

History Of The Arrangement Of Contempt Of The President Or Vice President In Indonesia

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ABSTRACT

This research aimed to find out the existence history of the Article on the arrangement of contempt of the President or vice President in Indonesia from the old order (orde lama), new order (orde baru) to reformation era. Type of this research is normative legal research under conceptual approach which studied literatures through library research. The collected materials were processed and analyzed qualitatively with deductive thinking method. Research result indicates that the regulation on contempt of the President and vice President in Orde Lama and Orde Baru era were accordingly to the Dutch colonial era. The regulation was terminated in the reformation era through the decree of the Supreme Court No.013-022/PUU-IV/2006 since it considered contradict the constitution 1945 (UUD 1945). Furthermore, contempt of the President and vice President regulated under Article 207 KUHP or Article 310-312 in term of the President or vice President regarded as ordinary civilian excluded their privileges as the law and human rights guaranteed each citizen's equation before the law.

Keywords: Arrangement; Contempt; President; vice President.

INTRODUCTION

The proclamation of independence and formation of the State of Republic Indonesia as declared in the The Constitution Of Republic Indonesia 1945, brought significant change in various aspects in Indonesia's social life including in law. Operated legal system in a society is basically the implementation of its legal ideal. Those ideals

are embodied in positive law components. Founding fathers of the Republic of Indonesia has declared that the state is legal-base as mandated in Article 1 verse (3) of the third amendment of The Constitution Of Republic Indonesia 1945.¹

Indonesia's current governance system is presidential as the state leads by a President. This system is different from the colonial or *Hindia-Belanda* era which embraced parliamentary system where the government led by a king or queen and therefore governmental policy determined the king or queen. In the *Hindia-Belanda* era crime against the king or queen was categorized as formal offence in order to protect the king or queen's dignity since they perceived the symbol of the state. Thus, those who conducted contempt to the king or queen will be charged and punished through formal trial process.

Notably, particular colonial regulation still adopted by Indonesian government era to era including the law of criminal act or Criminal Code especially related with the contempt of President. Certain issues emerge in the implementation which triggered debates among activists, legal enforcer and public. The opponents argued that the regulation is colonial's legacy therefore not necessary to be enforced continuously moreover Indonesia-made regulation has covered related issue. They propose such a conventional regulation require revision and reform especially concerning limitation of the provisions.

One of the cases was alleged to local musicians namely *Koes Bersaudara* as they considered insinuating the government through their songs. They were sentenced three months prison in 1965 due to practiced western culture within their performance such as the Beatles and Elvis Presley without having fair trial process. The President assumed it as contempt because President Soekarno was against imperialism, colonialism and capitalism at any form. Another case was involved Bimbo. This group was banned by the government of New Order due to the lyric of it single titled "*tante Sun*" as the lyric considered as insinuation to the wife of state's leader. Similar allegation also addressed to Iwan Fals in New Order era since his song titled "demokrasinasi" and "*mbak Tini*" which performed in a concert in Pekanbaru, Riau was "offending" the authority's dignity.

Derived from the above situation, this article will elaborate the history of the regulation concerning contempt of President and vice President from its initial formation and enforcement in order to find out the aim of such regulation and to what extent it benefitted further state development.

METHOD

This study use normative method. Approach using in this study are the historical approach and conceptual approach. Legal materials collection technique is by library research. The data then processed and analyzed in deductive thinking method.

ANALYSIS AND DISCUSSION

Regulation on contempt of the President and vice President in Old Order and New Order Era

Old Order is referred to the governing period of President Soekarno in Indonesia. It established in during 1945-1966. Meanwhile New Order is referred to the governance period of President Soeharto which was from 1966 to 1998. During those periods, Indonesia embraced liberal and commando economic system. In president Soekarno's era Indonesia was applied

¹ Article 1 Constitution of The Republic Of Indonesia of 1945.

liberal economic system combined with parliamentary government system as these system adopted from *Hindia-Belanda* era.

The reason behind the application of parliamentary governance system was that Hindia-Belanda led by a king or queen. The king or queen was symbol of the state who supremely respected. Hence as a symbol they shall not be insulted or harassed as insulting the symbol analogously insulting the state itself. In other words, regulation on the contempt of President and vice President was made to protect the king or queen's policy to prevent public from opposed the government for the interest of state's development.

To emphasize, such regulation is set forth in colonial's legacy Penal code (Criminal Code) as it imposed in certain articles including Article 134, 146 bis and Article 137. During Old Order and New Order period those articles were preserved as a tool to protect the President's dignity and limiting public's freedom of expression to criticize the state's leader. This description is similar to the aim of the establishment of Article 134 and 134 Criminal Code by Dutch colonial government as these Articles were used to sentence colony citizens who conduct rebellion. In the context of Indonesia it also used to preserve authority's power and to minimize opposition, rebellion and critics. The above articles asserting that:²

Article 134 Criminal Code "intended contempt toward President or vice President is potential to be imprisoned at longest six years or fined four thousand and five hundred rupiah at most"

Pasal 137 paragraph (1) "whoever broadcast or embedded publicly writings or drawings which contain contempt of President or vice President intending to be known or publicly known are potentially imprisoned at longest one year or fined four thousand and five hundred rupiah at most"

While arranging likewise object, i.e. authority, articles on contempt of President and authorized officers are different in scope. Articles on authorized officer carries more general meaning as authorized officers may refer to anyone who occupying position in public office and authorized in governmental hierarchy. Whereas articles on contempt of president is more particular as it refer to a more specific object.

Arrangement on contempt of public officer set forth in Article 207 and 208 Criminal Code as follows:³

Article 207: "whoever intentionally contempt authorized office or officer publicly in Indonesia either orally or written potentially imprisoned at longest one year or fined at most four thousand and five hundred Rupiah"

Article 208 Article Verse (1): "whoever broadcasting, exposing or embedded publicly writings or drawings contain contempt of authorized office or officer in Indonesia intending the contempt to be known or publicly known potentially imprisoned at longest four months or fined at most four thousand and five hundred Rupiah"

During Old Order and New Order era related cases was occurred. Such as Koes *Bersaudara* who sentenced three month prison in *Glodok*, West Jakarta in 1965 due to allegation of carrying out western culture in their music performance that resemble the Beatles or Elvis Presley. It considered as contempt of President Soekarno since he against any form of imperialism, colonialism and capitalism. Another charges addressed to Bimbo as they banned during New Order era due to their single titled "tante Sun which contain critic on the wife of authorized

² .Soesilo SH. (2014). *KUHP*. Pustaka Buana.p. 52

³ .*Ibid.*,p. 74.

officers. At the same era IwanFals also experienced likewise banned due to his song titled *DemokrasiNasi* and *Mbak Tini* as he performed these songs in a concert in Pekanbaru, Riau.

It can be said that the above articles restrict one's freedom to express his aspiration, reveal truth and sound critic through his works. This proves that the government intentionally preserve and implement the article as shield for their power.

Arrangement on the contempt of President or vice President in the reformation era

In this era freedom of the press is imposed which enable one to develop his aspiration through mass media either by searching, accessing and reveal it widely. It encourages public to freely express their aspiration in any possible ways to be seen and heard by authority. Protest, broadcast media, print media, social media or direct hearing can be choose to sounds one's idea. Even though one way may be less effective that another depends on the responsiveness of the targeted officer or institution.

Nevertheless this freedom of speech is contradictive to the regulation on contempt of President in Criminal Code. It also viewed as rubber articles which bias in boundary or classification on violation category as it also terminate one's constitutional right and interest.

The above situation led to lawsuit to the Supreme Court on the termination of Article 134, 136 bis and 137 Criminal Code for contending The Constitution Of Republic Indonesia 1945. The litigant namely Eggy Sudjana, an advocate and Pandopotan Lubis, a businessman who argued that the above articles are against human rights especially to express opinion in order to support the country's development.

Chronology of the case was on January 3 2006 prime litigant, Eggy Sudjana met the chief of Commission of Corruption Eradication (KPK), Taufikuqurahman Ruki confirming issue on unpaid production service fee by Bank Mandiri on behalf of ECW Neloe. Litigant suspected corruption indication involving a businessman namely Hary Tanoesoedibjo as he handed over luxury car known as Jaguar to certain individuals inside "presidential palace" circle which confirmed by the chief of KPK. This meeting content was shared to journalists as they asked which raised lawsuit to litigant.

Concerning second litigant, Pandopotan Lubis which case occurred on May 16 2006 as litigant and a group of activists expressing their thought and opinion at Bundaran Hotel Indonesia brought posters contain pictures of the President and vice President conveyed statements such as "we can't stand" , "down" , "the Joker" and "death card".⁴

This protest also attended by Sri Bintang Pamungkas and widely covered by press. The whole occasion was conducted properly by not more than ten persons with prior notification and supervised by police officers in certain distance. As DKI Jakarta's civil police department (SATPOL PP) tried to interrupt by threaten and sweeping protest device, fray almost happened but police officers manage to handle the situation.

Therefore litigants assume that in these cases they were betrayed by law that supposed to be supreme protector in citizen's life. Their human rights on expressing information in any ways as Indonesia's citizen for the interest of the state as mandated in Article 28 F The Constitution Of Republic Indonesia 1945 has been taken. To emphasize, the article stated that"

*"Everyone entitle to communicate and obtain information for personal and social development, also entitle to search, gain, own, keep, manage and deliver information through any available access"*⁵

⁴ *.Ibid*, Constitutional Court Verdict .p. 18

⁵ The Constitution of Republic Indonesia of 1945.

Based on the above situation, both litigants submit a plea to the judge of Supreme Court which proposed:⁶

1. Accepting and acceded entire litigants' plea;
2. Acceded litigants' provision plea;
3. Declare that the content of Article 134 Criminal Code, Article 136 bis Criminal Code and Article 137 Criminal Code including its descriptions are against/ in contrary with Article 27 Verse (1) The Constitution Of Republic Indonesia 1945, Article 28 The Constitution Of Republic Indonesia 1945, Article 28 E Verse (2) And (3), Article 28 F The Constitution Of Republic Indonesia 1945 Also Article 28j Verse (1) And (2) The Constitution Of Republic Indonesia 1945;
4. Declare that Article 134 Criminal Code and Article 136bis no longer legally valid.

According to experts Mardjono Reksodiputro and JE Sahetapy who witnessed at the Court, Articles on contempt of the President and vice President shall not be imposed anymore. Mardjono emphasize that enforcement of the Articles especially related to the description of "contempt" enacted in Article 310-321 Criminal Code shall adapt to the evolving description in the society. He point out that penalty on contempt of President or vice President shall no longer exist and shall refer to 310-321 Criminal Code. Mardjono stated that in a Republic state, country's interests are not related to the persona of President or vice President as it is in a monarchy state.⁷

On the other hand, Sahetapy argues that Article V of law number 1 of 1946 concerning penal regulation can be used as a *toetssteen* (examiner) on the relevancy and *raison d'etre* of Articles in Criminal Code. Article V of law number 1 of 1946 stated that "penal regulation entirely or partially cannot be imposed currently or against jurisdiction of Republic Indonesia as independent state or no longer meaningful shall entirely or partially considered inapplicable". According to this Article Sahetapy viewed that Article 134, 136 bis, Article 137 Criminal Code no longer relevant with reformation era and missing it *raison d'etre*.⁸

Jimly, head of judges panel in this case who abolished Articles on contempt of President and vice President mentioned that such a penal is a part of feudal system that irrelevant with today's situation. Besides, according to the Constitution of Republic Indonesia of 1945 the state's symbol is Garuda Pancasila and President as a state's institution has no feeling thus cannot be insulted, apart from President as an individual who is equal to any other citizen.

In it consideration, the Supreme Court opining that Indonesia as a democratic legal state which, republic formed, support people's supremacy and human rights as mandated by The 1945 Constitution is irrelevant to arrange contempt of President in it penal code such as Article 134, 136 bis and 137. Since these articles neglected the principle of equality before the law, diminished the freedom to express, thought and opinion, diminished freedom to access information and neglected law certainty principle. Furthermore, penalty on contempt of President or vice President shall be refer to Article 310 -321 Criminal Code if the contempt (*beleediging*) attacking his personal quality and Article 207 if the contempt is related his position as public officer (*alsambtsdrager*). Therefore, the nullification of Article 134, 136 bis, 137 does not legalize the contempt of President or vice President. Article 310-312 Criminal Code

⁶ Verdict of Constitutional Court Number. 013-022/PUU-IV/2006.p. 10

⁷ .Widya Suryani Widayati. (2017). Tindak Pidana Penghinaan Terhadap Presiden Atau Wakil Presiden:Perluakah Diatur Kembali Dalam CRIMINAL CODE , https://www.Researchgate.net./Publication/327864268_Tind . [Accessed at January 26, 2019] ak_Pidana_Penghinaan Terhadap Presiden Atau Wakil Presiden Perluakah Diatur Kembali Dalam CRIMINAL CODE Defamation Against The President Or Vice President Should It Be Regulated In The Criminal_ . [Accessed at January 26, 2019].

⁸ *Ibid.*

can be imposed to contempt that attacking personal quality of President and vice President. The difference between Article 134 and Article 310 Criminal Code is that Article 310 contains arrangement on contempt against any individual and categorized as by-complain penalty. Meanwhile, Article 134 contains arrangement on contempt of President and vice President which categorize as regular penalty.⁹

To avoid miss-application several revisions are required including clarify the perimeter of material and formal penal arrangement. Besides, to avoid disparity in Court decision harmonization among Criminal Code and Information and Act Concerning Electronic Transaction concerning the value of possible penal sentencing is required. Since the decree of Supreme Court was determined in 2007 penalty on contempt of President or vice President as arranged in Article 134, 136 bis and 137 Criminal Code as well penalty on expression of hostility, hate or disregarding the government of Indonesia arranged in Article 154 and 155 Criminal Code were declared to be “no longer legally binding”. According to the decree of Supreme Court of 2006 contempt on President’s personal matter will be rely on general contempt Articles set forth in chapter XVI , section II Criminal Code. On the contrary, if the contempt attacking President or vice President in term of his formal position as public officer, offender will be snared with Article 207 Criminal Code concerning contempt of public officers. Therefore, matters related to the freedom to express and convey opinion either written or orally is legally strengthen through the decree of the Supreme Court No.6/PUU/5/2007 which terminate Article 154 and 154 Criminal Code.¹⁰

Thus, due to decree no.013-022/PUU-IV/2006 The Supreme Court declared that Article on the contempt of President (Article 134, 136 bis and 137 Criminal Code) no longer legally applicable. Content of the decree as follows:¹¹

Adjudicates

- Declared that the petitions of litigants granted entirely;
- Declared that Article 134, 136 bis, 137 Criminal Code are against The Constitution of Republic Indonesia of 1945;
- Declared that Article 134, 136 bis and 137 Criminal Code no longer legally binding;
- Instructing the establishment of this decree in state gazette properly.

This decree was adjudged on December 6 2006 by attended by nine constitution judges as Jimly Ashiddiqie was the panel head concurrently as member, HM Laica Marzuki, H.A.S Natabaya, Maruarar Siahaan, Abdul Mukhtie Fadjar, H. Achmad Roesland Harjono, I Dewa Gede Palaguna and Soedarsono as members complemented with Cholidin Nasir as registrar also attended by replacement registrar and litigants/attorney of litigants, government or representative and house of representative or it representative.

CONCLUSIONS

Regulation on the contempt of President and vice President has existed in Old Order and New Order era which embodied in Article 134, 136 bis and 137 Criminal Code. Those articles remain existed until the beginning reformation era. It further eliminated through the decree of the Supreme Court which proposed by litigants who formerly charged by the above article. The Supreme Court considered that those Articles against The 1945 Constitution particularly Article 28f on human rights.

⁹ . Mardjono Reksodiputro.(2003). *Tentang Penghinaan*. Jakarta: Elsam. P. 58. 34.

¹⁰ Yulia Kurniaty, Agna Susila, dan Heni Hendrawati, “Unsur-Unsur Pidana Dalam Tindak Pidana Pencemaran Nama Baik Melalui Media Online (Kajian Putusan Perkara Dengan Terdakwa Florence Saulina Sihombing)”, *The 5th Urecol Proceeding*, ISBN 978-979-3812-42-7.p. 328-334.

¹¹ *Ibid*, Verdict of The Constitutional Court,p. 62.

Weakness of the Decree on elimination of Article 134, 136 bis and 137 Criminal Code is that currently the President and vice President no longer has privilege to counter contempt against them as they treated as ordinary citizens. Meanwhile its strength is the termination led to a more transparent governance and provide harmony with public. It also suppressed the authoritativeness of the government as in fact there is a difficulty to differentiate critic and contempt. Since such regulation can be used to silencing the opposition by which resulting an anti-critic government.

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