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The Meaning of the Phrase "Degrading Act" in the Criminal Offense of Insulting the President or Vice President

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Abstract. This study examines Law No 1 of 2023 concerning the Indonesian Criminal Code, mainly focusing on the provision regarding the insult of the President and/or Vice President in Article 218, paragraph 1. The research employs a normative juridical approach, explicitly analyzing the grammatical interpretation of the phrase "Degrading Act". The findings indicate that the "Degrading Act" encompasses actions that disrupt judicial processes, threaten judges, and insult the judiciary. This includes defacement, writing, drawing, or damaging national symbols, even when such actions deviate from their intended form, size, or colour. Notably, the study demonstrates that the categorization of the "Degrading Act" extends beyond mere legal definitions, encompassing considerations of societal propriety. By providing a comprehensive analysis of the legal and societal dimensions of insulting state leaders, this research contributes to a more nuanced understanding of the evolving legal landscape in Indonesia. Furthermore, the study offers a clearer understanding of the legal aspects concerning insults towards state leaders and contributes to the changing legal landscape in Indonesia.

Keywords: Degrading Act; Meaning; President; Vice President.

INTRODUCTION

Human Rights (HR) hold an indomitable place within individual entitlements that cannot be overlooked [1]. They are an inherent and universal attribute, extending their reach beyond geographical boundaries and diverse demographics. These rights, accessible to all individuals irrespective of their background, serve as an unequivocal shield against the encroachment of others. Rooted deeply within the essence of human existence, they play a pivotal role in safeguarding personal integrity and shaping the moral bedrock that underpins societal interactions [2].

While the term "Human Rights" might not be explicitly stated within Indonesia's Constitution, the foundational document, the 1945 Constitution (pre-amendment), enshrines a framework of rights and duties for citizens and residents alike [3]. Although not explicitly labelled as "Human Rights," this framework encompasses the quintessence of these rights, underscoring their significance within the national legal landscape.

This framework entails several critical dimensions of Human Rights, as manifested in different articles: Article 27 § 1 guarantees the "equality of position and obligation of citizens within the law and government"; Article 27 § 2 emphasizes "the right of each citizen to pursue meaningful work and secure livelihoods"; Article 28 ensures the fundamental right to "freedom of association, assembly, and expression, as stipulated by law"; Article 28 § 1 assures "the essential freedom to practice one's religion, safeguarded by the state"; Article 31 § 1 underscores the pivotal "right to education."

A crucial aspect of Human Rights, freedom of expression, is also anchored within Indonesia's Constitution. Article 28 and Article 28E § 3 affirm the sanctity of this right, proclaiming Article 28: "freedom to associate, assemble, express thoughts through speech and writing, and other means, as stipulated by law." Article 28E § 3: "Everyone possesses the entitlement to form associations, assemble, and voice opinions."

This right to freely express thoughts is further enshrined in the Universal Declaration of Human Rights (UDHR) in Article 19, unequivocally stating: "Every individual has the right to freedom of opinion and expression, including the liberty to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers".

However, the recent enactment of Law No 1 of 2023 on the Criminal Code (KUHP) has spurred a wave of concerns, particularly concerning the revival of provisions related to the insult against the President and/or Vice President, as articulated in Article 218 § 1. The article stipulates penalties for "publicly attacking the honour or dignity of the President and/or Vice President". While the language is clear, it raises queries about what constitutes an "attack" on honour or dignity.

Though the explanatory notes of Article 218 § 1 provide some elucidation, the phrase "attacks the honour or dignity" remains subject to interpretation. The challenge lies in deciphering the breadth of actions under this umbrella. The need for clarity is evident, as a nebulous understanding could lead to inconsistent enforcement, leaving room for diverse perspectives from law enforcement entities.

Therefore, this research aims to investigate the complex relationship between the enactment of Law No. 1 of 2023 on the Criminal Code (KUHP) and the fundamental human right of freedom of expression. Through a comprehensive review of legal provisions, case law, and scholarly discourse, this research aims to provide a nuanced understanding of how the revived condition on Insulting the President and/or Vice President in Article 218 § 1 of the Criminal Code impacts the delicate balance between safeguarding individual dignity and upholding the essential right to express opinions freely. By highlighting the potential implications and challenges posed by this legal development, this study seeks to contribute to the ongoing dialogue around the complex relationship between law, human rights, and the evolving socio-political landscape in Indonesia.

Theoretical Basis

Legal Analysis and Interpretation. The core element of the framework involves an intricate legal analysis of Law No. 1 of 2023, specifically Article 218 § 1 concerning the insult of the President or Vice President. This entails meticulously examin-

ing the provision's language, structure, historical context, and legislative intent [4]. By delving into legal commentaries, case law, and relevant scholarly discourse, this component aims to uncover the underlying legal implications, potential ambiguities, and precedents related to the "Degrading Act."

Linguistic and Grammatical Interpretation. The framework integrates a linguistic analysis to decipher the semantics and nuances of the "Degrading Act." This component involves a granular examination of the phrase's grammatical construction, syntax, and linguistic connotations [5]. By leveraging linguistic expertise, the study aims to unveil the diverse interpretations and potential shades of meaning that the term may encompass.

Societal Perception and Impact. The framework acknowledges the importance of societal perspectives and reactions to the "Degrading Act." This involves comprehensively examining public opinions, media discourse, and stakeholder viewpoints regarding the provision's reintroduction [6]. By capturing diverse societal voices, the study aims to shed light on the broader implications of public discourse, political engagement, and democratic culture.

However, this study provides a nuanced understanding of the legal, linguistic, and societal dimensions surrounding the "Degrading Act." Ultimately, this research seeks to contribute to a deeper appreciation of the evolving legal landscape and its implications within the Indonesian context.

METHODS

This research employs the method of normative legal analysis, utilizing various research approaches, including the statute approach and the conceptual approach [7]. The statute approach involves analyzing rules and regulations related to the issue under study, specifically concerning the criminal offence of insulting the President and/or Vice President. On the other hand, the conceptual approach provides an analytical perspective on problem-solving in legal research, considering legal concepts that underlie it and the values embedded in the norms of regulation about the utilized ideas [8]. This approach draws from evolving legal viewpoints and doctrines.

Secondary legal sources for this study include Article 218 § 1 of Law No. 1 of 2023 concerning

the Indonesian Criminal Code (KUHP). The legal analysis in this study is conducted through grammatical interpretation, which entails interpreting the words of the law according to both linguistic and legal grammatical rules and principles.

RESULTS AND DISCUSSION

Revisiting the Historical Emergence of the Criminal Offense of Insulting the President and/or Vice President. Before the Constitutional Court Decision No. 013-022/PUU-IV/2006, Indonesia regulated the crime of insulting the President and/or Vice President in Articles 134, 136 and 137 of the old Criminal Code (KUHP), which was derived from the Dutch *Wetboek van Strafrecht* (WvS). Subsequent amendments incorporated These provisions into several statutory regulations in the former Criminal Code. The phrase "President and/or Vice President" replaces the Dutch rulers, namely the queen or governor-general and the Dutch rulers in the Dutch East Indies.

However, this regulation was brought to Judicial Review at the Constitutional Court (MK) and declared unconstitutional due to causing legal uncertainty and susceptibility to multiple interpretations. This uncertainty raised questions about whether protests, expressions of opinion, or thoughts constitute criticism or insults towards the President and/or Vice President. Constitutionally, this contradicted Article 28D § 1 of the 1945 Constitution, which unequivocally states that "the right to recognition, guarantees, protection, and fair legal certainty as well as equal treatment before the law" should be ensured. It also has the potential to hinder communication efforts and the acquisition of information guaranteed by Article 28F of the 1945 Constitution. The previous articles, 134, 136 bis, and 137 of the Indonesian Criminal Code, could potentially hinder the freedom of expressing thoughts through speech, writing, or expression when law enforcement agencies always employ these articles against protest moments in public spaces. This is constitutionally inconsistent with Articles 28, 28E §§ 2, 3 of the 1945 Constitution.

The revival of the offence of insulting the President and/or Vice President is reinstated under Article 218 of Law No. 1 of 2023 concerning the Indonesian Criminal Code (KUHP). The reintroduction of this offence is based on several reasons:

1. The legal interest or fundamental value to be protected by the offence of insult is "human dignity," a universal value highly upheld.
2. Insult, by its nature, is a highly reprehensible act (considering moral, religious, societal, and human rights values), as it attacks and degrades human dignity (a universal value). As such, it is theoretically perceived as "rechtsdelic," "intrinsically wrong," "mala per se," and thus prohibited (criminalized) in various countries.
3. Determining the scope of types of insult offences can vary for each society or country, including criminal policy and social policy issues closely tied to each nation's socio-philosophical, socio-political, and socio-cultural values.
4. The scope of insult includes ordinary individuals, specific individuals (engaged in religious activities, religious officials, judges, officials, symbols, state institutions (flags, national anthems, state emblems), government officials, President/Vice President including those from friendly countries, sacred symbols/institutions/substances (God, divine word and attributes, religion, messengers, prophets, holy scriptures, religious teachings, or religious practices), and even deceased individuals.
5. It seems peculiar that insults against ordinary individuals, deceased individuals, flags/national anthems, state emblems, officials/public servants, and heads of friendly states are deemed offences. In contrast, insults against the President, whose status/position/role/duty/function is distinct from ordinary individuals, appear different from a sociological, legal, and constitutional perspective.
6. As the President's status/position is inherently different from that of ordinary individuals, it is unsuitable to confront this issue with the principle of "equality before the law." If questioned as such, all differences in types of criminal offences based on distinct status/qualification (such as various forms of insult, murder, assault, etc.) would need to be eliminated, as it would be considered contradictory to the principle of "equality before the law."

Considering the elucidation of the reasons behind the reintroduction of the offence of insulting the President and/or Vice President in the academic discourse, the main objective of establishing provisions regarding the criminal offence of attacking the dignity and status of the President

and/or Vice President is fundamentally to protect their honour and dignity.

Meaning of the Phrase "Degrading Act"

1. Based on a Linguistic Perspective. The Kamus Besar Bahasa Indonesia (KBBI) defines "Perbuatan" as an action or deed, while "merendahkan" means to belittle or demean someone. The KBBI does not explicitly outline the steps or acts encompassed by the term "perbuatan merendahkan." However, combining the definitions of "perbuatan" and "merendahkan" results in an action or deed that belittles or demeans others. The lack of further explanation leads to varying societal interpretations, which consequently lacks a clear benchmark for evaluating the phrase "perbuatan merendahkan" itself.

This ambiguity can significantly impact the legal landscape in Indonesia, as prevailing legislation regulates the phrase "perbuatan merendahkan." Without a clear definition in the Kamus Besar Bahasa Indonesia (KBBI), regulations about "perbuatan merendahkan" must provide explicit, clear, and rigid explanations regarding which actions or deeds fall within the scope of "perbuatan merendahkan."

2. Based on Regulation of the Indonesian Judicial Commission No. 8 of 2013 on Judicial Advocacy. The Judicial Commission issued Regulation No. 8 of 2013 on Judicial Advocacy to safeguard the dignity and honour of judges. In this regulation, the concept of "perbuatan merendahkan" (degrading act) towards the satisfaction of a judge is elaborated in Article 1 No 2, which states:

"The Degrading Act towards the Dignity of a Judge is an act by an individual, a group of individuals, or a legal entity that disrupts the court process or the judge in examining, adjudicating, deciding cases, threatens the security of the judge within or outside the court, and insults the judge and the court."

As described above, Article 1 No 2 of the Judicial Commission's regulation clarifies that a "perbuatan merendahkan" that makes a judge feel demeaned is an act by an individual or group that disturbs the trial process, threatens or insults the judge, both within and outside the court. This is notably different from the provisions of Article 218 § 1, especially the explanation part, which does not specify in detail the actions that can be categorized as "perbuatan merendahkan" causing the dignity and honour of a President and/or Vice President to feel demeaned.

3. Based on Article 236 of Law No. 1 of 2023 concerning the Indonesian Criminal Code (Insult to State Symbols). The State Symbol of the Republic of Indonesia is the Garuda Bird, which is often subject to domestic and international conflicts. Indonesia has enacted several favourable laws governing sanctions related to insulting the symbol to protect the State Symbol. These include Law No 24 of 2009 concerning the Flag, Language, and State Symbol of Indonesia and Law No 1 of 2023 concerning the Indonesian Criminal Code (KUHP), specifically in Article 236.

Article 236 of Law No. 1 of 2023 concerning the Indonesian Criminal Code states: "Anyone who defaces, writes on, draws, damages, or misuses the State Symbol with the intent to tarnish, insult, or demean the honour of the State Symbol shall be punished with imprisonment for a maximum of 3 (three) years or a fine of the highest category IV." It clarifies what actions fall under insulting or "perbuatan merendahkan" the honour of the State Symbol, such as: "Actions in the form of defacing, writing on, drawing, damaging the State Symbol, including using it in a manner inconsistent with its form, size, colour, and proportion, carried out intentionally or intending to insult or demean its honour."

Article 236 explicitly outlines actions that constitute "perbuatan merendahkan" towards the dignity of the State Symbol. This stands in stark contrast to the provisions of Article 218 § 1 concerning the Criminal Offense of insulting the President and/or Vice President, which does not provide a detailed explanation of the actions categorized as "perbuatan merendahkan" that could demean the dignity and honour of a President and/or Vice President.

4. Based on the nature of the offence. Characteristics of Unlawfulness in Criminal Law are theoretically divided into two doctrines: formal unlawfulness and substantive unlawfulness. Unlawfulness is one of the elements of a criminal act, representing an objective assessment of an action and not of the actors themselves.

a) Formal Unlawful Act. According to this doctrine, an act is classified as unlawful if it contradicts statutes and regulations, meaning the formal unlawfulness of an action can only be negated by justifications formulated within the legal framework. Thus, under this doctrine, unlawfulness is synonymous with contradicting or being against the law (written law). Consequently, the unwritten rule holds no place in criminal law.

b) Substantive Unlawful Act. The doctrine of substantive unlawful acts acknowledges the existence of unwritten law alongside statutes and regulations (written law). This doctrine states that unwritten law can be used as a basis to qualify an act as unlawful. Substantive Unlawful Act refers to actions that are or are not banned, as provided by written law and based on unwritten legal principles. The unlawfulness of acts that fall clearly within the definition of a specific offence can be erased based on legal provisions and unwritten rules (über Gezetzlich). According to this doctrine, unlawfulness is against written and oral laws, including social norms.

As an integral part of criminal law, albeit not explicitly regulated, substantive unlawful acts are recognized in Indonesia. The regulation of substantive unlawful acts within Indonesian criminal law can be understood based on the function of substantive illegal acts.

From the meaning of the characteristics of unlawfulness above, the Degrading Act also falls under substantive unlawful acts, where forms of degrading acts are not only defined by written law but also considered societal norms.

However, it's important to note that the acts mentioned above do not constitute a criminal offence when carried out for public interest while expressing opinions or criticisms of policies by the President and/or Vice President which are perceived as not beneficial or potentially harmful to society because it is already stated in Article 218 § 2.

The intention of "Perbuatan Merendahkan" (Degrading Act), as mentioned in Article 218 § 1, is to belittle the President and/or Vice President in a personal context or to attack their character.

Another essential aspect to know about the Criminal Offense of Insulting the President and/or Vice President is that it is a complaint-based offence, as stated in Article 220 of Law No. 1 of 2023 concerning the Indonesian Criminal Code: "1) Criminal offences as referred to in Article 218

and Article 219 can only be prosecuted based on a complaint; 2) the complaint as intended in § 1 can be made in writing by the President and/or Vice President".

Therefore, only the President and/or Vice President, as the protected subjects of Article 218, can report the perpetrators of the Criminal Offense of Insulting the President and/or Vice President. It does not become an issue if the President and/or Vice President do not feel offended or demeaned in their dignity.

CONCLUSIONS

In conclusion, "Degrading Acts" based on several written rules are acts of individuals, groups of people or legal entities that interfere with the court process or judges in examining, adjudicating, deciding cases, threatening the security of judges inside or outside the court, insulting judges and courts and crossing out, writing, drawing or scribbling, damaging the State's symbol, including using it not by its shape, size, or colour.

Based on the nature of the tort, "Degrading Acts" are included in material tort where the forms of "Degrading Acts" are not only seen from the acts contained in the law but also see whether the acts are in accordance or not with the values of decency in society such as violations of propriety, prudence and accuracy.

The government is expected to improve and perfect the provisions of Article 218 § 1 of Law No 1 of 2023 related to the Criminal Offense of Attacking the Dignity of the President and/or Vice President so that with clear boundaries related to acts classified as "Degrading Acts" of the President and/or Vice President will provide legal certainty in addition to law enforcement officials. But it will also be a certainty for the public so that they know what actions are classified as degrading the dignity of the President and / or Vice President.

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