



# CONSTITUTIONALE

Volume 2 Issue 1, January-June 2021: PP: 27 - 38  
Faculty of Law, Universitas Lampung, Bandar Lampung,  
Indonesia.

<http://jurnal.fh.unila.ac.id/index.php/constitutionale>

P-ISSN: 2723-2492 E-ISSN: 2745-9322

## Comparasion Of Insult Regulation Towards President/Vice President In The Decree of The Constitutional Court

**Robinsius Asido Putra Nainggolan**

*asidopn@gmail.com*

**Kejaksaan Negeri Way Kanan, Indonesia**

*Submitted: 8 January 2021; Reviewed: 23 February 2021; Accepted: 1 March 2021.*

Article's Information	Abstract
<p><b>Keywords:</b> <i>Formulation; President; Vice-President; Insult.</i></p> <p><b>DOI:</b> <a href="https://doi.org/10.25041/constitutionale.v2i1.2203">https://doi.org/10.25041/constitutionale.v2i1.2203</a></p>	<p><i>The reform of criminal law in Indonesia, which has become one of the discourses, is the Article regarding insults to the President and Vice President in the 2019 RUUKUHP. The government re-included several articles of insulting the president in the Draft Criminal Code formulation, which the Constitutional Court deleted through Decision Number: 013.022/PUU IV/2006. So the problem in this research is how the policy formulation of offense against the President and Vice President is following the formulation of the RUUKUHP and how the comparison of articles on insulting the President and Vice President in the formulation of the Draft Criminal Code with the Constitutional Court Judge Decision No: 013.022/PUU IV/2006. The research method used is juridical normative based on secondary data through library research data collection and data analysis. The discussion results show that the policy for the formulation of offense</i></p>



---

*against the President/Vice President following the formulation of the RUUKUHP is an effort to provide legal protection to the President/Vice President as a symbol in state life. Comparing articles regarding insults to the President and Vice President in the formulation of the RUUKUHP with the Constitutional Court Decision No: 013.022/PUU-IV/2006 have both similarities and differences.*

---

## A. Introduction

Efforts to reform the law are continuously carried out in Indonesia to aim that the values and norms of the positive law that apply are under the Indonesian people's characteristics and personality. The law can optimally function as a means of discipline in people's lives.<sup>1</sup> The law can carry out its role as an instrument that provides legal certainty and justice.<sup>2</sup> The renewal of the law's substance is carried out with the intention that the Indonesian nation has a legal system that reflects the values of national life that have high cultural or socio-cultural roots as a legacy from the nation's ancestors, not an inheritance from colonialists or colonialists.<sup>3</sup>

The process of legal reform in a criminal justice system is closely related to the sentence imposed by the judge against the perpetrator of a criminal offense, and it is the judge who sees the facts in the field directly. Thus the Panel of Judges can accurately consider what kind of crime is imposed on the perpetrator of the criminal act.<sup>4</sup> Law does not mean rigid in the life of a developing society. Thus, law enforcers must have high professionalism in unifying regulations with the conditions and development of society, thereby creating correct decisions and fulfilling aspects of legal certainty and usefulness.<sup>5</sup>

One of the discourses that have developed along with the reform of criminal law in Indonesia is the Article regarding insults to the President/Vice President in the 2019 Criminal Code Draft or *Rancangan Undang-Undang Kitab Undang-Undang Hukum Pidana* (RUUKUHP). The government has again included several articles insulting the president in the formulation of the Draft Criminal Code, which has been canceled by the Constitutional Court

---

<sup>1</sup> Putera Astomo, "Pembentukan Undang-Undang Dalam Rangka Pembaharuan Hukum Nasional Di Era Demokrasi," *Jurnal Konstitusi*, vol. 11, May 20, 2016, <https://doi.org/10.31078/JK%X>.

<sup>2</sup> Muladi, *Demokrasi, Hak Asasi Manusia dan Reformasi Hukum di Indonesia*, Jakarta: The Habibie Center, 2002, pg. 34.

<sup>3</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, Bandung: Citra Aditya Bhakti, 1996, pg.30.

<sup>4</sup> Lidya Suryani Widyati, "TINDAK PIDANA PENGHINAAN TERHADAP PRESIDEN ATAU WAKIL PRESIDEN: PERLUKAH DIATUR KEMBALI DALAM KUHP? (DEFAMATION AGAINST THE PRESIDENT OR VICE PRESIDENT: SHOULD IT BE REGULATED IN THE CRIMINAL CODE?)," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 8, no. 2 (November 1, 2017): 215–34, <https://doi.org/10.22212/jnh.v8i2.1067>.

<sup>5</sup> Sudarto, *Pembaharuan Hukum Pidana di Indonesia*. Jakarta: Badan Pembinaan Hukum Nasional Departemen Kehakiman, 1986, pg. 27.

(MK) with Decision No: 013.022/PUU IV/2006.<sup>6</sup> Several articles in the Criminal Code related to articles regarding insults to the president and the government revoked by the Constitutional Court (MK) through Decision No: 013.022/PUU IV/2006 are Articles 134, 136, and 137 of the Criminal Code. Many academics then considered the offense of insult as an offense with a comprehensive explanation. Therefore it is not surprising that in some regimes in effect in Indonesia, these articles are widely used to ensnare those who often criticize the government. These articles are then used by government officials, especially the president, to punish people who commit this “insult”. According to the government, in the academic draft of the Draft Criminal Code, the criminal acts contained in Chapter 11 of the Criminal Code are still relevant. They can be maintained because they are considered following the Indonesian nation's spirit, which is kinship in nature, where if the head of state is attacked or insulted, the public cannot accept it.

In the latest draft, the Article regarding attacks on dignity has been regulated, namely book II on the criminal offense against the dignity of the president and/or vice president. In general, a criminal act is a criminal act committed deliberately attacking the honor or reputation of the president and/or vice president because insult is essentially a disgraceful act seen from the moral, religious, social, and human rights aspects. Because the current function of criminal law should be more focused on protecting individual interests and human rights. The development of law as it is today should be the product of our criminal law to be better and more harmonious. However, this has been injured by following the problematic Article again, the Article on crimes of attacking the dignity of the president and/or vice president, whose contents are very vague or unclear in terms of liberalism.

The government's consideration of re-inserting articles regarding insults to the president in the Draft Criminal Code's formulation is to prioritize the principle of equality before the law. This principle is deemed to be implemented for the honor of the president/vice president, considering that in the Criminal Code, there are articles that threaten the perpetrator of the insult committed against the heads of friendly countries/officials of friendly countries visiting Indonesia. The Draft Criminal Code does not emphasize the personal figure of a president/vice president who was actively in office when the insult was committed, but the Presidential institution's protection, which the president heads.<sup>7</sup> The Article on insulting the president in the Draft Criminal Code's formulation adopted from Article 134 of the Criminal Code, which the Constitutional Court canceled. At that time, Article 134 was independent (only one Article and one paragraph without exception). Meanwhile, in the formulation of the Draft Criminal Code, the government wants an exception to the Article on insulting the president. This exception is an insult if it is in the community's interests or is aimed at self-defense so that the crime is meant in paragraph 1.

Several articles insulting the president re-included in the Draft Criminal Code are Article 218, Article 219, and Article 220. The legal issue in the research is the inclusion of articles regarding insulting the president in the formulation of the Draft Criminal Code is considered less relevant to the principles of democracy in force in Indonesia. The existence of these articles is considered to be contrary to the spirit of reform. It restricts freedom of expression, especially freedom of opinion as a citizen's right is also regulated in statutory regulations.<sup>8</sup> However, in practice, there has been an abuse of the application of articles concerning the criminal act of insulting or articles regarding the criminal act of insulting the president or vice

---

<sup>6</sup> Syukri Asy et al., “Model Dan Implementasi Putusan Mahkamah Konstitusi Dalam Pengujian Undang-Undang (Studi Putusan Tahun 2003-2012),” *Jurnal Konstitusi*, vol. 10, May 20, 2016, <https://doi.org/10.31078/JK%X>.

<sup>7</sup><https://www.hukumonline.com/berita/baca/lt5a7971580ae48/alasan-pemerintah-adopsi-pasal-penghinaan-presiden-dalam-rkuhp/> accessed on 11 February 2020.

<sup>8</sup><https://katadata.co.id/berita/2019/09/20/pidana-hina-presiden-pemerintah-dpr-dianggap-melawan-konstitusi>. Accessed on 11 February 2020.

president, namely to protect the interests of the government represented by the president and/or vice president. The concept of protecting the dignity of the president or vice president in these articles is also interpreted to protect government policies from criticism. Therefore, anyone who criticizes and demonstrates against the government will be considered as insulting the president and at the same time being considered the government.

Based on the background and explanation above, the main problem is how the policy for the formulation of offense against the president and/or vice president following the formulation of the Draft Criminal Code and how does the comparison of articles regarding insulting the president/vice president in the formulation of the Draft Criminal Code with the Constitutional Court Decision No.013.022/PUU IV/2006. The research method used in this research is juridical normative, which means that it is literature law research that is carried out by examining library materials or secondary data. Then the data analysis used qualitative methods.

## **B. Discussion**

### **1. Policy on the Formulation of Offense against the President and/or Vice President following the formulation of the RUU-KUHP**

The Draft Criminal Code's formulation policy is an attempt to update the Criminal Code to improve the positive legal substance that currently exists and is a legacy from the Dutch East Indies colonial government.<sup>9</sup> The formulation is carried out with the intention that the rules and legal norms that will be enforced are relevant to the national personality and adapt to the times that are increasingly rapid along with the advancement of modern science and technology today.<sup>10</sup>

According to Friedman in Sudarto<sup>11</sup>, The criminal law formulation policy is the stage of formulating the substance of criminal law legislatively. These parties, who have the authority to formulate legal rules, try to redesign the order of rules by considering many aspects, especially the nation's personality, which distinguishes it from other countries' legal order and products.

The policy for the formulation of offense against the President / Vice President in the 2019 Bill on the Criminal Code is contained in Article 218, Article 219, and Article 220, which are as follows:

1. Article 218 of the Draft Criminal Code, which regulates that anyone in public committing an attack on the President / Vice President's dignity and authority, is punishable by a maximum imprisonment of three years and six months or a maximum fine as stipulated in the fine. Category IV (Paragraph 1) If this is done for the benefit of the community or as an effort to defend oneself, it is not an attack on the President / Vice President (Paragraph 2).
2. Article 219 of the Draft Criminal Code, which regulates that anyone in front of the public broadcasts, shows, or affixes text/pictures and is seen by the public, plays a recording and is heard by the public, or disseminates information content containing attacks on the dignity of

---

<sup>9</sup> Adhya Satya Bangsawan, "KAJIAN KRITIS TERHADAP PUTUSAN MAHKAMAH KONSTITUSI NOMOR 013-022/PUU-IV/2006 TENTANG PEMBATALAN PASAL PENGHINAAN TERHADAP PRESIDEN," *Refleksi Hukum: Jurnal Ilmu Hukum* 4, no. 1 (December 22, 2019): 97–114, <https://doi.org/10.24246/jrh.2019.v4.i1.p97-114>.

<sup>10</sup> Wemby Adhiatma and Satrio Prayogo, "Tinjauan Kebijakan Pidana Terhadap Martabat Presiden Dan/Atau Wakil Presiden Dalam RKUHP," *Pandecta Research Law Journal* 15, no. 2 (September 4, 2020): 207–17, <https://doi.org/10.15294/pandecta.v15i2.22402>.

<sup>11</sup> Sudarto. *Op.Cit.* Pg. 25.

the president. / The Vice President shall be punished by a maximum imprisonment of four years and six months or a maximum fine as stipulated in Category IV fines.

3. Article 220 of the Draft Criminal Code stipulates that the criminal offense of Article 218 and Article 219 constitutes a complaint offense (Paragraph 1). The President/Vice President filed the complaint in writing.

Under the substance of several articles above, it is known that Article 218 contains criminal rules for anyone who insults the President/Vice President with a sentence of 3 to six years imprisonment. Article 219 contains regulations on whoever broadcasts publicly, performances or affixing of writings/ pictures visible to the public, playing a recording and being heard by the public, or disseminating information content containing attacks on the dignity of the President/Vice President, shall be punishable by a maximum imprisonment of four years six months or a fine of up to the amount as stipulated in Category IV fines. Article 220 contains the rules that this act is an offense on the complaint, and the complaint process is carried out in writing by the President/Vice President.

The basis for considering the reformulation of articles regarding insults to the President/Vice President in the Draft Criminal Code is in the framework of providing legal protection to the President/Vice President as a symbol in state life.<sup>12</sup> The formulation of the above articles is not intended to curb democratic freedom. Everyone is still welcome to convey criticism from the President/Vice President as long as it does not contain insults. The president is the head of state and head of government.<sup>13</sup> On another aspect, the president's inherent interest in the state requires norms and legal order related to dignity and honor.<sup>14</sup> The Article regarding insults to the President/Vice President in the Draft Criminal Code is deemed not to be removed but must be maintained because this rule is still universally valid. The government has implemented the mandate of the Constitutional Court decision by amending the offense in the Article regarding insult, which was initially changed to a material offense. The implication is that there are differences of opinion, and freedom of expression is not illegal.

The Article regarding insults to the President/Vice President was re-entered into the formulation of the RUUKUHP. Because there was a legal vacuum regulating the issue of the president's dignity, there must be special protection, especially there were many cases of humiliation to the president, even though the president was the Head of Government and the Head of State who had to be respected and was a state symbol. Articles regarding insults to the President/Vice President and Vice President must be maintained. However, the articles' formulation must be made carefully and requires supervision from law enforcers to minimize abuse of provisions of laws and regulations as occurred in the previous Article. The regulation of articles regarding insults to the President / Vice President must be maintained. At the formulation stage, the articles' elements must be clear so that they are not abused again or become multi-interpretative articles that can shackle the people in a democracy.

The Article on insulting the president is still considered very much needed to maintain the president's dignity because the president is the embodiment of a country's symbol. Therefore, it is necessary to have a criminalization process for the rules of insulting the President/Vice President in the formulation of the RUUKUHP. Criminalization is the determination of an act

---

<sup>12</sup> A. Rosyid Al Atok, "PENGUATAN KEPENDUDUKAN DAN PEMBATAHAN KEKUASAAN PRESIDEN DALAM PERUBAHAN UUD1945," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 24, no. 1 (June 27, 2016), <https://doi.org/10.17977/JPPKN.V24I1.5495>.

<sup>13</sup> Pamungkas Satya Putra, "Pemberhentian Presiden Dan/Atau Wakil Presiden Republik Indonesia Pasca Amandemen Uud Nri Tahun 1945," *ADIL: Jurnal Hukum* 7, no. 1 (2016): 76–89, <https://doi.org/10.33476/AJL.V7I1.333>.

<sup>14</sup> Moh Hudi, "KEDUDUKAN DAN TANGGUNGJAWAB PRESIDEN DALAM SISTEM PRESIDENSIAL DI INDONESIA," *MIMBAR YUSTITIA* 2, no. 2 (December 20, 2018): 173–90, <http://www.e-jurnal.unisda.ac.id/index.php/mimbar/article/view/1401>.

which is not originally a crime to become a crime regulated by law.<sup>15</sup> Criteria or measures for criminalization include the determination of an act as prohibited. The threat and imposition of punishment is the main way to prevent violations of the rule of law. The government must be able to carry out criminal threats if the act occurs.<sup>16</sup>

The policy for the formulation of offense against the President/Vice President has met criminalization criteria. The act of insulting the president creates unrest in the community and is not following the law that lives in the community to respect each other. Moreover, it is the president who serves as the Head of State and the Head of Government which is a symbol of the state as the holder of the highest power and is the result of the people's choice. To provide legal protection to the president from acts of humiliation and attacks on authority, every country must protect and maintain the President/Vice President's dignity, which is a symbol of the state and head of state in a sovereign state. The Article of defamation must fulfill the elements of a criminal act of defamation.<sup>17</sup>

In essence, the formulation of criminal law is a very significant stage in preventing and overcoming criminal acts by enforcing criminal laws or regulations. There is a demand for the law today, namely making legal norms that can accommodate and direct various law needs that are adjusted to people's awareness of the law itself. In other words, it can be stated that the ideal model for the execution of fines against the perpetrator of the criminal act of selling goods without being affixed with a mark of payment of excise can be carried out through the improvement of several aspects that are mutually correlated and related between one component and another, namely between law enforcers, regulations and society alone.<sup>18</sup> Formulations in the perspective of criminal law must pay attention to the harmonious relationship between the law's substance and the applicable punishment.<sup>19</sup> The legal substance is important as a basic legal foundation adjusted to the main characteristics of positive law, namely as laws that bind citizens. Criminalization is categorized as having effectiveness not only if applied by imposing punishment or punishment to the perpetrator of a criminal act, but there is prevention so that the criminal act does not occur again in the future.<sup>20</sup>

The formulation of the Article on insulting the president in the formulation of the Draft Criminal Code as the implementation of criminal law politics shows the availability of

---

<sup>15</sup> Shah Rangga Wiraprastya and Made Nurmawati., "Tinjauan Yuridis Mengenai Sanksi Pidana Terhadap Tindak Pidana Pencemaran Nama Baik Melalui Media Elektronik," *Jurnal Hukum Kertha Wicara* 5, no. 2 (2015): 1–5, <https://ocs.unud.ac.id/index.php/kerthawicara/article/view/14308>.

<sup>16</sup> Nanda Yoga Rohmana, "PRINSIP-PRINSIP HUKUM TENTANG TINDAK PIDANA PENGHINAAN DAN PENCEMARAN NAMA BAIK DALAM PERPSPEKTIF PERLINDUNGAN HAK ASASI MANUSIA," *Yuridika* 32, no. 1 (August 23, 2017): 105, <https://doi.org/10.20473/ydk.v32i1.4831>.

<sup>17</sup> Putri Conitatillah Jasmi, "ANALISIS IMPLEMENTASI ASAS KEPASTIAN HUKUM DALAM PROSES PUTUSAN HAKIM TERKAIT PENGHINAAN MELALUI DUNIA MAYA," *Jurnal Analisis Hukum* 3, no. 1 (September 27, 2020): 82, <https://doi.org/10.38043/jah.v3i1.2684>.

<sup>18</sup> Aditya Septian Wicaksono, R B Sularto, and Hasyim Asy'ari, "KEBIJAKAN HUKUM PIDANA TERHADAP FORMULASI PERBUATAN PENCEMARAN NAMA BAIK PRESIDEN SEBAGAI PERLINDUNGAN SIMBOL NEGARA," *DIPONEGORO LAW REVIEW*, vol. 5 (Program Studi S1 Ilmu Hukum, Fakultas Hukum, Universitas Diponegoro, March 29, 2016), <https://ejournal3.undip.ac.id/index.php/dlr/article/view/11011>.

<sup>19</sup> Anggraini Anggraini, "UPAYA HUKUM PENGHINAAN (BODY SHAMING) DIKALANGAN MEDIA SOSIAL MENURUT HUKUM PIDANA DAN UU ITE," *Jurnal Lex Justitia* 1, no. 2 (May 14, 2020): 113–24, <https://doi.org/10.22303/LEX JUSTITIA.1.2>.

<sup>20</sup> Raisa L. Saroinsong, "PERTANGGUNG JAWABAN TERHADAP PELAKU TINDAK PIDANA PENCEMARAN NAMA BAIK BERDASARKAN PASAL 310 KUHP," *LEX PRIVATUM* 5, no. 7 (December 12, 2017), <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/18241/17768>.

elections to achieving the best legislative results.<sup>21</sup> The best meaning is fulfilling various requirements of justice and having aspects of effectiveness for society. The implementation of criminal law politics has a meaning to implement rules following current conditions and conditions in the future. The government's efforts to formulate acts of insulting the President/Vice President in the formulation of the RUUKUHP constitute a decision that is considered appropriate and effective in criminal law politics to achieve the results of criminal legislation, enforce legal norms, and prevent criminal acts, and resolving conflicts that may occur as a result of criminal acts. Besides, it can bring a sense of security and comfort in people's lives and maintain the balance of life in society, nation, and state.

## 2. Comparison of Articles concerning Insult to the President/Vice President in the Formulation of the Draft Criminal Code with the Constitutional Court Decision No: 013.022/PUU IV/2006

The Constitutional Court Decision No: 013.022/PUU IV/2006, which tested the constitutionality of Article 134, Article 136 bis, and Article 137 of the Criminal Code. The Constitutional Court thinks that the provisions of Article *a quo* are unconstitutional so that they impact the decriminalization of the provisions for the crime of insulting the president and/or vice president in the Criminal Code. As an implication, the criminal act of insulting the president or vice president is no longer an ordinary offense. However, it becomes a complaint offense, with Article 134, Article 136 bis, and Article KUHP invalid. This, of course, relates to freedom of opinion as a human right. Freedom of opinion is not absolute because, in freedom of opinion, there are opinions that should be protected, and there are opinions that are not protected. Freedom of opinion is not absolute because, in freedom of opinion, there are opinions that should be protected, and there are opinions that are not protected. The limitation here is that freedom of opinion must not take the form of an opinion that insults the president or vice president. So for more details, below is a comparison of the Article regarding insults to the President/Vice President in the formulation of the Draft Criminal Code with the Constitutional Court Decision No: 013.022/PUU IV/2006 is presented as follows:

**Table 1. Comparison of the Articles of Insult to the President/Vice President in the Formulation Draft Criminal Code with the Constitutional Court Decision No: 013.022/PUU IV/2006**

Aspect Comparison	Formulation of the Draft Criminal Code	The Constitutional Court Decision No: 013.022/PUU IV/2006
Article Number	Article 218, Article 219, and Article 220	Article 134, Article 136 bis, and Article 137
Offense	Complaints (Article 220)	General
Elements of Humiliation	Anyone publicly commits an attack on the dignity and authority of the President/Vice President (Article 218)	Intentional insults against the President or Vice President (Article 134)

<sup>21</sup> Usman Usman and Permono Permono, "Harmonisasi Pasal Penghinaan Presiden Dalam RUU KUHP," *Jurnal Surya Keadilan* 2, no. 2 (2018): 320–39, <http://jurnal.umb.ac.id/index.php/suryakeadilan/article/view/113>.

	<p>Anyone who broadcasts, shows, or affixes text/pictures and is seen by the public, plays a recording and is heard by the public, or disseminates information content that attacks the dignity of the President or Vice President (Article 219)</p>	<p>Insult or humiliation if it is done other than the person being affected, whether through public actions, or not in public orally or writing, but the front of more than four people, or front of a third person, against his will and therefore feels offended (Article 136 bis)</p> <p>Anyone broadcasting, showing, or publicly posting insulting writings or paintings to the President / Vice President to make the contents of the insult known or better known by the public (Article 137)</p>
<p>Criminal Threats</p>	<p>The penalty in the form of imprisonment for a maximum of 3 years six months or a maximum fine as stipulated in Category IV fines (Article 218)</p> <p>Criminal is in the form of imprisonment for a maximum period of four years six months or punishment in the form of a maximum fine as stipulated in Category IV fines.</p>	<p>Criminal is in the form of imprisonment for a maximum of six years or a penalty in the form of a maximum fine of Rp 4500 (Article 134).</p> <p>Criminal is in the form of imprisonment of up to 1 year four months or a fine of up to Rp 4000 (Article 137)</p>

Based on the table above, the comparison of articles regarding insults to the president/vice president in the formulation of the Criminal Code Bill and the Constitutional Court Decision No: 013.022/PUU IV/2006 has all the same differences, namely:

1. Similarity

The similarity is that both protect the honor or authority of the President / Vice President as the Head of State and the Head of Government in the Unitary State of the Republic of Indonesia. It is known from the editorial point of Article 218 of the Draft Criminal Code that anyone publicly attacks the dignity and authority of the President / Vice President, and editorial staff of Article 219 of the Draft Criminal Code is anyone who broadcasts, shows, or affixes text/images and is seen by the public, listening to a recording and being heard by the public or disseminating information content that attacks the dignity of the President / Vice President.

Editors of this Article are almost the same as the editors of Article 134 of the Criminal Code: deliberate insults to the President/Vice President and Article 137 of the Criminal Code: Anyone who broadcasts, shows, or displays publicly writing/painting in which there is an element of insult to the President/Vice President, with the intention that the

contents of the insult are known/better known by the wider community. It's just that there are additional editors, namely disseminating information content containing attacks on the dignity of the President/Vice President in the Draft Criminal Code, which is adjusted to developments in information technology at this time.

## 2. Differences

The difference is in offenses and criminal threats. Article offense regarding insulting the President/Vice President in the Draft Criminal Code's formulation is a complaint offense as regulated in Article 220 of the Draft Criminal Code. In contrast, the article offense regarding insulting the president in the Constitutional Court Decision No: 013.022/PUU IV/2006 was general. Furthermore, the criminal threat of Article 218 of the Draft Criminal Code is a punishment in the form of imprisonment for a maximum of three years six months, or a maximum fine as stipulated in Category IV and Article 219 fines of the Draft Criminal Code is a punishment in the form of imprisonment for a maximum period of 4 years six months or punishment in the form of a maximum fine as stipulated in Category IV fines. This is different from the criminal threat of Article 134 of the Criminal Code, which is a punishment in the form of imprisonment for a maximum of six years, or a maximum fine of Rp 4.500, and Article 137 of the Criminal Code, which is a punishment in the form of imprisonment for a maximum of 1 year four months or a fine of up to Rp 4.500. In this case, there is a decrease in the threat of punishment in perpetual imprisonment and an increase in the threat of criminal fines.

Based on the above comparison, the provisions of Articles 218 and 219 of the Draft Criminal Code have editorial content similar to the existing articles. Substantially, this Article of insult has changed its editorial or sanctions, especially criminal sanctions in the form of fines. The threat of fines in Articles 218 and 219 of the Draft Criminal Code is following the current situation. Articles 134 and 137 of the Criminal Code stipulate that the threat of a maximum fine is only 4500 rupiah. In contrast, Articles 218 and 219 of the Draft Criminal Code note that the maximum penalty threat is a category IV fine. This arrangement is logical because according to Article 80 Paragraph (3) of the Draft Criminal Code, the fine as stipulated in Category IV fines reaches a maximum of Rp 75.000.000. Fines are the main types of crimes that are threatened and directed against the offender's assets for violating the rules of the criminal law.

Penalty as an alternative to imprisonment in the practice of justice in Indonesia. Law enforcement officers' ability must make the application of fines more effective so that these criminal objectives can be achieved. Crime needs to consider the system for determining the amount of punishment in the form of fines, limits on the implementation of the payment of fines, coercive actions that can guarantee the payment of fines according to a predetermined time limit. The application of fines is intended to minimize penalties in imprisonment or body imprisonment for the perpetrators of criminal acts. Article 219 The Draft Criminal Code has elements, namely broadcasting, performing or affixing writing/pictures and being seen by the public, listening to a recording and being heard by the public, or disseminating information content containing attacks on the dignity of the President/Vice President, if the requirements are met. Then anyone who does this is subject to criminal sanctions in Article 219 of the Draft Criminal Code. Article 219 of the Draft Criminal Code results from modification from an editorial point of view, which is derived from Article 137 of the Criminal Code, namely one year and four months imprisonment. In contrast, Article 219 is punishable by imprisonment for a maximum of 5 years, the threat of a maximum fine in category IV fines.

Based on this, the provisions of Article 219 of the Draft Criminal Code also provide criminal threats in the form of imprisonment and fines for anyone who listens to a recording containing insults to the President/Vice President so that the recording is heard widely with the intention

that the contents of the insult are known/better known by the public area, which was not previously listed in Article 134 of the Criminal Code. It can be seen that Article 218 and Article 219 of the Draft Criminal Code are not purely criminalization. However, the recriminalization of the KUHP Article 134 and Article 137, which the Constitutional Court has canceled, has undergone changes in terms of editorial or sanctions, especially criminal sanctions in the form of fines to conditions in society and change from general offense to turn into complaint offense.

The process of formulating articles regarding insults to the President/Vice President must pay attention to various limitations or criteria for criminalization, namely the process of criminalizing an act must be relevant and pay attention to national objectives to realize a sense of public justice. The process of criminalization is applied as an effort to prevent and overcome acts that have the potential to cause material or moral harm. Also, in the criminalization process, a criminal act must consider various aspects, including costs, outcomes, capacity, and capacity of law enforcement institutions. An important thing that must also be considered is the effect of criminalization on people's lives. In the formation of statutory regulations, the parties forming these regulations are obliged to pay attention to the principles of legality, subsidence, and equality to prevent possible misuse of laws. The most important thing is the protection of the community. By criminalizing acts of insulting the President/Vice President into the formulation of the RUUKUHP, in this case, it has entered the formulation stage in the criminal law policy process in Indonesia.

### C. Conclusion

Based on the research results, the conclusion shows that the formulation policy of offense against the President/Vice President according to the formulation of the Draft Criminal Code is an effort to provide legal protection to the President/Vice President as a symbol in state life. Regarding the comparison of articles regarding insults to the president and/or vice president in the formulation of the Draft Criminal Code with the Constitutional Court Decision No: 013.022/PUU IV/2006, it has both similarities and differences. The similarity is that both protect the dignity of the president/vice president. The difference is in the offense and the threat of punishment. The article's offense regarding insulting the president and vice president in the formulation of the Draft Criminal Code was a complaint offense. Simultaneously, the Constitutional Court Decision No: 013.022/PUU IV/2006 was a general offense. Furthermore, there was a decrease in the threat of punishment in the form of perpetual imprisonment and an increase in the threat of criminal fines. Furthermore, the author's suggestions are legislators carefully consider the appropriateness that an act can be formulated as a crime of humiliation. Also, it must be proven that the criminalization of acts of insulting the President/Vice President brings good interests to the state and society.

## Bibliography

### A. Books

- Muladi. *Demokrasi, Hak Asasi Manusia dan Reformasi Hukum di Indonesia*, Jakarta: The Habibie Center. 2002.
- Nawawi Arief, Barda. *Bunga Rampai Kebijakan Hukum Pidana*, Bandung: Citra Aditya Bhakti. 1996.
- Sudarto. *Pembaharuan Hukum Pidana di Indonesia*, Jakarta: Badan Pembinaan Hukum Nasional Departemen Kehakiman. 1986.

### B. Journal

- Adhiatma, Wemby, and Satrio Prayogo. "Tinjauan Kebijakan Pidana Terhadap Martabat

- Presiden Dan/Atau Wakil Presiden Dalam RKUHP.” *Pandecta Research Law Journal* 15, no. 2 (September 4, 2020): 207–17. <https://doi.org/10.15294/pandecta.v15i2.22402>.
- Anggraini, Anggraini. “UPAYA HUKUM PENGHINAAN (BODY SHAMING) DIKALANGAN MEDIA SOSIAL MENURUT HUKUM PIDANA DAN UU ITE.” *Jurnal Lex Justitia* 1, no. 2 (May 14, 2020): 113–24. <https://doi.org/10.22303/LEX JUSTITIA.1.2>.
- Astomo, Putera. “Pembentukan Undang-Undang Dalam Rangka Pembaharuan Hukum Nasional Di Era Demokrasi.” *Jurnal Konstitusi*. Vol. 11, May 20, 2016. <https://doi.org/10.31078/JK%X>.
- Asy, Syukri, Meyrinda Rahmawaty Hilipito, Mohammad Mahrus Ali Pusat Penelitian dan Pengkajian Perkara, and Pengelolaan Teknologi Informasi dan Komunikasi Mahkamah Konstitusi Republik Indonesia Jl Medan Merdeka Barat No. “Model Dan Implementasi Putusan Mahkamah Konstitusi Dalam Pengujian Undang-Undang (Studi Putusan Tahun 2003-2012).” *Jurnal Konstitusi*. Vol. 10, May 20, 2016. <https://doi.org/10.31078/JK%X>.
- Atok, A. Rosyid Al. “PENGUATAN KEPENDUDUKAN DAN PEMBATAAN KEKUASAAN PRESIDEN DALAM PERUBAHAN UUD1945.” *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 24, no. 1 (June 27, 2016). <https://doi.org/10.17977/JPPKN.V24I1.5495>.
- Bangsawan, Adhya Satya. “KAJIAN KRITIS TERHADAP PUTUSAN MAHKAMAH KONSTITUSI NOMOR 013-022/PUU-IV/2006 TENTANG PEMBATALAN PASAL PENGHINAAN TERHADAP PRESIDEN.” *Refleksi Hukum: Jurnal Ilmu Hukum* 4, no. 1 (December 22, 2019): 97–114. <https://doi.org/10.24246/jrh.2019.v4.i1.p97-114>.
- Hudi, Moh. “KEDUDUKAN DAN TANGGUNGJAWAB PRESIDEN DALAM SISTEM PRESIDENSIAL DI INDONESIA.” *MIMBAR YUSTITIA* 2, no. 2 (December 20, 2018): 173–90. <http://www.e-jurnal.unisda.ac.id/index.php/mimbar/article/view/1401>.
- Jasmi, Putri Conitatillah. “ANALISIS IMPLEMENTASI ASAS KEPASTIAN HUKUM DALAM PROSES PUTUSAN HAKIM TERKAIT PENGHINAAN MELALUI DUNIA MAYA.” *Jurnal Analisis Hukum* 3, no. 1 (September 27, 2020): 82. <https://doi.org/10.38043/jah.v3i1.2684>.
- Putra, Pamungkas Satya. “Pemberhentian Presiden Dan/Atau Wakil Presiden Republik Indonesia Pasca Amandemen Uud Nri Tahun 1945.” *ADIL: Jurnal Hukum* 7, no. 1 (2016): 76–89. <https://doi.org/10.33476/AJL.V7I1.333>.
- Rohmana, Nanda Yoga. “PRINSIP-PRINSIP HUKUM TENTANG TINDAK PIDANA PENGHINAAN DAN PENCEMARAN NAMA BAIK DALAM PERPSPEKTIF PERLINDUNGAN HAK ASASI MANUSIA.” *Yuridika* 32, no. 1 (August 23, 2017): 105. <https://doi.org/10.20473/ydk.v32i1.4831>.
- Saroinsong, Raisa L. “PERTANGGUNG JAWABAN TERHADAP PELAKU TINDAK PIDANA PENCEMARAN NAMA BAIK BERDASARKAN PASAL 310 KUHP.” *LEX PRIVATUM* 5, no. 7 (December 12, 2017). <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/18241/17768>.
- Usman, Usman, and Permono Permono. “Harmonisasi Pasal Penghinaan Presiden Dalam RUU KUHP.” *Jurnal Surya Keadilan* 2, no. 2 (2018): 320–39. <http://jurnal.umb.ac.id/index.php/suryakeadilan/article/view/113>.
- Wicaksono, Aditya Septian, R B Sularto, and Hasyim Asy’ari. “KEBIJAKAN HUKUM PIDANA TERHADAP FORMULASI PERBUATAN PENCEMARAN NAMA BAIK PRESIDEN SEBAGAI PERLINDUNGAN SIMBOL NEGARA.” *DIPONEGORO LAW REVIEW*. Vol. 5. Program Studi S1 Ilmu Hukum, Fakultas Hukum, Universitas Diponegoro, March 29, 2016. <https://ejournal3.undip.ac.id/index.php/dlr/article/view/11011>.
- Widyati, Lidya Suryani. “TINDAK PIDANA PENGHINAAN TERHADAP PRESIDEN

ATAU WAKIL PRESIDEN: PERLUKAH DIATUR KEMBALI DALAM KUHP? (DEFAMATION AGAINST THE PRESIDENT OR VICE PRESIDENT: SHOULD IT BE REGULATED IN THE CRIMINAL CODE?).” *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 8, no. 2 (November 1, 2017): 215–34. <https://doi.org/10.22212/jnh.v8i2.1067>.

Wiraprastya, Shah Rangga, and Made Nurmawati. “Tinjauan Yuridis Mengenai Sanksi Pidana Terhadap Tindak Pidana Pencemaran Nama Baik Melalui Media Elektronik.” *Jurnal Hukum Kertha Wicara* 5, no. 2 (2015): 1–5. <https://ocs.unud.ac.id/index.php/kerthawicara/article/view/14308>.

