

# **Juridical Review of The Crime of Attacking The President's And Vice-President's Honest And Dignity In The 2023 KUHP**

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## **ABSTRACT**

The article's regulation in the Bill of the Criminal Code regarding acts of attacking the honor and dignity of the president has been criticized. Some articles are considered to have the potential to threaten the right to freedom of expression and freedom of the press, which are part of the human rights guaranteed by the Constitution. On the other hand, legislators also have a *raison d'être* as the urgency of regulation. This study aims to explore in depth the significance of the substantial regulation of the articles, as well as to examine some potential conflicts with the right to freedom of expression and freedom of the press. This study is a type of normative legal research, with data analysis methods carried out with a qualitative approach to secondary data. The results of the analysis show that the articles concerning acts attacking the honor and dignity of the president or vice president still needed/urgent to be re-formulate in the Bill of the Criminal Code. However, it should be noted that it is necessary to adjust some of the explanations of the articles. In addition, the general construction of these articles cannot be said to have violated human rights principles related to the right to freedom of expression and freedom of the press. However, there should be an assurance that protecting the freedom of expression and freedom of the press still needs to be emphasized in the Bill of the Criminal Code. So far, the reality shows that there are still poor implementations in law enforcement related to some articles, such as articles on contempt.

**Keywords:** Contempt; President; Freedom of Expression; Freedom of The Press

## **1. INTRODUCTION**

The criminal act of attacking the honor or dignity of the President or Vice President is regulated in Articles 218 to Article 220 of the Draft Law on the Criminal Code (RUU KUHP 2019). Article 218 of the Draft Criminal Code basically regulates that anyone who publicly attacks the honor or dignity of the President or Vice President shall be punished with a maximum imprisonment of 3 (three) years and 6 (six) months or a maximum fine of category IV (two hundred million rupiah). However, if the act is carried out in the public interest or self-defense then it is not considered an attack on the honor or dignity of the president and vice president. The Criminal Code Bill, especially regarding the prohibition norms, is now being widely discussed nationally again. Various groups, including the public and some legal experts, criticized and rejected the regulation of this article, because it was considered to have threatened freedom of expression and had revived the article on insulting the president and vice president which had been



annulled by the Constitutional Court in 2006. MK Decision Number 013-022/PUU-IV/2006 stated that Articles 134, 136 and 137 of the Criminal Code relating to the offense of insulting the President and Vice President were contrary to the constitution and therefore had no binding legal force.[1]

Meanwhile, for the Criminal Code Drafting Team, this article needs to be regulated and is an article with a different formulation from the article that was canceled by the MK. Eddy OS Hiariej, through his article in Kompas, explained that it is ironic that insulting foreign heads of state is punishable by criminal law (regulated by the Criminal Code throughout the world), while the head of state himself is not given legal protection for his dignity and good name. Apart from that, this formulation is not intended to hinder freedom of expression in a democracy. Furthermore, the formulation of insulting the president or vice president is a complaint offense. This means that cases can only be processed on the basis of a complaint from the president or vice president. Apart from that, justificatory reasons have also been formulated, which stipulate that "it does not constitute an attack on the honor or dignity of the president or vice president if the action is carried out in the public interest"[2]

For those who oppose the regulation of this article, it is feared that this article could also criminally ensnare members of the press or journalists.[3] Journalists feel like subjects who are vulnerable to threats from articles related to insulting the president or vice president. The Alliance of Indonesian Journalists (AJI) said that there are at least 10 problematic articles in the Draft Criminal Code [4] which threaten press freedom, one of which is Article 219 of the Draft Criminal Code. 4 Several similar regulations that have often ensnared journalists are a) Article 310 paragraph (1) and paragraph (2) of the Criminal Code regarding insults; and b) Article 27 paragraph (3) of the 2016 ITE Law which regulates defamation. Several criminal cases against journalists include: The case of journalist Mohammad Sadli Saleh in 2020, sentenced to 2 years in prison by the Pasarwajo District Court, in Buton, Southeast Sulawesi for violating Article 45 paragraph (2) jo. 28 paragraph (2), Article 45 paragraph (3) jo. Article 27 paragraph (3) of the ITE Law. Then in the case of journalist Muhammad Asrul in 2021, the panel of judges at the Palopo District Court, South Sulawesi, found the defendant guilty and sentenced to 3 months in prison, for violating Article 45 paragraph (1) jo. Article 27 paragraph (3) of the ITE Law. Ironically, in Asrul's case, the judge even acknowledged that the news written by Asrul was a journalistic product/work and Asrul's status as a journalist, but Asrul was still found guilty [5]

The construction of Article 219 of the Criminal Code Bill has raised concerns among journalists. This article is considered to be identical to the formulation of the article relating to the



prohibition of defamation which has been in effect so far. Various debates regarding whether or not it is necessary to regulate articles related to acts of attacking the honor or dignity of the president or vice president in the Criminal Code Bill are very interesting to study. This article will specifically discuss the urgency of the concept of regulating articles on acts of attacking the honor or dignity of the president in the Draft Criminal Code, as well as whether this article is substantively a norm and constitutes a threat to freedom of opinion and freedom of the press. This article aims to gain an understanding of the background behind the regulation of this article in the Draft Criminal Code, as well as understanding what differentiates it from the article on insulting the president which in the previous legal arrangement in the Criminal Code was declared contrary to the Constitution by the MK. Apart from that, this article also aims to understand the potential point of contact between the substance of the article and the right to freedom of expression/opinion and freedom of the press. Several related previous articles include one written by Ajie Ramdan entitled "Controversy over the offense of insulting the president/vice president in the RKUHP." This article concludes that the Government and DPR do not have strong legal arguments to revive the offense of insulting the president/vice president, especially in terms of personifying the president/vice president with the country. Then there is also an article written by Lidya Suryani Widayati entitled "The Crime of Insulting the President or Vice President: Should It Be Re-Regulated in the Criminal Code?", the author of this article examines this policy from the perspective of the criminalization of the article. This article concludes that the criminal offense of insulting the president or vice president no longer needs to be regulated in the Criminal Code. The articles governing this criminal act basically contain the same substance as the insult articles regulated in the Criminal Code which have been annulled by the Constitutional Court because they were deemed to be in conflict with the 1945 Constitution of the Republic of Indonesia. These two articles are different from the focus of the discussion in this article. This article will not only examine the formulation of the article relating to the criminal act of attacking the honor or dignity of the president or vice president in terms of the urgency of regulating the article, but will also examine the differences in its regulation with the previous article on insulting the president which was annulled by the Constitutional Court. Apart from that, this article will also examine whether the article in substance constitutes a threat to freedom of opinion and freedom of the press. So from this study it can be seen how urgent the regulation of the article is, how it differs from the previous article which was revoked by the Constitutional Court, and the possible implications that need to be anticipated if this article remains part of the Criminal Code Bill which is later passed.



## 2. ANALYSIS AND DISCUSSION

The criminal act of attacking the honor or dignity of the President or Vice President is regulated in Articles 218 to 220 of the Draft Criminal Code. In the latest Criminal Code Bill which was submitted by the government on July 6 2022 to Commission III of the DPR RI, it is known that there are no substantive changes to the norms of Articles 218 to Article 220 of the Criminal Code Bill if we compare it with the 2019 version of the Criminal Code Bill, whose ratification was postponed. However, if you look carefully, you will understand that there are changes to the explanation of the articles, especially in the explanation of Article 218 of the Criminal Code Bill. Before reviewing the substance of this article in more depth, here is the complete editorial of the relevant article:

- a. Article 218 of the Draft Criminal Code: (1) Every person who publicly attacks the honor or personal dignity of the President or Vice President shall be punished with a maximum imprisonment of 3 (three) years and 6 (six) months or a maximum fine of category IV. (2) It does not constitute an attack on honor or dignity as intended in paragraph (1) if the act is carried out in the public interest or self-defense.
- b. Article 219 of the Draft Criminal Code: Every person who broadcasts, displays or attaches writings or images so that they are visible to the public, listens to recordings so that they are heard by the public, or disseminates by means of information technology an attack on the honor or honor and dignity of the President or Vice President with the intention of making the contents known or better known to the public shall be punished by a maximum imprisonment of 4 (four) years and 6 (six) months or a maximum fine of Category IV.
- c. Article 220 Draft Criminal Code: (1) Criminal acts as intended in Article 218 and Article 219 can only be prosecuted based on a complaint. Complaints as intended in paragraph (1) can be made in writing by the President or Vice President. In the article explanation section, the drafters of the Criminal Code Bill only provide an explanation for Article 218, while Articles 219 and Article 220 are stated to be "quite clear".

In the article explanation section, the drafters of the Criminal Code Bill only provide an explanation for Article 218, while Articles 219 and Article 220 are stated to be "quite clear". The following is a comparison of the explanation of Article 218 of the Criminal Code Bill from the two versions: The explanation of Article 218 of the two versions of the Criminal Code Bill explains several things, namely:

First, in the 2019 version of the Draft Criminal Code Bill, the drafters of the Criminal Code Bill put more emphasis on explaining Article 218 paragraph (1) to explain forms of attacks



on honor or dignity, such as insulting with letters, slandering and insulting. This formulation also explains the background or reasons behind the criminalization of this act, and an explanation of the purpose of the article (not to reduce freedom of expression). Meanwhile, Article 218 paragraph (2) only explains the meaning of "carried out in the public interest", namely as a form of freedom of expression. Second, in the 2022 version of the Draft Criminal Code Bill, the drafters of the Criminal Code Draft Bill omitted most of the explanation of Article 218 paragraph (1) of the previous version, and only explained the meaning of "attacking one's honor or honor and dignity", namely an act of "degrading or damaging one's good name or self-respect". Meanwhile, Article 218 paragraph (2) emphasizes the meaning of "carried out in the public interest", namely protecting the interests of society expressed through the right to expression and the right to democracy, but it also explains the concrete form of what is meant by "criticism", the permitted methods of criticism, as well as the prohibited methods of criticism (criticism carried out with malicious intent to demean or attack the honor and dignity and/or offend the character or personal life of the President and Vice President). From the changes in the explanation of this article, the drafters of the Criminal Code Bill may have intended to avoid potential misinterpretation of the phrase "done in the public interest". Apart from that, this change aims to eliminate misunderstandings among some groups who interpret the norms of this article as a prohibition on criticizing the President or Vice President as a form of freedom of expression. An explanation of the background to the regulation of an article norm in a law (UU) is usually understood by the public simply by paying close attention to the contents of the Academic Text (NA) of the Law, so it does not need to be explained in an official explanation of a Law. However, due to the great attention paid to this bill, many long explanations were found in the explanation section of the articles in the Criminal Code Bill. Even in Book I of the Draft Criminal Code, you can find various explanations of the principles of criminal law that are applied, so that this Draft Criminal Code will educate readers about criminal law. Especially in this article about the act of attacking the honor and dignity of the President or Vice President. The explanation of the long articles included by the drafters of the Draft Criminal Code Bill aims to provide more explanation regarding the norms of the articles in question, and to avoid misunderstandings by the public and law enforcers themselves when implementing the relevant articles. An explanation regarding the regulation of norms regarding the act of attacking the honor and dignity of the President or Vice President has been stated in the NA of the Draft Criminal Code, namely "This criminal act is regulated because it is considered to be in accordance with the family spirit of the Indonesian nation, where if the Head of state is attacked or insulted, then the public will not be able to accept this or criticize him. The head of state and his deputy can



be seen as the personification of the state itself. "Perhaps in other countries, especially in western countries, nowadays people have different views, but in Indonesia people still have strong respect for the President and Vice President." NA The Criminal Code Bill explains in concrete terms the reasons for maintaining the provisions regarding "Insulting the President", namely:[7]

1. The legal interests/objects (*rechtsbelangen/rechts good*) or basic values ("basic values") that are intended to be protected by the offense of insult are "human dignity" which is one of the universal values that is highly upheld;
2. Insulting is essentially a very reprehensible act (seen from various aspects: moral, religious, social values and human rights/human values), because it "attacks/demeans human dignity" (attacks universal values); therefore, theoretically it is seen as "*rechtsdelict*", "intrinsically wrong", "*mala per se*" and therefore also prohibited (criminalized) in various countries;
3. Determining the scope of criminal acts of insult can vary for each society/country; This includes criminal policy and social policy issues which are closely related to the socio-philosophical, socio-political and socio-cultural values of each nation/country;
4. The scope of humiliation of ordinary people; certain people (who are carrying out worship and religious officials; judges/judiciary; population groups; symbols/*la m b an g / ap ara t* / state institutions (flags/anthems; state symbols; officials/holders of general power; government; President/Vice President, including from friendly countries; symbols/institutions/sanctified substances (God, His word and nature; religion, apostles, prophets, holy books, religious teachings, or religious worship;
5. It is considered odd that insulting ordinary people, dead people, national flags/anthems, state symbols, public officers/officials, and Heads of friendly States is made a criminal offense; while insulting the President is not; Moreover, the status/position/position/function/duties of the President are different from those of ordinary people, seen from a sociological, legal and constitutional perspective.
6. Because the status/position of the President is different from ordinary people in general, it is not appropriate for this matter to be confronted/problematised with the principle of "equality before the law". If this is the case, all differences in types of criminal acts that are based on different status/qualifications (such as those found in the types of insults, murder, abuse, etc.) must also be eliminated because they are seen as contrary to the principle of "equality before the law".

All of these things are the urgency of the regulation of the "Article on Insulting the President" contained in the NA of the Criminal Code Bill. Even though during the discussion





process at the DPR RI, the norms of this article were debated for quite a long time, especially at the Working Committee Meeting for the Criminal Code Bill on 29 August 2019 at the DPR RI. Some factions continue to ask the government for an explanation regarding the regulation of this article. In the discussion at that time, Muladi explained that the Constitutional Court's decision (which revoked the article on insulting the President) indicated two things: First, it placed the President on the same level as ordinary citizens, so that the article had to be a complaint offense. Second, the complaint must have two pieces of evidence, so not only the president's statement but also other pieces of evidence, including recordings or photos and so on. This is the essence of the Constitutional Court's decision and must pay attention to the protection of freedom of information/press, then freedom of expression.

The Constitution of the 1945 Constitution of the Republic of Indonesia after the amendment refers to ICCPR Article 19 which has been ratified by Indonesia, namely freedom of expression, that freedom of expression is limited, meaning it must not harm other people, and must not disturb public order, or national security and the principles of democracy and humanity. So in this case we do not protect power with darkness, because what is called an insult must contain elements of offensiveness, attack and degrading dignity, and there is a term in the law that is *dolusmalus*, namely malicious intent and something that is fake, counterfeit, untrue. These are the 3 measures, offensive, fake, and there is *dolusmalus* or malicious intent. That is the standard in articles related to insults. So I say that freedom of expression is not as free as freedom, it is limited by the rights and interests of other people which are also limited by public order, security, elements of democracy, religion, and so on.

However, in the XI Plenary Meeting for the First Session Period of the 2019-2020 Session Year, Member of the Republic of Indonesia's DPR, Al Muzzammil Yusuf, even stated that the PKS faction proposed that Article 218, Article 219, Article 220 of the Criminal Code Bill regarding attacks on the honor and dignity of the President and Vice President be revoked. Criminal Code. Eddy OS Hiariej, explained that the philosophical basis for the birth of criminal law included the function of protection, both for the state, society and individuals. One thing that is protected by criminal law is honor, dignity and good name. Therefore, the article was born regarding insults directed at the state, society or individuals. Criminal law doctrine states that insults generally consist of two forms. First, insulting, both verbally and in writing. To insult means to humiliate one's dignity. For example, likening or cursing someone with the name of an animal. Second, slander or *raster*, namely accusing someone of committing a disgraceful act or criminal act and it



turns out that what is alleged cannot be proven by the person making the accusation. Included in slander are slanderous reporting and slanderous accusations.

Furthermore, Eddy also said that for Indonesia these insulting articles would still be maintained for the reasons: First, insulting results in character assassination. Second, insults are considered inconsistent with the traditions of Indonesian society<sup>17</sup> which still upholds eastern customs and culture. Third, insults are a form of *mala per se* or *rechtsdelicten* and not *mala prohibita* or *wetsdelicten*. This means that insults are considered a form of injustice before they are stated in law because they violate the rules of politeness. Moreover, insults are considered to violate religious norms if the substance contains slander. The criticism that the article on insulting the president which was annulled by the Constitutional Court was revived is unfounded because the best and *deel delict* (elements of the article) in the Draft Criminal Code are different in principle. This article also does not violate the principle of equality before the law, because the president and vice president are *primus inter pares* (first among equals). The same logic applies to criminal acts that threaten the lives of the president and vice president, they are not included in the general murder article, but are categorized as treason.

Then in terms of criminalization, whether or not the article about insulting the president or vice president is worthy of being criminalized again in the Criminal Code Bill. Regarding this matter, Bambang Poernomo explained that determining criminal acts is a process of determining a person's actions as acts that can be punished. It was also explained that this criminalization process formally began with the formation of a law where this act was threatened with a sanction in the form of a crime. Certain acts that undergo a process of criminalization in a factual sense, sometimes materially, the community already considers evil acts based on the laws that exist in society and receive a decision by an authorized legal officer as an act that is against the law.

The debate regarding the reappearance of the insulting the president article in the Criminal Code Bill is actually part of the process of determining the criminalization policy. Some circles of society, especially activists and journalists, believe that re-arranging this article in the Draft Criminal Code Bill should not be carried out, apart from the fact that this article has already been annulled by the Constitutional Court, this article also threatens freedom of expression and press freedom. Meanwhile, from the perspective of the drafters of the Criminal Code Bill, this article needs to be regulated to provide legal protection for the honor, dignity and worth of the president and vice president. Apart from that, in terms of elements, the formulation of the article is also different from the article that was annulled by the Constitutional Court.





In the view of those who oppose it, re-arranging the article on insulting the President is the same as reviving the "zombie" article and returning "lese majeste and Haatzai Articleen", meaning that this article is an article that has been killed by the Constitutional Court and is also a political tool to silence public criticism of the authorities. The Institute for Criminal Justice Reform (ICJR) in its article notes several arguments why this article should not be readjusted, including the following:

1. Historically, Article 134 of the Criminal Code which was revoked by the Constitutional Court in concordance comes from Article 111 of the Nederlands Wetboek van Strafrecht (WvS Nederland, 1881) which regulates opzettelijke belediging den Koning of der Koningin with the threat of a maximum prison sentence of five years or a maximum fine of 300 guilders. Pascal 134 WvS Nederlands-Indië reads, "Opzettelijke belediging den Koning of de Koningin aangedaan, wordt gestraft van ten hoogste zes jaren of geldboete van ten hoogste driehonderd gulden". Then, according to Article 8 Number 24 Oendang-Oendang 1946 Number 1 concerning Criminal Law Regulations, it is stipulated that the words Koning of der Koningin in Article 134 of the Criminal Code are replaced with the words President of den Vice - President (H.Soerjanatamihardja, Criminal Code, 1952), this is considered inappropriate.
2. sovereignty rests with the people and that the President and/or Vice President are directly elected by the people, so they are therefore responsible to the people. The dignity of the President and Vice President has the right to be respected according to protocol, but the two leaders chosen by the people cannot be given privileges that cause them to obtain positions and treatment as humans whose dignity is substantively different before the law from other citizens.
3. contrary to the Constitution of the Republic of Indonesia. Articles related to insulting the President create legal uncertainty (rechtsonzekerheid) because they are very susceptible to interpretation as to whether a protest, statement of opinion or thought constitutes criticism or insult to the President and/or Vice President. This is constitutionally contrary to Article 28D paragraph (1) of the 1945 Constitution and at some point can hamper communication efforts and obtaining information, which is guaranteed by Article 28F of the 1945 Constitution.

There are also opposing views from criminal law experts, one of whom is Mardjono Reksodiputro, who is an expert witness who influenced the previous MK decision. Quoting CPM Cleiren's opinion, Reksodiputro said that historically the offense of insulting the president/vice president, the dignity of the king does not justify the king's personality acting as a complainant (aanklager). Article 134 of the Criminal Code (as a concordant to Article 111 WvS Nederland) is



an article for special criminal treatment in connection with insulting the king (or queen) of the Netherlands. "The king's personality is so closely linked (verhoeven) to the interests of the state (staats belang), that the king's dignity requires special protection." Reksodiputro believes that there is no reference to whether similar reasons can be accepted in Indonesia, which replaces the word 'king' with 'president and vice president.'

The criminal threat for degrading the President's "dignity" included in the Criminal Code Bill is actually also regulated in various countries, including Germany, Albania, Georgia and Tajikistan. Regulations related to the article regarding insulting the president in these countries show that the crime of insulting the President is a quite serious crime. In Germany, for example, it is threatened with imprisonment between 3 months and 5 years, while in Albania it is threatened with imprisonment between 2 years and 5 years. The State of Georgia also not only provides a criminal threat of a fine, but also provides a criminal threat of community service for 150 hours to 240 hours. Likewise, Tajikistan threatens a fine of 100 to 500 times the minimum monthly income or social work for 1 year to perpetrators of insulting the President. When compared with Indonesia, after the MK revoked the article on insulting the president, there was practically no legal protection for the dignity of the President. In the sense that the legal interests of the dignity of the President of Indonesia are not placed as national interests that should be specifically protected. If a crime occurs against the dignity of the President, it is submitted entirely to Article 310 paragraph (1), Article 310 paragraph (2) and Article 315 of the Criminal Code, which basically are articles used to protect ordinary people from criminal acts of insult.

The Constitutional Court's decision is considered to have had a significant juridical impact on national criminal law policy. It is even considered to have "damaged" the value gradation system in the Criminal Code. 25 There is no longer any special protection for the President's dignity in relation to the position he holds. Meanwhile, insults against the king, heads of other states or representatives of other countries are still accommodated in the Criminal Code. Even desecration of the Indonesian flag and national symbols as well as insulting the flag of a foreign country are still valid in the Criminal Code. Even though the status and position of the President: As Head of Government (Chief Executive); As Supreme Commander of the Army, Navy and Air Force (Commander of the Army, Navy and Air Force); As Chief Diplomat (Chief Diplomat); and as Head of State. The Constitutional Court, through its decision, is deemed to have failed to properly consider the rules of the right to freedom of expression, which is linked to the notion of popular sovereignty, which has indirectly given rise to a very liberal (free) approach to the meaning of the right to freedom of expression (freedom of expression) itself.



Legal expert Barda Nawawi Arief, one of the drafters of the Criminal Code Bill, also considers that insulting the honor, dignity and dignity of the President and Vice President is a deviant behavior that exists in society, in the form of a real threat in the era of industrial revolution 4.0 which underlies life and social order in society in the future. Apart from that, if the article regarding insulting the honour, honor and dignity of the President and Vice President is removed and in the end the public considers it to be normal, as in a liberal country like the United States, then it is the same as not respecting the noble values of Pancasila (divine values, human values, unity and integrity, people's values and justice) as the basis and soul of all sources of law in Indonesia.

Of all the existing discourses, the values of Pancasila as the noble values of the Indonesian soul in national life are the key words in the norming of this article. Because this is a philosophical basis, are the norms of this article appropriate to be regulated in the Draft Criminal Code? The values of Pancasila as the basis of Indonesian state philosophy are essentially the source of all sources of law in the Indonesian state. As a source of all sources of law, it is objectively a view of life, awareness, legal ideals, and noble moral ideals which include the psyche and character/nature of the Indonesian nation.

Based on the various debates that have arisen, law makers should be able to find a middle way by paying attention to this rejection. The formulation of articles that are worried about by opposing parties must be a common concern, especially the formulation of articles that are obscure or vague in nature. As for the consideration that this article is still considered urgent to be regulated, of course it also needs to be understood together. The fact that the current position of the articles which the drafters of the Criminal Code Bill have formulated differently should be re-examined. This article now has the character of a complaint offense, meaning that only the president and vice president themselves can make a complaint if a crime occurs. Politically, it is certainly not so easy for the president and vice president to make a complaint, because it will have a big influence on their political preferences in the eyes of society or the public.

Apart from the UDHR, the provision of guarantees for freedom of expression by the international community is also contained in the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights) or commonly abbreviated (KIHSP/ICCPR) which was stipulated by General Assembly Resolution 2200 A (XXI) dated 16 December 1966, open for signature, ratification and accession, and came into force on 23 March 1976. KIHSP is an international instrument that is legally binding law, which provides an



elaboration of the basic rights and freedoms stated in the UDHR. Article 19 of the Criminal Procedure Code states that:

1. Everyone has the right to an opinion without interference.
2. Everyone has the right to freedom of expression; This right includes freedom to seek, receive and impart any information and ideas, regardless of restrictions, orally, in writing, or in the form of print, works of art or through other media of his choice.
3. The implementation of the rights listed in paragraph (2) of this article gives rise to special obligations and responsibilities. Therefore certain restrictions may be imposed, but this can only be done in accordance with the law and to the extent necessary to:
  - a. Respect the rights or reputation of others;
  - b. Protect national security or public order or public health or morals.

Based on an examination of international provisions relating to freedom of expression, it can be concluded that recognition of freedom of expression necessitates the freedom to seek, receive and convey information in any way. This freedom is given accompanied by the responsibility that arises to continue to respect the rights of other individuals. Nationally, in the fourth amendment to the 1945 Constitution of the Republic of Indonesia, the right to freedom of expression and opinion is regulated in Article 28, Article 28 E, Article 28F. Article 28 states "Freedom of association and assembly, expressing thoughts verbally and in writing and so on is determined by law". Then Article 28E paragraph (2) states "Everyone has the right to freedom of belief, expression of thoughts and attitudes, in accordance with his conscience". Furthermore, Article 28E paragraph (3) states "Everyone has the right to freedom of association, assembly, expression of opinion". This also includes Article 28F which states "Everyone has the right to communicate and obtain information to develop their personal and social environment, and has the right to seek, obtain, own, store, process and convey information using all types of available channels." In Indonesia, the right to freedom of expression and opinion also does not apply absolutely, meaning that there are still restrictions regulated in Article 28J paragraph (1) of the 1945 Constitution of the Republic of Indonesia, namely to guarantee recognition and respect for the rights and freedoms of other people and to fulfill fair demands in accordance with moral considerations, religious values, security and public order. Restrictions on the right to freedom of opinion and expression can also be seen in several laws, including Law Number 14 of 2008 concerning Openness of Public Information, Law Number 17 of 2011 concerning State Intelligence, and Law Number 44 of 2008 concerning Pornography. Regulations regarding freedom to express opinions in public are even specifically regulated in Law Number 9 of 1998 concerning



Freedom to Express Opinions in Public, which aims to realize responsible freedom as one of the implementation of human rights based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Apart from that, it can also be added as one of the "justifying reasons" in the Criminal Code Bill. In concrete editorial terms, the article states that: "There will be no punishment, every person who carries out a profession that is recognized and regulated by law, does so in accordance with professional standards, does not violate the professional code of ethics and is in accordance with the law." 45 This input from Mudzakir certainly needs to be taken into consideration by the drafters of the Criminal Code Bill. Another note that the drafters of the Criminal Code Bill need to pay attention to is the explanation of Article 218 paragraph (2), which does not yet provide clarity regarding the meaning of "self-defense", because it only provides an explanation regarding "public interests". Even though there are two reasons for abolishing criminal penalties as regulated in the article, "it does not constitute an attack on honor or dignity if the act is carried out in the public interest or self-defense." This needs to be done so that interpretation problems do not arise in the future regarding the meaning of self-defense. Then regarding Article 219 of the Draft Criminal Code, which regulates that "any person who broadcasts, displays, or attaches writing or pictures so that they are visible to the public, listens to recordings so that they are heard by the public, or disseminates using information technology means attacks on the honor or honor and dignity of the president or vice president with the intention of making the contents known or better known to the public...", also requires an explanation of the article, that journalistic work cannot be punished. Because of the elements of the article, it can be misinterpreted, namely when there is a journalistic work that reports on incidents of attacks on honor or insults themselves. Unfortunately, currently the explanation only states "quite clear". This condition needs to be paid attention to, because this article carries a fairly high criminal threat, namely a maximum prison sentence of 4 (four) years and 6 (six) months or a maximum fine of Category IV (Rp. 200,000,000,-). All of these notes are of course very important to consider as input for drafting the Criminal Code Bill. In order to avoid problems with the implementation of law enforcement by law enforcement officials (APH) if there is a complaint regarding alleged acts of insulting the president or vice president.

### 3. Conclusion

The article regarding acts of attacking the dignity of the President or Vice President is still necessary/urgent to be re-regulated in the Draft Criminal Code. However, with a note that adjustments are needed to the explanation of the article in question. In its formulation, this article is



also different from what was canceled by the Constitutional Court Decision. The fundamental change to this criminal act is to change this criminal act into a criminal act of complaint made in writing by the President or Vice President. Theoretically, this act is seen as "rechtsdelict", "intrinsically wrong", or "mala per se", and therefore is also prohibited (criminalized) in various countries. Insults are essentially despicable acts seen from the aspects of morals, religion, social values and human rights values. Therefore, criticism or opinions that differ from government policy are not included in the actions referred to in the norms of this article. This is regulated in the form of reasons for expunging the crime, namely the exception if the crime was committed in the public interest or for self-defense. However, the drafters of the Draft Criminal Code Bill need to consider improving and adding explanations to the articles to provide legal certainty and avoid misinterpretations and criminal penalties for ordinary people, especially those related to journalism work. Then, if these articles are promulgated in the future, the application of the law will of course require a good understanding by all APH, including lawyers, police, prosecutors and court judges. This aims to avoid punishments that are not in accordance with the wishes of the formulation of norms. In general, the construction of the articles regarding acts of attack on the dignity of the President or Vice President in the Draft Criminal Code cannot be said to have violated human rights principles related to the right to freedom of expression and freedom of the press. This argument is based on several things, one of which is that the Constitution has outlined guarantees of recognition and respect for the rights and freedoms of other people, as well as to fulfill fair demands in accordance with moral considerations, religious values, security and public order. Therefore, the right to freedom of expression must be accompanied by the responsibility to respect the rights of other individuals in accordance with the law, respect for the rights and freedoms of other people, including respecting the rights or good names of other people. The regulation of norms in this Article in the Draft Criminal Code is a limitation, which is realized in the form of a prohibition on acts that attack the honor, honor and dignity of the President or Vice President. However, there are important notes that must be taken into consideration by drafters of the Criminal Code Bill. That the guarantee of protection for freedom of expression and freedom of the press still needs to be emphasized in the Draft Criminal Code. Due to the reality on the ground so far, it is felt that there is still minimal legal protection for reporters or reporters when enforcing the law regarding norms of articles similar to or identical to articles related to insults.

Strengthening the protection of freedom of expression in the Draft Criminal Code Bill can be done, among other things, by improving part of Book I of the Draft Criminal Code, by regulating the issue of non-criminalization of people carrying out their profession, as long as it is





done in accordance with the standards of their profession and violates the professional code of ethics. The drafters of the Criminal Code Bill still need to add an explanation to the article regarding the meaning of "self-defense" in Article 218 paragraph (2) of the Criminal Code Bill. Because there are two reasons for eliminating criminal penalties regulated in this article, namely for the public interest or self-defense. This needs to be done so that interpretation problems do not arise in the future regarding the meaning of self-defense. Drafters of the Criminal Code Bill need to add an explanation regarding Article 219 of the Criminal Code Bill, at least explaining that journalistic work cannot be punished. Because of the elements of the article, it can be misinterpreted, namely when there is a journalistic work that reports on incidents of attacks on honor or insults themselves.

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