

Questioning the Protection of President's Dignity in the New Criminal Code

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Abstract: Protecting the president's dignity in law is not a new thing that has received much controversy from the public, even in the realm of the international state. Even in Indonesia, this article was annulled by the Constitutional Court. Nevertheless, the new Criminal Code has been reinforced, resulting in many pros and cons from the public. Therefore, this research discussed why the article on protecting the president's dignity was reinserted in the New Criminal Code. This research was normative legal research, while the data source consisted of secondary data, with primary and secondary legal materials such as books, scientific journals, papers, and scientific articles. The data collection process was done through library research using qualitative data analysis. This research used a conceptual approach and studies related to statutory regulations. The research found that protecting the president's dignity is essential for ordinary people in general. However, in the constitutional realm, a president is an interpretation of the State representing all citizens. Therefore, it is highly justified if this article is reactivated. Apart from that, if this article is not included in the new Criminal Code, it can potentially cause subsociality in public.

Keywords: Constitutional; Dignity; President;

1. Introduction

National development is a continuous system that unites all elements of the State, both philosophical or abstract and concrete, aiming to realize the Indonesian nation and citizens' welfare both now and in the future (Gunawan et al., 2022). The object of national development covers all people's lives, which is inherent in and directly related to people's lives, both in national life and daily social life with other citizens. The objects of national development in accordance with the functions of the State can be summarized as several aspects of national life, namely education, the nation and state's welfare, security, and order, as well as maintaining peace both at home and abroad. It means that two national goals are expected from law and national development, namely "social defense" and "social welfare," which shows the existence of the principle of balance in national development goals (Nugroho, 2019). Indonesia's national development is based on strong socio-political stability, this became clear at the beginning of the New Order government. Socio-political stability provided concentrated conditions for the government to plan and implement planned development prospects (Reza Hariyadi, 2021). The government in power at that time believed that social and

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political stability was the main key to the running of the concept of national development. However, at the beginning of independence, the concept of national development was not maximally implemented, due to the many supporting factors of the state that had not been fully formed (Mustopadidjaja Ar, 2012). History provides an important record of the development of Indonesia's national development which gradually continues to experience a significant increase, starting in 1950, at which time two of the most decisive initial steps were arranged, namely the economic and industrial urgency plan and the establishment of a State drafting council. Furthermore, in 1960 the GBHN was established which became the reel of the course of development until the MPR Tap was revoked after the amendment of Article 3 paragraph 1 of the 1945 Constitution. So that at present many regret the revocation of GBHN because taking the good from the past, as far as the progress of the nation, state and democracy is actually a much better step forward (Fauzani et al., 2021). To fill the legal vacuum in the direction of the country's development, Law 25 of 2004 concerning the National Development Planning System was enacted, and three years later it was complemented by Law 17 of 2007 concerning the Long-Term Development Plan, which is still valid today. After the abolition of the GBHN, empirically the development process continues, but it seems that the direction of Indonesia's development has no consistency and uncertainty because the direction of development, because development runs refers to the vision and mission of the President, which is then compiled in detail as a Medium-Term Development Plan.

Values and morals that live and develop in society which then form a certain object both concrete and abstract are referred to as local wisdom, in national development is the spirit that animates and drives the actions and mindset of the community, with strong community values and norms that will become the core of development crystallization, which is implemented in Indonesian human behavior with eastern and Indonesian character with religious and traditional acculturation, from here the morality of driving development will be very well formed, so that development can run well to achieve the goal of people's welfare. Criminal law in addition to functioning as a repressive measure is basically also very effective as a preventive instrument that can support and improve social welfare, with the application and enforcement of good and maximum criminal law it is not impossible that it will have a very strong effect on the community not to commit acts prohibited by law. One example of the application of criminal law and its law enforcement that can improve people's welfare is in terms of prevention and law enforcement in mining sector crimes. But in fact at this time Indonesian law enforcement is still very concerning, almost all sectors of criminal law are at a concerning stage. Especially in the field of corruption, which is the realm that most destroys social welfare and poses a serious threat to social defense, where mining-producing regions feel that there is an unfair distribution of mining products between the center and the regions. One successful country with very strict criminal law enforcement is China so that state officials and parties related to the government dare not try to commit acts of corruption.

National development in the modern era must accommodate the values and norms that live in public as the foundation and spirit that animates national development progress. Hence, national development continues on existing tracks and is in accordance with the national people's view, which still upholds the local wisdom values, with

eastern cultures and colored by religious norms to form the Indonesian nation's characteristics. Thus, it has digital nuances and freedom in the modern era but remains within the Indonesian nation's Eastern culture and characters. Values and morals that live and develop in society which then form a certain object both concrete and abstract are referred to as local wisdom, in national development is the spirit that animates and drives the actions and mindset of the community, with strong community values and norms that will become the core of development crystallization, which is implemented in Indonesian human behavior with eastern and Indonesian character with religious and traditional acculturation, from here the morality of driving development will be very well formed, so that development can run well to achieve the goal of people's welfare.

One of the concrete instruments that is very important in national development is legal instruments, especially criminal law. Criminal law in addition to functioning as a repressive measure is basically also very effective as a preventive instrument that can support and improve social welfare, with the application and enforcement of good and maximum criminal law it is not impossible that it will have a very strong effect on the community not to commit acts prohibited by law. One example of the application of criminal law and its law enforcement that can improve people's welfare is in terms of prevention and law enforcement in mining sector crimes. But in fact at this time Indonesian law enforcement is still very concerning, almost all sectors of criminal law are at a concerning stage. Especially in the field of corruption, which is the realm that most destroys social welfare and poses a serious threat to social defense, where mining-producing regions feel that there is an unfair distribution of mining products between the center and the regions. One successful country with very strict criminal law enforcement is China so that state officials and parties related to the government dare not try to commit acts of corruption.

According to Sudarto, criminal law must reflect the cultural values of the nation where the law applies (Ismayawati, 2021). Barda Nawawi mentions that criminal law reform aims to reorient and reform the law. Therefore, it aligns with the Indonesian people's fundamental socio-political, socio-philosophical, and socio-social values, which form the basis of the State's social order, criminal policy, and law enforcement (Irmawanti & Arief, 2021). Criminal Law reform is oriented towards updating it as a whole, not only in certain areas, by paying attention to the legal system's structure, culture, and content. This opinion can be compared with the opinion expressed by Marc Ancel, although in a slightly different frame, but has a similar substance. He stated that modern criminal science comprises three main elements: criminology, criminal law, and penal policy. Furthermore, he explains that criminal policy is both a science and an art, and the practical objective is to perfect the formulation of favorable legal regulations and provide direction to legislators. These courts enforce the law, organizers, and implementers of court decisions. If looking in more detail at the two opinions by comparing them, everyone can find substantive similarities between legal substance and criminology, legal structure and criminal law, and legal culture with penal policy. Meanwhile, another opinion provides a line regarding the development of national law: for the legal system (criminal law) to align with the spirit of the Indonesian nation (*volkgeits*), it must be sourced from Pancasila's nobility. Legislation that is oriented and

capable of producing aspirational and accommodating laws in accordance with the responsiveness of the public is legislation that grows and develops from people by incorporating people's noble ideals (Daud & Awaluddin, 2021). The breakthrough and reform of Indonesian criminal law is not without challenges. The most important challenge that has become homework that has not been able to be controlled is human resources. According to Gunnar Myrdal, human resources in developing countries have a soft mentality. This mentality displays negative behaviors such as laziness, mentality, subjective, corruptive and high individualist behavior without regard to others and the environment. As well as all forms of social indiscipline whose manifestations are seen in various forms of defective legislation (Gunawan et al., 2024). The essence of criminal law reform according to Barda Nawawi Arief is an effort to reorient and reform criminal law in accordance with the central sociopolitical, sociophilosophical, and sociocultural values of Indonesian society that underlie social policy, criminal policy, and law enforcement policy in Indonesia. In brief, it can be said that criminal law reform must essentially be pursued with a policy-oriented approach and at the same time a value-oriented approach. This is very relevant to the life of Indonesian society which is still characterized by religious culture (Nugroho, 2019).

At this time in Indonesia, with the new Criminal Code, there will undoubtedly be various kinds of responses and assessments from various groups according to their respective skills and fields of expertise. One of the objects in the discussion of the new Criminal Code is the protection of the president and vice president's dignity. This problem always receives serious attention from various groups, including law enforcement officials, legislators, human rights activists, and academics. This problem is always related to the people's right to express their aspirations. Apart from that, the State also must safeguard and protect the personal rights of individuals and State leaders. One of the countries in the world that respects human dignity is Uzbekistan, which firmly states that God glorifies humans (Jurakulovich, 2023).

2. Materials and Methods

This research used the normative legal research method. Meanwhile, the data source consisted of secondary data, with primary and secondary legal materials such as books, scientific journals, papers, and scientific articles. These data materials served as a basis for providing in-depth explanations of primary legal materials. The data collection process was done through library research using qualitative data analysis. While the technique used in this qualitative analysis is content analysis, this analysis can generally be interpreted regarding text analysis which can also be used to describe certain specific qualitative analyzes. According to Holsti, this technique draws conclusions by identifying the special characteristics of a record objectively, systematically and generalistically (Novendawati, 2022). To ensure the validity and reliability of the research, researchers used data that had been corrected and published in highly or moderately accredited journals, both national and international. The data that has been collected is then triangulated, namely classifying and comparing the data with the opinions and theories of experts in their fields which are carried out in the literature to obtain validity and improve data quality (Maghfiroh & Pratiwi, 2020). While the research stages will

begin with Identification of the problem, where the researcher begins to understand and identify the research issue then looks for materials or reading sources related to the phenomenon to be studied, then determines the purpose of the research, then data collection where the researcher must pay attention to selecting and determining the data that determines the next analysis and interpretation of data (interpretation); the data that has been obtained by the researcher is then analyzed or interpreted so as to produce new ideas or theories, and in the final stage, namely reporting, the researcher makes a report on the results of his research. This research used a conceptual approach and was strengthened by philosophical concepts by investigating the views of experts, writers, and studies related to statutory regulations (law) related to the problem. This research focused on the articles about protecting the president's and vice president's dignity.

3. Results and Discussion

Law no. 1 of 2023 concerning the Criminal Code is a new history in the government of the Republic of Indonesia in implementing one of the long-term legal agendas, which has been implemented in stages over a long period in reforming and constantly adapting developments in criminal law in line with time and people's lives Indonesia or even the development of behavior and culture of the international community. Hopefully, this regulation will be a significant milestone in realizing one of the State's functions: peaceful social life throughout the country. Therefore, there are many fundamental changes in the formulation of criminal provisions. In detail, attention is paid to the use of words and sentences in the articles, which originate from various new theories and the results of the latest research and expert opinions to adapt to legal developments in people in the present and future (futuristic). The formulations of regulatory articles lawmakers wish to achieve in the future are called legal objectives. The purpose of law is in every statutory regulation established by the state. Achieving the objectives of laws or regulations in the law implementation and enforcement shows the level of law effectiveness in people, even though there is the adage "*Het rechts hink achter de feiten*" that in reality, the law will never be able to keep up with the progress that occurs in people (Eko Listiyani et.al, 2020).

Legal effectiveness is the opposite of the legal objective that always accompanies the law's implementation in realizing ideas, aspirations, and conceptual frameworks expected to direct people towards a healthy, peaceful, and prosperous life and regulate it. According to Soerjono Soekanto, several things that can influence law effectiveness include first, legal factors themselves, problems that arise or disruption to the enforcement of laws due to statutory regulations, caused by (a) non-compliance with the principles of law-making; (b) absence of necessary implementing regulations; and (c) the wording of the law is unclear, confusing its interpretation and application. It is one of the discussions in the New Criminal Code.

Insults are despicable acts from morals, religion, and social and human rights values (Kusnadi, 2022). Insulting the president and vice president is nothing new in studying legal and political problems and protecting the president's privacy as head of state and legal subject in Indonesia (Ellandra et al., 2022). Many other countries have also addressed this problem (Zahran et al., 2022). Regulations regarding insulting the head of

state are also commonly applied in countries such as Korea, Thailand, the Netherlands, Japan, Germany, Lebanon, and Poland (Fernando et al., 2022). Article 4, paragraph 1 of the 1945 Constitution states that the president is the government power holder in addition to his role as head of state and head of government, outlined in CHAPTER III Concerning State Government Power. According to Douglas Verney, the head of state is also the head of government, which means that in a presidential form, the head of state is also the head of government (Yusa & Hermanto, 2019). Ministers act as the president's hands and feet, assisting him in carrying out the authority given to his position. The President is the sole executive. Many groups disagree and even protest against including this article in the new Criminal Code, arguing that the president's power will not be affected by public criticism but will instead be used as an excuse to limit freedom of expression in a democratic atmosphere. Even Decree Number 013-022/PUU-IV/2006 of the Constitutional Court stated that Articles 134, 136 bis, and 137 of the Criminal Code, which regulates insulting the president, is contrary to the 1945 Constitution of the Republic of Indonesia. However, essentially, the Indonesian government is trying to emphasize that the provisions for insulting the president are intended to uphold the honor and dignity of the president's office as head of state, not to suppress criticism and political opposition (Rohmah, 2023). It also happens in Tunisia, which states a profound political adage: dignity is not an abstract but an orientation that aims to cleanse a particular institution (Nadia Marzouki, 2021). Le Moli's opinion clearly states that human dignity is considered the most profound concept, which will receive opposing responses regarding its meaning and fundamental purpose (Cabrejas-Artola, 2022).

The President's policies as head of government will indeed significantly impact the public as citizens. They will constantly receive pros and cons from various groups of the public, especially rejection from parties who feel disadvantaged by a policy determined by the government or the President. The expression of rejection conveyed by people who do not like government policies can also take various forms. Although rejection can be expressed in various forms, it must not harm other parties, especially the president. Apart from that, the government must not allow the public to express opinions and expressions irresponsibly, blaspheme, curse, and insult the president, who should be respected by the Indonesian public (Cahyani et al., 2022). Indeed, there is a big difference between criticism, opinions, and behavior that demeans a person's dignity, whether verbally or in writing or with specific images and videos. The legislators provide a legal net that means the president's power is not above criticism. Concerns about the president's anti-criticism power will certainly not occur if criticism and suggestions are conveyed by all parties politely and ethically without any elements that degrade the position of certain parties, as is the case in the concept of equality before the law, both for defendants and plaintiffs, as well as for law enforcers and defendants or convicts. Even in the United States, criticism of the government has its limits; warning flags are always raised, and there is a judicial process for every mistake committed (Annas et al., 2021). If citizens convey criticism and suggestions in a reasonable, polite, ethical manner and under statutory regulations, the results will certainly not hurt or degrade anyone, individually or as a group.

One of the questions most frequently asked by students regarding the president's position is whether the president's honor and dignity need to be protected. Therefore, the first most relevant answer is from the president's individual or human side or person as a legal subject, clearly by looking at Article 1 Law 39 of 1999 concerning Human Rights. This legal basis applies to all humans in the world, namely that every human being must be respected and have their dignity upheld by the government and state. The second answer is institutional and institutional, more philosophical and constitutional. Because the president, apart from being a legal subject that must be protected individually, is also a high-state position. Even the position of president is the highest state institution, which is a legal entity that carries out the functions and sovereignty of the state with the mandate of the 1945 Constitution, which is also attached to the president as a legal subject who is one of the legal objects that the state must protect. It means that if people use words or other forms of expression to demean the president's dignity, it is the same as degrading the state's sovereignty. As a comparison, in the Indonesian state administration, a president is like a metal coin attached to his government side and the other side of state power, which cannot be separated. Besides, a president certainly has feelings and a conscience as an ordinary human being who can feel hurt or even experience trauma. Therefore, it can influence his policies in the future. The provisions for protecting human dignity that apply in Germany are stringent in protecting human dignity, especially at the level of the President of the State (Prahassacitta, 2023). In addition, Samuel von Pufendorf stated that dignity is what humanizes human beings (Poscher, 2019). Even the National Legal Development Agency clearly states that insulting anyone is a disgraceful act and demeans human values that are not in accordance with religious values, moral aspects, ethical values, and human rights values. Therefore, theoretically, it is considered as "*rechtsdelict*," "intrinsically wrong," *Mala per se*, and therefore prohibited in various countries (Prayogo, 2020).

The reappearance of the article protects the president's dignity in the new Criminal Code as a form of protection and preventive policy for the president and his deputy's authority as an interpretation of a country. Hence, it is natural that protecting the president's dignity is also a form of protection for the state from political opponents' attacks as well as from various forms of psychological threats that have the potential to disturb peace in public. Conversely, if this matter is not included in the New Criminal Code, it could potentially give rise to subsocial conditions (Wemby, 2020). Furthermore, Jan Rummelink adds that subsociality is a potential cause of polarization between social groups, especially supporters and cons. It is very reasonable and logical that if a person is lowered by his dignity, which the people constitutionally elect, and also the state's spirit and soul, there will be the potential for degradation of ethical values and the fading of the authority of a state.

The International Convention, which has been agreed upon internationally for quite a long time, regulates civil and political rights, especially in countries that adhere to democracy. It is prohibited to issue regulations that limit or prohibit the citizen's rights to express opinions in various media (Gunawan et al., 2024). However, this regulation is not without limitations. With freedom that has no control and is not global, it is interpreted and understood freely and also must not be understood partially but must also be

understood in conjunction with the following article, namely Article 19, paragraph (3) of the International Convention on Civil and Political Rights. It states that all kinds of expression and freedom of opinion can threaten the state's existence and national integration, and the state can limit this freedom to maintain security and order in the country and all kinds of threats from within and outside the country. Therefore, the concept of freedom of expression is not absolute, but the state can be present and impose restrictions that can threaten national integration (Rafiqi, 2021).

The weakness in the article on protecting the honor and dignity of the president and vice president lies in the type of criminal act applied, namely the offense of complaints, article 220, paragraph 1 of the New Criminal Code. Implementing the complaint offense in this article means the president is still considered an individual or person, not a position and legal entity. It means that the state's protection of the president's office in maintaining honor is still passive, awaiting action from a president or vice president in response to acts of violating the president's dignity. Meanwhile, the president's response to actions that demean the president's dignity can be significantly influenced by various factors behind the president's complaint. If seen from the legal perspective, crimes against human dignity, such as defamation, are generally a complaint offense, but there are sometimes legal exceptions because every law has exceptions. A president is a person and position directly elected by the people, representing the people's power and occupying the highest position in a state organization. Thus, in this case, it is normal if there are exceptions in protecting the honor and dignity of the president. Protection of the president or vice president's honor and dignity through criminal regulations that classify insulting them as an ordinary offense rather than a complaint is still quite large (Bangsawan, 2019).

Lawmakers should position themselves as sovereign states that intend to protect the institutions under them. Arranging insults directed at the President and Vice President to maintain law and order is an effort to protect them (Fernando et al., 2022). Hence, the state actively protects the interests and dignity of the president wherever and whenever and does not have to wait for complaints from the president himself in determining legal action and accountability for insulting acts that could lower the dignity of the president and vice president. The state's inactivity in this matter will significantly affect the level of effectiveness of the law, especially Article 218 of the new Criminal Code in the future. Thus, it weakens the position of the head of state and government, and the public will very easily influence the president's policies.

Regarding article 134 of the Criminal Code, which regulates insulting the president, based on several pieces of literature that the author found, it is stated that the insulting article is not a complaint offense. Even though the investigation documents for the suspects have been completed and submitted to the prosecutor's office, the prosecutor does not immediately continue the criminal act at the court level because he is waiting for the presence and response from the authorities at the prosecutor's level, to ascertain whether the authorities feel insulted by this action. In contrast, the authorities never succeeded in being brought in and asked for information regarding the response to this incident (Annas et al., 2021). Therefore, it is necessary to pay attention to the orientation of this article in the future, which still uses the same methods as the old criminal concept,

which is entirely irrelevant to the aim of reforming criminal law in the current and future eras. Apart from that, the reactivation of this article indicates that there is uncertainty among the regulators, or it seems that they are not optimal in protecting the dignity of the president as one of the attributes of the state. In this case, the State is passive and waiting for a complaint from the president. The State should actively protect the president's dignity and interests through its law enforcement officers.

4. Conclusions

Controversy over the article on protecting the president's honor and dignity has occurred in many countries, including Indonesia. Even in the old Criminal Code, this article was annulled by the Constitutional Court. Considering the positives and negatives, it is not uncommon for this matter to cause controversy from various parties. Parties who reject the article argue that the article is a form of limitation of the citizen's rights of expression and opinions. So they think this is a setback to the democracy that we have been building where the delivery of people's aspirations is the main joint of democracy that must be accommodated by the state, on the other hand, it is also a restriction on the human right to express opinions with various available media that have been recognized internationally. However, in the New Criminal Code, this article was activated and re-enacted because the president is a human being, and because of his dignity, the president is considered human. Besides, constitutionally, the position of the president as a head of state from the people's mandate is the interpretation of a country. If the president's dignity is degraded, it can directly lower the State's dignity and is a form of citizen's ethical degradation. However, one of the weaknesses in this article is the form of complaint offense that is applied, in which law enforcement requires reporting complaints from the aggrieved party. This research is very useful for the study of law, especially in the fields of constitutional and criminal law, where abstract objects attached to legal subjects both obtained from birth and by certain legal acts must be protected by the State. In addition, the benefits of this research for the State are as one of the instruments that can realize the conditions of the State's political stability by providing protection of non-immaterial rights attached to the head of State and personally. This research still has many limitations that hinder the exploration and implementation of the object of research where there are two legal rights which if not understood in depth will get the opposite conclusion. In the future, the understanding and implementation of human rights and democracy should not be carried out in an unlimited free manner, but also pay attention to the greater and beneficial aspects as the purpose of law.

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