face the executive department in Indonesia limits freedom of speech in certain case, such as the spread of hoax or provocative issues that is seen to be disruptive to national stability. However, Indonesia's approach toward freedom of speech indeed shows an effort to achieve a stability between self-freedom and the public interest, which suitable with Pancasila principles which are encourage unity and social justice. Freedom of expression is assumed a fundamental right, but it must be put together with the moral responsibility to honor the rights and obligations of other individuals and the values of society. This approach warrants that freedom of expression is not abused to disadvantages others or undermine social harmony. Talking about comparison to another countries that have different approaches to freedom of expression, it can be seen that Indonesia's democratic norms, which focus on cooperation and harmony in society, provide a stable approach among individual and the public interest.

## 5. CONCLUSION

The criminalization of abuses disregarding the President and Vice in the Indonesian Criminal Code (WvS) was decriminalized. Articles 217, 218, 219, and 220 within Law Number 1 of 2023 re-regulate it, bubbling attention about the negative impact on freedom of speech, which assume as the main pillar of democracy. The use of complaint offenses is the right step to prevent arbitrary actions and improve legal integrity. A comparison of freedom of speech between countries illustrates a variety of approaches to protecting and regulating freedom of speech. Each country has different characteristics and values of society, so rules or policies regarding freedom of speech must be adjusted to their respective cultures, laws, and ideologies. Criminalization is used for certain political reasons and represents a good appropriation of public opinion and criticism of the government. The implementation of this strategy must be fair and transparent so that the public can trust the legal institutions and the government, otherwise the legal system's integrity will be jeopardized and overall societal stability will suffer. Nonetheless, the criminalization of insults upon the President aims to safeguard upon public interest, also the integrity of the law and create a healthy democratic climate by providing space for discussion and constructive criticism of the government.

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